STATE ENVIRONMENTAL QUALITY REVIEW ACT

FINDINGS STATEMENT

Modified Belleayre Resort at Catskill Park

December 2, 2015

Pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act [SEQR]), the Department of Environmental Conservation (DEC or the Department), as Lead Agency for the Modified Belleayre Resort at Catskill Park (previously known, before 2007, as the Belleayre Resort at Catskill Park), makes the following conclusions of fact and law:

Name of development project:	Modified Belleayre Resort at Catskill Park
Location:	Town of Shandaken, Ulster County and Town of Middletown, Delaware County, New York
Project Sponsor:	Crossroads Ventures, LLC
Acceptance date of FEIS:	September 2, 2015

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I. Summary

This action involves the Department of Environmental Conservation's (DEC's or the Department's) issuance of permits under the State Pollution Discharge Elimination System and Protection of Waters (Title 8 of Article 17 [SPDES] and Title 5 of Article 15 of the Environmental Conservation Law [Protection of Waters], respectively) to Crossroads Ventures, LLC (the Applicant or Crossroads) to develop a year-round resort (Modified Belleayre Resort)[1] on lands near the Belleayre Mountain Ski Center (BMSC) in the towns of Shandaken, Ulster County, and Middletown, Delaware County, and within the boundaries of the Catskill Park.[2] The action also requires findings and approvals from other agencies, including, notably, the New York City Department of Environmental Protection (for Wastewater Treatment Plant Connection and Stormwater Pollution Prevention and Impervious Surfaces) and the town planning boards of the Towns of Shandaken and Middletown, which are

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[1] Under the Modified Belleayre Resort plan, the Applicant proposes to develop a year-round resort (hotels, lodging and amenities) on a 739-acre project site consisting of two distinct components known as the Highmount Spa and Resort and the Wildacres Resort. Wildacres Resort is located on approximately 254 acres on the eastern side of the project site. Development proposed for the Wildacres Resort includes a hotel building with 250 units and ancillary hotel uses (dining, spa and hotel related commercial), 163 lodging units in multi-unit buildings operated by but detached from the hotel, and an 18-hole golf course. The existing buildings at the base of the former Highmount Ski Area will be adaptively reused as the Highmount Spa Resort's Wilderness Activity Center. The Highmount Spa Resort is located on a portion of the approximately 237 acres that includes the former Highmount Ski Area and additional land to the west of the ski area. Development proposed for Highmount Spa Resort includes a 120 unit hotel with spa facilities. Also located in the hotel/spa building are 53 fractional ownership units. A multi-level lodge building is proposed near the hotel/spa and will contain 27 fractional ownership units. Sixteen (16) detached lodging units in 8 duplex buildings are also proposed. The layout of the Modified Belleayre Resort is shown in figures 1-3 and 1-4 of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Modified Belleayre Resort at Catskill Park. The Department reviewed the cumulative impacts of the Modified Belleayre Resort alongside the impacts of proposed amendments to the Department's Unit Management Plan (UMP) for the Belleayre Mountain Ski Center (see Part C of the FEIS). In 2012, the Department transferred responsibility for operation of the ski center to the Olympic Regional Development Authority (ORDA) although the Department retained authority over the UMP. Accordingly, the Department is preparing separate findings for the UMP action.

[2]The boundaries of the Catskill Park are described in ECL § 9-0101(2). General location maps for the Modified Belleayre Resort appear in the SDEIS in figures 1-1 and 1-2 of the SDEIS for the resort.

involved agencies under SEQR in this matter on account of their special use permit and site plan review authority over the project. The Town of Shandaken Town Board must also approve the formation of a transportation corporation for the Modified Belleayre Resort (see, generally, NY Trans. Corp. L., Article 4). The complete list of involved agencies and requisite approvals are listed in section 5.0 of the FEIS.

The Department hereby approves the SPDES and Protection of Water permits subject to the following stipulations and conditions, including the Applicant's April 5th 2013 letter to the Department outlining mitigation conditions, contained in the findings that follow and the Commissioner's Decision and Ruling in the Matter of Crossroads Ventures, LLC, dated July 10, 2015 (Commissioner's Decision and Ruling), which remanded this matter to the Department's staff to complete the SEQR process, including the issuance of a findings statement and permits (see Commissioner's Decision and Ruling, p. 42).[3]

The Department's detailed findings follow:[4]

II. Background

The history of this project dates back to 1999 when Crossroads submitted permit applications for the Belleayre Resort at Catskill Park (Belleayre Resort) to the Department. The Applicant proposed to locate the Belleayre Resort adjacent to the State-owned BMSC. In its original design, the Belleayre Resort would have encompassed 1,960 acres, of which 573 acres would be disturbed and the remaining 1,387 acres would be left undisturbed. The Belleayre Resort included two distinct developments as follows: Wildacres Resort was proposed to be developed on 242 acres of a 718 acre site located generally west and north of the BMSC. It included a golf course, hotel, additional hotel/detached lodging units, and a 21-lot subdivision of single-family homes and related infrastructure. This part of the project would have been situated within the New York City Pepacton Reservoir watershed. In addition, the Applicant proposed to develop the Big Indian Plateau on 331 acres of a 1,242-acre site east of BMSC and which would have included a golf course, hotel and additional hotel/detached lodging

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[3] The Commissioner's Decision and Ruling is available on the Department's website at the following address: http://www.dec.ny.gov/hearings/102608.html/

[4] As explained in the SEQR Handbook (http://www.dec.ny.gov/permits/56832.html), "[f]indings provide a rationale for agency decisions, including any conditions to be attached to the agency's approval. Should an agency decision be challenged, findings also provide a record to help explain the agency's decision-making. The findings procedure allows each involved agency to consider the relevant environmental factors presented in the final EIS, and balance and weigh essential considerations, including the economic and social factors, in reaching its decision on its underlying jurisdiction."

units, and related infrastructure. This part of the project would have been located within the New York City Ashokan Reservoir watershed.

Following a lead agency dispute, the Department was appointed as the SEQR lead agency for review of the Belleayre resort. The Department issued a positive declaration under SEQR, requiring that a draft environmental impact statement (DEIS) be prepared for the Belleayre Resort project. In 2003, after a number of resubmissions of the DEIS, the Department determined that the DEIS was adequate for public review. After a public comment period, staff referred the application to the Department's Office of Hearings and Mediation Services, which conducted a legislative hearing and issues conference on the project. The Administrative Law Judge (ALJ) determined that a number of issues required adjudication — mostly related to the Big Indian portion of the development. Participants to the issues conference appealed the ALJ's issues ruling to Carl Johnson, the Deputy Commissioner who found six issues for adjudication — mostly related to the Big Indian portion of the development (see Interim Decision of the Deputy Commissioner dated December 29, 2006 (http://www.dec.ny.gov/hearings/26553.html) (Interim Decision).

A key aspect of the Interim Decision was the Deputy Commissioner's request for Crossroads to develop a lower impact alternative to the Belleayre Resort.

After the issuance of the Interim Decision, the Applicant engaged in negotiations with the parties to the proceeding and reached an agreement, known as the Agreement in Principal (AIP), to significantly modify the Belleayre Resort proposal. A significant concern of the issues ruling of the ALJ was the impact that the development of the Big Indian Plateau would have on the New York City watershed and the Catskill Forest Preserve. As reflected in the AIP, the Applicant agreed to modify the project to remove any development on Big Indian, and sell the property to the State for inclusion into the State Forest Preserve — which occurred in 2011. The State's acquisition of Big Indian preserved a major undeveloped geographic feature of the scenic NYS Route 28 corridor in the heart of the Catskill Park to protect the New York City Watershed. The proposed development of Big Indian had threatened to affect the filtration avoidance determination for the New York City water supply along with posing other significant impacts to other natural resources (e.g., the State Forest Preserve) that were identified in the Interim Decision.

The AIP set out a resort plan, now without the Big Indian component, and thus a lower impact alternative, which the parties to the AIP agreed would be subject to a supplemental DEIS (see Commissioner's Decision and Ruling, pp. 4-5 and 23-25). "As stated in the AIP, the signatories 'negotiated in good faith to resolve their outstanding issues related to the originally proposed project for the Belleayre Resort at Catskill Park [and] reached agreement that this lower impact alternative is preferable' (Commissioner's Decision and Ruling, p. 4, quoting AIP)." The nine issues conference parties that signed the AIP were: Catskill Center for Conservation and Development; City of New York, Department of Environmental Protection; applicant Crossroads Ventures, LLC; Natural Resources Defense Council; New York Public Interest Research Group; Riverkeeper, Inc.; Theodore Gordon Flyfishers, Inc.; Trout Unlimited; and Zen Environmental Studies Institute (see 2013 SDEIS, Appendix 1 ¶ 1 and unnumbered signature pages).

The major components of the Modified Belleayre Resort (the AIP proposal as distinct from the current iteration of the resort described above in footnote 1) included two resort complexes, both located north and west of the BMSC along Ulster CR 49A and south of NYS Route 28. The first resort, Wildacres, would include a 250-room hotel plus 163 lodging units in townhouse-style units surrounding an 18-hole golf course. The second resort, the Highmount Spa, would include a 120 room hotel, spa facility, 60 lodging units in two multi-unit buildings and 60 detached lodging units in up to 52 buildings.

The AIP additionally spelled out a proposal to modernize and expand the BMSC beginning with a proposed amendment to the BMSC Unit Management Plan (UMP) that governs long range planning for the BMSC. Also, under the AIP proposal, the Department would acquire portions of the former Highmount Ski Center (78 acres+/-), plus permanent easements over other lands in close proximity to Crossroads' proposed resort facilities, and would develop new ski lifts and ski trails, with snowmaking capacity on the acquired parcels, configured to provide ski-in-ski-out public access to the resorts. The AIP also proposed a new lift and trails near the eastern edge of the existing BMSC property. (The UMP for the BMSC is subject to a separate set of findings.)

Under the terms of the AIP, review of the Modified Belleayre Resort would be remanded to the Department for preparation of a supplemental DEIS. Upon motion of the Applicant, the adjudicatory proceeding was suspended and the proceeding was remanded to the DEC staff for preparation of an SDEIS on the modified project.

On November 21, 2007, Staff issued a positive declaration under SEQR for the Modified Belleayre Resort and the UMP amendments for expansion of the BMSC. Staff also required preparation of a cumulative impact statement that would address the combined impacts of both actions. As described in the positive declaration (http://www.dec.ny.gov/docs/permits_ej_operations_pdf/Belleayreposdec.pdf]), the Modified Belleayre Resort project consisted of the following:

> A resort and spa complex generally west of and adjoining the NYS-owned and operated Belleayre Mountain Ski Center (BMSC); expansion of BMSC, including creation of "ski-in-ski-out" access to the resort; and acquisition by NYS of a 1200 acre +/- parcel east of the BMSC, referred to as "Big Indian" and a 78 +/- acre parcel west of the BMSC, referred to as "Former Highmount Ski Center." The Big Indian Resort and golf course and related Belleayre-Highlands lodging complex previously proposed by Crossroads for lands to the east of BMSC are no longer being considered for development by Crossroads.
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> The modified resort plan consists of two resort complexes, both located west of the NYS Belleayre Mountain Ski Center along Ulster CR 49A and south of NYS Route 28. The first resort, Wildacres, will include a 250-room hotel plus 139 lodging units in townhouse-style units surrounding an 18-hole golf course. The second resort, the Highmount Spa, consists of a 120 room hotel, spa facility, 60 lodging units in two multi-unit buildings and 60 detached lodging units in up to 52 buildings. It is being

> designed as a ski-in, ski-out resort connecting with the BMSC through an expansion to be built on the site of the former Highmount Ski Center.
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> The agreement proposed a number of infrastructure developments to support Crossroads' proposed resorts plus BMSC's proposed expansions, which must also be addressed in the SDEIS. Under the agreement, all of the facilities would receive sewage treatment services from the Pine Hill Wastewater Treatment Plant (Pine Hill WWTP) under special contract with its operator, the NYC DEP. Both DEC and Crossroads have committed to support infrastructure improvements to access the plant and to ensure that the Pine Hill WWTP will have adequate capacity to manage the total generated wastewater. Possible water supplies for the resorts and the ski area may draw from the same sub-watershed.

In 2013, the Department accepted a SDEIS for the Modified Belleayre Resort. However, between the time of the Department's positive declaration and finalization of the scoping statement and the acceptance of the SDEIS, the Modified Belleayre Resort underwent one more highly significant change, namely the removal of 24 residential units from the plateau above Highmount, which resulted in an even lower impact alternative to the one agreed to by the parties to the AIP (*see* Commissioner's Decision and Ruling, p. 24).[5] Thus, the Applicant's preferred alternative, as proposed in the SDEIS and carried through to the FEIS, is as follows:

The Modified Belleayre Resort would develop the Highmount Spa and Resort and the Wildacres Resort on a 739-acre project site. Wildacres Resort is located on approximately 254 acres on the eastern side of the Project site. Development proposed for the Wildacres Resort includes a hotel building with 250 units and ancillary hotel uses (dining, spa and hotel related commercial), 163 lodging units in multi-unit buildings operated by but detached from the hotel, and an 18-hole golf course. The existing buildings at the base of the former Highmount Ski Area will be adaptively reused as the Resort's Wilderness Activity Center. The Highmount Spa Resort is located on a portion of the

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[5] Under the alternatives section of the final scope, staff had set out an alternative whereby these units — 19 of which would be located at high altitude — would be eliminated from the development along with the associated road that would be constructed up a steep hillside to access these units. The other five (5) units were to be constructed along the proposed access road leading to the higher elevation units. During the positive declaration and scoping stage, although the parties to the AIP agreed to it, Department staff had concerns with this portion of the development, on account of stormwater management and visual impacts. The Applicant's removal of the 24 units served to avoid significant visual and stormwater impacts addressed staff's concerns.

approximately 237 acres that includes the former Highmount Ski Area and additional land to the west of the ski area. Development proposed for Highmount includes a 120 unit hotel with spa facilities. Also located in the hotel/spa building are 53 fractional ownership units. A multi-level lodge building is proposed near the hotel/spa and will contain 27 fractional ownership units. Sixteen (16) detached lodging units in 8 duplex buildings are also proposed.

The SDEIS and draft permits were the subject of a public hearing and extended public comment period that lasted nearly three months. In the course of that comment period, the Department received approximately 3700 comments. Staff responded to all substantive comments and a draft FEIS was completed.

The following table, which is reprinted from the FEIS for the Modified Belleayre Resort, shows a side-by-side comparison of a) the originally planned resort, b) the modified resort described in the AIP (AIP Plan Alternative), and c) the resort as it was finally presented in the SDEIS (Preferred Alternative).

Table ES-3

Comparison of DEIS Plan, AIP Plan Alternative
and the Applicant's Preferred Alternative Plan[6]

Project Component	DEIS Project	AIP Plan Alternative	Preferred Alternative
Total project site size (ac.)	1,960	739	739
Acreage to be developed	573	235	218
Acreage added to Forest Preserve	0	1,189	1,189
Conservation easement lands (ac.)	0	203	203
Number of lodging structures	121	58	29
Hotel lodging units (#)	400	370	370
Detached lodging units (#)	351	259	259
Overall density (units/acre)	0.38	0.85	0.85

[6] Pages "ii" to "iii" of the FEIS contain a narrative, bulleted list that compares the Belleayre Resort to the post-AIP, Modified Belleayre Resort.

Total length of roads (mi.)	8.2	2.6	1.5
Length of roads on >20% (mi.)	5.1	1.1	0.1
Impervious surfaces (ac.)	85	27	21
Golf courses	2	1	1

By letter dated September 10, 2014, staff made a motion to the Office of Hearings and Mediation Services requesting that the adjudicatory proceeding be cancelled with the proceeding remanded to staff for final completion of the FEIS, preparation of SEQR findings and issuance of permits. Staff also requested that the Commissioner deny a motion for reconsideration of the December 29, 2006 Interim Decision on the issue of community character. The Interim Decision rejected community character as an issue for adjudication. On July 10, 2015, extensive opportunities were provided to the parties to the adjudicatory proceeding to respond to staff's motion, as well as consideration of newly filed petition, the Commissioner ruled in favor of staff's motion to cancel the adjudicatory hearing, and also denied the motion for reconsideration of the community character issue. The Commissioner directed DEC staff to complete the SEQR process for the Modified Belleayre Resort and to issue permits subject to certain conditions that are set out and discussed below.

III. Legal Standard

Under SEQR, the Department, as lead agency, in making its findings under 6 NYCRR 617.11, must certify that the requirements of Part 617 have been met, and then certify that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable.

SEQR requires an approving agency to consider fully the environmental consequences revealed in an EIS and to take these consequences into account when reaching a decision whether or not to approve an action. Moreover, the statute authorizes the approving agency to implement measures designed to mitigate the adverse environmental impacts identified, so long as these measures are reasonable in scope and are reasonably related to the adverse impacts identified in the EIS. An agency may impose conditions on a project outside its traditional area of jurisdiction and may even deny a project if the agency finds it must do so to avoid or mitigate significant adverse environmental impacts.

This findings statement presents the Department's consideration of significant, adverse environmental impacts associated with the Modified Belleayre Resort, including cumulative impacts that may occur as a result of the proposed expansion of the Belleayre Mountain Ski Center (which is described in the

UMP for the Belleayre Mountain Ski Center, which is the subject of a separate parallel findings statement).

At the same time, pursuant to 6 NYCRR 617.3(b), nothing herein changes the jurisdiction between or among State and local agencies, nor affects the jurisdiction of other involved agencies or precludes the inclusion in their findings of substantive conditions which are practicable and reasonably related to the impacts identified in the FEIS. Pursuant to this direction, involved agencies, consistent with section 617.11(c) of 6 NYCRR, are required to make their own findings as they relate to their relevant state, county, and local approvals and jurisdiction. Specifically, Land Use and Planning, Socioeconomics, and Community Services, which are discussed in the FEIS, are within the jurisdiction of the Town of Shandaken and the Town of Middletown and their respective planning boards to address in findings. Notably, neither Shandaken nor Middletown have advanced an alternative other than the Applicant's preferred alternative. As set out below in the section dealing with community services, the towns' principal concerns had been with obtaining additional funding for police, ambulance and fire to defray the anticipated additional costs of providing such services that would not otherwise be funded through additional tax revenues. In response, the Applicant has proposed mitigation for these impacts, which is discussed below.

IV. Agency Permitting Jurisdiction

The Department's discretionary jurisdictions are Protection of Waters (golf cart bridge crossings) (Article 15 of the Environmental Conservation Law, Title 5) and individual SPDES permits for Stormwater Discharges associated with disturbances from Construction Activity (ECL Article 17, titles 7 and 8).

V. Relevant Environmental Impacts, facts and conclusions disclosed in the FEIS

Potential significant adverse environmental impacts of the Modified Belleayre Resort, as identified in the positive declaration dated November 21, 2007, included those on water quality, water supply, aesthetics, noise, transportation, and community character. These were carried over into the scope and then the supplemental DEIS and FEIS.

Step one of the findings requires the lead agency to consider the relevant environmental impacts, facts and conclusions disclosed in the FEIS. The analysis that follows will track the organization of the FEIS in terms of its consideration of impacts. As outlined in the table below, the FEIS covers 14 substantive categories of impacts as follows:

Impact Area	Reference to FEIS
Surface Waters and Aquatic Habitats, which includes Stormwater Management, Sediment and Erosion Control, Water Supply, Wastewater Collection, Treatment and Discharge, Golf Course Management, and Stream Crossings	3.1
Groundwater Resources, which includes Water Supply, Wastewater Collection, Treatment and Disposal, and Golf Course Management	3.2
Soils, which includes Stormwater Management, Sediment and Erosion Control	3.3
Terrestrial and Aquatic Ecology, which includes Vegetation, Wetlands/Waters of the US and Wildlife	3.4
Traffic	3.5
Visual Resources	3.6
Noise	3.7
Land Use and Planning	3.8
Socioeconomics	3.9
Community Services	3.10
Global Climate Change and Carbon Footprint	3.11
Air Quality	3.12
Cultural Resources	3.13
Catskill Forest Preserve	3.14

The FEIS also sets out nine alternatives to Crossroads' preferred alternative. An analysis of alternative project configurations or designs will enable the lead agency to determine if there are reasonable, feasible alternatives that would allow some or all of the adverse impacts to be avoided while generally satisfying the project sponsor's goals. Alternatives include the originally proposed Belleayre Resort project[7], alternative layout for Highmount Spa Resort, an alternative golf course layout, an alternative

[7] This alternative is for historical and comparative purposes only since it would require development of the Big Indian parcel that has been conveyed to the State and hence is no longer available to the Applicant.

water supply, an alternative wastewater disposal system, alternative golf course management practices, alternative stormwater management practices, alternative construction phasing plan, and the No-Action Alternative. The Department may also consider variations on these alternatives in its approval.

Potential significant adverse environmental impacts of the Modified Belleayre Resort, as identified in the positive declaration dated November 21, 2007 (http://www.dec.ny.gov/docs/permits_ej_operations_pdf/Belleayreposdec.pdf), included those on water quality, water supply, aesthetics, noise, transportation, and community character. These were carried over into the scope and then the supplemental DEIS.

Mitigation of project impacts is discussed at length below.

VI. Surface Waters and Aquatic Habitats

i. Potential Impacts

The project site is within the Delaware Watershed draining to the East Branch Delaware River and the Pepacton Reservoir. There are three protected streams on the project site that are part of the Delaware Watershed. Todd Mountain Brook (B[t]); an unnamed tributary to Emory Brook (B); and an intermittent tributary of Emory Brook (B).

Potential impacts on water quality and aquatic habitats of these protected streams include impacts on brook trout, brown trout, rainbow trout and variety of benthic macro invertebrates. An additional long-term impact is the possible increase in temperature of the streams resulting from a reduction in upland forest cover and stream cover in the wetland and stream locations identified as golf course play-over areas.

Exposure of soil during construction increases the potential for erosion and sediment deposition outside the areas of construction. Potential impacts to water quality and aquatic habitat from stormwater include thermal loading, phosphorus loading, and an increase in total suspended solids associated with stormwater run-off from construction related activities and the corresponding impact upon fish populations and macroinvertebrate populations.

The Modified Belleayre Resort project includes an 18-hole golf course. Aquatic biota can be impacted if potentially harmful materials, such as pesticides and herbicides, are applied to landscaped areas of the golf course and these materials enter surface waters where aquatic biota reside. The potential for these impacts to occur depends on the toxicity of materials applied and the potential for applied materials to move from the landscaped areas to surface waters via runoff.

The Applicant proposes to collect and convey wastewater from the Modified Belleayre Resort to the Pine Hill Wastewater Treatment Plant (WWTP) for treatment. At the same time, the Applicant proposes to collect and pump wastewater at the Highmount Spa to the Wildacres resort. The combined flow is

proposed to be collected at Wildacres and pumped to the Pine Hill WWTP. The Pine Hill WWTP has more than sufficient capacity to accept and treat waste generated by the project. The Pine Hill WWTP discharges all its treated wastewater to Birch Creek pursuant to an existing SPDES permit. No impacts are anticipated from this increased flow on Birch Creek. However, the Pine Hill WWTP currently experiences high flows during wet weather events due to inflow and infiltration issues (I&I) with the existing system.

Potential impacts associated with developing new water supplies include impacts on base flows in the Delaware River system from taking of groundwater for potable water use and then conveying wastewater out of the Delaware River basin for treatment at the Pine Hill WWTP (located in the Hudson River basin).

