

WHITEMAN
OSTERMAN
& HANNA LLP

Attorneys at Law
www.woh.com

One Commerce Plaza
Albany, New York 12260
518.487.7600 phone
518.487.7777 fax

Daniel A. Ruzow
Partner
518.487.7619 phone
druzow@woh.com

April 5, 2013

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

**Re: DEC Application ID# 0-9999-00096
Crossroads Ventures LLC Proposed Mitigation Conditions**

Dear Mr. Whitehead:

The SDEIS Part B submitted by Crossroads Ventures LLC (Crossroads) reflects proposed design details and mitigation measures for the Modified Belleayre Resort project that in part resulted from the 2004 DEC Issues Conference and the subsequent negotiated September 5, 2007 Agreement in Principle¹ (AIP). The AIP was signed by the majority of parties to the DEC permit hearings and related proceedings conducted in 2004-2006. It was the understanding of the AIP signatories that, where appropriate, several provisions would be incorporated into the final approvals of the Department, if and when issued, upon the conclusion of the SEQRA process.

While several of the design elements and mitigation measures were directly related to specific DEC programs, others measures would fall under DEC's SEQRA jurisdiction (e.g. Traffic Impacts – Paragraph 40 to AIP; Organic Golf Course operation, see paragraph 19 and Exhibit E to AIP).

The following is a list of mitigation conditions that the Applicant is voluntarily proposing to meet its environmental commitments in the AIP, all of which are reflected in the SDEIS:

¹ The Agreement in Principle is Appendix 1 to SDEIS Part B.

Stormwater

A. Plan Implementation Oversight- General- (SDEIS Section 3.1.2(1) and Appendix 19, SWPPP)

1. An independent stormwater monitor or monitors (“Independent Monitor”) shall be selected by Permittee, subject to the approval of NYSDEC and NYCDEP, to review and supervise all aspects of the implementation and maintenance of management plans and controls with respect to stormwater and erosion and sediment control programs during construction of the Modified Belleayre Resort project. Prior to approval, the NYSDEC and NYCDEP will provide a 30-day opportunity for AIP party comment on the qualifications of the proposed Independent Monitor, including training, experience and potential conflicts of interest.

2. The role of the Independent Monitor is to assure the effective implementation of all erosion and sediment control practices, all storm water control practices, all construction phasing practices, as well as related measures, pursuant to the Stormwater Pollution Prevention Plan (“SWPPP”) and any permits issued by NYSDEC and NYCDEP. The Independent Monitor shall have the authority to direct that all work which is believed to not conform with the SWPPP or NYSDEC or NYCDEP permits cease immediately in the affected Project area and that any such portions of the Project be stabilized or properly maintained before work is allowed to proceed.

3. The Independent Monitor services are to be conducted in accordance with an Independent Monitor Service Agreement (“I.M. Agreement”). The Independent Monitor shall be either (or both) a qualified professional engineer or a Certified Professional in Erosion and Sediment Control. The Independent Monitor shall be retained as an independent contractor by Permittee pursuant to the I.M. Agreement but will not be affiliated with Permittee, the construction contractors for the Project, or the design professionals involved with developing and implementing the stormwater pollution prevention plans for the Project. The Independent Monitor shall be responsible for conducting inspections, compiling information and drafting reports required to support the submissions which Permittee is or may be obligated to make to NYSDEC and/or NYCDEP pursuant to any permits issued by NYSDEC and NYCDEP. Original copies of all Independent Monitor reports, and any information generated or relied upon by the Independent Monitor related to Permittee’s report, are to be submitted to NYSDEC and NYCDEP, in an unaltered manner, at the same time as Permittee’s report. NYSDEC will send all Permittee’s reports and all Independent Monitor reports or information to a representative designated by the AIP parties as soon as practicable but not later than 72 hours after such report or information is received.

4. The Independent Monitor shall have all necessary staff available that possess the requisite educational background, certifications, licenses and/or experience necessary to perform the various tasks required. The Independent Monitor will have the right to access all locations of the Project site, at any time, to fulfill its responsibilities both during any clearing, grubbing, earth work or construction, and as part of any post-construction review or monitoring. The Independent Monitor will have access to any documents or information related to its duties that

would otherwise be available to NYSDEC or NYCDEP staff in the normal course of their duties. Permittee shall provide the Independent Monitor with adequate office space at the Project site including, at a minimum lockable desks, chairs, lockable file cabinets, telephone, email and internet service, electricity, lights, heat, and air conditioning.

