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March 11, 2024

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Re: APA Project No. 2022-0218  
DEC Project No. 5-1652-00216/00003  
USL Marina, LLC  
Proposed New Commercial Use of Upper Saranac Lake Marina  
Town of Santa Clara, Franklin County

**Staff**

Peter Bauer  
**Executive Director**

Dear Mr. Burth and Ms. Donhauser:

Protect the Adirondacks ("PROTECT") submits these comments regarding the proposal by USL Marina, LLC ("the Applicant") to revive a defunct marina on Lower Fish Creek Pond on lands classified Moderate Intensity Use by the Adirondack Park Land Use and Development Plan Map. For the reasons set forth below, PROTECT urges the Adirondack Park Agency ("APA") and the New York State Department of Environmental Conservation ("DEC") to consider and review the Applicant's proposed marina project as a new commercial land use and development, not a minor expansion of an existing marina as the Applicant claims.

Claudia K. Braymer, Esq.  
**Deputy Director**

As discussed below, the proposed marina project cannot be approved by APA and DEC for several reasons, including that: (i) neither agency can make the findings necessary for project approval in the absence of a carrying capacity study of the Saranac Lakes Complex as required by the State Land Master Plan and the Saranac Lakes Wild Forest Unit Management Plan; (ii) APA cannot make the findings required by the APA Act for project approval because the Applicant has refused to modify the project to avoid impacts to

Christopher Amato, Esq.  
**Conservation Director  
and Counsel**

protected wetlands; (iii) the Applicant proposes to install new structures that violate the APA Act's shoreline setback restrictions and has failed to meet the statutory test for being granted a variance from those restrictions; and (iv) because of the intrusive and excessive size of the new docks the Applicant proposes to construct, the APA cannot make the statutory finding that the project will not have any "undue adverse impacts upon the park's natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources". APA Act § 809(9).

### **The Proposed Marina Is a New Commercial Use**

It is our understanding that in the past, kayaks, canoes, and rowboats (described by the Applicant as "smaller aluminum utility style watercraft") were available for rent at the marina site when it was operated as Hickok's Boat Livery. Records show that the area of the property used for the water-based operations was approximately 13,000 square feet (this is the sum of the existing elements within the 50' setback area – see Applicant's Overlay Tables Sheet 31) in size.

The Applicant's proposal to construct what is essentially a new marina for the storage and rental of 92 large motorboats up to 36' in length would occupy approximately 46,800 square feet (approximately 25,000 square feet of area beyond 50' from the shoreline plus 21,872 square feet for the elements of the project within the 50' setback area – see Applicant's Overlay Tables Sheet 31). Thus, the proposed new marina is three and a half times larger than the small boat rental operation that previously occupied the site, and is more than a 25% expansion in size, as compared to the previous marina. The new marina is also a completely new type of operation in terms of both size and scope. Therefore, a permit is necessary for this new land use and development. See 9 NYCRR § 573.5(a)(1) (excluding from APA permit jurisdiction only those expansions of lawfully existing uses that are less than 25 percent).

Additionally, the limited commercial use of the property for a campground and small boat rentals was abandoned by the prior owner. This fact is essentially conceded in the Applicant's November 2, 2023 letter to DEC which states that the Applicant has no "[r]ecords of usage by the previous owner" and that the "existing wooden docks were in an extreme state of disrepair when the property was purchased since they were not maintained by the former owner".

Section 573.6(f) of the APA regulations provides:

An agency permit is required for the recommencement of any existing land use or development . . . which has been discontinued for a period exceeding five years, *or under circumstances which indicate that such use has been abandoned*, if the land use or development is a class A or class B regional project as provided in section 810 of the Adirondack Park Agency Act.

(Emphasis added).

Because the previously existing marina was abandoned by the prior owners and the proposed new marina is a class A regional project (because it involves wetlands) and is also a class B regional project (because it is a marina), the Applicant's proposal must be considered and reviewed as a new land use and development. See Executive Law §§ 810(1)(b)(1)(b), (2)(a)(10).

