

Adirondack Council
Adirondack Wild: Friends of the Forest Preserve
Protect the Adirondacks
Sierra Club Atlantic Chapter
Upper Saranac Foundation

June 20, 2024

Sean Mahar, Acting Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re. USL Marina application 5-1652-00216/00003, Lower Fish Creek Pond, Town of Santa Clara

Dear Acting Commissioner Mahar,

For the reasons stated below, our organizations believe the USL Marina application for a large commercial marina on 80-acre Lower Fish Creek Pond in the Town of Santa Clara does not comply with the applicable Department of Environmental Conservation (DEC) regulations for Use and Protection of Waters (6 NYCRR § 608.7) and for Floating Objects other than Aids to Navigation (9 NYCRR § 448.4). The proposed project has the potential for very significant adverse impacts upon enjoyment of the lake system by boaters and other users of the Saranac Lake Wild Forest. Taken together with other nearby boat launch facilities, it has the potential for triggering significant, cumulative impacts upon the ecology and recreational use of these tranquil, beautiful, and natural waters. Therefore, the current application should be denied.

We hasten to add that none of us oppose renovation, modernization, and modest expansion of the former Hickok's Boat Livery for active, commercial use. The difficulty arises from the fact that the USL Marina application presents a radical departure from the size and scope of the former Boat Livery.

Protection of Water Permit Must be Denied

The application does not satisfy the standards in Environmental Conservation Law (ECL) Article 15 Title 5 (Protection of Water), or the implementing regulations at 6 NYCRR § 608.7, requiring DEC to "ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state likely to result

from the proposed project” (ECL § 15-0503(2)(a)). DEC regulations explicitly authorize the Department to deny a permit to protect the natural resources of the state. The requested permit should be denied because:

1. The Proposal is Excessively Large

The proposal for 92 motorboat slips on Lower Fish Creek Pond, using large piers extending 160 feet, 172 feet, 188 feet and 196 feet from the shoreline, is not “reasonable and necessary” for a waterbody this size (6 NYCRR § 608.8(a)). This proposal is absurdly large for such a small water body: the proposed piers will be nearly two times the maximum length of 100 feet¹ allowed for docks on Lake George (28,451 acres or 45 square miles), a waterbody that is 374 times the size of Lower Fish Creek Pond (approx. 77 acres).

The contrast between existing and proposed conditions is extreme and demonstrates that the proposal is neither “reasonable” nor “necessary.” Former Hickok’s boat livery operated for many years and its docks were under ten feet in width and extended only 30-50 feet into Lower Fish Creek Pond. The proposal for USL Marina extends the length of docks between 160 and 200 feet into the Pond, with each dock being fifty feet in width inclusive of lateral projections, or a 4-5 time increase from what exists today.

The number and size of watercraft is also increased considerably from existing conditions, from a relatively low number of small sized boats (to our knowledge the number of boats rented was as low as two 22-foot pontoon boats in 2021, and the number of slip rentals averaged 25 slips per season) to proposed 92 boats, inclusive of many 22-foot and some 36-foot craft. The effects of this increased size of the marina’s docks and number, size, and behavior of its boats on Lower Fish Creek Pond and its channels is acknowledged in the several Notices of Incomplete Application by NYS DEC Region 5.

In DEC Region 5’s first notice of incomplete application (August 2023) DEC wrote that: “materials indicate that there is a current total capacity of 71 boats. However, the layout shown does not seem to reflect actual use. Please provide the approximate number of boats that have been docked at your facility each year for the past five years, including how you calculated these numbers.”

When USL Marina responded that it did not have the information requested and did not find such information relevant, in its second, January 2024 notice DEC Region 5 wrote: “DEC again requests the rental usage history. While there may be a historical capacity of 71 boats, please demonstrate that the facility has been utilized at that capacity in the last five years. It’s important to have a baseline of the recent usage to be able to evaluate the possible impacts of the expansion.”

The applicant has provided some materials, but its baseline information of pre-existing use is unreliable since it has only owned the property for a few years, making it difficult for DEC to evaluate the full impacts of the proposed project at USL Marina. For this reason, DEC

¹ See 6 NYCRR § 646-1.1(c)(2)(iii).

should deny the permit. The applicant would be free to resubmit the application with full and complete answers to these notices so that DEC can evaluate the impacts.

