

NEW YORK STATE: ADIRONDACK PARK AGENCY

In the Matter of the Application to
Construct the Adirondack Club and
Resort by

Preserve Associates, LLC,
Applicant.

Memorandum
Summarizing the Pre-
Hearing Conference
held on
October 20, 2010,
and Issues Ruling

APA Project No:
2005-100

November 16, 2010

SENT VIA E-MAIL AND REGULAR MAIL

I. Pre-hearing Conference

As scheduled in a memorandum dated September 24, 2010, the pre-hearing conference concerning the referenced application reconvened at 10:00 a.m. on October 20, 2010 at the Offices of the Adirondack Park Agency (APA) in Ray Brook, New York. Attached to this memorandum and issues ruling as Appendix A is a copy of the sign-in sheets, which identifies the parties and their respective representatives who appeared at the October 20, 2010 pre-hearing conference.

Staff from the Adirondack Park Agency (APA Staff) recorded the October 20, 2010 pre-hearing conference and prepared a DVD (video and audio).

As required by 9 NYCRR 580.9, this memorandum and issues ruling summarizes the topics discussed during the pre-hearing conference. The primary purpose of the October 20, 2010 pre-hearing conference was to discuss the issues for adjudication. In an Order dated February 15, 2007 (at 7 of 12 through 9 of 12), the Board identified ten issues for adjudication. However, since February 2007, Applicant has proposed mitigation that has rendered some issues, or portions of issues, irrelevant. During the October 20, 2010 pre-hearing conference, the parties had the opportunity to argue whether, and if so how, the issues identified in the Board's February 15, 2007 Order should be modified to reflect Applicant's current proposal.

In addition, pursuant to 9 NYCRR 580.7, I received petitions to intervene in the captioned matter. The Board's February 15, 2007 Order (at 11 of 12) authorizes me to "add an issue if not expressly excluded and for which a party makes an offer of proof." During the October 20, 2010 pre-hearing conference, the parties had the opportunity to discuss any additional issues that should be adjudicated.

Appendix B to this memorandum and issues ruling is a list of the issues that will be adjudicated in this proceeding.

II. Service List

In an email dated October 18, 2010, Mr. Gerstman advised that his email address had changed.

In an email dated October 18, 2010, Charles Clusen stated that the Natural Resources Defense Council (NRDC) is withdrawing its petition to intervene in the captioned matter. However, by email dated October 19, 2010, Mr. Caffry advised that Mr. Clusen was Co-Chair of Protect the Adirondacks!, Inc. (Protect), and requested that Mr. Clusen and his email address be added to the Service List for Protect.

In an email dated October 19, 2010, Frederick Moore, Executive Director of the Adirondack Park Local Government Review Board, advised that the Adirondack Park Local Government Review Board is withdrawing its petition to intervene in the captioned matter.

At the pre-hearing conference, Kirk Gagnier, Esq. appeared as legal counsel on behalf of the Town of Tupper Lake and the Joint Planning Board. I have added Mr. Gagnier's contact information to the Service List.

Based on these emails and the discussion at the October 20, 2010 pre-hearing conference, I have revised the Service List, revised October 22, 2010. A copy of the Service List, revised October 22, 2010 is attached to this memorandum and issues ruling.

III. Issues for Adjudication

As noted above, the APA Board's February 15, 2007 Order (at 7 of 12 through 9 of 12) identifies ten issues for adjudication,

and expressly excludes testimony and evidence concerning 11 topics (at 9 of 12 through 10 of 12). Prior to the pre-hearing conference, some of the parties met on October 8, 2010, and discussed how the original set of issues should be modified. At the pre-hearing conference, APA Staff circulated copies of a letter dated October 19, 2010 with an attachment that summarized the consensus of the parties who met on October 8, 2010. The attachment to APA Staff's October 19, 2010 letter served as the starting point for the discussion concerning the issues for adjudication. Each issue is addressed below.

A. Issue No. 1 - Great Camp Lots

From the Board's February 15, 2007 Order (at 7 of 12), Issue No. 1 states as follows:

Is the natural resource protection (including visual, forest resource, habitat and other natural resource considerations) implicit in Resource Management land use area adequately protected [§ 805(3)(g)(2)]; are the proposed great camp lots "substantial acreage . . . on carefully and well designed sites?" Are there alternatives, and if so, what are the relative impacts on these resources?

Curtis Read, on behalf of Little Simon Properties, Inc. (LPS), proposed that the scope of Issue No. 1 should be expanded or clarified to include a consideration of the following:

Compare the cost, benefits and environmental impacts of using Read Road.

Mr. Read distributed a memorandum dated October 20, 2010 at the pre-hearing conference, which further outlined the reasons for expanding the scope of Issues No. 1. The discussion concerning Mr. Read's proposed issue is addressed below (see § IV.B.1).

With an email to the parties dated October 19, 2010, I circulated a notice of incomplete application (NOIA) dated October 18, 2010 from Staff from the Department of Environmental Conservation (DEC staff). The October 18, 2010 NOIA addressed the Adirondack Club & Resort NYSDEC permit applications and supporting materials in which Applicant requests, among other things, a State Pollutant Discharge Elimination System (SPDES) permit to manage stormwater for the development.

With respect to Issue No. 1, DEC staff argued that the scope of this issue should include a consideration of stormwater impacts. DEC Staff observed that the scope of Issues No. 3 and 9 from the APA Board's February 15, 2007 Order (at 8 of 12, and 9 of 12, respectively) requires a consideration of stormwater impacts from the ski area and the western side of the site, respectively, and argued that the scope of Issue No. 1 should include stormwater impacts on the eastern side of the site.

DEC staff acknowledged that Item No. 9 in the Board's February 15, 2007 Order (at 10 of 12) states that stormwater, and erosion and sediment control would be appropriately managed for the majority of the site except for the areas identified in Issues No. 3 and 9. DEC staff and other parties contended, however, that the Board's February 15, 2007 Order is over three years old, the project has substantially changed since the Board issued the February 15, 2007 Order, and Issues No. 3 and 9 do not provide for a consideration of potential stormwater impacts in the Resource Management land use areas of the site. DEC staff recommended that the ALJ seek guidance from the Board about how to incorporate potential stormwater impacts into Issue No. 1.

APA staff opposed an expansion of the scope of Issue No. 1 to include a consideration of stormwater impacts. According to APA staff, Issue No. 1 was intended to address issues related to open space and Resource Management land use areas. APA staff recommended that concerns related to potential stormwater impacts in the Resource Management land use areas of the site could be addressed in Issue No. 9.

Applicant objected to any expansion of the scope of Issue No. 1 to include a consideration of stormwater impacts. Applicant observed that Item No. 9 of the Board's February 15, 2007 Order (at 10 of 12) limits potential impacts associated with stormwater to Issues No. 3 and 9. Applicant argued that Issue No. 1 is intended to focus on the Great Camp Lots. Furthermore, Applicant objected to delaying the APA administrative hearing while DEC staff continues to review the permit application materials that Applicant filed with DEC Staff.

Protect and the Adirondack Council argued that potential stormwater impacts should be addressed as part of Issue No. 1 because Issues No. 3 and 9 do not consider such potential impacts in the Resource Management land use areas of the site.

Because the project has been significantly reconfigured, Protect argued further that DEC staff's October 18, 2010 NOIA should be considered an offer of proof that would allow the ALJ either to expand the scope of Issue No. 1, or add a new issue, as provided in the Board's February 15, 2007 Order (at 11 of 12).

