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### MARC S. GERSTMAN

ATTORNEY AT LAW

Telephone: (518) 432-4100 Fax (518) 432-4200



June 7, 2004

Honorable Richard Wissler, Administrative Law Judge New York State Department of Environmental Conservation Office of Hearings and Mediation Services 625 Broadway Albany, New York 12233

Re: Belleayre Resort at Catskill Park; Application Number 0-9999-00096/00005

Dear Judge Wissler:

This is to advise you and the parties to the above referenced permit proceeding that the Catskill Preservation Coalition ("CPC") will be presenting witnesses in addition to those whose offers of proof included in CPC's initial Petition for Party Status.

As we discussed during a preliminary conference call, CPC intends to supplement its offers of proof with witnesses in the following areas: Thomas Alworth, Helen Budrock, Susanna Margolis, Judith Wyman, Peter DiModica, as well as an additional witness on the significance of the Catskill fisheries, regarding community character; Ken Silver on cumulative impacts and secondary growth. We may also present additional witnesses on stormwater, golf course and pesticides impacts. In addition, on June 8, 2004, Christopher Olney will be presenting maps which will be used throughout the presentations made by CPC's experts during the Issues Conference.

Finally, I have been unable to confirm the availability of Professor Dawson to testify on June 18, 2004 since he has been out of town for the last several days. I also request that Dr. Michael Burger be allowed to testify regarding impacts to bird habitat on June 18, 2004 as part of the discussion on forest impacts since his schedule will not allow him to appear on June 10, 2004 with Dr. Kiviat.

Very truly yours, Law Office of Marc S. Gerstman

Marc S. Gerstman, Esq.

cc. Mr. Daniel Ruzow, Esq.
Whiteman, Osterman and Hanna
Attorneys for Crossroads Ventures, LLC
One Commerce Plaza
Albany, New York

Ms. Carol Krebs, Esq Assistant Regional Attorney NYSDEC Region 3 21 South Putt Corners Road New Paltz, New York 12561-1620

Ms. Hilary Meltzer, Esq.
New York City Corporation Counsel
Senior Counsel
City of New York
Law Department
100 Church Street
New York, New York 10007

Ms. Drayton Grant, Esq. Grant & Lyons LLP 145 Wurtemburg Road Rhinebeck, New York 12572

Mr. Jeffrey S. Baker, Esq. Young, Sommer 5 Atrium Drive Albany, New York 12207

W:\Clients\CATSKILL PARK COALITION\CORRESPONDENCE

CV: Proc



## THE CITY OF NEW YORK LAW DEPARTMENT

100 CHURCH STREET NEW YORK, N.Y. 10007-2601

Hilary Meltzer Tel: (212) 788-1585 Fax: (212) 788-1619

June 2, 2004

Richard R. Wissler Administrative Law Judge NYS DEC Office of Hearings and Mediation Services 625 Broadway Albany, New York 12233-1550

Re: In the Matter of the State Pollutant Discharge Elimination System
Application Nos. 0-9999-00096/00005 and 0-9999-00096/00009
Belleayre Resort at the Catskill Park Property, Towns of Middletown and Shandaken

Dear Judge Wissler:

MICHAEL A. CARDOZO

Corporation Counsel

I am writing to supplement New York City's petition for party status in the above captioned SPDES permit hearing. On page 3 of the petition, the City named members of an Expert Panel – the witnesses from whom the City intends to present testimony at the Issues Conference in this matter. I would like to add to that list Craig Seymour, a vice president and principal at RKG Associates. Mr. Seymour, along with other members of his firm, has consulted with the City on community character and alternatives issues in this matter. A brief biography is attached to this letter. I apologize for the delay in submitting this information.

In addition, I wanted to let you know that in addition to my co-counsel noted on the City's petition, Daniel Greene and Michael Burger, my colleague Linda Geary will be participating in portions of the Issues Conference next week, when I will be unavailable.

Respectfully submitted,

Hilary Meltzer

Assistant Corporation Counsel Environmental Law Division New York City Law Department cc: Carol Krebs, Esq., DEC Regional Attorney
Daniel Ruzow, Esq., Whiteman, Osterman, and Hanna
Marc Gerstman, Esq.
Jeffrey Baker, Esq.

Craig Seymour is Vice President and Principal with RKG Associates, Inc., a consulting firm specializing in economics, planning and real estate with offices in Durham, NH and Alexandria, VA. Craig has over 20 years of experience in economic development and real estate planning. He graduated from Brown University with a degree in Civil Engineering and Economics, followed by an MBA from the University of New Hampshire. He is the former director of an EDA-funded economic outreach program, which he helped grow and evolve into the first statewide Small Business Development Center, funded by the SBA, the State of New Hampshire and the University System. He also ran his own consulting practice providing business planning services to entrepreneurs and growing companies.