2. The Proposal Will Endanger Public Safety and Negatively Impact Use of the Water

Second, the proposal is not “in the public interest” because it will “endanger the health, safety or welfare of the people of the State of New York” (6 NYCRR § 608.8.) The proposal negatively impacts the “safe commercial and recreational use of water resources” (6 NYCRR § 608.7(b)(4).)

DEC Region 5 requested a Boat Traffic Study, asking the applicant to “provide a boat traffic assessment discussing the additional boat traffic that will result from expansion of this existing marina. The assessment should quantify the number of additional boats in relation to existing use of the lake with emphasis on the increase in boat traffic to and from the main body of the lake through the Fish Creek channel. The assessment should also discuss how the reconfiguration of the docks at the marina will affect boat traffic in the channel and whether that will affect safe navigation for other boaters.”

The applicant provided the study last November, but DEC found it insufficient and inadequate, stating that “16% does not appear to be an accurate estimate of peak usage of rental boats. The peak use factor should be adjusted to have a higher percentage of use of rental boats.” DEC also questioned the maximum boat length asserted in the applicant’s report, the arrival and departure rate of rental boats, and asked the applicant to better account for the navigable width of the pond’s channel, the depth of the channel, and the channel width as boats moving in opposite directions pass each other.

To our knowledge the applicant’s Boat Traffic Study never answered key DEC questions and never substantively addressed these DEC critiques with a more substantive, analytical Boat Traffic Study. For these reasons DEC should deny the permit.

By applying a standard peak use factor average (16% of berthed boats at any given time) the applicant failed to provide actual, documented boat use during peak times of the year such as July 4 and Labor Day. Even the figure of 16% is contradicted by the applicant’s August 1, 2023, submission to the Adirondack Park Agency which stated that “Marina industry standard is that typical watercraft use does not exceed 25% of the docked watercraft at peak usage.” In short, there seems to be uncertainty about which peak use factor to employ here.

Also, in assessing the average number of boats going through the narrow channel to Upper Saranac Lake at any given time, the applicant failed to account for the nature of many of those boats, meaning the increased length, overall size, and wake of the boats proposed to be berthed at the marina. The application’s 92 boat slips can accommodate, on average, 22-foot boats, with many accommodating up to 36-foot pontoon craft. The type, size, uses, and wakes of these new craft comprise a significant change from historic baseline conditions,

and an additional impact on the lakes, on the channels, boat traffic and safety, and on waterbody environmental conditions which DEC is obligated to consider.

3. The Proposal Will Cause Unnecessary Damage to Natural Resources

Third, the proposal is not “in the public interest” because it will “cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state, including soil . . . water, fish . . . aquatic and land-related environment” (6 NYCRR § 608.8; *see* 6 NYCRR § 608.7(b)(1); 6 NYCRR § 608.7(b)(7).) As discussed above, a project of the size proposed is not necessary, and the impacts that it will cause to the natural environment are “unreasonable” and “unnecessary.” These adverse impacts to the natural resources of the Adirondack Park need to be weighed heavily by DEC because the State places a high value on the water resources of the Adirondack Park and considers them to have State, “national and international significance” (Executive Law § 801; *see* 6 NYCRR § 608.7(b)(7) requiring DEC to consider “natural resource management objectives and values”). The State’s values in protecting the “aesthetic resources” of the Adirondack Park will also be negatively impacted by the adverse visual impacts of the piers extending up to 196 feet into Lower Fish Creek Pond (Executive Law § 801; *see* 6 NYCRR § 608.7(b)(7)). These adverse impacts to the water resources and aesthetic resources of the Adirondack Park demand denial of the proposal.

The Saranac Lake Wild Forest Unit Management Plan (SLWF UMP), inclusive of Lower Fish Creek Pond and its channels to other lakes in the unit, explains that motorboats “have the potential to cause a greater variety and more significant impacts than non-motorized watercraft.” (page 75). It is well-known that docks and motorized watercraft cause numerous detrimental impacts including propeller damage to aquatic vegetation, water turbulence and wake that stirs up sediment, suspension of sediment nutrients, chemical pollution, erosion and shading of the areas under docks.² To address these impacts, the SLWF UMP identifies the need for “a comprehensive [carrying capacity] study” of the waterbodies in the Saranac Lakes Complex (page 112). As proposed, USL Marina will add even more and larger motorized craft to an already heavily used system of lakes, ponds, and narrow connecting stream channels that contain important and sensitive wetlands. The time has more than come for this cumulative recreational pressure to be properly evaluated.

