



**Adirondack  
Park Agency**

**ANDREW M. CUOMO**  
Governor

**TERRY MARTINO**  
Executive Director

**STATE OF NEW YORK: ADIRONDACK PARK AGENCY**

In the matter of the apparent  
violations of § 809 of the  
Adirondack Park Agency Act  
and 9 NYCRR Part 577 by:

Agency File #E2017-0026

**JAMES JOHN MCDONALD**  
**JEFFREY LEE**

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF AGENCY STAFF'S  
NOTICE OF APPARENT VIOLATION AND REQUEST FOR  
ENFORCEMENT COMMITTEE DETERMINATION**

Respectfully submitted by:

Jennifer Hubbard, Senior Attorney  
Adirondack Park Agency Staff

December 17, 2019

## **PRELIMINARY STATEMENT**

This administrative enforcement proceeding is brought by Adirondack Park Agency (Agency) staff to enforce § 809 of the Adirondack Park Agency Act (Executive Law § 801 et. seq.; referred to herein as the APA Act) and Agency regulations at 9 NYCRR Part 577 implementing the Wild, Scenic, and Recreational Rivers System Act (Environmental Conservation Law § 15-2701 et. seq.; referred to herein as the Rivers Act) against James John McDonald and Jeffrey Lee (Respondents) by addressing the establishment of a tourist accommodation and the installation and construction of associated structures on Rural Use lands in the Hudson River Recreational River Area.

Agency staff request a determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violations alleged in the Notice of Apparent Violation and Request for Enforcement Committee Determination (NAV) have occurred and are occurring. Agency staff further request that the Enforcement Committee determine appropriate injunctive relief and penalties against Respondents as provided by 9 NYCRR § 581-2.6(d).

## **FACTS**

Respondent McDonald owns tax map parcel 167.1-1-5 (Lot 5), an approximately 10.47-acre parcel located in the Town of Thurman, Warren County. Affidavit of Bart H. Haralson, dated December 17, 2019 (Haralson Aff.), ¶ 4. Respondent McDonald also owns tax map parcel 167.3-1-6 (Lot 6), an approximately 2.1-acre parcel located in the Town of Thurman, Warren County. Haralson ¶ 4. Lot 5 and Lot 6 are located on lands classified Rural Use by the official Adirondack Park Land Use and Development Plan

Map and are entirely within the designated Hudson River Recreational River Area. Haralson ¶ 4, Exhibit 1 of Haralson Aff. Lot 5 and Lot 6 together comprise the subject property. Haralson ¶ 4.

On March 20, 2017, Agency staff opened Enforcement File E2017-0026 in response to allegations that Respondents had established a tourist accommodation on Lot 5, installed structures on Lot 5 associated with this tourist accommodation, and undertaken construction of a single family dwelling on Lot 5 without obtaining a permit from the Agency. Haralson Aff. ¶ 6. Agency staff commenced an investigation and discovered that Respondents had been operating a tourist accommodation known as “The Brampton” on Lot 5 since at least November 2015. Haralson Aff. ¶ 6. Respondents did not obtain a permit from the Agency prior to the establishment of this tourist accommodation. Haralson Aff. ¶ 7. The tourist accommodation also uses structures constructed by a prior owner on Lot 5 without an Agency permit. Haralson Aff. ¶¶ 5, 9.

#### *First Site Visit and Follow-up Communications*

On April 5, 2017, Agency Enforcement Officer Bart Haralson and Agency Engineer Shaun LaLonde met with Respondent Lee at the subject property. Haralson Aff. ¶ 9; Affidavit of Shaun E. LaLonde, dated December 17, 2019 (LaLonde Aff.), ¶ 4. During this site visit, staff observed four structures on Lot 5: a single family dwelling, referred to by Respondents as a lodge, that had been constructed between 1995 and 2000 (the 1995 single family dwelling); an accessory structure, referred to by Respondents as a barn, that had also been constructed between 1995 and 2000 (the

1995 accessory structure); a yoga deck; and a single family dwelling under construction, referred to by Respondents as a cabin (the 2016 single family dwelling). Haralson Aff. ¶¶ 5, 9, Exhibits 6 – 10 of Haralson Aff.; LaLonde Aff. ¶ 4. Staff determined that there is an existing on-site wastewater treatment system serving the 1995 single family dwelling. The details of the components of this wastewater treatment system are unknown. LaLonde Aff. ¶ 4. During the site visit, Agency staff observed that the system's leaching facility is located within 100 feet of Respondents' water supply and an intermittent stream. LaLonde Aff. ¶ 4, Exhibit 1 of LaLonde Aff. These separation distances do not comply with New York State Department of Health (DOH) or Agency standards. LaLonde Aff. ¶ 4.

Respondents confirmed that the bedrooms and other areas in the 1995 single family dwelling were available for rent as part of The Brampton tourist accommodation, and that the 1995 accessory structure and the yoga deck were also used as part of the tourist accommodation. Haralson Aff. ¶ 9. Respondents informed Agency staff that the 2016 single family dwelling was intended to serve as an expansion of the tourist accommodation. Haralson Aff. ¶ 9.