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



# DRAFT PERMIT Under the Environmental Conservation Law (ECL) DRAFT #1 5/24/04

EFFECTIVE DATE
EXPIRATION DATE
None
(Except see General Condition
No. 3 on page 3)
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DRAFT #1 5/24/04

### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

#### GENERAL CONDITIONS

General Condition 1: Facility Inspection by the Department

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit

area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

The permittee must submit a renewal application at least:

a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and

b) 30 days before expiration of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:

NYSDEC Regional Permit Administrator, Region 3

21 South Putt Corners Road, New Paltz, NY 12561, telephone: (845) 256-3054

General Condition 4: Permit Modifications, Suspensions and Revocations by the Department

The Department reserves the right to modify, suspend or revoke this permit in accordance with 6 NYCRR Part 621. The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit,

exceeding the scope of the project as described in the permit application;

- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

DEC PERMIT NUMBER

0-9999-00096/00010

WSA # 10,566

PAGE 2 OF 4

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New York State Department of Environmental Conservation

## ADDITIONAL GENERAL CONDITIONS FOR ARTICLE 15, TITLE 15 (Water Supply)



Prior to starting work on any construction authorized herein, detailed plans of the structures proposed to be built and specifications for such work shall have been submitted to and approved by the Department. Thereafter such construction work shall be entirely completed in full accordance with the plans and specifications which have been submitted and approved.

NOTE: Approval by this Department of final plans and specifications, and of completed works, will not be issued until equivalent approvals have been issued by the NYS Department of Health.

- 6. Section 15-1529 of the Environmental Conservation Law forbids the operation of any of these works until, as constructed, they have been approved by the Department. Such final approval will be given only on written request. In general, such approval will not be given until all provisions affecting quality of the water and safety of the works have been complied with in full.
- The Department reserves the right to rescind this permit or to take whatever action it may deem suitable and proper if the works authorized to be constructed herein are not initiated by Effective Date of Permit + 2 years.

### SPECIAL CONDITIONS

### For Article 15, Title 15 (Water Supply)

- Prior to the initiation of any construction, the permittee must submit a copy of its final contract with the Village of Fleischmanns for the purchase of water. Also, Fleischmanns Well No. 1 must be rehabilitated or replaced and reconnected to the water system. Upon completion of this work, a formal pump test in accordance with New York State Department of Health standards must be completed and the results submitted to both NYSDOH and the Department.
- A GWUDI (GroundWater Under the Direct Influence of surface water) analyses of the Fleischmanns Springs, Well No. 1 and Well No. 2 is currently being conducted. If these analyses show that these sources are under the influence of surface water, then these sources will need to be further protected and treated in a manner acceptable to the NYSDOH.
- 3. The permittee shall make provisions to restore the quality or quantity of the Village of Fleischmanns' existing sources of supply should the approved project have any significant adverse effects on them.
- Nothing contained in this permit and approval shall be held to authorize the permittee to supply, sell or distribute, for any purpose, water from any source approved herein unless all such water shall first have been treated in a manner satisfactory to the NYSDOH.
- The permittee's approved water service area is shown as a blue boundary on a map entitled, "Wildacres Water Works Corporation Water Service Area Map", by the L.A. Group , dated 5/5/2004. Nothing contained herein shall be held to authorize the permittee to distribute water to any other water service area without the further approval of the Department.
- Granting of this permit by the Department is made subject to the granting by the Delaware River Basin Commission of any approval that may be required by provisions of the Delaware River Basin Compact.

DEC PERMIT NUMBER 0-9999-00096/00010	DRAFT #1 5/24/04
PROGRAM NUMBER	
WSA # 10,566	Page 3 of 4

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION 21 South Putt Corners Road, New Paitz, NY 12561-1695



### SPECIAL CONDITIONS

For Article 15 (Water Supply)

- 7. During any construction directly or indirectly associated with the activities authorized herein, the permittee shall make provisions to minimize erosion on the construction site and to prevent increased sedimentation in any water body on or adjacent to the site.
- 8. The permittee shall ensure that water used for disinfecting water mains, if discharged to area streams, has a free chlorine residual not exceeding 0.05 milligrams-per-liter (mg/l) at the point of discharge.
- 9. The permittee must maintain meters on all sources of supply used in the system and on all customer service connections supplied by the system.
- 10. Irrigation water must be withdrawn from the irrigation ponds. No other connections to the potable water supply distribution system shall be used for any automated irrigation purposes.
- 11. The permittee must periodically calibrate all of its water meters, including source meters, in accordance with applicable regulations of the New York State Public Service Commission (16 NYCRR, Part 500).
- 12. The permittee must maintain records of annual metered water production and consumption, and, at least once annually, must conduct a system water audit that utilizes metered production and consumption data to determine unaccounted for water.
- 13. The permittee must develop and implement a leak detection and repair program that uses sonic detection equipment to inspect its entire distribution system in a systematic fashion. At a minimum, this program must cover the entire system in a three-year cycle by inspecting at least one-third of the system each year. Whenever two consecutive annual water audits shall show that unaccounted-for water is 15% or less of system production, the leak detection and repair program may be modified to cover the entire system in a longer cycle.
- 14. The permittee must retain records of production and consumption, reports of audit results, and summaries of leaks detected and repaired for at least ten years. The permittee must provide copies of such of these records, reports, and summaries as might be requested in writing by the Department within one month of receiving such a request.