Discussion and Ruling: Applicant proposes to develop Great Camp Lots on the Resource Management land use areas of the site. Such areas allow for residential development provided the development is on "substantial acreage . . . on carefully selected and well designed sites" (Executive Law §805[3][g][2]). The careful selection and design of these sites, as well as any consideration of alternatives, would reasonably include a consideration of the potential stormwater impacts associated with the selection and design of the great camp lots. Therefore, the potential stormwater impacts associated with the selection and design of the Great Camp Lots currently proposed, as well as any alternatives, will be considered during the adjudication of Issue No. 1.

B. Issue No. 2 - The Orvis Shooting School

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 2 states as follows:

What are the impacts of the Orvis Shooting School activities on the noise levels, existing and as proposed [Development Consideration (DC) §805(4)(a)(4)]; are there alternatives or conditions which would address Shooting School impacts; are there any associated effects on water quality or traffic on Lake Simond Road [DC (a)(1)]?

During the October 20, 2010 pre-hearing conference, Applicant restated that all plans related to the Orvis Shooting School have been withdrawn from the project.

Ruling: Because Applicant has withdrawn the Orvis Shooting School from the project, the adjudication of Issue No. 2 is not necessary.

C. Issue No. 3 - West Slopeside and Westface Developments

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 3 states as follows:

What are the impacts of the proposed East Ridge, upper portions of the West Slopeside, and the Westface developments on the existing topography, vegetation and soils [DC (a)(2), (c)(1), (e)]; will the development as proposed cause excessive stormwater run-off, erosion and slippage in these areas [DC (a)(2)]; what will be the visual impacts during the day and night of these proposed sections [DC (a)(7)]?

Although part of the original project design, Applicant withdrew the East Ridge development from the project. In addition, Applicant scaled back those portions of the originally proposed West Slopeside and Westface developments that would have occupied the upper ridges. APA staff and Applicant argued, therefore, that the first portion of Issue No. 3 concerning development considerations (a)(2), (c)(1), and (e) (see Executive Law § 805[4]) has been addressed by mitigation, and does not need to be adjudicated.

With respect to the unresolved portions of Issue No. 3, APA Staff and Applicant asserted that the presentation concerning potential stormwater impacts could be made during the adjudication of Issue No. 9, and that the presentation concerning potential visual impacts could be made during the adjudication of Issue No. 1.

Protect and the Adirondack Council acknowledged that Applicant withdrew all proposed East Ridge development, and contended that it would no longer be necessary to adjudicate the potential impacts that may have been associated with the proposed East Ridge development. Protect recommended that the phrase "East Ridge" be removed from Issue No. 3.

Protect and the Adirondack Counsel argued against any further modifications to the remainder of Issue No. 3. These interveners asserted that although Applicant scaled back the proposed West Slopeside and Westface developments, the concerns identified in Issue No. 3 associated with the proposed West Slopeside and Westface developments remain. Essentially, the question is whether Applicant's proposed mitigation with respect

to the revised West Slopeside and Westface development would be sufficient to avoid potential impacts.

Protect and DEC staff recommended that Issue No. 3 should remain intact, but for the recommendation concerning the East Ridge development. With respect to the presentation of the parties' respective cases, Protect would not object to presentations about the potential visual impacts of various aspects of the project being made at the same time.

Discussion and ruling: In determining the issues for adjudication, the Board considered the potential impacts that may be associated with various land use areas of the project site. For example, Issue No. 1 concerns the Great Camp Lots, the majority of which were initially proposed for the eastern side of project site. Issue No. 2 concerned the Orvis Shooting School, though its adjudication is no longer necessary. Issue No. 3 relates to the proposed development of the ridges around the ski area. In order to preserve the Board's intent to consider the various land use areas on the project site, I decline to divide Issue No. 3 into its component parts.

During the adjudicatory hearing, however, the parties may choose to group certain presentations together in an effort to be efficient. For example, potential visual impacts are components of Issues No. 1 and 3. Accordingly, the parties may choose to present their respective cases concerning potential visual impacts at one point in the proceeding.

Because Applicant has withdrawn the proposed East Ridge development from the project, it is no longer necessary to adjudicate that portion of Issue No. 3. Accordingly, the issue is modified as follows:

What are the impacts of the proposed upper portions of the West Slopeside, and the Westface developments on the existing topography, vegetation and soils [DC (a)(2), (c)(1), (e)]; will the development as proposed cause excessive stormwater run-off, erosion and slippage in these areas [DC (a)(2)]; what will be the visual impacts during the day and night of these proposed sections [DC (a)(7)]?

No other modification to the wording of Issue No. 3 is necessary. Although Applicant has reduced the number of units for the West Slopeside and the Westface developments, an issue for adjudication remains whether Applicant's mitigation would be

sufficient to address the potential impacts that the Board specified in Issue No. 3.

D. Issue No. 4 - Wastewater Treatment

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 4 states as follows:

What impacts does the proposed on-site sewage treatment facility at Lake Simond have on neighboring water bodies [DC (a)(1)]?

During the October 8, 2010 meeting, the parties in attendance agreed that the adjudication of Issue No. 4, as originally drafted in the Board's February 15, 2007 Order, is not necessary because Applicant has withdrawn the on-site sewage treatment facility at Lake Simond. Applicant now proposes to construct a pump station and associated facilities that would connect the proposed Sewer District #27 to Sewer District #23.

The parties developed language that reflects the project revision:

Is it feasible to connect the proposed Sewer District #27 to Sewer District #23 via a pump station, taking into account design, location, costs (including long-term operation and maintenance costs) and any cost-sharing arrangements between Applicant, the Town and the Village, and whether all of the small eastern Great Camp Lots should be included in Sewer District #27?

The parties discussed the meaning of the term "pump station." APA Staff and Interveners noted that more than a pump would be installed, and that a storage tank and other equipment would be necessary. Applicant acknowledged that the proposed pump station would include several components.

Interveners also recommended that the word "impacts" be added to the list of items that could be considered during the adjudication. They argued that additional potential impacts would be visual, noise, odors, and protocols for overflow emergencies, among others. APA Staff supported the recommendation to add the term "impacts." Applicant, however, objected to the recommendation to add the term "impacts," but supported the use of the term "noise" instead of "impacts."

Intervenors recommended further that the term, "costs" should be changed to either "economic impacts" or "fiscal impacts." The Adirondack Council noted that other issues identified in the Board's February 15, 2007 Order use the term, "fiscal impacts" (see e.g. Issues No. 5 and 6), and recommended that the wording of Issue No. 4 should be consistent with the other issues. Applicant argued that the initial focus of Issue No. 4 was on potential environmental impacts to the receiving waters (i.e., Lake Simond) and, therefore, objected to the introduction of the term, "fiscal impacts" to the revised issue.

Curtis Read recommended that revised Issue No. 4 include a consideration of alternative designs. Mr. Read noted that the western boundary of the proposed Sewer District #27 would be adjacent to Read Road.

DEC Staff and Intervenors observed that the proposed pump station would require the creation of Sewer District #27, which the local municipalities would maintain and operate after construction. DEC Staff stated that the October 18, 2010 NOIA addressed deficiencies in the DEC application materials related to the pump station and the creation of Sewer District #27. DEC Staff contended that the proposed pump station is a substantial change from Applicant's initial proposal, and recommended that the ALJ seek guidance from the APA Board about how to incorporate potential stormwater impacts into Issue No. 4.

