

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

**FINGER LAKES WINE BUSINESS COALITION (FLXWBC)
PETITION FOR AMICUS STATUS**

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INTRODUCTION

According to the Notice of Deadline for Filing Petitions for Party Status the Applicant, Finger Lakes LPG Storage, LLC (“Applicant”)

proposes to construct and operate a new underground liquefied petroleum gas (LPG) storage facility for the storage and distribution of propane and butane on a portion of a 576-acre site located on NYS Routes 14 and 14A west of Seneca Lake in the Town of Reading, Schuyler County, and approximately 2.5 miles north of the Village of Watkins Glen. The storage facility will use existing underground caverns in the Syracuse salt formation created by US Salt (an affiliate of Finger Lakes) and its predecessors’ salt production operations. The existing caverns are located near the western shore of Lake Seneca, and associated surface facilities would extend uphill to the west with compressors, brine ponds, and distribution operations along Route 14 south of the junction of Route 14A, and along Route 14A west of the intersection with Route 14. [“Project Site”].

The Applicant has applied to the New York State Department of Environmental Conservation (“DEC”) for, *inter alia*, an Underground Storage of Gas Permit pursuant to Environmental Conservation Law (ECL) article 23, title 13. The construction and operation of the proposed underground LPG storage facility as described above is hereafter referred to as the “LPG Facility” or “Project”.

By this petition Finger Lakes Wine Business Coalition (“FLXWBC” or “Petitioner”), by its attorneys Tooher & Barone, LLP, respectfully requests amicus status concerning the scope of issues set forth in this petition. If the petition is granted, Petitioner’s brief will provide a discussion of legal and policy issues that will materially assist this administrative court when determining and resolving those issues that are the subject of this administrative adjudication.

**THE REQUIREMENTS OF 6 NYCRR § 624.5(B)(1) AND (3) ARE SATISFIED AND
FLXWBC SHOULD BE GRANTED PARTY STATUS**

DEC's permit hearing procedures require that a person seeking *amicus* party status in an administrative proceeding file a petition that meets the requirements of 6 NYCRR § 624.5(b)(1) and (3).

6 NYCRR § 624.5(b)(1) provides:

All petitions for party status must:

- (i) fully identify the proposed party together with the name(s) of the person or persons who will act as representative of the party;
- (ii) identify petitioner's environmental interest in the proceeding;
- (iii) identify any interest relating to statutes administered by the department relevant to the project;
- (iv) identify whether the petition is for full party or *amicus* status;
- (v) identify the precise grounds for opposition or support.

6 NYCRR § 624.5(b)(3) provides:

If the Petition is for *amicus* status, in addition to 6 NYCRR 624.5(b)(1) above, it must also:

- (i) identify the nature of the legal or policy issue(s) to be briefed which meets the criteria of subdivision 624.4(c) of this Part; and
- (ii) provide a statement explaining why the proposed party is in a special position with respect to that issue.

As set forth below, the Petition of the FLXWBC for *amicus* status meets the requirements of 6 NYCRR § 624.5(b)(1) and (3).

A. The Petition Meets all of the Provisions of 6 NYCRR § 624.5(b)(1)

(i) FLXWBC is the proposed party together and is represented

The proposed amicus party is the FLXWBC which represents a wide range of interests unifying wineries, vineyards, local food producers, and other artisans who are the stewards of Finger Lakes Wine Country. The individual members of FLXWBC are set forth in Exhibit A to this petition and include over one hundred representatives of the diverse businesses of Finger Lakes Wine Country. A map of Finger Lakes Wine Country – including Seneca Lake and the Finger Lakes Region – is set forth in Exhibit B and depicts the astonishing number and concentration of vineyards as well as wineries that make up the fabric of the Seneca Lake and Finger Lakes region. Toohar & Barone, LLP is representing the FLXWBC.

(ii) FLXWBC’s environmental interest in the proceeding

Finger Lakes Wine Business Coalition

FLXWBC views the Project and its significant adverse environmental impacts from diverse local, regional, statewide, national and global perspectives. Conversely, FLXWBC and its diverse membership possess a common and profound interest in the environmental and economic health of their communities, Seneca Lake and the Finger Lakes Wine Country. Since the announcement of the LPG Facility, members of the FLXWBC have expressed concerns about the threats posed by this Project to the local and regional communities as well as the wine businesses upon which these communities rely. DEC Letter Designations (from Public Comment Letters to the DSEIS Index) A11, A61, A62, A67, A68, A87, A120, A213, A235, B23, C52, C55, and Public Hearing Transcript Pages 81-82 and 33-36.

FLXWBC submits that the Project will result in significant adverse environmental impacts to the character of Seneca Lake and Finger Lakes Wine Country as well as the social and

economic vitality and base of the area. FLXWBC submits that this Project will overshadow and stigmatize the region, lead to other large scale industrial projects, create a potential for environmental catastrophe and ultimately transform Finger Lakes Wine Country from the unique configuration of glacier formed lakes, rolling hillsides, terraced vineyards, bucolic view sheds and historic villages, back to its industrial past of environmental degradation and economic blight. The loss to New York State as a consequence of this Project being approved has not been fully assessed, would be irretrievable and would be felt throughout Finger Lakes Wine Country and the State.

The Individual Members of FLXWBC

To further establish Petitioner's environmental interest in this proceeding both as an association and the members it is comprised of, individual entities who are members of FLXWBC, by their respective affidavits attached as Exhibits C through J, summarized below, demonstrate and identify the environmental interest of the organization in this proceeding (collectively, hereafter referred to as "Member Affidavits").

Exhibit C, Affidavit of Bruce Murray ("Boundary Breaks"). Bruce Murray presents an affidavit on behalf of Boundary Breaks, LLC, Vineyard and Winery, established in 2008 in Lodi, New York. ¶ 1. Murray speaks to the unique but developing nature of the Finger Lakes Wine Country. ¶¶ 2-3. The investment by Boundary Breaks, like all of the vineyards in the region, is a long term plan involving a substantial commitment of time, effort and finances. ¶¶ 4-12. Recognizing the natural tourist attractions of the topography, Murray also stresses that in order for the Finger Lakes Wine Country to succeed and continue to grow, it needs to function as a regional business community. ¶ 14-19. Individually, any one winery does not have the draw to sustain the necessary level of on-site patronage to survive economically, however, Murray's

experience reflects that as a region, the draw of the Finger Lakes Wine Country could match that of other better known areas of the world such as Napa/Sonoma in California and Willamette Valley in Oregon. ¶ 14, ¶¶ 22-26. This symbiotic regionalism is exemplified in the role of Watkins Glen as an essential nexus between Cayuga, Seneca and Keuka Lakes, where the largest number of the wineries are located. ¶ 20. Location of the proposed LPG Facility at this quintessential location poses a unique and devastating threat to the Finger Lakes Wine Country. ¶ 20-21. Murray has witnessed the growth of the Wine Country as a step forward from the economic blight the Region suffered in the past. ¶ 28. He views the proposed LPG Facility as a step backwards in the blossoming community character reflected by the support of New York State's political leaders as well as its tourists. ¶¶ 28-30. The proposed LPG Facility directly impacts upon the future development plans of the Boundary Breaks Winery. ¶¶ 31-32.

See, Exhibit C, Boundary Breaks.

Exhibit D, Affidavit of Kristina Hazlitt ("Sawmill Creek"). Kristina Hazlitt presents an affidavit on behalf of Sawmill Creek Vineyard, Hector New York, on the eastern side of Seneca Lake, a presence in the Finger Lakes Wine Country since the 1860's. ¶¶ 1-4. This seventh generation farm has a century and a half commitment to growing grapes in the Finger Lakes region, demonstrated in the family's commitment to the wine industry and their community. ¶¶ 5-8. The Hazlitt family are dedicated stewards of the land in the Finger Lakes Wine Country, and their crops are in demand across the entire New York State wine industry. ¶ 11. Sawmill Creek maintains the proposed LPG Facility is a menace to the community and the region, threatening their way of life with no offsetting benefits to the community. ¶ 16.

See, Exhibit D, Sawmill Creek.

Exhibit E, Affidavit of Justine Boyette ("Boyette and Barruol"). Justin Boyette has

provided an affidavit on behalf of Hector Wine Company and Forge Cellars, both along Seneca Lake, New York and established in 2010. ¶¶ 1-2. Forge Cellars has garnered the support of globally recognized vintner Louis Barruol of the Rhone Valley in France who comes from a family with 500 years of history in the international wine industry; the Barruol family have owned their historic chateau since 1570 . ¶ 4. As set forth in Louis Barruol’s letter from France annexed to Justine Boyette’s Affidavit (“Barruol Letter”), investment in the Finger Lakes Wine Country is “a question of love and passion for beauty and quality...the success of a wine region is deeply related to the respect of its environment and to its own beauty.” ¶ 10; *See also*, Barruol Letter. The proposed LPG Facility threatens the community character of the Finger Lakes Wine Country just as it is poised to step onto the world stage. ¶¶ 8-11.

See, Exhibit E, Boyette and Barruol.

Exhibit F, Affidavit of Lou Damiani (“Damiani Wine Cellars”). Lou Damiani speaks for Damiani Wine Cellars, located in Hector, New York. ¶ 1. Damiani and his partners started planting grapes on the shores of Seneca Lake in the mid-1990’s, opening the Wine Cellars entity in 2004. ¶ 2. Damiani’s success with award winning wines is part of the economic engine spurring growth in the Finger Lakes Wine Country, but he recognizes that his success is based upon regional success: “Finger Lakes Wine Country rises or falls together.” ¶ 4. The tasting room at Damiani Wine Cellars looks towards the proposed LPG facility. ¶ 7. The LPG Facility would significantly alter the viewshed for this Damiani Wine Cellars, also negatively impacting the community character along Seneca Lake upon which numerous other wine businesses and local municipalities rely. ¶¶ 7-9. Further, the socio economic benefits of growth in Finger Lakes Wine Country could be devastated by an accident at the LPG facility, including without limitation, impacts to the salinity of Seneca Lake. ¶¶ 10-15.

See, Exhibit F, Damiani Wine Cellars.

Exhibit G, Affidavit of Connor Evans (“Castle Grisch Winery”). Connor Evans has submitted an affidavit on behalf of Castel Grisch Winery of Watkins Glen. Originally established in 1987 by a local couple, Castel Grisch is an example of the influx of new interest in the Finger Lakes Wine Country. ¶ 4. The current owner of the winery was drawn to invest in the region because of its unindustrialized, natural environment and the tourist draw of Seneca Lake. ¶ 6. Castel Grisch also relies upon the gateway character of Watkins Glen to support the renewed growth of this existing winery. ¶¶7-9. The winery property is in extremely close proximity to the Applicant’s LPG Facility. ¶ 13. Any type of accident at the LPG Facility would directly affect the Castel Grisch business, reputation and production of wine. ¶ 13. The proposed LPG facility creates a strong disincentive to continue to invest in this burgeoning wine industry and the improvements such investment brings to the regional character, which are expected to continue without the Project. ¶ 12-15.

See, Exhibit G, Castle Grisch Winery.

Exhibit H, Affidavit of William Ouweleen (“Oh-Neh-Da and Eagle Crest Vineyards”). William Ouweleen’s Affidavit is submitted on behalf of Oh-Neh-Da and Eagle Crest Vineyards. Oh-Neh-Da has been making Sacramental Wine in the Finger Lakes Region since 1872. ¶ 6. It is the oldest winery in America dedicated to the production of pure grape wine for sacramental use. ¶ 6. This unique winery was hand dug into the hillside and the wine caves, cellars and original facility remain in use today. ¶ 6. Oh-Neh-Da, reliant on other vineyards for the more popular grapes of today, has succeeded in large part in reliance upon the regional brand of Finger Lakes Wine Country. ¶¶ 5, 8-9. Seneca Lake is a critical part of that regional community character. ¶¶ 8-9. The danger that the proposed LPG facility poses to Seneca Lake threatens all of Finger

Lakes Wine Country. ¶¶ 11-13.

