

STATE OF NEW YORK: ADIRONDACK PARK AGENCY

Matter of the Application to
construct the Adirondack Club
and Resort by

Rulings on
Party Status

Preserve Associates, LLC
Applicant.

APA Project No. 2005-100

February 14, 2008

A conference concerning the proposed Adirondack Club and Resort convened at 10:00 a.m. on Friday, January 25, 2008 at the Goff-Nelson Library in Tupper Lake, New York. Those who attended the January 25, 2008 conference agreed that the opportunity to participate in the mediation should be extended to those who would qualify for party status pursuant 9 NYCRR 580.5. There was further agreement that I should rule on the petitions for party status received since publication of the April 2, 2007 notice of public hearing concerning the project.

Because not everyone who either filed a petition for party status or appeared at the April 26, 2007 pre-hearing conference to request party status attended the January 25, 2008 conference, my memorandum dated January 28, 2008 provided a final opportunity to submit any additional information or argument in support of the petitions for party status. Information and comments in support of the petition for party were due by February 6, 2008.

In chronological order, I received the following additional submissions:

1. Letter dated January 28, 2008 from Lawrence F. Orton and a letter dated February 2, 2008 from Patrick Orton with enclosed deeds;
2. E-mail dated January 29, 2008 from Kevin E. Jones, Esq.;
3. Letter dated January 30, 2008 from John David Delehanty, Esq., submitted on behalf of Charlcie Delehanty with attached deed and other enclosures;
4. Letter dated February 1, 2008 from Robert and Leslie Harrison requesting party status. This letter was also sent as an attachment to e-mails dated February 3, 2008 and February 6, 2008;

5. Map received on February 4, 2008 from Scott and Mary Chartier;
6. E-mail dated February 6, 2008 from John Gillis;
7. E-mail dated February 6, 2008 from Joyce Hundley;
8. Letter dated February 6, 2008 from Marc S. Gerstman, Esq. on behalf of Little Simon Properties, Inc. (LSP) with attached Exhibits A through E;
9. Letter dated February 6, 2008 from Mitchell J. Goroski, Esq. on behalf of Staff from the Adirondack Park Agency (APA);
10. Letter dated February 6, 2008 from Thomas A. Ulasewicz, Esq., on behalf of Applicant;
11. E-mail dated February 7, 2008 from Alex Haddad; and
12. E-mail dated February 6, 2008 from Aaron Bloom, Esq. and Nancy S. Marks, Esq., Natural Resources Defense Counsel (NRDC), with attached Notice of Appearance.

Given the amount of materials filed, I was not able to copy the documents identified above to enclose them with this ruling. I note that with respect to the e-mails, copies were circulated to the e-mail distribution list. Also, except for the Chartiers' map identified above, copies of the supplemental filings that I received by mail in response to my January 28, 2008 memorandum were also sent to APA Staff and Applicant's counsel. A copy of the Chartiers' map is enclosed with this ruling. If you need a particular document, please contact my office at 518-402-9003, and my office will provide you with a copy.

In addition, William Crouse handed me copy of his deeds during the January 25, 2008 conference. Because these documents had not been circulated to participants, copies of Mr. Crouse's deeds are enclosed.

I. Parties to the Hearing

The April 2, 2007 Notice of Public Hearing outlined the requirements to participate in the pre-hearing conference and any subsequent adjudicatory hearing. The April 2, 2007 notice identified the parties-of-right, and outlined the additional information that interested parties must present in a petition to

intervene in the proceeding. According to the April 2, 2007 notice, petitions to intervene were due by April 23, 2007.

Section 580.5 of 9 NYCRR identifies the parties to an APA hearing, and references Adirondack Park Agency Act § 809(3)(e) as well as 9 NYCRR 580.4(b)(3) and 580.7. The parties, therefore, include: (1) the project sponsor; (2) the Adirondack Park Local Government Review Board; (3) any adjoining landowner; (4) the Clerk of any local government within 500 feet of the land involved; (5) the Chair of the county, town or village planning board or agency; (6) the Chief Executive Officer and the Clerk of the municipality in which the project would be located; (7) the Chair of the appropriate regional planning board; (8) any landowner within 500 feet of any border of the property; (9) Staff from any State Agency; and (10) persons granted intervention pursuant to 9 NYCRR 580.7.