During the site visit on April 5, 2017, Agency staff observed two small cabins on Lot 6. Haralson Aff. ¶ 9, Exhibits 11 -12 of Haralson Aff.; LaLonde Aff ¶ 4.

Respondents stated that the structures on Lot 6 were for personal use only and were not used as part of the tourist accommodation. Haralson Aff. ¶ 9; LaLonde Aff ¶ 4.

Respondents also suggested that they might replace one of the small cabins with a "tiny home" structure. Haralson Aff. ¶ 9.

On April 14, 2017, Agency staff sent a letter to Respondents reminding that an Agency permit is required for the establishment of a tourist accommodation on Rural Use lands within a Recreational River Area. Haralson Aff. ¶ 10, Exhibit 13 of Haralson Aff. The letter requested information necessary for staff to begin review of The Brampton tourist accommodation and stated that, “when the Agency receives all necessary information, staff ... will contact you to discuss a proposed settlement agreement.” The letter also explained that replacing one of the cabins on Lot 6 with a “tiny home” would not require Agency approval, provided the structure was registered with the New York or New Jersey department of motor vehicles, contained no permanent facilities for septic, was set back at least 150 feet from the Hudson River, and was not attached to any permanent structures such as a porch or steps. Haralson Aff. ¶ 10, Exhibit 13 of Haralson Aff.

On May 22, 2017, and June 12, 2017, staff discussed the requirements of the Agency’s letter with Respondent Lee by telephone. Staff received no written submission or other information in response to the letter of April 14, 2017. Haralson Aff. ¶ 11.

On May 15, June 22, and June 29, 2017, posts on social media indicated that Respondents were continuing to operate The Brampton tourist accommodation. Haralson Aff. ¶ 12, Exhibits 14 – 16 of Haralson Aff. In addition, Respondents advertised that new tourist accommodation structures had been added, including a camper van with provisions for sleeping and a wooden tent platform with a canvas tent. Haralson Aff. ¶ 12, Exhibits 14 – 15 of Haralson Aff. Advertisements on Respondents’ webpage and social media accounts also indicated that two cabins on Lot 6 (the

Cambridge Cabin and the Oxford Cabin) were now available to rent. Haralson Aff. ¶ 12, Exhibit 16 of Haralson Aff.

On July 12, 2017, Agency staff forwarded a letter to Respondents requesting that all new land use and development cease until the enforcement matter was resolved. The letter advised that continuing the tourist accommodation activities would result in additional enforcement action and potentially the assessment of civil penalties. Haralson Aff. ¶ 13, Exhibit 17 of Haralson Aff.

On July 17, 2017, Agency staff again discussed this matter with Respondent Lee by telephone. Haralson Aff. ¶ 14. Following this conversation, posts on the website for The Brampton showed that a “Yoga and Pilates” retreat was held at The Brampton from August 10 to August 14, 2017. The Cambridge Cabin and the Oxford Cabin were listed as available accommodations for this retreat. Haralson Aff. ¶ 15, Exhibits 18 – 19 of Haralson Aff.

On September 5, 2017, Agency staff again spoke to Respondent Lee by telephone. Respondent Lee indicated that he was meeting with an engineer and a surveyor in an effort to prepare the plans required by the Agency. Haralson Aff. ¶ 16.

#### Second Site Visit and Follow-up Communications

On September 28, 2017, Agency staff conducted a second site visit to the subject property. Agency Enforcement Officer Haralson, Engineer LaLonde, and Forester and Soil Scientist Aaron Ziemann attended this site visit. A representative from the NYS Department of Health was also present, along with Respondents and their engineer. Haralson Aff. ¶ 17; LaLonde Aff. ¶ 6.

During this second site visit, Agency staff inspected the interior of the 1995 single family dwelling on Lot 5, observing beds on all three floors, including the basement. At least three couches were also present. Haralson Aff. ¶ 17, Exhibit 20 of Haralson Aff; LaLonde Aff. ¶ 6. Agency staff also observed the 1995 accessory structure, yoga deck, and partially-constructed 2016 single family dwelling on Lot 5 (Haralson Aff. ¶ 17, Exhibits 21 – 25 of Haralson Aff.; LaLonde Aff. ¶ 6), as well the following new structures: a camper van containing a double bed; a nearby outhouse with a flush toilet, attached shower, electric service, and gravity-fed water (the outhouse structure), all connected to a cess pool; a tent platform with a double bed and a single bed; and a large staircase leading to the tent platform. Haralson Aff. ¶ 17, Exhibits 26 – 32 of Haralson Aff; LaLonde Aff. ¶ 6. Staff also observed extension cords running throughout the property to provide electric service to the various structures and to lights that had been strung outdoors. Haralson Aff. ¶ 17; LaLonde Aff. ¶ 6.