See, Exhibit H, Oh-Neh-Da and Eagle Crest Vineyards.

Exhibit I, Affidavit of John Wagner (“Wagner Brewing, Winery and Vineyards”). John Wagner provides insight into the diversity present in the business community around Seneca Lake. Wagner provides an affidavit on behalf of Wagner Vineyards, Wagner Winery, Wagner Valley Brewing Company and the Ginny Lee Café, all businesses impacted and influenced by the growth of Finger Lakes Wine Country. ¶¶ 1, 6, 7. Launched in the late 1800’s by John’s great grandfather, the Wagner family has watched the land around Seneca Lake become home to over 60 wineries. ¶ 4. The growth of the Wagner family businesses have benefitted the entire community, as they pour many of their resources back into the local community. ¶ 8. Wagner stresses the importance of Seneca Lake as vital to the continued success of Finger Lakes Wine Country as well as the tourism industry, and expresses concern over the stigma that the proposed LPG facility could create for the reputation of the community. ¶¶ 4, 9, 11-14.

See, Exhibit I, Wagner Brewing, Winery and Vineyards.

Exhibit J, Affidavit of Scott Signori (“Stonecat Café”). This local entrepreneur and owner of Stonecat Café in Hector, New York, on the eastern side of Seneca Lake, is another example of the widespread influence of the Finger Lakes Wine Country. Stonecat is a full scale restaurant dedicated to regional cuisine. ¶ 2. Signori attributes Stonecat’s success to the regional tourism spurred on by the Finger Lakes Wine Country brand which has created a local and regional character and economy based upon sustainable businesses, including agriculture, tourism and recreation as well as a vibrant artisanal food and beverage industry. ¶¶ 6-9, 11. Centrally located in Finger Lakes Wine Country, in close proximity to Watkins Glen, Watkins Glen State Park and the Finger Lakes National Forest, the Stonecat is situated along the Seneca

Lake Wine Trail, surrounded by wineries, vineyards and recreational outlets which draw large numbers of tourists to the region. ¶¶ 6-9. Further, Stonecat draws water from Seneca Lake; a rise in salinity levels or other effects to the water quality of the Lake will negatively impact the operations. ¶ 12. The catastrophic risks associated with this LPG Facility will create a stigma for the growing local communities, with no benefit in exchange. ¶ 13. Signori expresses the universal concern of the members of the FLXWCB that the proposed LPG storage facility threatens the character of the community, the quality of the water and the socio economic base of the region. ¶¶ 11-14.

See, Exhibit J, Stonecat Café.

(iii) FLXWBC's interest relates to statutes administered by the department that are relevant to the project

The Project is being reviewed by DEC pursuant to ECL § 23-1301 and 6 NYCRR § 617. FLXWBC has environmental interests in the proceeding relating to these statutes which are relevant to the application. FLXWBC, the members of which live or work on real property adjacent to or near the LPG Facility Site, has a strong interest in the statutes, regulations, permits and general permits administered by DEC related to agriculture, community character, water quality and other health and safety issues affecting the community in which its members live and work, including proceedings pursuant to the State Environmental Quality Review Act. FLXWBC's interests relate to: DEC's implementation of SEQRA (including the project's impacts to noise, visual, tourism, community character, water quality and neighborhood), ECL Article 8 and 6 NYCRR § 617, et. seq.; ECL Article 17; underground storage facilities, ECL Article 23; and cultural resources, historic preservation, Parks, Recreation and Historic Preservation Law Article 14. FLXWBC maintains that the Project cannot be approved under

these statutes as currently presented and requires review of the issues presented as set forth more fully below.

The purpose of ECL § 23-0301 “is clear: regulate LPG's underground storage to protect landowners' rights and the general public. See ECL 23–0301.” *Bath Petroleum Storage, Inc. v. Sovas*, 309 F. Supp. 2d 357, 375 (N.D.N.Y. 2004). As landowners, in some instances adjoining landowners, business owners and members of the public impacted by the location of the LPG Facility, FLXWBC have an environmental interest in the project.

FLXWBC as an organization, and its members individually, will be injured by the Applicant's Project, and that injury falls squarely within the zone of interests protected by the statutes administered by the DEC.

(iv) The petition is for amicus status

Petitioners FLXWBC seek to participate in the proceeding as amicus. FLXWBC and its members present unique perspectives that will be of benefit in the determining the issues to be adjudicated.

(v) The precise grounds for opposing the project

The members of FLXWBC assert that the significant environmental threats posed by the Project are not adequately addressed in the draft permit conditions. FLXWBC will submit an amicus brief addressing these issues and in opposition to granting the proposed LPG Facility the requested permit for the proposed storage facility.

In the November 17, 2010 Positive Declaration, the Department determined that the Project would have potentially significant adverse impacts on the environment, including

impacts on land, water, transportation and public safety safety (Dec, 11, 2014 Hearing Document List [“Doc. List”], IV.D.11). The Draft Supplemental Environmental Impact Statement (DSEIS)

Final Scoping Outline provides:

The DSEIS for this project is intended to function as a disclosure document to reveal information about the expected environmental effects of the proposed action and provide a basis for informed decisions. The DSEIS identifies and addresses the potential environmental impacts of the project and reasonable alternatives to the project and its impacts to the maximum extent practicable. Also addressed are irreversible and irretrievable commitment of resources, growth inducing aspects, and the use and conservation of energy.

The DSEIS must be written to a level of detail to properly assess the impacts identified and that allows involved agencies to make a reasoned decision on the action.

Doc. List IV.D.20.

Department staff improperly and prematurely determined that the DSEIS on the Project was complete. The DSEIS is deficient, misleading and factually incorrect. The DSEIS fails to address the impact of the project on community character, and fails to adequately address impacts to tourism, noise, viewshed and aesthetics. The DSEIS and additional submissions by the Applicant fail to address the potential impact of a catastrophic event, or to provide sufficient information regarding indemnification to the surrounding community as a consequence of such an event. The DSEIS fails to adequately address the irreversible and irretrievable commitment of resources of the project. The Applicant fails to provide an adequate level of detail to allow proper assessment of the Project and make a reasoned decision thereon. FLXWBC has a distinct and demonstrable interest in seeing these issues properly reviewed at the adjudicatory hearing.

Similarly the draft permit fails to adequately address the issues encompassed by community character or to provide conditions that would mitigate the environmental impacts of

the LPG Facility in this regard. The draft permit fails to provide conditions sufficient to protect the surrounding community from the potential damages which may arise from the LPG Facility in the event of a catastrophic event.

The members of the FLXWBC will be adversely impacted by the proposed LPG Facility and if granted amicus party status will oppose it. This Project will result in significant and unmitigated adverse environmental impacts which will have a critical bearing on the future of the towns and businesses of Finger Lakes Wine Country, including the entire wine region's thriving agriculture and tourism based economies. Additionally the potential harmful impacts of gas storage are not properly identified or mitigated in the draft permit as to adequately protect health and human safety and agricultural uses.

B. The Petition Meets all of the Provisions of 6 NYCRR § 624.5(b)(3)

(i) The legal and policy issues to be briefed are substantive and significant

The standards for adjudicable issues are set forth in 6 NYCRR § 624.4(c), which provides in significant part: “(1) Generally . . . an issue is adjudicable if: . . . (iii) it is proposed by a potential party and is both substantive and significant.” Additionally, “Whenever the Department, as lead agency, has required the preparation of a DEIS, questions of whether to adjudicate issues concerning the sufficiency of the DEIS or the ability of the Department to make the findings required [by SEQRA] will be made according to the standards set forth in [6 NYCRR § 624.4(c)(1) through 4]” that apply to identification of issues generally (6 NYCRR § 624.4[c][6][i][b]). This Petition raises issues as to the statutory requirements for issuance of the permit as well as the requirements under SEQRA. “SEQRA requires that an agency approving an action must make findings regarding the agency's consideration of environmental

effects and alternative actions and the minimization or avoidance of adverse environmental effects (see 617.11).” *In the Matter of Palumbo Block Company, Inc.*, Ruling 3, February 9, 2001. This Petition presents substantive and significant issues for adjudication.

1. Community Character

The FLXWBC will present legal and policy issues including whether the environmental review conducted by the lead agency adequately addressed potential significant environmental impacts to community character as a consequence of the proposed LPG facility. Pursuant to 6 NYCRR § 617.11(d)(5), DEC must “certify that consistent with social, economic and other essential considerations among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.” FLXWBC will provide legal and policy analysis regarding the inadequacy of the Draft Permit to address any of the concerns required to be evaluated in a community character analysis. 6 NYCRR § 624.5(b)(3).

The DSEIS omits consideration that the Project will result in any community character impacts. SEQRA defines the term “environment” broadly to include, “the physical conditions which will be affected by a proposed action, including ... existing patterns of population concentration, distribution, or growth, and existing community or character.” ECL § 8-0105(6). Accordingly, “the impact that a Project may have on population patterns or existing community character ... is a relevant concern in an environmental analysis.” *Chinese Staff & Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 366, 502 N.E.2d 176 (1986). The failure of the DSEIS to

identify community character in turn has caused the draft permit conditions to inadequately address issues related to preserving the community character of localities surrounding the Project Site, the Finger Lakes region in general and the Finger Lakes Wine Country in particular.

The DSEIS does not address the impacts on community character from the presence of the Applicant's proposed LPG Facility and the heavy industrial activities related thereto. Impacts in the communities surrounding Seneca Lake and the entire Finger Lakes region include the potential for diminished tourism as a result of a perception that the region has become industrialized and contains hazardous activities potentially affecting public health. In turn, a reduction in tourist activity will cause impacts such as the closing of businesses and decline in agricultural output, both leading to increased vacancy rates among commercial properties. These resulting effects are properly examined as part of the environmental analysis.

As a heavy industrial use, the proposed Finger Lakes LPG facility creates potential impacts on socio-economics, recreation and open space, noise, tourism, aesthetics and visual resources, health and safety, and cultural resources, all of which are intertwined with the community character of Finger Lakes Wine Country. These effects also impact the region's local municipalities and their role in influencing community character through official planning and zoning documents, including plans for tourism and the wine community.

Adverse impacts to community character are clearly cognizable under SEQRA. *Matter of Chinese Staff & Workers Ass'n*, 68 N.Y.2d 359 ; *Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 494 N.E.2d 429 (1986); *Matter of Lane Construction*, 1998 WL 389019 (N.Y. Dep't Env'tl. Conserv.).

In her findings, the ALJ noted that the Intervenors' reasons for alleging such impacts 'relate largely to the issues of *noise and visual impacts, and to the importance of tourism, recreational and*

agricultural activities in the economy and social fabric of the area surrounding the proposed mine.'

Indeed, the term “environment” expressly includes ‘existing community or neighborhood character’ and New York courts recognize that the concept maintains its own meaning and identity in terms of environmental review. Impacts to community character can include neighborhood gentrification, a proposed development that would quadruple a town’s present population, traffic and parking problems for a neighborhood arising from a proposed sports stadium, and lower property values and less future commercial development emanating from a proposed transfer station.

In the Matter of Palumbo Block Company, 2001 WL 651613 (N.Y. Dep’t Env’tl. Conserv.), 2 (citations omitted) (emphasis added).