5. The Independent Monitor will be available to NYSDEC and NYCDEP staff at all times while on site, either by telephone, cell phone, e-mail, or other similar means. The Independent Monitor, in addition to its regular duties, will promptly inspect and submit reports on specific areas or attributes of the Project site when requested to do so by staff of NYSDEC and NYCDEP. Copies of all documentation, inspection reports, directives to construction staff, logs, photos, and records developed, collected or generated by the Independent Monitor in connection with the monitoring of the Project are proposed to be maintained in their original format and be available to NYSDEC and NYCDEP. The Independent Monitor will be responsible for retaining all monitoring materials or copies of the monitoring materials on the Project site.

6. In the event that an Independent Monitor finds any non-conformance with the approved SWPPP or related NYSDEC and NYCDEP permit conditions, the Independent Monitor will be responsible for notifying NYSDEC and NYCDEP by email and in writing as soon as reasonably possible but no later than within 24 hours of having notice of an event of non-conformance. The Independent Monitor will provide all reasonable assistance requested by NYSDEC and NYCDEP.

B. Plan Implementation Oversight-SWPPP (SDEIS Appendix 19 and Section 3.1.2(2))

A project Erosion Control Superintendent appointed by Permittee shall be the main point of contact for the Independent Monitor. The Project Erosion Control Superintendent and its staff shall have the following responsibilities.

1. There will be a dedicated erosion control team of 4 to 6 people whose primary role will be repairing, maintaining and upgrading structural erosion control devices such as silt fence, construction fence and wattles. These crews will be equipped with all the necessary equipment and supplies necessary to effectively maintain the erosion control devices. The site work contractor will install all erosion controls and will also be responsible for maintaining the temporary sediment basins under the direction of the Erosion Control Superintendent and supervision of the Independent Monitor.

2. These crews will be directed by the Erosion Control Superintendent who will be a Certified Professional Erosion Control Specialist. Along with the Independent Monitor, the Erosion Control Superintendent will also have complete stop-work authority of all site earthwork contractors and will have the authority to utilize whatever construction equipment and manpower necessary to implement and repair erosion controls in a timely manner.

3. This Erosion Control Superintendent and the crew under its direction will not be employed by the site work contractor, but will be under independent contract to the developer and report directly to the developer's on-site representative.

4. The site work contractor, as directed by the Erosion Control Superintendent will be responsible for constructing and structurally maintaining the construction phase sediment retention basins that will be constructed site-wide.

5. The Erosion Control Superintendent will be the Independent Monitor's point of contact for all issues related to on-site erosion and sediment control.

C. Plan Implementation – Financial Security (SDEIS Section 3.1.2(3) and Appendix 19)

Prior to the commencement of any construction, and as security for the observance and performance by Permittee of its obligations under the erosion and sediment control plans and stormwater control plans prepared for the modified project/lower impact alternative in conformance with the applicable provisions of any NYSDEC and NYCDEP permits issued for the modified project/lower impact alternative, Permittee shall deliver to NYSDEC and NYCDEP the following:

1. A performance bond, letter of credit, or other form of security acceptable to NYSDEC and NYCDEP, issued by a bonding or surety company, bank, or other financial institution located and authorized to do business in the State of New York and otherwise approved by NYSDEC and NYCDEP (such approval not to be unreasonably withheld) (the "Issuer"), in a principal amount equal to the estimated cost of implementing and complying with the SWPPP prepared for the Modified Belleayre Resort project, and the applicable provisions of any NYSDEC and NYCDEP permits, during the period of construction of the Modified Belleayre Resort project. Such estimated cost is to be provided by design professionals and contractors retained by Permittee, subject to NYSDEC and NYCDEP approval which will not be unreasonably withheld. The performance bond, letter of credit or other form of security (i) will remain in full force and effect until completion of construction of the Modified Belleayre Resort project, as certified by NYSDEC and NYCDEP; (ii) will provide that if NYSDEC and NYCDEP determine that Permittee has failed to comply with the provisions of the SWPPP, and/or NYSDEC or NYCDEP permits, and deliver to the Issuer a certificate to that effect and also certifying the estimated cost of curing such failure, including compliance with such plans and/or permits, and restoration of the site as necessary, the Issuer will pay over to NYSDEC and NYCDEP such certified amount; and (iii) will otherwise be satisfactory in form and substance to NYSDEC and NYCDEP. NYSDEC and NYCDEP will, upon application by Permittee, grant permission to reduce the principal amount of the performance bond, letter of credit or other security based upon completion of portions of the Modified Belleayre Resort project and full compliance with those aspects of the SWPPP, and applicable provisions of NYSDEC and NYCDEP permits associated with such completed portions. Prior to delivering any certificate to the Issuer, certifying a failure by Permittee to observe and perform its obligations under such plans and/or permits, NYSDEC and NYCDEP will provide Permittee with written notice of such

