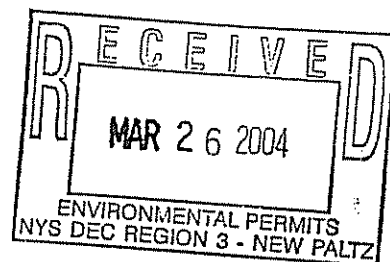




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 23 2004



Alexander Ciesluk, Jr.
Deputy Regional Permit Administrator
New York State Department of Environmental Conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620

Re: The Belleayre Resort at Catskill Park

Dear Mr. Ciesluk:

The purpose of this letter is to convey EPA's comments on the Draft Environmental Impact Statement (DEIS) and Draft State Pollution Discharge Elimination System permits for the Belleayre Resort project proposed in the towns of Shandaken, Ulster County, and Middletown, Delaware County. EPA's interest in this project stems primarily from its "primacy" enforcement responsibility for the federal Surface Water Treatment Rule for New York City's Catskill/Delaware water supply system.

In 1997, EPA along with New York State, New York City, upstate communities and environmental groups agreed upon a comprehensive watershed protection program which was memorialized in the New York City Watershed Memorandum of Agreement (MOA). The MOA paved the way for EPA to provide New York City continued relief (a "filtration avoidance determination" or FAD) from the federal requirement to filter its Catskill/Delaware water supply system. In November 2002, EPA again provided the City continued relief from this requirement conditioned upon, among other things, the City's implementation of a strong and effective watershed protection program. As both primacy agency and issuer of a conditional FAD to the City, it is incumbent upon this agency to be watchful of issues that may, in any way, reduce the watershed's existing "margin of safety" – a critical factor in our FAD decision.

As a signatory to the MOA, this agency strongly subscribes to one of its major tenets – that watershed protection and community vitality go hand-in-hand. Economically sound, vital communities make for excellent watershed stewards which, in turn, are critical to an effective watershed protection program. However, we must note that the size and scope of this project are significantly greater than anticipated by EPA when we agreed to the City's revised Watershed Rules and Regulations and signed the MOA. In addition, the Belleayre Resort is not located in a town center but on 1,960 acres of forested slopes and ridgelines adjacent to the Belleayre Mountain Ski Area.


We have two major concerns with the Belleayre Resort project as proposed, both of which relate to uncertainties and risk. These issues are the focus of most of our technical comments, which are attached. First, although the developer has designed a program to minimize water quality impacts during construction, there is a substantial risk associated with a project on a mountain ridge in which approximately 2 million cubic yards will be excavated (and used as fill) over a 4+ year construction period. Moreover, even the most carefully designed program will not be successful unless it is meticulously implemented, both during and after construction. Success will also require that the appropriate enforcement agencies be particularly vigilant in their oversight. Our concern is that, unless the necessary resources are brought to bear by the developer and the relevant governmental oversight agencies (notwithstanding any present or future resource limitations), mistakes will be made and water quality will be put at risk.

Our second concern is the impact that this project might have on future development in the New York City watershed, outside of existing town centers. We consider this impact a significant "unknown" that was not adequately addressed by the DEIS. In fact, some of the environmental constraints that the DEIS describes as limiting future growth outside of town centers are the very constraints the developer overcame in planning the Belleayre Resort project. The DEIS has not provided a substantial basis for its conclusion that commercial and residential development resulting from this project will be negligible. Indeed, if this project does portend increased development in forested areas outside of town centers, it could call into question the ability of the City to meet one of the major requirements of the Surface Water Treatment Rule for an unfiltered system – that the public water system

"... demonstrate through ownership or written agreements with landowners in the watershed, or a combination of both, that it controls all human activities which may have an adverse effect on the microbiological quality of the source water."

New York State has expended very substantial resources on what is of paramount importance to both our agencies, the protection of the drinking water supply for 9 million people. A project of this magnitude can significantly lessen the margin of safety under which we provided New York City a FAD. It is in this context that we ask the State to evaluate additional measures that could be taken to minimize secondary impacts and, above all, to continue to work with the developer to reduce the project footprint. We also ask the State to take a hard look at all opportunities to mitigate any potential water quality impact, both during construction and after. We have provided additional comments, which are attached, that focus on some of those opportunities. If you have any questions, please call me at (212) 637-3724.