At times, the issue of community character may also intertwine and overlap with issues such as aesthetics, traffic, parking, cultural resources and future commercial development and accordingly, the issue of community character cannot necessarily be viewed in isolation and may include a myriad of diverse components. *Matter of Palumbo*; see also, *Matter of Whibco Inc.*, 1998 WL 389014 (N.Y. Dep’t Env. Conserv.); *Matter of Lane Construction Company*, 1998 WL 389019 (N.Y. Dep’t Env’tl. Conserv.). While community character may include an analysis of additional SEQRA issues, “parsing out community character” can also “unduly exclude[] a thorough review” of the adverse impacts from a proposed project on the “community setting”. *Matter of Palumbo* at 2.

Community character is uniquely and intimately linked to the area’s natural, cultural, historic, aesthetic and community resources. *Wal-Mart Stores Inc. v. Planning Bd. of Town of N. Elba*, 238 A.D.2d 93, 668 N.Y.S.2d 774, 776 (3d Dep’t 1998). Although ultimately decided on local zoning law grounds, the *North Elba* case involved adverse environmental impacts to a community in the Adirondacks. In that instance, the court found that the project also ran afoul of SEQRA and the protections afforded to visual, aesthetic and community character resources.

Wal-Mart Stores Inc., 668 N.Y.S.2d at 776. Recognizing the unique nature of the resource that the Town of Lake Placid in the Adirondacks presents, the Court further observed that “with respect to the store’s [Wal-Mart] likely impact upon community character, it appears that the evidence . . . that other communities have suffered no decline in commercial property values after a Wal-Mart store opened is of little probative value, for most of the areas studied are not truly comparable to the Lake Placid region, a premier resort and tourist community.” *Id.* at 97

The issue of community character is both substantive and significant to this proceeding. Examination of the full scope and depth of the issue requires examination of the impact of the proposed LPG facility in the context of the Finger Lakes Wine Country. Similar to the other communities and regions across the State that have been ruled to have an identifiable character, the character of the Finger Lakes region and its *regional* brand of Finger Lakes Wine Country presents an adjudicable issue not addressed by the DSEIS (and draft permit conditions) which requires legal review. *See, In the Matter of The Applications of Crossroads Ventures, LLC*, 2005 WL 2178473, at *83 (ALJ ruled, “It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.”); *See also, Wal-Mart Stores Inc.*, 668 N.Y.S.2d at 776.

The Finger Lakes Wine Region is internationally recognized as a tourism destination. Wine Enthusiast Magazine named it the 2014 “Wine Region of the Year” beating out Champagne, France; Chianti Classico, Italy; the Sonoma Coast, California; and Red Mountain, Washington, for the designation¹. As stated in the magazine:

¹ Wine Enthusiast, <http://www.winemag.com/Web-2014/10-Best-Wine-Travel-Destinations-2015/index.php/cparticle/2> (last visited Jan. 16, 2014).

*Within the world of fine wines, the Finger Lakes wine region in upstate New York is a soon-to-be revealed secret. Nestled amidst bucolic farmland and the spindly glacial lakes for which the region is named, it's home to some of the best cool-climate wines in America. Known particularly for world-class Riesling, it's also home to an increasingly diverse array of wines, from Grüner Veltliner to Teroldego. Over 100 wineries surround the three main lakes, Cayuga, Seneca and Keuka. But with spectacular sights and a blossoming local food culture, the region is unlikely to stay hidden for long.*²

The designation will be officially awarded on January 26, 2015 in New York City.

The Finger Lakes Region is well known for its abundance of natural beauty, rural landscapes and nationally and state significant attractions. This includes: *“Pristine lakes, gorgeous waterfalls, and magnificent parks to the charming villages, one-of-a-kind museums, and unique shopping opportunities.”*³ The region is home to State Scenic Byways including the Seneca Lake Scenic Byway,⁴ Cayuga Lake Scenic Byway, a proposed Route 417/36 Scenic Byway, numerous National and State Register Historic sites, Finger Lakes National Forest, numerous State Parks and State Wildlife Management Areas, some of which are located within five miles of the proposed project⁵. These regional resources, together with the designation as an internationally-acclaimed wine tourism destination and official local planning and zoning documents provide the Finger Lakes with its sense of place and define its community character.

The Seneca Lake Scenic Byway runs along Route 414 on the East shore of Seneca Lake for approximately 19 miles from Watkins Glen North to the Lodi area in Seneca County.

The Seneca Lake Scenic Byway presents a scenic paradise capped by the topography including waterfalls, caverns and gorges all left by the Last Ice Age. Seneca Lake presents travelers with recreational opportunities such as boating, canoeing, fishing and swimming. In addition, the area offers golfing, birding, horseback riding, biking and hiking. The area presents a history as visitors

² See footnote 1.

³ New York's Finger Lakes, <http://www.fingerlakes.org/> (last visited Jan. 16, 2014).

⁴ The DSEIS concluded that portions of the proposed project would be visible from the roadway that was designated a Scenic Byway in 2012. The DSEIS did not identify the Seneca Lake Scenic Byway since it was prepared prior to the State designation.

⁵ Department of Transportation New York State Scenic Byways <https://www.dot.ny.gov/display/programs/scenic-byways/lists> (Last visited Jan. 16, 2014).

can visit landmarks that represent the interaction between Native Americans and European settlers. Rich bounties of agricultural products, from wine to fruit and vegetables, are produced in the area.⁶

Views from the Byway include the lands where the proposed Finger Lakes LPG project is proposed⁷.

Visitors to other internationally acclaimed wine regions, like the Rhone Valley in France, expect pastoral landscapes dominated by vineyards and wineries; they do not expect to find a landscape that also encompasses heavy industrial uses, such as those related to fossil fuel operations like the proposed LPG Facility and its associated pipelines and rail operations. *See*, Exhibit E, Boyette and Barruol ¶ 10 and Barruol Letter; Exhibit C, Boundary Breaks, ¶ 22.

Wine tourism in the Finger Lakes drives an economic engine that supports 57,746 local jobs within a \$2.8 billion industry.⁸ While 6.3 percent of all employment in the Finger Lakes is generated by tourism, Schuyler County is the most dependent upon tourism with 12.4 percent of the employment of that county sustained by visitors.⁹ Tourism in the Finger Lakes generated nearly \$352 million in state and local taxes in 2012 with sales, property, and hotel bed taxes generating an additional \$200 million in local taxes.¹⁰ Finger Lakes Wine Country as described by the *New York Wine & Grape Foundation* encompasses:

- Over 130 wineries in the region, many created in the past decade
- Over 10,000 acres of grapes
- Over 4,000,000 tourist visits to wineries

⁶ Department of Transportation New York State Scenic Byways, Seneca Lake, Hecotr and Lodi Scenic Byway <https://www.dot.ny.gov/display/programs/scenic-byways/seneca-lake-hector-lodi> (last visited Jan. 16, 2014).

⁷ *See footnote 6.*

⁸ Finger Lakes Travel NY, “The Economic Impact of Tourism in New York” <http://fingerlakestravelny.com/wp-content/uploads/2012/06/NYS-Tourism-Impact-Finger-Lakes.pdf> (last visited Jan. 16, 2014).

⁹ *See footnote 8.*

¹⁰ *See footnote 8.*

- Over \$300 million in wine-related tourism expenditures
- Over \$230 million state and local taxes paid
(source: *New York Wine & Grape Foundation*, www.newyorkwines.org)

Any diminution of this economic engine, caused by the introduction of heavy industry, has the potential to create a loss of tourism jobs and the closing of tourism-related businesses with the potential to create blight and deteriorated community character. The failure of the DSEIS to evaluate the community character impact of this project on this nascent Wine Country demonstrates the inadequacy of the environmental assessment.

2. Risk Assessment and Indemnification

Additional legal or policy issues to be addressed include whether the environmental review conducted by the lead agency adequately addressed potential significant environmental impacts and whether the draft permit conditions adequately protect (i) human health and safety and (ii) impacts upon agricultural uses including the health and safety of crops and animals which may be subject to exposure from fire, explosion or the slow escape of stored gas. This is an adjudicable issue because it is proposed by a potential party and is both substantive and significant. See 6 NYCRR § 624.5(b)(3) and § 6 NYCRR 624.4(c)(1)(iii).

The issue raised by Petitioner is substantive because there is sufficient doubt about the Applicant's ability to address permit requirements that should be applicable to the LPG Facility or whether those requirements are sufficient. Draft Permit Condition 7 requires the Applicant to install certain "shut down" devices at the LPG Facility and Draft Permit Condition 8 requires the Applicant to report certain "non-routine" incidents to the DEC. However, the relevant portion of the draft permit provides, in part,

The Permittee expressly accepts the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out

of the storage facility's construction and operation to the extent such liability is attributable to the actions of the Permittee, its employees, agents, contractors or subcontractors, and to the extent the Permittee is liable under the law for such actions. ...

Draft Permit Condition 9. The Draft Supplemental Environmental Impact Statement ("DSEIS") provides, in part, that "the major risk and uncertainties inherent in LPG storage in solution mined caverns can be minimized by following good engineering design and construction practices and implementing appropriate control methods during operation." *Id.* at 150. Although the DSEIS identifies these practices, there is no review of the Applicant's ability to compensate victims for damages in the event that the identified risk is realized.

There has been an insufficient inquiry into whether the Applicant is able to meet its financial responsibilities under Draft Permit Condition 9 nor has sufficient inquiry been made to determine the scope of potential damages which may arise from either an explosion or fire or from the slow release of gas that may have an impact on neighboring persons, livestock, crops or properties. Simply put, the inquiry should be, what is the amount at risk and can the Applicant assume responsibility for that risk? The DSEIS failed to undertake that review. "A substantive issue may also be raised by the identification of a defect or an omission of pertinent information in the application and EIS, so as to warrant further inquiry" regarding party status (citations omitted). See *Lane Construction Company - Final Issues Ruling 3*, April 22, 1996. Further inquiry is warranted here.

Further, proposed mitigation measures which rely upon local volunteer fire and EMT services, are insufficient where these agencies lack required training or damage from escaping gas is beyond their response obligations. As set forth in the Affidavit of Richard B. Kuperwicz, presented in support of the Petition for Party Status by the Seneca Lake Communities, the DSEIS and the draft permit do not account for the level of potential catastrophic event posed by the

proposed facility or the ability of existing personnel to respond. As a diverse group of local businesses potentially impacted in a variety of ways by such an event, FLXWBC has unique insights into the needs of the surrounding community in this regard. The permit conditions addressed to public health and safety and the protection of the environment are insufficient and the ability of the Applicant to meet proper standards demands further inquiry. See § 6 NYCRR 624.4(c)(2).

The issue raised by Petitioner is significant because if the Applicant is unable to comply with proper health and safety requirements or assume the obligation for damages which occur, the permit should not be issued. See 6 NYCRR 624.4(c)(3).

(ii) The FLXWBC is in a special position with respect to the issues.

Based upon the FLXWBC's expertise, special knowledge and unique perspective on the issues raised in this petition, this petition for amicus party status is submitted in opposition to the proposed Project and will contribute materially to the record. 6 NYCRR § 624.5(d)(2)(iii). The Finger Lakes Wine Business Coalition members are wineries, vineyards, local food producers, and creative artisans who are the stewards of Finger Lakes Wine Country. The members are independent businesses operating successfully in the local municipalities surrounding Seneca Lake and throughout the Finger Lakes region. The FLXWBC represents the vital industries of (i) agriculture, (ii) wine production, (iii) food and beverage, (vi) recreation and tourism and (v) other related wine businesses (e.g. hospitality) who are the fabric of the Finger Lakes brand and wine culture.

