

# MEMORANDUM

TO: **RIVERKEEPER**  
**Attention: Marc Yaggi, Esq., Senior Project Attorney**

FROM: **CASHIN ASSOCIATES, P.C.**  
**John M. Ellsworth, Manager of Environmental Programs**



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SUBJECT: **BELLEAYRE RESORT AT CATSKILL PARK**  
**Draft Environmental Impact Statement (DEIS),**  
**dated September 2003 – Discussion of Alternatives**

DATE: **APRIL 21, 2004**

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This report presents the analysis, findings and conclusions of Cashin Associates, P.C. (CA) regarding the above referenced document, which has been prepared by the applicant for the proposed project and has been circulated for public review by the lead agency, the New York State Department of Environmental Conservation. The public comment period currently is scheduled to expire on April 23, 2004.

CA has undertaken a technical review of the subject DEIS on behalf of Riverkeeper. As requested by Riverkeeper, CA's effort was directed primarily at evaluating the adequacy of the *Alternatives* portion of the DEIS, which comprises Section 5 of Volume 1 of the September 2003 report. However, CA also has reviewed other relevant components of the DEIS documentation, including appendices, in order to gain a more comprehensive understanding of the proposed action and its implications.

The following are CA's comments regarding the September 2003 DEIS for Belleayre Resort at Catskill Park, which should be addressed by detailed substantive responses in the Final Environmental Impact Statement (FEIS) which is anticipated to be prepared following the close of the public comment period for the DEIS, assuming that the lead agency allows the review process to proceed to an FEIS, or in a supplemental EIS if that is determined to be the appropriate next step.

## A. Overview

Ultimately, each and every agency that has discretionary decision-making authority with regard to the proposed action will be required to adopt a statement of environmental findings prior to issuing any approval for the project. The specific requirements for this so-called findings statement are set forth in 6 NYCRR § 617.11(d)(5) of the implementing regulations of the State Environmental Quality Review Act (SEQRA), which states that the involved agencies must “certify that consistent with social, economic and other essential considerations **from among the reasonable alternatives available**, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable [emphasis added].” Thus, one of the most critical considerations in the SEQRA decision for any action that has been through a full EIS process is that a range of reasonable alternatives must be described and analyzed in sufficient detail so as to allow the involved agencies to undertake a meaningful comparison between these alternatives and the proposed action. Furthermore, in order to ensure that the basis of this comparison is fair and accurate, SEQRA requires that the environmental impacts of the proposed action be adequately disclosed and addressed. In regard to the subject DEIS, CA’s review reveals that neither of these conditions has been met, as discussed in detail below.

## B. General Examination of the DEIS’s Discussion of Alternatives

Even an initial glance at Section 5 of the DEIS, *Alternatives*, hints at critical shortcomings in the information that has been presented by the applicant. Of the 59 pages of text in this section, fully 41 pages are devoted to a discussion of alternatives for water supply, wastewater disposal, site access, golf course management practices, stormwater management practices, and construction phasing. Although it is acknowledged that these items were specifically listed in the scoping document for the DEIS, they all start with the premise that the proposed action would entail the general scale of development currently being advanced by the applicant (in terms of categories and quantities of uses). For the most part, these alternatives relate to engineering design issues, which, while important to the ultimate success of virtually any project at the subject location, should be considered as secondary to the more elemental question of defining the type and magnitude of development that is appropriate for this site.

Section 5 of the DEIS devotes only 18 pages to addressing alternative development scenarios. Most of this text (about 13 pages) comprises a summary of the findings and conclusions of an almost 700-page appendix (#27) which is directed at an effort by the applicant to show why less intense alternatives for the proposed project (called “alternative layouts” in Section 5 of the DEIS) are financially infeasible. Based on the applicant’s conclusion that none of the alternative layouts are economically practicable,

the DEIS provides no analysis of the environmental implications of these alternatives. The remaining five pages of Section 5 cover three different subjects – alternative locations, alternative uses of the site, and the requisite no-action alternative – in a manner that is equally as dismissive as the DEIS’s discussion of alternative layouts. None of these are discussed in a way that provides a meaningful basis to evaluate the environmental impacts of the proposed action, both because of the utter lack of detail in the respective portions of Section 5 and because of critical deficiencies in the analysis of impacts for the applicant’s preferred plan (Sections 3 and 4).

In the end, Section 5 of the DEIS leaves the reader with the applicant’s foregone and self-serving conclusion that no development is feasible or reasonable other than the one being proposed (Subsections 5.1 through 5.3, and 5.10), and that the various engineering issues can be resolved in a manner that allows the proposed project to be constructed in a profitable manner (Subsections 5.4 through 5.9). The entire DEIS is written in a way that funnels into a black-and-white choice between the proposed project or nothing at all, with the alleged benefits of the applicant’s plan highlighted at every opportunity and the myriad of impacts associated with this action either muted or overlooked completely.

Even in the absence of specific regulatory requirements governing the evaluation of alternatives in a DEIS, the subject DEIS’s shortcomings in this regard would be objectionable to any impartial reviewer. However, these deficiencies become a fatal flaw when considering the explicit provisions of the SEQRA regarding alternatives.

The following commentary: identifies a number of substantive deficiencies in the DEIS’s analysis of the impacts of the proposed action, particularly as this information relates to the comparative evaluation of alternatives; discusses deficiencies in the individual subsections of the *Alternatives* portion of the DEIS; and presents the findings and conclusions of CA’s analysis of the DEIS regarding the manner in which alternatives have been addressed.