failure, allowing Permittee a period of thirty (30) days from the date of such notice to cure such failure.

2. A performance bond, letter of credit, or other form of security acceptable to NYSDEC and NYCDEP, issued by a bonding or surety company, bank or other financial institution located and authorized to do business in the State of New York and otherwise approved by NYSDEC and NYCDEP (such approval not to be unreasonably withheld) (the "Issuer"), in a principal amount equal to the estimated cost of operating and maintaining all stormwater controls to be constructed or installed for the Modified Belleayre Resort project in conformance with the SWPPP prepared for the Modified Belleayre Resort project, and the applicable provisions of NYSDEC and NYCDEP permits, for a period of five (5) years following completion of construction of the modified project/lower impact alternative. Such estimated cost is to be provided by design professionals and contractors retained by Permittee, subject to NYSDEC and NYCDEP approval which will not be unreasonably withheld. The performance bond, letter of credit or other form of security (i) will remain in full force and effect for a period of five (5) years from completion of construction of the Modified Belleayre Resort project, as certified by NYSDEC and NYCDEP; (ii) will provide that if NYSDEC and NYCDEP determine that Permittee has failed to comply with the provisions of the SWPPP or NYSDEC or NYCDEP permits with respect to the operation and maintenance of such stormwater controls, and deliver to the Issuer a certificate to that effect and also certifying the estimated cost of curing such failure, including compliance with such plans and/or permits, and restoration of the site as necessary, the Issuer will pay over to NYSDEC and NYCDEP such certified amount; and (iii) will otherwise be satisfactory in form and substance to NYSDEC and NYCDEP. NYSDEC and NYCDEP will, upon application by Permittee, grant permission to reduce the principal amount of the performance bond, letter of credit or other security based upon completion of portions of the Modified Belleayre Resort project, and Permittee satisfactorily operating and maintaining those stormwater controls associated with such completed portions for a period of five (5) years following completion of construction, in accordance with such plans and/or permits. Prior to delivering any certificate to the Issuer, certifying a failure by Permittee to observe and perform its obligations with respect to the operation and maintenance of stormwater controls, NYSDEC and NYCDEP will provide Permittee with written notice of such failure, allowing Permittee a period of thirty (30) days from the date of such notice to cure such failure.

D. Water Treatment Chemical Usage (SDEIS 3.1.2(9) and Appendix 19)

The Permittee is authorized to use Storm Klear Liqui-Floc (chitosan acetate) during construction periods only, for the treatment of stormwater which accumulates in any stormwater management pond, provided the following conditions are met.

Dosage – Runoff water collected in ponds shall be treated with chitosan based on the turbidity level and quantity of water being treated, at doses which result in a maximum concentration for the appropriate turbidity range, as follows:

Pond Turbidity	Maximum Pond Concentration (mg/l)
50-400	1.0
400-1400	1.1
1400-2400	1.2
2400-3400	1.3
3400-4400	1.4
4400-5000	1.5

Discharge – Stormwater treated with Storm Klear Liqui-Floc shall be discharged in accordance with the following requirements:

- No treated stormwater may be directly discharged to any surface water under any conditions.
- No treated stormwater may be discharged which exceeds a 50 NTU turbidity value, in any manner. [Per the DEIS, turbidity will be measured at a meter installed at the pump that is pumping out the sediment basins. Readings over 50 NTU on the turbidity meter will result in an automatic shutoff of the pump.]
- Whenever possible, treated stormwater must be transferred from a stormwater management pond to an Irrigation Pond for future irrigation purposes.
- Stormwater which cannot be transferred to an Irrigation Pond, due to insufficient capacity or for any other reason, must be discharged to the ground (overland flow) at a location which is at least 300 feet from the nearest surface water, including intermittent streams, in an area which is fully vegetated at the disposal location and over the entire pathway to the surface water.
- Discharge of the treated stormwater to land must be performed in a manner which results in even and controlled distribution of the stormwater, and which will not result in scouring, channelization, or erosive velocities.