Much of the non-potable water supply for the golf course will be supplied by irrigation. Surface water resources and aquatic biota that reside in them could potentially be impacted by the supply of irrigation water if this supply were to involve direct surface water withdrawals or involve groundwater withdrawals that affect hydrology of nearby surface waters.

Other potential impacts to surface waters include impacts from construction associated with the replacement of the existing culvert, over an intermittent stream, under the driveway to the Marlow Mansion and the existing Wildacres Motel; from the construction of six stream crossings associated with the construction of the golf course; and from the construction of water and sewer lines. Potential impacts include disturbance of the bed and banks and increased turbidity due to sediment-laden run off from adjacent construction activity.

ii. *Discussion, Mitigation and Findings*

The stormwater management system does not involve any direct discharges to trout waters. Even though there are no direct discharges to trout waters, concerns relating to thermal loading were considered in the selection of stormwater management practices. Micropool extended detention ponds are primarily used throughout the plan instead of other stormwater ponds (such as wet ponds). Stormwater ponds, such as wet ponds, could potentially result in increased stream temperatures. Only two wet extended detention ponds are utilized. The first is the irrigation pond. Because water in the irrigation pond will be used for irrigation during the warm times of the year, potential for stormwater discharges from the pond are greatly reduced. The second wet pond is at Highmount and functions more like a large forebay (an artificial pool of water in front of a larger body of water) since it will discharge directly into an adjacent micropool extended detention pond. Using bio-retention and dry swales also helps alleviate concerns for thermal loadings, as these practices reduce the amount of stormwater that would be required to pond, and potentially warm, prior to being discharged. Even though 24 hours of extended detention of the 1 year storm event is required, using these practices and the micropool extended detention ponds minimize the potential for thermal loading.

Exposure of soil during construction increases the potential for erosion and sediment deposition and thereby poses a pollution threat to surface waters outside the construction areas. Appendix 19 of the FEIS (the stormwater pollution prevention plan or SWPPP) provides an extensive and detailed set of avoidance and mitigation measures for this impact. These measures are incorporated into the findings as conditions of approval. In addition, see section VIII below, where stormwater management and sediment and erosion control are discussed in more detail.

The Modified Belleayre Resort involves new groundwater sources of potable water (the "K" and "Q" wells) to avoid potential impacts to surface waters. The Belleayre Resort project had a group of wells located near Friendship Road and Birch Creek called the Rosenthal wells. These wells were the primary source of potable water for the Belleayre Resort project. During the issues conference there were differing opinions between hydrogeologists on whether or not utilizing the Rosenthal wells would impact flows in Birch Creek. Therefore, alternative sources of potable water for the Modified Belleayre Resort (the K and Q wells) were developed and evaluated for their ability to provide potable water without impacting Birch Creek or other water resources. The well test report included in Appendix 13 of the SDEIS concludes that the K-wells and Q-well are capable of providing sufficient water to meet the needs of the Modified Belleayre Resort, and that using these new sources of water will not likely impact any surface water resources. Therefore, no further mitigation is required.

No impact to surface waters from potable water sources is anticipated from the project. Water level data were collected from potentially affected streams during the pump testing of these supply wells. The data show that the water supply wells, if pumped at the approved rates, can be used as long-term water supplies and are unlikely to impact surface water resources (see SDEIS Section 3.2 Groundwater Resources and Appendices 13, 13A and 22 for discussion of water supply).

For those streams where upland activities could result in an increase of solar exposure, the stream banks will be augmented with streamside plantings of suitable native plant materials so as to produce increased in-stream shading. Where vegetation is proposed to be disturbed in proximity to the water bodies, plantings are proposed to provide shading of the stream/wetland. This will be accomplished by placing appropriately sized coir logs along the existing stream banks and planting the coir logs with willow cuttings. Regular hand cutting maintenance of the vertical growth of the willow sprigs will allow for the development of a more horizontal willow canopy over the stream/wetland.

Inter-basin transfer of water between the Delaware and Hudson basins is anticipated, requiring a Delaware River Basin Commission permit application (see Appendix 7 of the SDEIS). Included in that application is a water balance that analyzes the project's taking of groundwater for potable water from the Delaware River basin and then conveying its wastewater out of the basin for treatment at the Pine Hill WWTP. The analysis concludes that this inter-basin transfer of water associated with the project will not negatively impact base flows in the Delaware River system.

Expected wastewater flows from the project are projected to be 145,200 gallons per day (gpd) at full project build-out and under a 100% occupancy scenario. The Applicant has proposed to collect and convey wastewater from the project to the Pine Hill WWTP. The Pine Hill WWTP has a design flow

of 500,000 gpd with advanced wastewater treatment, including microfiltration of the final effluent per New York City Department of Environmental Protection (NYCDEP) standards, and has sufficient capacity to accept and treat the wastewater generated by the Modified Belleayre Resort. The Wastewater Preliminary Design Report (Appendix 16 of the SDEIS) shows that because the loadings from the project are similar to conventional residential wastewater, the project will neither adversely affect the treatment capacity of the Pine Hill WWTP, nor the ability of the Pine Hill WWTP to meet its SPDES discharge permit limits and consequently will have no significant impacts on the receiving water.

To address existing I&I issues at the Pine Hill WWTP, the Applicant has agreed to mitigation conditions discussed in the Groundwater Resources section of these findings. Since the proposed wastewater flow rate from the Modified Belleayre Resort can be introduced to the Pine Hill WWTP without increasing its permitted flow rate or creating a need for increased treatment capacity, the additional flow will not have any adverse impact to the Birch Creek which is the receiving stream of the Pine Hill WWTP. Additionally, the Pine Hill WWTP uses UV light reactors instead of chlorine to disinfect the wastewater before it is discharged to the stream. The existing UV system has capacity to treat all of the wastewater flow from the Modified Belleayre Resort. The Modified Belleayre Resort's wastewater flows will not cause the Pine Hill WWTP to introduce chlorine in its treatment process and therefore there would be no impact to aquatic habitats due to the use of chlorine.

The Applicant will replace the existing culvert located under the driveway to the Marlow Mansion with a wider arch culvert. Removal of the existing culvert will take place "in the dry" when this intermittent stream is not flowing. If construction timing does not allow for this work to occur in the dry, then water flow to the culvert will be blocked and water will be pumped around the work area until the culvert has been removed. As additional mitigation, a member of the Applicant's stormwater inspection team will be present full time during the removal of existing culvert.

As for construction of stream crossings for golf cart paths and utility lines, golf cart paths will pass over streams on elevated, boardwalk-type crossings. Helical support posts will be installed on either side of the stream so there will be no disturbance to the bed or banks. Water and sewer pipes and a section of stormwater pipe will be installed underneath streams by directional drilling so that streambeds and banks are not impacted.

To address any potentially significant impacts from the operation of the 18-hole golf course, the Applicant shall comply with the requirements of the Organic Golf Course Management Plan (Appendix 15 of the SDEIS) and with the conditions set out in Appendix B of these findings.

VII. Groundwater Resources (including the Water Supply and Wastewater and Golf Course Management)

a. Water Supply

The Modified Belleayre Resort project, will have its own central water supply system and the source of potable water will be wells ("K" and "Q") that are located in the valley along NY Route 28 further west

of the project site. The K-well property is located off Todd Mountain Road within the Village of Fleischmanns. The Q-well is located off Moran Road within the Town of Middletown.

i. Potential Impacts

The Belleayre Resort proposed to use the Rosenthal wells for its water supply, which are located in the Birch Creek valley in Pine Hill. The use of the Rosenthal wells could have potentially affected water flows in Birch Creek. Revised plans for water supply for the Modified Belleayre Resort no longer include the Rosenthal wells eliminating potential impacts to Birch Creek. The new wells are located outside of the Birch Creek drainage system and near the Village of Fleischmanns.

A water budget analysis was performed to evaluate the potential impact that the Modified Belleayre Resort's changes in the land surface will have on aquifer recharge and surface runoff on an annualized basis. The water budget provides a mechanism for estimating percolation to the ground water system by balancing the amount of precipitation with runoff, percolation to the subsurface and evapotranspiration. This balance is dependent on factors such as slope, vegetation cover, soil type, land use, and climate. Some of these factors will change when development such as the construction of parking lots, roadways, buildings, and golf courses occurs, and can potentially result in either positive or negative changes in surface water runoff and percolation (aquifer recharge).

ii. Discussion, Mitigation and Findings

Water level data were collected in Todd Mountain Brook, Emory Brook and the Bush Kill during the pump testing of the project's water supply wells. The data show that the water supply wells, if pumped at the approved rates, can be used as long-term water supplies and are unlikely to impact surface water resources.

The Modified Belleayre Resort is projected to have a demand of 262,000 gallons per day with 100% occupancy (which would be the maximum daily flow). However, an average day would be with the Modified Belleayre Resort at 70% capacity resulting in an average demand of water of approximately 111,000 gallons per day. The Applicant shall conserve water through the methods set out in section 2.8.6, page 2-33 of the SDEIS (through the use of water efficient landscaping, innovative wastewater technologies, and water use reduction). No further mitigation is required as the K and Q wells avoid the potential impacts of the Rosenthal wells and their use do not appear to have any other significant impacts. Additionally, the Delaware River Basin Commission (DRBC) has jurisdiction over water withdrawals and the use of the K and Q wells for water supply. The Department defers the imposition of specific water usage requirements to the DRBC. However, the Department recommends to the DRBC that it impose the standard set of conservation related conditions from the Department's water supply permits.

The water budget analysis for the future, post-development conditions indicate that the annualized percolation rate for the project area will decrease from the existing conditions aquifer recharge rate. This change in percolation is small when compared to the normal seasonal and yearly climate

fluctuations, and when compared to the Delaware River basin as a whole. This decrease is primarily due to loss of percolation beneath the building footprints, paved areas, storm water features, and the irrigation pond.

The water budget analysis for the future conditions indicates that there will be a negligible increase in the surface water runoff from the project area and the annualized surface water rate of discharge to natural drainage features is anticipated to increase slightly.

The runoff and recharge rate estimates determined through the water budget analysis are annualized averages. The changes in the estimated rates between existing and post-development conditions are indicative of the potential impact to aquifer recharge and the streams that receive the surface runoff. The potential impacts to both aquifer recharge and surface water runoff are minimal, with a very slight decrease in aquifer recharge over the project area, and a negligible increase in runoff. No mitigation is required.

b. Wastewater / Sewage Disposal

i. Potential impacts

The project is estimated to generate 145,200 gpd of wastewater at full project build-out (2022) under a 100% occupancy scenario. The Applicant has proposed to collect and convey wastewater from the project to the Pine Hill WWTP by constructing a collection system that terminates at an equalization tank and pump station located in the north-east corner of the Wildacres Resort. The pump station would then pump the wastewater to the Pine Hill sewer system where the Pine Hill WWTP would treat it.

Potential impacts on wastewater and sewage disposal from the Modified Belleayre resort project include increases in high flows during wet weather events due to inflow and infiltration issues. Issues that the Pine Hill WWTP currently experiences. Other potential impacts include an increase of 111 kg/year in the annual load of phosphorus from wastewater and impacts to birch creek hydrology and water quality as a result of the wastewater flows from the Modified Belleayre Resort.

ii. Discussion, Mitigation and Findings

The original Belleayre project proposed the construction of two private wastewater treatment plants that have now been eliminated and treatment consolidated at the Pine Hill WWTP.

The Pine Hill WWTP is an updated treatment plant, providing advanced wastewater treatment, including microfiltration of the final effluent, per NYCDEP standards, with capacity to treat up to 500,000 gpd. The current average flows are approximately 130,000 gpd, therefore, the Pine Hill WWTP has the capacity and is capable of treating the estimated full build-out maximum day flow of 145, 200 gpd for the Modified Belleayre Resort

The Pine Hill WWTP uses UV light reactors instead of chlorine to disinfect the wastewater before it is discharged to the stream. The existing UV system has capacity to treat all of the wastewater flow from the Modified Belleayre Resort. Thus, the Modified Belleayre Resort's wastewater flows will not cause

the Pine Hill WWTP to use chlorine in its treatment process and no impact to aquatic habitats due to the use of chlorine will occur.

To assist the WWTP in dealing with problems associated with inflow and infiltration to existing pipes in Pine Hill during wet weather, the design for the project's wastewater infrastructure was adjusted to include a flow equalization tank on the project site that will be built by the Applicant and operated and maintained by NYCDEP. The capacity of the equalization tank was proposed to be 390,000 gallons plus 2,400 gpd of infiltration flow for the sewer pipe in the Modified Belleayre Resort. for a total of 392,400 gallons. Based on standard sizes for equalization tanks, a tank with 56-foot diameter and 24-foot high that has a capacity of 420,000 gallons with 12-inches of freeboard will be used to provide flow equalization. The equalization tank would normally be bypassed and the pump station would pump all of the Modified Belleayre Resort's wastewater to Pine Hill. During periods of high flow, or whenever else NYCDEP deems necessary, the wastewater would be diverted to the equalization tank operated by NYCDEP.

With the exception of the equalization tank that will be constructed by the Applicant on the project site, the Modified Belleayre Resort will own all of the proposed infrastructure, including the gravity sewers, pressure sewers, pump stations, and force mains. They will be operated by a sewage transportation corporation, which must be approved by the Town of Shandaken. The equalization tank will be operated and maintained by NYCDEP. The required operation and maintenance of the proposed wastewater system is expected to be very minimal in order to keep the system functioning as designed. The pump stations are the only aspects that will require routine inspection and periodic maintenance. The pump stations will be equipped with automatic call out alarm systems to alert the maintenance staff if something needs immediate attention. The pump stations will also be equipped with or wired into back-

The Applicant is proposing to pay an annual sewage fee to NYCDEP, and the Applicant will be responsible for all infrastructure construction, operations and maintenance costs associated with the project connection to the Pine Hill WWTP, with the exception of the operation and maintenance of the equalization tank which will be the responsibility of NYCDEP.

Sending project wastewater to the Pine Hill WWTP eliminates the need for a separate project wastewater discharge. A separate project discharge would have associated monitoring and reporting requirements under an additional SPDES permit that would have to be administered by DEC. The Pine Hill WWTP operates under an existing SPDES permit administered by DEC, and no changes to this permit are needed to accommodate the Modified Belleayre Resort.

Since the proposed wastewater flow rate from the Modified Belleayre Resort can be introduced to the Pine Hill WWTP without increasing its permitted flow rate or creating a need for increased treatment capacity, the additional flow will not have any adverse impact to the Birch Creek which is the receiving stream of the Pine Hill WWTP.

The project proposes innovative wastewater technologies including reduced potable water use for building sewage conveyance by 50% through the use of water-conserving fixtures (water closets, urinals) or non-potable water (captured rainwater and on-site or municipally treated wastewater).

Although the annual load of phosphorus from the Pine Hill WWTP will increase by 111 kg/year as a result of the Modified Belleayre Resort, this increase is already accounted for in the waste load allocation provided to the Pine Hill WWTP as part of the Ashokan total maximum daily load (TMDL).

Since loadings from the Modified Belleayre Resort are expected to have concentrations similar to conventional residential wastewater, the Modified Belleayre Resort should neither adversely affect the treatment capacity of the Pine Hill WWTP, nor the ability of the Pine Hill WWTP to meet its SPDES discharge permit limits. The Pine Hill WWTP has sufficient capacity to accept and treat the wastewater generated by the Modified Belleayre Resort and will not have any adverse impact to the Birch Creek.

c. Golf Course Management

i. Potential Impacts

Potential impacts to groundwater as a result of golf course operations include impacts from the application of materials such as pesticides and herbicides applied to landscaped areas and these materials entering the groundwater supplies.

ii. Discussion, Mitigation and Findings

Potential impacts to groundwater as a result of pesticide and herbicide use have been avoided by the development of the Organic Golf Course Management Plan. To address any potentially significant impacts from the operation of the 18-hole golf course, the Applicant shall comply with the requirements the Organic Golf Course Management Plan (Appendix 15 of the SDEIS) and with the conditions set out in Appendix B of these findings. In accordance with the Commissioner's Decision and Ruling, the Applicant shall, after issuance of all permits necessary for the construction of the Modified Belleayre Resort, establish the Technical Review Committee as outlined in the Organic Golf Course Management Plan. The Technical Review Committee shall be composed of a representative of the DEC, who chairs the Committee; a representative of the NYCDEP and the superintendent of the Highmount Golf Club or an Applicant designee until the superintendent is hired, and a representative of a non-governmental organization (NGO) with expertise in turf management or organic turf management, or both. All updates with respect to the Organic Golf Course Management plan are to be provided, in addition to the Technical Review Committee, to the DEC's regional directors in Regions 3 and 4.

Should the need for pesticide or herbicide applications arise, records will be maintained in accordance with DEC Program Policy OGC-3 and ECL 33-1205(1). The following information will be included in the application records: USEPA registration number, product name, quantity applied, application method, target organism, and place(s) of application.

Records are required to be maintained on an annual basis and retained for a minimum of three years. Annual reports derived from these records are required to be submitted to the central office of the NYSDEC. If requested, copies of annual reports will also be sent to the Department's Region 3 Office in New Paltz, NY. Access to pesticide application records shall also be available to personnel of the Towns of Shandaken and Middletown, such as the Code Enforcement Officer.

d. Irrigation Water

The sources of irrigation include "the pool well", "the Janis well", and "the Z well". The testing report for these irrigation wells in Appendix 17 of the SDEIS demonstrates that use of the irrigation wells will not negatively impact groundwater resources. The irrigation pond, which will also collect stormwater, will be lined.

e. *Blasting*

Based upon third party reports conducted on behalf of the US Bureau of Mines, the Applicant has concluded that it is unlikely that blasting, or blasting-induced changes to groundwater level will adversely affect wells in the area of the proposed project. However, the Applicant has proposed a series of measures to mitigate any impacts that may occur. These measures include a pre-blast well survey and the establishment of a well arbitration process. These mitigation measures are outlined in Section 3.2.4 of the SDEIS and Appendix B of these findings and are hereby incorporated as conditions of these findings.

VIII. Soils (Includes Stormwater Management and Sediment and Erosion Control and Blasting)

i. Potential impacts

1. Stormwater Management and Sediment and Erosion Control

Currently the site is undeveloped and predominantly forested. The total project site is approximately 739 acres. The Applicant has proposed to develop 218 of these acres, including approximately 1.5 acres of roads and 21 acres of impervious surface. Stormwater discharges to the Hudson River Watershed and the Ashokan Reservoir are limited. Only a small portion of the Wildacres site (approximately 12 acres) drains to the Hudson River Watershed. The majority of the stormwater discharges will be directed to the Delaware Watershed draining to the East Branch Delaware River and the Pepacton Reservoir.

Potential impacts include impacts from construction resulting in changes to the estimated exiting runoff discharge volumes, peak flow rates and sediment and phosphorus loading to receiving waters due to site disturbance and land use/cover modifications (i.e., an increase in impervious surfaces), and the disturbance of steep slopes. In addition, there are potential impacts to the Middle Hudson River Watershed and the East Branch of the Delaware River Watershed. Finally, additional potential impacts include impacts of runoff on water quality and quantity, including potential thermal impacts.

Improper stormwater management has the potential to affect the quality and quantity of both surface water and groundwater resources. Insufficient erosion control has the potential to affect water quality and lead to the loss of topsoil, especially on steep slopes. Development on steep slopes should be avoided because there is potential for erosion and a high rate of runoff for stormwater.

The lands on and around the project site are mostly areas of shallow and moderately deep, and very stony soils formed in glacial till soil derived from red shale and sandstone. These soils have a relatively high content of fine, colloidal material that does not settle well, but remains in suspension. Exposure of these soils during construction increases the potential for erosion and sediment deposition outside of the areas of construction, particularly during rain events. With this sediment, represented as total suspended solids (tss), there is a potential impact on water quality due to the additional presence of phosphorus load bound to the sediment.

In addition to sediment and phosphorus loads, there is a potential stormwater impact from industrial activities, namely from the concrete batch plant, to be located near the Wildacres Resort; and from rock crushing activities located in the same location as the concrete batch plant.

2. Blasting

Impacts from blasting are anticipated. The type of blasting to be employed is typical, general commercial construction blasting using non-electric controlled blasting where rock is pre-drilled, loaded with explosives and detonated. Larger areas requiring blasting are accomplished using numerous small blasts rather than fewer large blasts.

The majority of the blasting will occur in phase 1 and phase 2 of project construction. The duration of blasting operations depends on a number of factors. These factors include such things as the quantity of the rock that needs to be removed, the shape of the rock excavation (length, width and height), the incremental volume of rock loosened by each blast, the effort needed to prep the rock for blasting and the capacity to remove the rock from the blast area, and weather conditions. In addition to the potential impacts to groundwater wells discussed above, vibration and noise from blasting has the potential for impacting nearby structures and residents. Where blasting is required, the Applicant has committed to a series of mitigation measures, outlined below, in addition to the mitigation measures outlined above as regards blasting and groundwater resources.

ii. Discussion, Mitigation and Findings

1. *Stormwater Management and Sediment and Erosion Control*

In the original Belleayre Resort project, the Big Indian Plateau presented the greatest concern with regard to the potential stormwater impacts due to the topography of Big Indian with its steep slopes, and the location of the Big Indian Plateau within the Ashokan Reservoir Watershed (which includes waters listed as impaired waters) (see Commissioner's Decision and Ruling, p. 4). The Modified Belleayre Resort project, on the other hand, is almost entirely within the Pepacton Reservoir watershed. The Pepacton watershed is not considered impaired for construction related pollutants such as phosphorous and sediment. The elimination of development on Big Indian Plateau eliminated the

stormwater concerns associated with that component of the Belleayre Resort project. Additionally, changes to the project through the development of the SDEIS resulted in the reduction of 24 units from the upper portion of the Highmount Spa Resort, and the elimination of access roads on slopes greater than 20%, removing the potential for erosion on steep slopes during the construction of such facilities.

Project construction is to be phased over approximately 9 years, involving three phases, eliminating the need to have large areas of active construction open at any one time. Each phase of construction will have its own SWPPP that will require Department and NYC DEP review and approval before construction of that phase begins. The New York State Watershed Inspector General (WIG) will also review all SWPPPs associated with subsequent phases of the project. The applicant has agreed that the WIG will have 60 days for the review of each phase of the Applicant's stormwater plans during the same 60 days when the Departments' staff will be reviewing these plans for each phase. (See, Appendix D of these findings [November 17, 2014 letter from the Watershed Inspector General to the Department's Assistant Commissioner for the Office of Hearings and Mediation Services].)

The overall approach to erosion control during construction of the Modified Belleayre Resort will minimize erosion. Each construction phase will be divided into work areas that are 5 acres or less in size, with a few exceptions in the areas of the two hotels. The construction sequencing requires that a work area must be stabilized before soil disturbance can begin on the next work area. Sediment basins have been designed to capture and hold run-off from the 10 year storm. Diversion swales have been designed where there are undisturbed natural areas contributing run-off towards the active work areas. These diversion swales are designed to keep the uphill run-off from reaching the exposed soils in the active work area, reducing the potential for erosion.

The project will also be required to implement heightened soil stabilization time frames and inspection frequency. Other erosion control practices that shall be utilized during construction include perimeter silt fencing, bio logs or wattles, catch basin inlet protection, storm pipe outlet protection, check dams, water bars, rolled erosion control products, turf reinforcement mats, stabilized construction entrances, temporary and permanent seeding, wood fiber mulch and sod.

An additional mitigation measure related to soils and sediment and erosion control addresses how water captured in the proposed sediment basins will be treated during construction prior to the basins being drained. Specifically, food grade flocculent, chitosan or Liqui-floc®, shall be used to reduce turbidity in the sediment basins. Flocculants shall only be used during construction, and no flocculent-treated water shall be discharged to surface water bodies. The water from the sediment basins will be dispersed overland where any remaining free flocculent will bind with organic matter.

