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July 24, 2103

VIA E-MAIL and MAIL

Daniel T. Whitehead
Regional Permit Administrator
NYS Department of Environmental Conservation
Region 3 Headquarters
21 South Putt Corners Road
New Paltz, NY 12561-1696

Re: Belleayre Mountain Ski Center Draft UMP/DEIS
Modified Belleayre Resort at Catskill Park SDEIS
Nos. 3-5150-00005/00005, 0-9999-0096/00012,
& 0-9999-0096/00013

Dear Mr. Whitehead:

We represent Catskill Heritage Alliance, Inc. in connection with the above-referenced matters. On its behalf, we submit these comments on the April 17, 2013 Belleayre Mountain Ski Center Draft UMP/DEIS, the April, 2013 Crossroads Ventures Modified Belleayre Resort at Catskill Park SDEIS, the April 17, 2013 Cumulative Impact Analysis for said documents (collectively "the EISs") and the related permit applications.

Catskill Heritage Alliance, Inc. ("CHA") is a New York not-for-profit corporation and is a tax-exempt charity under Internal Revenue Code § 501(c)(3). It has approximately 600 members, many of whom reside and/or own property in the Towns of Shandaken and Margaretville, and in the vicinity of Belleayre Mountain, including along County Route 49A, adjoining Belleayre Mountain Ski Center ("BMSC") and adjoining the site of the proposed Crossroads Ventures, LLC Modified Belleayre Resort at Catskill Park ("Resort").

CHA is a party to the adjudicatory hearing on the Resort project.¹ CHA did not sign the so-called "Agreement in

¹ Matter of Crossroads Ventures, LLC, Ruling No. 3 of the Administrative Law Judge, September 7, 2005, www.dec.ny.gov/hearings/11135.html. CHA participated in the issues conference

Principle" or "AIP" that was signed by some of the other intervenors in the adjudicatory hearing. SDEIS Appendix 01.

Pursuant to the State Environmental Quality Review Act, ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQR"), and the laws and regulations applicable to the pending permit applications, these comments are submitted on the following documents:

A. April 17, 2013 Belleayre Mountain Ski Center Draft Unit Management Plan/Draft Environmental Impact Statement ("DUMP");

B. April, 2013 Crossroads Ventures, LLC Modified Belleayre Resort at Catskill Park Supplemental Draft Environmental Impact Statement ("SDEIS");

C. April 17, 2013 Cumulative Impact Analysis for the DUMP and the SDEIS ("CIA");

D. Olympic Region Development Authority ("ORDA") Draft SPDES Permit (No. 3-5150-00005/00005) and related applications;

E. Crossroads Ventures, LLC ("Crossroads") Draft SPDES Permit (No. 0-9999-0096/00012) and related applications; and

F. Crossroads Ventures, LLC Draft ECL Article 15 Permit (No. 0-9999-0096/00013) and related applications.

CHA anticipates submitting additional materials as part of the adjudicatory hearing process for the Resort, which has been suspended since 2007,² at a later date.

as part of the Catskill Preservation Coalition ("CPC"), which was granted party status. However, the ALJ also found that "each of the constituent groups comprising CPC has established its own requisite environmental interest in this proceeding in accordance with the requirements of 6 NYCRR 624.5(b)(1)(ii) and 624.5(d)(1)(iii)." Id. CHA is no longer associated with CPC.

² Matter of Crossroads Ventures, LLC, Ruling of the Administrative Law Judge, October 19, 2007, www.dec.ny.gov/hearings/39340.html.

Re: CHA Comments on Belleayre EISs

LIST OF EXHIBITS

CHA has engaged several experts to review the EISs on its behalf. Their reports are attached hereto and incorporated herein, as follows:

Exhibit A - Report by Michael Siegel, Public and Environmental Finance Associates, dated July 20, 2013 on financial, fiscal and economics issues ("Siegel Report").

Exhibit B - C.V. of Michael Siegel.

Exhibit C - Report by Alpentech, Inc., dated July 17, 2013 on the DUMP and ski area design and operation issues ("Alpentech Report").

Exhibit D - Four Seasons Master Plan, Belleayre Mountain, East Side Buildout Option, dated May 21, 2013, 2013, prepared by Alpentech, Inc. ("Map-1").

Exhibit E - Report by Zamurs and Associates, LLC, July, 2013 on Transportation and Air Quality Impacts ("Zamurs Report").

Exhibit F - C.V. of John Zamurs, Ph.D.

Exhibit G - Report by Dr. Lance D. Hoffman, Ph.D, dated July 15, 2013 on engineering issues ("Hoffman Report").

Exhibit H - C.V. of Dr. Lance D. Hoffman, Ph.D.

Exhibit I - Report by Barry Bowman, M.S. of NZR Geologic, Inc., dated July 23, 2013 on geology issues ("Bowman Report").

Exhibit J - C.V. of Barry Bowman, M.S.

Exhibit K - Report by Walter T. Keller, M.S., dated July 22, 2013 on fisheries, aquatic biology, and stream impacts ("Keller Report").

Exhibit L - C.V. of Walter T. Keller, M.S.

Exhibit M - Report by Sterling Environmental Engineering, P.C., dated July 23, 2013 on water quality and related issues ("Sterling Report"), prepared for Carter, Ledyard & Milburn, LLP.

Daniel T. Whitehead
Re: CHA Comments on Belleayre EISs

4

July 24, 2013

Exhibit N - Letter from New York City Department of Environmental Protection to the Catskill Watershed Corporation, dated April 1, 2011.

Exhibit O - Letter from CHA to Daniel T. Whitehead dated March 27, 2013.

Each attached expert report is summarized below. However, the summaries do not include each and every comment in the reports. **Each point made in each of these reports should be considered to be a separate substantive comment for purposes of SEQR, and responded to accordingly by DEC, as the lead agency for this action.** See 6 NYCRR § 617.9(b) (8).

I. THE EISs' REVIEWS OF ALTERNATIVES ARE INADEQUATE;
CHA'S PROPOSED ALTERNATIVE SHOULD BE ADOPTED

Based on its review of the EISs and additional research performed by its members and consultants, CHA has concluded that the plans described in both the SDEIS and the DUMP, as currently proposed, are neither viable or desirable. In lieu of the current proposals, CHA proposes an alternative plan that it believes will be both viable and desirable, and will avoid or minimize the adverse environmental impacts of the overall Project³ to the maximum extent practicable, as required by SEQR.⁴

CHA's proposed alternative would involve expanding BMSC on its east side, rather than on its west side, as is proposed in the DUMP, and simultaneously eliminating the proposed Highmount Spa Resort section of the Crossroads development, as proposed in the SDEIS. This alternative would, among other things, achieve significant cost savings for the State of New York, greatly reduce environmental impacts, result in a more compact layout for the Project, and provide a better skiing experience for the public than the current proposals by ORDA and Crossroads.