The following parties-of-right appeared and participated in the April 26, 2007 pre-hearing conference: (1) Applicant; (2) the Adirondack Park Local Government Review Board; (3) Franklin County;¹ (4) the Town of Tupper Lake; (3) the Village of Tupper Lake; (5) the Town of Tupper Lake Planning Board; and (6) State Agency Staff from the APA and the Department of Environmental Conservation (DEC).

In addition, the following individuals have identified themselves as either adjacent landowners, or property owners within 500 feet of the proposal: (1) Richard Abell; (2) J. Kyle Ackerman; (3) Edith R. Lamb, Graham McIlwaine, Melinda McIlwaine, Penelope McIlwaine, Sharon McIlwaine and Bayard G. Read - collectively the owners of the Birchery Camp; (4) Scott and Mary Chartier; (5) William Crouse; (6) Peter and Rhoda Curtiss; (7) Mary H. DeGarmo; (8) Charlcie Delehanty; (9) John and Susan Delehanty; (10) Timber Lodge [Don Dew Enterprises, LLC]; (11) John and Patricia Gillis; (12) Alex Haddad; (13) Jerrier A. and Carol J. Haddad; (14) Joyce Boden Hundley; (15) Kevin E. Jones; (16) Peter Littlefield and Elaine M. Yabroudy; (17) James R. and Judy McCartney, Jr.; (18) M. Dan McClelland; (19) Marilyn Oestreich; (20) Lawrence F. Orton; (21) Patrick and Gloria Orton; (22) Fortunata Plumley; (23) Susan H. Potterton; (24) Robert Ringrose; (25) Verne N. and Madeline Rockcastle; (26) Carol I. Richer; (27) Phyllis B. Thompson, PhD; (28) Paul Vidich; (29)

¹ Franklin County's status as a party-of-right is discussed in more detail below.

Dennis I. and Brenda S. Zicha; and (30) Little Simon Properties, Inc. (LSP).

The following groups and organizations timely filed petitions pursuant to 9 NYCRR 580.7: (1) the Tupper Lake Chamber of Commerce with a petition dated April 9, 2007; (2) the Adirondack Council with a petition dated April 20, 2007; (3) the Association for the Protection of the Adirondacks (the Association) with a petition dated April 17, 2007; (4) Natural Resources Defense Council (NRDC) with a petition dated April 18, 2007; and (5) the Residents' Committee to Protect the Adirondacks (the Residents' Committee) with a petition dated April 19, 2007.

A. Applicant's November 7, 2007 Memorandum

In a memorandum dated November 7, 2007, Applicant acknowledged that the following are parties-of-right to the adjudicatory hearing concerning the proposal: (1) DEC Staff; (2) Village of Tupper Lake; (3) Town of Tupper Lake; (4) Town of Tupper Lake Planning Board; (5) Adirondack Park Local Government Review Board; (6) Richard Abell; (7) J. Kyle Ackerman; (8) John D. And Susan M. Delehanty; (9) Don Dew Enterprises, LLC; (10) Jerrier A. and Carol J. Haddad; (11) Vincent E. Jay; (12) Robert and Fortunata Plumley; and (13) Phyllis B. Thompson.

In addition, Applicant did not object to the intervention of the following groups and organizations based on their respective petitions: (1) the Tupper Lake Chamber of Commerce; (2) the Adirondack Council; (3) the Association; (4) NRDC; and (5) the Residents' Committee.

In its November 7, 2007 memorandum, Applicant requested clarification and, in some cases, verification that the following individuals are either adjoining landowners or landowners within 500 feet of any border of the property: (1) the members of LSP; (2) Scott and Mary Chartier; (3) Mary H. DeGarmo; (4) Charlcie A. Delehanty; (5) John and Patricia Gillis; (6) Alex Haddad; (7) Joyce Boden Hundley; (8) Kevin E. Jones; (9) Lawrence F. Orton; (10) Patrick and Gloria Orton; (11) Susan H. Potterton; and (12) Verne N. and Madeline Rockcastle.

Applicant asserted that the following individuals are not parties-of-right and have not filed an adequate petition to intervene. They are: (1) Bob and Leslie Harrison; (2) Carol I. Richer; and (3) Dennis I. and Brenda S. Zicha.

Applicant did not receive a petition from Members of the Franklin County Legislature Paul A. Maroun and Timothy Burpoe.