On Lot 6, Agency staff observed that the two small cabins seen during the first site visit had been reconfigured to serve as the Oxford Cabin and the Cambridge Cabin listed as available for rent online. Haralson Aff. ¶¶ 15, 17, Exhibits 33 – 35 of Haralson Aff.; LaLonde Aff. ¶ 6. In response to questions from Agency staff, however, Respondent Lee stated that the Oxford Cabin and Cambridge Cabin were used only for Respondents' personal purposes. Respondent Lee explained that guests at The Brampton can be loud at night, and that Respondents prefer to stay offsite where they are more able to sleep and avoid intruding on their guests' experience. Haralson Aff. ¶ 17. Respondent Lee also explained that an area that had been cleared of vegetation on

Lot 6 would be used for a third structure, a “tiny home” for Respondents’ personal use. Haralson Aff. ¶ 17, Exhibit 36 of Haralson Aff.; LaLonde Aff, ¶ 6.

On Lot 6, staff also observed a single drilled well on-site water supply. Staff determined that the details of any on-site wastewater treatment system(s) for the cabins on Lot 6 were unknown. LaLonde Aff. ¶ 6, Exhibits 2 – 3 of LaLonde Aff.

In October 2017, Agency staff spoke with Respondent Lee by telephone on five occasions. During these conversations, staff again explained Respondents’ apparent violations, Agency regulations, and the requirements for resolving the matter. Haralson Aff. ¶¶ 18, 19.

On November 10, 2017, Agency staff received a letter from Respondent McDonald stating that Lot 6 “will henceforth be used solely for personal use.” Haralson Aff. ¶ 20, Exhibit 37 of Haralson Aff. The Agency received no other written response or submission from Respondents.

#### *First Proposed Settlement Agreement and Follow-up Communications*

On February 13, 2018, Agency staff forwarded a proposed settlement agreement to Respondent McDonald, as the owner of the subject property. Haralson Aff. ¶ 21, Exhibit 38 of Haralson Aff. The settlement agreement offered to resolve the enforcement matter, provided Respondent McDonald would commit to: obtaining an after the fact permit authorizing continued operation of the tourist accommodation and related development on Lot 5; removing the outhouse structure, cess pool, and 2016 single family dwelling from Lot 5; installing a new, Agency-approved on-site wastewater treatment system for use with the 1995 single family dwelling on Lot 5; and paying a



civil penalty of \$2,500. Haralson Aff. ¶ 21, Exhibit 38 of Haralson Aff. The settlement agreement did not address Lot 6, based upon Respondent McDonald's letter stating that the structures on Lot 6 would no longer be used as part of The Brampton tourist accommodation. Staff's letter accompanying the proposed settlement agreement reminded that any additional land use or development on the subject property would require an Agency permit. Haralson Aff. ¶ 21, Exhibit 38 of Haralson Aff.

On February 21, 2018, and March 27, 2018, Agency staff spoke with Respondent Lee by telephone. Haralson Aff. ¶ 22, 23. During the second conversation, Respondent Lee indicated that he was unclear on what was needed to resolve the enforcement matter. Haralson Aff. ¶ 23.

On March 29, 2018, Enforcement Program Supervisor Burth and Enforcement Officer Haralson met with Respondent Lee at the Agency's offices. During this meeting, staff again explained to Respondent Lee the apparent violations on Lot 5 and reviewed the Agency's enforcement process. Respondent Lee stated that he was "mostly agreeable" to the terms of the proposed settlement agreement. Haralson Aff. ¶ 24.

On May 24, 2018, Agency staff received from Respondents a permit application for The Brampton tourist accommodation. This application included professionally prepared plans for a proposed new on-site wastewater treatment system on Lot 5. Haralson Aff. ¶ 25; LaLonde Aff. ¶ 8. Staff did not receive a signed settlement agreement or any commitment from Respondents to remove the outhouse structure and cess pool or the 2016 single family dwelling from Lot 5 or to otherwise comply with the proposed settlement agreement. Haralson Aff. ¶ 25.

Between May 26, 2018, and June 27, 2018, Agency staff again spoke with Respondent Lee five times by telephone. Haralson Aff. ¶¶ 26, 27. During these conversations, Respondent Lee proposed new plans for alterations and expansions to The Brampton tourist accommodation and inquired as to when construction on the 2016 single family dwelling could recommence. Agency staff reminded Respondent Lee not to pursue any new plans or additional construction until the enforcement matter had been resolved.

On July 18, 2018, Agency staff forwarded a letter to Respondent Lee in response to the permit application of May 24, 2018. Haralson Aff. ¶ 28, Exhibit 39 of Haralson Aff. Staff requested additional details and clarification of inconsistencies on the submitted plans, noting that these “items must be addressed in order to proceed with a revised settlement agreement to resolve this matter.” The letter also reminded Respondent Lee that “the existing structures and uses [on Lot 5] constitute apparent violations for Agency purposes,” that the outhouse structure, cess pool, and 2016 single family dwelling would need to be removed from Lot 5, and that any use of Lot 6 for tourist accommodation purposes would require Agency review and approval.

Between July 23, 2018, and August 6, 2018, staff spoke with Respondent Lee by telephone three more times, answering additional questions about the enforcement matter. Haralson Aff. ¶ 29.

On August 1, 2018 and August 8, 2018, the Agency received complaints that trees were being cleared on the subject property. Haralson Aff. ¶ 30.

