



Board of Directors

August 27, 2020

Charles Clusen
Chair

John Burth
Adirondack Park Agency
P.O. Box 99
Ray Brook NY 12977

Marilyn DuBois
James McMartin Long
Michael Wilson
Vice-Chairs

Dear Mr. Burth:

Barbara Rottier
Secretary

Re: Public Comment on APA Project 2016-0029 LS Marina, LLC

David Quinn
Treasurer

Please accept these comments as part of the public hearing record for Adirondack Park Agency (APA) project 2016-0029 LS Marina, LLC. Protect the Adirondacks has reviewed 29 pages posted by the APA for the public hearing on the variance request from LS Marina on its marina on Lower Saranac Lake. The variance request was made as part of its overall expansion plans, which also involves a Class A Regional Project and wetlands permit from the APA under the Freshwater Wetlands Act. There are many questions and problems with this proposed expansion. Protect the Adirondacks urges the APA to deny the variance request and to hold a formal adjudicatory public hearing on the permit application.

Nancy Bernstein
Richard Booth
John Caffry
Andy Coney
Dean Cook
James Dawson
Lorraine Duvall
Robert Glennon
Roger Gary
Evelyn Greene
Sidney Harring
Peter Hornbeck
Mark Lawton
Peter O'Shea
Philip Terrie
Chris Walsh

Please see the comments below with regards to APA Project 2016-0029 for a variance request and wetlands permit from LS Marina, LLC.

Request for a Variance

Variance Should be Denied

Peter Bauer
Executive Director

Inadequate Variance Notice #1: The Variance Hearing Notice fails to describe what constitutes the parameters of the variances requested in any meaningful way. The Notice should have stated that the applicant is requesting to build boathouses at the main site (Crescent Bay), accommodating 90 boats, and boathouses at the Annex site, accommodating 80 boats, and that the square footage of those boathouses totals 36,368 square feet, in contravention of the APA's definition of a "Boathouse", which, among other requirements, limits the square footage of a boathouse to 1,200 square feet. The Notice also fails to state the numbers of boats currently lawfully berthed in lawfully existing boathouses on the properties. Without that information, it is impossible for the general public to determine these details or the scale of the project from the Notice, or even from

the plans on the website. Without that information, it is impossible to determine the scale and scope of the variances requested.

Inadequate Variance Notice #2: APA regulation (9 NYCRR 576.6) states:

(a) When the deputy director-regulatory programs believes that grounds for the variance clearly exist, the notice of hearing shall state that he intends to recommend to the agency that the variance be granted and shall state any conditions which he recommends be imposed.

In this case, the assigned APA staff person stated that the Deputy Director cannot and will not make such an assessment until after the hearing record is closed. This contravenes the clear intent of the regulation, which anticipates that the Deputy Director will, in advance of the hearing, make such an assessment, and will provide that assessment to the public, along with proposed conditions that will be recommended. If he/she insists on waiting until after the hearing, this section is useless for the purpose for which it exists: to give notice to the public before the hearing.

Variance Law as Applied to the Project: The applicant is requesting a variance to dimensional standards required by APA Regulations for boathouses. A boathouse is exempt from the shoreline setback requirements only if it meets the limitation of 1200 square feet (among other requirements). A request to vary a dimensional requirement is an “area” variance, and governed by standards and processes in the Regulations. This variance request is governed by Section 809(11) of the APA Act and Part 576 of APA Regulations.

We note that, some years ago, the adjoining property, Ampersand Resort, requested a variance to expand its covered boat slips and to expand its restaurant into and over the waters of Ampersand Bay. This project was not approved, for all the reasons similar to the legal arguments below, but also because the public is not allowed to build on Forest Preserve lands. The location of State Lands is critical to the review of this project and variance application, and should be determined and shown on all the maps and plans.

Overall Size of Request: First, there are two sites to this project, and review factors may differ in some regards for each site. The project overall involves, according to the applicant, a variance of 21,350 square feet for boathouses at the Main Site (Crescent Bay), and a variance of 15,018 square feet for the Annex Site (Ampersand Bay), for a total of 36,368 square feet. Since a boathouse is limited to 1200 square feet, this is a most extraordinary request under area variance law. This request is 30 times the allotted size!

Specific Criteria in Agency Regulations: APA regulation (9 NYCRR 576.1[a]): states:

Where there are practical difficulties in carrying out the strict letter of the provisions of the plan or the shoreline restrictions, the agency may, after public hearing, vary or modify their application so that their spirit is observed, public safety and welfare secured and substantial justice done.