³ The integrated plans for the expansion of the Belleayre Mountain Ski Center by ORDA and Crossroads Ventures' proposed Belleayre Resort at Catskill Park are referred to herein as "the Project".

⁴ 6 NYCRR § 617.11(d) (5); see Lane Construction Co. v. Cahill, 270 A.D. 2d 609 (3d Dept. 2000), app. den. 95 N.Y.2d 765 (2000). See also Decision of the DEC Deputy Commissioner, Matter of Lane Construction Co., June 26, 1998.

A. SEQR Requires a Detailed Comparison of Alternatives

The DUMP and the SDEIS each briefly address the alternatives proposed by CHA, but the analysis in each document fails to meet the legal requirements of SEQR. SEQR requires that any EIS must include:

a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. 6 NYCRR § 617.9(b)(5)(v) (emphasis added).

An EIS should contain a discussion of each alternative and a detailed comparison of all of them. Bronfman v. Flacke, 127 A.D.2d 833, 835 (2d Dept. 1987) (EIS upheld because it included "detailed comparative numerical and descriptive data in chart form" and there was a thorough discussion of the alternatives); see also C/S 12th Avenue, LLC v. City of New York, 32 A.D.3d 1, 5 (1st Dept. 2006) (EIS upheld because it assessed the comparative impacts of 21 alternatives in 24 categories); Druyan v. Village Board of Cayuga Heights, 33 M.3d 1203(A) (Sup Ct., Tompkins Co. 2011) (EIS upheld because it contained information about relative cost and impact of each alternative, which allowed for comparative analysis).

Where the alternatives analysis in an EIS does not include adequate supporting data and does not consider all reasonable alternatives, then the decision to approve the action will be annulled. Brander v. Town of Warren, 18 M.3d 477, 480-481 (Sup. Ct., Onondaga Co. 2007); MYC New York Marina v. Town Board of East Hampton, 17 M.3d 751, 759-760 (Sup. Ct., Suffolk Co., 2007). Neither the DUMP or the SDEIS meet the requirements of SEQR, as established in the foregoing cases.

B. The DUMP's Analysis of Alternatives
Does Not Comply With SEQR, Especially
its Failure to Analyze the East Alternative

Section 6 of the DUMP describes and evaluates three basic alternatives for the BMSC, plus the no-build alternative. All three involve additional development on the western end of the BMSC, between BMSC and the proposed Highmount Spa section of the Resort, and/or in the existing core area of BMSC. These

alternatives are labeled "Full Build-Out", "West" and "Core". Consistent with SEQR and the case law interpreting it, the DUMP (§ 6.7) contains tables comparing the impacts of these three alternatives for 16 potential types of impacts, such as the increase in ski trails, tree cutting, air pollution, and cultural resources.

However, Section 6 of the DUMP does not include comparable cost data for the three alternatives that it analyzes, as required. See Druyan, supra; Matter of Multi-Town Solid Waste Management Facility, Interim Decision of the Commissioner, November 19, 1982. Cost data is provided for the preferred "Full Build-Out" alternative at DUMP Table 4.11-35, showing that the cost to the State of constructing this alternative would be over \$74.2 million. However, no such data is provided for the other alternatives. Having adequate cost data available for all of the alternatives will be essential for the State officials who must choose among them when deciding how to allocate the limited public funds available for the BMSC. Such an analysis should be provided. Id.

The DUMP also mentions an "East Alternative", but labels it as "conceptual" and does not analyze it. DUMP § 6.5. No details on this alternative are provided. On each of the 16 tables in the comparison of alternatives in DUMP § 6.7, all that is said about this alternative is that additional environmental review and another amendment to the UMP would be required if plans for this alternative were proposed.

For this alternative there is not a "level of detail sufficient to permit a comparative assessment of the alternatives discussed" as required by 6 NYCRR § 617.9(b)(5)(v). This omission is particularly striking because, approximately a decade ago, BMSC extensively analyzed such an alternative.⁵ Despite the availability of these prior studies, the necessary level of detail about this alternative is not included in the comparison of alternatives at § 6.7.

Having identified this alternative as being among "the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor", the DUMP's failure to analyze this alternative "at a level of detail sufficient to permit a comparative assessment" (6 NYCRR § 617.9(b)(5)(v)) is clearly a violation of SEQR, and must be remedied. An analysis of this alternative should be

⁵ See Alpentech Report, Exhibit C.

performed, with the same level of effort as was put into the analysis of the other alternatives. Brander, supra; MYC New York Marina, supra.

Finally, the DUMP (§ 6.1) concedes that the Full Build-Out alternative "is expected to have the largest impact to the environmental setting of the facility and site disturbance." That alone is reason enough to reject this alternative in favor of CHA's propose East end alternative, as discussed below.

C. The SDEIS's Analysis of Alternatives Does Not Comply With SEQR, Especially its Failure to Actually Analyze the Elimination of the Highmount Spa Resort

Section 5 of the SDEIS purports to describe several alternatives, plus the no-build alternative. However, most of these so-called "alternatives" are just discussions of potential mitigation measures for various impacts of the project, such as water supply (§ 5.4) and wastewater disposal (§ 5.5). Two more of the alleged alternatives are descriptions of former plans that the applicant itself has already rejected (§ 5.1 & § 5.2.A), so that these discussions are just academic exercises, and are not a legitimate comparison of alternatives.

The only true alternative that is discussed (§ 5.2.B) is the elimination of the Highmount Spa Resort aspect of the project. CHA supports this no-Highmount alternative. However, the SDEIS fails to analyze the comparative adverse environmental impacts of this alternative vs. those of the preferred alternative, let alone provide a "level of detail sufficient to permit a comparative assessment of the alternatives discussed" as required by 6 NYCRR § 617.9(b)(5)(v).⁶ For example, there is no comparison of the impacts from wastewater disposal, at the Pine Hill WWTP,⁷ the impacts from runoff and erosion,⁸ the impacts to

⁶ See also DEC *SEQR Handbook*, p. 121, § 5.C(23): "The discussion of each alternative should specifically include an assessment of its likely effectiveness in reducing or avoiding specific impacts." The SDEIS does not include this discussion for the no-Highmount alternative.

⁷ See Sterling Report, Exhibit M.

⁸ See Sterling Report, Exhibit M; Zamurs Report, Exhibit E; Hoffman Report, Exhibit G.

wildlife habitat,⁹ air pollution and traffic impacts,¹⁰ adverse impacts to the local economy¹¹, and all other categories of adverse impacts that have been raised in the EISs. Reducing the size of the project by about one-third by eliminating the Highmount Spa Resort would substantially reduce the project's impacts. By contrast, the DUMP compares the impacts of some (if not all) of its alternatives across 16 different types of potential impacts.