The Stormwater Management Design Report (see Appendix 18 of the SDEIS) states that the peak discharge rate does not increase from existing conditions. The project's stormwater management system has been designed in accordance with the current (2010) requirements of the New York State Stormwater Management Design Manual (NYSSMDM) such that post-development stormwater will leave the site at the same rate as it does now in the pre-development state. The NYSSMDM is the Department's design standard for stormwater management. The stormwater management system has

been designed to attenuate the increased peak rate of flow to the pre-development flow. This will be accomplished through the construction of detention basins and by utilizing green infrastructure that holds back stormwater runoff thereby allowing water to be discharged at the same rate as it is discharged in the pre-development stage, but over a longer period of time to account for the increased volume of run-off. The overall system was designed to attenuate the post-development peak rate of run-off for the 10 and 100 years storm events to pre-development rates thus ensuring that impacts to surface waters will be no greater than under the existing conditions.

Additionally, the proposed project includes plans for the reconstruction of the CR-49A corridor. Although post-development flow rates are not anticipated to increase, the Applicant has proposed to replace several culverts with larger culverts to address issues relating to flooding under the existing conditions. Improvements to the drainage channel along CR-49A will also provide additional storage so that runoff will discharge through the road culverts as intended rather than spilling over and overtopping the road. Concrete weirs, within the channel improvements, have been designed to direct the flow from smaller storms to the road culverts without spilling over the channel and onto the road (see, generally, Commissioner's Decision and Ruling, p. 20).

The Modified Belleayre Resort project stormwater management plan meets the DEC and NYCDEP (which are the jurisdictional stormwater authorities) requirements for stormwater quality and quantity. The mitigation measures set out in the April 5, 2013 letter from the Applicant's attorney to the Department (attached as Appendix B) with proposed mitigation conditions, including stormwater management conditions, are hereby incorporated into these findings as legally enforceable conditions and shall be incorporated into the SPDES permit for discharges associated with construction activities.

As for impacts from the concrete batch plant and rock crusher, appropriate sediment and erosion controls will be implemented for this portion of the project site during construction. Should additional or enhanced practices be required during construction, due to unforeseen circumstances, the Independent Stormwater Monitor (to be established by the SPDES permit) has the authority to direct that they be employed and will document their use and maintenance as part of the SWPPP updates and record keeping requirements.

2. Blasting

Where blasting is required, the Applicant shall perform a series of mitigation measures. These mitigation measures are outlined in Appendix B of the findings (see section "Blasting for Construction"). Measures include a blasting survey, time of day and time of week restrictions, blasting notification to adjacent landowners, the maintenance of a blasting record and the establishment of peak particle velocity limits. These mitigation measures are hereby incorporated into these findings.

IX. Terrestrial and Aquatic Ecology

i. Potential impacts

Potential impacts from land clearing include loss of habitat, introduction and spread of invasive species, forest fragmentation, and disruption of movement patterns of wildlife, including large, mobile wildlife such as bear and deer, or less mobile populations such as snakes, breeding bird and bat populations. Impacts to wetlands are anticipated due to construction activities.

Of the 739 acres of existing plant communities on the site approximately 218 acres, or about 29 percent of the site, would be impacted by the proposed action. Most of the site is forested, thus the vast majority of the habitat alteration would affect forested communities. This includes 178.8 acres of Beech-Maple Mesic Forest and 36.0 acres of Hemlock-Northern Hardwood Forest. Combined, these two communities represent approximately 98% of the impact area.

No threatened or endangered plants or unique natural communities were found on the site during site investigations. No New York State Regulated Freshwater Wetlands will be impacted by the proposed development and therefore no State Regulated Freshwater Wetland permit is required. United States Army Corp of Engineers (ACOE) jurisdictional determinations for the project site confirmed that no Federal permit, under section 404 of the Clean Water Act, is required for the project.

Proposed physical disturbance of wetlands involves the removal by hand of woody vegetation for the golf course playover areas and the installation of golf cart bridges. These golf cart bridges will total 148 linear feet and will span an area of 0.03 acres of ACOE jurisdictional wetlands, a quantity considered to be a *de minimis* amount of the waters of the United States. A 24-foot long steel arch culvert, spanning over 0.009 acres of waters of the US, with the footings for the span located outside of the waters of the US is also proposed.

Potential impacts to non-jurisdictional wetlands include the proposed construction of a parking garage associated with the Wildacres Hotel. The Applicant has proposed to build the parking garage upon piers with no anticipated direct impact to the wetland hydrology. This wetland is seep formed and maintained primarily by groundwater discharge. The function of wetlands that will be primarily impacted by the Modified Belleayre Resort will be a change in wildlife habitat in the golf course playover areas only.

Impacts to wild life would correlate primarily with the extent and nature of habitat loss. Some medium and large-sized species, such as raccoons and white-tailed deer, might successfully adjust their home ranges, thus reducing the magnitude of the impact. But smaller-sized species, including small mammals, amphibians, and reptiles, would be impacted to a degree directly commensurate with the loss of habitat. Suitable habitat for breeding birds would likewise be reduced. The reduction in suitable habitat would result in a reduction in population levels of certain wildlife species. Since on-site habitat conditions are similar to much of the habitat available in the immediate area, the proposed action is unlikely to result in a reduction in local or regional species richness.

Considerable variation exists within the areas of project disturbance. For example, although 0.22 acres of wetland cover types (intermittent rocky stream wetland, hardwood swamp, and hemlock-hardwood swamp) would be impacted, no wetland fill is proposed. Hand removal of woody vegetation for golf course playover areas will however change the existing wetland plant communities to an open wet meadow habitat in the limited areas affected.

Impacts on avian species would focus on forest-dwelling birds. The Ovenbird, Black Throated Green Warbler, and Red-eyed Vireo are three species that are among the five most abundant species in each of the forested communities that are likely to be most affected. These species are representative of avian species typically found in large forested stands. The alteration of about 218 acres of forested habitat would reduce the abundance of these species in the immediate area, along with other common forest species. Vast areas of comparable forest habitat exist in the local area, as well as throughout this region of New York State, thus the overall impact on forest-dwelling birds would be minimal.

Impacts of the proposed action on amphibians reflect the degree to which various plant communities would be disturbed and the habitat preferences of those species documented on the site. For example, species such as the red-spotted newt, wood frog, and eastern red-backed salamander utilize a variety of community types; a reduction in suitable habitat commensurate with the acreage to be disturbed is expected. Stream salamanders should be affected to a lesser degree because their distribution on the site is confined primarily to the Intermittent Rocky Stream Wetland community, of which only 0.8 acre will be affected by hand removal of woody vegetation.

Although several snake species could occur on the site, only the common garter snake was documented. All of the potentially occurring snake species are associated with upland communities, including forested communities. Therefore, if such species are present on the site, the proposed action would alter the habitat suitability for such species. However, any potential impact would not totally reflect the loss of habitat since snakes can adapt and find suitable habitat in close proximity to structures and human activity. No endangered, threatened, or special concern snake species, including the timber rattlesnake, were documented using the site or are known to inhabit the area.

Likely impacts on mammals would vary among the species known or likely to use the site. Small-sized mammals that have small home ranges, such as mice, voles, shrews, rabbits, and squirrels, would be reduced in abundance in similar proportion to the loss of suitable habitat.

Larger-sized mammals, such as foxes, skunks, and raccoons, would also experience a loss of suitable habitat. Because such species range over larger areas, encompassing various community types, there is a greater potential for them to adapt to newly created habitat conditions by adjusting their home ranges. These species, along with white-tailed deer and black bears, have demonstrated the ability to exist in close proximity to human development. Their continued abundance in densely populated suburban areas attests to this adaptive capability. While the loss of existing plant communities may cause a reduction in the overall abundance of these larger mammals, viable populations will remain on the site.

The proposed action would have no negative effect on use of the site by bats. The creation of openings and forest edges can enhance foraging opportunities for bats. Such enhancements would result from the construction of roads, ski slopes and other proposed facilities. Human activity associated with such areas would have no effect on bat foraging behavior. The DEIS examined the issue of the Indiana bat and found that the project site does not provide suitable habitat for such bats. The recent listing of the Northern Long Eared bat does not change the DEIS conclusions as this is not known occupied habit for either species. Therefore, the proposed action would have no negative effect on mammalian species that are listed as endangered, threatened, or species of special concern

ii. Discussion, Mitigation and Findings

Golf course construction will involve the standard sequence of clearing, grubbing, rough grading, fine grading and stabilization. Techniques will be employed to minimize impacts. Examples include tree roots left in place on the slope then seeded and maintained as taller grasses. A similar treatment will occur where golf holes cross fringe wetlands associated with the intermittent streams that run through the site. In these areas trees will be cut and removed from the wetlands by hand. There will be no removal of the herbaceous vegetation within the wetlands and the soils will remain undisturbed.

In other locations, where an intermittent stream runs across the golf hole in between the fairway and the green/approach, grading is not proposed to occur within 30 feet of the stream. Within this area trees will be removed, stumps will be grubbed and the area will be smoothed by raking and then seeded. No earthmoving will occur in this or similar areas.

All of the proposed clearing of woody vegetation within wetlands 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, minimal disturbance of soil within this area (wetlands) will take place. Detailed tree clearing protocols will be included on the grading and clearing plans provided to contractors.

The hydrology of the wetlands will not be altered as a result of the changes that will occur on the site as part of the project. Stormwater management has been designed to maintain pre-development discharge, including sediment and erosion control plans that detail how potential impacts to wetlands from erosion will be prevented.

To address the issue of the potential impact from invasive species, an Invasive Species Control Plan (see Appendix 21 of the SDEIS) shall be implemented. The Invasive Species Control Plan contains specific control measures for construction and operations for the prevention and control of invasive species such as purple loosestrife, common reed, garlic mustard and Japanese knotweed.

As for impacts to wildlife, although the alteration of large blocks of forested habitat would reduce the abundance of some avian species, the project would enhance habitat suitability for other species. For example, the most abundant species recorded in the breeding bird data collected from sampling points designated as “ski slope” and “ski slope/beech-maple mesic forest” included such species as chestnut-

sided warbler, common yellowthroat, wood thrush, Baltimore oriole, mourning dove, rose-breasted grosbeak, chipping sparrow, and American goldfinch. These species were not the most common species recorded from sampling points in purely forested portions of the site. Consequently, those avian species that require extensive stands of forested habitat would be negatively impacted by the proposed action, while other species, those that prefer "ecotone" (newly created) conditions, would be positively affected. No significant impact to avian species are anticipated.

No potentially significant impacts to wildlife were identified during the course of this assessment. Therefore, no specific mitigation measures are necessary. No rare species, or habitats of unusual value were found associated with the site.

An ecological impact analysis, using a 200-meter effect zone, conducted as part of the FEIS, compared the ecological effect zone of the existing development to the ecological zone of the proposed development. The analysis concluded that the majority of the ecological effect zone associated with the proposed development falls within areas that are currently developed or the corresponding ecological effect zone of current development. Only a minimal amount of undeveloped land, approximately 3.4%, will be added to the existing ecological effect zone.

There were no federally or state listed endangered or threatened species identified on the site during field investigations. Three species of special concern were observed on site including Red-Headed Woodpecker, Vesper Sparrow, and Sharp-shinned Hawk. The habitat observed within the project site is comparable to the habitat of the 200-meter adjacent area, and therefore similar species composition is likely to occur within both areas. Federally or state listed endangered or threatened species are not expected to be affected. Although the species of special concern and other species found in the ecological effect zone may be affected during and after construction, the effect is expected to be minimal. This is due to the fact that a variety of wildlife is currently utilizing the site and surrounding areas despite the fact that an ecological effect zone from developed areas already exists, and the existing effect zone will only be expanded minimally by the proposed development.

Introducing new residential development into an area with abundant wildlife may result in an increase of human-wildlife interactions. Such interactions can become a nuisance unless addressed as part of the operation of the Modified Belleayre Resort. Mitigation measures shall be consistent with DEC guidance on this issue, including the following: except for winter months, bird feeders shall be prohibited; where feasible, garbage containers shall be stored inside; where it is unavoidable to have dumpsters located inside, dumpsters shall be equipped with lids that can be locked to prevent access from wildlife; garbage cans and other refuse containers shall be cleaned frequently with ammonia, bleach or Lysol; kitchen exhaust fans that vent to the outside when not in use shall be turned off and vent screens shall be cleaned regularly.

The relatively small and localized impacts to wildlife that could result from the development of the Modified Belleayre Resort are offset by the approximately 1,189 acres of forested land on the Big Indian parcel that, as a direct consequence of the AIP process, have been placed in public ownership and added to the State Forest Preserve —thus protecting a large and important block of wildlife habitat from any

future impacts. Also, approximately 203 acres known as the Adelstein parcel (located in the western part of the project site) were placed in a Conservation Easement granted to New York City, which will further help to protect and save wildlife habitat.

X. Traffic

As mentioned above, SEQR does not change the jurisdiction between or among agencies. State, county, and local roads fall within state or municipal jurisdictions (county and town). These entities, to the extent they must issue discretionary permits for the project, have the responsibility to make specific findings and conditions on traffic issues. Certain mitigation measures are recommended below and the Applicant has agreed to pay its fair share for these mitigations.

i. Potential impacts

Car and truck traffic on local roads will increase from contractors, employees of the resort complex, residents, and patrons of the hotel, spa, and other amenities. Potential impacts include an increase in accidents, increase in traffic volume, and disruption of traffic flows associated with reduced views at intersection.

A study of seasonal traffic in the study area was undertaken as part of the Belleayre Resort at Catskill Park DEIS. It is typical for seasonal factors to be utilized to factor raw traffic data up or down to represent “average” volume conditions. Due to the extreme seasonal nature of the study area, the scope of this study was defined to analyze a “worst case” condition in the study area. The analysis presented in the initial DEIS included a wintertime AM and PM hour analysis, fall Friday PM and Sunday PM peak hour analysis, and a general assessment of summer traffic volumes. Of the four seasons assessed, the wintertime Saturday afternoon peak was determined to be the worst case condition and was the basis of the detailed traffic analysis and for the improvements recommended as part of the project. In general, a comparison of traffic volumes indicates that the January traffic volumes are between 1.8 and 2.5 times higher than June volumes, and January traffic volumes are approximately 1.8 times higher than October volumes. A further comparison of weekend peak hour traffic volumes on NY Route 28 from 2004 illustrates that peak conditions occur during ski season consistent with the peak analyzed in the traffic study.

As part of an SDEIS updated traffic impact study (TIS) (see Appendix 11 of the SDEIS) (which cumulatively assessed the traffic from both the Modified project and the anticipated traffic from the BMSC at full-build-out) a study area was established and several intersections along the Route 28 corridor were analyzed for accidents, capacity/level of service and sight distance. These intersections were:

NY Route 28/NY Route 214/South Street

NY Route 28/NY Route 42

NY Route 28/County Route (CR) 47

NY Route 28/ Main Street

NY Route 28/CR 49A/Owl Nest Road

CR 49A/Gunnison Road/Belleayre Lower Driveway

CR 49A/Belleayre Upper Driveway

Other intersections analyzed as part of the 2003 DEIS for the Belleayre Resort at Catskill Park include the NY Route 28/Friendship Road intersection and the Main Street/Bonnieview Avenue/Academy Street intersection. These intersections were addressed qualitatively in the SDEIS as the modification of the proposed project, including the removal of Big Indian, has significantly reduced potential impacts at these intersections associated with the Modified Belleayre Resort.

To evaluate the impact of the Modified Belleayre Resort, traffic projections were prepared for a Build year of 2015 and a comparison made between future traffic volumes with the project (Build) and without the project (No-Build). Peak hour average vehicle delays were calculated to establish the quality of operation. This level of service (LOS) was used as the measure of effectiveness for traffic flow conditions. LOS is identified on a scale of level of service, a LOS of "A" is considered excellent with very little delay while a LOS of "F" generally represents conditions with very long delays.

Construction traffic will access the project via NY Route 28 and CR 49A. For the start of Phase 1 Wildacres construction traffic will come from CR 49A, onto Gunnison Road, and into the site. For the later part of Phase 1 and thereafter traffic will enter through this same route but will also have the upper entrance near the hotel as an ingress/egress location. Phase 3 construction at Wildacres will utilize the Front-9 Village access road directly off of CR 49A. Essentially all construction traffic for Highmount will be from NY Route 28 and CR 49A. All construction vehicles will use this route, but it is possible that some locally residing workers might come to the site from the south via CR 49A.

Rough widening of the upper portion of CR 49A will occur in the early phase of the project in order to provide heavy equipment access to Highmount site during construction.

The improvements along the upper portion of CR 49A are anticipated to take approximately 3 months to complete. Dry Brook Road and Todd Mountain Road to Fleischmanns Heights Road would be likely detour routes for local traffic during the approximately 3 months it will take to complete this work. The detour may not be needed for the entire time. Access for local residents along CR 49A within the work zone is likely to be disrupted.

Based upon the updated traffic impact study (Appendix 11 of the SDEIS) and Crossroads' assessment of the market area for the proposed resort, Interstate 87 is the likely main artery for the majority of the traffic traveling to the resort from the greater metropolitan New York area. The highest percentage of travel is predicted to use Interstate 87, Exit 19 where NY Route 28 provides access to the project area and Exit 16 where NY Route 17 and CR 47 provide access to the project area.

Based upon intersection LOS and capacity analysis, the following intersections will experience degradation in the LOS, with an increase in traffic volume or traffic delays, and will require mitigation:

NY Route 28/NY Route 214/South Street NY Route 28/CR 49A/Owl Nest Road

CR 49A/Belleayre Upper Driveway/Wildacres Main Access Driveway

CR49A/Wildacres Front 9 Village Driveway

CR 49A/Wildacres Upper Access Driveway

CR 49A/Highmount Spa Resort Driveway

The sight distance analysis (SDA), conducted as part of the traffic impact study, involved the measurement of intersection sight distances from the perspective of a passenger car exiting the site at the proposed site access driveway locations on CR 49A, looking straight ahead for vehicles traveling north and south on CR 49A, and turning left into the proposed development. The available intersection sight distance approaching the intersection from a side street should allow drivers a sufficient view of the intersecting highway to allow vehicles to enter or exit the intersection without excessively slowing vehicles traveling at or near the operating speed on the main roadway.

Sight distances may be impacted by a combination of roadway speed, the presence of vegetation, the presence of an embankment, or the geometric configuration of the intersection.

The following intersections were found to have sight distances less than the recommended standards:

CR 49A/Wildacres Front-9 Village Driveway

CR 49A/Wildacres Main Access Driveway

CR 49A/Wildacres Upper Access Driveway

CR 49A/Highmount Spa Resort East Driveway (Main Driveway)

CR 49A/Highmount Spa Resort West Driveway (loop road)

CR 49A/Highmount Spa Resort South Driveway (loop road)

CR 49A/Wilderness Activity Center Driveway

ii. *Discussion, Mitigation and Findings*

No pedestrian related accidents or fatalities were recorded at the study area intersections or segments. Based upon the NYSDOT accident records on NY Route 28 and CR 49A, a majority of the accidents occurring on the study area roadways and intersections involved a single vehicle collision with fixed

objects and animals due to the rural character of the area and driver error and inattention. Consequently, as these existing conditions cannot be corrected by roadway improvements, no accident related mitigation is required for the Modified Belleayre Resort.

The analysis of traffic levels indicates that some roadway improvements need to be undertaken to improve traffic movements. These include constructing a right turn lane on CR 49A to facilitate right turns onto NY Route 28 eastbound towards Kingston; a left turn lane on NY Route 28 to facilitate left hand turns off of NY Route 28 and onto CR 49A towards the Modified Belleayre Resort; and a three-phase traffic signal at the NY Route 28/CR 49A intersection.

The LOS analysis indicates that the unsignalized study area intersections on NY Route 28 at NY Route 214, NY Route 42, CR 47, and Main Street and the CR 49A/Gunnison Road/Belleayre Lower Driveway intersection will operate at poor levels on the minor street approaches during No-Build conditions and will continue to operate similarly after construction of the Modified Belleayre Resort. However, a review of the minor street volume to capacity (v/c) ratios indicates that, while these approaches may experience longer delays during the Saturday PM peak hour, they still provide adequate capacity. The delay experienced during the Saturday PM peak hour is mainly reflective of the through volumes on NY Route 28 and CR 49A and is generally considered an acceptable operating condition since the traffic volumes reflect peak seasonal operating conditions.

In addition, based upon the National Manual on Uniform Traffic Control Devices (MUTCD), these intersections do not meet the traffic volume criteria for the installation of a traffic signal during peak operating conditions of the BMSC and the Modified Belleayre Resort. The vehicle delays experienced on the side streets are expected to be much less during off-peak seasons and off-peak times of day. Therefore, no capacity related mitigation is recommended at these intersections.

The unsignalized NY Route 28/CR 49A/Owl Nest Road intersection will operate at poor levels of service on the minor street approaches during No-Build conditions and will continue to operate similarly after construction of the Modified Belleayre Resort. Due to the high turn volumes traveling to and from NY Route 28 and CR 49A, the traffic study concluded that a westbound left-turn lane on NY Route 28 and a northbound right-turn lane on CR 49A is necessary. In addition, based upon the National MUTCD, the peak hour signal warrant would be met for No-Build conditions during peak winter conditions and therefore a three-phase traffic signal should be installed at this intersection. It is anticipated that the traffic signal would be fully operational during the winter months and may be able to operate on flash during off-peak spring/summer/fall months. This intersection will operate adequately during the Saturday PM peak hour for No-Build and Build conditions after the installation of a traffic signal. The above improvements are warranted for the No-Build condition prior to the development of the proposed project and should therefore be completed before the project opening date. Since the combination of the BMSC UMP and the Modified Belleayre Resort will result in the volume increases that meet the criteria for the installation of a traffic signal and geometric improvements, the Applicant has committed to a fair share contribution towards the improvements at this intersection.

The LOS analysis indicates that the Upper Access Driveway for the Wildacres Resort and the Highmount Spa Resort Driveway intersections on CR 49A will operate adequately during the peak hours as unsignalized intersections. The Front-9 Village driveway on CR 49A will operate with vehicle delays of approximately one minute on the driveway approach during the peak hour as an unsignalized intersection. These intersections shall consist of a single lane on each approach for shared travel movements with the site access road approaches operating under stop-sign control.

The LOS analysis indicates that the new eastbound Wildacres Main Access Driveway approach will operate at a LOS F since movements from this intersection will mainly consist of left-turns that have to yield to through traffic on CR 49A and to the high number of westbound right-turns associated with the skiers exiting the BMSC. Based upon the National MUTCD this intersection does not meet the traffic volume criteria for the installation of a traffic signal during peak operating conditions. It is expected that the LOS F experienced during the winter weekend conditions would be short-term, therefore the intersection shall be controlled with stop signs on the eastbound and westbound approaches. As a result of sight distance limitations, CR 49A shall be realigned and regraded vertically at this intersection. To better accommodate the vehicles entering the BMSC as well as the Modified Belleayre Resort from CR 49A, left turn lanes shall be constructed on CR 49A at this intersection as part of the roadway improvements.

A qualitative intersection evaluation at the intersections of NY Route 28/ Friendship Road and Main Street/Bonnieview Avenue/Academy Street indicates that these intersections will operate adequately after full development of the proposed project. No mitigation is necessary.