No other WTC may be used by the Permittee without prior authorization, on a case-by-case basis, by the Department.

E. Organic Golf (SDEIS Appendix 15)

Potential impacts to aquatic biota will be mitigated by implementing the proposed Project organic golf course management plan. The Highmount Golf Club shall be managed as organic. The following principles and criteria for the organic management plan for the SDEIS and golf course operation shall be observed by the Permittee:

- i. "organic golf course management" means operating and maintaining a course by using biological, cultural and mechanical practices that foster soil health, maintain biodiversity and the watershed ecology while ensuring playable golf course turf, without the use of synthetic chemicals (except as provided for pursuant to Appendix 15 to the SDEIS).
- ii. Organic management of the Highmount Golf Club will be achieved and maintained by implementing a management approach that places on the site the fewest inputs

necessary to provide a sustainable, high quality and nationally recognized golf course operation. To assure organic golf course operation at the Highmount Golf Club, an annual Organic Management Plan will be developed, implemented and revised as necessary; a dynamic list of approved and prohibited substances will be complied with; and an Organic Golf Course Technical Review Committee will be established to oversee implementation of this condition and the provisions of Appendix 15 to the SDEIS which sets forth implementation details for this condition.

iii. Following five years of Highmount Golf Club operation pursuant to this Permit, the operator may seek approval from the NYSDEC to modify the conditions of its SPDES permit relating to organic golf course operation, provided that the State or federal government or an independent certifying entity adopts and implements an organic golf course program substantially similar to the one set forth in this Agreement and that the operator applies for and receives certification of the Highmount Golf Club as organic under such a program. In this event, this SPDES permit will be modified to incorporate the operator's commitment to continued participation in and compliance with the respective new State or federal or independent certifying program.

iv. Following five years of Highmount Golf Club operation pursuant to this Permit, Permittee may seek approval from the NYSDEC to discontinue organic golf course operation and to remove such requirement from its SPDES permit. Should such approval be sought, the NYSDEC will solicit the advice of the Organic Golf Course Technical Committee and will approve such request only if it finds that the operator has demonstrated to the NYSDEC's satisfaction that the operation of the Highmount Golf Club as a high quality nationally recognized golf course through organic management is infeasible under this provision and that the concerns raised by the operator cannot be adequately addressed through adjustments or modifications to the Organic Management Plan, as provided for in this permit and Appendix 15 to the SDEIS. In the event that NYSDEC finds that the operator has satisfied the above-described conditions for discontinuance of organic golf course operation under this provision, the NYSDEC will modify its SPDES permit and include a requirement that the operator implement a state-of-the-art Integrated Pest Management system for the Highmount Golf Club that utilizes the fewest inputs necessary to provide a sustainable, high quality, nationally recognized golf course operation.

v. The following products may be used under the Organic Golf Course Management Plan.

1. Beneficial insects
2. Beneficial nematodes
3. Bt (*Bacillus thuringiensis*)
4. Compost
5. Corn gluten
6. Fish Emulsion
7. Garlic oil/juice

8. Horticultural oils (preferably vegetable-based instead of petrochemical based)
9. Kelp/seaweed extracts
10. Lemon and vinegar formulations
11. Lime
12. Beneficial Microbes and Microbial Derivatives
13. Milky spore
14. Neem
15. 100% Natural organic fertilizers
16. Pheromone lures
17. Pyrethrin/pyrethrum
18. Rock dust minerals
19. Biopesticides

In addition to the approved products listed above, the operator may also use products on the National List of approved substances established under the Organic Foods Product Act of 1990, and products approved as organic by duly accredited certifying organizations such as the Northeast Organic Farming Association (NOFA) and/or the Organic Materials Review Institute (OMRI), or products or substances defined as "organic" by any future U.S. or New York State organic golf course regulatory program. The Organic Golf Course Technical Review Committee may include or exclude any product from the approved products list when such decision is supported by scientific peer-reviewed data and the site-specific needs of the operation.

vi. The following list of products are not proposed to be used at Highmount Golf Club unless specifically approved under the Special Use Exemption process set forth in Organic Golf course Management plan in SDEIS Appendix 15. This list shall be updated with each annual update of this Plan. The following list of products may not be used at Highmount Golf Club unless specifically approved under the Special Use Exemption process described Organic Golf Course Management Plan.