APA Staff stated that the original application included the now proposed pump station as an alternative to the initially proposed on-site sewage treatment facility. APA Staff contended that the Board was aware of the pump station as an alternative. APA Staff, therefore, objected to the ALJ seeking guidance from the Board about the proposed pump station.

APA Staff characterized the proposed pump station as a form of mitigation that would avoid adversely impacting the water quality of Lake Simond. The Town and the Joint Planning Board advised that they are reviewing the details of the proposed pump station.

Discussion and ruling: As noted above, the adjudication of Issue No. 4, as originally drafted in the Board's February 15, 2007 Order, is not necessary because Applicant has withdrawn the on-site sewage treatment facility at Lake Simond. Because Applicant now proposes the pump station as an alternative to the on-site sewage treatment facility, Issue No. 4 should be revised

to consider the potential impacts associated with the pump station.

To properly frame the revised issue, the components of the proposed pump station need to be identified. The *Preliminary Engineering Report and Facility Plan: Wastewater Collection, Treatment and Disposal* (Delaware Engineering, PC [August 2006, revised June 2010] § 5.1.1 at 9) identifies the components of the proposed pump station. According to the application materials, the proposed pump station would be enclosed in a building that would house a wetwell, an aeration system, an odor control system, as well as the pumps and other station controls.

Potential impacts associated with the various components of the pump station include, among other things, noise, odors and aesthetic impacts. Accordingly, such impacts will be considered during the adjudication of the issue.

The parties' concerns about the potential economic or fiscal impacts of constructing, maintaining and operating the pump station are addressed in Issue No. 5. Therefore, I decline to change the term, "costs" in the proposed revision of Issue No. 4 to either "economic impacts," or "fiscal impacts."

The last phrase of revised Issue No. 4 states: "whether all of the Small Eastern Great Camp Lots should be included in Sewer District #27." The meaning of this phrase is unclear. The parties did not discuss this portion of revised Issue No. 4 during the October 20, 2010 pre-hearing conference.

As proposed in the report, *Adirondack Club Sewer District No. 27* (Delaware Engineering, PC [November 2005, revised May 2010]; see also, *Applicant's Updated Information for Adjudicatory Hearing: Main Volume* [June 2010] at 22), Sewer District #27 would include Great Camp Lots No. 20-31, inclusive. These Great Camp Lots are on the eastern side of the site and located east of Read Road. However, Great Camp Lots No. 16, 17, 18, and 19 are also on the eastern side of the site, but are located west of Read Road. According to the application materials, Great Camp Lots No. 16-19 would not be part of the proposed Sewer District #27.

It is not clear from the wording of revised Issue No. 4 whether Sewer District #27 should be expanded to include all eastern Great Camp Lots (*i.e.*, Lots No. 16-31), or only those located on the eastern side of Read Road (*i.e.*, Lots No. 20-31). The word, "all" does not mean "some" or "most." It might mean

all the eastern Great Camp Lots located east of Read Road, but the proposed wording of the revised issue is not qualified in that manner.

Therefore, I will allow the parties to develop a record about expanding proposed Sewer District #27 to include eastern Great Camp Lots No. 16-19, inclusive, as part of this issue. A consideration of this potential, alternative configuration of Sewer District #27 implicates either the use of Read Road, or may require access across or under Read Road. Other proposed issues related to Read Road are addressed more fully below (see § IV.B.1).

For the adjudicatory hearing, revised Issue No. 4 shall be:

Is it feasible to connect the proposed Sewer District #27 to Sewer District #23 via a pump station and associated components, taking into account design, location, impacts (such as noise, odors and visual, among others), costs (including long-term operation and maintenance costs) and any cost-sharing arrangements between Applicant, the Town and the Village, and whether all of the small eastern Great Camp Lots (*i.e.*, Lots No. 16-31, inclusive) should be included in Sewer District #27?

E. Issue No. 5 - Fiscal Impacts on Local Municipalities

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 5 states as follows:

[DC (d)(1)] What are the fiscal impacts of the project to the governmental units should any phase or section of the project not be completed as proposed; what is the public vulnerability should the project either fail or not proceed at its projected pace relating to on- and off-site infrastructure for which cost-sharing has been proposed between the developer and local governments (e.g. drinking water plant improvements, road maintenance) or on-site private infrastructure that may be subject to eventual operation by the Town; what is the ability to provide municipal and emergency services to any section in light of the road design or elevation (e.g. East Ridge booster pump station)?

Discussion and ruling: During the pre-hearing conference, the parties commented that the final example concerning the East Ridge booster pump station is not relevant because, it was associated with the East Ridge development, which Applicant has withdrawn from the project. The parties recommended that the example referring to the East Ridge booster pump station be removed. Other than this proposed minor change, the parties did not propose any additional revisions to Issue No. 5 or otherwise object to Issue No. 5. Accordingly, the phrase, "e.g. East Ridge booster pump station" will be removed, and the revised Issue No. 5 will be:

[DC (d)(1)] What are the fiscal impacts of the project to the governmental units should any phase or section of the project not be completed as proposed; what is the public vulnerability should the project either fail or not proceed at its projected pace relating to on- and off-site infrastructure for which cost-sharing has been proposed between the developer and local governments (e.g. drinking water plant improvements, road maintenance) or on-site private infrastructure that may be subject to eventual operation by the Town; what is the ability to provide municipal and emergency services to any section in light of the road design or elevation?

F. Issue No. 6 - Public Burdens and Benefits

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 6 states as follows:

Section 805(4) requires the consideration of the burden on and benefits to the public. What are the positive and negative impacts of the project (including fiscal impacts) to the governmental units? What are the impacts of the project on the municipalities' electric system's ability to meet future demand? To what extent will energy conservation mitigate demand impacts? What are the assumptions and guarantees that the Big Tupper ski area can be renovated and retained as a community resource; what are the current and expected market conditions relating to available housing for the project's workforce; what are the impacts of the proposed project on the local housing market?

Ruling: During the pre-hearing conference, the parties did not propose any additional revisions to Issue No. 6 or otherwise object to the issue in its current form. Accordingly, the original wording of Issue No. 6 will not be changed.

G. Issue No. 7 - Impacts on Intensive Use Areas

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 7 states as follows:

What are the impacts, alternatives and appropriate conditions on the use of Forest Reserve such as State facilities in Intensive Use areas [DC (c)(2)(a)]?

The former McDonald's Marina on the shore of Tupper Lake is located in this land use area. Applicant proposes to reopen the marina as a new facility. The refurbished marina, however, would not provide boat launching services. The refurbished marina would be located in the vicinity of a New York State boat launch site - a State facility. The New York State boat launch site is also located in the same land use area.

DEC Staff argued that the use of the State boat launch site needs to be adjudicated. DEC Staff is concerned about how the recreational boating capacity of Tupper Lake would be impacted by the project. In addition, DEC Staff is concerned about how the State facility would be used by residents and guests of the Adirondack Club and Resort given its close proximity to the refurbished marina. With reference to 6 NYCRR 190.24 (Use of State Lands-Boat Launching Sites), DEC Staff is concerned whether commercial activities would take place at the State facility.

Ruling: During the pre-hearing conference, the parties did not propose any additional revisions to Issue No. 7 or otherwise object to the issue in its current form. Accordingly, the original wording of Issue No. 7 will not be changed.