The results of the intersection sight distance analysis indicate that vegetation clearing and embankment grading is necessary to provide adequate sight lines for the Highmount Spa Resort Driveway intersections and at the Wildacres Upper Access Driveway. The results of the intersection sight distance analysis also show that vegetation clearing, embankment grading, and the installation of an intersection warning sign is necessary for the Wildacres Front-9 Village Driveway. The vertical curve on CR 49A should be modified and road realigned in front of the Wildacres Resort Main Access Driveway to provide adequate stopping sight distance and improve the intersection sight distance. This is essential since an at grade pedestrian crossing is proposed as part of the site plan on the south side of the intersection which will allow skiers from the Wildacres Resort to cross CR 49A and access a new ski lift proposed on the opposite side of the road. The results of the intersection sight distance analysis also show that the existing Wilderness Activity Center driveway should be moved to an alternative driveway located approximately 300-feet to the south. No private vehicles will have access to the Wilderness Activity Center, only resort shuttle buses.

The entrance to Wildacres Hotel is proposed to be located along CR 49A across the road from the BMSC upper driveway. Because of existing sight distance problems in this location, this section of CR 49A will be improved with reconstructed vertical and horizontal curves. As part of this reconstruction a center left turn lane from CR 49A into the BMSC upper driveway and into the Wildacres Hotel shall be added to CR 49A.

The section of CR 49A above the BMSC upper driveway will also be improved in order to widen the road and to alleviate some existing limitations due to horizontal and vertical curves. The vast majority of the proposed improvements are necessary under the existing baseline conditions. Currently, drainage controls along the section of CR 49A near the former Highmount Ski Center are inadequate during heavy storm events. As part of the road improvements to CR 49A proposed in this area, drainage improvements will be made to alleviate these currently inadequate drainage conditions. Larger rip-rapped drainage swales will be installed along the side of CR 49A and the culverts that currently carry water under the road will be replaced by larger culverts set at the proper elevations. According to the Applicant, these drainage improvement plans were reviewed in the field with engineers from Ulster County Department of Public Works Highways and Bridges Division who agreed that the proposed measures would improve drainage along this section of CR 49A. The Applicant has agreed to pay for these improvements.

In winter, shuttle buses will play a role in reducing the trips from the Modified Belleayre Resort to and from the BMSC. The Applicant will also provide year round shuttles between the Modified Belleayre Resort and the Wilderness Activity Center. It is estimated that 60% of the trips generated by the Modified Belleayre Resort during the winter peak will be shared trips between the resort and the ski center. Of the shared trips it is estimated that 90% will use the shuttle system or ski-in/ski-out services.

XI. Visual Resources

i. Potential impacts

Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Significant aesthetic impacts are those that may cause a diminishment of the public enjoyment and appreciation of an inventoried resource, or one that impairs the character or quality of such a place. Potential significant aesthetic impacts from the Modified Belleayre Resort include impacts on publically accessible hiking trails, scenic roads, high points, State Forest Preserve and National Register Properties. Visibility at night and the issues of nighttime “sky glow” and direct glare are also considered as potential impacts.

The Applicant’s visual impact assessment (VIA) analyzed the changes in views that could be expected as a result of the project. Zones of potential visibility were established, 51 locations were photographed and ultimately 11 locations selected as representative of the view shed in the five-mile study area. In addition to aesthetic resources designated by DEC Program Policy “Assessing and Mitigating Visual Impacts”, views included public roadways as established by the Modified Belleayre Resort scoping document issued in February 2008. The anticipated changes to the view shed as a result of the project are provided in detail in Appendix 25 of the SDEIS and the Errata section of the FEIS.

An additional 22 viewpoints were reviewed outside of the five-mile study area. Based upon the VIA, there were no views into the project from 19 of the viewpoints. These views were blocked by topography and/or vegetation. The project site is barely visible from the fire tower on Hunter Mountain, which is 12 miles away and is not discernible in the rendering of the proposed project. Parts of the project site are also visible in a very limited view from Bearpen Mountain that is 9 miles from the site. The Modified

Belleayre Mountain Resort is not discernible in the rendering of the proposed project. The third location, Halcott Mountain, is actually within five miles, and the view from this trail-less mountain is highly screened by vegetation. See Appendix 25 of the SDEIS.

The SDEIS included an assessment, by Lighting Research Center (LRC) of Rensselaer Polytechnic Institute, of the effect of the Modified Belleayre Resort's outdoor lighting on project visibility at night by analyzing Outdoor Site-Lighting Performance (OSP) or "Glow". The OSP allows the quantification of outdoor lighting impacts before installation and a comparison with other sites. Analysis was conducted for three parking lots, three roadway segments and the tennis courts.

The OSP analysis showed that the proposed outdoor lighting at the Modified Belleayre Resort will likely produce more outdoor light leaving the boundaries of the site in winter compared to summer, due to reflective snow on the ground and will emit more light than the adjacent lighting at BMSC; and that roadways and parking lots at the Modified Belleayre Resort will perform well in terms of light pollution, if implemented as designed. However, the tennis court lighting, without mitigation, would exceed both average OSP database results for sports facilities and LRC's recommended limits before a hypothetical curfew hour.

ii. Discussion, Mitigation and Findings

As for the existing views analyzed in the VIA of SDEIS and Errata section of the FEIS, all have some existing development in them, with some having more than others, and the type varying between viewpoints. Views, for the most part, are from public roads that have existing foreground development between the receptor location and the project site. From the north of NY Route 28 looking south, foreground and middle ground views all have BMSC, Highmount, and the cell phone tower protruding above the ridgeline at Highmount in the views that include the project site. The one view facing north across NY Route 28, Cathedral Glen hiking trail, has road corridor, residential and recreational development in the view.

The lack of significant visual impact in part involves the limited number of people that would be affected by any changes in views. The busiest public road in the area is NY Route 28, and the project is only potentially visible from one location on this road. In order to get the view into the site from near Koop Road, a driver and any passengers would have to look at an angle to the direction of travel while driving on a road posted at 55 mph and while going around a curve. All of the other road views assessed in the VIA have a limited number of users, including some views from unpaved roads.

The project will not be visible from any Forest Preserve lands classified as Wilderness. The project has limited visibility from Wild Forest areas due to vegetation, topography, distance, and the mitigation measures listed below.

Mitigation measures associated with the design of the Modified Belleayre Resort reduce visual impact to minor levels. The Applicant has eliminated the Big Indian development and has agreed to clustering development, relocating the upper elevation units at Highmount and eliminating large areas of clearing

needed for surface parking by placing parking underground within buildings, specifying earth tone colors for exterior finishes, implementing green building architecture at the Highmount Spa Resort, and preserving nearly 70% of the project site in its current condition.

Regarding nighttime impacts, to improve OSP performance before curfew hour, the analysis concluded that the tennis courts should be enclosed by means of foliage or high opacity windscreen material. This will help contain light within the tennis court areas and mitigate impacts. The Applicant shall mitigate potential impacts from tennis court lighting by establishing a curfew of one hour after sunset. Afterwards, the tennis court lighting will be turned off entirely through the use of an automatic timer.

The Errata section of the FEIS includes the addition of the Galli-Curci Mansion as a viewpoint and an evaluation of the potential visual impacts from Highmount Spa Resort on the Galli-Curci Mansion. The Galli-Curci Mansion is listed on the National Register of Historic Places. A contributing factor to its listing is the scenic views across the valley below the estate, specifically to the northwest, which is in the opposite direction of views towards the Highmount Spa Resort. Analyses of topography and vegetation, along with photographs and mapping provided in the Errata section of the FEIS, shows that intervening topography and vegetation will provide a visual screen of the project. Views of the Modified Belleayre Resort from the Galli-Curci Mansion will be limited under both leaf-on and leaf-off conditions and will not significantly impact the Galli-Curci Mansion. Potential visual impacts on the Galli-Curci Mansion were evaluated in accordance with the Department's Visual Policy and no further analysis is warranted. However, before the commencement of construction, the Applicant shall provide the Department with a planting plan for deciduous and evergreen tree plantings along CR 49A that will provide additional visual screening of the Highmount Spa Resort. (See, generally, Commissioner’s Decision and Ruling, pp. 22-23.)

XII. Noise

i. Potential Impacts

A noise assessment (NA) (see Appendix 20 of the SDEIS) and a traffic noise impact assessment (See Appendix 26 of the SDEIS) were conducted for the Modified Belleayre Resort. The noise assessment consisted of an ambient sound survey, an estimation of predicted sound levels from the construction and operation of the Modified Belleayre Resort, and an evaluation of potential adverse noise impacts. Where adverse noise impacts were predicted, noise mitigation was proposed to address the impact.

Potential impacts from noise include project construction, project operation, and traffic associated with the project. Potential significant impacts from the construction of the access road, Highmount Golf Club, building and facility construction and renovation, and rock crushing at Highmount, include the operation of earth and rock excavating machinery, including a rock crusher, and blasting.

In comparison with other construction sound, the impact from blasting will be brief and relatively infrequent. The nearest blasting to receptors is expected to occur for the underground parking area of the Wildacres Hotel, approximately 1500 feet south of the nearest receptor. This receptor will be

shielded from the blast by terrain and woods. Blasting will not significantly contribute to overall construction noise from the Modified Belleayre Resort.

Impacts from project operation may include both daytime and nighttime, and both continuous and non-continuous sources. Major continuous noise sources include heating, cooling and ventilation system (HVAC). Major non-continuous noise sources consist of on-site traffic, golf course maintenance, and new ski slope snow making operations.

The Noise Impact Assessment associated with project traffic is in Appendix 26 of the SDEIS. A traffic noise study was completed to quantify the effect of the increase in traffic volumes on traffic noise in the study area. This noise study compares the potential changes to noise levels due to the project and compares them to the noise requirements of the Codes of the Towns of Shandaken and Middletown, and to the New York State Department of Environmental Conservation Program Policy "Assessing and Mitigating Noise Impacts". Traffic related noise levels are expected to slightly increase along CR 49A during the ski season Saturday peak one-hour traffic period. These predicted noise level increases will be gradual and slowly increase until full build-out. They also fall within the range of barely noticeable to most people and remain below the Federal Highway Administration (FHWA) noise abatement criteria for the existing land use. For these reasons, the increase in traffic volumes along affected roadways due to the proposed project will not create a significant noise impact; therefore, no mitigation measures are necessary. Increases in traffic noise during non-peak periods, which will include resort guests driving to and from the resort, and resort shuttles traveling between different areas of the resort (described in Appendix 11 of the SDEIS), will be less than that for peak traffic conditions.

With regard to potential operational noise impacts on users of wilderness and wild forest areas from onsite activities, the noise impact assessment determined that no change in ambient noise levels on Wilderness or Wild Forest lands would occur. The study concluded that no increase in daytime or nighttime ambient sound levels will occur at the nearest State Forest Preserve lands classified as Wilderness, that there will be no increase in the ambient sound level at the State Forest Preserve from estimated nighttime continuous sound levels from project operation, and no increases in average ambient sound levels arising from daytime and nighttime sound levels. (See, SDEIS, Appendix 20; FEIS, Response to Comments, p. 196.)

ii. Discussion, Mitigation and Findings

Proposed mitigation for construction related impacts shall include minimizing on-site equipment usage when within 500 feet of residences, placing temporary earthen berms when construction is anticipated for an extended period, maintaining vegetative buffers between the construction and the receptor, placing of temporary line of sight barriers between construction equipment and receptors and constructing a barrier between the rock crusher and the nearest receptor.

Proposed operational noise impact mitigation includes the use of lower-noise HVAC units, or placing sound shielding barriers around each HVAC unit.

As part of the mitigation strategy to address potential construction noise impacts, the Applicant shall establish and comply with the following protocol:

a) During the first two years of construction, Crossroads shall maintain a phone complaint line during its hours of operation. Upon receipt of a complaint regarding noise generated by blasting operations, rock crushing or cement plant equipment on its construction site(s), whether written or oral, Crossroads shall enter a record of the complaint in a log maintained for that purpose.

b) Within two hours of receipt of the complaint, Crossroads shall investigate the alleged noise problem and respond to the person who complained.

c) In the event that Crossroads in its sole discretion determines that corrective action is required, such corrective action shall be promptly implemented and a note of such action shall be entered in the log.

d) If Crossroads cannot promptly identify and correct the cause of the noise complained of, the person who complained shall be invited to inspect the site, with a company escort, to assist in identifying the source of the problem. Upon completion of any corrective action, the person who complained shall be invited to inspect the site, with a company escort, to observe the corrective action.

e) The complaint log shall be kept at the site, and shall be available for inspection by the DEC.

f) This complaint procedure shall not limit the other remedies of DEC, or any other person or organization with regard to noise conditions at or around the Modified Belleayre Resort (See Section 3.7 Noise, pp.3-67 of the SDEIS).

In addition to the noise complaint mitigation measures described above, DEC staff and the Applicant agreed to evaluate potential noise impacts prior to initiating construction, as additional mitigation may be necessary for major noise-producing construction and post-construction activities, operations, or equipment—hereinafter referred to as "noise generators." For construction noise generators, each location/aspect/activity/equipment may require consideration (e.g., Wildacres/West Village/clearing/dozer). Mitigation may consist of any or all of the following: noise barriers (berms and/or walls), site re-grading and structure/activity relocation or reorientation, operational changes or limitations, equipment substitution, operating duration or time changes. Noise generators were evaluated in the Belleayre Resort at Catskill Park DEIS and for the Modified Belleayre Resort SDEIS, Project activities were identified where noise generators may require mitigation. The final project and construction plans will be compared to those evaluated in the DEIS/SDEIS and any significant additions/deletions regarding noise generators identified. For those Project activities specified in the DEIS or SDEIS or subsequently identified in the final plans as having noise generators requiring mitigation (whether construction and/or post-construction), a Mitigation Plan Report(s) shall be prepared by the Applicant after the subject noise generator's location, operation, or components have been finalized (where changes arise that allow refinement in noise analysis that may lead to results

substantively different than in the DEIS or SDEIS). The Applicant may submit additional mitigation plans as practical to address phased starts in construction or project operation that were not anticipated or assessed by the initial mitigation plan. The Applicant shall submit The Mitigation Plan Report(s) to the Department within 45 days prior to the noise generator installation/activation. The Applicant shall also provide copies to the towns of Shandaken and Middletown. The Mitigation Plan Report(s) shall:

1. Identify subject noise generator.

2. Document noise generator or group of noise generators: hours of operation—weekdays and weekends, duration of operations (such as for construction activity), times of year.

3. Describe dominant noise source and/or generation mechanisms qualitatively.

4. Identify appropriate noise metric (e.g., maximum sound level, LAmax; equivalent sound level, LAeq; 10th percentile sound level, L10) for describing noise exposures—may differ for different noise generators. Metrics and their use will be consistent with those recommended by NYSDEC Program Policy document "Assessing and Mitigating Noise Impacts".

5. Define appropriate noise generator mitigation goal in terms of sound level noise metric (not change in exposure magnitude due to mitigation). A specific total sound level metric goal (noise generator sound level plus the existing ambient sound level for that metric, in dBA) will be established for each Project activity requiring mitigation, utilizing NYSDEC noise assessment guidance relating impact to increases in existing sound level. Existing ambient sound levels will be based on those previously measured for the Project for the DEIS and SDEIS. Additional ambient measurements may be desirable to allow assessments for new receptor locations pursuant to Item 6, below.

6. Reexamine the now-existing noise receptors with respect to those evaluated in the DEIS/SDEIS and any significant additions/deletions regarding receptors identified.

Additional receptors necessary to assess any changes shall also be examined.

Identify representative worst-case receptor locations—individual specific noise-sensitive locations (e.g., dwelling, school, location where quiet is of special importance) from the receptors identified in the DEIS and SDEIS and any others necessary due to introduced receptors or otherwise necessary to assure significant noise impacts are mitigated. The use of noise contours is prohibited.

7. Tabulate un-mitigated noise exposure magnitudes at receptors near the Project activity and requiring noise mitigation. Noise levels at receptors farther from the activity and not requiring mitigation need not be tabulated.

8. Document supporting noise measurements and/or prediction methodology and reference data for unmitigated sound levels and mitigation design.

9. Provide detailed description/specification of proposed mitigation. For noise mitigation via barriers, documentation must include—identification of source-receptor paths and barrier locations, barrier height, top elevation, length, and position.

10. For noise generator mitigation by operational limitations, define procedures for problem reporting and response.

11. Tabulate mitigated noise exposure magnitudes (total sound levels of the appropriate noise metric) at all receptors.

12. Provide any additional situational or relative information necessary for evaluation of proposed mitigation and potential impact.

XIII. Land Use and Planning and Socioeconomics

i. Potential Impacts

Land use and planning and socioeconomics are interrelated subjects under SEQR. Land use and planning relates to the conformity of a particular development with the land use policies of the community. Socioeconomics relates to the character of the surrounding area that is driven by a combination of land use policies and economics. Land use policies are typically expressed in a community's comprehensive plan and implemented through zoning (whose exercise allows a community to dictate the uses that may occur in a community and the character of those uses) as well as site plan review. If a community has an adopted comprehensive plan, zoning and site plan review, then it has jurisdiction to dictate land use policies, guide land use, and avoid or mitigate socio-economic effects (e.g., gentrification and sprawl) that a particular land use may cause to a community.

Land use planning and socioeconomics are subjects firmly within the land use jurisdiction of the towns of Middletown and Shandaken to address. "[A]dopted local land use plans are afforded significant deference by the Department in ascertaining the character of a community. Accordingly, the Department relies to a large extent on local land use plans as the standard for community character (Interim Decision at 71-72)." [Commissioner's Decision and Ruling at p. 40, citing to the Deputy Commissioner's Interim Decision in Crossroads Ventures, LLC, December 29, 2006].

As lead agency in the SEQR process here, it was the Department's primary role to create the record on land use and socioeconomics (see SDEIS, Appendices 3 and 4) that would be the basis of decision-making by the planning boards of the Town of Shandaken and the Town of Middletown (which are both involved agencies on account of their special use permit and site plan review authorities).

The impact that the Modified Belleayre Resort may have on land use and socio-economics (sprawl and gentrification) was also ofconcern to the Department in the SEQR process. Existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character fall squarely within the domain of SEQR (*Chinese Staff & Workers v. City of New York*, 68 NY2d 359 [1986]). Accordingly, in the positive declaration for the Modified Belleayre Resort, the Department

stated, "The projects will result in seasonal population increases in a rural area, including patrons of the resorts and ski area as well as additional seasonal staff; year-round staffing needs may lead to a small increase in year-round population. The demands for services for both visitors and residents will likely lead to secondary growth including development of various retail/commercial facilities in the project vicinity as well as increased demands for community services." See also, Final Scoping Document for the Belleayre Mountain Ski Center Unit Management Plan and Modified Belleayre Resort at Catskill Supplemental DEIS, Part B, sections 3.8 and 3.9, February 23, 2008. The Department set out in the review process to determine whether the Modified Belleayre Resort would have these impacts and to what extent.[8]

ii. Discussion, Mitigation and Findings

The compatibility of the project with local land use regulations was described in section 3.8 of the SDEIS, and additional information on this topic is presented is section 3.8 of the FEIS. The SDEIS (section s 3.8.2(A) (1) (a) & (b), pp. 3-70 to 3-72) evaluates the Modified Belleayre Resort's compatibility with respect to existing community character and the 2005 Town of Shandaken Comprehensive Plan, and Section 3.10 of the SDEIS discusses the land use planning goals of the Town of Middletown Comprehensive Plan. The interpretation of comprehensive plans, however, is a matter for the towns that drafted and adopted them since both towns must make findings in this matter.

Socioeconomic including growth inducing impacts were studied and addressed in sections of 3.8 and 3.9 of the FEIS, which are based on Appendices 3 (Socioeconomic and Fiscal Conditions and Effects) and 4 (Growth Inducing and Secondary Impacts) to the SDEIS (which are incorporated by reference into the FEIS). They were also studied in the DEIS for the original iteration of the project (DEIS at 3.8).

As to the compatibility of the Modified Belleayre Resort with the land use policies of the two Towns, the project is a permitted use in both towns. The resort requires special use permit approvals from the Shandaken and Middletown Planning Boards. A special use permit is a type of approval that enables a use of land that is in concept appropriate in light of municipal planning objectives but that might otherwise not be in harmony with the rest of a neighborhood or district. It enables the proposed use of land to achieve such harmony by complying with conditions developed in the review process. Accordingly, inasmuch as the Modified Belleayre Resort is classified under the two zoning laws as a special permitted use, the Modified Belleayre Resort is contemplated to be within the municipal planning objectives of the two towns. Notably, during the extensive review process for the Modified Belleayre Resort, neither Shandaken nor Middletown has indicated that the Modified Belleayre Resort

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[8] Community character was rejected as an issue for adjudication both in 2006 and 2015 (see Commissioner's Decision and Ruling, p. 40). This decision, however, does not mean that an analysis does not have to be performed under SEQR — only that the issue was not substantive and significant under the Department's 6 NYCRR Part 624 standards for adjudication. The issue has been completely evaluated in the FEIS.

is not compatible with their land use policies. At the same time, the special use permit would enable the municipal planners to impose conditions to address site and development specific issues within the Towns' jurisdictions. .

Summarizing the record on secondary growth, the Growth Inducing and Secondary Impacts report (see Appendix 4 to the SDEIS) states that, "[i]t is expected that the current commercial centers located in the village and hamlet areas is where most economic activity would occur. These locations are where commerce now is centered, and are where existing buildings and commercial spaces are available for business expansions and new business starts. Land use policies, combined with environmental and regulatory constraints, as well as land ownership by the New York City Department of Environmental Protection and the New York State Department of Environmental Conservation render new development on Route 28 corridor sites unattractive, while these same factors — combined with available commercial spaces — enhance the attractiveness of village and hamlet centers as places for new and expanded commercial activity." (Appendix 4 at p. 1 of the SDEIS) Appendix 4 also points out, though the data to support the statement is somewhat dated, that the supply of vacant commercial business locations has increased as businesses have closed leading up to the recession. The Modified Belleayre Resort is not expected to negatively impact downtown small businesses because of the availability of commercial space and, according to the EIS, the resort would offer a level of amenities that is not commonly found in the region — which would attract a new and different consumer base to the socioeconomic study area.

As to whether the Modified Belleayre Resort will inflate local home prices making housing unaffordable for many local residents, the socioeconomic report (SDEIS, Appendix 3) concludes that there should not be substantial pressure on housing prices as a result of the proposed project. The report points out that the majority of the year-round and seasonal jobs created by the proposed project are expected to be filled by local residents or people who already reside within a reasonable commuting radius. As stated on page 33 of Appendix 4, of the 771 jobs that would be introduced by the proposed project, up to 250 jobs (or 32 percent) could be in-migrants or new worker/residents within the workforce study area. The socioeconomic report indicates that these 250 employees would include approximately 16 to 20 mid- to upper management positions. They would most likely be imported into the region since filling these positions locally may not be possible due to the specialty or technical nature of these positions. In addition to these management positions, there could be up to 230 additional workers who would be new worker/residents within the workforce study area, as defined in Appendix 3 of the SDEIS. These workers may choose to relocate for a variety of reasons such as the type of employment or salary offered, how far a worker is willing to travel for employment, and the increasing cost of commuting. The FEIS finds that it is likely that the existing housing supply could accommodate the new workers/residents. Therefore, it is not expected that there would be substantial pressure on housing prices as a result of the proposed project. (See FEIS, Part B, Volume IV, pages 210-211.)

As with the compatibility of the Modified Belleayre Resort with the land use policies of the towns, the towns will make the final determination with respect to the socio-economic effects of the project. Both towns have the authority to incorporate mitigation measures through their special use permits and site plan review.