While there is no precise definition of the term “practical difficulties”, in general, the petitioner must show that as a practical matter it cannot utilize its property or a structure thereon “without coming into conflict with certain of the restrictions of the zoning ordinance” (Matter of Fuhst v. Foley, 45 N.Y.2d 441, 445).” [In re Cohen v. Bd. of App. of Saddle Rock, 297 A.D.2d 38, 41 (N.Y. App. Div. 2002)]. There must be something unusual about this property that distinguishes it from all the neighbors subject to the same rule.

In this case, the applicant can most certainly use this property without coming into conflict with the zoning requirements. If the applicant wants to continue operating a marina at these two sites, it can do so without 36,368 square feet of covered berthing space. The applicant can just build un-covered docks to berth boats. That fact alone compels denial of the variance; there simply is no “practical difficulty”. Most marinas in or outside the Adirondack Park provide only un-covered dock spaces, and operate at a profit.

There is nothing about this property which is unusual or prevents its use as a marina without covered dock space.

APA regulation (9 NYCRR 576.1[a]) states:

A variance will be granted when 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 is that he will not be able to offer as many covered boat dock spaces, and that is certainly not a death knell for this marina. As evidenced at the hearing, there is demand for the dock spaces, covered or otherwise. The applicant can offer un-covered dock spaces and be profitable, the same as other marinas.

The adverse consequences to the “public purpose” should the variance be granted, will be significant. The “boathouse” definition limiting size and use of such structures was adopted to protect lakes and shoreline areas from excessive development. Any development close to the water increases runoff, and adversely impacts water quality, marine habitats, and the natural visual qualities of the lake, among other potential impacts. That alone is reason to minimize the size of boathouses.

In this case, there are additional impacts. Most of the shoreline and surrounding lands of this lake are owned by the State, which manages the lake for public recreational use, while also preserving open space, natural, scenic, and wildlife values. These lands are public Forest Preserve, protected as “Forever Wild” by the NYS Constitution. The Forest Preserve is a national and State treasure, set aside for public use, and utilized by millions every year. It is imperative, under the Constitution, that the wild land, wildlife, natural, scenic, visual and open space values be preserved; that is the overriding “public purpose” of protecting shorelines and limiting development on shorelines.

For the Annex site, there are additional public purpose concerns. Most of Ampersand Bay is wetland: emergent and submerged. A study by former DEC Fisheries Biologist, Richard Pre-

all, determined that the wetlands in Ampersand Bay are of exceptional value to the lake as a spawning area; there are no others in this lake. The pre-existing boathouses were built parallel to the shoreline. The proposed boathouses go well into the bay and over a significant portion of wetlands.

The benefit of this requested variance to the marina is to increase its income. This is not a “practical difficulty” and violates the requirements for the granting of a variance. It would set a precedent that will impact not just this lake, but other lakes in the Park. If the applicant wants to argue the extra income is essential to a profitable marina, much more detail is required regarding the finances of the operation. Moreover, expensive coverings to the dock space could price these slips out of reach of the “locals”; the people the applicant is professing to serve. Accurate data on finances are required to make any assessment of “adverse consequences to the applicant.”

APA regulation (9 NYCRR 576.1[c]) states “In determining whether a variance shall be granted, the agency will consider, among other relevant factors” (factors quoted below as items 1-6):

- (1) whether the application requests the minimum relief necessary;

This application is extraordinary in scope, being 30 times the allotted size for a boat house. Surely, there is no reasonable argument that this is the minimum relief necessary, when a marina does not require any covered berthing at all! A marina can, and most do, operate with just un-covered boat dock space.

- (2) whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

No information was made available other than 29 pages of plans for the public hearing. The full contents of the application file, including Notices of Incomplete Applications, or the applicant’s answers to the NIPAs, were not provided. No studies regarding potential impacts were provided for the public hearing, and apparently, no recent studies of value have been undertaken by the applicant or the State. The “neighbors” are more than the immediate private property owners. The State of New York owns most of the shoreline of this lake, and the lands are designated Wild Forest. It is part of the NYS Forest Preserve, protected as “Forever Wild” by the NYS Constitution. Any assessment of impacts to “neighbors” must include an assessment of impacts to the Forest Preserve, and the public use thereof. Of particular importance, especially with regard to the extensive wetlands in Ampersand Bay, is the impact upon those wetlands and the public fishery of Lower Saranac Lake.