H. Issue No. 8 - Cranberry Pond

From the Board's February 15, 2007 Order (at 8 of 12), Issue No. 8 states as follows:

Are there alternatives to minimize interference with wetland values and functions including ground water

infiltration, wildlife habitat, stormwater control and other values, and the need for mitigation in the areas of Cranberry Pond wetland complex, the marina and the base lodge footprint?

In response to an inquiry about the scope and nature of the wetland mitigation that may be considered, APA Staff stated that all forms would be considered, including but not limited to, the creation of new wetlands to compensate for the loss of wetlands.

DEC Staff inquired whether the term, "other values" was limited to the items listed in Issue No. 8. APA Staff responded that the list was intended to be illustrative rather than exclusive. APA Staff referred to 9 NYCRR 578.4, which lists the general values of freshwater wetlands, and 9 NYCRR 578.4(e), which lists "other values." The Adirondack Council referred to 9 NYCRR 578.5, which is entitled, *Values of Particular Wetlands*.

DEC Staff observed that the Cranberry Pond wetland complex is a significant environmental resource that would serve several prominent functions. For example, the wetland complex would be incorporated into the stormwater management plan. In addition, it would serve as the receiving water for the discharge from the on-site wastewater treatment facility. Finally, water would be withdrawn for snowmaking purposes. DEC Staff noted that the maintenance of the wetland complex depends on the continued integrity of a beaver dam.

B.G. Read and Curtis Read noted that a portion of Read Road is located very close to the Cranberry Pond wetland complex.

Applicant argued that due to the project's location in the Adirondack Park, the freshwater wetlands on the site were subject to the jurisdiction of the APA and not the DEC.

Ruling: During the pre-hearing conference, the parties did not propose any additional revisions to Issue No. 8 or otherwise object to the issue in its current form. The parties agreed that the the scope of the issue is intended to be broad. Accordingly, the original wording of Issue No. 8 will not be changed.

I. Issue No. 9 - Stormwater Management near the Base Lodge

From the Board's February 15, 2007 Order (at 9 of 12), Issue No. 9 states as follows:

Are there undue adverse downstream stormwater impacts associated with the base lodge subcatchment area; specifically, the water quality components (i.e., overbank flood and extreme flood) included in the stormwater pond designs?

In part, the discussion about Issue No. 9 focused on Applicant's permit applications filed with the DEC, and DEC Staff's review of the application materials.

Ruling: During the pre-hearing conference, the parties did not propose any additional revisions to Issue No. 9 or otherwise object to the issue in its current form. Accordingly, the original wording of Issue No. 9 will not be changed.

J. Issue No. 10 - Compliance

From the Board's February 15, 2007 Order (at 9 of 12), Issue No. 10 states as follows:

What are the appropriate mechanisms to coordinate and ensure project compliance with application commitments and permit conditions as the project is undertaken over time? [§ 809(13)(b)].

At the October 20, 2010 pre-hearing conference, APA Staff circulated a handout, and explained that APA Staff was considering whether to provide a summary of the record (summary), and draft conditions for the proposed project. APA Staff said that the summary would include, among other things, a description of the project site, a chronology of the permit application (Project No. 2005-100), a description of other required permits and approvals, and a summary of project design changes. APA Staff stated further that the summary and draft conditions would be circulated in advance of the adjudicatory hearing.

In making this offer, APA Staff emphasized that the proposed summary would not reflect any pre-judgment or analysis by the APA Staff participating in the hearing. APA Staff acknowledged that preparing and circulating the summary and draft conditions would be different from the usual Agency practice. Given the large scope of the project, however, APA Staff stated that the purpose of the summary and draft conditions would be to focus the hearing and facilitate record development.

DEC Staff and Applicant supported the idea of APA Staff developing draft conditions to circulate before the adjudicatory hearing. Applicant noted that the practice is a requirement in a DEC permit hearing. DEC Staff recommended that the ALJ could prepare the summary rather than APA Staff. Applicant stated that APA Staff's summary would take the place of an integrated application.

Protect argued that preparing the summary proposed by APA Staff would require making judgment calls, which is contrary to APA Staff's role (see 9 NYCRR 580.6). Therefore, Protect expressed concern about APA Staff preparing a summary in advance of the adjudicatory hearing. Protect asserted further that APA Staff may not have authority to prepare a summary before the adjudicatory hearing commences. According to Protect, APA Staff may summarize the record, which includes the application materials, after the hearing, and the parties have the right to comment about the summary. In addition, the parties have the right to offer proposed findings of fact and conclusions of law. (See 9 NYCRR 580.18[a].)

Protect and the Adirondack Council observed that Applicant has yet to provide the integrated application that it promised. Interveners contended that if Applicant had prepared the integrated application, then APA Staff would not need to prepare the proposed summary, and resources could be directed toward preparing for the adjudicatory hearing.

The Adirondack Council noted that Issue No. 10 could be resolved by a stipulation that would obviate the need to adjudicate the issue. The Adirondack Council recommended that the parties consider how to resolve the issue without adjudication.

Discussion and Rulings: At the pre-hearing conference, the parties did not propose any additional revisions to Issue No. 10 or otherwise object to the issue in its current form.

Accordingly, the original wording of Issue No. 10 will not be changed. The adjudication of Issue No. 10 may be avoided if a stipulation is developed that adequately addresses the issue.

When an administrative hearing is held, APA Staff's duties are outlined at 9 NYCRR 580.6. Among other things, APA Staff is required at the beginning of the hearing to state which of the development considerations and other required findings it considers pertinent to the project, and to outline the evidence it intends to present (see 9 NYCRR 580.6[b]). This requirement essentially directs APA Staff to provide what I would characterize as an opening statement.

At the conclusion of the hearing, APA Staff may summarize the record of the hearing for the aid of the agency (see 9 NYCRR 580.18[a]). If APA Staff provides such a summary, the other parties may comment about the completeness of the summary with references to the hearing record (see *id*).

The summary of the record that APA Staff has proposed to prepare and circulate in advance of the adjudicatory hearing appears to be in excess of what is required by 9 NYCRR 580.6, and would be premature given the regulation at 9 NYCRR 580.18(a). Therefore, I recommend that APA Staff provide only the opening presentation required by 9 NYCRR 580.6(b). I will allow APA Staff to provide this presentation in written form. The other parties may also submit their respective opening statements in writing before the adjudicatory hearing convenes.

I recommend further that the summary of the record, which APA Staff proposed during the October 20, 2010 pre-hearing conference, be submitted at the conclusion of the adjudicatory hearing as authorized by 9 NYCRR 580.18(a). If APA Staff provides such a summary, the other parties may comment about the completeness of the summary as provided for by 9 NYCRR 580.18(a).

As discussed during the October 20, 2010 pre-hearing conference, the DEC administrative practice requires DEC Staff to circulate a draft permit before the hearing commences. A purpose of draft permit conditions is to focus the proceeding. In addition, the parties to the DEC administrative proceeding may propose either refinements to the draft conditions, or alternative draft conditions. I encourage APA Staff to present draft conditions in advance of the adjudicatory hearing. These draft conditions may be part of a stipulation that could resolve Issue No. 10 without adjudication.

IV. Additional Issues

Consistent with the April 2, 2007 notice of public hearing, I received petitions to intervene (see 9 NYCRR 580.7) from, among others, NRDC, the Association for the Protection of the Adirondacks and the Residents' Committee to Protect the Adirondacks (now reorganized as, Protect the Adirondacks!, Inc.), and the Adirondack Council and Little Simon Properties, Inc.¹

In their respective petitions, the interveners stated generally that they would develop a record about the issues identified in the Board's February 15, 2007 Order. Intervenors stated further that they would propose additional issues for adjudication. The Board's February 15, 2007 Order (at 11 of 12) authorizes me to "add an issue if not expressly excluded and for which a party makes an offer of proof."