On August 16, 2018, a post on social media advertised the Airstream travel trailer as available for rent at The Brampton, referring to the trailer as “our latest

member of the family.” Haralson Aff. ¶ 31, Exhibit 40 of Haralson Aff. A second post, dated August 20, 2018, depicted a newly constructed lawn area adjacent to the Airstream travel trailer, stating, “Well, what did you expect? If you have a vintage Airstream you need a lush 6000 square foot games lawn to put it on...” Haralson Aff. ¶ 32, Exhibit 41 of Haralson Aff.

### Third Site Visit and Follow-up Communications

On August 22, 2018, Agency staff visited the subject property a third time to meet with Respondent Lee. This site visit was attended by Enforcement Program Supervisor Burth, Enforcement Officer Haralson, Engineer LaLonde, and a representative from the New York State Department of Health (DOH). Haralson Aff. ¶ 33; LaLonde Aff. ¶ 9.

During this third site visit, on Lot 5, Agency staff observed the structures that had been present during the previous site visits: the 1995 single family dwelling; the 1995 accessory structure; the yoga deck; the partially-constructed 2016 single family dwelling; the camper van containing a double bed; the outhouse structure; the tent platform with a double bed and a single bed; and the large staircase. Haralson Aff. ¶ 33; LaLonde Aff. ¶ 9. In addition, staff observed the following new structures and development: an illuminated sign with upward-facing lights at the entrance to the property; an area that had been cleared and graded for a lawn; a gravel driveway with a culvert crossing to access the lawn area; and an Airstream travel trailer. Haralson Aff. ¶ 33, Exhibits 42 – 44 of Haralson Aff; LaLonde Aff ¶ 9.

During this third site visit, on Lot 6, Agency staff observed the Cambridge Cabin and the Oxford Cabin, which had been present during the second site visit. Haralson

Aff. ¶ 33; LaLonde Aff. ¶ 9. In addition, staff observed that a new “tiny home” had been placed on the portion of Lot 6 that had been cleared of vegetation and vacant during the second site visit (the Tiny Home). Haralson Aff. ¶ 33, Exhibit 45 of Haralson Aff; LaLonde Aff. ¶ 9.

In response to questions from Agency staff, Respondent Lee stated that the Airstream travel trailer is not available for rent as part of the tourist accommodation. Respondent Lee also stated that he intended to remove the 2016 single family dwelling, the outhouse structure and cess pool, and the Airstream travel trailer from Lot 5. Haralson Aff. ¶ 33.

On September 18, 2018, Agency staff sent Respondents a letter following up on the August 22, 2018 site visit. Haralson Aff. ¶ 34, Exhibit 46 of Haralson Aff. The letter documented Respondent Lee’s statements that the Airstream travel trailer was not available for rent as part of the tourist accommodation; that the 2016 single family dwelling, the outhouse structure and cess pool, and the Airstream travel trailer would be removed from the property; and that Respondents would “cease all further construction and clearing.” The letter also stated the following:

“In order to avoid further enforcement action, the items requested in the Agency letter to you dated July 18, 2018 (copy enclosed), will need to be submitted no later than October 31, 2018. Upon receipt of approvable plans, Agency staff will forward you a revised proposed settlement agreement to resolve this matter.

As noted in the July 18, 2018 letter, the Agency has not sought cessation of the ongoing tourist accommodation operation while this matter is being resolved. However, any further expansion, construction of structures, or new land use and development without prior Agency approval may result in additional enforcement action.”

Sometime after staff's site visit of August 22, 2018, Respondents added another travel trailer to Lot 5 (the second travel trailer). This travel trailer is located adjacent to the lawn area and near the Airstream travel trailer, as depicted in a social media post dated October 18, 2018, on the Instagram page for The Brampton. Haralson Aff. ¶ 35, Exhibit 47 of Haralson Aff.

Agency staff again discussed the enforcement matter with Respondent Lee by telephone on November 5, 2018. Haralson Aff. ¶ 36. Agency staff did not receive a signed settlement agreement or other written response to the Agency's letters of July 18, 2018, and September 18, 2018. Haralson Aff. ¶ 37.

#### Second and Third Proposed Settlement Agreements and Ongoing Construction

On January 8, 2019, Agency staff forwarded a second proposed settlement agreement to Respondents. Haralson Aff. ¶ 37, Exhibit 52 of Haralson Aff. The Agency again received no response to this offer.

Posts on social media dated January 20, March 23, and May 16, 2019, indicated that Respondents were continuing use of The Brampton. Haralson Aff. ¶ 38, Exhibits 53 – 55 of Haralson Aff. In addition, a post on the Instagram account for The Brampton advertised that the Tiny Home installed on Lot 6 in 2018 was now available for rent, noting, "We can't stop adding fun places to sleep at Brampton Village." Haralson Aff. ¶ 39, Exhibit 56 of Haralson Aff. It also appears that construction on the subject property continued, as a June 21, 2019, Instagram post depicted a newly-constructed deck attached to the Airstream travel trailer on Lot 5. Haralson Aff. ¶ 39, Exhibit 57 of Haralson Aff.

