VOLUME 2

In the Matter of the Applications of

CROSSROADS VENTURES, LLC

for the Belleayre Project at Catskill Park
for permits to construct and operate pursuant to the Environmental Conservation Law

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Margaretville Fire House
Margaretville, New York
May 27, 2004

B E F O R E:

HON. RICHARD WISSLER,
Administrative Law Judge

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LIST OF EXHIBITS

187

(9:36 A.M.)

P R O C E E D I N G S

ALJ WISSLER: This is the Issues Conference in the matter of the application of Crossroads Ventures continued, and our issue for discussion this morning will be traffic.

Is there anything preliminarily that I need to know before we begin?

(NO AFFIRMATIVE RESPONSE.)

The record should reflect that yesterday we had a site visit, focusing almost exclusive on the Wildacres portion of the application, and that that site visit extended from 9 o'clock yesterday morning until about 6:30, quarter to 7 last night.

My intention this morning is to do traffic, and sometime around 11:30 or 12, to conclude that issue if we can and continue the site visit at the Big Indian site.

On the matter of traffic, Mr. Gerstman, I think you have the lead here in that; am I right?

MR. GERSTMAN: Yes, your Honor.

ALJ WISSLER: Is the City going to weigh in on the traffic at all?

MR. GREENE: The City is not.

ALJ WISSLER: For the sake of the record, let me have the appearance of counsel.

MR. RUZOW: For the Applicant, Dan Ruzow and Terresa Bakner from Whiteman, Osterman & Hanna.

MS. KREBS: Department Staff, Carol Krebs, Assistant Regional Attorney, and Vincent Altieri, Regional Attorney.

MR. GERSTMAN: For the Catskill Preservation Coalition, Marc Gerstman, Cheryl Roberts and Eric Goldstein.

ALJ WISSLER: Mr. Gerstman, it's all yours.

MR. GERSTMAN: Your Honor, I would like to introduce Mr. Brian Ketcham who is our expert witness on the traffic impacts from the Belleayre project. His curriculum vitae has been submitted as part of the petition which I think has been designated as Hearing Exhibit 8. His traffic report has also been submitted

as part of that petition.

For his introduction, I would like Mr. Ketcham to briefly talk about his professional experience and background.

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. KETCHAM: Thank you, your Honor. I've had about 35 years experience in traffic and transportation environmental engineering; starting out actually with the -- part of that was in design engineering for the automotive industry, but shortly after that, I joined the John Lindsay administration in the early--late `60's, early `70's, and actually worked with DEC. I was the lead author on New York City's Transportation Control Plan in 1972 and `73, and set up the Bureau of Motor Vehicle Pollution Control for the city. During that time, I went on to do a lot of advocacy work. I formed my own corporation with Carolyn Kohheim in 1981, Konheim & Ketcham, doing transportation and environmental engineering. We've done many, many environmental impact statements over the years, comparable to what we have on the table here.

I also am Executive Director of Community Consulting Services, which is a not-for-profit we established several years ago to continue our pro bono work in projects like this. I don't know how much more you need. I'm a licensed professional engineer in

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

New York State.

MR. GERSTMAN: Thank you. I also want to point out that Mr. Ketcham is a resident of Margaretville, part-time resident of Margaretville.

Mr. Ketcham, would you like to expand on that?

MR. KETCHAM: Well, I live two miles from here, and so I am -- as of about two and a half years ago. So I'm very familiar with the area. I ski at the Belleayre Ski Center and travel Route 28 on an almost weekly basis, particularly in the wintertime. I have observed a lot of activity with the ski area over the past two and a half years. So I really have ongoing familiarization, familiarity rather, with the traffic both during the wintertime, which is what I've been looking at for this project, as well as throughout the year.

MR. GERSTMAN: As a part-time resident of Margaretville and you have a home in Margaretville, have you taken a position one way or the other with respect to the proposal of the Belleayre project?

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. KETCHAM: I have not. I'm neutral on the project. My objective in appearing here and many, many other similar actions is simply to get at -- to help the community understand the impact of a project itself, to get the truth on the table, and that's why I'm

here now.