In addition, Fish Creek Pond was evaluated in 2011 in the *Adirondack Park Forest Preserve Carrying Capacity of Water Bodies Study: Phase I – Selecting Indicators for Monitoring Recreational Impacts* by April McEwen, Chad Dawson, and Lisa Gerstenberger, dated August 31, 2011 (“Study”). The Study classified Fish Creek Pond in the “High” Impact category due to the physical, chemical, and biological impacts then occurring to the waterbody. Study p. 64 (Table 11). The Study further noted:

Fish Creek Pond had the highest concentrations of gasoline compounds out of the three pilot sites with motorized boating use. Fish Creek Pond was observed to have a

² See <https://pubmed.ncbi.nlm.nih.gov/31297728/>

much higher level of motorized use than the other pilot sites, although the exact difference in use intensity was not evaluated. The highest concentrations of o+m+p-xylene, carcinogenic compounds known to have adverse impacts on human health and cause toxicity in organisms (Adirondack Lake Survey Corporation 1987), were detected at the no-wake zone between Fish Creek Pond and Square Pond.

Study p. 53.

Benzene, toluene, ethylbenzene, and xylene compounds were measured at the three pilot sites that allow motorized boating (Fish Creek Pond, Meacham Lake, and Putnam/North Pond). *Id.* p. 52. Fish Creek Pond also had one of the highest concentrations of chloride of the waterbodies studied, which demonstrates impairment of this waterbody's water quality. *Id.* p. 46.

Additionally, the report states that daily average dissolved oxygen concentration in Fish Creek Pond (classified as AA waters) at a depth of four meters was 3.2 ppm (3.2 mg/L). The State standard for Class waters requires the daily average of dissolved oxygen to not be less than 6 mg/L (6 ppm) and at no time less than 4 mg/L (4 ppm). 6 NYCRR § 703.3. Study p. 50. The Study concludes that “[u]nder the conditions detected in Fish Creek Pond at the time of measurement, fish would not be sustained at the average depth where the cooler water temperatures are and where they might escape to avoid heavy motorized boating traffic.” *Id.* p. 50. The study also noted the presence of invasive plant species in Fish Creek Pond. *Id.* p. 51.

The Study demonstrates that as early as 2011 Fish Creek Pond was already impaired because of the high amount of motorized boating and shoreline development in the area. The project's exacerbation of the adverse environmental impacts identified in the Study demonstrates that the proposal for the USL Marina must be denied. *See* 6 NYCRR § 608.7(b)(1)(ii) (requiring DEC to consider the proposal's impacts on “water quality, including . . . dissolved oxygen, suspended solids”); 6 NYCRR § 608.7(b)(1)(iv) (requiring DEC to consider “erosion, turbidity, and sedimentation”).

Moreover, the wetlands located near the shoreline, directly between boat slips on piers #3 and #4, demonstrate that the proposal must be denied because it will “cause unreasonable, uncontrolled or unnecessary damage to . . . aquatic” vegetation (6 NYCRR § 608.8; *see* 6 NYCRR § 608.7(b)(1)(i) (requiring DEC to consider the proposal's environmental impacts on aquatic habitats and wetlands). To our knowledge, there is nothing preventing boats from driving directly through these wetlands.

Finally, the significant boat traffic from the proposed project will also negatively impact wetlands in the narrow channel connecting Fish Creek Ponds to Upper Saranac Lake. Turbulence from propellers, increased turbidity, and direct damage to submerged aquatic vegetation from motorboats compel also denial of the proposal.

4. The proposal will cause a hazard to navigation

The applicant's proposal includes placing three "no wake" buoys fifty feet beyond the end of the new piers. That places the buoys approximately 250 feet from the shoreline, and well into the navigable portion of Lower Fish Creek Pond. The placement of the buoys that far from the shoreline into the navigable waters certainly has the potential to "be a hazard to navigation" (9 NYCRR § 448.4.) Therefore, DEC cannot make the required finding that the objects "will not be a hazard to navigation," and the permit must be denied. *Id.*

For its failure to seriously address DEC's requests for well documented information about pre-existing conditions and analysis of additional boat traffic impacts on the narrow channels leading to and from Lower Fish Creek Pond, DEC should reject this application without prejudice to a submittal that actually meets the requirements of DEC regulations (6 NYCRR Part 608.7) pertaining to safe commercial and recreational use of these interconnected waterbodies, and the protection of the natural resources of the Adirondack Park.

Thank you for your careful consideration of our comments.

Sincerely,

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