Finally, Applicant stated that it did not receive a petition or other document from the following individuals, which either states that the person is a party-of-right, or requests party status. They are: (1) William Crouse; (2) Vincent Giuseffi; (3) Peter Littlefield and Elaine M. Yabroudy; (4) James R. and Judy McCartney; (5) M. Dan McClelland; (6) Marilyn Oestreich; (7) B.G. Read; (8) Robert Ringrose; and (9) Paul Vidich.

B. APA Staff's November 28, 2007 Letter

In a letter dated November 28, 2007, APA Staff noted that the April 2, 2007 notice of public hearing stated that parties-of-right could either send in a letter of intention to become a party, or appear at the pre-hearing conference and state their intention. APA Staff noted further that some statutory parties appeared at the pre-hearing conference on April 26, 2007 to state their intention to become parties without submitting a letter.

In its November 28, 2007 letter, APA Staff requested clarification that the following individuals are either adjoining landowners or property owners within 500 feet of any border of the property: (1) William Crouse; (2) Scott and Mary Chartier; (3) Mary H. DeGarmo; (4) Charlcie A. Delehanty; (5) Alex Haddad; (6) Jerrier A. and Carol J. Haddad; (7) Joyce Boden Hundley; (8) Kevin E. Jones; (9) Lawrence F. Orton; (10) Patrick and Gloria Orton; (11) Marilyn Oestreich; (12) Susan H. Potterton; (13) B.G. Read; (14) Carol Richer; (15) Verne N. and Madeline Rockcastle; (16) Paul Vidich; and (17) Dennis and Brenda Zicha.

C. Applicant's January 7, 2008 Memo-Report

In response to recommendations made in my December 5, 2007 memorandum, some prospective parties provided additional documentation to verify that they are parties-of-right. Subsequently, in a Memo-Report dated January 7, 2008, Applicant provided additional comments about the requests for party status. Table 1 on page 16 of Applicant's January 7, 2008 Memo-Report summarizes Applicant's position with respect to individual requests for party status.

Applicant requested additional information from: (1) the Elvin N. Jones Irrevocable Trust (Gontowich Farm); (2) LSP; (3) Lawrence F. Orton; and (4) Elaine Yabroudy and Peter Littlefield. Applicant argued that party status should be denied for: (1)

Honorable Timothy Burpoe; (2) Scott and Mary Chartier; (3) William Crouse; (4) Charlcie A. Delehanty; (5) John and Patricia Gillis; (6) Vincent Giuseffi; (7) Carol J. Haddad; (8) Bob and Leslie Harrison; (9) Honorable Paul A. Maroun; (10) James and Judy McCartney, Jr.; (11) Patrick and Gloria Orton; and (12) Verne and Madeline Rockcastle.

D. APA Staff's January 7, 2008 Letter

In a letter dated January 7, 2008, APA Staff also provided comments about the requests for party status. APA Staff recommended that the following are parties-of-right because they are either adjacent landowners, or property owners within 500 feet of the project: (1) William Crouse; (2) Mary DeGarmo and Alex Haddad; (3) Charlcie Delehanty; (4) Joyce Hundley; (5) Kevin Jones, Esq.; (6) Patrick and Lawrence Orton; (7) Marilyn and Gerald Oestreich; (8) Susan H. Potterton; (9) B. G. Read and the Birchery; (10) Carol Richer; (11) Paul Vidich; and (12) Dennis and Brenda Zicha.

To the extent that individuals are neither adjacent landowners nor property owners within 500 feet of the project site, APA Staff recommended that the letters filed by these individuals should be considered requests to intervene as provided for by 9 NYCRR 580.7. APA Staff recommended that correspondence received from Franklin County, Vincent Giuseffi, Robert and Leslie Harrison should be treated in this manner.

II. Rulings on Requests for Party Status

As noted above, Applicant has generally withdrawn its objections to all but a few requests for party status. Similarly, APA Staff supports nearly every request for party status. All requests are addressed below.

A. Parties-of-Right

1. Unopposed Requests

In its January 7, 2008 Memo-Report, Applicant identified the groups and individual property owners who are either parties-of-right or who have requested party status, and to which Applicant does not object to their participation in the hearing. In addition, APA Staff in a letter dated January 7, 2008 provided a similar list. In the absence of any objections, and upon review of the information submitted, I conclude that the following are parties-of-right pursuant to 9 NYCRR 580.5:

- (1) the Village of Tupper Lake;
- (2) the Town of Tupper Lake;
- (3) the Town of Tupper Lake Planning Board;
- (4) the Adirondack Park Local Government Review Board; and
- (5) APA and DEC Staff.