The following assessments are needed, and must be current, to address this finding:

- Visual, scenic, and open space impacts of proposed structures, to the public who enthusiastically use this lake, and private landowners on the lake, including an assessment of proposed lighting.

- Carrying capacity of the lake (not boat traffic capacity, which the applicant claims to have done, but which apparently is based on information from a lake in North Carolina!). The carrying capacity of the lake must be based on the character of the lake and its traditional use, and the reasons the public values this lake so highly. Carrying capacity must be assessed based on the Constitutional imperative of “Forever Wild” and the values the State is bound to preserve. DEC agreed to produce a carrying capacity study of Lower Saranac Lake when it enlarged the public boat launch at the Route 3 Bridge. DEC has had years to undertake the study, but has not done so. Its failure should not change the fact that such a study is required before this project can be fairly evaluated under the requirements of the APA Act.

- Wetlands, water quality and fisheries impacts: We know that DEC Fisheries biologist Richard Preall did a study of Lower Saranac Lake and Ampersand Bay, and determined that the extensive wetland in Ampersand Bay is high-quality fish spawning habitat, which does not exist anywhere else in this lake. This study must be part of the hearing record and also should be updated. Potential for impacts to this wetland is a critical factor and must be seriously studied. The applicant has proposed “skylights” in some of the boathouse slips. However, the boat in the slip will shade the wetlands just as much as a roof would. Moreover, the applicant asserts that “sunlight hours” matters more than light intensity in terms of viability of the wetlands. Data is needed to support these assertions about light and wetlands.

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

There simply is no “practical difficulty.” The applicant can use this property for a marina with only the pre-existing covered dock space and additional un-covered dock space. Hence there is no argument that the difficulty cannot be alleviated. Almost all marinas in or outside the Park do operate without covered slips.

There simply is no “practical difficulty” and hence there is no argument that the difficulty cannot be alleviated. The applicant can operate a marina with un-covered slips, as almost all marinas in or outside the Park do operate.

(4) the manner in which the difficulty arose

There is no difficulty. This marina can operate without covered boat slips.

(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 applicant claims that the covered dock slips will prevent oils and gas from entering the water as boats will no longer need to be bailed. There is no data to support this; gas and oil get into the water with motor operation, and upon filling the tanks, even at a pump station. Any oil and gas that makes it into the boat is likely to get into the lake at some point, no matter what. Covered dock space may create additional visual and aesthetic impacts, may shade sub-

merged wetlands, may adversely affect fish habitat and spawning areas. These issues should be addressed by appropriate studies.

- (6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) of this subdivision.

There are no conditions which would ameliorate all the impacts of 36,368 square feet of covered boat slips, which coverings are not required for the berthing of boats. The expanse of roof requested is exactly why there are restrictions on structures built on the shoreline or in the water. Structures on/in shoreline areas increase runoff, displace native vegetation, create impacts to water quality and wetlands, and visual impacts. Perhaps the specific locations of which docks are covered might help a bit with regard to visual impacts, but we can't know this without appropriate assessments. The skylights likely do not help wetlands values.

APA regulation (9 NYCRR 576.2) Significant economic injury states:

- (a) The applicant may seek to prove, by specific financial documentation and expert testimony, that the strict application of the relevant restrictions will result in significant economic injury.
- (b) The testimony shall be limited to the effect of the restrictions upon the value of the property in question; whether the value would be enhanced were a variance granted shall not be relevant.

There was no evidence presented at the hearing that the applicant would suffer any "significant economic injury" should these variances be denied. Whether the value of the property would be enhanced by the grant of the variance is not relevant. If the applicant would make a bit more money with more covered boat slips is not a factor that can be considered.

APA regulation (9 NYCRR 576.3) When proof of significant economic injury offered states:

If, in the opinion of the hearing officer, the applicant has proven significant economic injury, the hearing officer may order that proof be taken as to whether the strict application of the restriction in question is reasonably related to the public health, safety and welfare and the purposes sought to be served by section 806 of the Adirondack Park Agency Act. The agency staff may also offer such proof on its own initiative.

Since no evidence of "significant economic injury" was presented, this section is not applicable.

APA regulation (9 NYCRR 576.4) Self created difficulty or economic injury states:

The agency will not deny a variance, or refuse to consider proof of significant economic injury, on the sole ground that the practical difficulty or alleged economic injury is self-created.

