

Department of Environmental Conservation
State of New York

In The Matter Of The Applications For Permits To Construct and Operate A Proposed Development To Be Known As The Belleayre Resort At Catskill Park, Located In The Town Of Shandaken In Ulster County, New York, and The Town Of Middletown In Delaware County, New York, Pursuant To Environmental Conservation Law Article 15, Titles 5 And 15, and Article 17, Titles 7 And 8, And Parts 601, 608 And 750 Through 758 of Title 6 of the Official Compilation Of Codes, Rules and Regulations of the State Of New York ("6 NYCRR"), and for a Water Quality Certification Pursuant to Section 401 of the Federal Water Pollution Control Act And 6 NYCRR Part 608,

-By-

Crossroads Ventures, LLC,

Applicant.

DEC Project Numbers: 0-9999-00096/00001; 0-9999-00096/00003; 0-9999-00096/00005; 0-9999-00096/00007; 0-9999-00096/00009; and 0-9999-00096/00010

Notice Of
Motion To Cancel
the Adjudicatory
Proceeding in the
Captioned Matter
and for Dismissal of
the Motion for
Reconsideration of
the Interim Decision
of the Deputy
Commissioner dated
December 29, 2006

Motion Made By: Staff of the New York State Department of Environmental Conservation

Date: Wednesday, September 8, 2014

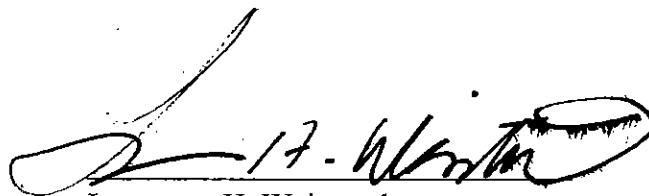
Supporting Papers: Affidavit of Daniel Whitehead, Regional Permit Administrator, Region 3, supporting memorandum of law, draft permits and the final and cumulative environmental impact statements for the above referenced project.

Relief Demanded: Cancellation of the adjudicatory hearing pursuant to Section 624.4(c) (5) and dismissal of the motion, dated January 29, 2007, by Friends of the Catskill Park, for reconsideration of the Interim Decision of the Deputy Commissioner, dated December 29, 2006.

Grounds for Relief: The issues determined to be subject to adjudication pursuant to the Interim Decision of the Deputy Commissioner dated December 29, 2006, in the above referenced matter, have been addressed by modifications to the project as described in the Final EIS and Cumulative Impact Statement for the Belleayre Resort at Catskill Park or are no longer relevant and staff have otherwise determined that there are no substantive and significant issues requiring an adjudication under Part 624 of 6 NYCRR with respect to the modified project.

Answering Papers: Any and all answering papers be served upon the undersigned and the other parties pursuant to 6 NYCRR 624.6, or as otherwise directed by the Office of Hearings and Mediation Services.

Dated this 10th of September, 2014.

A handwritten signature in black ink, appearing to read "L.H. Weintraub", is written over a horizontal line.

Lawrence H. Weintraub
Assistant Counsel

Department of Environmental Conservation
State of New York

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Affidavit in Support of
Motion To Cancel the
Adjudicatory
Proceeding in the
Captioned Matter
Pursuant to 6 NYCRR
624.4(e) (5)

Daniel Whitehead, being duly sworn, deposes and says:

1. I am the Regional Permit Administrator for the Region 3 Office of the New York State Department of Environmental Conservation ("DEC") and Project Manager for the above referenced permit proceeding (hereinafter "Belleayre Resort" or "Belleayre Resort at Catskill Park").
2. I am over eighteen years of age and am not a party to this proceeding.
3. Since in or around 2007, I have served as the DEC's Project Manager for the review of the Belleayre Resort project and have continuously served in that role since that date. As such, I am fully familiar with the Belleayre Resort project.