XIV. Community Facilities and Services

i. Potential impacts

This potential impact concerns whether the service needs of the Modified Belleayre Resort would exceed the ability of local service providers such as police, ambulance and fire protection to satisfy those needs.

ii. Discussion, Mitigation and Findings

Some service providers indicated that they had the ability to provide services to the Modified Project. Some providers, however, indicated the need for mitigation (see SDEIS, Appendix 27), which the Applicant has volunteered as follows:

"To compensate for this possible extra police department expense, Crossroads Ventures has agreed to contribute to the Town of Shandaken Police Department, a sum equal to the salary and benefits of one additional police officer for a period not to exceed four years. In addition, the Applicant has committed to provide funding for manpower or equipment, or both, to the Pine Hill Fire Department and the Shandaken Ambulance Squad to mitigate the effects of increased demands for the services of these providers as a result of the Project that are not addressed by the significant increase in local tax revenues." FEIS, Part B, Volume 4 Responses to Comments, page 210; see also, FEIS, Part B, Volume 4, pages 223-224.

Here, Crossroads has volunteered mitigation by funding personnel and equipment upgrades to the police, fire and ambulance services. The mitigation should be specific and not illusory. The provision of the named services are, however, local responsibilities and under the jurisdiction of the municipal entities. Through its findings and permits and by agreements, the appropriate municipal boards can ensure delivery of the promised funding.

XV. Global Climate Change

i. Potential impacts

As part of the SEQR review of the Modified Belleayre Resort, the Department required an analysis to determine its impact on climate change through emission of greenhouse gases (see SDEIS, Appendix 28). This climate change analysis was one of the first of its kind under SEQR for any large-scale development project. The Modified Belleayre Resort carbon footprint is the sum of all GHG emissions and is calculated as metric tons per year carbon dioxide equivalent (CO2e). GHG emissions from the Modified Belleayre Resort primarily would result from fossil fuel combustion during construction and operation. The analysis determined that the development of the Modified Belleayre Resort will contribute to GHG emissions as measured in CO2e (a compilation of CO2, CH4, and N2O). The total emissions from all resort sources would be 42,136 tons per year of CO2e (see FEIS, page xii). Appendix 28 to the SDEIS contains a breakdown of this number. The Applicant has volunteered mitigation to reduce emissions of the project, which corresponds with the suite of mitigations described in the Department's policy on assessing energy use and greenhouse gas emissions.

ii. Discussion, Mitigation and Findings

Appendix 28 (pages 4-1 through 4-3) of the SDEIS contains a list of measures to reduce greenhouse gases — which are taken from the Department's climate change policy for EISs (New York State Department of Environmental Conservation's Policy on Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements [July 15, 2009] — that Crossroads has promised to undertake all as part of the design of its project (see FEIS, responses to comments, page 23 and page 70). As the Department stated in the FEIS, response to comment: "The developers have stated their commitment to achieving LEED Silver status or higher for each of the two resort hotel structures. Energy Conservation is a critical measure in obtaining LEED Silver status. The methods and technologies, along with the building codes and regulations are ever changing. Therefore, the specific measures to conserve energy will not be decided upon until the project enters the design development and construction document phases, after permitting approvals are granted. The Highmount Spa Resort, based on its conceptual plan, will evidence significant savings in heat loss during cooler months and cooling needs during the warmer months because of the fact that its roof will be covered by earth, among other strategies that will be employed."

To verify the mitigation for climate change through energy conservation and other measures, Crossroads shall submit a pre-construction report (after the Design Development and Construction Document phases) detailing its implementation of the mitigation measures identified in the Appendix 28 report to the DEC Regional Directors of Regions 3 and 4 and the Assistant Commissioner for Air Resources, Climate Change and Energy. The report shall document those measures (among the list contained in Appendix 28) that were made part of the design of the Modified Belleayre Resort. The pre-construction report shall note any variances or changes from the mitigation proposed in the FEIS, including an explanation as to why measures were not made part of the design project. Crossroads shall strive to obtain LEED Silver status or higher for each of the two resort hotel structures. The Appendix 28 list does not limit Crossroads' ability to implement additional energy saving measures or other greenhouse gas emission reduction measures, as such technologies are rapidly advancing. Additionally, beginning from the start of resort operations, as described below, Crossroads shall implement the shuttle bus system described in Appendix 11 to the SDEIS (to shuttle skiers to and from the BMSC and year round shuttles will be provided between the resorts and the Wilderness Activity Center), using electric or hybrid shuttle buses.

XVI. Air Quality

i. Potential Impacts

Potential air quality impacts from construction activity, including generation and travel of dust from construction traffic, earthmoving, rock crushing and cement production, were examined in Appendix 22A of the DEIS, entitled "Air Quality Assessment of Construction Activities". Operational air quality impacts are potentially associated with an increase in traffic volumes. For this study, air quality impacts are defined as concentrations of particulate matter in ambient air at existing residential properties nearest to the construction activities.

Particulate matter is solid particles or liquid droplets suspended or carried in the air, including elements such as carbon and metals; compounds such as nitrates, organic and ammonium compounds, and sulfates; and complex mixtures such as diesel exhaust and soil.

Air quality impacts are determined to be acceptable if the concentrations are less than the National Ambient Air Quality Standards (NAAQS). The United States Environmental Protection Agency established a NAAQS for particulate matter of less than 10 microns in aerodynamic diameter, referred to as PM10. The air quality assessment concluded that the nearest sensitive receptors that could be affected were located far enough away that there would be no significant air quality impact on the nearest residential properties.

Potential air quality impacts from traffic associated with the Modified Belleayre Resort project include potential increases in carbon monoxide levels, particulate matter, volatile organic compounds (VOC) and nitrogen oxide (NOx) levels. An Air Quality Assessment (Appendix 24) was conducted as part of the SDEIS.

ii. Discussion, Mitigation and Findings

A microscale air quality analysis is used to determine carbon monoxide concentrations at worst case receptors adjacent to roadways in a project area. Worst case receptors are typically chosen at signalized intersections where a level of service D, E, or F exists for the build conditions. Seven intersections along NY Route 28 and CR 49A were assessed for air quality. Based on the site screening analysis conducted for these intersections for full build out conditions, a microscale air quality analysis was not necessary since this project will not increase traffic volumes, reduce source-receptor distances or change other existing conditions to such a degree as to jeopardize attainment of the National and New York State ambient air quality standards.

A microscale air quality analysis is also used to determine particulate matter (PM) impacts from a project. PM microscale air quality analysis uses CAL3QHC, a line based dispersion model, to calculate impacts from PM. Only one of the seven intersections at issue required detailed analysis, and the results demonstrated that if the Modified Belleayre Resort is constructed, the PM concentrations will not result in a violation of the standards.

A mesoscale air quality analysis covers a larger area than a microscale analysis and, in addition to carbon monoxide, a mesoscale analysis monitors for VOC and NOx. However, the criteria for a mesoscale analysis, based upon the New York State Department of Transportation (NYSDOT) Environmental Procedures Manual (EPM), are not met for this project, accordingly, no mesoscale analyses is required.

In conclusion, the air quality within the project area may experience short-term impacts due to the construction of the project. During construction, airborne particulates will increase as moving construction vehicles raise dust. This increase is expected to be sporadic and short-term in nature and will be most noticeable in the area immediately adjacent to the construction. The impacts should be

minimized by the use of dust inhibitors, such as calcium chloride and other dust-control provisions found in the NYSDOT Standard Specifications for construction. No mitigation is required for air quality impacts associated with traffic.

XVII. Cultural Resources

i. Potential impacts

A stage 1A Literature Review and Archeological Sensitivity Assessment, and a Stage 1B Cultural Survey and fieldwork were conducted as part of the Belleayre Resort DEIS. Potential significant impacts associated with the adaptive re-use of the Marlowe Mansion and the Leach farmhouse on the historical character and context of these then national register-eligible properties were identified.

Supplemental Stage 1B testing was carried out for the Modified Belleayre Resort, including the upper portions of the Highmount parcel and a portion of the Wildacres parcel. Appendix 12 of the SDEIS, contains the November 2008 Phase IA/IB Cultural Resources Survey of Additional Lands of the Modified Belleayre Resort at Catskill Park Project. Additionally, the routes of the off-site water lines and the off-site sewer lines were also investigated as part of the SDEIS. A Supplemental Phase 1B report for the off-site utilities was prepared and submitted to Office of Parks, Recreation and Historical Preservation (OPRHP) in March 2010. Additional consultation occurred with OPRHP in 2013 on potential impacts on the Galli-Curci Estate.

When a project under review by the Department may affect a property listed, or eligible for listing, on the State or National Register of Historic Places, staff is required to consult with OPRHP concerning the impact of the project. *See* Parks, Recreation and Historic Preservation Law §14.09 and 6 NYCRR Part 621. OPRHP was regularly consulted throughout the environmental review process and provided the Department with written "no adverse impact determinations" in 2003, 2009, 2010 and 2013.

ii. Discussion, Mitigation and Findings

OPRHP's review of the DEIS Stage 1B materials led them to state, in their January 6, 2003 letter (copy in DEIS Appendix 6) "OPRHP has no further issues regarding project ground disturbance and archeology: additional archeological study is not warranted". OPRHP concluded that the project would have no adverse effect on properties on or eligible for listing on the State and National Registers of Historic Places based on the condition that all work (interior and exterior) that is proposed for the historic structures on the project site shall be reviewed by OPRHP prior to the initiation of any construction activities. The historic structures that are referred to in OPRHP's January 6, 2003 letter were listed in OPRHP's June 12, 2000 letter (see DEIS Appendix 6) and include the Marlowe Mansion (Wildacres Hotel in OPRHP's letter) and the Leach Farm.

On December 4, 2009 OPRHP issued a finding of No Adverse Effect for the Modified Belleayre Resort based on the same condition from 2003 that all work (interior and exterior) proposed for the Marlowe Mansion and Leach Farm historic structures be reviewed by OPRHP prior to the initiation of construction.

On April 9, 2010 OPRHP issued a letter stating that the proposed utility work associated with water lines and off-site sewer lines would have no adverse impacts on historic resources.

On September 13, 2013 OPRHP issued a letter stating that based upon the review of current project plans, the project will have no adverse impact on the historic resources that were identified as part of the SDEIS and DEIS, specifically referencing the Galli-Curci Mansion.

This issue was also addressed in the 2015 Commissioner's Decision and Ruling, where it was noted that as a result of OPRHP's no adverse impact determination, Department staff was not required to consider mitigation measures under §14.09 of the Parks, Recreation and Historic Preservation Law as OPRHP had determined, through the various issued "no effect determinations", that the Modified Belleayre Resort will have no adverse impact upon historic resources. (*See* Commission's Decision and Ruling, p. 31.)

No other mitigation measures are required as per OPRHP's determinations.

XVIII. Catskill Forest Preserve

i. Potential Impacts

New York's constitutional forest preserves are among the State's most important natural resources. The Belleayre Resort posed significant noise impacts to the Catskill Forest Preserve from the Big Indian portion of the development. Those lands are now part of the State Forest Preserve as a result of the AIP. The Modified Belleayre Resort does not abut any designated Wilderness or Wild Forest area, nor are there any proposed direct connections between the Modified Belleayre Resort and the Wilderness or Wild Forest areas. At average occupancy for the Modified Belleayre Resort and in the years following BMSC expansion, it is reasonable to expect that the additional number of Forest Preserve visitors would not exceed 105 people per day, though the Applicant is anticipates creating synergies among the Modified Belleayre Resort, the Forest Preserve, and the BMSC (see FEIS, HVS Report at page 3).

ii. Discussion, Mitigation and Findings

Impacts to the Forest Preserve would not be significant, as a result the removal of Big Indian from the development proposal and other measures to mitigate or avoid noise and visual impacts. Nonetheless, the Applicant has agreed to the following condition: "The Modified Belleayre Resort would implement a program to educate and guide resort guests in the use of Forest Preserve trails. Trails that may be at risk of overuse would be identified to redirect guests to less intensively used trails. Information on guest usage would be submitted to NYSDEC monthly, and a report on trail conditions and guest usage will be submitted to the NYSDEC annually." (See SDEIS Section 3.14, p. 3-93).The Department includes this as a condition of the approval, with the first annual report to be submitted to the Department on or before the first anniversary of the first operational year of either of the two resort hotels.

XIX. Cumulative Impacts

Cumulative impacts occur when multiple actions affect the same resource(s). These impacts can occur when the incremental or increased impacts of an action, or actions, are added to other past, present and reasonably foreseeable future actions. Cumulative impacts can result from a single action or from a number of individually minor but collectively significant actions taking place over a period of time (See The SEQR Handbook, p. 205, published on the Department's website at http://www.dec.ny.gov/permits/6188.html). In this matter, the Department analyzed potential impacts of the two projects that may affect the same resources. Part C of the UMP-FEIS analyzes the potential cumulative environmental impacts of two proposed projects, the BMSC UMP-FEIS and the Modified Belleayre Resort.

The two proposed projects include the following components:

- The Modified Belleayre Resort at Catskill Park

The Modified Belleayre Resort at Catskill Park (the "Modified Belleayre Resort") project consists of two resort complexes, both located west of the Ski Center along Ulster CR 49A and south of NYS Route 28. The first resort, Wildacres, will include a hotel building with 250 units and ancillary hotel uses plus 163 lodging units in multi-unit buildings detached from the hotel and an 18-hole golf course. The second resort, the Highmount Spa, consists of a 120 unit hotel with spa facilities and 53 fractional ownership units; a multi-level lodge building with 27 fractional ownership units and 16 detached lodging units in 8 buildings.

- Belleayre Mountain Ski Center UMP-FEIS

The expansion of the Ski Center is proposed as part of the revision to the Unit Management Plan, as required by The CPSLMP. The Department is proposing to expand the Ski Center, consistent with state constitutional limitations on the total miles of ski trail that can be developed at the Ski Center. In the core area, trail, lift and lodge improvements are being proposed.

On the west of the BMSC, the State of New York proposes to acquire most of the property known as the former Highmount Ski Center (the "Highmount Parcel") (99 acres+/-) from Crossroads, and upon acquisition, classify this parcel as an addition to the Ski Center's Intensive Use Area. The Department proposes to develop new ski lifts and ski trails, with snowmaking capacity on the acquired parcel. The current property owner, Crossroads Ventures LLC (Crossroads), would retain title to a 150 foot wide strip of land running through the parcel, consisting of approximately 5.38 acres in order to construct a ski lift and warming hut (the "Spa Village Property"). Under this proposal, Crossroads would also retain easements across the Highmount Parcel for sewer and utilities and an access road. If the Highmount Parcel is acquired by the State of New York, and if the Spa Village ski lift is built by Crossroads, the proposal envisions that the Olympic Regional Development Authority (ORDA) and Crossroads will enter into an operating agreement such that ORDA will maintain and operate the ski lift and ski trails on the adjoining private Spa Village Property for Crossroads, and ORDA would receive compensation

for these services from Crossroads. In order to do so, ORDA would need an amendment to its authorizing statute, Public Authorities Law Article 8, Title 28. Ski trails constructed on the Spa Village property by Crossroads would provide a connection between the Highmount parcel and the Spa Village Property. In addition, ski trails on the Highmount parcel would connect to the rest of BMSC. These trail connections would allow for public use of the Spa Village ski lift and trails leading to the Highmount Spa, as well as ski-in ski-out access to BMSC for Highmount Spa guests. In addition, as part of the Modified Belleayre Resort, Crossroads proposes to connect the Wildacres resort to the Belleayre West lift by installing a pedestrian crosswalk across CR 49A. (A cumulative map of the Modified Belleayre Resort and the Full Build-out Alternative is attached as Appendix C.)

Potential Impacts of the Two Projects:

a. Stormwater Management

i. Potential Impacts

Potential impacts from the two projects include impacts from construction resulting in changes to the estimated exiting runoff discharge volumes, peak flow rates and sediment and phosphorus loading to receiving waters due to site disturbance and land use/cover modifications (i.e., an increase in impervious surfaces); potential increases in runoff during spring snowmelt due to the additional snowmaking required for the Highmount ski-trail development; and the disturbance of steep slopes. In addition, there are potential impacts to the Middle Hudson River Watershed and the East Branch of the Delaware River Watershed. Finally, additional potential impacts include impacts of runoff on water quality and quantity, including potential thermal impacts.

ii. Discussion and Findings

The stormwater management system proposed for the BMSC uses storage-based attenuation methods such as dry swales, diversion swales, biofilters, dry detention basins, and porous pavement to mitigate the potential impacts that may result from the increases in impervious areas. These measures are intended to meet the volume and peak rate control requirements set by the New York State Stormwater Management Design Manual (NYSSMDM). In addition, the hydrologic analysis of the portion of the Modified Belleayre Resort contributing to the Middle Hudson River watershed indicates that runoff volume and peak flow are not expected to increase when compared with existing conditions in this drainage area.

The majority of the drainage to the East Branch of the Delaware River watershed for the project would consist of the sub-catchments associated with the Modified Belleayre Resort. The results from the post-construction volume estimates for the Modified Belleayre Resort that contribute to the East Branch of the Delaware River watershed conclude that peak flow rates are not expected to increase at the stormwater discharge locations. Additionally, modeling results conclude that no cumulative impacts were observed for stormwater draining to the East Branch of the Delaware River.

Accordingly, the potential adverse impacts on surface water resources that may result from stormwater have been addressed by the SWPPP prepared for both of the projects. Post-construction storm water management systems have been designed to mitigate and minimize any potential long-term impacts of runoff water quality and quantity, including potential thermal impacts. In addition, SWPPPs from both projects include provisions for project phasing, heightened inspections requirements, heightened stabilization requirements and other measures or best management practices to manage run-off and control erosion during construction. The DEC will also issue individual SPDES permits for the construction because both projects have triggered the steep slope provisions in the SPDES General Permit for Stormwater Discharges from Construction Activity. The individual SPDES permits for both projects will include provisions that require the implementation of the project SWPPPs as reviewed and accepted by the Department. In addition, all SWPPPs will require NYCDEP approval and review by the NYS Watershed Inspector General. Implementation of the SWPPPs will minimize or avoid impacts from potential stormwater runoff.

b. Water Supply

i. Potential Impacts

Potential Impacts include quantitative changes in ground and surface water resources that may result from various features of the proposed projects. In addition there could be adverse impacts on stream habitats.

ii. Discussion and Findings

A water-budget analysis was completed for the Ski Center UMP-FEIS and the Modified Belleayre Resort FEIS to provide an analysis of the potential impacts identified above. The potable water supply system for the Ski Center consists of a series of four main groundwater supply wells, and a fifth well that is dedicated to supplying the Sunset Lodge. The well field will continue to be utilized for the post-development water supply. Although there is an anticipated increase in groundwater withdrawals, the current potable water supply system is capable of delivering the anticipated required demand without requiring additional wells to provide for the increased withdrawals from the aquifer. Surface water from Pine Hill Lake, the Upper Impoundment and Cathedral Glen Impoundment will be used for snowmaking at BMSC. To avoid having adverse impacts on stream habitats, withdrawals from the streams contributing to the reservoirs will only be allowed during flows in excess of the minimum stream flow. For the Modified Belleayre Resort, new wells will be located outside of the Birch Creek drainage system, near the Village of Fleischmanns. Pumping and water quality tests demonstrated that these wells will provide sufficient potable water without adversely affecting the Village of Fleischmanns' water supply. Water that is planned to be used for irrigation at the Modified Belleayre Resort will come from stormwater routed to a lined irrigation pond and water from three wells located on the Wildacres portion of the site. Tests performed on the three wells proposed for irrigation are capable of sustaining typical irrigation season water demands and not adversely affect existing groundwater supplies or surface waters. No surface waters will be impounded in order to provide irrigation water at the Modified Belleayre Resort. The ongoing operation of the wells supplying the Ski Center as well as the tests

conducted on the wells planned to supply the Modified Belleayre Resort development indicate that no cumulative, adverse impact are expected from the developments to the groundwater resource.

c. Wastewater

i. Potential Impacts

Potential impacts could result from the increased wastewater from an expanded Ski Center and the Modified Belleayre Resort.

ii. Discussion and Findings

All wastewater from the Ski Center currently is conveyed to, and treated at, the Pine Hill WWTP, except for the Sunset Lodge. The Sunset Lodge is presently served by an on-site septic tank and absorption bed system. However, the Department (now ORDA) proposed that the Sunset Lodge septic tank effluent would be connected to the wastewater collection system in the future and would become influent to the Pine Hill WWTP. All wastewater generated within the various Modified Belleayre Resort buildings will be collected and transported to the Pine Hill WWTP, via a new connection to the existing Hamlet of Pine Hill sewer system. The Pine Hill WWTP has adequate excess design flow capacity to treat the future wastewater flows from both proposed projects on an average daily flow basis, which is lower than the design flow capacity. Finally, to address high flows during wet weather events due to inflow and infiltration issues with the existing Pine Hill sewer system, the design for the Modified Belleayre Resort includes a flow equalization tank on the project site that will be built by Crossroads and operated and maintained by NYCDEP that would minimize or avoid impacts from wastewater.

d. Surface Water and Groundwater Resources

i. Potential Impacts

Potential impacts include those to streams and wetlands, the Middle Hudson River watershed and the East Branch of the Delaware River, Pine Hill Lake and other ponds in the vicinity.

ii. Discussion and Findings

Cumulative impacts will only be experienced within the East Branch of the Delaware River watershed. The Modified Belleayre Resort project is primarily located in this watershed. There are five mapped streams and nineteen wetlands/wetland segments. Thirteen wetlands are considered jurisdictional by the Army Corps of Engineers (ACOE), an additional six wetlands did not have any apparent surface water connections to waters of the United States and were determined not to be jurisdictional. The far northern portion of the Ski Center is also located within the East Branch of the Delaware River. The Ski Center UMP-FEIS identified six wetland areas and one stream within this area. Four of the ACOE wetlands are considered jurisdictional and two were determined to be non-jurisdictional. (There are no DEC jurisdictional wetlands.) After review of existing mapping and reports provided by each project, the Department determined that cumulative impacts would occur though they would be temporary and mitigated.

There is one intermittent unnamed stream that is a tributary to Emory Brook (Class B) mapped within both the Ski Center and the Modified Belleayre Resort areas. This stream is indicated as being within the "Highmount Brook Watershed" in the Modified Belleayre Resort FEIS and originating in the slopes of the Highmount Ski Area in the Ski Center UMP-FEIS. According to the Ski Center UMP-FEIS this stream occurs within an area where trail clearing and two ski lifts are proposed. Potential impacts to this stream as well as to downstream resources may include siltation, increased turbidity, decreased levels of dissolved oxygen, increased warming, and increased drainage from ski slopes.

Construction activities that may have an impact to wetlands and downstream waters within the East Branch of the Delaware River Watershed include trail clearing/non-mechanized tree and woody vegetation removal, installation of elevated bridges crossings for golf carts, subsurface directional drilling for water and sewer lines, and construction of the Highmount Ski Base. Regarding wetlands, cumulative impacts resulting from construction of the project were estimated at approximately 2.271 acres for the delineated BMSC onsite wetlands, the majority of which are associated with disturbance of forest or vegetation cover caused by construction. However, 2.089 acres of these disturbances include activities such as tree clearing of wetlands for ski trails and golf course play over areas, as well as the minor impacts that would result from the installation of golf cart and pedestrian bridge installation, which would include hand clearing of vegetation. These temporary impacts are not regulated and do not require permitting as they do not involve dredging or filling in jurisdictional wetlands. The remaining 0.139 acres of regulated impacts would result from the removal and replacement of the ski lift base at the proposed Highmount Ski Area. As part of a mitigation plan, this wetland would be replanted with appropriate vegetation to restore the disturbed area and return it to its ecological function.