Since no evidence of "significant economic injury" was presented, this section is not applicable

Variance Request Should be Denied: The hearing process was significantly flawed by: a) the failure of the Variance Hearing Notice to give any reasonable detail regarding the variance request, and b) the failure of the Deputy Director of Regulatory Programs to make an assessment, prior to the hearing, regarding whether the applicant appears to have met the criteria for approval, and if so, the conditions he/she recommends for approval.

The applicant's desire to provide more covered boat slips than allowed under the dimensional requirements imposed by APA Regulation does not create a "practical difficulty." There is no "difficulty" since the applicant can use his lands for a profitable marina with un-covered docks.

There is no evidence that there will be a "significant economic injury." Moreover, the regulations prohibit consideration as to whether the applicant can make more money if the variance is granted.

There are potentially significant impacts to the "public purpose" served by the dimensional requirements sought to be varied. Limits on the size of boathouses help reduce development in and near the waters of lakes and rivers. Such development adversely impacts water quality, natural wetland and habitat values, and visual impacts, among others.

In the case of Lower Saranac Lake, where much of the lands are state owned and protected as "Forever Wild" by the State Constitution, the recreational, natural, scenic, open space resources of Park are a paramount public purpose. The public recreation values must be evaluated based upon the historic public uses, which are largely based on the open space qualities, the scenic and natural beauty, the relative moderate density of motor boat use, and significant public use in human-powered boats. The quality of the fishery, and the importance of the extensive wetlands in Ampersand Bay, are major public assets protected by the Constitution, the APA Act, and Freshwater Wetlands Act, and must be preserved.

It is also important to note that the hearing materials did not contain a single word as to whether "the adverse consequences to the applicant resulting from [variance] denial are greater than the public purpose sought to be served by the restriction" (9 NYCRR 576.1[b]).

Not a word as to "whether the application requests the minimum relief necessary" (9 NYCRR 576.1[c][1]).

Not a word as to "whether granting will create a substantial detriment to adjoining or nearby landowners" (9 NYCRR 576.1[c][2]).

Not a word as "whether difficulty can be obviated by a feasible method other than a variance" (9 NYCRR 576.1[c][3]).

Not a word as to "the manner in which the difficulty arose" (9 NYCRR 576.1[c][4]).

Critically important, as it relates to the requisite statutory project approval criteria in §809(10) (e), not a word as to "whether granting the variance will adversely affect the natural, scenic and open space resources of the park and any adjoining waterbody, due to erosion, surface runoff,

subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur” (9 NYCRR 576.1[c][5]).

Lastly as to the multiple and substantial variances sought, not a word as to “whether the imposition of conditions upon [their] granting will ... ameliorate the adverse effects referred to in [§576.1(c)(5) quoted above]” (9 NYCRR 576.1[c][6]).

In short, it appears that the applicant totally refrained from even seeking to prove that there are “practical difficulties or unnecessary hardships” in carrying out the shoreline restrictions (§806[3][a]) or that “the strict application of the shoreline restrictions will result in significant economic injury” (9 NYCRR 576.2[a]).

As to the statutory project approval criteria, as mentioned above, nothing on impacts to wetlands (ECL Article 24; 9 NYCRR Part 578). Nothing on whether the Agency can find, as it must, that the project would not have an undue adverse impact on the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park (§809[10][e]).

Many Questions about Encroachments on State Forest Preserve Lands: The proposal to expand the “annex” appears to expand the existing encroachment onto lake bottom lands that are part of the Forest Preserve. This may also be the case for the Main Marina location. These are public lands, not private lands, and cannot be used for private purposes.

Any activity on the Forest Preserve must be part of an approved Unit Management Plan (UMP) for a given state land unit. These lands on the lake bottom of Lower Saranac Lake are part of the Saranac Lake Wild Forest Area UMP. There is nothing in the UMP about uses by a private marina of public Forest Preserve lands. Moreover, the public use and enjoyment of these Forest Preserve lands will be considerably circumscribed by the expansion of the annex. To date, we have not seen anything in the variance request or wetlands application about approval of the use of the Forest Preserve by the Department of Environmental Conservation (DEC).

The DEC needs to delineate the underwater Forest Preserve lands. It is our belief that the lands in question for the annex expansion are Forest Preserve and cannot be developed or infringed upon in any way.