During the October 20, 2010 pre-hearing conference, I provided the parties with the opportunity to discuss any additional issues that should be adjudicated. As noted above, NRDC withdrew from the proceeding. Therefore, any additional issues proposed in NRDC's petition are considered withdrawn. At the pre-hearing conference, Protect advised that it would not propose any additional issues for adjudication.

The Adirondack Council, as well as B.G. Read and Curtis Read, proposed additional issues for adjudication. The parties were provided the opportunity during the October 20, 2010 pre-hearing conference to comment about the proposed additional issues. Each of the proposed additional issues are discussed below.

A. The Adirondack Council

With a cover letter dated April 20, 2007 the Adirondack Council filed a petition of the same date, pursuant to 9 NYCRR

¹ With an email dated October 19, 2010, David Gibson and Dan Plumley filed a petition of the same date on behalf of Adirondack Wild: Friends of the Forest Preserve (Adirondack Wild) to intervene in the captioned matter. A ruling on this petition is pending.

580.7, to become a party.² On pages 23-25 of the April 20, 2007 petition, the Adirondack Council proposed five additional issues for adjudication.

1. Aesthetic and Scenic Resources

The first issue proposed by the Adirondack Council concerns potential impacts to aesthetic and scenic resources:

The extensive network of roads and driveways required to support the ACR project is likely to be visible from the scenic overlooks on nearby public or state lands and would unduly harm the aesthetic and scenic resources of the Park.

Applicant and APA Staff objected to the proposed issue, and referred to Item No. 5 of the Board's February 15, 2007 Order (at 10 of 12) concerning the visual analysis methodology and results. APA Staff contended that potential visual impacts would be considered within the scope of Issue No. 1.

Although the methodology and selection of viewpoints may not be adjudicated, Protect contended that the results of the visual impact analysis may be adjudicated. DEC Staff asserted that potential visual impacts would be considered within the scope of Issues No. 3 and 7.

Discussion and ruling: As noted above, Item No. 5 of the Board's February 15, 2007 Order (at 10 of 12) states that APA staff approved the visual analysis methodology and the selection of viewpoints, and that the simulations are a fair representation of the proposed project. The Board's conclusion, however, does not preclude record development about the results of the visual analysis, or how to interpret the results of the visual analysis.

Issue No. 1 (February 15, 2007 Order at 7 of 12) requires the adjudication of potential visual impacts, among other impacts, on the Resource Management land use areas of the project site. Issue No. 3 (February 15, 2007 Order at 8 of 12) limits the adjudication of potential impacts on Moderate Intensity land use areas of the project site to the West Slopeside and the Westface developments. Essentially, the

² In rulings on party status dated February 14, 2008, I granted the Adirondack Council's petition to intervene.

Adirondack Council proposes to expand the scope of the visual impact analysis, as authorized by Issue No. 3, to include not only the West Slopeside and the Westface developments, but the other portions of the Moderate Intensity land use areas of the project site. I grant this request. (See Appendix B, Issue No. 11.)

2. Light Pollution

The second issue proposed by the Adirondack Council concerns potential impacts to aesthetic resources from light pollution:

While the APA specifically agreed to consider lighting issues with respect to the East Ridge and other high-elevation project components, light pollution from the development and related vehicular traffic as a whole is a serious concern and has the potential to unduly disrupt the darkness of night skies in the area and cause the ecological damage that can result from excess artificial light.

Applicant asserted that this proposed issue is redundant of Issue No. 3 (February 15, 2007 Order at 8 of 12). APA Staff contended that the proposed issue is redundant of Issues No. 1 and 3. DEC Staff and Protect also referred to Issue No. 3.

As with the first issue, the Adirondack Council argued that the scope of the proposed second issue is broader than that authorized by the Board's October 15, 2007 Order. Although the methodology and selection of viewpoints may not be adjudicated, the Adirondack Council contended that the results of the visual impact analysis may be adjudicated.

Discussion and ruling: Issue No. 1 does not expressly limit the adjudication of potential visual impacts to the Resource Management land use areas to only daylight hours. Therefore, in the interest of developing a complete record for the Board's review, I interpret the adjudication of the potential visual impacts, as required by Issue No. 1, to include potential visual impacts during daylight as well as nighttime hours.

Issue No. 3 provides for the adjudication of potential visual impacts during the day and night, but limits the affected areas to the West Slopeside and the Westface developments. However, I conclude that the adjudication of potential visual

impacts during nighttime hours should not be limited to only the West Slopeside and the Westface developments, but should also include the other Moderate Intensity land use areas of the project site based on the broad scope of Issue No. 1.

Given the common theme of the first and second proposed issues, I reframe the Adirondack Council's issues as follows. This issue is identified in Appendix B as Issue No. 11:

What will be the potential visual impacts of the project during the daylight and nighttime hours on the Resource Management and Moderate Intensity land use areas of the project site?

Given the Board's directive in Item 5 (February 15, 2007 Order at 10 of 12), further development of the factual record does not appear necessary. Rather, the adjudication will focus on how to interpret the simulations, which the Board has determined are fair representations of the project. Expert witnesses may offer alternative interpretations of the simulations. Also, the parties will have the opportunity to present argument about how the results of the visual analysis should be interpreted.

3. Potable Water and Wastewater Treatment

The third issue proposed by the Adirondack Council concerns potable water and wastewater treatment:

To a large extent that the ACR is relying on the Village of Tupper Lake for drinking water and sewage treatment. Eventually, the Village will have to expand its treatment systems to service the additional 2,000 or more seasonal residents drawn to the ACR. This dramatic increase in the population served by the facilities raises serious questions about the local government's ability to provide the additional sewage and water treatment services required, about the investment that the Village will have to make to do so and about the impact of a failure or partial project failure on the availability of funds to support such expansion. Although portions of this question are addressed in the issues specifically set for hearing, the Adirondack Council believes that the overall municipal capacity to provide these services should be reassessed.

Applicant and APA Staff argued that the scope of the issues identified in the Board's February 15, 2010 Order is broad, and incorporates the concerns raised in this proposed issue. To support the argument, Applicant referred to Issue No. 6 (February 15, 2007 Order at 8 of 12).

DEC Staff contended that the scope of Issues No. 4 and 6 addresses the concerns that the Adirondack Council is proposing with this issue. In addition, DEC Staff argued that Applicant's pending DEC permit applications provide additional information about the potential impacts the project may have on potable water and wastewater treatment. DEC Staff pointed out, however, that the pending DEC permit applications are incomplete, and that additional information is needed.

Adirondack Council argued that this proposed issue would expand the scope of the revised Issue No. 4.

Discussion and Ruling: The scope of revised Issue No. 4, as well as Issues No. 5 and 6 provides for the consideration of the concerns raised by the Adirondack Council in its proposed third issue. Therefore, the Adirondack Council's proposed third issue will not be adjudicated as a separate issue.