1. All synthetic, chemical pesticides (unless otherwise included on the Approved Products list)
2. Arsenic
3. Biosolids derived from sewage sludge or industrial waste (i.e. Milorganite®)
4. Genetically modified products, ingredients, or seeds (Endophytically enhanced seed and improved grass seed cultivars produced through conventional breeding programs are not GM and therefore are permitted.)
5. Piperonyl butoxide and other synthetic ingredients
6. Pyrethroids
7. Tobacco
8. Pesticides dispensed by automatic misting systems

As listed above, use of synthetic chemicals for golf course pest controls are generally prohibited, and will only be considered for use under very strict circumstances, and any Special Use Exemptions must be pre-approved by the Golf Course Technical Committee chaired by a

representative of NYSDEC and also including representatives of NYCDEP and the NGO. Should a special use exemption be contemplated by the golf course operator, then only those products that passed the stringent Pesticide Risk Assessment included in the SDEIS as Appendix 15 will be considered for use. One of the criteria used to identify suitable products in the SDEIS Pesticide Risk Assessment was safety of aquatic biota, including fish and aquatic invertebrates.

Stream Disturbance and Wetlands (SDEIS Sections 3.4.2(C) and 3.4.1(F))

1. In stream and wetlands areas as shown on the plans, all of the proposed clearing of woody vegetation will be done by hand, using chainsaws and other hand-operated power equipment. Heavy machinery, such as bulldozers and backhoes, will not be used to conduct the clearing or to pull stumps. Therefore, no disturbance of soil will take place. Detailed tree clearing protocols will be included on the grading and clearing plans provided to contractors.
2. Where golf holes cross fringe wetlands associated the intermittent streams that run through the site, trees will be cut and removed from the wetlands by hand and there will be no removal of the herbaceous vegetation within the wetlands and the soils will remain undisturbed.
3. Permittee will implement the program for the prevention of invasive species during construction and operation as provided in Appendix 21 to the SDEIS.
4. Permittee will keep records in the regular course of business documenting the application of synthetic chemicals to any grass, shrubs, flowers, trees or other plantings or greenery on the project site, and will make such records available on request to the NYSDEC.

Forest Preserve (SDEIS Section 3.14)

1. Prior to the start of resort construction, Permittee shall develop a plan to be submitted to DEC for its approval, to implement a program to educate and guide resort guests in the use of the trails in the Forest Preserve. In developing the plan, the applicant shall consult with the DEC Region 3 staff and other appropriate groups, including the NY/NJ Trail Conference, to identify area trails, in particular, those which may be the subject of over use, in order to redirect guests to less intensively used trails. The plan shall include a method of keeping track of resort guest usage of Forest Preserve trails and for seeking feedback from resort guests on trail conditions. The information on guest usage and trail conditions shall be compiled into an annual report and submitted to DEC. In addition, Permittee shall provide a monthly report to DEC of usage of Forest Preserve trails by its guests.

Blasting For Construction (SDEIS Sections 3.3(G) and 3.2.4(A))

A. Blasting Survey

1. Prior to commencing any blasting operations, Permittee's blasting contractor will give written notice by regular mail to all residents within ¼ mile of the blasting locations within the

site of the opportunity to have a pre-blast survey of structures of their property at Permittee's expense.

2. If the property owner does not respond in writing that they will allow a pre-blast survey to be done, Permittee will not have any further obligations to undertake a survey.

3. If a property owner gives such permission, they will be supplied with a copy of the report of the survey.

4. Blasting shall be conducted only between the hours of 9:00 a.m. to 5:00 p.m. on weekdays only. Explosives will not be detonated on weekends or the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

5. All blasting shall be done by a person licensed to blast in New York State.

6. Blasting shall be controlled so the vibrations (Peak Particle Velocity) satisfy the particle velocities v. frequency limits recommended by the U.S. Bureau of Mines Report-8507 (November 1980). If measurements are made at other than the nearest residential structure, the measurements shall be interpreted in accordance with U.S. Bureau of Mines 8507 report entitled "Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting".