Wetlands Permit Application

Protect the Adirondacks has many concerns about the wetlands permit part of this application. We will seek to review the contents of the complete file on this application in order to submit more detailed comments at a later date to the APA Board, but please kindly take these comments into consideration.

Wetland Impacts: As noted earlier, the wetland involved has been identified by a DEC fishery biologist as a vital spawning area and of enormous ecological value to the Saranac Lake Chain of Lakes. The proposed project would further encroach upon this important wetland and diminish its ecologic value. Much more information is needed to evaluate the impacts on this submerged wetland in Ampersand Bay.

Carrying Capacity: Protect the Adirondacks recognizes that the applicant referenced the importance of a carrying capacity analysis for this project. Unfortunately, this information supplied looked at boating capacity from a lake in North Carolina and is not applicable.

The Adirondack Park State Land Master Plan specifically references the importance of water in Forest Preserve planning and management. It mentions that lakes, including those like Lower Saranac Lake with heavy state ownership, are critical resources. Over three-quarters of the shoreline of Lower Saranac Lake is owned by the state and is part of the Forest Preserve.

The State Land Master Plan directs the APA and DEC to undertake carrying capacity analysis for lakes in the Forest Preserve, or those lakes like Lower Saranac Lake, with high state ownership and a high number of campsites. DEC's management of the lake as a natural resource and as a recreational resource as well must be guided by the Adirondack Park State Land Master Plan. The Master Plan states:

Water

The water resources of the Adirondacks are critical to the integrity of the Park. The protection of the major watersheds of the state was a major reason for the creation of the forest preserve and continues to be of significant importance. Waters, particularly lakes and ponds, have their carrying capacity from a physical, biological and social standpoint just as do tracts of public or private land. The use made of state waters also has a direct impact on adjacent land holdings.

A genuine need exists to insure that the scale and intensity of water-oriented uses are consistent with uses of adjoining state and private lands and the general character of the Park, particularly so far as the type, speed and number of boats are concerned.

A comprehensive study of Adirondack lakes and ponds should be conducted by the Department of Environmental Conservation to determine each water body's capacity to withstand various uses, particularly motorized uses and to maintain and enhance its biological, natural and aesthetic qualities. First emphasis should be given to major lakes and ponds totally surrounded by state land and to those on which state intensive use facilities exist or may be proposed. The importance of the quality of these resources cannot be overemphasized. (p 4)

Central to state land planning and management is an emphasis on the protection of lakes and ponds in the Adirondack Park. As stated above, carrying capacity analysis is one of the best tools available to state managers. Unfortunately, despite the directive in the State Land Master Plan and despite the focus in the Saranac Lake Wild Forest UMP, there has not been a carrying capacity study on any of the Saranac lakes. The current application, both for the variance request and the wetlands permit, also failed to provide a carrying capacity analysis. A boating study is not a carrying capacity analysis.

The 2019 Saranac Lake Wild Forest UMP has a section on Water Body Carrying Capacity. This section explains what is involved in a carrying capacity analysis of natural resource areas.

Beyond the biological impacts, carrying capacity also looks at social carrying capacity. Motorboats have an outsized impact on natural resource areas where their size, noise, speeds, wakes and waves created magnify their presence.

The UMP states:

There are several ways that water quality is impacted: introduction of nutrients, petroleum products, effluent, sediment, and invasive species; damage to riparian vegetation; and disturbances to bird nesting are pressures and impacts on water bodies from use. Several waterbodies within the unit are of concern, including Rollins Pond, Square Pond, and Upper Saranac Lake. These have significant potential for impacts from inputs such as shoreline development and ease of access.

In addition to the environmental impacts, there are also impacts to the recreational experience caused by use on water bodies. Crowding and conflict impact one's experience on a waterbody. Lower Saranac Lake and Follensby Clear Pond have a significant density of tentsites and ease of access. These factors greatly increase the probability of social impacts.

The APSLMP recommends that a comprehensive study of Adirondack lakes and ponds should be conducted by the Department to determine each waterbody's capacity to withstand various uses. The Department and APA are working together to develop a guidance framework for monitoring wildlands in the Adirondack Park which will assess the effects of management actions and public use with respect to the physical, biological and social conditions. This wildlands monitoring guidance framework will likely be based on selecting indicators that will comprehensively monitor the ecological and social impacts of use on the water bodies and surrounding riparian lands to assess the carrying capacity.