4. Additionally, I was appointed as Acting Regional Permit Administrator for Region 3 in September 2011 and as Regional Permit Administrator in September 2012. In that role, I oversee all Uniform Procedures Act permitting matters for Region 3, including the Belleayre Resort application.
5. Prior to 2007, Crossroads Ventures LLC (the "Applicant" or "Crossroads") submitted an application to build the Belleayre Resort.¹
6. A lead agency dispute ensued (under the State Environmental Quality Review Act or SEQRA).
7. On or about March 20, 2000, the Commissioner designated the Department as lead agency for the SEQRA review.
8. A draft environmental impact statement ("DEIS") for the project was accepted on November 26, 2003.
9. Thereafter, DEC staff referred the matter to the Office of Hearings and Mediations. The case was assigned to Administrative Law Judge ("ALJ") Richard Wissler.
10. By ruling dated September 7, 2005, ALJ Wissler ruled on issues for adjudication and party status on which the Applicant, Department staff, and the Catskill Preservation Coalition appealed to the Commissioner.
11. By decision dated on December 29, 2006, Deputy Commissioner Carl Johnson, by delegation of authority from the Commissioner, issued an interim decision that narrowed ALJ Wissler's ruling regarding issues for adjudication ("Interim Decision").
12. In or around in September 2007, instead of proceeding to hearing on the issues identified in the Interim Decision, the City of New York, Crossroads, and most of the non-governmental organization ("NGO") parties to the hearing entered into an agreement in principal ("AIP") to support a modified project ("Modified Belleayre Resort") that would avoid most of the impacts that were of primary concern to the parties.²
13. Among other things, the parties to the AIP agreed to the preparation of a supplemental draft environmental impact statement ("SDEIS") to evaluate the modified project.

¹ The original Belleayre Resort project is described on pages 1-2 of the Interim Decision of the Deputy Commissioner dated December 29, 2006.

² The AIP (including exhibits) is posted on the Department's website at <http://www.dec.ny.gov/permits/54704.html>.

14. By decision dated October 19, 2007, upon the motion of Crossroads, ALJ Wissler suspended the adjudicatory hearing pending the staff's preparation of the SDEIS mentioned above.
15. Judge Wissler's decision stated: "In support of the motion, the Applicant notes that on September 5, 2007, it and certain of the parties entered into an Agreement in Principle which proposes a modified project having, they assert, a lower environmental impact. The Applicant and the signatory parties to the Agreement acknowledge that this alternative project would require the preparation of a supplemental draft environmental impact statement and the filing of new or modified Department permit applications, all of which would be subject to full public review."
16. Accordingly, applicant requested, and the ALJ granted, suspension of further adjudicatory proceedings on the original project pending supplementation of the administrative record (see ALJ Ruling on Motion to Suspend Adjudicatory Hearing, Oct. 19, 2007).
17. Further, upon motion by applicant, the Commissioner suspended proceedings on a motion for reconsideration pending before the Commissioner's office (see Ruling of the Commissioner on Motion to Suspend Proceedings on the Motion for Reconsideration, Nov. 9, 2007).
18. In addition to agreeing to support a Modified Belleayre Resort proposal, the parties to the AIP also agreed to support the modernization and expansion of the State-owned Belleayre Mountain Ski Center ("BMSC"), including creation of "ski-in-ski-out" access to the resort; and acquisition by New York State 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 the "Former Highmount Ski Center."

Post-2007—Procedural History of the Modified Belleayre Resort at Catskill Park

19. After the AIP had been executed, DEC staff issued a "positive declaration," under SEQRA dated November 21, 2007, for the modified project. The positive declaration was based on the project elements as set out in the AIP.

20. Because the AIP included a plan to modernize and expand BMSC, the positive declaration included the Department's proposal to amend the Unit Management Plan ("UMP") for the BMSC — which would be developed through the Department's UMP amendment process, which is distinct from the permitting process under the Uniform Procedures Act. *See* Department of Environmental Conservation, Unit Management Plans, <http://www.dec.ny.gov/lands/4979.html>.
21. In 2007, prior to issuing the positive declaration, DEC staff decided to evaluate the cumulative impacts of both the Modified Belleayre Resort and the UMP. The cumulative impact analysis would become part of the SEQR record for both developments since they are adjacent, were potentially concurrent, and because of the proposed ski-in/ski-out aspects of the proposals.
22. DEC staff undertook preparation of the environmental impact statements and denominated the UMP/DEIS as Part A, the Modified Belleayre Resort SDEIS as Part B, and the cumulative impact analysis as Part C.
23. On February 28, 2008, the DEC adopted an 86-page final scope for Parts A, B, and C.
24. On or about April 12, 2012, Crossroads conveyed the 1200 acre ± Big Indian parcel to the State of New York, whereupon the Big Indian parcel became part of the lands of the Catskill Forest Preserve.
25. On April 17, 2013, DEC staff determined that Parts A, B and C were complete for purposes of public review pursuant to 6 NYCRR 617.9(a).
26. Staff also determined that the associated permit applications were complete and issued separate draft permits under Environmental Conservation Law ("ECL") Article 17, the State Pollution Discharge Elimination System (SPDES), for the Modified Belleayre Resort and the BMSC. DEC staff also issued a draft permit for the Modified Belleayre Resort under Title 5 of ECL Article 15 for stream disturbance. No other permits are required from the Department for the Modified Belleayre Resort.³
27. The Modified Belleayre Resort must also obtain approvals from other agencies as more fully set out on executive summary pages xxviii and xxvii of the SDEIS for the Modified