MR. GERSTMAN: Your Honor, as you've read in the petition, we believe that the Draft Environmental Impact Statement does not adequately address the significant adverse traffic impacts which will be associated with the project, and as a result we believe the Commissioner will be unable to issue her SEQRA findings pursuant to 6 NYCRR 617.11.

We believe that traffic impacts are tied very closely to the adverse impacts on community character. They will certainly impact the rural and Catskill Mountain experience that people have come to enjoy and love in visiting this area. There will be impacts to people visiting the forest preserve and taking advantage of the open space and the State land associated with the state lands.

The DEIS generally -- we will get into

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

the details -- under-reports the existing traffic conditions, utilizes erroneous project completion date as a base line for project analysis, under-reports the worse case scenario, ignores the summer traffic situation and the temporal distribution of traffic. It ignores the Belleayre Mountain ski expansion. It under-reports the project impacts and misrepresents traffic distribution.

We believe that the results of the growth, background growth of the project and

the Belleayre Mountain ski expansion will have significant impacts on traffic along the entire Route 28 corridor, and that has not been adequately addressed.

Rather than me asking Mr. Ketcham questions, I'm going to ask Mr. Ketcham to begin the analysis and provide you, your Honor, with the report that he has prepared. I'm going to distribute a packet of documents, some of which are --

ALJ WISSLER: G and I, I think, are in there. Are you giving me something that's different than what you have given me?

MR. GERSTMAN: Some of the documents

are the same, and they are marked, and some of them are different. So we can mark them as G and I, did you say?

ALJ WISSLER: I'm referring to your petition. There are exhibits in your petition which are two reports by Mr. Ketcham, Exhibits G and I.

MR. GERSTMAN: That's correct. Some of the tables and figures that are identical are labeled as Table 1 or Figure 1, those are included in Mr. Ketcham's report. Those that don't have such a demarcation are additional exhibits. For convenience, I put a package together and thought we could identify this as Catskill Preservation Coalition --

ALJ WISSLER: CPC 1 and 2.

("TABLE 2" COMPARISON OF TRAFFIC

VOLUMES REPORTED BY CME FOR THE BELLEAYRE RESORT WITH COUNTS TAKEN FOR THE CATSKILL CENTER ON SAT. FEB. 15, 2003 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC EXHIBIT NO. 1, THIS DATE.)

ALJ WISSLER: For the record, CPC Exhibit 1 is a document, the facing page is titled, "Table 2 Comparison of Traffic Volumes

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

Reported by CME for the Belleayre Resort with Counts Taken for the Catskill Center on Saturday, February 15th, 2003;" am I correct?

MR. GERSTMAN: Yes, your Honor.

MR. RUZOW: For the record, Marc, copies will be given to the other parties that aren't here -- the proposed parties, Shandaken, Mr. Baker?

MR. GERSTMAN: That's a good question. Your Honor, I don't know that Mr. Baker had an issue with traffic.

MR. RUZOW: You raised it in the context of community character and the town's comments, Ms. Draden's [sic] comments are what they are, but they seem to be a little parallel. I guess I want to be clear that we all have to get copies.

ALJ WISSLER: Yeah, we do. Frankly that goes for everything that we've done so far. Shandaken needs to have that record.

MR. GERSTMAN: They'll have a transcript.

ALJ WISSLER: They're part of this process. The transcript will have a hole in it if they don't have the exhibits.
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

195

A note to all counsel, that if you put in exhibits, you need to copy Shandaken and Mr. Baker's group; and what I would ask is that you simply copy me on any cover letter that accompanies those exhibits.

("ACCESS TO BELLEAYRE SKI RESORT - SHUTTLE TRAVEL TIME" RECEIVED AND MARKED FOR IDENTIFICATION AS CPC EXHIBIT NO. 2, THIS DATE.)