Agency staff forwarded a final proposed settlement agreement on August 2, 2019. Haralson Aff. ¶ 40, Exhibit 59 of Haralson Aff. Staff's letter accompanying this final proposal stated that staff were prepared to bring the matter before the Agency's Enforcement Committee to seek a determination to address the ongoing apparent violations and a civil penalty.

Agency staff has received no response to the proposed settlement agreements of January 8, 2019 and August 2, 2019. Haralson Aff. ¶ 41. The last communication with Agency staff by Respondents was the telephone discussion on November 5, 2018. Haralson Aff. ¶ 36.

#### Advertisements for The Brampton

During the entire period of Agency enforcement involvement with this matter, Respondents have continuously advertised The Brampton tourist accommodation on social media, Respondents' website, rental property websites such as Airbnb.com, and wedding websites such as theknot.com. Haralson Aff. ¶ 45, Exhibits 68 – 71 of Haralson Aff. In addition, and in spite of Respondents' statements and promises to the contrary, all of the structures on both Lot 5 and Lot 6 have been listed online as available for rent. See, e.g. Haralson Aff ¶¶ 9, 12, 15, 17, 20, 31, 33, 35, 39, 46, Exhibits 16, 18, 19, 40, 48, 49, 50, 51, 54, 56, 57, 58, 60, 69, 70, 72, and 74 of Haralson Aff.

Specifically, on Lot 5, the following structures have been listed as available for overnight rental:

- The 1995 single family dwelling;

- The camper van containing a double bed;
- The tent platform with a double bed and a single bed;
- The Airstream travel trailer; and
- The second travel trailer.

On Lot 6, the following structures have been listed for overnight rental:

- The Oxford Cabin;
- The Cambridge Cabin; and
- The Tiny Home.

The website for The Brampton states that the tourist accommodation can host 15-20 people overnight during the winter months, and more than 20 people overnight during the summer. Haralson Aff. ¶ 47, Exhibit 69 of Haralson Aff. However, advertisements for The Brampton have offered space for as many as 36 overnight guests. Haralson Aff. ¶ 47.

In addition to hosting individual guests, Respondents have advertised and hosted various group events at The Brampton, such as multi-day culinary events, weddings, corporate retreats, adventure retreats, and yoga retreats. Haralson Aff. ¶ 49. The website for The Brampton and other websites advertise the property as available to book through 2020, with retreats and other events, including a wedding, already scheduled. Haralson Aff. ¶ 53, Exhibits 51, 68, 70, 81 of Haralson Aff. According to the website for The Brampton, up to 100 guests can be accommodated during weddings. Haralson Aff. ¶ 49, Exhibits 71, 76, and 77 of Haralson Aff.

The Brampton has also been promoted in other online publications. For example, The Brampton was voted one of “2017’s Hottest New Venues Across the

Globe” by The Venue Report, was listed as one of “9 Adventurous Wellness Retreats” in Outside Online, is listed as a lodging facility on the website “Visit the Lake George Area in New York’s Adirondacks,” and has been featured on various blogs, including “Escape Brooklyn,” “Just Opened New York,” and “The Daily Meal.” Haralson Aff. ¶ 44, Exhibits 62 – 67 of Haralson Aff.

### Rates at The Brampton

Accommodations at The Brampton range in price depending on the season and the type of accommodation or activity involved. For example, the entire 1995 single family dwelling was advertised as available to rent for \$1500 for a weekend in March 2019. Haralson Aff. ¶¶ 38, 48, Exhibit 54 of Haralson Aff. During the peak summer season, however, the dwelling requires a 4-night minimum stay, with a rate shown on Airbnb of \$1,321 per night, plus an additional \$350 cleaning fee and \$727 service fee. Haralson Aff. ¶ 48, Exhibit 74 of Haralson Aff.

The rates for group events also vary. For a week-long adventure retreat in July 2019, five bedrooms in the 1995 single family dwelling, as well as the camper van, Airstream travel trailer, second travel trailer, Cambridge Cabin, and Tiny Home, were all listed at a rate of \$1500 - \$3000 per person. Haralson Aff. ¶ 49, Exhibit 49 of Haralson Aff. A weekend culinary retreat held in October 2017 advertised rates between \$650 and \$950 per person (Haralson Aff. ¶ 49, Exhibit 75 of Haralson Aff.), and a weekend yoga retreat held in October 2019 advertised rates between \$549 and \$999 per person (Haralson Aff. ¶ 49, Exhibit 50 of Haralson Aff). Rates for weddings start at \$10,000



(Haralson Aff. ¶ 49, Exhibits 71, 77 of Haralson Aff.), and rates for corporate retreats start at \$3,000 for one night, mid-week (Haralson Aff. ¶ 49, Exhibit 78 of Haralson Aff).

## **ARGUMENT**

### ***Procedural Basis***

This enforcement proceeding is brought pursuant to 9 NYCRR Subpart 581-2. As provided by 9 NYCRR § 581-2.6(b), Agency staff has initiated this proceeding by serving a NAV on Respondents. Respondents have 30 days to serve their Response on Agency staff pursuant to 9 NYCRR § 581-2.6(c). Agency staff request a determination by the Enforcement Committee in this matter pursuant to 9 NYCRR § 581-2.6(d).