Furthermore, because the pre-existing small boat rental use was abandoned by the prior owner, the Applicant's January 15, 2024 "existing" boat count of 71 boats (Sheet C01A) has no basis and the existing boat count is zero boats. Indeed, the Applicant's own submission makes clear that the existing facilities are incapable of being used to dock any boats because they are "antiquated and unsafe" and "in an extreme state of disrepair".

### **The Proposed Project Cannot be Approved Without a Carrying Capacity Study**

The proposed marina site is located on Lower Fish Creek Pond, which is connected to Square, Follensby Clear and Little Square Ponds, as well as to Upper, Middle and Lower Saranac Lakes. These interconnected waterbodies, commonly referred to as the Saranac Lakes Complex, have numerous private docks and several State and private boat launches. Adding a new commercial marina with the capacity to dock 92 large motorboats will increase boat traffic and have an impact on the water quality and natural resources of these interconnected waterbodies and on the user experiences of people recreating on them. A carrying capacity study is necessary to understand and assess impacts to recreational users, water quality, fish and wildlife, invasive species, and noise levels from the increased motorboat traffic associated with the proposed marina.

As stated in our December 12, 2022 letter, APA cannot make the requisite findings under the APA Act to approve the project in the absence of the carrying capacity study called for by the Saranac Lakes Wild Forest Unit Management Plan and the Adirondack Park State Land Master Plan. A copy of our prior letter is enclosed for your reference. Since that time, a joint letter from numerous environmental organizations has also been submitted to APA urging the completion of a carrying capacity study for the Saranac Lakes Complex prior to the approval of this project. A copy of that letter is also enclosed for your reference. Additionally, in *Jorling v. Adirondack Park Agency*, 214 A.D.3d 98, 105 (3d Dept. 2023) the Appellate Division found that it was "inexplicable" that a carrying capacity study had not yet been completed for the Saranac Chain of Lakes. Neither APA nor DEC should approve permits for this proposed project in the absence of the required carrying capacity study.<sup>1</sup>

A carrying capacity study would help the agencies make rational decisions about public and private project proposals by determining "each water body's capacity to withstand various uses, particularly motorized uses and to maintain and enhance its biological, natural and aesthetic qualities". Adirondack Park State Land Master Plan at 4. In fact, this study is essential to "making sure a natural area's 'carrying capacity' is not exceeded while concurrently providing for visitor use and enjoyment". Saranac Lakes Wild Forest Unit Management Plan at 68.

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<sup>1</sup> The boat traffic assessment required by DEC, which will examine the number of boats in use at any one time, the density of boats on the water, boat traffic routes, and the potential for boat traffic accidents, is only one aspect of carrying capacity.

## **The Project Does Not Comply with the Shoreline Setback Restrictions and Does Not Qualify for a Variance**

According to the Applicant's submissions dated November 2, 2023 and January 15, 2024, the proposed project will involve demolishing a dilapidated shoreline boathouse that had six (6) boat slips, demolishing a number of small "antiquated and unsafe" docks, and constructing 4 long piers that are 160 to 196 feet in length and 50 to 64 feet in width. There will be several additional smaller docks, for a total docking capacity of 92 boats. One of the piers will have 3,321 square feet of dock space that is covered with a roof.

APA has previously determined, in at least one similar application, that covered boat slips constitute "structures" that require a variance from the APA Act's shoreline setback restrictions. While the APA Act allows lawfully existing structures to be rebuilt or replaced on the same foundation or in the same location without a permit or variance, the proposed new structures are not a replacement of the old boathouse that currently exists on the shoreline. The new covered dock will extend 188 feet from the shoreline, with the first approximately 66 feet of that length that is closest to the shore being covered with a roof. The new covered docks slips are thus not "on the same foundation or in the same location" as the existing shoreline boathouse. 9 NYCRR § 573.6(a). Therefore, there is no exemption from the requirement to obtain permits from the Agency, including a wetlands permit and the requirement to obtain a variance from the shoreline restrictions, for these new structures. See 9 NYCRR § 575.5.