In addition, the following are either adjacent landowners or are property owners within 500 feet of the project site. Accordingly, they are also parties-of-right:

- (1) Richard Abell;
- (2) J. Kyle Ackerman;
- (3) John D. and Susan M. Delehanty;
- (4) Don Dew Enterprises, LLC;
- (5) Vincent E. Jay;
- (6) M. Dan McClelland;
- (7) Marilyn and Gerald Oestreich;
- (8) Fortunata Plumley;
- (9) Carol I. Richer;
- (10) Robert W. Ringrose;
- (11) Phyllis B. Thompson; and
- (12) Dennis I and Brenda S. Zicha.

2. Franklin County

With respect to Franklin County, the Honorable Guy H. Smith, as Chairman of the Franklin County Legislature filed a letter dated April 25, 2007, which identified the Honorable Paul A. Maroun and the Honorable Timothy Burpoe as the Chairman's

designees to this matter.² In a letter dated February 6, 2008, Applicant's counsel stated that Applicant does not object to this arrangement.

Party status is extended to the Chair of the county planning board or agency (see 9 NYCRR 580.5, which references 9 NYCRR 580.4[b][3][ii]). Therefore, a narrow reading of this regulatory provision would appear to limit participation to a formally designated subunit of county government concerned exclusively with planning. At the conferences held to date, Mr. Maroun has stated, however, that Franklin County does not have a separate, distinct planning board or agency. In addition, Mr. Maroun advised that the required approvals for this project from Franklin County are analogous to those that a county planning board or agency would issue. When, as here, in the absence of a separate and distinct county planning board, this regulatory provision should be read broadly. Accordingly, I conclude that Franklin County is a party-of-right to this proceeding.

In the alternative, Chairman Smith's April 25, 2007 letter could reasonable be considered a petition as provided for by 9 NYCRR 580.7. Accordingly, I conclude, in the alternative, that party status should be extended to Franklin County as a person granted intervention pursuant to 9 NYCRR 580.7. Furthermore, Chairman Smith's designation of Messrs. Maroun and Burpoe as Franklin County's representatives at these proceedings complies with the requirements outlined at 9 NYCRR 580.10 (Appearances).

3. Additional Landowners

The April 2, 2007 notice of public hearing stated that parties-of-right could either send in a letter of intention to become a party, or appear at the pre-hearing conference and state their intention. The following appeared at the pre-hearing conference on April 26, 2007 (transcript pp. 14-19) to state their intention to become parties: (1) Elaine Yabroudy and Peter Littlefield [adjacent landowners]; (2) William Crouse [within 500 feet]; (3) Todd Friend of behalf of the Birchery Camp [adjacent landowners]; and (4) Robert W. Ringrose [within 500 feet]. As recommended, Ms. Yabroudy, Mr. Crouse and B.G. Read, on behalf of

² Neither Mr. Maroun nor Mr. Burpoe seek to be parties as individuals. Their participation would be on behalf of Franklin County in their capacities as members of the county legislature.

the Birchery Camp, submitted additional information concerning their respective properties.

In order to assure the proper distribution of public notices associated with this matter, APA Staff reviewed local tax rolls to determine the landowners who are adjacent to the project site, as well as those within 500 feet of the site. APA Staff used this information to develop two mailing lists. Prior to the April 26, 2007 pre-hearing conference, APA Staff provided me with copies of these two mailing lists. In my memorandum dated January 28, 2008 concerning mediation participants, I reported that it is my understanding that Applicant's counsel, Mr. Ulasewicz, stated at the January 25, 2008 conference that Applicant would withdraw any objections concerning party status made by adjacent and nearby landowners provided the names of the landowners appeared on either of the two mailing lists developed by APA Staff.

The following additional property owners: (1) either sent a letter stating that they were adjacent or nearby landowners, or appeared at the April 26, 2007 pre-hearing conference to state their intention to become parties, and (2) their names appear on the mailing lists developed by the APA Staff. Therefore, I conclude that the following landowners are also parties-of-right to the captioned matter:

- (1) Scott and Mary Chartier;
- (2) Peter and Rhoda Curtiss;
- (3) John and Patricia Gillis;
- (4) Jerrier A. and Carol J. Haddad;³
- (5) Joyce Boden Hundley (a member of Everwild Trust)
- (6) Kevin E. Jones, Esq. (a member of Elvin N. Jones Irrevocable Trust, which is also known as the Gontowich Farm);
- (7) Lawrence F. Orton, and Patrick and Gloria Orton;

³ Carol J. Haddad is the spouse of Jerrier Haddad. By letter dated April 10, 2007 Jerrier and Carol Haddad jointly requested party status.