### ***Violations of § 809 of the Adirondack Park Agency Act***

#### ***Establishment of The Brampton Tourist Accommodation***

Pursuant to § 809(2)(a) of the APA Act, a permit is required from the Adirondack Park Agency prior to the establishment of any tourist accommodation on Rural Use lands in the Adirondack Park. Pursuant to § 809(10)(c) of the APA Act, the Agency cannot authorize the establishment of a tourist accommodation involving the use of more tourist cabins or other units available for rent than allowed under §§ 802(50) and 805(3)(f)(3) of the APA Act.

Agency investigation reveals that Respondents have been operating The Brampton tourist accommodation on Lot 5 and Lot 6 since at least 2015. Because

Respondents failed to obtain a permit from the Agency prior to establishing The Brampton tourist accommodation, Respondents have violated and are continuing to violate § 809 of the APA Act. In addition, because The Brampton involves the use of more tourist cabins and other units available for rent than allowed under §§ 802(50) and 805(3)(f)(3) of the APA Act, no Agency permit could be issued for the tourist accommodation.

Undertaking of a Subdivision into Sites

Pursuant to §§ 809(2)(a) and 810(2)(c)(2)(b) of the APA Act, a permit is required from the Adirondack Park Agency prior to the construction of more than one principal building after May 22, 1973, on a non-shoreline lot containing less than 14.70 acres in a Rural Use land use area. Pursuant to §§ 805(3)(f)(3) and 809(10)(c) of the APA Act, the Agency cannot issue a permit authorizing the construction of more than one principal building after May 22, 1973, on a lot containing less than 12.75 acres in a Rural Use land use area.

Agency investigation reveals that Respondents undertook construction in 2016 of a second single family dwelling on Lot 5. Because Respondents failed to obtain a permit from the Agency prior to constructing a second single family dwelling on Lot 5, Respondents have violated and are continuing to violate § 809 of the APA Act. In addition, because Lot 5 is located in a Rural Use land use area and contains less than 12.75 acres, no Agency permit could be issued for the construction of the 2016 single family dwelling.

## ***Violations of 9 NYCRR Part 577***

### ***Construction and Installation of Structures on Lot 5***

Pursuant to Adirondack Park Agency regulations at 9 NYCRR Part 577, a permit is required from the Adirondack Park Agency prior to any new land use or development classified a compatible use on Rural Use lands within any designated Recreational River Area in the Adirondack Park. Pursuant to § 805(3)(f) of the APA Act, single family dwellings and accessory structures are compatible uses in a Rural Use land use area.

Agency investigation reveals that a prior owner of Lot 5 constructed a single family dwelling and accessory structure between 1995 and 2000. Because the prior owner of Lot 5 failed to obtain a permit from the Agency prior to constructing the 1995 single family dwelling and 1995 accessory structure, and Respondents have failed to obtain the necessary approvals, Respondents have violated and are continuing to violate Agency regulations at 9 NYCRR Part 577.

Agency investigation reveals that Respondents installed the yoga deck, camper van, tent platform, large staircase, Airstream travel trailer, and second travel trailer on Lot 5 without an Agency permit. Because Respondents failed to obtain a permit from the Agency prior to installing these structures, Respondents have violated and are continuing to violate Adirondack Park Agency regulations at 9 NYCRR Part 577.

### ***Establishment of The Brampton Tourist Accommodation***

Pursuant to Adirondack Park Agency regulations at 9 NYCRR Part 577, a permit is required from the Adirondack Park Agency prior to any new land use or development classified a compatible use on Rural Use lands within any designated Recreational

River Area in the Adirondack Park. Pursuant to § 805(3)(f) of the APA Act, tourist accommodations are compatible uses on Rural Use lands.

Agency investigation reveals that Respondents established The Brampton tourist accommodation on or about November 2015, and have since been operating the tourist accommodation on Lot 5 and Lot 6. Because Respondents failed to obtain a permit from the Agency prior to establishing a tourist accommodation on Lots 5 and 6, Respondents have violated and are continuing to violate Adirondack Park Agency regulations at 9 NYCRR Part 577.

### **RELIEF SOUGHT**

#### ***Remediation***

To bring Lot 5 and Lot 6 into compliance with § 809 of the APA Act and 9 NYCRR Part 577, Agency staff seek a determination from the Enforcement Committee requiring Respondents to remove the yoga deck, camper van, tent platform, large staircase, Airstream travel trailer, second travel trailer, and 2016 single family dwelling from Lot 5. Agency staff also seek a determination from the Enforcement Committee requiring Respondents to immediately cease operating The Brampton tourist accommodation on Lots 5 and 6 unless and until the subject property is brought into compliance with the overall intensity guidelines of the APA Act and the Agency issues a permit authorizing a tourist accommodation, in addition to the other terms detailed in the accompanying NAV.

## **Penalty**

Agency staff recommend that the Enforcement Committee determine an appropriate penalty in this matter based on consideration of the following relevant factors from the Enforcement Committee's General Penalty Guidelines:

### **1. Statutory Maximum:**

Section 813 of the APA Act allows the Agency to determine a penalty of up to \$500 for each day that a violation of the APA Act continues.