As set forth in the affidavits of the FLXWBC members submitted with this petition, the interests of the FLXWBC present a unique perspective that provides assistance in determining the issues to be addressed during administrative adjudication. Member Affidavits, *supra*. The

FLXWBC seeks amicus status to provide input on questions of law and policy presented by the permit application for the proposed Project. Servicing and operating within the communities of Finger Lakes Wine Country, the unique perspective of the FLXWBC members will assist in evaluating whether the proposed LPG Facility and any permit issued adequately preserves the environmental integrity and character of the local municipalities, Seneca Lake and the Finger Lakes region.

The FLXWBC opposes the Applicant's proposed Project and contends that the permitting of operations is not supported under any reasonable interpretation of Article 8 of ECL and 6 NYCRR 617, et. seq.; Article 17 of ECL; Article 23 of ECL; and Article 14, Parks, Recreation and Historic Preservation Law. Because of their unique perspective, the wine businesses of Finger Lakes Wine Country, including without limitation those located around Seneca Lake, have heightened and justifiable concerns regarding the threats this Project presents to the self-sustaining economy of the region along with recreation and open space, noise, aesthetics and visual resources, health and safety, and cultural resources.

The FLXWBC will provide unique input by defining the Finger Lakes Wine Country brand and demonstrating the role of its members as the fabric of the communities of Seneca Lake and the entire Finger Lakes region. The support of the members of the FLXWBC has enabled local municipalities to cultivate, fund and preserve certain compatible industries in their respective communities over recent decades. Consequently, wine related businesses have become the character of those communities, sustaining the local economy and distinguishing this region as the Finger Lakes Wine Country. The FLXWBC will also provide unique counter arguments to and an alternative perspective from the Applicant on these same issues.

Given the substantial interest of the FLXWBC as well as the unique and varying special

perspectives the members bring, it is respectfully submitted that the Administrative Court should grant the Petitioner's request for amicus status.

CONCLUSION

A Petitioner shall be granted amicus party status if it can

identify a legal or policy issue which needs to be resolved by the hearing, [has] a sufficient interest in the resolution of that issue, and through expertise, special knowledge or unique perspective [can] contribute materially to the record on that issue.

Al Turi Landfill, Inc. - Ruling, September 23, 2002 and see, Sour Mountain Realty, Inc. - Issues Ruling, April 17, 1996 (party granted amicus status because it asserted "special knowledge and a unique perspective on quarries and quarry products"). Since Petitioner has met the required statutory burden, the petition should be granted.

A party with amicus status has the right to file a brief and, at the discretion of the ALJ, present oral argument on the issue(s) identified in the ALJ's ruling on its party status. 6 NYCRR § 624.5(e)(2). Proposed amicus FLXWBC presents unique perspectives on the issues before this Administrative Court. For this reason and for all the reasons set forth in the petition, Petitioner requests permission to participate in the oral argument on the issue(s) identified in the ALJ's ruling on its party status.

Dated: January 16, 2014

Albany, New York

Respectfully Submitted,

TOOHER & BARONE, LLP



John L. Barone, Esq.

Meave M. Tooher, Esq.

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EXHIBIT A



Finger Lakes Wine Business Coalition

MEMBER LISTING

Ann Cain Crusade Acupuncture and Herbal Medicine Est. 2006

Anthony Road Wine Company Est. 1990

Argetsinger Vineyards Est. 1996

Atwater Estate Vineyards Est. 1999

A Stone's Throw Bed & Breakfast Est. 2012

Bagley's Poplar Ridge Vineyards Est. 1980

Barnstormer Winery Est. 2013

Barry Family Cellars Est. 2011

Bellangelo Est. 2002

Billsboro Winery Est. 2007

Black Diamond Farm, LLC Est. 1994

Bloomer Creek Vineyard Est. 1999

Bostwick House B&B Est. 2007

Boundary Breaks Vineyard Est. 2008

Bully Hill Vineyards Est. 1970

Castel Grisch Winery Est. 1986

Catherine Cottages Est. 2003

Clean Team Est. 2000

Compost International Est. 2010

Cottage Views Bed & Breakfast Est. 2013

Curry Creek Vineyards Est. 2003

Damiani Wine Cellars Est. 2000

Damiani Vineyards Est. 1997

Dan Rapaport Consulting Est. 1982

Davis Vineyard Est. 1998

Eli Thomas Art Est. 1990

Eminence Road Farm Winery Est. 2008

Eremita Winery Est. 2011

Eve's Cidery Est. 2002

Fall Bright, The Wine Makers Shoppe Est. 1978

Finger Lakes Cider House Est.2014

Finger Lakes Food Company LLC, dba. Verjooz Est. 2009

Finger Lakes Mill Creek Cabins Est. 2006

First Flight Est. 1987

FLX Winery Est. 2014

Forge Cellars Est. 2008

Fox Run Vineyard Est. 1984

Frontenac Point Vineyard – Estate Winery Est. 1979

Ginger Cat Bed & Breakfast Est. 2008

Ginny Lee Cafe Est. 1983

Good for Business Est. 1999

Goose Watch Winery Est. 1997

Hazlitt 1852 Vineyards, Inc. Est. 1985

Heart & Hands Wine Company Est. 2006

Hector Wine Company Est. 2009

Hermann J. Weimer Vineyards Est.1979

Heron Hill Vineyard Est. 1977

Hidden Marsh Distillery Est. 2007

Hunt Country Vineyard Est. 1981

Idol Ridge Winery Est. 2013

Inspire Moore Winery and Vineyard Est. 2007

Interludes Est. 2000

J. Crytzer Woodworking Est. 2003

J.R. Dill Winery Est. 2009

Keuka Spring Vineyards Est. 1985

King Ferry makers of Treleaven Wines Est. 1984

Lacey Magruder Vineyard & Winery Est. 2011

Lake House & Cottage Rental Est. 1997

Lamoreaux Landing Wine Cellars Est. 1990

Lost Kingdom Brewery Est. 2014

Macro Mamas Est. 1992

Magnolia Place Bed & Breakfast Est. 1997

McGregor Vineyard Est. 1971

Medleys Est. 1993

Montezuma Winery Est. 2001

Nautical Nights Est. 2000

Nedloh Brewing Company Est. 2014

New Vines Bed & Breakfast Est. 2007

Old Fashioned Flowers, Fernville Farm Est. 2011

O-Neh-Da & Eagle Crest Vineyards Est. 1872

Peggy Haine – Food and Wine Writer Est. 1984

Penguin Bay Winery Est. 2006

Pompous Ass Winery Est. 2008

Ports of New York, Est. 2000

Rasta Ranch Vineyards Est. 1993

Ravines Wine Cellar Est. 2000

Redbyrd Orchard Cider Est.2010

Red Newt Cellars, Inc. Est. 1998

Regional Access Est. 1989

Renovus Energy Est. 2003

Sawmill Creek Vineyard Est. 1852

Savor Life Radio Est. 1994

Seneca 7 Est. 2011

Shalestone Vineyards, LLC Est. 1995

Shaw Vineyard Est. 1980

Sheldrake Point Winery Est. 1997

Silver Springs Winery LLC Est. 2001

Silver Thread Vineyard Est.1991

South Hill Cider Est. 2013

Stone Cat Cafe Est. 1999

Stone Pillow Pottery Est. 2012

Strategic Coaching Est. 2014

Sun Dance Creations Est. 1998

Sunrise Landing Bed and Breakfast Est. 2004

Sustainable Viticulture Systems Est. 2013

Suzanne Fine Regional Cuisine Est. 2003

Swedish Hill Vineyard, Inc. Est. 1985

Themis and Thread Est.2013

The OCD Art Galley Est. 2013

The Pearl of Seneca Lake, Inc. Est. 2005

Three Brothers Wineries and Estates Est. 2007

The Rose Petal Inn Est. 2014

Two Goats Brewing Est. 2010

Ventosa Vineyards Est. 2005

Vineyard View Winery Est. 2013

Wagner Valley Brewing Company Est. 1997

Wagner Vineyards Est.1976

Wide Awake Bakery Est. 2010

EXHIBIT B

EXHIBIT C

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
BRUCE MURRAY**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

Bruce Murray, being duly sworn, deposes and says.

1. I am founder, co-owner and president of Boundary Breaks, LLC, a producer of premium Riesling wines in the Finger Lakes. I make this affidavit in support of the Petition for amicus status on behalf of the Finger Lakes Wine Business Coalition.
2. I was raised in Syracuse, NY and graduated from W.H. Nottingham High School in 1974. I have spent the majority of my career in media and market research businesses based in California, New York City and Canada. Most recently I was the CEO of a publicly-traded market research firm, WANTED Technologies (WAN.V), based in Quebec City. Eight years ago, in my early 50's, I decided to change direction and devote the last third of my life to developing a business producing Riesling wine in the Finger Lakes.
3. The wine business is extremely risky. However, tremendous opportunity exists for Riesling. It is an underappreciated and misunderstood wine with a noble and long

heritage. The Finger Lakes Wine Country has the ideal conditions to produce exceptional Rieslings. The region has recently become recognized for its exceptional Riesling wines, however it still has a very, very long way to go to become as successful as other American wine-producing regions like Napa and Sonoma Counties in California and the Willamette Valley in Oregon.

4. In 2008 I purchased a 120-acre crop farm in the town of Lodi, NY with the express purpose of producing world-class, award-winning Riesling wines from the Finger Lakes.
5. Boundary Breaks is located at 1428 Porter Covert Rd., Lodi, NY 14860. The property is ideally-suited for the production of Riesling fruit. It is located on gently-sloping ground very close to the shore of Seneca Lake. At the time I purchased the property in 2008, the tillable acreage had been leased out as a crop farm without any functional structures or a residence on the property.
6. In 2008, following the purchase of the property, I built a small home and equipment building on the site. I began investing in vineyard preparation, a critical step in developing a world class winery. Prior to planting any vines, we had invested approximately \$150,000 in vineyard preparation and materials. The purchase of the property and vineyard preparation was the first step in a 10-15 year master plan to develop a business producing 20,000 cases of wine per year. This master plan includes a vineyard, a wine production facility and a wine-tasting/event venue.
7. In 2009, we planted our first Riesling vines.
8. In 2013 we released our first Riesling wines.
9. In December 2014, Wine Enthusiast magazine named the 2012 Boundary Breaks Finger Lakes Riesling #239 to its list of the "Top 100 Wines in the World for 2014."

10. Currently, our production is approximately 4,000 cases of wine, distributed in New York, New Jersey, Massachusetts and California. To date, we have made a cumulative investment of approximately \$2.5 million in facilities, equipment and vineyard development; in vineyard and wine-making labor; in product packaging and storage; and in sales and marketing. We have three full-time employees and contract with the equivalent of 6-8 full-time positions for vineyard labor, wine-making, marketing and administration.
11. The goal for production at Boundary Breaks is 20,000 cases per year. At this level we expect the Boundary Breaks business to employ 15 full-time people, and in addition to that, a significant number of outside contractors for seasonal and other types of work.
12. We are currently at a critical stage in our business development. The next phase of development requires a further investment of \$3.0 - \$4.0 million. The majority of this next round of investment will be to construct our own wine production facility and tasting venue. (Currently, we contract out wine production to other wineries in the area.) In 2013, we retained the architectural firm of King + King, of Syracuse, NY, to develop a master facility plan as well as detailed schematic and space plan for both facilities. The master plan and schematic plans are complete and we are currently in the process of contacting and interviewing contractors in the upstate region to solicit construction estimates.
13. Boundary Breaks has not yet made a formal commitment to proceed with the next phase of our long-range plan. The development of wine business can be extremely uncertain, and we are weighing the risks before proceeding. A significant risk we have identified regarding our location is the expansion of the Crestwood Liquefied Propane Gas (LPG)

storage facility near Watkins Glen. There are several reasons why the expansion of this facility threatens our expansion plans.