- (8) Susan H. Potterton;⁴
- (9) B.G. Read and the other members of the Birchery Camp;
- (10) Verne N. and Madeline Rockcastle;
- (11) Paul Vidich; and
- (12) Elaine Yabroudy and Peter Littlefield.

In addition to those identified above, two other landowners have requested party status, but do not appear on either of the two APA mailing lists. These are William Crouse and Charlcie A. Delehanty.

Mr. Crouse appeared at the April 26, 2007 pre-hearing conference (transcript p. 15), and stated his intention to be a party-of-right in these proceedings. At the January 25, 2008 conference, Mr. Crouse provided me with copies of his deeds. Because copies of these documents were not previously circulated, copies of Mr. Crouse's deeds are enclosed with this ruling. Mr. Crouse owns property located at 255 Lake Simond Road. Many of his neighbors have requested party status because they are either adjacent landowners or landowners within 500 feet of the project site. Therefore, I find that Mr. Crouse is either an adjacent landowner or one within 500 feet from the project site, and conclude, given his appearance at the April 26, 2007 pre-hearing conference, that he is a party-of-right to this matter.

Charlcie Delehanty owns property located at 14 Hillside Drive within 500 feet of McDonald's Boat Livery by virtue of a 25 foot right-of-way to the Raquette River and within 500 feet of the proposed site. Ms. Delehanty filed an undated letter received by my office on April 19, 2007 in which she commented about the proposal.

Ms. Delehanty's son, John Delehanty (also an adjacent landowner and a party-of-right), is an attorney and represents his mother in this matter. Subsequently, with correspondence dated November 28, 2007 and January 30, 2008, Mr. Delehanty

⁴ In a letter dated December 12, 2007, Ms. Potterton stated that the contact person for the Potterton Family Irrevocable Trust is Sandra P. Ulbricht. The enclosed service list dated February 14, 2008 has been updated to reflect this designation.

provided additional documentation to support his mother's petition including a copy of the deed. Ms. Delehanty has reserved a life estate and power of appointment over this property. According to the information provided by Mr. Delehanty, a tenant of a life estate is entitled to the full and exclusive possession, control and enjoyment of the property for the duration of his or her life. In addition, a life tenant has the power to sell, convey or otherwise alienate his or her estate. Given the control that Ms. Delehanty maintains over the property and her continuing legal obligations, (such as payment of taxes, among other things), I find that Ms. Delehanty is either an adjacent landowner or one within 500 feet from the project site, and conclude that she is a party-of-right to this matter.

4. Little Simon Properties, Inc.

By letter dated April 20, 2007, Little Simon Properties, Inc. (LSP) advised that it intended to participate in the captioned matter as a landowner within 500 feet from the project site. LSP owns half of Read Road, which runs through the project site. According to its letter of intent, "LSP owns over 2,600 acres of nearly adjacent lands to the south and east of the project site."

In a letter dated December 20, 2007 from LSP's counsel, Mr. Gerstman explained that the ownership of Read Road is listed on the Tupper Lake Assessor's records as No. 522.-1-1.7 under the name Mt. Morris Associates. Mt. Morris Associates is a name of convenience. Mr. Gerstman included copies of the deeds with his December 20, 2007 letter, which provide a description of the right-of-way referred to as Read Road.

In its January 7, 2008 Memo-Report, Applicant requested additional information from LSP, as well as clarification of the information already submitted on behalf of LSP. For example, Applicant requested the names of the individual members of LSP, and clarification of the corporate structure. Applicant also inquired whether any members of LSP filed individual requests for party status as adjacent or nearby landowners.

At the January 25, 2008 conference, Mr. Gerstman distributed a list of the individual members of LSP. Subsequently, with a letter dated February 6, 2008, Mr. Gerstman provided additional information about his client. Mr. Gerstman clarified that the members of Mt. Morris Associates are LSP and the owners of the Birchery Camp. In addition, Mr. Gerstman provided another copy

of the individual members of LSP, which is identical to the list distributed at the January 25, 2008 conference. According to Mr. Gerstman, none of the members of LSP has individually applied for party status. Mr. Gerstman provided a copy of the LSP Certificate of Incorporation and copies of additional deeds. Mr. Gerstman stated that the 2,600 acre parcel owned by LSP is separate and distinct from the property owned by the Birchery Camp.