7. Blasting Notification

a. Following the issuance of this permit, Permittee shall provide written notice to all identified owners of property within a ¼ mile of the proposed blasting location of their right to be notified in advance of blasting events. Permittee's obligation to provide notice shall be deemed satisfied if a good faith attempt is made to mail, by regular mail, notice to all persons appearing on the then-current tax rolls of the Town of Middletown and the Town of Shandaken as owners of record of lands with that radius.

b. If a property owner does not respond, in writing, that he or she wishes to be notified, he or she shall be deemed to have waived his or her right to notice until he or she indicates otherwise in writing.

c. Residents within a ¼ mile radius of blasting locations within the site who choose to be notified in advance of blasting events will be phoned 1 hour prior to the blast.

d. Any eligible owner or successor to an eligible owner who does not receive notice, may request in writing that he or she be put on the Blast Notice Phone List of Permittee.

8. All persons who conduct blasting operations shall comply with all applicable State and federal laws governing the use of explosives.

9. Blasting shall be conducted in a manner that prevents injury to persons and damage to public or private property outside the project area.

10. A record of the blast shall be made, retained by the operator for at least three (3) years and made available for inspection by the Department on demand. The record is to be completed by the end of the work day during which the blast occurred, including the seismograph reading, if available, and shall contain the following:

- a. Name of operator conducting the blast.
- b. The location, date and time of the blast.
- c. Name, signature and license number of the licensed blaster.
- d. Type of material blasted.
- e. Number of holes, burden and spacing.
- f. Diameter and depth of holes.
- g. Type of explosives used.
- h. Total weight of explosives used.
- i. Weight of explosives per hole.
- j. Maximum weight of explosives detonated within any eight (8) millisecond period.
- k. Maximum number of holes or decks detonated within any eight (8) millisecond period.
- l. Initiation system, including number of circuits and the time interval, if sequential timer is used.
- m. Type and length of stemming (deck and top).
- n. Type and detonator and delay periods used, in milliseconds.
- o. Distance and scaled distance to the closest protected structure.

11. Maximum peak particle velocity shall not exceed limits as set by U.S. Bureau of Mines 8507 Report at the location of any dwelling, public building, school, church or community or institutional building outside the blast area.

12. All blasting will be done with small charges and with the following protective best management practices, whenever feasible:

- a. Two to four feet of rippable material will be left over the solid material to be blasted to serve as a cover to prevent excessive fly rock. Blasting mats may be used if overburden is not available. The blasting mats must be of suitable size and material to dampen noise and contain blasted materials.
- b. The size of the shot will be limited by sound and vibration control levels and amount of area that can be blasted with good results.
- c. Small diameter drilling with high speed equipment will be used to reduce the amount of explosives used in each hole.
- d. The use of delay blasting techniques will be used to reduce vibrations associated with the blast.
- e. Material stockpiles will be placed to help block blasting and material processing noise transmission off-site.
- f. Blasting shots will be designed to minimize ground vibration and air blast.

13. Blasting will not occur during adverse weather conditions such as high winds unless a loaded charge must be detonated before the end of the day for safety reasons.

14. Blasted and other excavated material will be used on site.

15. Shot design will be reevaluated if ground vibration or air blast thresholds are approached. Air blast values shall be limited to those set forth in US Bureau of Mines RI 8485 or other similar standard.

B. Well Protection

1. Pre-Blast Well Survey

a. Prior to commencing any blasting operations, Permittee's blasting contractor will give written notice by regular mail to all residents within ¼ mile of the blasting locations within the site of the opportunity to have a pre-blast survey of their well at Permittee's expense.

b. If the property owner does not respond in writing that they will allow a pre-blast survey to be done, Permittee will not have any further obligations to undertake a survey.

c. Such property owners shall notify permittee of their desire for eligibility by providing Permittee with written notice. Permittee shall have a period of 90 days from notification to collect baseline data, which data it will share with property owners upon request.