14. Finger Lakes Wine Country is capable of producing world-class wines (as demonstrated by *Wine Enthusiast's* inclusion of Boundary Breaks Riesling in the Top 100 Wines in the World for 2014) and of becoming a top wine destination. However, the regional approach to establish Finger Lakes Wine Country as a top wine producer and destination differs from other successful wine-producing regions in the United States, such as Napa/Sonoma in California and the Willamette Valley in Oregon. For instance, although the region flourishes from the spring through autumn, the Finger Lakes does not have a year-round tourist activity that typically supports hospitality-driven businesses, such as hotels, restaurants and other tourist attractions. The lack of hotels and restaurant significantly inhibits the flow of visitors from New York City in particular. The Finger Lakes generally lacks proximity to a major population center. Napa and Sonoma Counties in California are within 1.5 hours of the San Francisco Bay Area and the Willamette Valley in Oregon is within one hour of Portland. New York City is more than five hours away from the Finger Lakes. Visitors can make day trips from San Francisco to the Napa Valley. Visitors from New York City to the Finger Lakes cannot make day trips, and that is why a robust hotel and restaurant environment is so important.
15. Because the Finger Lakes region is located four-five hours from major population centers like New York City, Philadelphia and Pittsburgh, it must offer an exceptional experience to visitors if it is to generate loyalty, word-of-mouth promotion and economic growth.
16. What the Finger Lakes region does have is inviting countryside with beautiful rolling hills and spectacular lakes. Further, the unusual geological formation of the extremely

long, north-south orientation of the Finger Lakes as well as the picturesque ravines and gorges that dot the area are significant tourist attractions.

17. Taking advantage of this topography and landscape, the Finger Lakes wine businesses are currently generating that exceptional tourism experience. The success of our winery is dependent in no small part on the success of other businesses, such as breweries, restaurants, bed & breakfasts and the other contributors to the vibrant artisanal food and beverage industry shaping the character of Finger Lakes Wine Country.
18. The wine businesses of this region are truly a part of the community character of the Finger Lakes.
19. The unusual geography of the Finger Lakes also affects the tourism in a unique way. It restricts east-west travel and places extraordinary responsibility on the cities and towns at the northern and southern ends of the lakes to offer exceptional services and tourist experiences.
20. Critical to the tourism corridor around the Finger Lakes themselves is the Village of Watkins Glen. Watkins Glen is centrally located in Finger Lakes Wine Country and acts as a nexus for Cayuga, Seneca and Keuka Lakes. The village is an essential tourist passageway for the region.
21. An industrial facility like the expanded Crestwood LPG storage facility, located adjacent to Watkins Glen, brands the region as a petro-chemical industrial complex, and not as a desirable destination for vibrant, agri-tourism.
22. In my experience, consumers are fickle, and they have many alternatives to choose from when seeking to travel for a weekend or a weeklong vacation. People seeking to leave

metropolitan areas and visit the countryside want to escape industrialism; they do not seek to leave a metropolitan area to visit an LPG Storage facility.

23. A robust tourism industry is critical to the survival of small and medium-sized wineries in Finger Lakes Wine Country. There are very concrete economic reasons for this. By law and regulation, wineries in New York State that sell wine outside of their own tasting rooms are obligated to use a sales and distribution network referred to as the “three-tier” system to reach their end customer. The three “tiers” in this system are: (1) the winery; (2) the wholesale distributor; and (3) the retailer. In the three-tier system, both the distributor and the retailer are entitled to their share of the retail price paid by the wine consumer.
24. When distributing via the “three-tier system” wineries receive less than 50 percent of the retail price for the wine they produce. Distributors and retailers certainly earn their share of the price paid by the consumer, and the amount that the producer typically receives does not cover the production costs for a small winery. The ONLY way small and medium-sized wineries can have a viable business is to sell a maximum amount of their wine directly to the public through their tasting rooms and wine clubs, receiving the full, retail price for their product.
25. The traffic to the tasting room is of utmost importance to survival of the small winery. In our experience, the amount of tourism to the area has a direct effect on the traffic to the tasting room. Anything that harms tourism in this region, as the Crestwood LPG facility will, harms the small and medium-sized wineries by reducing traffic to the tasting rooms.
26. The amount of revenue a winery receives from sales through its tasting room is highly variable and not entirely within the control of the winery. The increase in the number of

wineries and tasting rooms in the region fragments the market among a greater and greater number of wine venues, thus reducing the number of visitors to any one venue. This reduction can be offset by the support of a regional wine trail in Finger Lakes Wine Country, encouraging tourists to spend extended periods of time sampling various wineries.

27. The ability of wine businesses to engage visitors and encourage repeat visits is highly dependent upon the experience that visitors have when they visit the region. An expanded, petro-chemical industrial complex like the one proposed for the facility north of Watkins Glen does nothing to encourage growth in tourism and indeed discourages people from coming to the area. LPG facilities are not environmentally friendly and do nothing to attract the type of clientele that patronize small vineyards. Additionally, LPG facilities are known to carry certain environmental risks and stigmatize the area as potentially unsafe.
28. Since purchasing our property in 2008, we have become much more familiar with the Finger Lakes region. We are struck by its beauty, but we are also struck with how much blight exists in the area. Like many former industrial regions, it has experienced economic depression and historically, tolerated a disproportionate number of highly-undesirable, publicly-funded or sanctioned facilities in this region. We do not need yet another unacceptable facility in our midst. The wineries, vineyards and related businesses have been serving as an economic engine in the region, helping to lift communities out of this economic blight. The expanded Crestwood LPG facility would represent a regressive step back to the type of objectionable activity that no longer fits with the character of the Finger Lakes region and Seneca Lake.

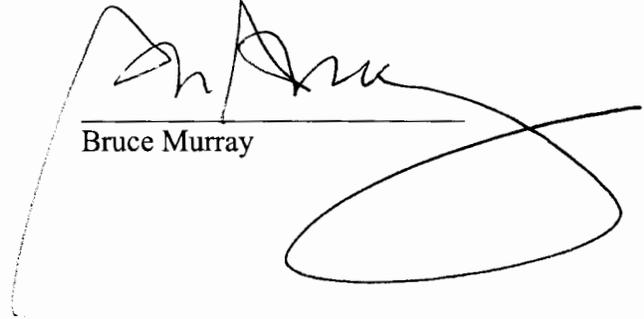
29. In evaluating the risks inherent in expanding our winery, Boundary Breaks, LLC is holding off in making its next round of investment, pending the decision on whether the Crestwood application is approved. Siting of the Crestwood LPG facility creates additional risks to our already risky endeavor. Because the success of our business is dependent in no small part on the success of other businesses, such as hotel operators and restaurateurs, all of these businesses are impacted by the continued and increasing flow of tourists to Finger Lakes Wine Country. Siting of the Crestwood LPG facility interferes with that tourist inflow by stigmatizing the area and potentially threatening the serene bucolic surroundings that bring tourists to the region.
30. I have found the current administration in the State of New York to be exceptionally supportive of the growth of the Finger Lakes agri-tourism industry. This support has included modifying outmoded Prohibition-era regulations governing the production, distribution and sale of wine, spirits and other beverages, the recent ban on fracking in New York State and the recent approval of a large gaming complex not far away in the town of Tyre. These encouraging steps have encouraged us to continue to make the investments that we have made thus far in our vineyard and wine business.
31. Boundary Brooks would like to continue to make further investment in our business to:
- i. complete the architectural, structural and landscape engineering plans for our expanded site;
 - ii. retain and employ local contractors and tradesmen in the construction of a wine production and tasting facility;
 - iii. train and develop local residents in viticulture, winemaking, sales, social media and online sales and marketing; and
 - iv. retain and distribute the \$4.0 - \$5.0 million in expected annual revenues in the heart of Finger Lakes Wine Country.
32. The State's approval of the Crestwood application for expansion will put all of this at risk. We do not believe it is a sound business practice to move forward with our

additional investment if the State of New York approves a permit for an LPG facility in
the heart of Finger Lakes Wine Country.

sworn to before me on January 13, 2015:



Notary Public
Somers, New York



Bruce Murray

Beth Golden
Notary Public New York
Reg. No. 01006216912
My Commission Expires Feb. 1, 2018

EXHIBIT D

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
KRISTINA M.
HAZLITT**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF SCHUYLER)

Kristina M. Hazlitt, being duly sworn deposes and says,

1. I am the Corporate Secretary and Treasurer for Sawmill Creek Vineyards in Schuyler County in what is known as the Finger Lakes Wine Country. After almost two decades in banking and bank management, when my father-in-law retired, I came on to the family business full-time, taking over the financial management, sales, marketing, human resources, customer relations, and harvest scheduling. I serve as Secretary of the New York Wine Industry Association and am on the Advisory Board of the Finger Lakes Grape Program.

2. Sawmill Creek Vineyards is a member of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
3. Sawmill Creek Vineyards is located at 5587 State Route 414, Hector, NY 14841 with additional farm acreage located on Ball Diamond Road and Tichenor Road also in the Town of Hector. The vineyard is located on the east side of Seneca Lake approximately 10 miles north of Watkins Glen. The total acreage owned by the vineyard is 180 acres with 85 acres under vine and 3 acres of sweet & sour cherries.
4. The original 154 acre Hazlitt family farm was purchased in 1852 by David Hazlitt. Peaches were the main crop at the time. The first grapes were planted on the property in the 1860's. (See, Farm Fact Sheet annexed hereto.)
5. The fourth generation Hazlitt, James Russell Hazlitt, returned to manage the vineyards when his father died in 1940. He served as president of the Cornell College of Agriculture Alumni Association and assessor in the Town of Hector. He was also director of the National Grape Cooperative and served as the first president of the NYS Grape Growers Cooperative. *Id.*
6. Fifth generation brothers James Roberts and Jerry took over the farm upon their father's death in 1970. The brothers split the business in 1982. James was named Grape Grower of the Year in 1995 by the New York Wine and Grape Foundation and Vineyard & Winery Management Magazine. Jerry and his family started the Hazlitt 1852 Vineyards Winery in 1985. *Id.*

7. Today the farm is owned and operated by the 6th generation of the family, James Roberts' son Eric Hazlitt, whose son, Jason Hazlitt (7th generation) started Hector Wine Company in 2010 with co-owner Justin Boyette. *Id.*
8. Our family considers ourselves stewards of the land and has invested extensively in the growth and future of Finger Lakes Wine Country. As the proud 6th generation owners of the family farm, our goal is to strive for quality production in our vineyards using sustainable viticultural practices, environmentally and economically sound practices ensuring the health of our family farm for generations to come.
9. In the early 1980's Coca Cola purchased local Taylor Wine Cellars and canceled the local grape contracts. The grape growers of the region, of whom we were one, had to make a decision at that time whether to move forward or close up shop. Our 5th generation, James Hazlitt, mortgaged the entire farm plus his home in 1984 and went over a half million dollars in debt to convert the farm to vinifera wine grapes and continue supplying grapes to the wine makers in the region. There were only a few farm wineries in the Finger Lakes region at this time, but he believed the region would support the growers of vinifera wine grapes and that we eventually could cultivate world class grapes. During the transition period of the mid 1980's our farm receipts grossed approximately \$60,000 per year.
10. Now 30 years later, our farm grosses more than \$500,000 per year, employs 3 family members and four full-time year round crew members, plus seasonal labor as needed. We are considered one of the premier grape growers in the Finger Lakes, with Sawmill Creek Vineyards designated on the labels of multiple wineries.