Read Road is a private road that extends southeast from NYS Route 30. It provides access to lands owned by the Birchery Camp and LSP. Read Road bisects the project site. On the northeast side of Read Road, Applicant has proposed to locate the Lake Side View subdivision and several of the Great Camp lots. On the southwest side of Read Road, Applicant has proposed to locate, among other things, the Cranberry Village subdivision and Great Camp Lot No. 6. These elements of the proposal would be located on land adjacent to Read Road. Based on LSP's partial ownership of Read Road, I find that LSP is an adjacent landowner, and conclude that LSP is a party-of-right to this matter.

5. Vincent Giuseffi

In a letter dated April 17, 2007, Vincent Giuseffi provided extensive comments about the project, and expressed an interest in the outcome of the proceedings. In his letter, Mr. Giuseffi does not state that he is either an adjacent landowner or a landowner within 500 feet of the project site. According to APA Staff's letter dated January 7, 2008, Mr. Giuseffi's property is located more than 500 feet from the project site. Because Mr. Giuseffi is neither an adjacent landowner nor one within 500 feet of the project site, he is not a party-of-right.

Moreover, in his April 17, 2007 letter, Mr. Giuseffi does not expressly request party status in the proceedings related to the captioned matter. Therefore, I am unable to conclude, as a matter of regulation, that Mr. Giuseffi's April 17, 2007 letter complies with the requirements outlined at 9 NYCRR 580.7. Absent the required petition, Mr. Giuseffi is not a party to the proceedings.

6. James R. McCartney, Jr.

James R. and Judy McCartney reside at 19 Logan Lane in Tupper Lake. Mr. McCartney's name appears on the APA mailing list of landowners located within 500 feet of the project site.

Accordingly, he is entitled to be a party-of-right to this matter.

I have searched my file concerning this matter. I cannot find any correspondence from the McCartneys stating their intention to be parties in this proceeding. The US Postal Service has not returned any of the correspondence that I have sent to the McCartney's Tupper Lake address concerning this matter. In addition, I have reviewed the transcript from the April 26, 2007 pre-hearing conference, and the McCartneys did not appear at the conference to state their intention to be parties.

Because James R. McCartney, Jr. (and perhaps Judy McCartney) is a landowner within 500 feet of the project site, I will grant Mr. McCartney party status in this matter provided he delivers a letter to the APA Board by March 3, 2008 in which he states his intention to be a party. Mr. McCartney must also provide a copy of the letter to Applicant's counsel, APA Staff and me at the same time and in the same manner as the letter is provided to the APA Board. Without a timely filed letter, Mr. McCartney will lose his status as a party in this matter.

III. Petitions filed after April 23, 2007

As noted above, the April 2, 2007 notice outlined the additional information that interested parties must present in a petition to intervene in the proceeding (see 9 NYCRR 850.7), and set April 23, 2007 as the filing date for these petitions. In addition to the petitions identified above,⁵ two more petitions were filed subsequent to April 23, 2007. Robert and Leslie Harrison requested party status in a letter dated December 10, 2007. In a letter dated November 15, 2007, Susan Allen requested party status pursuant to 9 NYCRR 580.7.

Pursuant to 9 NYCRR 580.7(g), the hearing office may permit any person to petition for intervention at any time after the first day of the hearing and before the last day on which testimony is taken, provided: (1) there is reasonable cause for the failure to file a timely petition; (2) no party will be prejudiced; and (3) the participation of the petitioner is

⁵ As noted above, the following organizations filed petitions to intervene pursuant to 9 NYCRR 580.7: (1) the Tupper Lake Chamber of Commerce; (2) the Adirondack Council; (3) the Association; (4) NRDC; and (5) the Residents' Committee. These intervenors have been granted party status.

essential to an informed decision. In addition to the criteria outlined in 9 NYCRR 580.7(a), the criteria outlined in 9 NYCRR 580.7(g) will be applied to the petitions filed by Robert and Leslie Harrison, and Susan Allen.