4. Water Quality Issues related to Snow-making

The fourth issue proposed by the Adirondack Council concerns potential impacts to water quality from using Cranberry Pond as a source of water for snow-making purposes:

Currently, Preserve Associates proposes releasing treated sewage into Cranberry Pond and drawing from that resource for snow-making. This man-made snow will eventually melt and the run-off will traverse large portions of the site and enter other area waterbodies. To date, there has not been an adequate assessment of the potential pollution that may be generated by this process. Without a more detailed assessment of the contaminants that may be contained in the snow-making water and released throughout the site during the spring melt, it is impossible to determine whether this proposal will create undue adverse impacts on the Park's natural resources or ecological integrity. This issue should be raised and fully evaluated as part of the adjudicatory process.

Applicant argued that the scope of Issue No. 8 from the Board's February 15, 2007 Order (at 8 of 12) provides for the consideration of the concerns raised in this proposed issue.

APA Staff concurred with Applicant. In addition, APA Staff referred to Item 10 of the Board's February 15, 2007 Order (at 10 of 12), which states that APA Staff and DEC Staff have evaluated the proposed wastewater treatment facility for Cranberry Pond, and concluded there would be no adverse impacts to water resources.

DEC Staff asserted that the proposed project would rely upon the Cranberry Pond wetland complex as a receiving waterbody for treated wastewater, a source of water for making snow, and a retention facility to manage stormwater. DEC Staff contended that the scope of Issues No. 8 and 9 from the Board's February 15, 2007 Order (at 8 of 12 and 9 of 12, respectively) provides for the consideration of the concerns raised in the Adirondack Council's fourth proposed issue. DEC Staff noted that the October 18, 2010 NOIA requested additional information about the on-site wastewater treatment facility and the other proposed uses of the Cranberry Pond wetland complex.

Given DEC Staff's position outlined in the October 18, 2010 NOIA and the additional information requested, the Adirondack Council argued that any prior evaluation of the proposed on-site wastewater treatment facility for Cranberry Pond, as well as any conclusions about potential adverse impacts to water resources should be revisited.

Discussion and ruling: The question raised in the Adirondack Council's fourth proposed issue is whether the treated discharge from the on-site wastewater treatment facility would adversely impact the water quality of the Cranberry Pond wetland complex. Because water from Cranberry Pond would be used to make snow, any degradation to the water quality resulting from the discharge from the on-site wastewater treatment facility would literally be spread over the ski slope when water is withdrawn to make snow. The water quality of the spring run-off could, in turn, adversely impact natural resources throughout the project site.

The scope of Issue No. 8 (February 15, 2007 Order at 8 of 12) provides for the consideration of the question raised in the Adirondack Council's fourth proposed issue. Therefore, the

Adirondack Council's proposed fourth issue will not be adjudicated as a separate issue.

Based on the discussion at the October 20, 2010 pre-hearing conference, one of the many values of the Cranberry Pond wetland complex is water quality protection. During the adjudicatory hearing, the parties may propose additional mitigation to what is proposed in the application materials, or other alternatives, to preserve and protect the Cranberry Pond wetland complex, and the water quality of the wetland complex. In addition, the parties may present information about the need for additional mitigation in the area of base lodge to mitigate potential adverse impacts associated with spring run-off.

5. Transfer of Development Rights across Private Lands

Prior to filing its application with the APA, Applicant requested conceptual review of its proposal. Conceptual review is authorized by 9 NYCRR 572.3. In a memorandum dated February 2, 2005, the APA's Regulatory Programs Committee discussed potential issues related to the proposed Adirondack Club and Resort, and provided recommendations.

The February 2, 2005 memorandum (at 5) discusses the issue of principal building right transfers or allocations. The discussion states that when, as here, a project would use principal building rights from another separately owned parcel physically separated by an intervening owner, the Agency requires the consent of the intervening owner for the sale and transfer of principal building rights through the adjoining property. With respect to McCormick Road and Read Road, the discussion states further that Applicant asserts there are easements to cross these parcels. The February 2, 2005 memorandum concludes there is no issue about the rights of principal building transfers, and that Applicant can allocate these rights throughout the proposed ownership within the same land use areas.

The fifth issue proposed by the Adirondack Council concerns the transfer of development rights across private lands:

The APA appears poised to allow the transfer of development rights across private lands, which is typically not permissible under applicable law and regulations. The proposed ACR development is divided

into three portions by Read Road and McCormick Road, which run directly through the project site. These roads are private property held in fee simple by neighboring land owners. The Adirondack Park Act allows a land owner to consolidate adjacent properties to calculate development rights if those properties are separated by simple "dividing lines as lot lines, roads [or] rights of way." N.Y. Exec. § 809(10)(c). In this case, the agency appears to be treating Read Road, private property owned by LSP and the Birchery, as well as the privately held McCormick Road as simple "dividing lines" between parcels held by Preserve Associates. This interpretation is without merit and should not be permitted. We ask that this issue be considered as part of the adjudicatory hearing, since it could have important implications for the shape of the project and for future projects within the Park.

In addition to the Adirondack Council, Curtis Read, on behalf of LSP, Inc., and B.G. Read, on behalf of the Birchery Camp, proposed an issue concerning the transfer of principal building rights across their private property (*i.e.*, Read Road). The Reads argued that it is necessary to determine how many "principal buildings" Applicant will be transferring. The Reads stated that their family would not consent to the transfer of any principal buildings across Read Road without the appropriate financial compensation and contracts. The Reads asserted that the principal buildings would have a monetary value for Applicant, and that the transfer of principal buildings is critical to determining the density around the ski slope. Finally, the Reads argued that their circumstances are different from the recent taking of the TNC/Follensby land for a road and electric transmission line right-of-way.

Applicant objected to this proposed issue, and referred to the February 2, 2005 Regulatory Programs Committee's memorandum. Applicant argued that the conceptual review determination settled any issue concerning the transfer of principal building rights.

To further support its position, Applicant referred to Item No. 2 of the Board's February 15, 2007 Order (at 9 of 12) regarding conformance with the overall intensity guidelines. With respect to the Moderate Intensity land use areas of the project site, Item No. 2 states there are no issues of compliance with the overall intensity guidelines. For the Moderate Intensity land use areas, the guidelines allow a

maximum of 500 principal buildings per square mile. With respect to the Resource Management land use areas of the project site, Item No. 2 states that it may be necessary to recalculate the number of principal buildings per square mile to verify compliance with the overall intensity guidelines.

APA Staff also referred to the February 2, 2005 memorandum. APA Staff provided me with a copy of the memorandum at the conclusion of the October 20, 2010 pre-hearing conference.

The Adirondack Council and Protect contended, however, that conceptual approval is not binding. To support this contention, the parties cited 9 NYCRR 572.3(c), which states that recommendations made during the conceptual approval process by APA Staff do not constitute authorization to commence a project, and are not binding upon the agency.

Protect argued that the factual portion of the proposed issue could be resolved by calculating the number of principal buildings per square mile to verify compliance with the overall intensity guidelines for the Resource Management land use areas of the project site. Protect argued further that an issue of law concerning the transfer of principal building rights remains, and that the parties should be allowed to brief the issue at the end of the adjudicatory hearing.

Discussion and Ruling: The intervening parties correctly observed that conceptual approval is not binding (9 NYCRR 572.3[c]). Accordingly, the recommendations outlined in the February 2, 2005 memorandum by the Regulatory Programs Committee do not preclude the adjudication of this proposed issue.

Given the proposed mitigation where Applicant has withdrawn the East Ridge development and reduced the number of units associated with the West Slopeside and Westface developments, the overall intensity guidelines for the Moderate Intensity land use areas on the site would not be exceeded. The Board had made the compliance determination before Applicant proposed the mitigation that withdrew the East Ridge development and scaled back the West Slopeside and Westface developments.