Section 15-2723 of the Rivers Act authorizes penalties of not less than \$100 and not more than \$1,000 per day for each day that a violation of the Rivers Act continues.

### **2. Potential Harm and Actual Damage**

This factor focuses on the extent to which the violators' conduct resulted in or could potentially result in harm to the environment or human health. The penalty should be proportional to potential or actual harm.

In this case, the subject property is located on Rural Use lands, which are described in the Adirondack Park Agency Act as areas that "provide the essential open space atmosphere that characterizes the park." APA Act § 805(3)(f). The Act goes on to state that "[t]he basic purpose and objective of rural use areas is to provide for and encourage those rural land uses that are consistent and compatible with the relatively low tolerance of the areas' natural resources and the preservation of the open spaces that are essential and basic to the unique character of the park." *Id.* The subject property is also located within a designated river area, intended to be "protected for the benefit and enjoyment of present and future generations." Rivers Act § 15-2701(3).

Since 2015, Respondents have operated a tourist accommodation in the Adirondack Park without any Agency review. Respondents have installed and constructed numerous structures associated with The Brampton, in violation of the Agency's density standards and without regard to the impacts from the development. The Agency has received multiple complaints related to this tourist accommodation, and even Respondent Lee has admitted that The Brampton can be disruptive at night. The hosting of events with up to 100 guests, and the addition of an illuminated sign with upward-facing lights and the stringing of other outside lights throughout the property, all disturb the character of the surrounding Rural Use and river area lands.

Development on the subject property has also occurred without regard to water quality or other resource or human health protections. In contravention of all Agency requirements, Respondents have constructed an outhouse with running water, a flush toilet, and a shower, that all drains into a cess pool on Lot 5. In addition, the on-site wastewater treatment system associated with the 1995 single family dwelling on Lot 5 does not meet Agency or DOH standards, with the leaching facility apparently located within 100 feet of Respondents' water supply and an intermittent stream. On Lot 6, which contains three tourist cabins for rent, there is simply no information about any associated wastewater facilities.

Based on staff's investigation, it appears that The Brampton is generating significant revenue; the facility advertises often charges relatively high rates, and has received national coverage in various publications and websites. Allowing Respondents to accrue substantial income and public attention by operating a tourist accommodation in non-compliance with Agency density and environmental requirements may

encourage other businesses to avoid Agency regulations, further damaging Park resources.

### **3. Culpability**

The violators' culpability is relevant in assessing the amount of a penalty; a higher penalty is appropriate where a violator is culpable for the violation. In assessing the degree of Respondents' culpability, staff recommend consideration of the following: (i) how much control Respondents had over the events constituting the violation; and (ii) the foreseeability of the violation.

In this case, Respondents' culpability for their apparent violations justifies the maximum penalty. Respondents were first advised in person on April 5, 2017, and then in writing on April 14, 2017, that the establishment of The Brampton tourist accommodation required an Agency permit. Since that time, Respondents have been on notice that The Brampton is operating in noncompliance with New York State law. In addition to participating in at least 20 phone conversations, three site visits, and one meeting at Agency offices, Agency staff have sent numerous letters and other correspondence reminding Respondents that the tourist accommodation requires an Agency permit, requesting that Respondents cease new land use and development until the enforcement matter is resolved, and warning Respondents that civil penalties could be required as part of the resolution of the apparent violations. Respondents have not consented to the three proposed settlement agreements forwarded by staff, and ignored the warning in the final proposal that staff would bring this matter to the Enforcement Committee for a formal administrative determination. To the contrary, The Brampton has remained openly and continuously advertised on social media, the website for The

Brampton, rental property websites such as Airbnb.com, and wedding websites such as theknot.com.

Respondents have also intentionally misled Agency investigators. For example, beginning at staff's first site visit on April 5, 2017, Respondents continually stated that none of the structures on Lot 6 would be used for tourist accommodation purposes. Even though the Oxford Cabin was listed online as available for rent as early as June 22, 2017, Respondents continued to affirm that Lot 6 would not be used as part of The Brampton, and Respondent McDonald sent a letter to Agency staff on November 10, 2017, stating that Lot 6 "will henceforth be used solely for personal use." However, in spite of these statements, the Oxford Cabin, the Cambridge Cabin, and the Tiny Home on Lot 6 have all been and remain available for rent, with Respondents even boasting on social media that they "can't stop adding fun places to sleep at The Brampton Village."

Respondents have continued to add new structures to Lot 5, as well. On August 16, 2018, after numerous letters, meetings, and telephone calls during which staff warned Respondents not to undertake additional construction or expansion without Agency approvals, Respondents posted a photograph and statement announcing the addition of the Airstream travel trailer to the tourist accommodation. Six days later, during staff's third site visit, Respondent Lee stated that the Airstream travel trailer was not available for rent and that he intended to remove it from Lot 5. Accordingly, staff's proposed settlement agreements of January 8, 2019, and August 2, 2019, required removal of the Airstream travel trailer. However, online posts and advertisements not only continue to offer the Airstream travel trailer for rent, but also show that the trailer



has been expanded through the construction of a large attached deck. In fact, Respondents appear to have expanded The Brampton even further since then, by adding the second travel trailer to Lot 5.