The SDEIS does contain two tables (5-2 & 5-3) comparing a random few impacts for the preferred alternative and the two alternatives that have already been rejected by the applicant. The no-Highmount alternative is not included in this comparison. Thus, rather than serving its intended purpose of providing the decision-makers with a basis for choosing "from among the reasonable alternatives available" to "avoid[] or minimize[] adverse environmental impacts to the maximum extent practicable" (6 NYCRR § 617.11(d)(5)), the alternatives discussion in the SDEIS is used solely to justify the applicant's preferred alternative.

The rationale given for not analyzing the relative benefits of the no-Highmount alternative is contrary to the guidance given by the DEC *SEQR Handbook*:

An analysis of alternative project configurations or designs will enable the lead agency to determine if there are reasonable, feasible alternatives which would allow some or all of the adverse impacts to be avoided while generally satisfying the sponsor's goals. A project sponsor generally develops its project proposal based solely on its own goals and objectives. These goals and objectives may not include maximum protection of environmental factors, and are not always shared by the reviewing agencies or the public. Requiring that reasonable alternatives be discussed allows a reviewer to independently determine if the proposed action is, in fact, the best alternative for that project when all environmental factors have been considered. *SEQR Handbook*, p. 121, § 5.C(22) (emphasis added).

⁹ See § 4.C, below.

¹⁰ See Zamurs Report, Exhibit E.

¹¹ See Siegel Report, Exhibit A.

Analysis of the no-Highmount alternative was mandated by the Scoping Document¹² for the SDEIS: "[t]he Supplemental DEIS shall also address the alternative of eliminating the Highmount Spa Resort in its entirety." Scoping Document, Part B, p. 39; SDEIS p. 5-6. However, without analyzing the environmental impacts (and benefits) of this alternative to the extent necessary to comply with 6 NYCRR § 617.9(b)(5)(v), and to allow the requisite comparison of this alternative with the preferred alternative (6 NYCRR § 617.11(d)(5)), the no-Highmount alternative was dismissed out of hand by the authors of the SDEIS solely for financial reasons. SDEIS p. 5-6.

Not only does this failure violate SEQR, and the guidance of the *SEQR Handbook*, it violates the express mandate of the Scoping Document. Moreover, it is not even based on a realistic assessment of the economics of the Project.

The stated justification for retaining the Highmount Spa Resort part of the project relies heavily on a report prepared by HVS Consulting Services and Ragatz Associates in 2008. SDEIS p. 5-7. However, that report, which was prepared when the real estate market was at its peak, found that the hotel aspect of the Highmount Spa Resort was only "marginally feasible". SDEIS, Appendix 5, HVS Report p. 7-8. At this point, 5 years later, it is no longer feasible. See Siegel Report.

Furthermore, Ragatz now believes that has determined that the market for shared-ownership units such as those proposed for the Resort has declined 80% since that time.¹³ The detailed economic analysis of the Project prepared for CHA by Siegel demonstrates that the Resort as a whole is oversized and should be reduced in scale. This is further described at Section III.A below.

Therefore, the alternatives analysis of the SDEIS fails to comply with both the Scoping Document and the SEQR regulations. See Brander, supra; MYC New York Marina, supra. This failure must be remedied by providing a detailed comparison of the adverse impacts of the preferred alternative and the no-Highmount alternative. In addition, the specious reliance on the outdated

¹² Final Scoping Document, Belleayre Mountain Ski Center Unit Management Plan - DEIS, and Modified Belleayre Resort at Catskill Park Supplemental DEIS, dated February 28, 2008 ("Scoping Document").

¹³ See Siegel Report, Exhibit A.

HVS and Ragatz studies (SDEIS, Appendix 5) to justify the continued consideration of the Highmount Spa Resort should be rejected.

D. CHA's Alternative Would Be Better for the Environment, for Skiers and for the Local Economy

CHA's proposed alternative would eliminate the Highmount Spa Resort and much of the related ski area expansion that would be necessary to connect that area to the existing BMSC. The Resort development would be focused on the Wildacres area, and ski area expansion would occur at the eastern end of the BMSC.¹⁴ These changes would greatly reduce the Project's adverse environmental, social and financial impacts.¹⁵ CHA's alternative proposal is more fully described and supported at Sections III.A and III.B, below and in the Siegel and Alpentech Reports (Exhibits A and C).

Because the Resort is oversized for the market, and would damage existing local businesses, eliminating the Highmount Spa Resort would actually protect the local economy and the existing community character.¹⁶

Finally, spared from the poorly designed layout forced on it by the goal of connecting BMSC to the Highmount Spa Resort, so that Crossroads Ventures can sell ski-in/ski-out "shared-ownership units", BMSC can implement a well-designed plan to improve the skiing experience for the public.¹⁷

II. THE PROPOSED CONNECTION BETWEEN BMSC AND THE SPA VILLAGE SKI FACILITIES WILL CAUSE SIGNIFICANT LEGAL AND DESIGN PROBLEMS

Crossroads has proposed to build a chairlift, to be known as the "Spa Village" lift, related ski trails, and a warming hut, which would be located partly on its property at the Highmount

¹⁴ See Alpentech Report, Exhibit B.

¹⁵ See Alpentech, Siegel, Sterling, Zamurs and Hoffman Reports; Point I.C, supra.

¹⁶ See Siegel Report, Exhibit A.

¹⁷ See Alpentech Report, Exhibit B.

Spa Resort and partly on the land that Crossroads proposes to sell to the State for inclusion in the Forest Preserve and the BMSC. This lift and trails would supposedly be built by Crossroads and leased and operated by ORDA. SDEIS p. 2-15.

The DUMP and the SDEIS fail to take into account many of the infrastructure and operational needs and environmental impacts of these facilities. The failure of the DUMP to include them in its plans means that they can not be legally constructed on the Forest Preserve. In addition, this proposal would violate the Public Authorities Law and Article 14, § 1 of the New York State Constitution.

A. The Spa Village Ski Facilities
are Not Included in the DUMP

The Catskill Park State Land Master Plan ("CPSLMP")¹⁸ requires the preparation of a unit management plan ("UMP") for each Forest Preserve unit in the Park. CPSLMP Section V. The DUMP has been prepared in an attempt to satisfy that requirement. Among the requirements for a UMP are that it must identify "needed additions or improvements" to the unit "for providing for further appropriate public use of, [sic] the area consistent with its carrying capacity". CPSLMP p. 57. The DUMP fails to address the Spa Village ski facilities that have been proposed by Crossroads.

Crossroads has proposed to construct part of its Spa Village chairlift, part of at least one ski trail, various connector ski trails, and a warming hut, on land that it hopes to sell to the People of the State of New York for construction of the Highmount ski lift and ski trails. SDEIS pp. xii, xvi, xxx, 2-14, 2-15, 3-76. The map at SDEIS Drawing 2-32 shows the proposed layout of these facilities, including the proposed boundary line between State land and private land.