MR. KETCHAM: You have seen my submission and I want to walk you through the process using the exhibits submitted for that purpose. I want to talk about first the base line that has been established in the DEIS, and as I see it, how you estimate future conditions, how you account for the expansion of the Belleayre Ski Resort, estimating the project impacts themselves, determining how the traffic from the proposed project is distributed on the region's roadway network, estimating the impacts of that distribution of traffic on the operation of the network, looking at parking conditions, parking requirements, and finally looking at mitigation.
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

196

I want to start with establishing a base line. If you look at the first table

-- I'm sorry I don't have these numbered but I'll describe them. It says Table 2. What we did in February of 2003 is went out and did our own counts at several locations along Route 28. We did two-hour counts similar to what was done for the EIS for several locations, the morning and peak hours. And what we found was that in 2003, the traffic volumes were about 20 percent greater than were reported in the DEIS for the CR 49A, the entrance to the Catskill Ski Resort, and the other one that's reported here was County Road 47, which was overall 12 percent higher in the morning and 16 percent higher in the evening. I think of importance is to note the increase, however, in movements entering and leaving the ski resort itself. For example, in the morning, we observed 31 percent more traffic than was reported in the DEIS and in the evening --

ALJ WISSLER: Mr. Ketcham, you're referring to Exhibit 2?

MR. KETCHAM: Table 2.

ALJ WISSLER: Table 2 in Exhibit 1, I'm sorry. So that we can all follow along with what you are telling us from that table, can you tell us where you are at?

MR. KETCHAM: Yes. There's two portions to this table, there's an upper and lower. If you look at the first table, says,

"County Road 49A at Route 28."

ALJ WISSLER: You said 31 percent?

MR. KETCHAM: If you look at the first row on top of there, says left, this is the northbound movement on Route 28, it says left. That's traffic moving west, turning left into the ski area. What we observed was 355 vehicles an hour making that left turn versus 270 reported in the DEIS. That's a 31 percent increase.

The other figure I mentioned was in the evening. If you go down about ten rows to what is the eastbound CR 49A right turn, you'll see that at least in the evening, which is the critical hour, there was a 34 percent increase in traffic in our observed traffic compared to what was reported in the DEIS. Then if you go down to the bottom of that

percentage column, says 20 percent for both morning and evening. That's the overall movement of vehicles through that intersection during morning and evening.

ALJ WISSLER: During a peak hour?

MR. KETCHAM: Yes, the morning peak and the evening peak.

ALJ WISSLER: When are they?

MR. KETCHAM: From roughly 8:30 to 9:30 in the morning, and 3 to 4 in the evening -- I'm sorry, 4 to 5 in the evening.

ALJ WISSLER: Those were the times at which these counts were taken?

MR. KETCHAM: We took counts from about 8 to 10 in the morning, and from about 3 to 5 in the evening along -- at several locations along Route 28. Then the next table presents the results of County Road 47, with some similar results. Again, overall at the bottom of the percent column, you see that we observed 12 percent more traffic moving through that intersection in the morning and 16 percent in the evening.

ALJ WISSLER: This is as compared to the figures in Appendix 25 of the EIS?

MR. KETCHAM: Yes. So overall, there's a substantial increase in observed traffic. Part of that -- I'll get to that in a minute -- is a consequence of growth in the background traffic. That's comparing our numbers for 2003 with their numbers for 2000, and they're assuming a 3 percent per year growth. That would account for some of the increase, the other would be accounted for by the growth in traffic at the ski resort itself. I'll get to that in a minute.

Something we did which was not included --

ALJ WISSLER: Route 28, East of 49A, DEIS, 2-15-03, the list on the next page?

MR. KETCHAM: Yes. It says, "Route 28, East of 49A, DEIS, 2-15-03."

ALJ WISSLER: Okay. So we're all on

the same page.

MR. KETCHAM: What this shows is the temporal characteristics that we observed along Route 28 just east of 49A. This is just representative of what should have been presented in the DEIS. We developed this from all the data that we collected that was

presented, as well in the DEIS, and that -- and information we got from the ski center itself, and compiled all that into this. It's an approximation of what happens hour by hour along Route 28.

ALJ WISSLER: Let me stop you there for a second. If we go back to the first page, Table 1 -- you have 49A at 28, 2/15/03, total is 652 is what you got; correct?