### C. Deficiencies in the Analysis of Impacts for the Proposed Action

CA was retained by Riverkeeper to perform a critical review of the *Alternatives* section of the DEIS (Section 5). In order to establish the proper frame of reference for evaluating the various alternatives, CA undertook review of essentially the entire DEIS at varying levels of detail, with the greatest attention paid to Sections 1 (*Introduction*), 2 (*Description of Proposed Action*), 3 (*Environmental Setting, Potential Impacts and Mitigation Measures*), and 4 (*Unavoidable Adverse Environmental Impacts*), in addition to Section 5. In many cases, CA found the DEIS to be insufficiently detailed to serve as a meaningful basis for assessing the relative impacts of the proposed action versus the alternatives, which would prevent the involved agencies from making informed decisions regarding the balancing of these environmental impacts with socio-economic benefits for the proposed project and the various alternatives.

The following are CA's comments regarding sections of the DEIS other than Section 5. This should not be interpreted as representing a comprehensive compilation of comments, since CA's assignment was limited. However, all of these comments, when considered cumulatively, demonstrate that the DEIS does not contain a sufficient level of detail to adequately and accurately disclose project-related impacts. Unless these comments are addressed in a detailed and meaningful way, CA believes that the record would be deficient to a degree that would not support positive environmental findings with respect to the proposed action.

1. It is indicated on page 3-4 (¶ 2) that 374,600 cubic yards of rock would be removed by proposed blasting, which appears to pertain only to the Wildacres parcel. The quantity of blasting that would occur on the Big Indian parcel also should be specified.
2. The discussion of impacts due to blasting in Subsection 3.1.2.A is limited to potential effects on groundwater resources. The potential for blasting to destabilize adjacent areas of steep slopes also should be analyzed.
3. The discussion of topographic impacts in Subsection 3.1.2.B is limited to summary information regarding overall cut and fill volumes. In CA's experience, a DEIS for development in areas of extensive steep slopes typically would include a quantitative analysis of the spatial extent of steep slopes that would be disturbed. Given the size of the proposed development and the extent of steep slope areas that are present on the subject property, such an analysis should be provided in this instance. The recommended slope analysis should be broken down by category (e.g., 0-15 percent, 15-25 percent, and greater than 25 percent), with impact areas quantified in tabular format and depicted on a readable map.
4. Item #2 on page 3-9 asserts that: "The proposed grading will not result in any drastic cuts and fills along any ridgelines that would alter the overall silhouette of the landform." This conclusion is not supported by any quantitative analysis in the DEIS, such as a map showing areas and depths of cut and fill.
5. It is indicated on page 3-10 (¶ 1 in Subsection 3.2.1) that the proposed action involves development of "0.2 % of the Ashokan Reservoir's watershed, 96 % of which is currently forested or water." These data appear to be directed at minimizing the apparent impacts of the proposed project. If it is assumed that development presently comprises the four percent of the reservoir's watershed which is not covered by forest or surface waters, then the proposed project (i.e., the portion on the eastern parcel on Big Indian Plateau), by itself, would entail fully a five percent increase in the area of development with the entire watershed of Ashokan Reservoir (i.e.,  $0.2 \div 4.0$ ).

6. The discussion of surface water resources does not include sufficient information to adequately assess impacts. Although the various surface water bodies on and in the vicinity of the subject property are described, not all of the paragraphs specify the extent of development that is proposed within the respective watershed areas of these streams. Furthermore, the watershed boundaries and the extent and type of proposed development in these watersheds are not illustrated. Many of the streams in the project area are designated as supporting trout, or are even designated or proposed for trout spawning, and a fairly small deterioration in water quality conditions could imperil these designations. Therefore, more detailed information and analysis regarding the proposed project's effect on the sub-watersheds is needed in order to assess the potential for localized water quality impacts.
  
7. The DEIS's analysis of wetland impacts is cursory, at best. It appears that the applicant has equated the issuance of a Nationwide Permit by the U.S. Army Corps of Engineers with a conclusion that the proposed project would not cause a significant impact to on-site wetlands. However, nowhere in the SEQRA regulations is it stated that impact analysis should be limited to considering the regulatory thresholds of any given agency. Such an approach would be illogical, since it would presume that the wetlands in a municipality that has enacted a local wetland ordinance establishing more stringent standards than are provided under federal law would somehow be more significant than similar wetlands in an adjoining municipality which, for whatever reasons, lacks such legislation. In fact, the subject DEIS undertakes analysis at varying levels of detail to assess anticipated impacts relative to a number of environmental parameters for which there are no specific regulatory standards (e.g., ecological communities and visual/aesthetic resources). Furthermore, it is the role of the involved agencies, not the applicant, to determine what constitutes a "significant" impact under SEQRA.

On the basis of the foregoing, CA respectfully submits that the EIS should provide suitable maps illustrating the locations of the wetlands on the subject property and the specific areas that are proposed for disturbance (unless this information is contained on the sheets in the rear pocket of Appendix 17, copies of which were not available to CA within the time frame of our review). Furthermore, analysis should be provided with respect to the quality of the individual wetland areas on the site and the functional value of the wetlands that are proposed for disturbance. This information is critical to determining whether alternative layout plans would minimize impacts to wetlands.

8. The DEIS analysis of wetlands virtually ignores impacts that would be posed by inadequate buffering around these sensitive features. Notwithstanding that the federal regulations do not provide for buffer protection, the importance of providing sufficient buffers around wetlands is scientifically well established.

Preserving areas around freshwater wetlands creates a physical separation between development and the resources of the wetlands, thereby minimizing the impacts that typically result from such development. Buffers also provide for the effective filtering of stormwater discharges, a function which is particularly important in cases where development is placed in close proximity to wetlands, and especially during project construction.

In at least one instance, the DEIS appears to acknowledge the importance of wetland buffers to ensure that development-related impacts are mitigated. In item #1 on page 3-94, the proposed program of "Mitigation Measures" specifies that "[a] 25-foot protective buffer zone will be established on both sides of wetland 32, that contains the stream in Giggie Hollow." However, there is no explanation as to why the applicant believes that such buffering is necessary for only this one wetland area, out of all the wetlands on the subject property.