Moreover, during construction most stream and wetland disturbances would be minor and temporary. Erosion and sediment control measures would be implemented during construction to mitigate potential impacts on surface waters. Measures include detailed phasing and sequencing of construction, perimeter controls, structural controls, temporary and permanent stabilization of channel banks and slopes and installation of sediment basins. In addition, best management practices would be used to control runoff and avoid any potential impacts; and dry season scheduling of the work would help to minimize the potential impacts to these waterbodies.

e. Aquatic Resources

i. Potential Impacts

Potential impacts to aquatic resources include: stream crossings; wetlands; and an increase in temperature of the streams resulting from a reduction in upland forest cover and stream cover in the wetland and stream locations.

ii. Discussion and Findings

A total of nine stream crossings are proposed along various intermittent streams located within the combined project. Pedestrian, skier and golf cart passages will be required to span these waterbodies. Very little physical disturbance is proposed within the channel beds and banks of surface waters located on the site; all road crossings and ski trail crossings of streams would utilize elevated bridges, except for one stream crossing at an access road on the Wildacres development that would require the replacement of an existing culvert with a large bottomless arch culvert. Any impacts that result from stream crossings are considered temporary. Both the Modified Belleayre Resort FEIS and the Ski Center UMP-FEIS present best management practices in soil and erosion control plans that provide mitigation methods to help reduce the impacts of sedimentation that may otherwise result from construction adjacent to surface waters and habitats. Additionally, any disturbed stream bank, impoundment and wetland areas will be restored and planted with native vegetation.

An additional long-term impact that may result from the construction and operation of the two projects is the possible increase in temperature of the streams resulting from a reduction in upland forest cover and stream cover in the wetland and stream locations identified as golf course play-over areas. To mitigate potential impacts from thermal loading to the aquatic habitats, any vegetation that is proposed to be disturbed in proximity to the intermittent streams shall be replaced with plantings to provide shading of the stream/wetland. This will be accomplished by placing appropriately sized coir logs along the existing stream banks and planting the coir logs with willow cuttings. Additionally, regular hand cutting maintenance of the vertical growth of the willow sprigs will allow for the development of a more horizontal willow canopy over the stream or wetland. Another mitigation measure for thermal loading is designed into the stormwater management systems for both projects. The proximity of the proposed Ski Center development to trout streams and the potential for thermal impacts on these habitats were considerations in the design of stormwater runoff control. The proposed construction would not have any significant impacts on flow, temperature, or macroinvertebrate distribution with the mitigation measures described above; however if any impacts are detected based on monitoring during or after construction, additional mitigation and restoration will be required.

f. Terrestrial Wildlife

i. Potential Impacts

Potential impacts from land clearing include loss of habitat, forest fragmentation, or disruption of movement patterns of wildlife, including large, mobile wildlife such as bear and deer, or less mobile populations such as snakes, breeding bird and bat populations. In addition, there are potential impacts to terrestrial forest ecology as a result of the operation of both projects.

ii. Discussion and Findings

The cumulative impacts of construction of both projects would result in the clearing of 334.2 acres. This represents approximately 12% of the 2,677.9 acres of the combined projects. Cumulative impacts

would result if the magnitude or duration of the combined impacts would result in a significant loss in habitat, forest fragmentation, or disruption of movement patterns of populations of wildlife, including large, mobile wildlife such as bear and deer, and less mobile populations such as snakes, breeding bird and bat populations. Each project evaluated the potential for forest fragmentation and concluded that because the project is at the edge of the forest now, it would not add new forest edges, but instead move the edge deeper into the forest. Breeding bird and bat populations are not expected to be affected significantly by construction of the project. The potential impacts to terrestrial forest ecology during operations were evaluated for both projects. The largest adverse impacts of the projects would occur from the land clearing. Long term impacts to wildlife would be reduced, as local populations would quickly adapt to the new habitat boundaries. Both projects concluded that there would be some adverse impacts from the lost habitats to terrestrial mammals, amphibians, snakes, and birds. These potential adverse impacts would be partially mitigated by the replacement of the forests with open ski slopes, which provide forage and habitat for birds that prefer the ecological gradient (ecotone) between forests and fields, and the feeding habitat provided by open grasslands for predatory birds. No rare, threatened, or endangered species would be impacted by either project or by the cumulative impacts of both projects.

Another type of potential impact resulting from the combined projects would be a significant increase in populations of nuisance or invasive species. However, the Invasive Species Plan for the Modified Belleayre Resort is intended to assure that the Wildacres Golf Course, and other cleared areas, use best practices to avoid the use of herbicides, as outlined in the Appendix B of these findings, and prevent the growth of invasive plant species.

Both projects are proposing design elements that avoid and minimize impacts to wildlife. The proposed new buildings of the Modified Belleayre Resort will be clustered in small areas. Clustering minimizes forest fragmentation and reduces disturbances from roads and utilities. The proposed LEED certification of buildings at both projects would support unobtrusive designs and landscaping only with native vegetation. Maintenance of buffers around streams at the Ski Center, and extensive utilization of BMPs would mitigate impacts to wildlife. As part of the Ski Center UMP-FEIS, redevelopment of existing trails at Highmount minimizes the impacts to wildlife.

g. Transportation and Traffic

i. Potential Impacts

The projects' EISs undertook an analysis of the potential impacts as a result of both the construction and operation of the projects on traffic.

ii. Discussion and Findings

The Department evaluated cumulative operational impacts on traffic and transportation. The analysis of the cumulative development concludes that the Level of Service (LOS) for traffic entering or crossing NY Route 28 from the intersecting side streets will generally be LOS E or LOS F during the worst-case condition of a peak attendance day at the Ski Center. The LOS F designation is based on the delay

experienced per vehicle on the stop-controlled approach. However, some of these intersections still operate with acceptable volume to capacity ratios, indicating that there is reserve capacity (i.e., the hourly volume is less than the hourly service rate). Additionally, these operations reflect the peak season conditions during the peak hour of the day in order to evaluate the worst case scenario. Delay during more average conditions, including offseason and off-peak times of the day would be much less.

Crossroads has committed to various mitigation measures, which, among others, includes the construction of a right-turn lane on the northbound CR 49A approach, a left-turn lane on the westbound NY Route 28 approach and the installation of a traffic signal. Other mitigation measures are proposed in the design of the projects (i.e., shuttle service between the Modified Belleayre Resort and the Ski Center, ski-in/ski-out). See Appendix B of these findings.

Additional mitigation includes improving site distance for drivers along the CR 49A corridor and drivers exiting driveways from both sites; vegetation clearing and/or embankment grading and intersection warning signs for certain intersections. In addition, CR 49A will be realigned to improve vertical and horizontal curves to accommodate pedestrian crossing between the projects in the area of the Wildacres Resort Main access driveway. The Wilderness Activity center driveway will be relocated to the south or movements will be restricted to right-in/right-out. Finally, other mitigation measures include expanded public transportation opportunities (i.e., existing Ulster County Area Transit free service to BMSC from Kingston to provide additional capacity on high attendance ski days and to serve other key local skier origins within the UCAT service area (Poughkeepsie, New Paltz, Newburgh, Wallkill, Saugerties)); expanded packages with private bus companies; and other operational strategies including staggering the closing times of different ski lifts and/or keeping other lodge facilities open longer after the lifts are closed at the Ski Center; offering different check-in/check-out days for the fractional units and offering a variety of weekend packages for the hotel that would include arrivals and departures on off-peak days at the Modified Belleayre Resort; and providing variable message signs at key locations in the CR 49A corridor. These measures collectively will significantly reduce traffic impacts.

h. Visual

i. Potential Impacts

Assessing the aesthetic impacts of the projects involved the evaluation of the Visual Impact Assessment (VIA) Reports of both the BMSC and the Modified Belleayre Resort and determining the combined effects of the projects. The zone of visibility influence (ZVI), or viewshed maps, created for both projects have been analyzed to determine the extent of the area where either project, or both, may be visible within a 5-mile radius. In addition to the viewshed analysis of the 5-mile radius from the project, the BMSC VIA analyzed the potential visibility from specific locations at distances of 25 miles away. In addition, visibility at night and the issues of nighttime “sky glow” and direct glare were reviewed as potential impacts.

ii. Discussion and Findings

To assess the significance of the cumulative aesthetic impact of the proposed projects, all the research, field studies, maps, figures, and simulations of both VIAs and those combined for the Cumulative Analysis were reviewed. The ZVI modeling and maps indicate that changes resulting from the expanded Ski Center and the Modified Belleayre Resort will be blocked from view by topography and vegetation from most of the identified locations in study area. As demonstrated in the simulations and line-of-sight profiles, distance, angle, and seasonal changes in vegetation will often prevent the viewers from recognizing built structures from the locations where visibility is possible. The Modified Belleayre Resort FEIS VIA determined that the project would not introduce a significant change in the visible landscape, relying on two main factors as follows: the context of the existing views and the mitigation measures integrated into the project design that are intended to reduce the potential for visual impacts. The new ski slopes, like the existing ones, will be highly visible from some locations in the winter months because the white groomed snow provides a high contrast with the forested areas of the mountain. Since the Ski Center currently includes existing ski slopes and the new slopes are of similar length and width, the new expansion is compatible with the existing site. While the potential for visibility of the projects overlap from some locations, from most views the visibility varies because of the different locations of the two projects. Most of the visible facilities of the BMSC are located along the north-ridge of Belleayre Mountain, facing northeast. Most of the Modified Belleayre Resort facilities will be located at a lower elevation on Belleayre Mountain, or in the case of the Highmount area, will be located facing northwest. This lower location and profile means views are usually blocked by vegetation surrounding the project site and between the viewer and the project, as indicated in the viewshed analysis. None of the eleven representative locations within a 5-mile viewshed of the Modified Belleayre Resort project would experience a significant change in visual resources, and the project would not be visible from any Forest Preserve lands classified as Wilderness. Additionally, views were evaluated from 22 locations from mountain peaks, hiking trails and/or overlooks outside of the 5-mile radius. The majority of these did not have views of the project, while 3 of these locations had potential views toward the project but were not considered significant in the overall analysis.

The new ski slopes at the Ski Center may be visible from specific visual resources within the study area, but these views are typical of the existing ski area and would not introduce a discordant visual element into the viewshed.

Both projects have been designed so as to avoid or mitigate visual impacts and improve the aesthetic quality of the built environment on Belleayre Mountain. The design of the Modified Belleayre Resort has been changed significantly to comply with the AIP and address the visual impacts of the project. The Modified Belleayre Resort design includes clustering development and smaller buildings than the original design or the agreed upon conditions of the AIP. The new design reduces the amount of cleared area, thereby preserving nearly 70% of the project site in its current condition. The need for surface parking is substantially reduced by placing most parking underground in buildings; all building heights will be maintained within limits set by local land use regulations; and exterior finishes shall be earth

tone colors. At the BMSC, new ski lifts will be low in profile and will be painted colors that blend into the wooded landscape. Parking lots shall be terraced and tree cover will be preserved to block views of the lots. External finishes of the new buildings will also be chosen to blend into the landscape, using earth tone colors and non-reflective glass.

To mitigate light pollution, outdoor lighting shall be designed to meet the standards of the International Dark Sky Association. Cut off light fixtures shall be used in new applications, and the Ski Center shall not be equipped with lighting to allow night skiing. At the Modified Belleayre Resort, lighting design, screening and operational restrictions, such as the installation of timers on tennis court lighting will minimize light pollution to acceptable levels. While glow from outdoor project lighting is expected, these levels are lower than the RPI Lighting Research Center's recommended limit for most rural locations.

Accordingly, the combined visual impacts of the two projects will not have a significant effect on the region's scenic and aesthetic resources, in view of proposed mitigation and project designs.

i. Noise

i. Potential Impacts

Potential impacts include increased noise as a result of the construction and operation of the projects. To evaluate the potential cumulative noise impact resulting from the Ski Center and the Modified Belleayre Resort, the predicted noise levels, as estimated from modeling conducted for the Ski Center UMP-FEIS and the Modified Belleayre Resort FEIS, were added. Potential impacts were for the construction and operation of each project at the nearest noise receptor locations. The combined noise levels were compared with the measured existing noise levels in the area to determine the potential increase in noise above the existing noise level.

ii. Discussion and Findings

For construction, combining the sound levels for the construction of the Modified Belleayre Resort and the Ski Center projects with mitigation measures employed would result in an increase in the sound level at the receptors ranging from no increase to a 15 decibel increase over the existing sound level. However, mitigation measures planned for the construction projects would reduce the noise contribution at the nearest receptors. These measures include: stationary equipment such as compressors and generators shall be located away from noise-sensitive receptors; construction activities would be phased such that not all of the equipment is operating simultaneously; maximum-sized intake and exhaust mufflers will be used on internal combustion engines; idling equipment would be turned off when not in use; to the extent possible, construction sites will be laid out in a manner that reduces the need for backing up construction equipment in order to reduce the noise from backup alarms; noise-reduction blankets that would reduce the noise level by 5dBA to 10 dBA would be installed on perimeter site fencing at some locations, as necessary; on-site equipment use would be minimized when within 500 feet of residences in order to reduce the noise of moving equipment on and offsite; and a sound barrier would be put in place when construction activities would be within 500 feet of a residence.

Accordingly, with the implementation of these measures, the cumulative noise impact of constructing both projects would not be significant.

To assess the potential cumulative noise impact resulting from the operation of the Ski Center and the Modified Belleayre Resort, the operating noise levels projected by the environmental impact study for each project were combined for the nearest representative receptor locations. Modeling indicates there would be an increase over the ambient noise level at each of the receptor locations as a result of the expanded Ski Center and the Modified Belleayre Resort project operating at the same time. However, by employing mitigation measures such as restricting the snowmaking operations to certain times, and using lower noise HVAC units or shielding HVAC units (or both), it is expected that the cumulative noise levels due to the operation of both projects would result in a noise increase of less than 5 dBA at all of the receptors with the exception of receptor W-11, the closest receptor on CR 49A to NY Route 28, which is impacted by the increase in project traffic.

Traffic levels would be expected to be less during the summer months since the peak operations at the proposed resort would occur during the winter when the Ski Center is operational. Since music concerts have been ongoing at the Ski Center in the summer, the concert and traffic noise are considered as existing conditions and no additional noise would be expected from the Ski Center operation in the summer. The cumulative noise resulting from both projects would include only additional traffic noise associated with the resort operation, which would be less than the winter traffic noise. Accordingly, the worst case cumulative noise resulting from both projects would only include additional traffic noise associated with the resort operation — approaching a 6 dBA increase during daytime in the wintertime which, according to DEC guidance, will be perceived but will not constitute a significant adverse impact. Consequently, there would be no significant adverse impacts and no mitigation is required.

j. Socioeconomics

i. Potential Impacts

Potential impacts include the cumulative socioeconomic impacts of the construction and operation of the expanded BMSC and the Modified Belleayre Resort on the local (e.g. the Towns of Middletown, Shandaken, and Olive) and regional economies (e.g. Delaware, Ulster, and Greene Counties).

ii. Discussion and Findings

The cumulative socioeconomic impacts of the construction and operation of the expanded Ski Center and the Modified Belleayre Resort would have a positive socioeconomic impact on the local (e.g. the Towns of Middletown, Shandaken, and Olive) and regional economies (e.g. Delaware, Ulster, and Greene Counties). During construction, the regional output, employee earnings, and total employment would experience substantial increases as a result of construction of these two projects. The increase in construction spending would directly impact the regional and state economy by increasing employment and earnings in the construction industry. Likewise, the operation of the expanded Ski Center and the Modified Belleayre Resort projects would have a long-term positive impact on the local and regional economies. Local employment opportunities, employee earnings, and local expenditures would increase

as a result of both projects. Cumulatively, the expansion of the Ski Center and the Modified Belleayre Resort projects are expected to directly contribute a total of approximately $29.1 million into the regional economy each year through payroll and wage and salary payments.

The Department also considered competitive impacts on private ski areas within the region in response to public comments on the UMP-FEIS. DEC and ORDA believe that improvements to BMSC would benefit all ski areas in the region by making the region a more desirable ski destination. Expansion of the BMSC is part of a larger initiative within the State to promote the Catskill Region as a tourist destination. ORDA will operate BMSC in such a way to promote the Catskills as a regional destination for skiers. The BMSC, in conjunction with private Catskill ski resorts and other amenities, would build a critical mass for drawing tourists to the Catskill region during the winter months. In addition to expansion of the BMSC, the State is promoting the region by placing informational signage along the New York State Thruway (in both northbound and southbound directions) that will highlight the Catskill Mountain Ski Areas.

The concept of building and maintaining a critical mass to draw tourists or an "industry cluster" has been described in academic economic research. First pioneered by Porter (1998) the "industry cluster" concept was then applied to the tourism industry by Nordin (2003); Weidenfeld, Butler, et al (2010); and others, and shows that developing a tourism resort "cluster" has the potential to expand the tourism market for all operators in a region, not just a single operator and has the potential to lower costs associated with suppliers and support services needed by all members of the cluster. The primary economic benefit of an industry cluster is that by concentrating a variety of establishments that offer similar goods and services, many of the secondary industries that service these industries locate to the area, thus providing required good and services for the optimal functioning of the cluster and lowering support costs via economies of scale. In the case of tourism clusters, the clustering of similar attractions also helps create a tourism destination. As described in Inman et al (2002) in order for a tourist area to "be competitive having a vigorous and innovating support sector is indispensable." Support services such as quality dining, shopping, and accommodations as well as good providers of hotel and restaurant food and supplies and trained culinary and hospitality personnel are all crucial for creating a thriving tourism industry. By expanding BMSC, New York State plans to expand further an environment that would encourage this secondary support industry. Common costs such as regional promotion and marketing activities are greatly enhanced when there is a cluster of similar destinations in a region. In her analysis of the impact of ski resort clusters in northwestern Sweden, Nordin (2003) found that the synergy and cooperation between the various entities within a cluster (i.e. attractions, accommodations, dining etc.) determine how effective that cluster was at promoting economic development. Rather than compete with private ski areas, the state's goal is to work with private ski areas to develop the region as an attractive destination for visitors. To this end, ORDA is willing to provide leadership to promote a regional marketing effort of the Catskill region.

Thus, the proposed expansion of the Ski Center and the Modified Belleayre Resort projects are not expected to have a significant impact on the population or demographic characteristics of Delaware, Ulster, or Greene counties. The projects are expected to have a positive impact on local sales tax, property tax, and hotel occupancy tax receipts. The cumulative impacts on socioeconomic conditions

of the proposed expansion of the Ski Center and the Modified Belleayre Resort project would be positive due to the projected increases in tax revenues, job creation, and economic activity. This, however, would be a finding that the towns of Shandaken and Middletown would be called upon to make in evaluating the Modified Belleayre Resort as part of their SEQR findings and approvals.

k. Community Character

i. Potential Impacts

Community character is defined by municipalities, through their comprehensive plans, which document their existing community character, set out their vision for the future, and configure a road map for achieving that by guiding land use patterns and development. Ideally, comprehensive plan goals are implemented through land use regulations and other municipal actions. Potential impacts include impacts on land use, cultural amenities, noise, traffic and air quality; future development of the Catskills; and impacts on the Catskill State Park and Forest Preserve.

ii. Discussion and Findings

The community character and land use study area for each project comprises the two project sites and the communities along the Route 28 corridor between Boiceville and Margaretville. While there would be some short-term adverse impacts from construction and operation of the Ski Center and the Modified Belleayre Resort, they are not expected to result in significant adverse cumulative impacts on community character. The Ski Center expands an existing use that dates back to the 1940s, in an area whose economy is centered on tourism and recreation. The same is true for the Modified Belleayre Resort, which would create a destination resort in a region that was historically home to such resorts. While discussed above, the following potential impacts are also discussed below as elements of community character.

1. Land Use

Both projects are generally consistent with the applicable local planning and development goals, and the Modified Belleayre Resort is permissible under the Town of Middletown's and the Town of Shandaken' s zoning regulations as special permit uses. The projects integrate with each other and are familiar uses in the Catskills, and are consistent with the goal of promoting tourism that is embraced by communities in the study area. The projects allow for the conservation of a substantial amount of acreage for public ownership and use, including the acquisition of 1,200 acres known as the "Big Indian" parcel; adaptively reuse and provide for the protection of historic structures; and provide recreational and open space within their project areas. All of the project facilities proposed for the Ski Center were planned to support the existing Ski Center, and there will be no changes in existing land use. Permanent land use impacts of the Modified Belleayre Resort would be restricted to the project site, and approximately 29% of this site would be developed.

2. Visual

The majority of the proposed new facilities at the BMSC would not be visible from historic/cultural resources. These resources would be screened from Ski Center facilities either by terrain or by the extensive existing vegetation at the Ski Center. The proposed new ski slopes could be viewed from some historic structures; however, ski slopes are an existing part of the Ski Center and would not introduce a discordant element into the landscape.

Regarding visual impacts for the Modified Belleayre Resort, none of eleven representative locations within a 5-mile viewshed of the project would experience a significant change in visual resources, and the project would not be visible from any Forest Preserve lands classified as Wilderness. Additionally, views were evaluated from 22 locations from mountain peaks, hiking trails and/or overlooks outside of the 5-mile radius. Nineteen of these locations did not have views of the project, while 3 of these locations had potential views toward the project. The new ski slopes at the Ski Center may be visible from specific visual resources within the study area, but these views are typical of the existing ski area and would not introduce a discordant visual element into the viewshed. While glow from outdoor project lighting is expected, these levels are lower than the recommended limit for most rural locations and mitigation measures will be implemented.

3. Noise

The cumulative impacts of both projects on noise are anticipated to be temporary, and restricted to on-site activities (i.e., during construction). Construction would occur over a period of time and not together all at once, which serves to avoid or reduce construction related noise impacts on the community.

4. Air

Air quality impacts resulting from construction of both projects would be temporary, and sources (i.e., small equipment and trucks) would be distributed throughout the BMSC and the Modified Belleayre Resort because they are primarily mobile equipment. There would be a short-term cumulative adverse impact on air quality during the mix of construction and operation activities, and the minor cumulative impacts on air quality would cease upon completion of construction. During operations, minor cumulative impacts are anticipated as a result of traffic related emissions or pollutants emitted from sources associated with the Modified Belleayre Resort. For emissions of NOx, the reduction at the BMSC from the elimination of existing diesel equipment would likely offset any increase in NOx associated with operation of the Modified Belleayre Resort.

5. Future Development

The projects are so unique that they are unlikely to have an impact on future similar developments in the Catskills. While limited commercial development exists along Route 28, the concentration of commercial development is limited to the areas immediately adjacent to Boiceville and Margaretville. This pattern of development is likely to continue because of existing local and New York City watershed land use restrictions, regulations on new development, and existing environmental constraints. The

cumulative impacts of the combined projects are not expected to have adverse effects on local water supply or wastewater treatment. Wastewater from both projects would be collected and conveyed to the Pine Hill WWTP for treatment. Because the loadings from the project are similar to conventional residential wastewater, the project would neither adversely affect the treatment capacity of the WWTP, nor the ability of the WWTP to meet its SPDES discharge permit limits.

l. Catskill Forest Preserve

The BMSC expansion project is neither designed nor intended to increase access to adjacent Forest Preserve lands except for any proposed passive recreational uses of portions of the Big Indian lands. Although the project would result in a significant increase in skier attendance at the BMSC and could foster a greater interest in the surrounding area, the project is expected to have negligible impacts on Forest Preserve lands. The Modified Belleayre Resort does not abut any designated Wilderness area or Wild Forest area, nor are there any proposed direct connections between the Modified Belleayre Resort and the Wilderness or Wild Forest areas. At average occupancy for the Modified Belleayre Resort and in the years following BMSC expansion, it is reasonable to expect that the additional number of Forest Preserve visitors would not exceed 105 people per day. In order to mitigate adverse impacts that could result from an increase in Forest Preserve use, the Modified Belleayre Resort would implement a program to educate and guide resort guests in the use of Forest Preserve trails. Trails that may be at risk of overuse would be identified in order to redirect guests to less intensively used trails. Information on guest usage would be submitted to NYSDEC monthly, and a report on trail conditions and guest usage will be submitted to the NYSDEC annually.