The Department issued a draft storm water SPDES permit to the Olympic Regional Development Authority ("ORDA), which is the current operator of the BMSC. See <http://www.dec.ny.gov/permits/54704.html>.

Belleayre Resort. Notably, these include site plan and special use approvals from the towns of Shandaken and Middletown.

28. Crossroads submitted to the Department a set of proposed, additional conditions that the Department consider in its findings. The proposed conditions reflect the agreements contained in the AIP and provide additional environmental benefits. The full set of conditions are posted on the Department's website (<http://www.dec.ny.gov/permits/54704.html>).
29. Importantly, just prior to the completion of the draft EISs for parts A, B, and C, Crossroads made a beneficial change to its project design that deserves mention. The AIP project design (see Appendix C to the AIP agreement) anticipated the construction of multiple detached lodges on the steeped sloped sections above the Highmount Spa and on the plateau above the Spa Resort. Crossroads proposed a switchback access road to be constructed that would allow for vehicular access to the lodges. This was known as the Upper Highmount Alternative. In the scope, the DEC called for consideration of an alternative arrangement because of its concerns regarding storm water and visual impacts associated with the Upper Highmount Alternative. Crossroads responded by removing the Upper Highmount Alternative from its preferred alternative and the units were removed to the Wildacres portion of the resort — which avoided the impacts that were of concern to DEC.
30. DEC staff subsequently held a public hearing on the draft permits and EIS pursuant to 6 NYCRR 621.8 (Uniform Procedures) and 6 NYCRR 617.9(a) (4) (SEQR). Staff received approximately 3700 hundred comments. Every individual comment was read and responded to in the responsiveness summaries that are part of the EISs for the projects.
31. DEC staff have completed all of the parts of the environmental impact statement required by the final scope for the Modified Belleayre Resort, including the following:
 - a. PART B – a draft, Final Environmental Impact Statement for the Belleayre Resort at Catskill Park; and
 - b. PART C - a draft, Final Cumulative Impact Analysis.
32. In this affidavit, I have referred to Parts B and C as “drafts” pending the outcome of the staff's motion to cancel the adjudicatory proceeding. If this motion is granted by the

Office of Hearings and Mediation then DEC staff will file the Final Environmental Impact Statement and prepare findings under SEQR.

33. Although the UMP is not a part of this adjudication, DEC staff are providing a copy of the UMP to the Office of Hearings and Mediation Services only for informational purposes.
34. The Modified Belleayre Resort significantly reduces its environmental impacts from that of the initial project consistent with the Interim Decision (examination of lower impact alternative). In addition, through the environmental impact statement process all other significant issues have been addressed through avoidance or mitigation, DEC staff therefore have determined that there remain no substantive or significant issues for adjudication. Accordingly, DEC staff now respectfully request that the present adjudicatory proceeding be immediately cancelled. See Table ES-1 of the draft, Final EIS for the Belleayre Resort (table presenting a comparison of the impacts of the "unmodified" versus the "modified" projects).

THE INTERIM DECISION AND THE MODIFIED DESIGN FOR THE BELLEAYRE RESORT AT CATSKILL PARK

35. In the Interim Decision with respect to the Belleayre Resort at Catskill Park issues enumerated 6, 8, 9, 10, 12, 14, and 18 were raised as significant issues for adjudication. Each of these issues is addressed in turn below. Issues that were rejected for adjudication by the Deputy Commissioner are excluded from discussion.