9. The DEIS summarily discards from consideration all wetland areas which, although exhibiting the characteristics of wetlands, do not conform to the current federal definition of regulated wetlands because they lack surface connections to other wetland areas. Again, this assumes that the lack of coverage under the existing regulatory framework is equivalent to a determination of non-significance, which as discussed above is a logically flawed conclusion. Furthermore, CA is unaware of any authoritative study or document which demonstrates that isolated wetlands are insignificant to the point of not meriting identification and analysis. In fact, even isolated wetlands can have important ecological values that are similar to jurisdictional wetlands.

Based on the foregoing, CA respectfully submits that the subject EIS should be required to identify non-jurisdictional wetland areas on the project site, delineate the extent of disturbance that is proposed for each such wetland, and discuss associated impacts in terms of lost wetland functions and values.

10. Item #2 on page 3-94 specifies that all wetland areas that are to be retained on the site would be protected by deed restrictions and/or conservation easements. It should be verified whether this measure would apply equally to the two proposed golf courses. In CA's experience, it is common practice for golf course configurations to be modified periodically over time, and restrictions preventing the disturbance of wetlands could make such changes problematic.
11. Pages 3-95 and 3-96 outline a protocol for the selective removal of wetland trees. Additional details should be provided regarding the anticipated number, sizes and types of trees that are expected to be removed. Even if the exact count is not available, a reasonable estimate should be possible at this time.

12. The DEIS's assessment of the potential impacts of the proposed development with respect to watercourses in the project area, on page 3-25, is largely based on considering the linear distances between proposed areas of disturbance and the water courses. However, there is no discussion as to whether drainage patterns in the areas leading down to the subject water courses may result in concentrated flow in defined drainage ways, which would accelerate the delivery of surface flow (and associated contaminants) to the water courses, thereby diminishing the buffering capabilities of the intervening woodlands.
13. The discussion of anticipated impacts to wildlife resources in Subsection 3.5.3.B appears to greatly overplay the alleged benefit of the proposed action with respect to "habitat diversity". This discussion is very general, and does not identify the species that the applicant believes would benefit from the project, nor is there any meaningful attempt to quantify the trade-off between the habitat that would be lost versus the new habitat to be created.
14. Item #3 on page 3-108 specifies that 4,000 new trees are proposed to be planted as part of the new project. In order to assess the mitigative value of this measure, a comparison should be provided as to the number, type and size of trees that would be removed by the proposed action versus the number, type and size of trees to be planted.
15. The second bullet on page 3-27 indicates that the temporary sediment basins proposed as part of the project's erosion and sediment control plan would be designed to accommodate flow from the ten-year storm. Given the total time frame of construction that would be required to complete this project, it appears probable that an overflow event would occur. Therefore, an analysis should be provided regarding the impacts that would be expected if a temporary sediment basin overflows. This analysis should take into account the increased potential for overflow if residual water is left in the basin between closely spaced storms, considering the amount of time that would be required to treat the retained water with flocculant and drain the treated water from the basin.
16. The DEIS's water quality impact assessment appears to be focused on the drinking water reservoirs. However, due consideration also should be given to potential water quality impacts to nearby streams. In particular, page 3-38 indicates the proposed effluent from the Big Indian wastewater treatment plant would be discharged to Birch Creek. The potential for the proposed outfall to impact this water body, which is designated as a trout spawning stream, should be addressed by quantitative analysis.
17. The description of the construction phase erosion and sediment plan, on page 3-38, indicates that the developer would hire certified professional erosion control specialists (CPECSs) with the authority to stop the work of all contractors and

subcontractors. In order to avoid a potential conflict of interest which would be inherent in the developer hiring and paying individuals who are supposed to oversee the developer's activities, consideration could be given to an alternative arrangement, whereby the developer would establish a trust account that would be used by an appropriate regulatory agency to hire and oversee the CPECSs.

18. Item #7 on page 3-45 indicates that hydro-seeding would be applied in any areas on the construction site that would not be worked on for 14 days. The amount of time that would be required for treated areas to become effectively stabilized after seeding should be specified.
19. With regard to the implementation of Integrated Pest Management techniques at the proposed golf courses, page 3-74 (¶ 3) states that “[i]t is envisioned that Town personnel, such as the Code Enforcement Officer, would perform annual or semi-annual reviews for compliance.” A determination should be made as to whether Town staff has the necessary technical expertise to perform this duty.
20. The applicant is proposing that groundwater monitoring would extend for five years after starting operations on the developed project site. Appropriate analysis should be presented to confirm that this is a sufficient time span to detect any project-related impacts, given the amount of time that would be required for water infiltrating into the project site to reach well intakes. Furthermore, elaboration should be provided regarding the meaning of the term “after starting operations”, since it is proposed that the project would come on-line in phases, with several years scheduled to elapse between initial startup and completion of the final phase.
21. Subsection 3.3.3.G.2.e indicates that the golf course superintendent would be responsible for preparing reports on the results of laboratory testing of groundwater samples. Verification should be provided as to this individual's technical expertise to satisfactorily undertake this responsibility.
22. The DEIS's assessment of air quality impacts of construction activities (Appendix 22A) is based strictly on an evaluation of regulatory standards for airborne particulates. The DEIS concludes that adjacent residences would not be significantly impacted, using modeling results indicating that all of these residences are situated outside the area in which compliance would be achieved with respect to airborne particulates around the proposed on-site rock crushing and concrete manufacturing equipment. However, this analysis does not show the degree to which airborne particulate concentrations during project construction would be increased on residential properties in closest proximity to the subject facilities, compared to current levels.



CA is aware of more than a few instances of analogous industrial-type facilities, including aggregate crushing operations that are very similar to what is being proposed on the subject property, that reportedly are in compliance with applicable regulatory standards, but which are a persistent source of complaints from nearby residents. These circumstances indicate that real impacts can occur even in cases when regulatory compliance is achieved, suggesting that a broader impact assessment should be undertaken for the proposed facilities to calculate the anticipated magnitude of increase in airborne particulate levels at nearby sensitive receptors.