With respect to the petitions filed by Robert and Leslie Harrison, and Susan Allen, I conclude there is reasonable cause for the failure to file a timely petition, and no party will be prejudiced by these late filed petitions. Prior to the April 26, 2007 pre-hearing conference, Applicant proposed mitigation, which reduced the scope of the project. Subsequent to the pre-hearing conference, Applicant provided further updates and clarified the nature of the mitigation. In addition, the pre-hearing conference has been adjourned at Applicant's request to pursue a mediated settlement. The adjudicatory hearing concerning this matter has not commenced. In addition, if a complete, mediated settlement is not reached, it will be necessary to reconvene the pre-hearing conference and to rule on additional issues for adjudication as proposed by intervenors.

A. Robert and Leslie Harrison

In a letter dated December 10, 2007, Robert and Leslie Harrison requested party status. As noted above, the Harrisons subsequently filed a letter dated February 1, 2008 to supplement their December 10, 2007 petition, which was also attached to e-mails dated February 3 and 6, 2008.

Prior to the April 26, 2007 pre-hearing conference, the Harrisons filed an undated letter, which I received by fax on April 18, 2007. In their April 18, 2007 letter, the Harrisons explained that they own a camp on Rock Island in Tupper Lake, which is across Rock Island Bay from Litchfield Park. They stated further that they believe that Applicant was negotiating with Litchfield Park about moving the Orvis shooting school to that location. The Harrisons object to siting the Orvis shooting school in Litchfield Park.

In their December 10, 2007 letter, the Harrisons identified the tax roll number for their Tupper Lake property, and stated that this property is neither adjacent to, nor within 500 feet of, the project site. They stated, however, that their property is within 500 feet of Litchfield Park, and that they would become a party-of-right if the Orvis shooting school were located in Litchfield Park. The Harrisons identified natural resource protection, and impacts associated with the Orvis shooting school

(assuming that the shooting school would be located in Litchfield Park) as issues of concern.

In their February 1, 2008 letter, the Harrisons reiterated their concern about locating the Orvis shooting school in Litchfield Park. Mr. Harrison stated that he has a bachelor of science degree in Engineering, and is familiar with sound level measurement and attenuation principles. Mr. Harrison stated further that he would address noise issues related to the shooting school in either the mediation or as part of the hearing.

The Harrisons object to Applicant's argument that their request for party status should be denied given the uncertainty about the status of the shooting school. The Harrisons are concerned that Applicant may attempt to segment its proposal, and subsequently propose to relocate the shooting school. The Harrisons explained further that they are concerned about the potential adverse impacts associated with the anticipated increase in boat traffic on Tupper Lake. For example, the Harrisons are concerned about Rock Island eroding from the wake action associated with an increase in boat traffic that would result from the project. According to the Harrisons, the state-operated boat launch is "often completely full on weekends," and would become busier if the proposal is approved. Because the Harrisons' Tupper Lake property is on Rock Island, they depend upon the state-operated boat launch to access their property. In their February 1, 2008 letter, the Harrisons add the potential overuse of state facilities, such as the boat launch on Tupper Lake, as an issue.

In a letter dated February 6, 2008 from Applicant's counsel, Applicant states that it "has no intention to propose these development components [*i.e.*, the Orvis shooting school, among other things] at any foreseeable time in the future...."

Based on Applicant's February 6, 2008 letter, the Harrisons would not become parties-of-right as landowners within 500 feet of the project site. Presently, the Harrisons are not parties-of-right because they are not adjacent landowners or ones within 500 feet of the project site. Given Mr. Harrison's education as an engineer and related work experiences, however, I find that he would supply information or expertise relative to the matters that will be considered at the hearing (see 9 NYCRR 580.7[a][2] and 580.7[g]). In addition because the Harrisons own property in the Town of Tupper Lake and given the scope of the project, I find that they have a material social, economic and environmental

interest that would be affected by the Board's decision concerning the project. Accordingly, I conclude that the Harrisons petition for party status with its supplements complies with the requirements outlined at 9 NYCRR 580.7(a), as well as the additional requirements at 9 NYCRR 580.7(g). Therefore, I grant the Harrisons' request for party status.

B. Susan Allen

In a letter dated November 15, 2007, Susan Allen requested party status pursuant to 9 NYCRR 580.7. According to her letter, Ms. Allen writes, edits and publishes the Adirondack Park Agency Reporter, which Ms. Allen characterizes as an independent newsletter covering the actions and deliberations of the Adirondack Park Agency. Ms. Allen's participation would be limited to whether mediation should be used to resolve the economic and environmental issues related to the project, and the confidentiality of the mediation sessions.