Once the land at the Highmount ski area is sold to the State, it will become part of the Forest Preserve pursuant to Constitution Article 14, § 1 and ECL § 9-0101(6). At that point, it must be classified and incorporated into a specific unit, which will presumably be the BMSC. CPSLMP Section III. In order for the ski facilities to be built on it, they must be included in the UMP for the unit. CPSLMP p. 57.

¹⁸ www.dec.ny.gov/lands/43013.html

The DUMP does not currently incorporate the Spa Village ski facilities. See e.g. DUMP pp. 3-23, 3-27, sheets SM-1, TR-1; CIA Fig. 1.1-1, Fig. 1.3-1.¹⁹ The proposed Spa Village lift (both on and off the Forest Preserve) is not included in the list of proposed lifts. DUMP p. 3-23, Table 3.2-12. The proposed Spa Village trails (both on and off the Forest Preserve) are not included in the list of proposed ski trails. DUMP p. 3-27, Table 3.2-13.

Likewise, the SDEIS states that the "Spa Village lift, which will be constructed by the Applicant and leased and operated by the BMSC ...". SDEIS p. 2-15. However, the DUMP makes no mention of ORDA doing so. Nor does the CIA.

The omission of the Spa Village ski facilities from the DUMP means that they can not be constructed on the Forest Preserve lands of the BMSC and that ORDA can not lease or otherwise operate them. This omission also shows a significant lack of coordination between ORDA and Crossroads regarding the future operation of the skiing facilities which are being planned by both organizations.

B. The EISs Do Not Appear to Have Assessed All of the Impacts of the Spa Village Ski Facilities

Because the Spa Village ski facilities are not included in the inventories of ski lifts and ski trails, it is likely that their potential adverse environmental impacts are not included in the impacts assessments in the EISs, including, but not limited to, noise (especially from snowmaking), vegetation clearing, erosion, stormwater runoff, and visual impacts. These impacts must be assessed and included in the revised individual EISs and the CIA.

C. The Spa Village Ski Facilities Are Not Integrated with BMSC

It is unclear how the Spa Village ski facilities would be integrated into the operation of the BMSC:

- Would they be part of the BMSC snowmaking and grooming systems, and if so, is there adequate capacity planned to

¹⁹ A single sheet of the DUMP plans (SM-2) may show snowmaking piping for these trails.

Re: CHA Comments on Belleayre EISs

include them? If not, what will the additional impacts be of adding the required capacity?

- Where would lift tickets for this lift be sold and where would the public park to access this lift?
- Was the ski trail mileage for the additional trails proposed for the Forest Preserve included in the tally of ski trail length permissible under Article 14, § 1 at DUMP pp. 3-15 & 3-27? If not, how will correcting this error affect the total?
- How would these facilities affect the terrain distribution, density, and comfortable carrying capacity of the BMSC, as calculated at DUMP pp. 3-28 to 3-31?
- Who would pay the cost of building the lift, warming hut and trails?
- Who would pay the cost of operating the lift and snowmaking, and of grooming and maintaining the trails?
- How would the flow of skiers between this area and BMSC work? How would they reach the top and bottom of the Spa Village lift from BMSC?
- Would these trails be functional for more than a few weeks a year, given the need to limit night-time snowmaking so as to minimize noise impacts?²⁰

These are just some of the many problems that appear not to have been addressed by Crossroads and ORDA in the EISs. Additional related concerns are discussed in the Alpentech Report.

D. The DUMP Does Not Comply With the CPSLMP

Section V of the CPSLMP sets out the requirements for the content of UMPs in the Catskill Forest Preserve. The DUMP does not appear to address all of the required elements for a UMP. The missing elements include, but are not limited to:

- An evaluation and plan for implementation of the Limits of Acceptable Change Model. CPSLMP p. 57.

²⁰ See Alpentech Report, Exhibit B, pp. 11-12.

Re: CHA Comments on Belleayre EISs

- An assessment of the unit's physical and biological carrying capacity. CPSLMP p. 56.
- Removal of nonconforming uses. CPSLMP p. 57.

The DUMP should be revised to address all of the requisite elements of a UMP for the Catskill Forest Preserve.

E. ORDA Lacks the Authority to Operate the Private Spa Village Ski Facilities

Public Authorities Law ("PAL") Article 8, Title 28 creates ORDA and empowers it to manage certain facilities on behalf of the State, including "Belleayre Mountain ski center". PAL §§ 2611(9), 2614(4). However, the statute does not give it the authority to lease or manage ski facilities on private land at BMSC. This may be contrasted with the authority given to ORDA to manage ski facilities owned by the Town of Johnsbury, which adjoin Gore Mountain. PAL § 2614(5).

Without such statutory authority, ORDA may not lease or manage the Spa Village ski facilities, as proposed by Crossroads. SDEIS p. 2-15.

F. The Proposed Spa Village Ski Facilities Would Violate Article 14

The proposed Spa Village chairlift, ski trails, warming hut and connector trails are primarily intended to allow people to access the Resort. SDEIS p. 2-15. The construction of trails and a ski lift on Forest Preserve lands, and the destruction of trees thereon, for the benefit of a private corporation would violate Article 14, § 1 of the Constitution, which provides in part:

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Furthermore, if the upper elevations of the lift and trails were located on Forest Preserve land, it would be a violation of Article 14 to allow a private corporation such as Crossroads to build and/or own a ski lift, warming hut and ski trails on the

Forest Preserve, as proposed at SDEIS p. 2-15, even if they were to be leased to or managed by ORDA. Compare Slutzky v. Cuomo, 114 A.D.2d 116 (3d Dept. 1986).

G. The State Should Not Purchase
or Lease Any Land at Highmount

Crossroads has proposed that the State buy from it a parcel of land at the former Highmount ski area and also lease from it the Spa Village ski trails and facilities on adjoining land that Crossroads would retain. It is unclear why, when there are so many other pressing needs in the State budget, including in the land acquisition budget for the Forest Preserve, the State should spend its limited funds to acquire land for ski lifts and trails that will primarily benefit a private business.

Public funds should not be spent for this purpose. If public funds are spent, that could result in a violation of the Gift Clause, Article VII, § 8 of the State Constitution. If the State does ultimately decide to acquire any interest in these lands, the property and/or leasehold interest should be donated to it by Crossroads.

III. CHA'S EXPERT REPORTS DEMONSTRATE
THAT THE EISs ARE SEVERELY DEFICIENT

The attached reports by CHA's experts demonstrate the analyses in the EISs do not meet the standards required by SEQOR and the laws and regulations governing the permit applications. The EISs and the permit applications will require significant supplementation before the review of the Project can proceed.

The Siegel Report and the Alpentech Report, together with portions of other reports, outline CHA's proposed alternative project for BMSC and the Resort and demonstrate why this alternative is superior to the current proposals.