23. The DEIS does not discuss whether the proposal to site rock crushing and concrete manufacturing facilities at this location during construction are permitted uses in the applicable zoning districts, or whether any special approvals are required to erect and operate these plants. It appears from Table 5-1 that such uses are not permitted, at least in the portion of the subject property in the Town of Shandaken.

The subject property is zoned for residential use, and the facilities in question are industrial uses (the DEIS admits as much in the heading of Subsection 3.2.3.D). Developed residential properties are located in close proximity to both of the proposed plant sites. During the 18 to 24 months of anticipated operation for these plants, people in the neighboring homes would be living next to an intense industrial operation, with continuous (i.e., 24-hour per day) activity occurring when large concrete pours are undertaken. Even the most basic tenets of planning practice would indicate that juxtaposing divergent land uses in this manner entails a high potential for conflicts (i.e., impacts) which are not sufficiently addressed in the DEIS.

24. Subsection 3.5 of the DEIS describes the ecological communities found on the subject property, as illustrated in Figures 3-17 and 3-18. However, there is very little location-specific information regarding the maturity of the woodlands in various locations on the site (including, but not limited to typical and maximum tree sizes, and specific types of trees and other vegetation present in various portions of the site). Given that statements are made in a number of locations in the DEIS to the effect that lands on the project site “have been comprehensively and repeatedly logged over the last century, including in recent years”, there is reason to believe that there may be significant variability in the quality of the forest communities across the site. This information would be essential to evaluating whether the proposed plan is one that adequately avoids areas of greater ecological importance.

The data contained in Table 3-21 suggest that little consideration may have been given to avoiding areas containing higher quality ecological communities and concentrating development in areas that are less ecologically important. In

general, the proposed project would result in the disturbance of a higher percentage of the total on-site area in the most valuable habitats (e.g., BM, HS, HH, RS, and HD, with the area that would be cleared ranging from 22 percent to 51 percent of the total acreage of these communities on the site) and would disturb a lower percentage of the area in less valuable ecological communities (e.g., PP and SS, at 16 percent and 0 percent, respectively).

25. Bullet #3 on page 3-86 indicates that tree clearing would be strictly controlled outside the area currently proposed for development. A discussion should be provided regarding the mechanism that would be used to enforce this restriction.
26. The discussion of potential impacts to community character, in Subsection 3.8.2.B, states that the proposed action would “re-introduce resort development uses into an area that historically supported such development locally and on a large scale” and “consolidates recreation oriented land use in the same general location within the community.” This conclusion ignores the fact that the project area has had a more rural community character for many years. Furthermore, the supporting analysis – in terms of the locations, types, sizes, and year closed for prior resort facilities in the project area – has not been provided.
27. The second paragraph in Subsection C.2.a claims that “previous blasting has been conducted on Belleayre Mountain by New York State without noise impact on the community”. Although a reference is given (Crossroads, 2001), the DEIS’s list of references does not contain this citation. More specific information should be provided regarding the blasting that reportedly occurred at Belleayre Mountain, in terms of volume of rock removed, distances to nearest sensitive uses, blasting methods used, and other relevant factors. This information is needed in order to verify that the prior blasting activities were analogous to what is being proposed by the present applicant.
28. The Sound Impact Study (Appendix 22) appears to understate the likely impacts that construction of the proposed development would cause at nearby sensitive uses. Section 5.4 assumes that temporary increases in noise levels of 9 dBA or less are “insignificant” and do not require mitigation. However, the table on page 4-2 characterizes a 0-to-5 dB increase in noise level as “unnoticeable to tolerable” and a 5-to-10 dB increase as “intrusive”. This terminology implies that a noise increase of as little as 5 dB may be taken to constitute a significant impact. In light of this apparent inconsistency, an explanation should be provided regarding the basis of the applicant’s conclusion that any increase in construction noise that is less than 9 dBA is not significant.
29. A large measure of the “mitigation” for construction noise proposed by the applicant is attributed to a 50 percent decrease in equipment usage in sensitive areas. It is not clear what this actually means, in terms of the actual number and

types of equipment that would be used under normal circumstances versus the mitigated condition, nor are any assurances provided as to how this would be enforced.

30. Subsection 3.9 of the DEIS does not appear to evaluate the burden that the proposed project would place on involved regulatory agencies in terms of increased monitoring and oversight responsibilities during and after construction.

#### D. Alternative Locations

1. Overall, Subsection 5.1 of the DEIS provides very little detail of the analysis that was performed in identifying and evaluating alternative sites. At the very least, a map should be provided to identify the sites that were given consideration, illustrating acreages, environmental constraints, and other relevant factors.
2. Paragraph 2 in Subsection 5.1 indicates that alternative locations had to be “within a reasonable distance” of Belleayre Mountain Ski Center. However, the distance that the investigators considered to be “reasonable” is not defined (e.g., in terms of a certain number of miles or typical driving time).
3. The discussion of the “third site” (in ¶ 6 in Subsection 5.1) indicates that one of the reasons that development of this site was eliminated from consideration is that it “would not provide the needed economic benefits to Ulster and Delaware Counties.” However, this site appears to be sufficiently close to both of these counties so as potentially to present reasonable employment opportunities to residents of Ulster and Delaware Counties, which would provide certain economic benefits to these two counties (especially the former). Furthermore, this limitation appears to presume that Greene County does not require economic revitalization, which seems to be contrary to the information presented in Subsection 3.10.1 of the DEIS.
4. The last paragraph in Subsection 5.1 states that the applicant engaged in discussions with Shandaken Town officials in an effort to identify alternative sites for the proposed project. However, there is no indication as to whether a similar investigation was performed for the Town of Middletown. If no such parallel investigation was completed for Middletown, the reasons should be explained.
5. The last paragraph Subsection 5.1 indicates that certain properties identified for consideration based on information provided by the Town of Shandaken were “determined to be unsuitable for a number of reasons.” Information regarding the location, acreage, and reasons for eliminating each such property should be provided.