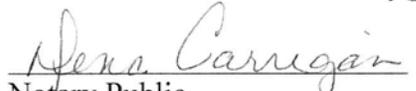
11. Sawmill Creek sells wine grapes to over 20 premium New York State wineries throughout the Finger Lakes, Hudson Valley, and the Catskills, with additional wineries on a waiting list for any excess grapes available. Ten of these wineries grow no grapes of their own, relying solely on professional growers such as ourselves to supply fruit while focusing their energies on the winemaking side of the business.
12. The Hazlitt Family has invested 162 years in Schuyler County, New York. Our family and the vineyard are a part of the regional community character. Each generation of the Hazlitt family has given and continues to give extensively of their time, volunteering in local and regional civic groups, agricultural organizations and more. (See, Farm Fact sheet.)
13. The Finger Lakes was just named a top Wine Destination for 2015 by Wine Enthusiast magazine. “Nestled amidst bucolic farmland and the spindly glacial lakes for which the region is named, it’s home to some of the best cool-climate wines in America.”¹
14. Anything that threatens to industrialize our world class tourism destination here in the Finger Lakes, endangers our water supply and has a high risk for a catastrophic accident, could potentially end everything we have built. It threatens more than a single vineyard, but rather threatens the entire region and a community’s way of life.
15. Grape vines cannot be picked up and relocated without severe consequences. It takes 6 years to harvest a crop from the time a new vine goes in the ground. Our family has spent over a century cultivating the vines that now make up our successful vineyard.
16. The vineyards and businesses of the Finger Lakes Wine Country are supporting a growing economic engine that benefits the character of the entire region. The

¹ <http://www.winemag.com/Web-2014/10-Best-Wine-Travel-Destinations-2015/index.php/cparticle/2>

Applicant's proposed LPG storage facility threatens our tourism, our water and the overall environment, with zero benefit to our local community. This community is being asked to assume all of the risks to destruction of its entire way of life with no benefit to the community.


Kristina M. Hazlitt

sworn to before me on January 15, 2015:


Notary Public
Watkins Glen, New York

Dena M. Carrigan
Notary Public, State of New York
No. 4997615
Qualified in Schuyler County
Commission Expires 6-8-18

**EXHIBIT:
SAWMILL CREEK VINEYARDS
FARM FACT SHEET**



FARM FACT SHEET

CONTACT INFO: Tina Hazlitt, Financial Manager

Office Phone: 607-546-6777

Cell Phone: 607-227-8901

Fax Line: 607-546-6778

Email: smcvineyard@htva.net

FAMILY FARM

To avoid confusion with the winery - Hazlitt 1852 Vineyards – the farm name was changed in 1995 from Hazlitt Vineyards to Sawmill Creek Vineyards after a beautiful gully that borders the vineyards along the south end of the property.

Jim Hazlitt – Past President, and owner from 1967-2007.

Eric Hazlitt – Current President and owner since 2007. Eric is the Equipment and Spray Manager. Wife Tina manages the office, finances, sales & marketing, and human resources. (Typical farmer's wife 😊)

DIRECTIONS TO FARM IN FINGER LAKES WINE COUNTRY

The farm is located on the east side of Seneca Lake in the town of Hector approximately 10 miles north of Watkins Glen, and 30 miles south of Geneva. The address is 5587 State Route 414. Local landmarks include the Sunoco gas station to the south and the Post Office to the north, both on the opposite side of the road.

CROPS

Sweet & Sour U-Pick Cherries – 3 Acres

Wine Grapes – 85 Acres

80% Vinifera, 20% French-American Hybrids

HISTORY - HAZLITT FARM ~Schuyler County~State of New York

In 1852, David Hazlitt, who had farmed in Mecklenburg since 1823, purchased a 154-acre fruit farm in Hector. Peaches were the main crop, but David planted grapes in the 1860s. Some of the Catawba vines he planted are still in production today. David married Clarissa Roberts, and in time they sold the farm to their son James Roberts Hazlitt, who had also purchased an adjoining farm to the north. He operated the farm until his death in 1896. In 1900, James' son William Herbert purchased more land to the north and expanded the fruit operation by planting 50 acres of peaches and more grapes.

Herbert's son James Russell Hazlitt graduated from the College of Agriculture at Cornell in 1924. He was a US Government appraiser, but returned to manage the vineyards and orchards when Herbert died in 1940. James married Elisabeth Voorhees in 1929, they had two sons, James Roberts and Jerome Voorhees Hazlitt.

James Russell was president of the Cornell College of Agriculture Alumni Association and assessor in the Town of Hector. He was director of the National Grape Cooperative, first president of the NYS Grape Growers Cooperative, and held leadership positions in many other professional and agricultural organizations. Elizabeth was a Schuyler Hospital volunteer and worked with the League of Women Voters, Hector Library, Home Bureau and the Presbyterian Church.

James Roberts graduated from the College of Agriculture at Cornell in 1960. The same year he married Susan McKellar and joined his brother Jerry on the farm. The brothers took over the farm on their fathers' death in 1970. Jim and Susan had two children, Eric and Kristin. Jim and Jerry split the business in 1982. Jerry and his family started the Hazlitt 1852 Vineyards winery in 1985 which is today run by Doug Hazlitt and Leigh Hazlitt Triner.

Eric attended the Ag School at Cobleskill. Eric Hazlitt and first wife Elise had two children, Erin and Jason. Son Jason Hazlitt (the 7th generation) started Hector Wine Company in 2010 with co-owner Justin Boyette.

As the proud 6th generation owners of the family farm, the goal is to strive for quality production in their vineyards using sustainable viticultural practices. This means using environmentally and economically sound practices ensuring the health of our family farm for generations to come.

AWARDS

They were awarded "Conservation Farmer of the Year" in 1985.

They were awarded the Century Farm Award in 1991.

In 1995, Jim was named Grape Grower of the Year by the New York Wine and Grape Foundation and Vineyard & Winery Management Magazine. Sawmill Creek Vineyards fruit has won the Governor's Cup twice for the best New York State wine. Jim attributes the greatly improved grape quality to using new trellis systems and other innovations. The farm now sells to over 20 premium New York State wineries, with additional wineries on a waiting list for any excess grapes available.

COMMUNITY INVOLVEMENT - Current

Jim – Treasurer of Schuyler County Soil & Water Conservation District

Sue – Childrens Program Coordinator for the Hector Library

Tina – Secretary of the New York Wine Industry Assoc., Advisory Board of the Finger Lakes Grape Program

COMMUNITY INVOLVEMENT - Past

Jim – Treasurer of Schuyler County Soil & Water Conservation District

Tina – Hector Library Board, Finger Lakes Jazz Festival Director, Finger Lakes Wine Festival Director, Women for NYS Wine, Secretary of Schuyler County Farm Bureau

EXHIBIT E

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
JUSTIN BOYETTE**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

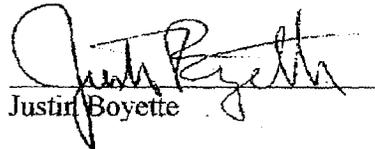
STATE OF NEW YORK)
) SS.:
COUNTY OF SCHUYLER)

Justin Boyette being duly sworn deposes and says,

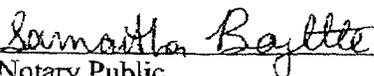
1. I am the Co-Owner/ winemaker with Jason Hazlitt of Hector Wine Company in Hector, New York located along the eastern shore of Seneca Lake. I am also a partner in Forge Cellars, Seneca Lake, New York. Hector Wine Company and Forge Cellars are members of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
2. The Hector Wine Company opened in 2010. I have been in the Finger Lakes wine industry since 2000.

3. Noted French vintner Louis Barruol, Rick Rainey and I came together in 2010 and agreed to start Forge Cellars, an additional winery focused on global expansion of the Finger Lakes Wine Country brand.
4. Louis Barruol, comes from a family with 500 years of history in the wine industry. His family's Chateau de St. Cosme is located in Gigondas, in the Rhone Valley in the south of France. The history of winemaking at Saint Cosme dates back to the year 109 A.D. and the Barruol family have been the owners of this historic chateau and estate since 1570.
5. Louis is world renown in the greater wine world. His wines have won multiple awards including being selected #2 in the Wine Spectator's top 100 wines and receiving several perfect scores by Robert Parker, both respected wine publications.
6. Louis spent multiple years exploring wine regions around the world looking for an area outside of France in which to start a new project.
7. At the suggestion of Rick Rainey, an experienced wine importer, Louis made several visits to Finger Lakes Wine Country. Louis chose the Finger Lakes over all the other regions of the world because he liked the potential he saw in the Finger Lakes as an internationally appreciated wine region. Louis recognized the area as a superb location for growing world class Riesling and Pinot Noir grapes. He liked the soil, the lay of the land and the clean natural environment. He also recognized the potential for growth of the Finger Lakes brand.
8. Forge Cellars is designed to rely on national and international distribution, taking our Seneca Lake product nationwide and around the world. Our first vintage was 2011. Already, Forge is distributed in at least 30 states, Canada, and France.

9. In Dec 2014 Forge cellars purchased 21 acres of land in Hector New York, on the eastern shore of Seneca Lake to build a production facility and grow additional grapes. This substantial growth represents a new and independent facility and is a \$600,000 to \$700,000 investment by Forge.
10. The proposed LPG storage facility threatens the growth of Forge and the entire Finger Lakes Wine Country. As set forth in my partner Louis Barroul's letter annexed hereto, investment in the Finger Lakes Wine Country is "a question of love and passion for beauty and quality....the success of a wine region is deeply related to the respect of its environment and to its own beauty."
11. As noted by Louis, the construction of the proposed LPG storage facility will ruin all the work of the community. Because of the negative impact of the facility upon the community character, this opportunity for expansion of the Finger Lakes brand on the global market will be lost.


Justin Boyette

sworn to before me on January 15, 2015:


Notary Public
Schuyler County, New York

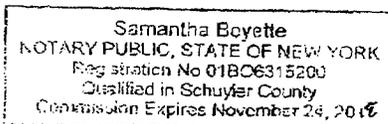


EXHIBIT: Letter
from Louis
Barruol

Saint Cosme

Sarl Louis et Cherry BARRUOL
Château de Saint Cosme
84190 Gigondas
France

Tel : 04 90 65 80 80
GSM : 06 80 99 63 02
Fax : 04 90 65 81 05

Email : barruol@chateau-st-cosme.com



Gigondas, Thursday 15th January 2015

I am Louis Barruol, 45, winemaker from France, Southern Rhone Valley, Gigondas, from an ancient family of vine growers and winemakers.

I have chosen in 2010 to come and invest in the Finger Lakes to establish with my American partners Rick Rainey and Justin Boyette, a winery called Forge Cellars, dedicated to top end quality Rieslings and Pinot noir. I think the quality potential of the Finger Lakes is marvellous but we will have to work hard and it will take some time to achieve the world recognition that the region deserves. Come and invest here is purely a question of love and passion for beauty and quality. It is a lot of time, energy, money and dedication. Because the success of a wine region is deeply related to the respect of its environment and to its own beauty, the idea of establishing a massive gas storage here is a long-term nonsense that will ruin all the work of the entire community. I deeply love the Finger Lakes and its people but if this project of gas storage really happens, I will disengage myself out of Forge Cellars. It will be a shame as we plan to rapidly produce 240 000 bottles, export in 30 countries 50% of our production and create 7 employments locally.