MR. KETCHAM: Yes.

ALJ WISSLER: Looking at the next page, is there a time frame? Where does that figure of 652 add up from the totals listed on the next page? Do you understand what I'm saying?

MR. KETCHAM: Yes, it does add up.

ALJ WISSLER: What hours am I looking at to get to 652?

MR. KETCHAM: The second table is the movement of traffic along 28 in both directions east of the site where we took data, collecting data, east of the site. We're not at the intersection itself, we're beyond the intersection. And so to get the

numbers, you have to add up the -- in terms of
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

the --

ALJ WISSLER: There's not a direct correlation?

MR. KETCHAM: There is. The numbers come directly from the first table, says Table 2, but you have to -- for example, to get the numbers from Table 2, you have to add up all of the vehicles approaching the intersection from the east going west, and you have to take all of the -- to get to the eastbound, you have to take the three movements leaving the intersection, the northbound right turn, the eastbound through and the westbound left turn, add those together to get the numbers that are shown on the second table. They do add up.

ALJ WISSLER: Again, my bottom line question is: When I look at February 15th, `03, total of 652 for the a.m. peak hour --

MR. KETCHAM: That comes directly off this other table. If you want, I can mark this up and show you.

ALJ WISSLER: Yes, because I'd like to know what the correlation is on those two tables.

MR. KETCHAM: You want me to do it
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

now?

ALJ WISSLER: You can do it on a break. I want to be able to go from one to

the other.

MR. KETCHAM: The numbers come directly off the data that we collected in the field.

ALJ WISSLER: How long would it take you to do that math for me?

MR. KETCHAM: Just a minute.

ALJ WISSLER: Go on. I do want you to come back and show me that map.

MR. KETCHAM: That's fine. Take my word for it now that they do match but I'll show you.

ALJ WISSLER: I have no reason not to.

MR. KETCHAM: You can develop this stuff -- this should have actually been taken in the field through ATR counts, Automatic Traffic Recorder counts. The ATR counts that were included in the DEIS were a couple of hours. They weren't for an entire period. Normally we do ATR counts for a project, we do an entire week so we have a clear understanding of how a roadway segment is

working. They didn't do it in this case, and I'll get to why this is important in a second. The next table.

MR. GERSTMAN: Mr. Ketcham, let me interrupt you. February 15th, 2003, did that represent a worst case scenario, was that typical traffic for that period of time?

MR. KETCHAM: Actually we took that because it was one of the peak weekends. But

if I can jump ahead a little bit, there are two tables in here that I think -- if you jump ahead about four tables, there's one -- I have to show them to you.

ALJ WISSLER: You have this table in Exhibit G?

MR. KETCHAM: That's this one here. Those two tables I'm talking about if the rest of you folks want to know where I'm at. (Indicating).

MR. GERSTMAN: The first one is Figure 1 from Mr. Ketcham's offer of proof, and the second one is Table 1.

ALJ WISSLER: Both of those are in the packets that is CPC Exhibit 1?

MR. KETCHAM: Yes, they're in both

packets. But let me just address those two because they address what Marc was just talking about. You look at Table 1 provided by the ski center, and it shows you the 20 or so peak ski days in the 2002/2003 ski season that we get. If you look at the one that's got a 1 there, the Martin Luther King day, it says 2,928 skiers. The day we took counts, there were 3,970 skiers, higher than on the day that was counted for the DEIS, but considerably below what their peak is. They're getting -- several points here. They had at or near 5,000 skiers per day; and I think the point that was being made is that

what we measured on February 15th was not a worst case day, it was 20 percent below what a worst case day is.

ALJ WISSLER: In your understanding, what is the day that's used in the DEIS?

MR. ALTIERI: Your Honor, we have Figure 1, we don't see Table 1.

ALJ WISSLER: We're looking at Table 1 which is part of Exhibit G in CPC's petition.

MR. RUZOW: May I make a suggestion, your Honor. If the new exhibit were actually

numbered, if we all just numbered them one through the end, it would make it a little easier.