In my memorandum dated December 5, 2007, I requested clarification of Ms. Allen's petition. Ms. Allen responded with an e-mail message dated December 20, 2007. Ms. Allen observed that the APA Act and its implementing regulations are silent about the use of mediation and related processes, such as negotiations, arbitration and conflict resolution, to resolve disputes related to permit and enforcement actions pending before the APA Board. Absent specific language in the APA Act and regulations, Ms. Allen argued that the APA cannot rely on mediation and alternative forms of conflict resolution to resolve disputes. To support her position, Ms. Allen provided many references to the minutes from APA meetings where Board members discussed the use of mediation and related processes, and concluded, for example, that there is no statutory authority to use mediation.

Ms. Allen explained further that a reliance on the confidentiality of the mediation process is not in the public interest. Ms. Allen pointed to the failed mediation attempt that was part of the Lake George SONAR hearing. According to Ms. Allen, the Board rejected the mediated settlement in the SONAR hearing because the bases for the stipulation were not disclosed to the Board, and the Board concluded that it did not have a complete record before it. As a result, Ms. Allen observed that the SONAR hearing was inappropriately delayed by the mediation. Ms. Allen argued that state government should be steering away from secrecy, and that the deliberative process associated with the project to be open to the public.

In a written statement dated January 25, 2008, Ms. Allen responded to the comments filed by (1) the Association, dated January 6, 2008; (2) Applicant in its January 7, 2008 Memo-Report; and (3) APA Staff in its letter dated January 7, 2008. Ms. Allen provided me with a copy of her statement, which was distributed with my memorandum dated January 28, 2008. In addition, Ms. Allen also e-mailed a copy of her statement to me, which I subsequently distributed via e-mail.

Generally, the parties-of-right, which include APA Staff and Applicant, as well as intervening parties, among them, the Association, do not support Ms. Allen's request for party status. According to Ms. Allen's November 15, 2007 petition, Ms. Allen and her newsletter take no position about the merits of the project, and the request is limited to participation only in the mediation. Ms. Allen does not offer any expertise or knowledge related to the factual issues identified in the Board's February 15, 2007 Order. Ms. Allen is not a resident of either the Town or the Village of Tupper Lake. Accordingly, I deny Ms. Allen's request for party status.

IV. Consolidation of Parties

In its January 7, 2008 Memo-Report, Applicant recommended the consolidation of parties, and requested a ruling from me about its recommendations concerning consolidation. Applicant repeated its request at the January 25, 2008 conference. Some of those present at the January 25, 2008 conference objected to Applicant's recommendations for consolidation, and others presented additional comments.

I reserved on Applicant's request to consolidate parties until after ruling on petitions for party status. I will further reserve on this request pending the review of any duly filed appeals, and the Board's consideration thereof. In the meantime, I encourage the parties to consider how they could be consolidated.

V. Appeals

Section 580.7(f)(1) of 9 NYCRR states, in pertinent part, that

"[a]ny decision of the executive director or hearing officer to grant or deny intervention may, within five days of receipt, be appealed to the agency, which will decide the appeal at its next regular meeting. Other

parties may submit briefs in support of or in opposition to the decision."

In addition, pursuant to 9 NYCRR 580.7(f)(2), notice of any appeal and a copy of all materials filed in support of any appeal must be given to the executive director or hearing officer and all parties to the hearing.

Consistent with the provisions outlined at 9 NYCRR 580.7(f), these rulings on party status may be appealed to the Adirondack Park Agency Board. At the January 25, 2008 conference, APA Staff stated that the APA Board will meet on March 13 and 14, 2008. In addition, the materials that the Board will consider at the March 13 and 14 meeting will be mailed to the members on March 5, 2008.

VI. Further Proceedings - Mediation Sessions

During the January 25, 2008 conference, the participants agreed to meet in Tupper Lake on **March 11, 2008** to finalize and execute the mediation protocol, and to develop a schedule for future mediation sessions that will address, at least initially, the factual issues identified in the Board's February 15, 2008 Order. The meeting will begin at **10:00 a.m.** on March 11, 2008 at the **Goff-Nelson Library** in Tupper Lake.

Prior to the March 11, 2008 meeting, I agreed to circulate a draft mediation protocol for the participants review and comment. I will circulate that document under separate cover.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
February 14, 2008

To: Preliminary Service List, revised February 14, 2008

Enclosures: Mr. Crouse's deeds
The Chartiers' map