No mitigation measures for potential impacts to community character are specifically proposed, beyond mitigation for individual resource areas such as impacts on the Catskill Forest Preserve (Modified Belleayre Resort), visual resources (signs and building materials), traffic, and air quality (dust control measures during construction, reduction of air pollutant emissions through the use of green technology, green design, and the use of shuttle buses or ski-in/ski-out options).

Accordingly, the proposed expansion of the Ski Center is consistent with existing on-site uses; and the Modified Belleayre Resort project would re-introduce resort development uses into an area that historically supported this type of development. The development appears consistent with the comprehensive plans and zoning of the two towns that would be home to the resort. This, however, would be a finding that the affected towns would be called upon to make in evaluating the Modified Belleayre Resort project with respect to their zoning authority and comprehensive plans.

m. Air Quality

i. Potential Impacts

Potential impacts include air quality impacts during construction of the projects as it is possible that construction activities could overlap in one or more years and it is feasible that operation of the Ski Center would overlap with a combination of construction and operational activities at the Modified Belleayre Resort. The improvements proposed in the Ski Center UMP-FEIS and the Modified Belleayre

Resort FEIS were evaluated for their potential cumulative impacts on air quality and greenhouse gas (GHG) emissions. In addition, a cumulative assessment for construction air pollutant emissions was conducted, based on a worst-case scenario—peak construction year emissions for each project with the assumption they occur during the same year.

ii. Discussion and Findings

1. Construction

Construction emissions would be temporary and emission sources would be distributed throughout the project areas because they are primarily mobile. Construction emissions would cease when construction is completed, and the minor cumulative impacts on air quality would cease upon completion of construction. The dispersed nature and short-term impacts would not represent a significant cumulative adverse impact.

2. Operation

Operation of the two facilities is expected to ultimately produce only small cumulative air quality impacts. Several features of both projects are designed to reduce air pollutant emissions, including new snowmaking equipment that uses electric motors to turn fans instead of diesel compressors and pumps; green building design at the Ski Center and Modified Belleayre Resort; minimizing vehicle traffic between the Modified Belleayre Resort and the Ski Center through use of shuttle buses or ski-in/ski-out options. Traffic and associated emissions from the Modified Belleayre Resort would not be expected to coincide with peak traffic air pollutant emissions associated with the Ski Center. Therefore, the potential cumulative impact of traffic-related emissions is expected to be small.

3. Climate Change

In each year of construction, direct GHG emissions would be produced from construction equipment exhaust at the rate of approximately 10,000 metric tons of CO2e per year. Construction at the Ski Center would also result in the loss of forest when land is cleared for ski lifts and trails. The CO2e released from the forest and woody material is estimated at 44,000 tons. This release of GHG would likely occur over the period of construction as the woody material decays. It is anticipated the woody material would be chipped and used primarily as ground cover (mulch). Direct GHG emissions during Ski Center operations would be lower compared with existing direct GHG emissions; conversely, indirect GHG emissions would be higher. Indirect emissions from the removal of trees for the ski lifts and trails would result in a loss of carbon sequestration estimated at approximately 30 tons of CO2e per year. Mitigation measures affecting direct emissions of GHGs during operations at the Ski Center include the incorporation of green building principles in the new construction at the Discovery Lodge and subsequent reduction of energy consumption and use of electricity-driven snowmaking machines. (See, generally, SDEIS, Appendix 28.)

Construction at the Modified Belleayre Resort may initially coincide with construction at the Ski Center. Since construction at the Modified Belleayre Resort would take place over approximately a 9 year period, the overlap of construction GHG emissions at the two sites would potentially cease after a five-

year period when construction is completed at the BMSC. In the initial years, the Ski Center would be emitting GHG from construction and also still using the diesel snowmaking equipment. In this worst-case analysis it is assumed that the replacement of the diesel pumps and compressors would not occur until the end of construction. Also, the snowmaking would not occur during the same months as the construction, but GHG emissions are assessed on an annual basis so no credit is accepted for the lack of overlap between construction and snowmaking. Using 25,000 tons per year direct CO2e, there is a three-year period when cumulative GHG emissions would exceed 25,000 tons per year direct of CO2e. This period coincides with construction activities and operation of facilities at the two project sites. This short-term effect would end when construction is completed at the Ski Center. In subsequent years, direct cumulative GHG emissions are expected to be less than 25,000 tons per year direct CO2e. Mitigation designed to reduce the direct and indirect emission of GHGs from the BMSC and Modified Belleayre Resort are focused on efficient use of energy, materials and resources. With these measures implemented, the Ski Center and the Modified Belleayre Resort would minimize GHG emissions to the maximum extent practicable.

Mitigation measures that will aid in minimizing emissions of GHGs from the Ski Center include using green building principles in new construction at the Discovery Lodge to lower energy consumption and thus reduce direct and indirect GHG emissions; replace the diesel engine air compressor station with a substantially larger electric air compressor station to mitigate direct GHG emissions associated with snowmaking; testing and repairing leaks in the compressed air system to maintain efficiency; strategic placement of the new water reservoir to take advantage of gravity and use of new higher efficiency pumps; groundwater reclamation to reroute surface water run-off directly to the upper and new reservoirs instead of allowing it to flow to Pine Hill Lake; establish automated procedures and install automated equipment to control energy use; and mitigating a reduced ability to sequester carbon by keeping forest clearing to a minimum, using wood from the cleared areas in on-site building construction if feasible, and establishing a forest by planting trees in areas that are currently not forested.

Transportation and other mobile source/equipment GHG emission mitigation measures at the Ski Center would include construction emissions mitigation using best management practices aimed to maximize fuel efficiency such as using fuel-efficient vehicles, ensuring that all equipment is properly maintained and minimizing idling of construction vehicles; using existing power sources (e.g., grid electric power) or clean fuel electric generators rather than diesel-powered electric generators. Finally, other mitigation measures are proposed to reduce the impact from staff and visitor traffic such as increasing the number of passengers per vehicle and thereby reduce the number of vehicles travelling to the Ski Center; preferential parking areas for high occupancy vehicles and other incentives for carpooling such as rewards of food, beverages, free/reduced price lift tickets or equipment tuning; and increasing use of mass transit and/or shuttle buses by providing additional parking for buses. The new Ski Center, despite being bigger than the existing facility, will have less emissions because of more efficient equipment. Consequently, there would be an improvement in air emissions from this project.

The Modified Belleayre Resort's design goal is to achieve Leadership in Energy and Environmental Design (LEED) Silver status, and the project would also incorporate specific mitigation measures outlined in DEC's "Policy on Assessing Energy Use and Greenhouse Gas Emissions in Environmental

Impact Statements." These mitigation measures would result in overall lower energy consumption and associated GHG emissions. Clearing forested areas would be kept to the minimum required for a successful project. In so doing, trees and other woody plants remaining on-site would continue to provide carbon sequestration. In addition, as part of landscaping around the resort areas, replacement trees would be planted wherever feasible.

Accordingly, the potential cumulative impacts on air quality and greenhouse gases are expected to be minor and the projects have incorporated reasonable mitigation measures.

n. Climate Change

i. Potential Impacts

The improvements proposed in the Ski Center UMP-FEIS and the proposed Modified Belleayre Resort were evaluated for their potential cumulative impacts on GHG emissions and climate change (one of the first large scale projects known to have done so in New York). The effect of climate change on the combined projects was also evaluated.

ii. Discussion and Findings

Major winter recreation areas, such as the Ski Center, may face operational challenges during the 21st Century if average global temperatures continue to rise. The primary effect of increasing global temperatures will likely be a shortening of the ski season, reduction in annual snowfall and hours with air temperatures suitable for snowmaking, and a general lessening of the snow quality as more mixed precipitation or rain falls during the winter months. However, the increase in reliance on snowmaking to maintain a reliable snowpack would help to mitigate or adapt to these potential changing conditions, as long as snowmaking capacity is sufficient to take advantage of available snowmaking hours. The potential for an increase in the amount of snowmaking may result in additional greenhouse gas emissions through increased use of snowmaking equipment. The use of the most energy efficient snowmaking equipment will help to mitigate any additional emissions. In addition, the existing layout of the Ski Center, i.e., the northward facing slopes, will help retain snow during warmer temperatures since sunlight on sunny days will not be as direct as it would be on south facing slopes. For the Modified Belleayre Resort, drought conditions would require an increase in the use of irrigation to maintain landscape appearance and golf course amenities. Water conservation techniques such as using water-saving fixtures that exceed building code requirements, collecting and re-using rainwater and design water efficient landscaping could be used to mitigate low rainfall periods. The measures described above will help reduce the effects of climate change on the combined projects.

o. Cultural Resources

i. Potential Impacts

Separate cultural resources analyses were conducted for the Ski Center UMP-FEIS and the Modified Belleayre Resort FEIS. These analyses considered prehistoric archaeological resources, historic archaeological resources, historic structures and changes to the viewshed that could impact the setting of historic resources.

ii. Discussion and Findings

Based on information provided in the survey report, the New York State Office of Parks, Recreation and Historic Preservation and DEC have determined that the proposed activity will have no adverse impact on registered or eligible archeological sites or historic structures, consequently construction and operation of the Ski Center and the Modified Belleayre Resort are not expected to result in adverse cumulative impacts on cultural resources. No mitigation measures are proposed beyond agency consultation for the adaptive reuse of historic buildings for the Modified Belleayre Resort and avoidance of the historic Whispell House at BMSC.

XX.Alternatives

An environmental impact statement must address alternatives to the proposed action including the no-action alternative. Under SEQR, the function of the consideration of alternatives is to avoid or mitigate significant, adverse impacts of the action while meeting the project sponsor's principal goal. The SEQR regulations provide that the environmental impact statement must describe and evaluate the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. A "no action" alternative must be included in the range of alternatives considered. The objectives of a private project sponsor are important in determining what alternatives should be considered.

The Deputy Commissioner's Interim Decision (December 29, 2006) called for the evaluation of a lower impact alternative, which was fulfilled through the subsequent AIP alternative. The removal of the higher altitude units proposed for Highmount added to the acceptability of the AIP Alternative. (See Commissioner's Decision and Ruling, pp. 23-25, July 10, 2015.) The Applicant's preferred alternative meets the requirements for a lower impact alternative to both the Belleayre Resort at Catskill Park (removal of Big Indian) and the AIP alternative (removal of higher altitude units).

i. No-action Alternative

The no-action alternative is unacceptable because it does not meet Crossroads' goals of constructing a resort and the significant impacts (e.g., visual, stormwater management, traffic and noise) associated with the Modified Belleayre Resort can be mitigated or avoided as set forth in these findings. Also, the no-action alternative would not realize the potential economic benefits of the resort development. The no-action alternative also leaves open the possibility that the lands upon which the resort is to be built would be subsequently developed in a haphazard manner rather than in a well-planned and cohesive manner. The no-action alternative is, therefore, not acceptable for multiple reasons.

ii. Eliminating the Entire Highmount Alternative

This alternative was addressed in the Commissioner's Decision and Ruling. The Commissioner stated as follows:

"The alternatives analysis shows that, while the number of acres to be disturbed by elimination of development on Highmount would be reduced by 42 acres, the number of impervious acres would only be reduced by approximately 3 acres In sum, the analysis of the 'no-Highmount' alternative asserts that the environmental benefits would be modest, and that elimination of Highmount would result in the project becoming economically infeasible (*see* 2013 SDEIS at 5-7 to 5-8; see also id. Appendix 5; draft FEIS, Errata § 2.8 [No Highmount Alternative Additional Analysis, at 2-4 (providing a comparison of environmental impacts based on category – surface waters, groundwater, visual, noise, etc.)]; draft FEIS, Errata § 2.5 [HVS November 2013 Feasibility Study and Sensitivity Analysis (updating the feasibility analysis)])." (See Commissioner's Decision and Ruling, p. 25.)

As pointed out in detail in the Errata, Section 2.8 of the FEIS (Supplemental Assessment of the No-Highmount Alternative), there are few environmental benefits to eliminating the Highmount portion of the resort as compared to the Applicant's preferred alternative, which was already downsized with the elimination of the upper Highmount units (and associated road). In terms of gross statistics, they are shown in the table that follows the Supplemental Assessment of the No-Highmount alternative. Some of the key natural resources comparisons are set out below for the No-Highmount alternative versus the Applicant's preferred alternative:

Net change in total project size:	139 acres less of total project size for no Highmount alternative
Total length of roads:	1.31 as compared to 1.5
Length of roads on grades over 20 percent:	.07 versus.1
Impervious surfaces	18 versus 21 acres
Water supply (gallons per day)	105,300 versus 145,200
Earthwork (cubic yards)	39, 900 less

Traffic (Design Peak Hour Trips)	213 versus 343

Crossroads indicates that the No Highmount alternative is not a “feasible and reasonable” alternative. The FEIS contains a lengthy explanation of Crossroads’ position. The reduction in natural resource impacts of developing Wildacres alone, however, is not sufficiently significant to justify selection of a No-Highmount alternative. The purpose of the alternatives analysis is not to arbitrarily decide on the proper size of the development but to mitigate impacts. The Wildacres only alternative does not result in a sufficient lessening of natural resource impacts over permitting both Wildacres and Highmount together. In any event, the impacts that would be avoided or mitigated by eliminating Highmount must be balanced against the economic benefits of allowing Highmount to go forward (as illustrated in the FEIS table that compares the Wildacres only alternative) (e.g., fewer jobs and tax revenues), notwithstanding whether the alternative is feasible and reasonable for Crossroads.

iii. The AIP Plan Alternative

Essentially, the AIP Plan Alternative consists of the Highmount portion of the resort with the addition of 24 detached lodging units and an access road leading up to the plateau above the larger Highmount development. As indicated in the SDEIS, the AIP Plan Alternative would have resulted in an additional 5,580 feet (1.1 miles) of roadway, the majority of which is located on slopes >20%. The AIP Plan Alternative, if accepted, would have also resulted in additional impervious surfaces from roads, buildings and driveways totaling approximately 6 acres; approximately 17 additional acres of site disturbance; an increase in the highest elevation proposed for development (buildings and roads) from 2620 feet to 3080 feet. The AIP Plan Alternative had the potential to increase the overall visibility of the project, including the very limited daytime visibility of the project from Forest Preserve Wild Forest lands on the Dry Brook Ridge Trail and the Balsam Lake Mountain Fire Tower. Nighttime visibility may also have been increased with the higher elevation detached units on Highmount. The Department had significant stormwater management concerns with the AIP Plan Alternative because of the additional impervious surfaces and site disturbances on steep slopes. This proposal was therefore modified prior to submission of the SDEIS to eliminate Highmount’ s 24 units of higher altitude lodging units and the road leading up to them.

iv. Other alternatives

The FEIS also set forth alternatives for golf course layout and management practices, alternative water supply, alternative wastewater disposal, alternative stormwater management practices, and alternative construction phasing.

v. Conclusion

The Applicant's preferred alternative avoids or mitigates adverse environmental impacts to the maximum extent practicable. The alternatives for golf course layout and management practices, alternative water supply, alternative wastewater disposal, alternative stormwater management practices, and alternative construction phasing are either not practicable or in other cases less protective of the environment.

XXI. Social, Economic, and Other Essential Considerations

In reaching a decision whether to approve, approve with conditions, or deny, applications for an action which is the subject of an EIS, each involved agency is required to weigh and balance the public need and other social, economic and environmental benefits of the project against identified environmental harm. Thus, for an agency to approve an action with potential to create significant environmental damage, or to adversely affect important environmental resources, the agency must be able to conclude that the action which the agency will approve, including any conditions attached to that approval, avoids or minimizes anticipated impacts to the maximum extent practicable, or that public needs and benefits outweigh the identified environmental harm. Environmental factors are not the sole consideration in agency decision-making where an EIS has been prepared. The purpose of SEQR is to ensure that the environmental impacts of an action are weighed and balanced with social, economic and other considerations so that a suitable balance of social, economic and environmental factors may be incorporated in the planning and decision-making processes of state, regional and local agencies.

The economic analysis contained in the SDEIS, which the Department's economist found to be acceptable for methodology, concludes that based on the Applicant's preferred alternative, the project would improve the economy of the region. The economic analysis projects that the proposed project, when operational, can be expected to generate 771 full (541) and part-time (230) employees and 264 indirect employees in the tri-county region (Ulster, Delaware and Greene) (See page 42 of Appendix 3 of the SDEIS).

Based on a total projected payroll of $24.85 million and the assumption that 50 percent of these direct wages and salaries would accrue to households within the NY Route 28 Corridor Study Area, it was estimated that there would be $12.43 million in new expenditure potential within the NY Route 28 Corridor Study Area from Resort employees' wages and salaries. (See page 43 of Appendix 3 of the SDEIS.)

Based upon the Regional Input-Output Modeling System (RIMS II) economic multipliers, the resort would generate an additional 264 permanent jobs within the region. (See page 42 of Appendix 3 of the SDEIS.) Local businesses would benefit from the spending from the indirect employees generated by the project. Based on total indirect wages and salaries within the tri-county area of $12.96 million, there would be an estimated $650,000 in new expenditure potential within the NY Route 28 Corridor Study

Area from indirect employment generated by resort operations. (See FEIS, Volume 4, Response to Comments, page 214.)

It can be reasonably expected that visitors to the Modified Belleayre Resort would not limit their spending entirely to on-site Resort goods and service; they would travel off-site for spending on a variety of goods and services such as antiques, crafts, restaurant meals, groceries, gas and oil, recreational fees for off-site amenities, and cultural attractions.

The FEIS economic analysis finds that the project would provide significant tax revenues to the Margaretville and Onteora central school districts as well as the counties. (See page 3-80 of the SDEIS).

The conclusions of the economic analysis are based upon the full build out of the preferred alternative, and based upon this analysis the jobs and tax revenues from the Modified Belleayre Resort would be a significant benefit to the region.

At the same time, the Town of Shandaken Comprehensive Plan acknowledges the need for a tourist based economic catalyst, such as the Modified Belleayre Resort project. Specifically, it states, "despite its natural amenities, the Town of Shandaken has faced a continuing struggle to provide a stable economy for its residents, as evident through the demographic trends discussed earlier in this plan. Historically, similar weak economic challenges have been faced by this community, as documented in previous economic strategy reports performed for the Route 28 corridor and through trends contained in the West of Hudson Economic Development Study. Shandaken specifically is experiencing trends of an aging population, highly educated work force, increasing numbers of self-employed business owners, the lowest family and household average income in the county, with few amenities or opportunities to sustain or improve these trends. The natural resources of the Catskill region and its proximity to 15 million people within a 150 mile radius, makes it a clear potential for importing and harnessing the tourism market. As a year-round destination within two hours driving time of 15 million people, the region's potential to attract tourists is substantial." Comprehensive Plan for the Town of Shandaken, NY, July 11, 2005."

The Applicant's preferred alternative minimizes or avoids environmental impacts revealed in the supplemental environmental impact statement process to the maximum extent practicable. It goes further than the AIP alternative, which was endorsed by most of the parties to the adjudicatory proceeding including NRDC, Riverkeeper City of New York, the New York State Watershed Inspector General, and the towns of Shandaken and Middletown, in avoiding and mitigating environmental impacts. The Department concludes based on the foregoing that the social and economic benefits of the Modified Belleayre Resort outweigh the environmental impacts of the proposed resort, as avoided or mitigated.

XXII. *Certification to Approve*

Having considered the Draft and Final EIS and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of State Environmental Quality Review (6 NYCRR Part 617) have been met, and;
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action approved (the Applicant's preferred alternative as conditioned by these findings) is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures (as set out above) that were identified as practicable.

Daniel T. Whitehead
Regional Permit Administrator, Region 3,
New York State Department of Environmental Conservation

Dated: December 2, 2015
New Paltz, New York

Appendix A: List of Documents Reviewed

In developing this SEQR Findings Statement, the DEC has reviewed and considered the following documents:

1. Draft Environmental Impact Statement (DEIS) for the Belleayre resort at Catskill Park, September 2003
2. Positive Declaration for the Modified Belleayre Resort at Catskill Park and Belleayre Mountain Unit Management Plan, November 21, 2007 and scoping statement, dated February 28, 2008
3. Supplemental Draft Environmental Impact Statement (SDEIS) for the Modified Belleayre Resort at Catskill Park, April 2013
4. Final Environmental Impact Statement (FEIS) for the Modified Belleayre Resort at Catskill Park, September 2015
5. Final Environmental Impact Statement (FEIS) for the Belleayre Mountain Unit Management Plan September 2015
6. Matter of Crossroads Ventures, LLC, Interim Decision, December 29, 2006
7. Matter of Crossroads Ventures, LLC, Decision and Ruling, July 10, 2015
8. Permit application materials for the Modified Belleayre Resort at Catskill Park and BMSC.

Appendix B: Mitigation Agreement

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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 Principle[1] (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' 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. <u>Organic Golf (SDEIS Appendix 15)</u>

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. Permitee 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. <u>Blasting Survey</u>

1. Prior to commencing any blasting operations, Permitee'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' 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 timber 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 per-blast survey of their well at Permitte'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 Permitee'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 Permitte 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 ¼ 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.