ALJ WISSLER: I would agree.

MS. KREBS: Your Honor, I believe we don't have that page.

ALJ WISSLER: Although that table is not in my Exhibit 1.

MR. KETCHAM: It's in the other one.

ALJ WISSLER: So we are looking at Office of Hearings Exhibit 8, Expert's Exhibit G, Table 1.

MR. GERSTMAN: That's correct.

MR. RUZOW: We found it.

ALJ WISSLER: We're with you. My question to you was that in your understanding, what is the date that the DEIS uses for their --

MR. KETCHAM: Martin Luther King day is my understanding.

ALJ WISSLER: The day.

MR. KETCHAM: That's my understanding.

MR. RUZOW: It was Saturday of the Martin Luther King day weekend for 2000.

MR. KETCHAM: That's what it is, I guess. My point is the other figure, Figure 1, shows growth characteristics at the Belleayre Mountain over the past -- over the three years from `99/2000 to 2000\2003. It shows there's been a substantial growth in the number of ski days there, 50 percent over that three-year period. I don't have data for 2003\2004. Having skied for most of that, I would suspect it's about the same as it was in 2002/2003, but there's been a substantial growth. And the point of both of these is that we took counts that showed a 20 percent increase in background travel. That's in establishing a base line at a time that did not -- that was not at a point in time that they had a peak number of skiers there, and that's how I arrived of the 20 percent, plus 20 percent, is how I arrived at my assertion that they have underestimated base line conditions by 40 percent.

ALJ WISSLER: Do that math for me again. 40 percent because you have 20 percent increase in the number of skiers?

MR. KETCHAM: Well, they under-counted -- their counts in 2000 were low by

20 percent from my counts in 2003, and my counts occurred on a day that did not correspond to a peak ski day which was -- added another 20 percent to the traffic during peak hours along Route 28.

ALJ WISSLER: It's your position that the day you chose is more representative?

MR. KETCHAM: The day I chose was the day I chose, but I checked it against other peak ski days as shown in this Table 1, and the day I happened to choose was just convenient for being up here and being able to get people out to the field.

ALJ WISSLER: But you're suggesting that the day you chose is more representative than the day that was chosen by the Applicant?

MR. KETCHAM: It was not a peak day, it was probably representative, but it was not a peak day for the number of skier trips. One of the assertions made in the DEIS is there's only one peak day, and in fact, there are multiple peak days all year-round during the ski season.

ALJ WISSLER: What other statements that you make in Exhibit G with respect to the

number of skiers at Belleayre increasing 5,000 a day to 8,000, where did you get that number from?

MR. KETCHAM: We met with Tony Lanza several times talking about his plans for

expanding the ski area. He suggested that they were going to double the number of ski days over the next several years. He laid out an elaborate plan for expanding parking there. And I thought, 10,000 skiers is a little high so I've been using 8,000 as a sort of 2010 target for their expansion program, but based on conversation with him. He had been providing us information and data for current ski activities.

ALJ WISSLER: The 40 percent you just spoke about, you get 20 percent increase because of the difference in the days that you choose -- the 15th compared to the number -- the count for the day chosen in the DEIS?

MR. KETCHAM: I think the 20 percent was -- I think the 20 percent reflected the fact that there was a three-year difference between the counts. There may have been more skiers. There's been considerable growth at

the ski area.

ALJ WISSLER: But that 20 percent is a projection by you based upon your observations on the 15th and the data provided in the DEIS?

MR. KETCHAM: The 20 percent is what we observed, and there's another 20 percent on top of that to reflect the multiple worse case days. I'm counting these 4,000 skiers. There's plenty of days when there's 5,000 skiers there, which would be a 25 percent

increase in the number of ski trips.

ALJ WISSLER: It's not a major point but I'm trying to understand. To get to the 40, there's, first of all, a comparison of the raw numbers that you have, and then there's the impact of the increased use of Belleayre, the increase in skiers which makes up the other 20 percent?

MR. KETCHAM: That's correct. So to go back to the order that I'm working from and these pictures, the next table -- something else that's important in my analysis. It says, "Vehicles Entering and Leaving Belleayre Mountain Ski Center."