A. The Siegel Report Shows That the Project
is Not Economically Viable and Will Hurt
Existing Local Businesses and Communities

Michael Siegel of Public and Environmental Finance Associates ("Siegel") has reviewed the EISs on financial, fiscal and economics issues. His qualifications are set forth at Exhibit B. Among the key findings in his report (Exhibit A) are:

Re: CHA Comments on Belleayre EISs

- The alleged financial feasibility of the Resort is based on out of date 2008 studies (SDEIS Appendix 5) that were done at the peak of the real estate market, which, over 5 years later, has not recovered from the Great Recession. No new studies have been done since then.
- Even in 2008, Crossroads' consultant HVS Consulting Services found that the hotel component of the Resort was only "marginally feasible". No new analysis of its feasibility has been performed since then.
- Crossroads' consultant Ragatz has found that as of 2013, the market for shared-ownership units of the type proposed by Crossroads has collapsed by 80%.
- The Resort is over-sized for the market and, rather than grow the local tourism industry, it will divert customers from existing businesses and ski areas. Thus, the projected economic benefits to the community are overstated and local businesses will suffer.
- The Resort's feasibility is undermined by its underestimation of construction costs by 20% to 30%. [As shown elsewhere in these comments and the attached reports, many aspects of the Resort's costs were not even included in those estimates, so that the total underestimation is even greater than the percentages calculated by Siegel.]
- The projected increase in skier days at BMSC is the product of wishful thinking and will not be achieved at the projected levels. Therefore, the "full build-out" alternative for BMSC is not warranted.
- Increases in skier days over a several year period at BMSC were inflated by DEC's policy of giving away large numbers of lift tickets. When ORDA took over the BMSC and ended this policy, skier days actually dropped significantly. Therefore, data from the years under DEC's management are not a reliable basis for predicting future performance.
- The levels of operating and capital expenditures required to sustain the full build-out alternative for the BMSC will drive up lift ticket prices, further depressing skier days.
- The DUMP shows that the financial benefits to the community of improving the BMSC are not dependent upon the building of the Resort.

Re: CHA Comments on Belleayre EISs

- A more economically feasible Project would eliminate the West side and Highmount aspects of the BMSC expansion and drop the Highmount Spa Resort. An east side expansion of BMSC could be more financially feasible.
- Such a smaller alternative Project is far less likely to damage the local economy than the current proposal by Crossroads.

B. The Alpentech Report Shows That CHA's East Side Alternative Plan for the Expansion of BMSC is Superior to the Current Proposals

Beat Von Allmen and Iwan Fuchs of Alpentech, Inc. ("Alpentech") have reviewed the EISs on ski area design and operation issues. Their qualifications are set forth at the end of their report (Exhibit C). As shown by their report, they have previous extensive experience with BMSC.

At CHA's request, Alpentech has done a preliminary design for an East Side alternative for the BMSC, which is described in their report (Exhibit C) and depicted on their Map-1 (Exhibit D). As discussed above, this alternative was mentioned in the DUMP as a conceptual alternative, but no specifics were provided. CHA and Alpentech have attempted to remedy that deficiency, to the extent possible.

The East Side alternative would create new ski trails and a new lift in the Cathedral Glen area of the BMSC, in an area where trails already exist and which has previously been studied for expansion. It would provide longer trails than the proposed West Side and Highmount trails. It would occupy less land and cost less to build and operate, yet would be more easily integrated into the existing trail network and ski area operations. It would not require the State to acquire additional land from Crossroads.

The East Side alternative also proposes that a zipline be built in the Cathedral Glen area in order to attract summer business and extend the season for BMSC and local businesses.

Among the other key findings in the Alpentech Report (Exhibit C) are:

- The EISs have stated that in order to mitigate noise impacts from snowmaking guns, night-time snowmaking would have to be

Re: CHA Comments on Belleayre EISs

prohibited on parts of certain trails. However, night-time often provides the best weather for snowmaking. With climate change increasing, suitable day-time temperatures for snowmaking will decrease. Thus, it may not be feasible to make adequate snow on these trails to have them open for the full season. This discussion in the Alpentech Report calls into question the entire rationale for the West and Highmount ski trails, as well as the Spa Village ski trails.

- The proposed relocation of the base area facilities to the Discovery Lodge area will result in:
 - Operational inefficiencies for grooming and maintenance of BMSC.
 - A poor skier traffic pattern, that will force beginner and advanced skiers to share the same areas, resulting in skier safety problems. The current layout separates these groups, providing for a better beginner skiing experience and a safer situation for both groups.
 - The proposed West and Highmount trails would result in additional skier congestion at the base area and other problems with skier traffic patterns.
 - Increased energy usage and greenhouse gas emissions.
- It is unclear how the Highmount and Spa Village areas would be integrated into BMSC.
- The designs of the run-out areas for the West and Highmount lifts are unsafe.
- In prior analyses, the State rejected purchasing the Highmount ski area.
- The proposed tubing area is too steep, lacks an adequate run-out area, and is unsafe.
- The snowmaking system proposals have design flaws, particularly in light of climate change.
- The West end alternative would create more stormwater runoff impacts than the CHA's proposed East end alternative.
- No cost breakdowns are provided for any alternative other than the Full Build-Out alternative.

- Alpentech's preliminary estimates show that it would cost 46% more to operate the West end alternative than CHA's proposed East end alternative.
- Alpentech's preliminary estimates show that it would cost 47% more to construct the snowmaking system for the West end alternative than for CHA's proposed East end alternative.
- The proposed Project could lead to higher lift ticket prices, forcing less affluent skiers out of the sport.
- The rationale for the DUMP's estimated increase in skier visits is unsupportable.

C. The Zamurs Report Shows That Transportation and Air Pollution Impacts Were Not Properly Analyzed

John Zamurs of Zamurs and Associates, LLC ("Zamurs") has reviewed the EISs on transportation and air pollution issues. His qualifications are set forth at Exhibit F. Among the key findings in his report (Exhibit E) are:

- The traffic study should have been done on a year-round basis, not just for the winter.
- The traffic study should have covered the routes that customers will use to reach the Project, not just the local area.
- The Project has implications for potential non-attainment levels of ozone pollution in the summer.
- Traffic levels generated by the Project have been underestimated.
- No responsible party is defined for many of the necessary traffic improvements, and no funding is available to implement them.
- The EISs are not consistent with the AIP and the Scoping Document.
- Obsolete models were used for modeling air quality impacts, and the modeling must be redone.

Re: CHA Comments on Belleayre EISs

- Particulate matter emissions appear to have been underestimated and not all relevant pollutants were examined.
- The air modeling should have been done using local weather data, rather than data from the Albany Airport, where weather, altitude and topographic conditions are quite different.
- There are numerous other defects in the assessment of air pollution impacts, including greenhouse gas emissions.
- Climate change will increase the levels of stormwater runoff and impacts to culverts and roadways. This was not taken into account.