### Distribution:

F. Sievers, Regional (4) Water Engineer

S. Ports, DEC Region 4

M. Holt, DEC Albany (3504)

M. Montysko, NYS DOH- Albany

R. France, NYSDOH - Oneonta

J. Agansky, NYSPSC

W. Muszynski, DRBC

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0-9999-00096/00010	PROGRAM NUMBER WSA # 10,566	PAGE 4 of 4	DATE:	



Office of Hearing Exhibit #14 Amended Petition

### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Application of

Application Numbers 0-9999-00096/00005 0-9999-00096/00009

BELLEAYRE RESORT at the CATSKILL PARK PROPERTY

### AMENDED PETITION FOR FULL PARTY STATUS

**FOR** 

#### THE COALITION OF WATERSHED TOWNS

**DELAWARE COUNTY** 

TOWN OF MIDDLETOWN

TOWN OF SHANDAKEN

**Dated:** June 8, 2004

Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC Executive Woods 5 Palisades Drive Albany, NY 12205 (518) 438-9907

Jeffrey S. Baker Kevin M. Young, Of Counsel

#### I. Introduction

The purpose of this submission is to amend the above-referenced Petition for Party Status ("the Petition") to add the Town of Shandaken to the group referred to in the Petition as the "Watershed Communities" or "Intervenor." The Town of Shandaken seeks to join the Coalition of Watershed, Delaware County and the Town of Middletown as a party to the above – referenced proceeding as part of the group referred to therein as the "Watershed Communities." The Town Board of the Town of Shandaken has passed a resolution seeking party status. A copy of that resolution is attached. The Town of Shandaken is seeking party status on the same basis as the other Watershed Communities. The majority of the project will be located in the Town of Shandaken. The Town of Shandaken will be issuing one or more planning approvals including site plan approval.

As the ALJ and the other parties are aware, the Planning Board of the Town of Shandaken has also filed for party status. The Planning Board of the Town of Shandaken is responsible for conducting detailed site plan review and issuing findings under SEQRA. The Planning Board's interest in participating as a party is to ensure that it's concerns relating to the project design and impacts are addressed under SEQRA. The Town Board is participating to express and protect the broad concerns expressed in the Petition for party status.

We also seek to supplement our Petition to add as potential witnesses the following:

Witness Name	Topic
Len Utter, Supervisor, Town of Middletown	Len Utter is a life long resident of the Town of Middletown and is currently the Town Supervisor. He will testify regarding the history of the Town of Middletown, the historic role that resorts and tourism played in the community, the status of the resorts, hotels and motels within the community, the need for additional and/or new resorts including destination resorts, the land use plans and regulations of the Town of Middletown, the consistency of this project with local zoning, the efforts of the Town of Middletown (and within the Village of Margaretville) to address stormwater concerns and reduce phosphorous discharges within the town, and the constraints on development within the hamlet areas.
Bob Cross, Supervisor, Town of Shandaken	Bob Cross is a life long resident of Ulster County and is currently the Town Supervisor. He will testify regarding the history of the Town of Shandaken, the historic role that resorts and tourism played in the community, the status of the resorts within the community, the need for additional and/or new resorts including destination resorts, the land use plans and regulations of the Town of Shandaken, the consistency of this project with local zoning, the tools available to the Town of Shandaken to regulate land use and the constraints on development within the hamlet areas, the demographics and economics of the area and the importance of local decision making on land use issues. He will also testify on the needs for local employment opportunities and the lack of employment opportunities for full-time residents.