Louis Barruol

SARL Louis et Cherry BARRUOL

Au Capital de 15245 €

Domaine de Saint-Cosme

Chateau de Saint Cosme
Gigondas - Rhone Valley - France

84190 GIGONDAS - FRANCE

CS Carpentras B 413 776 485

Tél. 04 90 65 80 80 - Fax 04 90 65 81 05

Forge Cellars
Seneca Lake - NY

S.A.R.L. Louis et Cherry Barruol - Négociant éleveur
Siège social: Château de Saint Cosme - 84190 Gigondas
Au capital de 15 245€ - TVA: FR00413776485 - Accise: FR98027E0108
RCS Carpentras B 413 776 485 - N° de gestion 97B309 - Siret N° 413 776 485 00018 - APE 513J

EXHIBIT F

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
LOU DAMIANI**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF SCHUYLER)

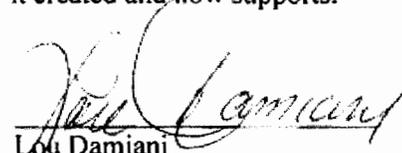
Lou Damiani, being duly sworn deposes and says:

1. I am co-owner of Damiani Wine Cellars in the town of Hector in Schuyler County.
Damiani Wine Cellars is a member of the Finger Lake Wine Business Coalition
(FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party
status in the above proceeding.
2. My Partners and I dreamed and planned about the possibility of developing fine, world
class wines for years before planting grapes on the shores of Seneca Lake in the mid
1990's. The development of growing vinifera grapes in the Finger Lakes is only decades
old. We opened Damiani Wine Cellars in 2004.

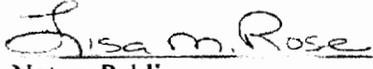
3. From the outset, Damiani Wine Cellars have been on the forefront, developing high end world class red and white wines that have received numerous medals, awards and high scores from all major industry publications. We are part of the reason people come to Finger Lakes Wine Country. We will continue to grow as long as the area has the good sense to support a vibrant wine and tourist industry.
4. What we have realized over time is that the Finger Lakes Wine Country rises or falls together. It is a world class tourist destination with Seneca Lake and the wineries as the center piece. People come from near and far for the complete experience of a unique environment where they can enjoy the lake, the wineries and all the other bounties this pristine area has to offer.
5. Finger Lakes Wine Country is just starting to realize the fruits and benefits of this sustainable enterprise taken on by thousands of people making huge investments of time, energy and money. We are part of that effort and have invested everything that the 3 partners have in this endeavor. We employ 10 full time people and many part time people.
6. The interests of the winery could be severely impacted if the Applicant's LPG storage facility currently proposed becomes a reality on Seneca Lake. Had we known about the project, we would have thought long and hard about staying and investing in this area.
7. The tasting room at Damiani Wine Cellars looks towards the south and the proposed LPG facility. Flair stacks will be visible from our tasting room.
8. Customers in our tasting room often ask about the site and upon hearing of the plans ask us to help keep the pastoral and bucolic nature of the Finger Lakes intact.

9. The proposed LPG facility significantly and negatively impacts our viewshed and the community character of our town, the wine businesses along the Lake and Finger Lakes Wine Country.
10. Further, the possible pollution to the air and water from an industrial giant like the Applicant offers very little benefit for the possible catastrophic cost such a project presents.
11. The possibility of a real catastrophe happening is significant. Whether the impact is contaminating Seneca Lake with brine or a gas explosion at the facility, either of these will have a severe negative impact on the tourism and wine industry, negatively impacting the character of the area.
12. The proposed LPG facility will industrialize the area and possibly increase heavy truck and rail traffic (which has not been removed from the draft permit), devastating a blossoming tourism industry.
13. We are very concerned with the present salinity of the lake and the potential spike resulting from use of the salt caverns by the Applicant for its storage facility.
14. Any impact relating to a spike in salinity will negatively affect our utilization of the water for personal use, winemaking and future possible irrigation of vineyards. Increased salinity can damage vine strength and yield.
15. Finger Lakes Wines present a sustainable industry that has already generated millions of dollars in sales and employs thousands of people, with an economic churn in the billions of dollars. It has set the Finger Lakes Wine Country on a path to success and shaped a community character built on this way of life. The proposed LPG facility is a threat to

the Finger Lakes Wine Country and the community it created and now supports.


Lou Damiani

sworn to before me on January 15, 2015:


Notary Public
Ithaca, New York
Tompkins County

LISA M. ROSE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN TIOGA COUNTY
LIC. #01RO06181271
COMM. EXP. 01-28-2016

EXHIBIT G

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
CONNOR EVANS**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF SCHUYLER)

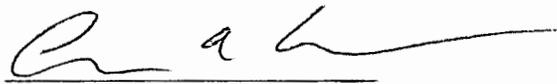
Connor Evans, being duly sworn, deposes and says:

1. I am the Sales Manager at Castel Grisch Management, LLC (“Winery”). Castel Grisch Winery is a member of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
2. I have served as Sales Manager at the Winery since April 2014. My responsibilities include the promotion, branding, and sale of Castel Grisch Products. I am also involved with long-range planning and development at the Winery.
3. Castel Grisch Winery is located at 3380 County Route 28 in Watkins Glen, NY 14891. The Winery is a 51-acre farm property which includes a production facility, tasting room, and a café/restaurant overlooking Seneca Lake.

4. The Winery was established in 1987, and was previously owned by Schuyler County residents Thomas and Barbara Malina. In September 2013, the Winery was purchased by Daniel Lai. Daniel had vacationed in the Finger Lakes Wine Country and fell in love with the natural beauty of the area and the unindustrialized community character. He became interested in the Finger Lakes Wine Country and specifically, in development and relocation along Seneca Lake.
5. The Winery recently acquired a 16-acre property directly west of the US Salt plant at 3542 Route 14 in Watkins Glen, NY 14891. A small strip of land divides the two properties. The Winery had intended to expand onto this additional parcel.
6. Seneca Lake is appealing for its non-industrialized, natural environment. Our business, like many of the businesses along Seneca Lake, is dependent upon tourist influx for profit. These tourists are attracted to the beautiful setting that Seneca Lake provides and the quality of the community character in Finger Lakes Wine Country.
7. The town of Watkins Glen is equally attractive for its location, lack of industrialization and natural beauty. It has an old time Americana flavor and a rich history that acts as a natural magnet for tourism and for business.
8. Watkins Glen also sits strategically at the southern tip of Seneca Lake. Because of the long north south orientation of the Finger Lakes, travelers through Finger Lakes Wine Country pass through Watkins Glen as they travel through the region, and specifically as they travel to Keuka or Cayuga Lakes where the majority of other wineries and vineyards are located.

9. We specifically chose Watkins Glen to develop in because of its hometown quality and its position as a gateway to the Finger Lakes Wine Country.
10. The Applicant's proposed LPG storage facility threatens to damage the brand that Finger Lakes Wine Country has created and tarnishes the community character of Watkins Glen, Seneca Lake and the entire region.
11. There is great concern regarding the proposed LPG storage facility and how it will detract from future tourism and the developing businesses in Finger Lakes Wine Country. The LPG facility also threatens the future plans of the Winery to develop on the adjoining property.
12. The LPG facility would warp Watkins Glen from a historical, rustic town to an over-industrialized traffic hub, destroying many of its positive attributes.
13. There is also a concern regarding the potential for accidents at the proposed facility. Our new property is in extremely close proximity to the Applicant's LPG facility. Any type of accident at the facility would directly affect our business, our reputation and the production of wine.
14. Along with these concerns we are also reliant on in-house business from our tasting room. The potential additional rail and truck traffic, noise and air pollution that would come with the proposed LPG storage facility would discourage tourists from coming to Seneca Lake and negatively impact the entire Finger Lakes Wine Country.
15. If the proposed LPG storage facility is approved, the concerns I have outlined above pose too great of risk to further invest additional capital in so volatile an

area. We would be forced to look to invest in another area.



Connor Evans

sworn to before me on January 15, 2015:



Notary Public

SCHUYLER COUNTY, New York

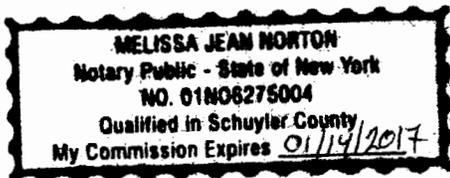


EXHIBIT H

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
WILLIAM OUWELEEN**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF LIVINGSTON)

William Ouweleen, being duly sworn deposes and says:

1. I am the Brand Manager for O-Neh-Da and Eagle Crest Vineyards, on Hemlock Lake in the Western Finger Lakes of New York State. I have served in that capacity since 2007.
2. O-Neh-Da and Eagle Crest Vineyards members of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
3. Prior to joining the winery business, I was a Principal at Brand Integrity, an International Brand Consulting Firm. Clients I served as a brand consultant included Microsoft, Hallmark Cards, and Duke Energy. Prior to that, I was Vice President of Marketing and Development for St. John Fisher College, a private, liberal arts college in Rochester, NY.

I bring over 20 years of brand management and marketing experience to my role as Brand Manager at O-Neh-Da and Eagle Crest Vineyards.

4. As Brand Manager of O-Neh-Da and Eagle Crest Vineyards I am in charge of all marketing, sales, public relations and community outreach for both brands. I am responsible for the stewardship and development of three (3) brands: O-Neh-Da Authentic Sacramental Wine; Eagle Crest Vineyards 100%Pure Grape Finger Lakes Wines; and O-Neh-Da Vineyard, makers of the Finest Wines from Finger Lakes Vines. I also serve in the capacity of Wine Grower, acting as the liaison between our grape growers and our wine-making team. I source grapes and determine with the growers when to harvest and at what crop yield per acre we will manage vineyards given the conditions of any specific growing season.
5. As Brand Manager, I have developed a brand-building strategy to align closely with the rising brand equity of "Finger Lakes Wine Country." As set forth below, O-Neh-Da winery has an historic place in the dawning of the Finger Lakes as a wine producing region. O-Neh-Da Vineyard is one of the oldest wineries in New York State, now in its 143rd year of operation as a Finger Lakes winery. Intrinsically, perception of the Finger Lakes brand, positive or negative, affects us significantly.
6. O-Neh-Da Vineyard is the oldest winery in America dedicated to the production of pure grape wine for Sacramental use. Sacramental wine must be pure of the grape with no additives. Bishop McQuaid, the founding Bishop of the Roman Catholic Diocese of Rochester, founded the Vineyard in 1872 and operated a 576 acre farm and vineyard until his passing in the early 20th century. The winery was hand-dug into the hillside and the wine caves, wine cellars, and original facility are still in use today. 156 acres of vineyard

were planted and maintained by Christian brothers, until they closed their seminary and Mission in the early 1980s. The winery continues to operate as a dedicated Sacramental winery to this day through a committed team of laity trained by the monks in the Old World wine making craft.

7. In the late 1960's O-Neh-Da Vineyard recruited Hermann J. Wiemer, from the Mosel Valley of Germany to be the vineyard manager and next wine maker. Hermann later when on to be founding winemaker of Bully Hill Vineyard, ultimately establishing his own vineyard and winery. Much of the success of the rising world-wide recognition for Finger Lakes Wine Country, especially for world-class Riesling, goes to Hermann Wiemer.
8. In 2007, a decision was made at O-Neh-Da to join the rising trend in the Finger Lakes to produce world class vinifera grape table wines, leveraging the historic role of the winery as an early pioneer in Finger Lakes Wine Country. However due to the high elevation and small size of Hemlock Lake, the grapes popular today (Chardonnay, Riesling, Pinot Noir, Cabernet Franc) are not able to be successfully cultivated on Hemlock Lake. Therefore the winery sources grapes from the best vineyard sites on Keuka, Seneca, and Cayuga Lakes, giving the winery a direct interest in the success of annual harvests on Seneca Lake.
9. As the only winery on Hemlock Lake, O-Neh-Da does not constitute enough of a draw by ourselves to create sufficient tourist traffic for our business. Given the protected nature of Hemlock Lake as the water supply for the City of Rochester, O-Neh-Da is likely to remain the only winery on Hemlock Lake. Seneca Lake draws millions of visitors each year to the Finger Lakes Wine Country. O-Neh-Da and Eagle Crest Vineyards benefit

directly from the Seneca Lake tourism traffic as O-Neh-Da is the first stop in Finger Lakes Wine Country as visitors approach from the west on their way to Seneca Lake. Thus it is critical to our survival that Seneca Lake remains a vital part of the entire Finger Lakes Wine Country and the character of the community as the wine district continues to thrive.