## E. Alternative Uses of the Site

1. Although titled “Alternative Uses [plural] of the Site”, Subsection 5.2 of the DEIS examines only one such alternative, as-of-right residential subdivision, and even that potential development scenario is addressed merely in a superficial manner (see commentary under #E.4, below). Unfortunately, the scoping document is unhelpfully vague in describing the range of alternative uses that should have been included in the DEIS. However, it is reasonable to expect that one of the primary objectives for this component of the DEIS was to provide a meaningful analysis of possible alternative tourist/recreational uses, which would serve some or all of the same general purposes of the proposed action, including the generation of significant economic benefits to the local communities, while also moderating the magnitude of environmental impacts that are associated with the proposed development of the Crossroads assemblage.

Alternative development plans to accommodate tourist and recreational facilities on the subject property conceivably could have been addressed under the “alternative layouts” discussion in Subsection 5.3. However, Subsection 5.3 is fixated on the types of “world-class” resort facilities that the applicant envisions for the site. Most of that discussion is limited to examining the economic viability implications of variations on the specific uses being proposed. On the basis of conclusions drawn from that analysis, the applicant has discarded as economically untenable any of the “alternative layouts” identified in the scoping document.

The information presented in Subsection 5.3 of the DEIS regarding the feasibility of reducing the magnitude of the applicant’s proposed uses can form a part of the basis used by involved agencies in reaching informed decisions on this matter, provided that this information is fully and independently validated. However, the SEQRA regulations do not support the outright exclusion of other reasonable alternatives that may not precisely conform to the project sponsor’s specific objectives and capabilities, especially when at least some of the primary stated purposes for the proposed project (e.g., increased employment opportunities, expanded recreational facilities serving a cross-section of interests, economic revitalization, etc.) potentially could be served by such alternatives. The applicant’s objectives and capabilities are one factor that can enter into the decision-making process, but certainly not to the exclusion of other considerations (see comment #E.3 for further discussion).

It is absolutely necessary for the subject EIS to provide an effective analysis of one or more viable alternatives (other than the applicant’s proposed development) for utilizing the subject property for tourist-related and recreational uses. The development magnitude of said alternative(s) should be significantly scaled down from the applicant’s preferred plan, and discussed in specific, detailed,

quantitative terms, contrasting impacts and benefits relative to the proposed project. CA believes that the absence of such an analysis from the SEQRA record would render the entire process fatally flawed, since there would be no basis of comparison for the involved agencies to determine whether the proposed action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable “from among the reasonable alternatives available”. **This additional analysis should be completed whether or not the applicant undertakes further evaluation or discussion in the EIS with regard to alternative layouts (see Subsection F, below).**

2. Among the alternative uses for the subject property that could (should) be examined in the EIS is a facility, scaled down significantly from the proposed plan, which focuses primarily on addressing the local shortfall of lodging identified in the DEIS. Such an alternative could be designed to provide a range of lodging options, similar to the proposed project, and also could include suitable amenities (e.g., one or more restaurants, lodging-related shops and recreational facilities, to name a few). It would be appropriate for this alternative to include a number of variants, which examine a range of options for lodging facilities and amenities.
3. Subsection 2.2.1.B of the DEIS identifies a number of existing golf courses located in the vicinity of the subject property, but provides no additional information regarding these facilities. Appendix 27, in a brief section titled “The Golf Course Market” starting on page 210, identifies a “sample of 31 golf courses”, but does not indicate the location of these facilities relative to the subject property.

A detailed inventory should be compiled describing all golf courses within a “reasonable” distance of the site (as specifically defined in terms of miles or driving time). This inventory should include the number of holes at each location, general course quality and difficulty, availability for public use, ability to accommodate additional demand (in terms of number of rounds played versus potential number of rounds), and any other relevant information. The analysis of these data should be directed at determining the degree to which existing golf facilities in the project area potentially could be used to serve the demand for golfing opportunities generated by a new lodging development on the subject property.

4. The DEIS’s examination of an as-of-right residential alternative which could occur under the existing zoning is cursory, providing no meaningful analysis whatsoever. It seems odd that the applicant would go through the trouble of creating illustrations (Figures 5-1, 5-2, and 5-3) depicting a layout for a conventional 445-lot subdivision of the subject property, with hardly more than a passing reference to these maps.

In the final paragraph of Subsection 5.2, the residential development alternative is summarily dismissed because it does not conform to the “applicant’s objective”. Although the SEQRA regulations state that a DEIS should describe alternatives “that are feasible, considering the objectives and capabilities of the project sponsor”, this is just one factor to be considered in evaluating alternatives. There are no provisions under SEQRA that allow an alternative to be discarded solely because it is not something the applicant would pursue, especially for an alternative which is specifically identified for analysis in the scoping document, as is the case here.

Based on the foregoing, it is clear that the content of Subsection 5.2 requires major overhaul to conform to the requirements of SEQRA relative to the discussion of the residential development alternative. However, it would not be appropriate to devote such a discussion to examining the spurious subdivision sketch presented in the DEIS, which would entail extensive disturbance of steep slopes and probably wetlands. Instead, a more valid and meaningful analysis would take into consideration the land use tools at the disposal of the two involved Towns, particularly any provisions in the respective zoning codes allowing for clustering or other mechanisms to reduce the incursion of development into areas of sensitive environmental resources.