### Topic Witness Name Nicole Franzese is the Director of Planning for Nicole Franzese, Planning Director, Delaware County. She has been with the Delaware County County Planning Department for over 10 years. Shelly Johnson has been a planner with Shelly Johnson, Planner, Delaware County with responsibility for the Delaware County Town of Middletown for the past 5 years. Delaware County Planning Department provides consulting services to the municipalities within Delaware County. Delaware County Planning (and, in particular, Shelly Johnson) has been the planning consultant for the Town of Middletown Planning Board and has extensively advised and worked with the Planning Board in relation to this project. They will provide testimony regarding the demographics of Delaware County and the Town of Middletown, Delaware County's efforts to implement stormwater management programs, the planning tools available to and used by the Town of Middletown to review and regulate this project; Town of Middletown's Comprehensive Plan and the status of its revisions, the consistency of this project with the County's and Town's planning initiatives including the economic initiatives, the population trends of Delaware County, the practicality of siting new or expanded resort facilities within that portion of Delaware County within the New York City Watershed and Town of Middletown. They will also describe how the Delaware County Action Plan for phosphorous reduction provides a framework for watershed protection planning on a watershed basin basis.

Witness Name	Topic
Glenn Nealis, Director of Economic Development, Delaware County	Mr. Nealis is also a life long resident of the area. He is currently the Director of Economic Development. Mr. Nealis will testify regarding the current status of the Delaware County's economy with emphasis on the Town of Middletown's economy. He will testify regarding the existence of County and regional economic development documentation and the consistency of destination resorts with those planning documents. He will testify regarding the availability of the local workforce to staff the project, the need for full-time employment within the community, compare the proposed wage levels to existing wage levels, and will describe the obstacles faced by Delaware County in obtaining new development/businesses within the watershed of New York City.

Witness Name	Topic
Dean Frazier, Director of Watershed Affairs, Delaware County	Mr. Frazier is also a life long resident of Delaware County. He was the first and has been the only Director of Watershed Affairs for Delaware County. Under Mr. Frazier's leadership, Delaware County has adopted the Delaware County Action Plan for Phosphorous Reduction ("DCAP"). Mr. Frazier will testify regarding the programs implemented by the County to reduce phosphorous, the success of the DCAP program, the significance of the phosphorous discharges from the proposed project to the overall phosphorous load to the Pepacton Reservoir and to the phosphorous reductions being achieved under DCAP. He will explain that the County's objective in implementing an aggressive phosphorous reduction program was to provide the greatest phosphorous reductions for the least amount of funds while, at the same time, allowing new development consistent with the Watershed Regulations to proceed. He will explain how DCAP is a joint effort by state, local and county government to achieve phosphorus reductions, that the DCAP model created in Delaware County is beginning to be adopted by other communities.

The Watershed Communities reserve the right to supplement their witness list as necessary to address the issues identified for adjudication. On behalf of the Watershed Communities, thank you for your consideration of our Amended Petition.

Dated: June 8, 2004

Albany, New York

Respectfully submitted,

YOUNG, SOMMER, WARD, RITZENBERG,

BAKER & MOORE, LLC

Jefffer S. Baker, Esq.

Kevin M. Young, Esq.

5 Palisades Drive

Albany, NY 12205

(518) 438-9907



SITE INSPECTION CHRONOLOGY 6/17/04

Belleagre News at Cability Park

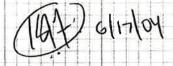
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MICDEP: Joe Demath, Hillory Meltzer, In Grew CPC: Mark berstman, Peter Di Modica, Ton Alworth, Enc Kivick, Spiller Berbor DEC: CONDI KINGS Applicant' Dan Ruzow, Kiern Franke, Steve Trader, Al Frisenan, Gry Gails

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- Drop Vehicles Behind Jaka Moon Restaurant OFF Lasher Rd.

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- walled post Point H& to area above Gish Hollow
- Newmer to Timer mansion and down to Blue trail / diversey intersection
- Hilled blue trail to State lands boundary neumen to Blue Trail / dulenny inhisuhin ± 2:45
- END OF SITE INSPECTION



### Windham Site Visit

### July 22, 2004

Leave Margaretville – Take NYS Rt 30 north to Grand Gorge, Make right on NYS Rt 23 and drive to Windham (36 miles); Meet at Ski Windham parking lot.

Travel up and back down CD Lane Rd and return to Ski Center;

Travel to the east to Trailside Rd, travel up and back on portion of Trailside Rd;

Leave Ski center, travel East on South Street to Windham Country Club Golf Course;

Continue east on South Street to Rt 296, turn right to Hensonville;

Leave Hensonville, take left turn on CR Rt 65 north to Brooksburg at NYS Rt 23;

Turn left on NYS Rt 23 heading west;

Turn right on Begley Rd heading north to Bell Hill Rd;

Turn left on Bell Hill Rd and turn left on Mitchell Hollow Rd for views of Ski Center and mountainside development;

At NYS Rt 23 turn right and travel through Windam Business District (Construction due to installation of sewer line for new STP);

Travel on NYS Rt 23 past Chrisman's Golf Course (on right);

Turn around at Ashline Town Line and head east on Rt 23, take right onto South Street, past new Windham Sewer Plant back to Ski Windham parking lot.