However, the number of principal buildings needs to be verified before any transfer could be considered. Similarly, the number of principal buildings in the Resource Management land use areas needs to be calculated for the same purpose. The current number of Great Camp Lots is different from what was originally considered during the conceptual review process.

It is anticipated that verifying acreages and the number of proposed principal buildings on the various land use areas would not require adjudication. If a stipulation cannot be reached, however, the parties may present evidence at the adjudicatory hearing so that the Board can make the necessary factual determinations about the number of principal buildings in the Moderate Intensity and Resource Management land use areas.

Furthermore, I conclude there is a legal issue about the transfer of principal building rights across Read Road. At the conclusion of the hearing, the parties may brief this issue. (See Appendix B, Issue No. 12.)

B. Little Simon Properties (LSP), Inc. and the Birchery Camp

In addition to the issue concerning the transfer of principal building rights across Read Road, the Reads³ proposed additional issues for adjudication.

1. Alternative Project Designs using Read Road

The Reads argued that the scope of alternatives required in Issues No. 1 and 8 (February 15, 2007 Order at 7 of 12 and 8 of 12, respectively) should include the use of Read Road. With respect to Issue No. 1, the Reads argued that potential environmental impacts would be reduced or avoided if Read Road, in whole or in part, were used for access to some of the proposed Great Camp Lots (Nos. 24, 25 and 26). Concerning Issue No. 8, the Reads argued further that constructing the on-site wastewater treatment facility on Cranberry Pond could be avoided if Applicant installed sewer lines under sections of Read Road.

Applicant objected to this proposed issue. Applicant argued that alternatives related to the use of Read Road are irrelevant because Read Road is not part of the pending application. According to Applicant, the alternatives that must be considered in Issue No. 1 relate to alternative Great Camp Lot configurations.

³ In rulings on party status dated February 14, 2008, I granted LSP, Inc.'s and BG Read's respective petitions to intervene.

APA Staff and Protect argued, however, that the scope of Issue No. 1 includes a consideration of alternatives using Read Road.

According to the Adirondack Council, one of the purposes of the adjudicatory hearing is to evaluate the potential effects of the project on neighboring properties. The Adirondack Council argued that the scope of Issue No. 1 should include using Read Road as part of an alternative layout to Applicant's proposal.

Discussion and ruling: The Board's February 5, 2007 Order (at 7 of 12 and 8 of 12, respectively) did not qualify the nature, or otherwise limit, the scope of the alternatives that must be considered in Issues No. 1 and 8. Therefore, as an intervening party, who is also an adjacent land owner, the Reads may present evidence concerning the use of Read Road as an alternative access route to the eastern Great Camp Lots (Issue No. 1), and as an alternative that may obviate the need to construct the on-site wastewater treatment facility on Cranberry Pond (Issue No. 8).

In addition, the parties may present evidence about the potential costs associated with using Read Road. These potential costs include, but are not limited to, purchasing all or a part of Read Road, purchasing access rights for the installation and maintenance of potable water and sewer lines and other utilities, as well as upgrading the roadway, in whole or in part.

2. Other Concerns

The Reads identified other concerns that may result from the proximity of their property to the project site. For example, the project plans show a network of hiking and cross country skiing trails that are adjacent to or may cross onto or over the Reads' property including Read Road. The Reads are concerned about privacy and security.

Also, the Reads explained that during periodic logging operations on the Read property, loggers had been given access through the OWD property to haul the timber from the Read property to Route 30. The Reads are concerned about whether loggers would continue to have access through the OWD property, if Applicant obtains the requested approval. The Reads asserted that the lack of access could adversely impact the revenue that they obtained from logging operations, and reduce the number of

local jobs if logging operations on the Read property are curtailed by the loss of access to the OWD property.

Ruling: These other concerns are beyond the scope of the Agency's review and, therefore, are not issues for adjudication in this administrative forum.

V. Petition for Intervention

With an email dated October 19, 2010, David Gibson and Dan Plumley filed a petition of the same date on behalf of Adirondack Wild: Friends of the Forest Preserve (Adirondack Wild) to intervene in the captioned matter. A ruling on this petition to intervene will be forthcoming.

VI. DEC Notice of Incomplete Application

On August 16, 2010, Applicant provided DEC Staff with updated permit application materials concerning the approvals required from the DEC. The required approvals include a SPDES permit to manage stormwater discharges from the proposed development, a SPDES permit for the operation of the on-site wastewater treatment facility on Cranberry Pond and the associated creation of a new sewer district, permits for the extensions of existing water supply and sewer districts operated by the local municipalities, as well as numerous stream crossings.

As noted above, DEC Staff issued a NOIA on October 18, 2010, and requested additional information. The October 18, 2010 NOIA also provided some preliminary technical comments about the pending application materials. With an email dated, October 19, 2010, I circulated DEC Staff's October 18, 2010 NOIA to the parties.

During the October 20, 2010 pre-hearing conference, intervening parties expressed concern about the additional information requested in the October 18, 2010 NOIA, and the preliminary technical comments. Protect contended that the October 18, 2010 NOIA advised Applicant that DEC Staff would not issue the requested permits for the current proposal. Protect argued that the APA hearing should not commence until Applicant responded to the October 18, 2010 NOIA and DEC Staff completed the review of the permit application materials.

The Adirondack Council contended that DEC Staff's review of the pending permit applications would address, in whole or in part, most of the issues identified in the Board's February 15, 2007 Order. The Adirondack Council contended further that the October 18, 2010 NOIA could require Applicant to substantially modify the current proposal. The Adirondack Council argued that it would be more efficient to hold the APA hearing in abeyance until Applicant addresses the concerns raised in the October 18, 2010 NOIA.

DEC Staff argued that the October 18, 2010 NOIA does not conclude that the current project would not be approved. Rather, the NOIA provides technical review of the proposal, and requests clarification and additional information from Applicant. DEC Staff agreed with the other intervening parties, and argued that the APA hearing should not commence until Applicant completes the permit applications pending before the DEC. To support its position, DEC Staff observed that stormwater management is a prominent theme in the APA hearing, and Applicant's SPDES permit application for stormwater management pending before the DEC is incomplete. DEC Staff recommended that issues identified in the Board's February 15, 2007 Order not related to stormwater management could proceed.

Applicant objected to holding the APA hearing in abeyance. Applicant stated that it is in the process of responding to the October 18, 2010 NOIA. Applicant asserted that DEC Staff did not review the application materials as expeditiously as possible.

Discussion: Obtaining a Notice of Complete Application (see 6 NYCRR 621.6[c] and 621.6[g]) from DEC Staff is not a prerequisite to commencing the APA administrative hearing. I agree there are many benefits to having the required approval processes proceed in a more parallel fashion. However, some parties such as Applicant, APA Staff, the Town and Village of Tupper Lake, and some residents wish to proceed with the APA administrative hearing.

I note that Applicant would not be able to commence construction of the project until it obtains all necessary approvals. In addition, to the extent that agency approvals, once obtained, conflict, Applicant would have to seek and obtain a modification of the approvals to resolve any conflicts.

When the parties' discovery for the APA administrative hearing is complete, we will commence with the issues, or

aspects of the issues, not directly related to the permit applications pending before the DEC Staff. Perhaps by that time, Applicant will have responded to the October 18, 2010 NOIA, and DEC Staff's review of the pending permit application materials will be more complete.