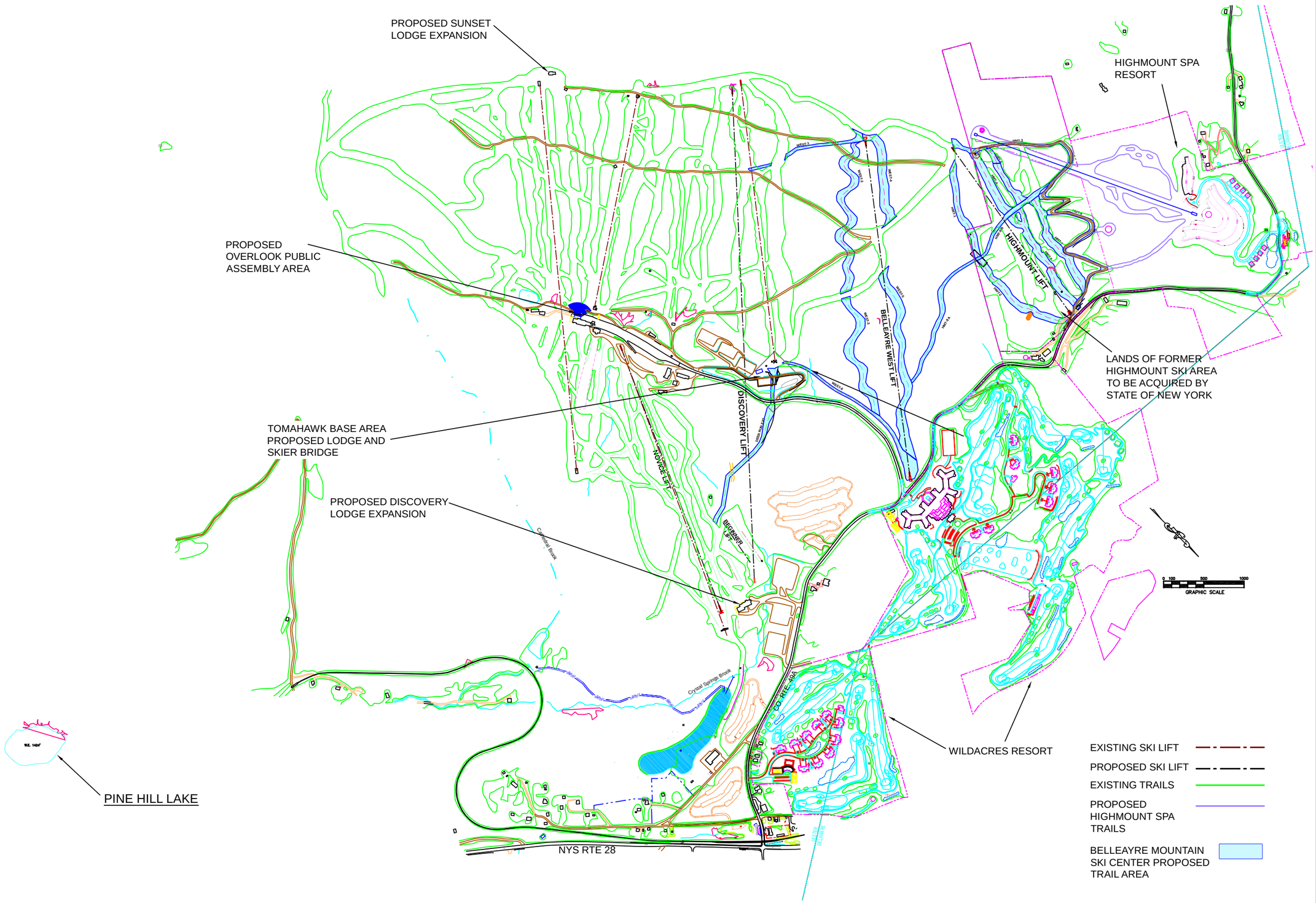
6. Permittee shall improve the section of CR 49A from the Belleayre Mountain Ski Center Upper Driveway to the Highmount Spa Resort to mitigate the existing non-standard vertical and horizontal features along the roadway. The improvements will widen the roadway to provide two 11-foot wide travel lanes 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.

Appendix C: Map Showing Applicant's Preferred Alternative and BMSC Full Build-out Alternative



NYS Department of Environmental Conservation
Bureau of Design & Construction

CUMULATIVE MAP: BELLEAYRE MOUNTAIN SKI CENTER - FULL BUILD OUT PLAN AND MODIFIED BELLEAYRE RESORT AT CATSKILL PARK

Appendix D: November 17, 2014 letter from the Watershed Inspector General to the Department's Assistant Commissioner for the Office of Hearings and Mediation Services

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 17, 2014

By E-Mail and Mail

Louis A. Alexander, Assistant Commissioner
Chief Administrative Judge, James T. McClymonds
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway
Albany, New York 12233-1500

Re: Matter of Applications for Permits to Construct and Operate Belleayre Resort at Catskill Park

Dear Assistant Commissioner Alexander and Chief Judge McClymonds:

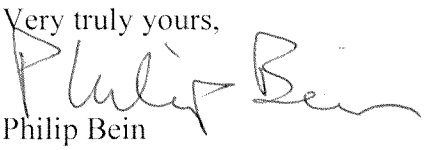
The Office of Watershed Inspector General (the WIG), an amicus party to the adjudicatory hearing in the above-referenced matter, respectfully responds to the motion by Department Staff to cancel the pending adjudicatory hearing as follows:

The WIG has reached agreement with the applicant for the Resort at Catskill Park to address our concerns regarding potential adverse stormwater impacts from that project. The applicant has satisfactorily resolved the WIG's stormwater concerns to date, and has agreed that the WIG will have 60 days for the review of each phase of the applicant's stormwater plans during the same 60 days when the Department's staff are reviewing these plans for each phase. In addition, the WIG has reached agreement with Department Staff to address our concerns regarding potential adverse stormwater impacts from development at the Belleayre Mountain Ski Center under the Unit Management Plan. Department Staff have satisfactorily resolved the WIG's stormwater concerns to date, and the WIG will have 60 days to review the stormwater plans for each project to be constructed under the Unit Management Plan.

Attached and incorporated within this response are the respective agreements, specifically an email (with attachment) dated November 17, 2014, from Dan Ruzow on behalf of the applicant, and a letter agreement signed by the WIG and by Lawrence Weintraub on behalf of Department Staff, dated November 17, 2014.

Accordingly, in light of these agreements, the WIG does not object to cancellation of the pending adjudicatory hearing.

Very truly yours,



Philip Bein
Watershed Inspector General

Cc: Service list

Attachments

Philip Bein

From: Ruzow, Daniel <DRuzow@woh.com>
Sent: Monday, November 17, 2014 11:14 AM
To: Philip Bein; Lawrence Weintraub
Cc: Kevin Franke; Bakner, Terresa
Subject: SWPPP Comment and Future SWPPP Review
Attachments: Crossroads Response to WIG Concerns Regarding Modified Project SWPPP 111714(rev).docx

Importance: High

Dear Phil,

As a follow up to our recent telephone calls, this is to confirm that we will address all of the issues raised by the Watershed Inspector General's Office as outlined in the attached Response to your Offices recent comments. The plan changes will be made subsequently during the site development process and your Office will be afforded the same period of time, i.e. 60 days, for the review of each phase of the Stormwater Pollution Prevention Plan during the same 60 days when NYSDEC staff are reviewing the SWPPP for each phase.

We appreciate the comments of the WIG's Office and the assistance of Mr. Lake in bringing these questions to our attention.

Dan Ruzow

Daniel A. Ruzow

Whiteman Osterman & Hanna LLP

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Crossroads Ventures LLC Agreed Upon Responses with Watershed Inspector General
November 17, 2014

WIG Concerns Regarding Modified Project SWPPP:

A. Stormwater Controls:

1. Parking Garage Near Wildacres Hotel and Filling a Wetland:

Project phases characterize when project components are to be constructed. The Draft stormwater pollution prevention plan (SWPPP, Appendix 19 in the SDEIS presents a very detailed plan for the construction of the Wildacres Hotel during Phase 1A of the Modified Project (Drawings L-3.01). However, Phase 1A does not include the detailed plans for constructing the unattached garage for the Wildacres Hotel. Plans to construct the unattached garage are presented in Phase 2 of the Modified Project (L-3.01 and L-3.00 and in the blasting plan shown on Figure 2-35 of the DSEIS). As recommended in my July 24, 2013 Technical Appendix Comment I.B.3., these plans need to be included in Phase 1A.4 (or eliminated entirely). According to the grading plan view drawings, the drawings that show the various phases of construction, and the erosion and sediment control plans, the Wildacres Hotel with its associated infrastructure appears to obstruct access to the area designated for the garage. The FEIS needs to address this potential access issue and explain how construction of this garage will be integrated into the project. In addition, the extent of construction activity at the proposed hotel parking garage does not appear on drawing L-3.01 or on drawing L-3.09 of the Erosion and Sediment Control Plan. These details must be added, if this component of the project is to be constructed. Also, the work area tables on drawing L-3.01 and in Table 11, page 54 of the SWPPP need to be modified accordingly. As discussed in my July 24, 2013 Technical Appendix Comment I.D., The proposed parking garage associated with the Wildacres Hotel is to be built on top of an isolated wetland (L-4.03), and will fill approximately half of it. I recommend, in the absence of documentation in the FEIS, that the isolated wetland not be disturbed and that the 208 parking spaces associated with this garage be constructed below the Wildacres Hotel, adding to the existing capacity of 250 parking spaces to make a total of 458 parking spaces.

Response: The majority of the connector road between the hotel and the parking garage is included in Phase 1 construction, more specifically in subphase 1A.4. This connection will be used, in part, for construction access to build the parking garage (planned during Phase 2 construction) Also, as shown on the attached annotated excerpt from Sheet L-3.01, construction access can be obtained from County Route 49 A and tie into the connector road in order to lessen construction traffic in proximity to the hotel. As we discussed, we will revise the SWPPP for the Phase 1 construction drawings to reflect the work that will be undertaken to ensure construction access to the parking garage and to set forth the soil disturbance and the soil erosion and sedimentation control practices that will be followed. A clarifying note will be added to the Phase 1 SWPP plans that the construction access from County Route 49A will be constructed

as part of Phase 2. This will ensure that the work related to the construction of the parking garage (Phase 1A) in Phase 2 matches up fully with the work undertaken in Phase 1.

The proposed parking garage will be built on piers so there will be no direct impact to the wetland hydrology as agreed in the AIP. This wetland area is a seep formed and maintained primarily by groundwater discharge. The AIP provides that the non-jurisdictional wetlands will be avoided based on this construction technique and this will be shown in the construction drawings (phase 1 of the SWPPP, but for Phase 2 construction) of the SWPPP. All SWPPPs prepared for all phases of site development will be provided to the WIG's Office which will have 60 days to review each SWPPP for each phase.

2. Soil Restoration and Vegetative Control:

Section 6.2.1 of the stormwater pollution prevention plan (SWPPP) describes the soil restoration measures that will be performed on site. Table 3, on page 24 of the SWPPP, shows the restoration requirements for specific amounts of soil disturbance. As recommended in my July 24, 2013 Technical Appendix Comment I.B.4., all disturbed, "compacted" soils in the area of development are required to be decompacted after construction activities have been completed, to restore their water infiltrating characteristics (New York State Stormwater Design Manual, August 2010, pages 5-20 through 5-24). Soil restoration is critical to the post construction condition of the site. Areas requiring soil restoration should be designated on the plan views associated with the erosion and sediment control plan or the site stabilization drawings, L-3.26 and L-3.27, as well as in the text of the revised SWPPP. Failure to provide soil restoration across the site voids ALL the hydrology analysis and calculations for water quality treatment volume (WQv) in the FEIS.

Response: All of the soil restoration provisions currently set forth in the text in the draft SWPPP in the EIS will be set forth on the SWPPP plans for each phase of construction so that the contractors are easily able to understand the soil restoration requirements discussed above.

Section 7 of the SWPPP, Vegetative Control, states that 50 acres of sod will be used at the project. Drawings L-6.00 to L6.06 details the landscaping and the planting plan for the project. However, there are no detailed seeding specifications, seeding mixes or seeding rates shown for the project. It has been noted in the DSEIS that the soils on the site are classified as frigid soils, due to their elevation and short growing season. Therefore, the selection, establishment, and maintenance of a successful grass cover are critical to stabilize the soil. Appropriate detailed seeding specifications, seeding mixes or seeding rates

should be incorporated into the final EIS. In addition, drawings L-6.00 to L-6.06 need to be updated with this information.

Response: Each phase of the final SWPPP drawings will include the specifications for seeding mixtures and rates, as well as all locations where sod is to be placed. The WIG's Office will have 60 days to review each phase of the SWPPP to ensure that the notes added to the drawings regarding such sod placement locations and seeding mixtures and rates are appropriate.

3. Woody Debris:

The Draft SWPPP describes on site timber clearing operations (Appendix 19, section 6.1.4). These operations include the removal of marketable timber, chipping brush, limb wood, and other woody debris, and potentially burying stumps and debris onsite (page 2-37). As recommended in my July 24, 2013 Technical Appendix Comment I.B.5., no mention of burying stumps is made on the drawings and no waste areas are designated to receive this woody material. Due to the forested nature of a large majority of this site, a substantial quantity of woody debris may result. Woody debris storage and disposal areas should be designated and detailed in the revised SWPPP and shown on the detailed drawings L-4.00 thru L-4.09 of the Grading and Drainage Plan. This has not been done. The revised drawings dated February 21, 2014, do not detail what is to be done with the cut trees and stumps. These directions need to be added to the drawing notes on all drawings from L-4.00 to L-4.09.

Response: Each phase of the final SWPPP will contain notes concerning the appropriate handling and disposal of woody debris. These precise instructions to the contractor (which will include directing that burial of woody debris must be undertaken within the designated limits of disturbance), will be provided to the WIG's Office as set forth above.

B. Erosion and Sediment Controls:

1. As discussed in my July 24, 2013 Technical Appendix Comment I.C.7., the Erosion and Sediment Control Plan drawings, L-3.02 through L-3.25a, show many swales, rock outlets, and all sediment basin outlet dispersion pipes located outside of the designated work areas. The work limits should include these areas, since they result in a significant amount of work and, in many cases, soil and vegetative disturbance. Once these limits have been revised, the work area table on sheet L-3.01 and Table 11 of the Draft SWPPP should be corrected accordingly.

Response: The work limits shown on the plans have been re-verified to ensure that all activities involving soil disturbance are accounted for, and any necessary updates to the corresponding work area tables have been included in an updated sheet L-3.01and SWPPP Table 11, both of which are included in the Errata section of this FEIS. Dispersion pipes are not typically included in the disturbance areas since these pipes will be manually laid on existing ground and staked into place with little to no soil disturbance. The dispersion pipes are not included in the limits of disturbance, but they can be considered within the limits of construction. Each phase of the final SWPPP will be reviewed as set forth above.

2. As discussed in my July 24, 2013 Technical Appendix Comment I.C.11., a few sediment basins have the potential to short circuit due to the inlet flow entering the basin too close to the discharge outlet (e.g. sheet L-4.05). This should be corrected with a barrier to re-route the inlet flow along a longer flow path to the outlet point.

Response: Sediment basins will be dewatered with a pump with a turbidity meter into a dispersion pipe, and not over a traditional outlet. (See detail 1 on sheet L-8.01in the errata section of this FEIS). Therefore, maximizing flow path within the sedimentation basin is less of a concern. Each phase of the final SWPPP will carefully examine whether the length between the inlet and outlet can be increased via the use of a barrier or the shape of the basin. For permanent basins to be used for operational stormwater management every effort will be made to have an appropriate flow path to the outlet point that maximizes the effectiveness of the basin. The WIG's Office will have an opportunity to review each phase of the final SWPPP as set forth above.

3. As discussed in my July 24, 2013 Technical Appendix Comment I.C.12., a drop inlet catch basin, or a transition inlet structure that collects flow from two swales prior to its appearance under a golf fairway, needs to be placed on sheet L-4.04.

Response: This will be shown on the final SWPPP for that phase.

New Additional Comments

The following comments are based on the updated drawings (2/21/14):

1. The emergency spillways for the stormwater management ponds should be relocated from atop the embankment and above the service spillways to a secure location in natural ground to prevent a potential washout of the dam, if overtopping should occur (drawings L-4.05 and L-8.01).

Response: This improvement will be shown on the ponds on the final SWPPP for each phase where feasible. For the most part, all ponds are excavated and do not have embankments.

2. Drawing L-4.03 shows the top floor elevation of the parking garage to be at 2,200' while the bottom floor elevation is shown at 2,210'. These elevations need to be confirmed.

Response: These elevations were inadvertently swapped and the numbers will be corrected.

3. Drawing L-4.05 should adjust the location of the micro-pool extended detention pond forebay to capture runoff from the south stormwater conveyance at the practice driving range.

Response: This will be adjusted on the final SWPPP plan for that phase of the site development.

4. Drawing L-4.08 should re-configure the inlet/outlet points of the stormwater pond in such a way as to prevent short circuiting of the flow and maintain the required minimum length to width ratio of 1.5 to 1 (New York State Stormwater Management Design Manual, 2010).

Response: This drawing shows the irrigation pond (which also functions as a stormwater cistern). The irrigation pond will be used for irrigating the golf course rather than for simple treatment and discharge of stormwater. Because of the lack of discharge from this pond, short circuiting will not be an issue of concern.

5. Stockpile areas are shown at locations on the Erosion and Sediment Control Plans, such as the one shown on sheet L-3.12 and again on sheet L-3.13, but it is not clear what is to be stockpiled in these areas. These specifics need to be added to the grading and erosion control notes for clarification.

Response: The specific information regarding the soil stockpile areas will be added to the final SWPPP. As stated above, in all cases the WIG's Office will have the same 60 day review period as the NYSDEC for the each phase of the final SWPPP which will be submitted as part of the site development in accordance with the individual SPDES permit issued by NYSDEC for the project.

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 17, 2014

Lawrence Weintraub, Esq.
Assistant Counsel
Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1500

Kelly Turturro, Esq.
Assistant Regional Attorney
NYSDEC Region 3
21 South Putt Corners Road
New Paltz, New York 12561

Re: **Matter of Applications for Permits to Construct and Operate the Belleayre Resort at Catskill Park**

Dear Counsel:

The purpose of this letter is to memorialize the agreement between the Watershed Inspector General (WIG or WIG Office), an amicus party in the above-referenced administrative proceeding, and Department of Environmental Conservation Staff (Department Staff) concerning future review by WIG and further revisions by the Department's staff of the stormwater pollution prevention plans for the Belleayre Mountain Ski Center Unit Management Plan.

The WIG Office and WIG's stormwater consultant, Donald Lake, have reviewed the Final Environmental Impact Statement for the Belleayre Mountain Ski Center Unit Management Plan, dated July 2014, including Appendix A (containing 151 construction drawings), Appendix A1 (Technical Appendix Supporting Stormwater Calculations), and Appendix E (the Stormwater Pollution Prevention Plan or SWPPP). In this letter, we refer to these documents collectively as the UMP Stormwater Plans.

I. WIG Technical Comments

The WIG Office has shared the following technical comments concerning the UMP Stormwater Plans with Department Staff:

A. Soil Restoration:

Sub-Appendix J, "Best Management Practices" of Appendix I, Shumaker SWPPP for Discovery Lodge Expansion", on page 806 of the file labeled "03 Belleayre UMP-FEIS Appendices B-P" includes the compacted soil restoration requirements for the final stabilization of the site areas at the UMP project. However, these requirements are absent from and need to be placed on the following construction drawings: TR-3, 4, 7, 10; SM-15, 15A, 15B, 16, 17; LT-1 through LT-8; EC-1, 2, 4, 6, and 8 through 12; BS-5, 6, 7, 10, 11, and 13 through 16.

B. Snow Management:

As discussed in the Technical Appendix, to WIG's July 23, 2014 comments concerning the Draft Environmental Impact Statement (DEIS) for the Belleayre Mountain Ski Center UMP (hereinafter DEIS Comments) (Comment II.C), a detailed snow management plan was missing from the DEIS. After reviewing the FEIS, it is still missing. As mentioned before, details concerning snow removal and snow storage practices need to be provided. For example, will the snow be removed during the winter season and stored in a specific location, such as adjacent to a stream, or will it be plowed into a stormwater management practice and potentially impede its performance? A snow management plan must be developed and incorporated into the FEIS and SWPPP, especially at critical parking areas.

C. Woody Debris:

Due to the forested nature of a large majority of this site, a substantial quantity of woody debris may result. Page 858 of Appendix E of the SWPPP, indicates that trees and stumps will be chipped. As discussed in my July 24, 2013 Technical Appendix, Comment II.D.4, there are no waste areas designated to receive this woody material. Additional information must be added to existing notes and construction details on all appropriate construction drawings and the SWPPP to clarify and segregate the routing of construction waste material from the vegetation removal operations. This information should be added to the notes and construction details shown on drawings TR-4, LT-2, BS-2, SM-8, EC-2, 4, and EC-6.

D. Deficiencies in Construction Drawings:

None of the more than 151 drawings contained in the updated FEIS have revision dates recorded on them. This would indicate that they have not been updated. Technical comments concerning these drawings were presented in our letter of July 24, 2013. Unfortunately, none of our technical comments concerning deficiencies in the construction drawings have been addressed in the FEIS. The following deficiencies still exist:

1. The FEIS, incorporates by reference, many details that are contained in documents that are not part of the FEIS submittal, such as the New York State Standards for Erosion & Sediment Control (2005). These details need to be reproduced and added to the details and specifications that appear on the construction drawings that were submitted as part of the FEIS. For example, drawing PK-10 requires additional details.

2. Although specific seed mixes, seeding rates, mulches, and mulch application rates for detailed areas of the project appear in Appendix F of the FEIS, they are not shown on the drawings where they have been referenced. Drawings LA-1 and LA-2 should be revised to include this information.

3. Dimensions and details are missing from a number of specific works of improvement, such as for the building site drawings (e.g. BS-2, 3, 6, 7, 8), the lift terminal drawings (e.g. LT-1 through LT-8), snowmaking (e.g. SM-2, SM-9, SM-10, SM-11A, and SM-12), and parking (e.g. PK-1 and PK-6 through PK-16). This information needs to be added to the construction drawings.

4. Topographic information presented in yellow ink is unreadable on many of the Building Site drawings, specifically BS-10 through BS-13, and also on EC-1 and EC-2. The color of the ink on these sheets needs to be changed so that the contour lines are readable.

5. Rock outlet protection designations are absent from many of the drawings. For example, they are missing from drawings BS-3, BS-7, LT-3, LT-5, EC-1, and EC-6. This omission needs to be corrected.

6. Safe site access is essential to all stormwater management practices that require maintenance. Drawings associated with these stormwater practices must clearly delineate access pathways. For example, access to maintain the stormwater infiltration basin on drawing BS-3 must be shown.

7. Additional grading details such as contour closure, defined diversion outlets and fill elevations and slopes are needed to clarify proposed earthwork modifications on drawings BS-10 through 16, LT-2, LT-4, EC-6, EC-10, and PK-4, PK-7, PK-14, and PK-15.

8. Channel lining details are needed for the water conveyances shown on drawings SM-10, EC-1, PK-7, and PK-9. For example, depending on the practice and its longevity, these details could specify whether the conveyances are constructed from stone, plastic, or vegetation.

9. A range of specific erosion and sediment control practice details need to be added to the construction drawings. The following list provides an example of these details: adding concrete truck washouts on drawing BS-2 and EC-1; adding rock outlet protection structures on all culvert outlets shown on drawing BS-3, EC-1 and EC-6; adding seed and mulch types and rates to the EC series of drawings and to all the ESC plan sheets for the

other series of drawings (LT, SM, BS, PK, and TR), adding drop inlet protection on drawing LT-3, and detailing diversion outlets on drawings LT-1 through LT-8.

10. Additional phasing and sequencing notes and legends are needed to complete construction drawings BS-4, BS-5, BS-16, EC-1, and EC-2.

II. Revisions of the UMP Stormwater Plans and Further Review by WIG

The Department's staff concur with the WIG's comments set forth in Section I above, and shall, in cooperation with the Olympic Regional Development Authority, incorporate them into revised Construction Stormwater Pollution Prevention Plans for each project to be implemented within the Belleayre Mountain Ski Center under the UMP. Subsequent to approval of the Unit Management Plan but prior to commencement of construction of each project, the Department's staff or the Olympic Regional Development Authority, shall make their revised Construction Stormwater Pollution Prevention Plan available to the WIG Office for its review and comment for a 60-day period for that project. This comment period shall be for agency consultation only; it shall not be deemed a public comment period pursuant to the Uniform Procedures Act or the State Environmental Quality Review Act or otherwise. Consistent with the Executive Order establishing the New York City Watershed Inspector General, the Department's staff, in cooperation with the Olympic Regional Development Authority, shall work with the WIG Office to consider any comments submitted by the WIG and confer with WIG prior to finalizing the Construction Stormwater Pollution Prevention Plan for any such project.

Please indicate your agreement with the foregoing on behalf of the Department's staff by signing where indicated below.

Yours truly,

Philip Bein
Watershed Inspector General

Agreed and Accepted:

Department Staff

By: Lawrence Weintraub
Assistant Counsel

c: Mr. Ted Blazer, ORDA
Kelly R. Turturro, Assistant Regional Attorney
Andrew J. Niles, P.E., NYSDEC – Bureau of Design and Construction