D. The Hoffman Report Reveals Numerous Flaws
in the Engineering Analyses for the Project

Dr. Lance D. Hoffman, Ph.D. ("Hoffman") has reviewed the EISs on engineering issues. His qualifications are set forth at Exhibit H. Among the key findings in his report (Exhibit G) are:

- Crossroads' soil test results conflict with published data and are incomplete.
- Many of the affected soils are not suitable for the development proposed on them, and there is not enough fill available on-site for the required construction.
- There are significant concerns about the two proposed dams.
- Permits are required for the proposed mining and batch plant operations.
- There are significant problems with the design, engineering and financial aspects of the proposed wastewater treatment system.
- Impacts to County Route 49A were not properly assessed.
- There are significant problems with the stormwater control analysis.

Re: CHA Comments on Belleayre EISs

- The potential adverse impacts of horizontal directional drilling for the installation of water and sewer lines were not assessed.
- The Project does not comply with the Town of Shandaken Comprehensive Plan.

E. The Bowman Report Shows That the Assessment of Geological Issues Has Significant Omissions

Barry Bowman of NZR Geologic ("Bowman") has reviewed the EISs on geological issues. His qualifications are set forth at Exhibit J. Among the key findings in his report (Exhibit I) are:

- The issue of radon intrusion into the subterranean hotel at Highmount has not been addressed, despite past studies that show that excess levels of radon often occur in the Town of Shandaken and Ulster and Delaware Counties.
- The SDEIS also fails to assess the potential for harmful mold in the ventilation system of this structure.
- The water modeling fails to take into account the region's history of regular droughts and the effects of sedimentation on the snowmaking pond.

F. The Keller Report Raises Significant Questions About Impacts to Aquatic Habitat and Trout Fisheries

Walter T. Keller, a former DEC fisheries manager ("Keller"), has reviewed the EISs on fisheries issues. His qualifications are set forth at Exhibit L. His report (Exhibit K) raises questions in several areas of concern:

- The potential for impacts to ground and surface waters, thereby affecting trout habitat.
- The failure to analyze impacts to all potentially affected trout streams.
- The lack of analysis of impacts to stream biota.

G. The Sterling Report Reveals Significant Engineering Defects in the Project's Design

Sterling Environmental Engineering, P.C. ("Sterling") has reviewed the EISs on water quality and related issues. Sterling is a leading full-service environmental engineering company.²¹ Its report (Exhibit M) demonstrates that there are severe defects in the engineering design and environmental impact assessment of the Project, and that the applications for permits by ORDA and Crossroads must be denied. Among the key findings in its report are:

- The Project will worsen existing culvert overflow and erosion problems along County Route 49A. [If CHA's alternative project design were adopted by ORDA and Crossroads, this impact may be greatly reduced due to the elimination of most new development above Route 49A.]
- The Pine Hill Wastewater Treatment Plant ("WWTP") lacks adequate capacity to handle the flows from the Project, even with the proposed flow equalization tanks. If CHA's alternative project design were adopted, eliminating the Highmount Spa Resort, this impact could be reduced due to the reduced flows from the smaller alternative.
- There is no responsible party or funding source identified for many of the proposed mitigation measures necessary to make the Project comply with SEQOR and other applicable laws and regulations.
- Stormwater runoff, erosion and poor sewage treatment from the Project could cause further impairment of the Ashokan Reservoir.
- Impacts to trout streams were not properly considered.
- The dam permit application is incomplete and the required evaluation of safety hazards to people downstream of the 41 million gallon snowmaking pond has not been performed.
- A critical permit application to the Delaware River Basin Commission is missing.

²¹ See www.sterlingenvironmental.com/ .

- The Resort will lead to excessive development on steep slopes.
- There are significant errors in the stormwater modeling that will lead to inadequate stormwater management controls.

IV. THE EISs DO NOT PROPERLY ASSESS
ALL OF THE PROJECT'S ADVERSE IMPACTS

In addition to the defects in the EISs established above, and in the exhibits hereto, the EISs do not properly address numerous other potential adverse environmental impacts of the Project.

A. Wastewater Treatment Capacity

1. The Project has usurped all of the remaining capacity in the Pine Hill WWTP. As shown by the letter from the New York City Department of Environmental Protection to the Catskill Watershed Corporation, dated April 1, 2011, a copy of which is annexed hereto as Exhibit N, no additional capacity exists in this sewage treatment plant for other potential users because all of its current excess capacity has been reserved for three actions, two of which are the Crossroads project and the expansion of the BMSC.

This situation creates at least two adverse impacts. First, it prevents other users from hooking up to the WWTP and resolving existing environmental impacts due to inadequate wastewater treatment.

Second, it effectively puts a cap on future business and residential development in the existing hamlets in the Route 28 corridor. Without adequate sewage treatment options, existing businesses will not be able to expand, new business can not be developed, and new residences can not be built. As shown by the Siegel Report (Exhibit A), the Project will cannibalize the existing businesses in the area. This problem will be compounded by the inability of local businesses and homebuilders to obtain sewage treatment for their own projects.

The EISs should have taken both of these effects into account.

B. Noise Impact Analysis

2. The analysis of noise impacts to the Forest Preserve is deficient in that, rather than assess impacts to all Forest Preserve lands, the analysis is limited to impacts to Wilderness Areas. SDEIS Appendix 20. However, there are large areas within the boundaries of the BMSC Intensive Use Area that are not used for skiing, and which continue to exist in their natural state. See SDEIS Appendix 20, Figure 2-1 & DUMP Sheet G-3. These areas will be impacted by the noise from the Project. SDEIS Appendix 20. In particular, there are hundreds of acres between the Highmount area of the Project and the noise monitoring location (ML-W1 & #FP-1) that was used to calculate potential noise impacts on the Forest Preserve. See SDEIS Appendix 20, Figure 2-1 & DUMP Sheet G-3.

This has the effect of using constitutionally protected Forever Wild forest lands that are in the BMSC Intensive Use Area, but are outside of the areas actually being used for the BMSC, as a buffer for the Project's noise. The potential noise impacts on these lands should be calculated, assessed, and mitigated.

The CPSLMP (p. 48) provides that Intensive Use Areas will be used for "recreational activities that are appropriate to a wild forest setting", shall be developed in conformity "with the wild character of the Forest Preserve", and shall be used "in a setting and on a scale in harmony with the wild and undeveloped character of the Forest Preserve and Catskill Park." Thus, there is no reason to ignore noise impacts to the Intensive Use Area lands.

The failure to treat all Forest Preserve lands as wild recreational lands, and measure noise impacts only at the Wilderness Area boundary, provides an almost one-mile wooded buffer that, in reality, does not exist. This extra distance resulted in an analysis that significantly understated noise impacts to the Forest Preserve. Noise impacts on the Forest Preserve should be recalculated at the edge of the active ski area.