VII. Discovery

In my September 24, 2010 memorandum, I authorized the parties to serve their first set of discovery demands by October 13, 2010. During the October 20, 2010 pre-hearing conference, I stated that I did not need to receive either copies of the discovery demands or responses unless there were disputes among the parties about the discovery demands. Also, during the pre-hearing conference, the parties agreed to respond to the discovery demands served on October 13, 2010 by Friday, November 12, 2010.

Based on the discussion held during the October 20, 2010 pre-hearing conference, and for the reasons outlined above, the scope of some of the issues outlined in the Board's February 15, 2007 Order has changed. In addition, I have added some of the issues proposed by the Adirondack Council and the Reads.

Therefore, I will authorize a second round of discovery in the form of document requests. The scope of the second round is limited to the issues from the Board's February 15, 2007 Order as modified herein (Issues No. 1, 4, and 8), and the new issues identified above (Issues No. 11 and 12 [see Appendix B]). The second set of discovery demands must be served by **December 3, 2010**. Responses will be due by **January 14, 2011**, which is slightly more than thirty days given the intervening Holidays. The parties may negotiate reasonable extensions of the response date.

VIII. Expert Witnesses

By **January 14, 2011**, the parties shall provide me, and the other parties to this proceeding, with a list of the experts they expect to call as witnesses. The parties shall also identify who will testify about which issue or issues.

IX. Hearing Schedule

During the October 20, 2010 pre-hearing conference, the parties discussed topics related to the hearing schedule. With respect to prefiling testimony, some parties prefer to prefile all testimony by the same date. Others prefer to have a staggered schedule for prefiling testimony. The proposed dates for prefiling testimony ranged from December 20, 2010 to mid-January 2011. Prior to prefiling testimony, APA Staff offered to submit the proposed summary and draft conditions.

With respect to hearing dates, some parties prefer to convene on Monday or Tuesday through Friday for consecutive weeks until the hearing completed. Others would prefer to convene on Tuesday through Thursday with time in between to attend to other law office responsibilities. The parties proposed that the adjudicatory hearing should commence as soon as early-January 2011. Others proposed that the adjudicatory hearing commence by late-January or early-February 2011.

During the October 20, 2010 pre-hearing conference, the parties expressed their preferences for where the adjudicatory hearing should convene. Proposed locations included the APA Offices and the DEC Region 5 Offices in Ray Brook, and in Tupper Lake.

After the discovery process has progressed further, I will advise the parties about the schedule for prefiling testimony and other aspects of the hearing schedule.

_____/s/_____
Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
November 16, 2010

Appendix A Appearances at the October 20, 2010 pre-hearing
Conference

Appendix B Summary of Issues for Adjudication

Appendix B

Adirondack Club and Resort Summary of Issues for Adjudication

X. From the Board's February 15, 2007 Order

Issue No. 1: Is the natural resource protection (including visual, forest resource, habitat and other natural resource considerations) implicit in Resource Management land use area adequately protected [§ 805(3)(g)(2)]; are the proposed great camp lots "substantial acreage . . . on carefully and well designed sites?" Are there alternatives, and if so, what are the relative impacts on these resources?

The scope of Issue No. 1 includes potential stormwater impacts, and a consideration of using Read Road as an alternative. Also see Issue No. 11.

Issue No. 2: Adjudication of Issue No. 2 (February 15, 2007 Order at 8 of 12) is not required. Applicant withdrew the Orvis Shooting School.

Issue No. 3: What are the impacts of the proposed upper portions of the West Slopeside, and the Westface developments on the existing topography, vegetation and soils [DC (a)(2), (c)(1), (e)]; will the development as proposed cause excessive stormwater run-off, erosion and slippage in these areas [DC (a)(2)]; what will be the visual impacts during the day and night of these proposed sections [DC (a)(7)]?

Issue No. 3 is revised because Applicant withdrew the East Ridge development. Also see Issue No. 11.

Issue No. 4: Is it feasible to connect the proposed Sewer District #27 to Sewer District #23 via a pump station and associated components, taking into account design, location, impacts (such as noise, odors and visual, among others), costs (including long-term operation and maintenance costs) and any cost-sharing arrangements between Applicant, the Town and the Village, and whether all of the small eastern Great Camp Lots (*i.e.*, Lots No. 16-31, inclusive) should be included in Sewer District #27?

Issue No. 4 is revised because Applicant withdrew the on-site wastewater treatment facility on Lake Simond. The scope of Issue No. 4 includes a consideration of various impacts related to the pump station, as well as from the associated components. The eastern Great Camp Lots include Lots No. 16-31, inclusive.

Issue No. 5: [DC (d)(1)] What are the fiscal impacts of the project to the governmental units should any phase or section of the project not be completed as proposed; what is the public vulnerability should the project either fail or not proceed at its projected pace relating to on- and off-site infrastructure for which cost-sharing has been proposed between the developer and local governments (e.g. drinking water plant improvements, road maintenance) or on-site private infrastructure that may be subject to eventual operation by the Town; what is the ability to provide municipal and emergency services to any section in light of the road design or elevation?

Issue No. 5 is revised because Applicant withdrew the East Ridge development.

Issue No. 6: Section 805(4) requires the consideration of the burden on and benefits to the public. What are the positive and negative impacts of the project (including fiscal impacts) to the governmental units? What are the impacts of the project on the municipalities' electric system's ability to meet future demand? To what extent will energy conservation mitigate demand impacts? What are the assumptions and guarantees that the Big Tupper ski area can be renovated and retained as a community resource; what are the current and expected market conditions relating to available housing for the project's workforce; what are the impacts of the proposed project on the local housing market?

Issue No. 6 is not revised or modified.

Issue No. 7: What are the impacts, alternatives and appropriate conditions on the use of Forest Reserve such as State facilities in Intensive Use areas [DC (c)(2)(a)]?

Issue No. 7 is not revised or modified.

Issue No. 8: Are there alternatives to minimize interference with wetland values and functions including ground water infiltration, wildlife habitat, stormwater control and other values, and the need for mitigation in the areas of Cranberry Pond wetland complex, the marina and the base lodge footprint?

With respect to Issue No. 8, the scope of wetland values that will be considered is intended to be broad. The scope of Issue No. 8 includes maintaining water quality standards (snow making), and a consideration of Read Road as an alternative to constructing the on-site wastewater treatment facility on Cranberry pond.

Issue No. 9: Are there undue adverse downstream stormwater impacts associated with the base lodge subcatchment area; specifically, the water quality components (i.e., overbank flood and extreme flood) included in the stormwater pond designs?

Issue No. 9 is not revised or modified.

Issue No. 10: What are the appropriate mechanisms to coordinate and ensure project compliance with application commitments and permit conditions as the project is undertaken over time? [§809(13)(b)].

Issue No. 10 is not revised or modified. Issue No. 10 may be resolved with a stipulation.

XI. Additional Issues

Issue No. 11: What will be the potential visual impacts of the project during the daylight and nighttime hours on the Resource Management and Moderate Intensity land use areas of the project site?

The scope of Issue No. 11 is limited by the Board's directive at Item No. 5 (February 15, 2007 Order at 10 of 12).

Issue No. 12: How many principal buildings are proposed to be located on Moderate Intensity and Resource Management land use areas? The fact question may be resolved with a stipulation. There is a legal issue about the transfer of principal building rights across Read Road.