C. Well Arbitration

a. Permittee shall participate in arbitration proceeding brought by any eligible property owner located within a radius of 1/4 mile of the blasting locations who alleges that his or her well, including commercial wells, have been damaged by Permittee's blasting activity. To ensure that a proper determination of cause can be made, the arbitration proceedings would be presided over by a panel of one or more qualified hydrogeologists. The format of the arbitration remedy shall be as follows:

- i. Any property owner who desires to be eligible to participate in the arbitration procedure shall allow their well to be inspected by Permittee for the collection of baseline data in accordance with the pre-blast survey procedure outlined above.
- ii. Any aggrieved owner may initiate arbitration proceedings by serving Permittee with a letter by registered or certified mail notifying Permittee of their desire to arbitrate a well issue.
- iii. Within seven days of receipt of said letter initiating arbitration, Permittee shall inspect and test the owner's well to determine the extent and cause of the problem. If water quantity in the well has fallen below the baseline level established under paragraph "i" to a production level less than the amount necessary for existing use; or, in the case of residential use only, if water quality has fallen below the baseline level to a level no longer in compliance with Department of Health potable water quality standards,

- then in either event, Permittee shall immediately provide potable water to the owner in the amount necessary for existing use until responsibility for the problem has been determined, pursuant to paragraph "viii."
- iv. Permittee may within a period of sixty (60) days, attempt to cure the well problem by, for example drilling the owner's well deeper.
 - v. If the problem is not cured to baseline level as determined pursuant to paragraph "i," the arbitration shall commence as soon after the initial sixty (60) day period as is possible.
 - vi. The arbitrator shall be a qualified hydrogeologist selected by mutual agreement between the owner and Permittee.
 - vii. If the parties cannot agree on the selection of a neutral hydrogeologist, each party shall select their own hydrogeologist, who in turn will select a third neutral hydrogeologist to conduct the investigation.
 - viii. The arbitrator shall investigate and determine the cause of the well problem. Both parties shall allow access to their respective property to the arbitrator. Unless the arbitrator determines that the project is not a contributing cause to such problem, the arbitrator shall require Permittee to cure the problem and Permittee will provide potable water until the problem is cured.
 - ix. If Permittee is found to be only partially at fault, it shall be required only to pay its percentage of fault.
 - x. Permittee will pay all costs of arbitration, unless the arbitrator determines that the Permittee activities is not the cause of the problem, in which case each party will pay one-half of the cost of the arbitration.
 - xi. This arbitration shall be available to owners of property, whose wells are located within $\frac{1}{4}$ mile radius of the blasting location(s).
 - xii. This arbitration remedy shall be available through the construction phase of the project, and shall apply to new wells developed during the construction phase, provided such wells are registered with Permittee.

Traffic (SDEIS Sections 2.8.3(E) and 3.5)

1. Permittee shall utilize hybrid vans or similar clean-air vehicles to transport guests and visitors traveling between the Highmount and Wildacre hotels and lodging units and nearby recreational facilities, including the Belleayre Mountain Ski Center
2. Permittee shall make a fair share contribution toward the construction of a westbound left-turn lane on NY Route 28 at the NY Route 28/CR 49A intersection and a northbound right-turn lane on CR 49A and installation of a traffic signal.
3. Permittee shall provide for realignment and regrading of CR 49A at the proposed Wildacres Main Site Driveway/ Belleayre Mountain Ski Center Upper Driveway intersection to mitigate sight distance limitations and construction of left-turn lanes on CR 49A in both directions at the intersection.

4. Permittee shall provide for clearing of vegetation and embankment grading at the Highmount Spa Resort Driveway on CR 49A and at the Wildacres Upper Access Driveway. Clearing of vegetation, embankment grading and the installation of an intersection warning sign on CR 49A at the Wildacres Front 9 Village Driveway shall also be provided.
5. Permittee shall relocate the Wilderness Activity Center Driveway approximately 300-feet to the south on CR 49A or implementation of access restrictions to this driveway to eliminate movements with less than desirable sight distance.
6. Permittee shall improve the section of CR 49A from the Belleayre Mountain Ski Center Upper Driveway to the Highmount Spa Resort to mitigate the existing non-standard vertical and horizontal features along the roadway. The improvements will widen the roadway to provide two 11-foot wide travel lanes and 2-foot shoulders to better accommodate the increased traffic expected with the project development.

Very truly yours,



Daniel A. Ruzow

c: Jeanne M. Konz, Esq.
Lawrence H. Weintraub, Esq.