#### F. Alternative Layouts

1. Essentially the entire text of the introduction to Subsection 5.3 is taken more or less verbatim from pages 2-8 through 2-10 of the DEIS. It is not clear how this information, discussing the suitability of the subject property for golf course development, is relevant to the stated purpose of the subsection (alternative project layouts).
2. The second paragraph under the “Overview” heading in Subsection 5.3.4 of the DEIS closes by implying that a detailed analysis of the reduced-scale alternatives is not warranted because site design and construction planning for the proposed action “already minimize or avoid environmental impacts associated with full construction of the site.” However, the occurrence of numerous deficiencies in the information presented in the DEIS with respect to project-related impacts (see Subsection C of this comment document) precludes a definitive conclusion as to the scope or magnitude of the environmental impacts that would result from the proposed project. Moreover, the entire foundation of this conclusion is fundamentally flawed, since the DEIS, as incomplete and biased as it is, still admits to some impacts, albeit in greatly watered down fashion. As described in Section 4 of the DEIS, the impacts of the proposed action include loss of existing vegetation and wildlife habitat, potential erosion and sediment transport during construction, generation of fugitive dust and increased noise levels during

construction, change in the visual character of the subject property, and increased traffic on local roadways. It is difficult to imagine an argument, and certainly none is attempted in Subsection 5.3 (nor any other portion of the DEIS that CA has reviewed), to support the contention that these impacts would not be decreased if the project were reduced in scale. Therefore, it is simply not true that the applicant's current plans "already minimize" environmental impacts.

3. Subsection 5.3.4.B of the DEIS contains testimonial statements by reputed experts claiming that the construction of two 18-hole golf courses on the subject property is a critical and economically necessary component of the proposed project. However, these conclusions have been based on what appears to be a highly speculative economic analysis. In fact, the authors of the DEIS's feasibility analysis do not hesitate to acknowledge these uncertainties, with statements like the following (in the section of Appendix 27 titled "A Feasibility Analysis for Crossroads", page 272): "As noted frequently in this feasibility analysis, there are no close comparables anywhere in the surrounding area. Thus, it is impossible to compare projects for sales, pace, pricing, etc. in this report against effected market forces."
4. In Table 5-3, summarizing the results of the applicant's financial feasibility analysis, the proposed project and the alternative layouts (rows #1 through #5) are expressed in terms of the internal rate of return (IRR) for the proposed hotels and golf courses. On this basis, the applicant concludes that the proposed plan "generally meets the industry threshold for a financially sound project" while none of alternatives conform to this standard. However, the proposed lodging units have been excluded from these calculations. Although statements are made to the effect that the lodging units would "add to overall viability" of the proposed project and would "not be sufficient to overcome a low calculated IRR" for the various alternatives, the DEIS does not appear to provide the supporting data and analysis.

The summary data provided in rows #6 and #7 of Table 5-3 indicate that the proposed lodging units at both sites, by themselves, would provide an IRR that "well exceeds industry threshold". Additionally, Table 5-3 indicates that the "East Resort" alternative has a much smaller shortfall in IRR (at 3.3 percentage points, relative to the industry threshold of viability), as compared to the other alternative hotel-and-golf-course layouts (at 5.6 or 5.7 percentage points). Considering these two factors together, it would appear that the combined development plan currently proposed for the western parcel (including hotel, golf course, and lodging units) may be very close to the threshold of viability, especially when the Highmount Estates subdivision – which does not appear to be considered at all in the DEIS's analysis – is factored into these calculations. Even if there would still be a shortfall when all of these components are considered together, it may be possible to augment certain elements of the "West Resort"

scenario to a relatively small degree so as to overcome this difference in a manner that would render the overall project financially viable. In order to properly analyze this contingency, a quantitative IRR analysis for the entire “West Resort” alternative should be provided and, if it can be shown that an IRR shortfall would still occur for this alternative, suitable options (e.g., different mix of the uses being proposed, additional units, etc.) should be explored to determine whether it would be practicable to produce a profitable venture on the western parcel.

5. As noted above, the financial feasibility analysis in the DEIS does not appear to include the proposed 21-lot Highmount Estates subdivision, suggesting that, even by the applicant’s own reckoning, this component is not necessary for the viability of the overall development plan being proposed by the applicant. With this in mind, CA believes that the alternative of a project without the proposed single-family homes should be analyzed in detail.
6. Various data presented throughout Appendix 27 appear to belie the applicant’s contention that two 18-hole golf courses are economically essential to the success of the proposed development. Some of the most cogent examples are discussed below.
  - Table V-4 in the “Feasibility Analysis for Crossroads” section of Appendix 27 contains case study data for “Active Timeshare Projects in Mountain Areas”. Of the 25 projects listed in this table, only five are identified as having any golf facilities. Although the number of holes is not specified in the table, review of the respective web sites for the five locations with golf facilities reveals that not a single one has 36 holes: three of these locations (Fairfield Pagosa, Christmas Mountain Village, and Shawnee-Ridgetop) have 27 holes, while the other two locations (Lake Condos at Big Sky and Bethel Inn & Country Club) have only 18 holes.
  - Based on CA’s Internet research, it appears that the vast majority of the 14 “new-style fractional interest projects” listed in Table VI-1 in the “Feasibility Analysis for Crossroads” section of Appendix 27 also lack on-site golf facilities. Of the five locations that do appear to include golf facilities, only Snowmass Resort at Northstar is specifically identified as containing more than one golf course (two courses are indicated), while web sites for Telluride Club advertise the availability of golf but do not reveal how many holes are involved (Table VI-3 in the “Feasibility Analysis for Crossroads” indicates that these facilities actually are located off-site).
  - Section VII in the “Feasibility Analysis for Crossroads” portion of Appendix 27 examines 21 resort hotels in Ulster County. Of these facilities, it is reported that only seven have on-site golf courses, and none of these are identified as having more than one 18-hole course. The remaining 14 (67



percent) of the sample group of hotels rely on off-site courses to satisfy the demand for golf among their guests.