10. The Finger Lakes is a unique and precious asset not be exploited or destroyed. Wineries require major capital investments and time to mature vines to make the best wine. Generations of family farmers have literally poured their sweat and blood into the vineyards; this way of life is quite literally rooted to the earth. Other businesses can relocate when conditions dictate, but vineyards and wineries are intergenerational businesses directly connected to the Terroir.
11. If Seneca Lake were to be negatively impacted due to an accident or gradual environmental degradation that damages Seneca Lake, or a stigma that damages the allure of Seneca Lake as the dominant natural feature of the Finger Lakes Wine Country brand, it would undermine a wine culture that has developed over nearly a century and a half.
12. O-Neh-Da and Eagle Crest Vineyards are gravely concerned about the potential for irreparable damage to the Finger Lakes Wine Country brand and way of life, as well as to the Seneca Lake community, posed by plans to develop the LPG storage facility on Seneca Lake.
13. Seneca Lake is a critical part of Finger Lakes Wine Country. Placement of the LPG facility on Seneca Lake threatens the viability of numerous vineyards and winery

operations along the Lake and in the region, potentially destroying our bucolic regional charm and character, and the burgeoning Finger Lakes wine brand.


William Ouweleen

sworn to before me on January 15, 2015:


Notary Public
Livonia, New York

MARINDA RUCINSKI
No. 01RU6198634
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires 12/29/16

EXHIBIT I

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
JOHN WAGNER**

Finger Lakes LPG Storage, LLC to construct and operate a
new Underground Liquefied Petroleum Gas (LPG) Storage
Permit, Town of Reading, Schuyler County pursuant to
ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF SENECA)

John Wagner being duly sworn deposes and says,

1. I am the Co-owner of Wagner Vineyards, Wagner Winery, Wagner Valley Brewing Company and the Ginny Lee Café, all located on Seneca Lake, New York. Wagner Vineyards and Wagner Valley Brewing Company are members of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
2. In the late 1800's my Great Grandfather grew grapes on the eastern shore of Seneca Lake. 115 years later the fifth generation of the Wagner Family is still growing grapes on the eastern shore of Seneca Lake. Seneca Lake is not just a pretty body of water to look at, it is the essential element that enables our family business to exist.
3. My late father, Bill Wagner was a lifelong grape grower. In 1976 after the New York State legislature passed the New York Farm Winery Act, Bill Wagner began construction of one of Seneca Lake's first Farm Wineries. At the time no one

envisioned what this humble wood and steel octagonal building would mean to the Finger Lakes region. Bill Wagner essentially “went all in” mortgaging every bit of property that he owned to make his fledgling winery successful. Eventually with sheer grit and determination along with some very loyal bank lenders the winery became a successful local business, and paved the way for a region wide revolution of farm winery startups in Finger Lakes Wine Country.

4. The land surrounding Seneca Lake is now home to over 60 wineries as well as a multitude of ancillary businesses that thrive on the large number of visitors that the wine business brings to the region. Our own business has continued to grow through the years with 225 acres now planted to vineyards. Wagner Winery opened in 1979, and currently receives nearly 100,000 visitors per year.
5. The Wine Enthusiast magazine has just published the on-line version of its top 10 wine destinations for 2015, with Finger Lakes Wine Country garnering the number one ranking. This will appear in the February print issue of the Wine Enthusiast. This region’s wide notoriety has taken many decades for us to achieve.
6. In 1983 we expanded our business with the addition of the Ginny Lee Café, a 200 seat restaurant named after my niece with vistas overlooking the vineyards and Seneca Lake. The restaurant was a natural extension of the concepts my father had for the winery: a restaurant where people could be introduced to the affinity of wine and foods. All of our menus have been designed by our Culinary Institute of America trained chef to complement and enhance the medal-winning estate wines of Wagner Vineyards and craft brewed beers from Wagner Valley Brewing Co.

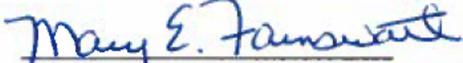
7. The Wagner Valley Brewing Company was added in 1997, the region's first microbrewery to be built in combination with a winery. Wagner Valley Brewing Company adheres to the Reinheitsgebot of 1516, a German Purity Law that states: "Only the finest Malt, Hops, Yeast and Water can be used in the production of beer ". This quality standard, used for our standard beers, in conjunction with our Brewers' talent has resulted in Wagner Valley Brewing continuously winning the most prestigious of brewing awards, capturing numerous G.A.B.F., World Beer Cup and Tap New York medals.
8. Over the course of the last 40 years we have invested many millions of dollars to expand and improve our businesses. Much of that money was spent supporting other local businesses that sell us goods and services. At the height of our summer season our family business employs nearly 100 people.
9. The topography of the Seneca Lake area has allowed it to flourish as a winegrowing region as evidenced by the rapid expansion of winery numbers around Seneca Lake over the last 36 years. The attributes of the Finger Lakes, deep, narrow, temperature moderating lakes, steeply sloped hill sides, fragile shale bedrock, clean water, and breathtaking scenery, make it ideally suited to be a top ranked wine growing region in the world.
10. By definition, these same physical attributes, and the blossoming Finger Lakes Wine Country brand, make it a very poor choice for the Applicant's LPG storage facility.
11. Decades of local investments made by thousands of people around Seneca Lake and in the Finger Lakes Wine Country have won us hard fought international recognition. Our businesses and our very way of life depend on Seneca Lake being protected as

our area's shining draw for the entire world. Seneca Lake is so vital to our local economy that it would be unconscionable to risk its future by allowing huge volumes of liquefied petroleum gas to be stored below it.

12. Just as important as the threat of increased industrial activity, one environmental accident either now or sometime in the future would jeopardize the livelihood of every person that lives around Seneca Lake and potentially the reputation of the entire Finger Lakes Wine Country.
13. The consequences of such an environmental accident are unfixable. Further, just the perception of such industrial activity or possible accident creates the likelihood of damaging stigma which would impact the region's community character.
14. There is nothing that has been presented by the Applicant that would in any way mitigate this threat to the community character of Seneca Lake and the entire Finger Lakes Wine Country. The reputation that this region has worked so diligently to build would be forever destroyed with just one mistake.


John Wagner

sworn to before me on January 15, 2015:


Notary Public
Renwick, New York

MARY E. FARNSWORTH
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SENECA COUNTY
REG. #01FA6084389
MY COMM. EXP. DEC. 02, 20 18



EXHIBIT J

STATE OF NEW YORK DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of Application of

**AFFIDAVIT OF
SCOTT SIGNORI**

Finger Lakes LPG Storage, LLC to construct and operate a new Underground Liquefied Petroleum Gas (LPG) Storage Permit, Town of Reading, Schuyler County pursuant to ECL Article 23

Application No. 8-4432-00085

STATE OF NEW YORK)
) SS.:
COUNTY OF TOMPKINS)

Scott Signori being duly sworn deposes and says,

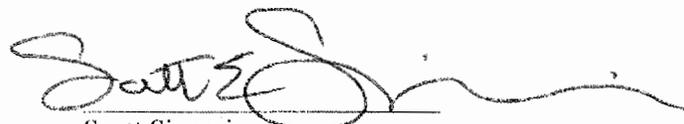
1. I am the chef and majority owner of the Stonecat Café in Hector, New York located on the eastern side of Seneca Lake, 10 miles north of Watkins Glen. Stonecat is a member of the Finger Lake Wine Business Coalition (FLXWBC). I make this affidavit in support of the FLXWBC petition for amicus party status in the above proceeding.
2. The Stonecat is a full scale restaurant that is committed to regional cuisine. We source most of our produce locally and organically and buy much of our meat in the form of whole animals from many farms in the area. We also use local dairy from farms in the immediate vicinity. Our chefs continue to create and evolve the regional cuisine of the Finger Lakes, using local ingredients and global culinary influences.

3. I moved to the Finger Lakes in 1996 to help open a winery and restaurant in an up and coming wine region that skeptics did not believe would ever be worthy of competing on the world market. I started the Stonecat in 1999.
4. The Stonecat is open from the April to the end of November and serves as a social hub for locals as well as countless tourists that come through on the wine trail. I see within this community and in the tourists that come here support for locally, grown and organic food, produced in the beautiful environment of the Finger Lakes Wine Country.
5. I am proud to say that as a consequence of much hard work and with the support from my community, in 2014 we reached the \$1 million mark for sales. We serve hundreds of people a week and I am finally making a good living as well as providing jobs to over 40 other people in the community.
6. Finger Lakes Wine Country has created a local and regional character and economy based upon sustainable businesses, including agriculture, tourism and recreation, as well as limited light manufacturing such as the local breweries. The Stonecat is centrally located in Finger Lakes Wine Country and directly benefits from this community character.
7. We are located just 10 miles or less from Watkins Glen, Watkins Glen State Park and the Finger Lakes National Forest. We are located along the Seneca Lake Wine Trail and find ourselves surrounded by numerous wineries and vineyards to the north, south, east and to the west across the Lake.
8. The patrons of our restaurant come to Finger Lakes Wine Country to relax and enjoy the natural beauty of the Finger Lakes while swimming, boating, and fishing in Seneca Lake;

they also hike, ski, bike, and drive around the lakes on local roads and trails. Of course, those activities culminate in the day's main draws: tastings at various wineries and then dinner at the Stonecat watching the sun set behind the hills across Seneca Lake.

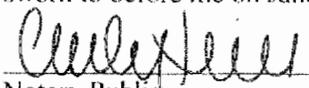
9. From wineries to breweries to restaurants, tourists are heading to Finger Lakes Wine Country, sampling the wide variety of fun food and libation at quality restaurants in a region looking to compete with the fame of California's Napa Valley as a wine and dine destination.
10. The interests of Stonecat and the other wine businesses of the FLXWBC present a valuable perspective and special position with respect to evaluating the issues raised by the petition for amicus party status. The restaurant is located across the lake and just a few miles north from the proposed LPG storage facility.
11. I have serious concerns regarding the impacts of the construction and operation of this LPG Facility in Finger Lakes Wine Country, including the significant rise in noise, viewshed degradation and diminishment of tourism that will result from this industrial albatross in the midst of wine country.
12. All of the drinking water for our customers at the restaurant as well as the water with which we wash and prepare all of the food for the restaurant is drawn from Seneca Lake. A rise in salinity levels or other effects to the water quality of the Lake will negatively impact our operations.
13. Further, the catastrophic risks associated with this LPG Facility will create a stigma for our growing local communities, with no benefit in exchange.
14. The proposed LPG storage facility presents a threat to the character of Seneca Lake and the character of Finger Lakes Wine Country. It further threatens the evolving vibrant

artisanal food and beverage industry that provides a livelihood for me and my family, as well as many other people in my community.



Scott Signori

sworn to before me on January 16, 2015:



Notary Public
Schuyler County, New York

Cecily A. Hill
Notary Public, State of New York
Registration no. 01HM297171
Qualified in Schuyler County
Commission Expires February 18, 20 18