Sincerely,



Walter Mugdan, Director
Division of Environmental Planning and Protection

Attachment

Technical Comments and Recommendations

Wastewater Treatment and Disposal

1. Big Indian Draft SPDES Permit (NY0270679)

- A. *Outfall 001*: The permit should include a daily average loading (0.36 lbs/d) limitation for total phosphorus.
- B. The permit should require the operator to re-direct the wastewater discharge to the irrigation pond if a WWTP upset or bypass occurs during discharge through outfall 001 (Birch Creek) until the WWTP is back in full treatment and stable operating condition.
- C. *Outfall 002*: The permit should include daily average loading and annual maximum loading limitations for total phosphorus.
- D. The permit should require that spray irrigation cease if there is a WWTP upset or bypass to the irrigation pond, and that spraying cannot commence until sampling shows safe levels.
- E. *Outfall 003*: The permit should include the regulatory requirements for this outfall (NYSDOH Appendix 75-A regulations).
- F. *Pond 2*: EPA recommends that the permit include Pond 2 (see drawing SD-6) for toxicity testing (table on page 9 of the permit) and phosphorus and pesticide monitoring (tables on page 11 of the permit - and designated SW5). Monitoring this location will capture any contaminant load contribution from the Belleayre Highlands portion of the site.
- G. *Treatment facility*: EPA recommends that, if the project goes forward, the nearby Pine Hill facility be reconsidered for treating wastewater from the Big Indian portion of the site. We believe that, consistent with the goals of the FAD, it is environmentally prudent to use existing treatment capacity instead of building an entirely new treatment facility in the watershed.
- H. *SPDES Annual Report requirements*: The final permit should require the permittee to report annually on the status of operator certification and staffing, operation and maintenance activities during the previous year, expenditures made during the previous year to comply with the SPDES permit, and funds allocated for the coming year.

2. Wildacres Resort Draft SPDES Permit (NY0270661)

- A. *Outfall 001*: The permit should require the operator to re-direct the wastewater discharge to the irrigation pond if a WWTP upset or bypass occurs during discharge through outfall 001 (Emory Brook) until the WWTP is back in full treatment and stable operating condition.
- B. *Outfall 002*: The permit should include daily average loading and annual maximum loading limitations for total phosphorus.
- C. The permit should require that spray irrigation cease if there is a WWTP upset or bypass to the irrigation pond, and that spraying cannot commence until sampling shows safe levels.
- D. *Outfalls 003-015*: According to the draft permit, only 4 of the 13 outfalls will be sampled. It states that NYSDEC may increase, decrease, or modify locations of the detention ponds to be monitored for evaluation purposes. However, with no sampling at some outfalls, there is no way of determining whether those outfalls are complying with SPDES discharge requirements. The final permit should include adjustments to monitoring frequency (when deemed necessary by NYSDEC) and include a rotational monitoring scheme that incorporates all outfalls listed in the permit. This would ensure that all outfalls are subject to monitoring and compliance determinations.
- E. *SPDES Annual Report requirements*: The final permit should require the permittee to report annually on the status of operator certification and staffing, operation and maintenance activities during the previous year, expenditures made during the previous year to comply with the SPDES permit, and funds allocated for the coming year.

Site Drainage and Grading

According to Table 2-1A and Table 2-1B of the DEIS, approximately 2 million cubic yards of material will be excavated during the project construction period. For a more complete understanding of project impact, the DEIS should include the volume of bedrock that is anticipated to be removed, excavated, and blasted from the site, and a discussion of any anticipated impacts of these activities on the underlying hydrogeology.

Stormwater/Erosion Control During Construction

1. The DEIS states that "during construction there will be disturbed areas with bare soil that will be susceptible to erosion." As described in the DEIS, the developer intends to implement a complex construction phasing program to address and mitigate potential

water quality and quantity problems associated with erosion. In addition, the developer will employ a Erosion Control Superintendent (with a support team), who will be independent of and have stop work authority over site contractors and subcontractors. We note that a special condition of the draft SPDES includes a requirement that

“Construction of any subsequent phase of the project cannot commence until substantive completion of the previous phase, as determined by the [NYSDEC] Regional Water Engineer. Such construction cannot commence until receipt by the Regional Water Engineer of a statement from a licensed professional that the previous construction phase was completed and stabilized in accordance with the SPPP.”

EPA is very concerned that adequate erosion control be continuously maintained on this project. Rigorous, effective erosion control requires not only a strong program but vigilant oversight by enforcement agencies. We note that, pursuant to the New York City Watershed Rules and Regulations, NYCDEP has the authority to review and approve the project Stormwater Pollution Prevention Plan(s). As an added level of oversight assurance, EPA recommends that the Stormwater Pollution Prevention Plan(s) include the requirement that each construction *subphase* can only commence upon authorization by NYCDEP.

2. EPA recommends that the SPDES permit include an additional condition stating that no more than 25 acres of unstabilized soils will occur at any given time within either reservoir watershed.