3. It appears that the noise impact analysis did not take into account the DEC Noise Impact Policy²² which, at page 7,

²² DEC Program Policy DEP-00-1, *Assessing and Mitigating Noise Impacts* ("Noise Impact Policy"); available at

requires that 10 dBA be added to all noise levels measured between 10 p.m. and 7 a.m.

4. The noise impact analysis was apparently based on ambient noise level testing done in the month of May. It is not clear whether that was during leaf-on or leaf-off conditions and how that may affect the results.

C. Wildlife Impact Analysis

5. The wildlife impact analysis in all three EISs failed to fully assess the Project's impacts on wildlife because it looks only at impacts within the footprint of the areas where land will be cleared or development will occur. It fails to address the "ecological effect zone" around each of these areas. For example, according to a recent study by the Wildlife Conservation Society, the ecological effect zone for birds can extend as much as 200 meters from a structure, and a single house can affect 30 acres.²³ "These changes can have myriad impacts, including altered species behavior and composition, increased human wildlife conflicts, new predator-prey dynamics, and decreased biotic integrity (a measure of how pristine a wildlife community is)."²⁴

The Project will result in the clearing of over 334 acres of land (CIA § 1.5.2), yet the CIA and EISs make no attempt to quantify or assess the severity of the habitat loss that will result, aside from vague conclusory statements. When 200 meter ecological effect zones are also taken into consideration, thousands of acres of habitat could suffer potential adverse effects on birds and other wildlife. Glennon & Kretser, supra.

www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf .

²³ Glennon & Kretser, "Size of the ecological effect zone associated with exurban development in the Adirondack Park, NY", *Journal of Landscape and Urban Planning*, Vol. 112, April 2013, p. 10. See also Glennon & Kretser, "Impacts to Wildlife From Low Density, Exurban Development - Information and Considerations for the Adirondack Park", Wildlife Conservation Society, 2005. Copies of these studies are available upon request.

²⁴

www.wcs.org/press/press-releases/study-single-rural-birds.aspx .
A copy of this article is available upon request.

These additional impacts must be assessed, in the proper seasons of the year, before the review of the Project proceeds any further.

6. The wildlife impact analysis failed to fully assess the Project's potential impacts on amphibian habitat because it only considered impacts to streams and wetlands used by amphibians for certain habitat purposes (SDEIS Appendix 23, DUMP § 4.5 & CIA § 1.4), and did not consider that amphibians use a wide variety of habitats during their life cycles, including upland habitat at least 800 feet away from the streams and wetlands where they typically breed.

In reviewing a similar project in the Adirondack Park, the Adirondack Park Agency ("APA") recently found that:

82. Some development is proposed in areas comprising upland amphibian habitat. It is possible that some of this proposed development would prevent amphibian migration patterns and that human/amphibian interactions would result in amphibian mortality. A comprehensive amphibian survey and impact analysis will identify critical habitat areas and amphibian migration corridors which require additional protection.²⁵

Based on this finding, APA required the developer in that case to conduct amphibian upland habitat studies of areas within an 800 foot radius around their wetland habitats.²⁶

Crossroads and ORDA have not undertaken such an analysis for impacts to upland amphibian habitat, and should be required to do so, in the proper season of the year, before the review of the Project proceeds any further.²⁷

²⁵

apa.ny.gov/_assets/ACR/P2005-0100-20120131-CCP-F-Order-mlr.pdf

²⁶ apa.ny.gov/_assets/ACR/P2005-0100-4-20120131-CCP-F-Small_Eastern_Great_Camp_Lots_Permit-mlr.pdf at ¶¶ 24-31. Copies of these APA documents are available upon request.

²⁷ APA allowed these studies to be done after-the-fact and to exclude certain parts of the project site. Id. Those omissions, and others, are currently the subject of litigation. See Protect the Adirondacks v. APA, 38 M.3d 1235(A) (Sup. Ct., Albany Co. 2013).

7. Despite purporting to assess habitat fragmentation, the EISs failed to do so. One of the principal adverse effects of habitat fragmentation is the creation of forest edge habitat, which adversely affects forest-dwelling species. See Glennon & Kretser, supra. The CIA claimed (§ 1.5, p. 2) that the Project will not create new forest edge habitat, and will merely "move the edge deeper into the forest." This claim is patently false. For example, construction of 5.9 miles of new ski trails within the BMSC (DUMP p. 3-16) will create about 11.8 miles of new edge habitat. Construction of the ski lifts, Spa Village ski trails, parking lots, housing and other development will create several additional miles of edge habitat. Overall, the increased edge habitat will adversely affect hundreds of additional acres of woodland habitat.

These impacts should be assessed, in the proper season of the year, before the Project proceeds any further.

D. Community Character

8. As described in the Siegel Report, the Project will cannibalize existing local businesses and other ski areas. The CIA (§ 1.9, pp. 6-7) recognizes that this could occur, but, without any evidentiary support,²⁸ claims that much of the Project's business would come from new customers. The Siegel Report proves otherwise.

The EISs should address this issue in depth, taking into account the conclusions drawn by the Siegel Report. This analysis should include such potential effects on community character as the closure of businesses and abandonment of buildings, loss to the community of the character of small, locally owned establishments, and the drawing of business and residential growth away from the existing hamlets into the Resort.

9. CHA and CPC made a significant record on community character impacts during the prior issues conference on the

²⁸ Indeed, this conclusion is contradicted by page 7-3 of the SDEIS, which claims, again without support, that local businesses will capture some of the increased spending that the Project will allegedly create, and without addressing the competition from the Project.

Project.²⁹ Although the Project has been redesigned, there has been little change in its overall size, and thus little to no reduction in the scale of its impacts to community character. Therefore, despite the changes to the Project since the issues conference, this issue remains important, and the issues conference record remains relevant. That issues conference testimony and related exhibits are incorporated herein as comments on the SDEIS, DUMP and CIA, as if they were more fully set forth herein. DEC already has these records in its possession.³⁰

E. Climate Change

10. On March 27, 2013 CHA submitted to you a letter on the potential impacts of climate change on the viability of the Project. A copy of that letter is annexed hereto as Exhibit O and should be considered as comments on the EISs, and responded to accordingly pursuant to 6 NYCRR § 617.9(b)(8).

11. The DUMP recognizes that climate change is occurring, but fails to assess its potential effect on the financial and operational viability of the Project. As discussed in the Alpentech Report, this impact could be significant. ORDA should undertake a detailed analysis of the effects of climate change, including on the ability of BMSC to make adequate snow at a reasonable cost, on the length of the ski season, and on the potential loss in skier days and revenue.