ISSUES RULING 6: WATER SUPPLY AND GROUNDWATER AND SURFACE WATER IMPACTS

36. This water supply issue (No. 6) concerns the ability of Rosenthal wells 1, 2 and 3 to supply water to the former Big Indian Plateau so as to meet the regulatory requirements for such a permit. The issue is moot since Crossroads will not be using Rosenthal wells 1, 2 and 3 to supply potable water to the resort project. The Belleayre Resort, which is no longer located on the Big Indian Plateau, will now have its own water supply system. The source of potable water will be located in the valley along New York State Route 28 west

of the project site. DEC staff has determined that these wells provide an adequate water source for the resort based on pumping tests that were performed on the new wells in 2007 and 2008. The use of the new wells will avoid any impacts on flows in Birch Creek (which was a concern about using the Rosenthal wells). The new wells are located outside of the Birch Creek drainage system and near the Village of Fleischmanns. The pumping and water quality tests demonstrate that these wells will provide sufficient potable water for the resort without the use of the Rosenthal wells and without adversely affecting the water supply for the Village of Fleischmanns. Further discussion is set out in the draft, Final EIS for the Modified Belleayre Resort (or Part B) at pages 2-22 to 2-25.

ISSUES RULING 8: AQUATIC HABITATS

37. This issue concerns whether the pumping rates proposed in the draft water supply permit for the Big Indian Plateau risk that dewatering would occur to the detriment of aquatic habitats.
38. This issue is moot since no development is proposed for the Big Indian Plateau and the alternative wells will not affect the flows in Birch Creek and therefore will not affect its aquatic habitats.

ISSUES RULINGS 9: STORM WATER IMPACTS

39. Storm water issues included a series of sub-issues as follows: (a) the adequacy of the HydroCAD model and its assumed inputs and design points, (b) the adequacy of the Big Indian SWPPP and the design of its various storm water management controls, (c) the identification of the storm water flow paths on the project site, (d) the level of pre- and post-development storm water flows, and (e) the basis for the waiver of the requirement to have no more than five-acres exposed during construction at any one time.
40. In the AIP, the parties developed a protocol to address "a", "c", and "d". The protocol is consistent with the Department's standard practice. The protocol is carried over into the in the development of the modified storm water pollution prevention plan ("SWPPP") and was evaluated in the environmental impact statement process. The staff have reviewed that SWPPP and it meets permitting standards. Item "b" is moot since no development is proposed on the Big Indian Plateau.

41. With regard to item "e", as mentioned in the Interim Decision, the Department does allow more than five acres to be disturbed at any one time with Department approval and enhanced erosion and sediment control measures that would be included in the SWPPP. The request to open more than five acres is typical of large construction projects.
42. The individual SPDES permit for the Modified Belleayre Resort requires compliance with the SWPPP. The SWPPP specifically includes enhanced requirements such as the hiring of a dedicated erosion and sediment control contractor, extensive use of rolled erosion control products, and a detailed phasing plan that limits the amount of disturbance in any one area thereby minimizing impacts. In staff's opinion, the foregoing completely addresses item "e".

ISSUES RULING 12: NOISE IMPACTS

43. Under Issues Ruling 12, the Deputy Commissioner directed Crossroads to undertake a noise study on operational noise from the Big Indian and Wildacres and the impact on wilderness and wild forest areas in close proximity to the project. The study was to be considered during any subsequent adjudication.
44. This issue is moot or satisfied since the Big Indian portion of the resort is now in State ownership and an operational noise study has been conducted for the balance of the resort. Staff believe that the noise study is adequate.
45. The draft, FEIS contains an operational noise impact analysis at section 3.9, unlike its predecessor draft EIS for the Belleayre Resort. That analysis concludes that operational sound levels -- after incorporation of proposed mitigation measures -- will result in no increase to the ambient sound level from operational noise on the wilderness and wild forest areas.
46. Staff believe that the operational noise issue from the Belleayre Resort has been satisfied.