- Appendix 27 also contains a “National Resort Comparable Club Analysis” within a section without page numbers titled “Recommendations Concerning Amenities and Membership Programs”, which examines 21 “comparable clubs”. Seventeen of these facilities are in warm-weather locales, where golf can be played year-round: two in Puerto Rico, seven in Florida, four in California, two in Arizona, and two in Texas. One facility is in Virginia which, although arguably not a warm weather site, focuses its program on golf and not winter activities, according to its web site. The three remaining resorts included in the analysis are all located in Colorado. With three 18-hole courses, the Broadmoor Golf Club is the only one of these Colorado sites containing more than 18 holes of golf; however, this facility touts a mild climate on its web site and does not advertise an association with winter sports. Therefore, of the 21 “comparable clubs” used in this particular analysis, only two appear to be truly “comparable” to the proposed development in the sense of catering to both summer and winter activities (i.e., primarily golf and skiing), and neither of these sites contains more than a single 18-hole golf course.
- Also presented in the “Recommendations Concerning Amenities and Membership Programs” section of Appendix 27 is a separate “Belleayre Comparable Club Analysis”. A total of 19 facilities are examined, of which eight are in warm-weather locales (two in Arizona, one in Florida, four in Georgia, and one in South Carolina). Of the remaining 11 facilities, only one (Lake of the Isles Golf Club on Wellesley Island in the St. Lawrence River) is reported to have 36 holes; two sites have 27 holes, five have 18 holes, and three contain only nine holes. The Lake of the Island facility consists of the golf courses and a clubhouse/catering facility, with no lodging accommodations, according to its web site. Therefore of the 19 “comparable clubs” analyzed in this section of the DEIS, none are truly “comparable” to the proposed development.
- Table 3-4 in the “Fiscal and Marketing Information Addendum – HCS Economic Evaluation” section of Appendix 27 lists eight “selected branded resort hotels” which were examined as part of the “forecast of hotel income” analysis. Two of these resorts have no on-site golf at all, and four have only 18 holes of golf. The remaining two locations have 36 holes of golf, but both are situated in warm-weather locales (Ritz-Carlton in California and Westin La Cantera in Texas).

7. CA has identified numerous deficiencies throughout the DEIS, including a pervasive bias that mutes the proposed project's likely environmental impacts and extols its alleged virtues, which cast a veil of doubt over the objectiveness of the entire document. In light of these circumstances, it would not be advisable to accept the contents of Appendix 27 (*Fiscal and Marketing Information*) without rigorous scrutiny. The SEQRA regulations, at 6NYCRR § 617.9(b)(8), specify that: "The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it." On this basis, it is respectfully suggested that the Department of Environmental Conservation, as the lead agency in this case, is responsible for undertaking a careful and critical review, using its own staff and/or qualified outside consultants if necessary, in order to test and verify the accuracy of the information presented in Appendix 27, including, but not limited to baseline data, assumptions, and calculations.

Clearly, the entire concept of alternative layouts, which otherwise appears to be environmentally superior to the proposed action, has been eliminated from detailed consideration in the DEIS based solely on the applicant's dubious economic arguments. Therefore, ensuring the completeness of the record regarding these alternatives should dictate that the veracity of the applicant's conclusion regarding the economic infeasibility of these alternatives be thoroughly and independently analyzed. The urgency of such verification is amplified by the information noted above indicating that none of the numerous "comparable" facilities examined in Appendix 27 (which presumably are mostly successful from a financial perspective) have 36 on-site holes of golf. These findings appear to irrevocably contradict the applicant's assertion that the construction of a pair of championship golf courses is absolutely necessary for the financial solvency of the entire proposed project.

8. Any alternative layout for a "world-class" project that is subsequently found to be potentially viable, based on supplemental economic analysis, should be submitted to a comprehensive environmental impact analysis and comparison to the proposed project. Special attention should be paid to the "East Resort" and "West Resort" alternatives, since either of these development scenarios would substantially reduce the magnitude of land clearing and associated impacts that would be involved in disturbing both sites under the proposed plan. In examining these alternatives, the EIS should provide a thorough assessment of the relative merits and drawbacks of developing the eastern versus the western parcel, as well as a comparison to the proposed action, based on all of the relevant environmental and socio-economic variables. Table 5-2 in the DEIS could serve as a useful synopsis. However, a much greater level of detail is needed, addressing the full range of environmental impact issues, including those discussed in Subsection C of this comment document, in order to provide a proper basis for decision-making.

It appears that limiting the project to the eastern parcel may pose a somewhat greater potential for causing environmental impacts with respect to certain critical parameters, when compared to a similar magnitude of development on the western parcel. More specifically, it is noted that the project component currently proposed for the eastern parcel, by itself, would result in a significant increase in the total extent of disturbance and development in the watershed for Ashokan Reservoir (as discussed in comment #C.5). Moreover, the Ashokan Reservoir already is known to be significantly stressed, having been included on the *Section 303(d) List of Impaired Waters Requiring TMDL* (total maximum daily load) since 2002, with silt/sediment being the specific cause/pollutant identified. Ashokan Reservoir comprises approximately 87 percent of the water storage capacity in the Catskill Reservoir System, which provides approximately 40 percent of New York City's daily water demand. This reservoir has been subject to periodic "turbidity events", or episodes of elevated turbidity often caused by storms, which in the past have threatened to shut down the water supply system (according to information available on the U.S. Environmental Protection Agency web site). The five percent increase in the area of developed land in the watershed which would result from the applicant's current proposal carries the potential for significantly exacerbating this situation, especially during project construction when large areas would be cleared of protective vegetation and soils would be exposed, which could further threaten the down-State drinking water supply.