The monitoring will examine water-related use and development in the SLWF. The monitoring will select indicators, monitor the indicators, and evaluate against standards to determine the capacity of waterbodies. Indicators may look at ecological impacts (e.g. non-native aquatic plants, fecal coliform, chloride, dissolved oxygen, and water temperature), social impacts (e.g. trip satisfaction, visitor conflict), recreation use (e.g. people at one time, visitor overnight use), and adjacent development (e.g. number of campsites). (p 111)

This study would be very useful to assist the APA in its decision about whether or not to grant the variance. This study would also help the APA in its decision on whether to hold a formal adjudicatory public hearing on the wetlands application and the APA's decision to grant a wetlands permit. The North Carolina study used by the applicant is not applicable. The Saranac Lake Wild Forest UMP was completed in 2019 and the study it called for was not undertaken.

APA Project 2016-0029 Requires an Official, Adjudicatory Public Hearing: (9 NYCRR 580.2) Determination to Conduct a Public Hearing lists eight criteria to be used by APA staff and Board to determine whether an adjudicatory public hearing should be required for a proj-

ect. The regulations state that an adjudicatory public hearing should be held if just one of the criteria is met. APA Project 2016-0029 clearly meets the test for six of the criteria.

- (1) the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected;

The project proposes a total of 292 boat slips 22 feet wide, 170 of them covered with 64,051 square feet of floating dock structures extending 186 feet into Ampersand Bay; 27,633 square feet of them involving wetlands, and the removal of 14,871 square feet of buildings from wetlands. Shoreline setback variances are sought for a total of 36,368 square feet of the new structures. By any reasonable measure the project is large and complex.

- (2) the degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations;

We understand over 60 people participated in the APA's August 21 variance hearing. We trust your staff will advise the Board as to the exact number of additional comments received (and below we express our profound hope they will furnish copies, not their summary of them, to the Board). We suggest there is more public interest manifest here than in any project before you since the Adirondack Club and Resort. Public interest in this project has been well documented by the interest in the public hearing, letters to the APA from citizens, and letters from organizations.

- (3) the presence of significant issues relating to the criteria for approval of the project;

As set forth elsewhere in this submission, there are far more than "significant" issues relating to approval criteria for the many variances sought. While, as also set forth elsewhere, there is nothing in the application with respect to the many wetlands involved. Clearly, there are significant issues that would benefit from examination by experts, including impacts to the submerged wetland; motorboat carrying capacity; and, impacts to the Forest Preserve.

- (4) the possibility that the project can only be approved if major modifications are made or substantial conditions are imposed;

As also set forth at length elsewhere in this submission, we respectfully suggest that what you have before you is not adequate to enable you to make any informed decision with respect to the project, let alone whether it can be approved on substantial conditions. It is highly likely that a project of reduced scale could be approved after the full range of issues are explored by experts during an official adjudicatory public hearing.

- (5) the possibility that information presented at a public hearing would be of assistance to the agency in its review;

We also respectfully suggest that given the immense public interest in the project, a

public hearing would evoke formal party participation by citizen groups and established Adirondack preservation organizations. Expert testimony with regard to wetlands impacts, for example, is urgently required, not the unchallenged view of APA staff. Information as to the carrying capacity of Lower Saranac Lake is equally urgently needed. And those are only two of the critical issues. The applicant needs not only to come forth with its "case," it needs to answer many questions about it, to defend it. This project cries out for formal examination and input from more than the applicant and APA staff. Information will be provided at an adjudicatory hearing on the importance of the submerged wetland where development is proposed, on motorboat carrying capacity, and encroachments on Forest Preserve lands.

(6) the extent of public involvement achieved by other means;

The extent of public involvement thus far consists only of many, many public comments. While we fondly hope and trust APA staff will furnish all copies (including this submission) to the Board, even assuming that they do so, a formal quasi-judicial public hearing is immeasurably greater and meaningful "public involvement" than the mere expression of comment. A hearing was held on the variance request. There is no other means for public involvement at this time other than through active participation as an official "party" in an official adjudicatory public hearing.

The six criteria discussed clearly merit an adjudicatory public hearing. The APA has not held an adjudicatory public hearing since the Adirondack Club and Resort project in 2007. It is important to note that by APA rules only one criteria has to be met for a project to be sent to public hearing. In this case, six criteria have been met.

On behalf of the Board of Directors of Protect the Adirondacks, please accept my gratitude for the opportunity to submit these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer
Executive Director