#### **4. Cooperation**

The cooperation of violators in remedying a violation and the self-reporting of a violation may be mitigating factors in determining an appropriate penalty. Those factors do not apply in this case, as Agency staff only discovered Respondents' apparent violations when the establishment of The Brampton was reported to the Agency by a third party. Despite numerous communications and contacts with staff since April 2017, no steps have been taken by Respondents to bring the subject property into compliance. Respondents have not agreed to sign a settlement agreement or otherwise resolve the apparent violations in accordance with Agency standards. Instead, Respondents have only expanded the tourist accommodation.

#### **5. Extent of Compliance Attained Through Resolution**

In this case, full compliance with § 809 of the APA Act and 9 NYCRR Part 577 will be achieved if Respondents are required to comply with the terms detailed in the accompanying NAV.

#### **6. Importance to the Regulatory Scheme**

The APA Act was enacted with the basic purpose of insuring "optimum overall conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Adirondack Park." APA Act § 801. To implement the basic purpose of the APA Act, any person who wishes to undertake any Class A regional project must first obtain an Agency

permit. APA Act § 809(2)(a). Class A regional projects in Rural Use areas are defined by the APA Act to include tourist accommodations. APA Act § 810(1)(d)(6).

Prior to issuing a permit for a Class A regional project on Rural Use lands within the Adirondack Park, the Agency must, in addition to reviewing the permit application in accordance with the policies and standards set forth in the APA Act, determine that the project “would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park... taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project.” APA Act § 809(10)(e). Further, the Act prohibits the Agency from issuing a permit authorizing the construction of more than one principal building after May 22, 1973 on a lot containing less than 12.75 acres in a Rural Use land use area. The Act also prohibits the Agency from authorizing the establishment of a tourist accommodation involving the use of more tourist cabins or other units available for rent than allowed under §§ 802(50) and 805(3)(f)(3) of the APA Act.

The Rivers Act was enacted pursuant to a legislative finding that “many rivers of the state, with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values.” Rivers Act § 15-2701(1). The Act was intended to implement a public policy “that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future generations.” Rivers Act § 15-2701(3). Section 15-2705 of the Rivers Act states that “the functions, powers and duties encompassed by this section shall be vested in the Adirondack Park Agency as to any

privately owned part of a river area within the Adirondack park as defined by law which may become part of this system.” Section 15-2709(1) of the Rivers Act states that, within the Adirondack Park, the Adirondack Park Agency “shall make and enforce regulations necessary for the management, protection, and enhancement of and control of land use and development in the wild, scenic and recreational river areas.” Pursuant to 9 NYCRR § 577.4(a), “no person shall undertake a rivers project without first obtaining an agency permit.”

The Agency’s Staff Civil Penalty Guidelines state that:

“Undertaking any action which requires an Agency permit or variance, without first obtaining the permit or variance, is always a serious matter, not a mere “technical” or “paper work” violation... Failure to first obtain required approvals deprives the Agency of the opportunity to satisfy its obligation to review and condition jurisdictional activities. If significant penalties are not imposed for such violations, it would be unfair to those who voluntarily comply with the law.”

The Civil Penalty Guidelines also state that “an activity for which the Agency would not have issued a permit more seriously undermines the applicable statutory goals,” and that “violations which involve wetlands, shorelines, river areas or open space or other natural resources are necessarily more serious than other violations.”

Respondents base their marketing on the natural resources of the Adirondack Park, which the APA Act and the Rivers Act were designed to protect. However, even though they have been on notice since 2017 that The Brampton was operating in apparent violation of these laws, Respondents have openly continued their tourist accommodation use, adding new structures and other development and misleading Agency investigators. Respondents are taking advantage of the environment created and protected by the APA Act and the Rivers Act – and of other landowners’ compliance

– while dismissing any application of these laws to the subject property. The Brampton remains in violation of the building density requirements that apply to all other new businesses in the Park, and continues to operate without regard for impacts to nearby landowners, water quality, the recreational river area, or any other Park resources.

Financially, this approach appears to be working, as Respondents generate substantial revenue from The Brampton. In fact, the cost of renting the 1995 single family dwelling alone for one night during the peak summer months is almost triple the daily penalty under § 813 of the APA Act, and over \$300 more per day than the maximum penalty under the Rivers Act. To end the ongoing impacts from The Brampton tourist accommodation and to discourage other landowners from similarly ignoring the Park's environmental requirements, the maximum penalty allowed under law is justified in this instance.

### **CONCLUSION**

Agency staff request a determination by the Enforcement Committee pursuant to 9 NYCRR § 581-2.6(d) that the apparent violations alleged in the NAV have occurred and are continuing to occur. Agency staff further request that the Committee determine appropriate injunctive relief and penalties against Respondents as authorized by 9 NYCRR § 581-2.6(d) and consistent with the NAV and Agency staff's recommendations.