Stormwater Control Post-Construction

1. The Stormwater Pollution Prevention Plan should contain management plans for removal/dewatering/disposal of contaminated sediments. These actions may be necessary to maintain operating efficiency of the proposed micro-pools.
2. The DEIS is not clear as to whether the micro-pools will remain wet year-round. The DEIS should include a discussion of the assumptions that were made regarding removal efficiencies and whether these assumptions are valid should the micro-pools be subject to dry periods.
3. The developer has prepared a comprehensive Integrated Turf Management Plan to mitigate potential impacts to surface water and aquatic biota from pesticide and phosphorus runoff. The plan, however, is only effective if it is vigilantly implemented, and vigilant implementation requires strong oversight. To that end, EPA recommends that the Integrated Turf Management Plan (Appendix 14) and Section 5 of Appendix 15 (Fertilizer and Pesticide Risk Management) be incorporated into and be made an enforceable part of the Stormwater Pollution Prevention Plan.

4. The DEIS includes a modeling evaluation of 53 pesticide active ingredients and, based on the results of this evaluation, recommends 33 ingredients for use in accordance with the Integrated Turf Management Plan. Of these 33, 20 did not leach and 13 leached to “some degree.” Regarding the 13 active ingredients that leached to some degree, there is no substantive body of data to indicate that “undiluted leachates” may be diluted to the extent of removing their potential leachability. A bigger concern, however, is the uncertainty with respect to pesticide runoff. It was not clear from the DEIS text whether the GLEAMS model was modified to provide for the actual slope conditions present at the proposed site. There is also a degree of uncertainty as to whether the proposed retention basins will contain all runoff from the site. Due to the above issues, and to minimize as much as possible any potential risk to water quality, EPA suggests that the 13 pesticide active ingredients that leached to “some degree” be added to the list of “not recommended for use” products. The remaining 20 pesticide active ingredients that are recommended for use appear to be sufficient to meet the objectives of the Integrated Turf Management Plan.

Induced/Future Growth Impacts

1. The DEIS (Appendix 26, page 5-4) provides an Environmental Constraints Analysis Hierarchy:

Constraint (in decreasing order of severity)	
Protected Lands	NYSDEC State Forest Preserve and NYCDEP properties
Hydrography	Water bodies and wetlands and applicable setbacks
Topography	Slopes greater than 15 percent
Soils	Soils constrained by depth to bedrock or depth to water table
Sewers	Location and capacity of public sewers
Zoning	Current zoning regulations for the Towns of Shandaken and Middletown

It explains that, “with the exception of protected/public land, each of the constraints can, theoretically, be addressed by engineering at a site-specific level. However for generic planning purposes, these environmental features define at a macro-level where development is more or less feasible.” That the Belleayre Resort developer has overcome several of the listed “constraints,” calls into question their validity as a measurement of future growth potential.

2. The DEIS (Appendix 26, Chapter 6) includes three case studies (Windham, NY, Mount

Greylock, MA, and Gore Mountain, NY) to “gain insight into potential secondary development consequences generated by the Belleayre Resort based on observations of development patterns and experiences from other resorts.” The Mount Greylock resort project (one golf course and one hotel) is not yet built; thus, future growth impacts are unknown. As the DEIS notes, Ski Windham is more of a ski center, primarily oriented toward the ski season, lacking many of the amenities proposed for the four season, Belleayre Resort. Gore Mountain includes a few small hotels and inns - - no large resorts or golf courses. The largest resort area is Lake George, 25 miles away.

The three case studies are an interesting comparison of regional ski areas. They show that these ski areas have similarities with respect to topography, population density, and ski center characteristics. However, the studies also show that none has been subject to development on a scale that is planned adjacent to the Belleayre ski center, making any insight on the potential of the Belleayre Resort to induce future growth nearly impossible. Therefore, we question the basis for the conclusion drawn in the DEIS (Appendix 26, page 6-23) that “it is unlikely that the Belleayre Resort would create a particularly large secondary growth in terms of new development...”

3. Based on an economic effects model, the DEIS (Appendix 26, Chapter 7 - Growth Inducing Aspects) estimates that the Belleayre Resort will stimulate the need for a small amount (76,700 square feet) of additional commercial development in the study area. The DEIS also concludes that the project is expected “to meet the housing demand that its amenities generate” and “capture the latent seasonal housing demand” (Appendix 26, page 7-16) that has been generated by the Belleayre Mountain Ski Center and will induce no new housing construction. The estimate for residential housing demand is based, in part, on the above-mentioned case studies and environmental constraints. As we stated previously, we question any conclusions regarding growth inducement that are based on this information.