ISSUES RULING 14: VISUAL IMPACTS

47. The visual issues for adjudication are:
- a. Visual impacts from development on the Big Indian Plateau during wintertime or leaf-off conditions; and

- b. the extent to which the area in the vicinity of the Big Indian Plateau would be impacted by visible lights and —night glow, particularly from higher elevations and during winter months.
48. These two issues are now moot with regard to the Big Indian Plateau and a leaf-off analysis has been prepared — as set out on pages 3-61 to 3-66 of the draft, Final EIS (Part B) and in the Visual Impact Analysis, Appendix 25.
49. DEC staff have determined that the mitigations offered as part of the Visual Impact Analysis are sufficient and public comment has not raised any substantive and significant issues to alter that conclusion.
50. As far as visual impacts from the rest of the project design is concerned and particularly its impact on nearby areas designated Wilderness in the State Forest Preserve, the issue has been addressed in the Final EIS (draft volume) at pages 3-61 to 3-66 and corresponding appendix (no. 25). The FEIS and Visual Impact Analysis provides sufficient mitigation to mitigate such impacts.

ISSUES RULING 18: ALTERNATIVES

51. In issues ruling 18, the Deputy Commissioner stated: “I would direct applicant to include an environmental evaluation of impacts with respect to the two alternatives already referenced in the DEIS (the one golf course and one hotel complex alternative and the east resort/west resort alternative) and such additional smaller scale alternatives that would ensure that a reasonable range is considered... [and that] the primary focus of the adjudicatory hearing on this issue should be the environmental impacts associated with the alternative layouts rather than the economic feasibility of the alternatives.” The Deputy Commissioner also stated, “[w]ith respect to the questions posed by the ALJ on alternatives (see Ruling, at 150 environmental questions # 1-6)], applicant should address the initial two questions in its supplemental analysis of the east resort/west resort alternative. I do not see any need for applicant to address the remaining four questions that were posed unless they relate specifically to an alternative layout that applicant presents in the supplemental alternatives analysis.”
52. The two questions are as follows:

- a. What are the physical environmental impacts that would result from the development of the Big Indian site only?
 - b. What are the physical environmental impacts that would result from the development of the Wildacres site only?⁴
53. The first question is moot as the Big Indian site has since been conveyed to the State of New York.
54. Crossroads has addressed the second question in the draft, Final EIS, Section 5 (Alternatives), pages 5-5 to 5-6 , which shows a comparative analysis if Wildacres were developed and the Highmount Spa was not developed. The analysis indicates that the alternative would result in approximately 42 acres less project site disturbance; approximately 2 acres less project site impervious area; and approximately 328,000 cubic yards less of project site earthwork.
55. The Modified Belleayre Resort project is itself, with the removal of the project from the Big Indian Plateau to Highmount, a lower impact alternative to the alternatives that were before the Deputy Commissioner on December 29, 2006. The currently proposed Highmount Spa development would not have the attendant storm and waste water impacts associated with the development that Crossroads had previously proposed for the Big Indian Plateau.
56. The social and economic questions from the ALJ's ruling are addressed in the draft, Final EIS, to the extent they are relevant.

STAFF HAVE DETERMINED THAT THERE ARE OTHERWISE NO SUBSTANTIVE AND SIGNIFICANT ISSUES FOR ADJUDICATION

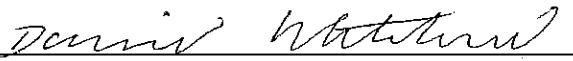
57. Staff have not identified any other substantive and significant issues with the Modified Belleayre Resort.

⁴ See Crossroads Ventures, LLC - Ruling 3, September 7, 2005, page 150.

58. Aside from its own review of the project, which has been on-going since 2007, staff have reviewed thousands of public comments and none of the comments have raised a substantive and significant issue.


Conclusion

59. Staff respectfully request that the Office of Hearings and Mediation cancel the adjudicatory hearing and remand the proceeding to staff to complete the EIS process and issue findings. Staff believe that the issues set out in the Interim Decision are either moot or satisfied through the subsequent EIS process and there are no other substantive and significant issues requiring adjudication.



Daniel Whitehead

Subscribed and sworn to me this 8th day of
September, 2014



Notary Public-State of New York

CRISTIN M. CLARKE, ESQ.
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02CL6056390
QUALIFIED IN SARATOGA COUNTY
COMMISSION EXPIRES MARCH 19, 2015