#### G. No-Action Alternative

1. This subsection opens by indicating that the no-action alternative would result in "a number of impacts". This is an apt prelude to the entire presentation for this alternative, which addresses only three parameters (land use, local and regional planning goals, and socio-economic benefits) and appears to have been composed for the specific purpose of highlighting the purported benefits of the proposed action and relative drawbacks of the no-action alternative. A more balanced assessment of comparative impacts and benefits is needed, which provides a detailed analysis of all relevant variables, including geologic and topographic resources, surface water resources, groundwater resources, terrestrial and aquatic ecology, soils, traffic, visual and aesthetic characteristics, noise community services, and cultural resources.
2. The first sentence in Subsection 5.10.1 states that one of the "impacts" of the no-action alternative is that the subject parcels "will continue to be logged as they have been for over the past fifty years." Although similar statements are made in other parts of the DEIS (e.g., page 3-81), there does not appear to be any more specific information regarding the occurrence of logging at this location. This information is needed to provide the basis for defining the magnitude of environmental impact associated with these activities, and should include a

description of: the historical frequency of logging on the subject property, especially over recent years; the most recent occurrence of logging here; the specific areas (location and spatial extent) that have been affected; the methods that have been used to harvest and remove timber from the site, and the specific environmental impacts they involve; and other relevant details.

3. The second paragraph in Subsection 5.10.1 states that another of the “impacts” of the no-action alternative is that the buyers of the subject parcels “may propose to develop some of these component properties”. Such a contingency is not appropriate for inclusion in the no-action alternative since, as specifically acknowledged in the introduction to Subsection 5.10, the no-action alternative entails “leaving the lands in their present state”. Any future development of these lands, if the proposed action should not proceed, would likely need some sort of discretionary approval (such as subdivision) and, therefore, would be required to undergo appropriate further review under SEQRA.
4. The second paragraph in Subsection 5.10.1 closes by stating that under the no-action alternative “the opportunity for comprehensively analyzing the effects of large-scale development would be lost, since each potential smaller development would undergo independent local regulatory agency reviews.” This assertion appears to ignore the fact that any environmental review under SEQRA is required to examine the potential cumulative effects of such multiple projects. Furthermore, the manner in which the proposed project has been presented in the DEIS, as an all-or-nothing proposition, arguably entails its own substantial environmental perils, as compared to a scenario of gradual development of the subject property whereby impacts would accrue progressively over time and suitable mitigative actions could be implemented as the need arises.
5. The third paragraph in Subsection 5.10.1 highlights the fact that the no-action alternative does not include the development restrictions that the proposed action would place on 1,387 acres of the subject property. However, in order to gauge the true effect of these proposed development restrictions, it would be necessary to evaluate the realistic development potential of the 1,387 acres of land in question, considering the environmental constraints that are present (especially with regard to steep slopes and soil limitations).
6. Subsection 5.10.2 compares the proposed action versus the no-action alternative with respect to local and regional planning goals. However, this discussion focuses exclusively on economic development, and does not consider any relevant local and regional goals for environmental conservation (including watershed protection) and the relative degree to which the no-action alternative and the proposed action would advance such goals.

## H. Discussion

The subject DEIS suffers from acute defects on a number of fronts, including questionable methodologies, inadequate disclosure of environmental impacts and, most serious of all, the virtual absence of an analysis of use alternatives for the subject property. As discussed in detail above, alternative layouts for the proposed development are dismissed completely based on dubious economic analyses. The discussion of alternative uses/facilities is limited to a cursory glance at residential subdivision, completely overlooking any of the other myriad uses that could occur on the site. The DEIS section on the no-action alternative unabashedly highlights a handful of professed benefits of the proposed development, while ignoring the much larger sweep of environmental variables for which maintaining the status quo appears to be the preferable option. Overall, the DEIS treats the discussion of alternatives as if it were a minor element of document, akin to the perfunctory sections on “Irreversible and Irrecoverable Commitment of Resources” and “Effect of the Proposed Action on the Use and Conservation of Energy”. In fact, the truth is exactly the opposite.

The SEQRA regulations are somewhat sketchy in defining certain requirements, but are very clear and precise on the purpose of the alternatives section of a DEIS. Specifically, 6 NYCRR § 617.9(b)(5)(v) states that: “The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.” Clearly, based on the findings of CA’s review, the subject DEIS falls far short of this standard, since the necessary detail either is absent or very limited, thereby utterly thwarting the requisite comparative assessment of alternatives.

## I. Conclusions

As discussed above, CA believes it is evident that the subject DEIS is grossly deficient, and is unsuitable as a basis for future decision-making. The magnitude of the omissions and faulty information in the DEIS make it difficult to see how these problems can be remedied in a standard FEIS format. In some cases, it would be necessary to essentially rewrite entire sections of the DEIS. This is especially true with respect to the discussion of alternatives, since the applicant has crafted a scheme that completely avoids addressing use alternatives in any meaningful way. Under these circumstances, the SEQRA regulations indicate that a supplemental EIS may be the most appropriate mechanism for continuing the environmental review process for the proposed action.

Pursuant to 6 NYCRR § 617.9(a)(7), two of the three conditions under which a supplemental EIS may be appropriate, at the discretion of the lead agency, is when there is “newly discovered information” or “a change in the circumstances related to the project”. Given the critical absence of any substantive discussion of use alternatives in the DEIS, the preparation of these sections at this time can readily be understood as “newly discovered information”, particularly given the central importance that the evaluation of reasonable alternatives has in the context of the entire EIS process.

Additionally, any further analysis that alters the key conclusions presented in the DEIS, including but not limited to the financial analysis, could be interpreted as constituting “a change in the circumstances related to the project”, which also would indicate the need for a supplemental EIS.

Based on the findings of our technical review of the DEIS, CA believes that neither the public nor the involved agencies would be well served if the subject SEQRA process were allowed to proceed to the FEIS stage at this time, given the complexity and magnitude of the issues that have not been adequately resolved in the DEIS, and considering the absence of provisions under SEQRA for public review and commentary for an FEIS. Therefore, a supplemental EIS appears to be the only proper course of action.