12. ORDA should also assess the wisdom of moving the principal base area structures and operations to a much lower altitude. The current layout of BMSC gives it something of an advantage in responding to climate change, in that its principal base facilities are located at a relatively high elevation on the mountain, and that even if snow cover is sparse on the lower mountain, it can still operate on the upper mountain. It makes no sense to throw this advantage away, even as it becomes more important. The Alpentech Report lays out other reasons why

²⁹ See Matter of Crossroads Ventures, Commissioner Ruling, November 9, 2007; Interim Decision of the Deputy Commissioner, December 29, 2006; Ruling on Issues and Party Status of the Administrative Law Judge, September 7, 2005.

³⁰ Copies of these documents are available upon request.

moving the base operations to the lower part of mountain makes no sense.

13. With the impending shortening of the ski season, the DUMP should focus more attention on non-skiing recreational opportunities, such as the zipline proposed in the Alpentech Report. This would benefit the recreating public, as well as lengthening the tourist season for local businesses.

14. As discussed in the Zamurs Report, the EISs also fail to address the effects of climate change on stormwater management and erosion issues.

F. Compliance With Local Zoning

15. In the Town of Shandaken, the Resort is located entirely within the R5 and R3 Residential zones which require 5 and 3 acres per building, respectively. See Town of Shandaken Code, Chapter 116 Zoning, Attachment 1, District Schedule of Area and Bulk Regulations (hereinafter "Shandaken Bulk Table"). A simple inspection of the Project Master Plan (SDEIS Sheets 1.00-1.02) reveals more than one building per 5 acres or 3 acres, with as many as a dozen buildings per acre in some locations. This appears to exceed the allowable density. See Shandaken Bulk Table. If the density of units and rooms/acre is 0.85 (SDEIS, Table ES-1 Comparison of DEIS and Modified Projects (page vi)), then a rough gauge of overall density projected per 3-acre lot is 0.85×3 acres, yielding 2.55 units or rooms proposed on average, instead of the one unit allowed.

16. Additionally, Crossroads has made no application for a cluster subdivision. Even within the framework of a cluster subdivision, the number of buildings and units violates the Town of Shandaken Code because, in some areas, there would be more than four dwelling units per acre. See Town of Shandaken Code § 116-32 (M).

17. Crossroads states that the Resort site contains 739 total acres (SDEIS Table ES-1 Comparison of DEIS and Modified Projects (page vi)), but for purposes of determining density, areas with steep slopes must be subtracted prior to making density calculations. See Town of Shandaken Code § 116-32 (A). The SDEIS provides insufficient information to determine the acreage of steep slopes on the 739 acre site. Therefore it is not feasible to calculate a denominator for the required density calculations, exclusive of steep slopes.

18. Crossroads states that there will be 218 developed acres on 739 total project acres (SDEIS Table ES-1 Comparison of DEIS and Modified Projects (page vi)), yielding a structure coverage ratio possibly as high as 29%, while the maximum structure coverage in R5 and R3 zones is 10%. See Shandaken Bulk Table. Insufficient information is provided to determine the exact acreage that the various types of development (e.g., buildings, golf course, parking areas) contribute to the 218 developed acres. Therefore, it is not feasible to calculate a precise figure for the percentage of coverage.

19. Some proposed structures appear to be incompatible with the existing residential zoning (e.g., multifamily dwellings, Leach Farm Conference Center, Marlowe Mansion, and Wilderness Activity Center). See Town of Shandaken Code § 116-10.

20. In addition, the height of some structures is excessive (see elevations from SDEIS Sheet L-4.00). For example, the Highmount Lodge is shown to have a height of 52 feet (2,634' elevation (Roof) - 2,582' elevation (1st Level) = 52 feet), and the Highmount Hotel is shown to extend 78 feet underground (2,602' elevation (Roof) - 2,524' elevation (1st Level) = 78 feet). Elevation figures for the Wildacres Hotel and most other structures are not provided. In the Town of Shandaken, the maximum structure height in any zone is 35 feet. See Shandaken Bulk Table; Town of Shandaken Code § 116-32(J). Therefore, it appears that the proposed structures do not comply with the Shandaken Town Code.

21. The SDEIS should include on the list of required approvals use and area variances from the Town of Shandaken Zoning Board of Appeals and the need to refer the various applications to the County Planning Board.

V. DEC SHOULD PREPARE THE SFEIS FOR THE RESORT

DEC, as lead agency, should prepare the Supplemental Final Environmental Impact Statement ("SFEIS") for the Resort, not Crossroads, the applicant. SEQR § 8-0109(5) provides that:

After the filing of a draft environmental impact statement the [lead] agency shall ... prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided.

The SEQR regulations at 6 NYCRR § 617.9(a)(5) likewise require the lead agency to "prepare or cause to be prepared" the FEIS within 45 days. Thus, the lead agency does not have to do the actual work of preparing the FEIS itself and can have its staff or consultants do so: "The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it." 6 NYCRR § 617.9(b)(8). However, this authority has not been delegated to project sponsors by the regulations.³¹

Therefore, DEC, not Crossroads, should prepare the SFEIS, along with the Final UMP and the Final CIA.

VI. CROSSROADS' APPLICATIONS SHOULD BE DENIED

Ultimately, Crossroads' applications for permits from DEC should be denied, *inter alia*, because:

A. The adverse impacts of the Project have not been avoided or mitigated to an acceptable level as mandated by SEQR. Lane Construction Co. v. Cahill, 270 A.D. 2d 609 (3d Dept. 2000), app. den. 95 N.Y.2d 765 (2000). See also Decision of the DEC Deputy Commissioner, Matter of Lane Construction Co., June 26, 1998. An application may be denied under SEQR when the project's adverse impacts, "cannot be sufficiently mitigated" and "despite the proposed mitigation efforts, unacceptable environmental impacts would occur." Lane Construction Co., supra, at 610, 611-612.

B. The demonstrated unmitigated adverse environmental impacts of the Project have not been offset by its social and economic benefits, if any. 6 NYCRR § 617.11(d)(2) & (d)(5); Lane Construction Co. v. Cahill, supra.

C. The Project does not comply with the applicable SPDES and ECL Article 15 requirements, as shown by the Sterling Report.

³¹ See West Village Committee v. Zagata, 242 A.D.2d 91, 100 (3d Dept. 1998). Also, compare the DEIS procedures at 6 NYCRR § 617.9(a)(1) to (4), which allow the project sponsor to prepare the DEIS, to the FEIS procedures at 6 NYCRR § 617.9(a)(5) to (6), and § 617.9(b)(8), which do not allow the FEIS to be prepared by the project sponsor.

Daniel T. Whitehead
Re: CHA Comments on Belleayre EISs

32

July 24, 2013

CONCLUSION

The EISs and application materials are significantly defective in numerous areas and require substantial correction and supplementation. Most importantly, ORDA and Crossroads should assess, and then adopt, the alternative projects proposed by CHA. Otherwise, the permit applications by Crossroads should be denied.

Sincerely,

/S/ John W. Caffry

John W. Caffry
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JWC/ljs
enc.

cc: Kathy Nolan, Chair, CHA (enc.)

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