Moreover, the APA's shoreline setback regulations specify that a "replacement in kind" is not subject to the shoreline setback restrictions "*provided the previously existing setback nonconformance is not increased.*" 9 NYCRR § 575.5(a) (emphasis added). Here, the massive new dock structures proposed by the Applicant would extend far into Lower Fish Creek Pond, thereby vastly increasing nonconformance with the shoreline setback restrictions as compared with the pre-existing shoreline boathouse, and thus do not qualify as a "replacement in kind."

Nor does the proposed project qualify for a variance from the shoreline setback restrictions. The APA Act provides that the Agency may grant a variance from the shoreline restrictions "*where there are practical difficulties or unnecessary hardships* in the way of carrying out the strict letter of the restrictions." APA Act § 806(3)(a) (emphasis added). The APA's regulations echo this requirement, providing that APA may grant a variance "*where there are practical difficulties* in carrying out the strict letter of the provisions of the plan or the shoreline restrictions." 9 NYCRR § 576.1(a) (emphasis added).

Here, the Applicant has not submitted an application for a variance. Thus, there has been no showing of "practical difficulties" by the Applicant, including no demonstration that the property cannot be utilized without coming into conflict with the shoreline restrictions. In fact, the property can be utilized with a boat launch and docks as it has in the past. Since there is nothing in the application demonstrating practical difficulties in meeting the shoreline restrictions, the Applicant failed to meet its burden of demonstrating compliance with the regulatory standard for issuance of a variance.

## **The Proposed Project Cannot be Approved Because the Applicant Refuses to Avoid Impacts to Wetlands**

Pursuant to the Freshwater Wetlands Act, Environmental Conservation Law (“ECL”) Article 24, the APA is responsible for regulating wetlands located within the Adirondack Park, and is mandated to “preserve, protect and conserve freshwater wetlands and the benefits derived therefrom” as one of its highest priorities. ECL §§ 24-0103; 24-0801(1); ECL § 24-0701 (regulating structures within wetlands and “one hundred feet from the boundary of such wetland”, plus greater than 100 feet if “necessary to protect and preserve the wetland”); *Jones v. Adirondack Park Agency*, 270 A.D.2d 577, 577 (3d Dept. 2000) (“Freshwater wetlands conservation is a matter of state concern” and, as particularly relevant here, “freshwater wetlands are an integral part of the unique . . . resources of the Adirondack park” that must be protected by the APA (citing ECL § 24-0105(4),(6)).

The Applicant’s letter to APA dated February 1, 2024 indicates that it is unwilling to reconfigure the slips on Docks 3 and 4, as requested by APA, in order to avoid impacts to protected wetlands when boats are entering and existing the boat slips. The Applicant rejected APA’s request stating that “*It is our opinion that the two slips on Dock 3 and the two slips on Dock 4 closest to wetland do not need reconfiguration*”. The wetlands permit application must therefore be denied.

### **Pier Length and Navigational Impacts**

It is our estimate that the existing docks extend approximately 25 to 30 feet into Lower Fish Creek Pond from the shoreline, with the longest dock extending approximately 65 feet into the water. The four longest docks for the proposed project will extend the following distances into Lower Fish Creek Pond: 160 feet, 172 feet, 188 feet and 196 feet. Thus, the proposed piers will extend much farther into Lower Fish Creek Pond than the existing docks – two and half to three times farther. This is an absurdly large size for piers in a relatively small water body: the proposed piers will be nearly two times the maximum length of 100 feet allowed for docks on Lake George (45 square miles), a waterbody that is 374 times the size of Lower Fish Creek Pond (approx. 77 acres).

Consequently, the application should be denied because the project’s massive and intrusive docks cause an “undue adverse impacts upon the park’s natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources”. APA Act § 809(9).

On behalf of the Board of Directors of Protect the Adirondacks, we thank you for considering our comments and concerns regarding this commercial marina project.

Sincerely,



Claudia K. Braymer,  
Deputy Director

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