ALJ WISSLER: This is page 3 of CPC 1;

am I right?

MR. KETCHAM: Yes. What this is is based on our field counts and observations at the ski resort, this is the number of vehicles leaving the upper and lower driveway of the ski center. I'll show you why this is important in a minute, but this does, again, show you the kind of day that should have been included in the DEIS for a full analysis of this project's impact on the community.

The next table shows you the -- is entitled, "Route 28, East of 49A, DEIS." This is a Saturday, estimated temporal distribution without ski traffic. This was estimated simply by subtracting the number of ski trips entering and leaving the ski resort from the

earlier table I showed you, showing total trips along Route 28, east of 49A. This is important because this is what I used to grow traffic for future conditions. This is the way this should have been done.

ALJ WISSLER: This is the way --?

MR. KETCHAM: This is the way that future conditions -- let me tell you what I'm going to do. I'm going to walk you through

how I have estimated future conditions in the year 2014, then I'm going to show you what the effects are on the traffic compared to the DEIS.

ALJ WISSLER: Not a problem. I need to walk slowly though.

MR. KETCHAM: As slow as you want. We'll set this aside for a second because I'm going to go back to it.

MR. GOLDSTEIN: That's page 4.

MR. KETCHAM: The next issue is establishing the build year. It's important for a bunch of reasons, in particular, for establishing future conditions. In this case, the traffic analysis assumes a 2008 build year, however the Socioeconomic Analysis lists a build year of 2014, and I have tier sheets from the EIS that suggests that there's a 12-year construction period, which puts the build year at more like 2018. My analysis is based on the 2014 rather than 2008.

ALJ WISSLER: What are you looking at right now for that?

MR. KETCHAM: I'm looking at my notes. I have here, however -- if you want, I can submit this, the sheets that show the -- I thought I had them. I can submit them.

ALJ WISSLER: You talk to Mr. Gerstman about that.

MR. KETCHAM: The tier sheets that show the 2014 date in the Socioeconomic Analysis, I think it's Section 3, page 47, and the Executive Summary also reports a 2014 build year. Now, the importance of this is what the DEIS assumes is a 3 percent per year growth rate for traffic, 2 percent background, plus one percent for the ski area. So they adjust their background growth by 27 percent. However, if you take this out to 2014, all of a sudden that background growth increases to 51 percent, or double what is going to be included in the DEIS. That is really important.

And then we come to the issue of just how much the ski area is going to expand. They've assumed one percent per year, or eight percent over the eight-year analysis period. We already reviewed the data that I got that suggests that the ski resort already expanded by 50 percent, and that they're planning on a further doubling of ski area, as I said

earlier. I more conservatively assumed that they might reach -- comfortably reach an 8,000 limit, which would be a 60 percent increase. Both of those are important in establishing future no build conditions.

ALJ WISSLER: Future what?

MR. KETCHAM: No build conditions. Conditions for, in my case, 2014 without the Belleayre Resort. You establish the future conditions so you have a basic end switch to really compare project impacts.

Now, the next table that is listed, "Route 28, East of 49A, DEIS, February 2014, Saturday Estimated Temporal Distribution Without Ski Traffic." What this shows -- I showed you earlier the table showing temporal characteristics without the ski resort. That was for 2003. What I did was grow these numbers by 2 percent per year compounded up to 2014, so this table, number 5 --

ALJ WISSLER: Where does the 2 percent come from?

MR. KETCHAM: I took the table I showed you earlier that I calculated based on

observed characteristics on the roadway.

ALJ WISSLER: Okay.

MR. KETCHAM: I subtracted out what I observed to be the condition -- the vehicles entering and leaving the ski area, came up with a 2003 temporal characteristics along

Route 28, east of 49A without the ski area, then I multiplied that times a growth factor, 2 percent per year compounded.

ALJ WISSLER: That's my question. Where do you get the 2 percent growth factor?

MR. KETCHAM: The DEIS reports that the state says the growth along 28 has been 2 percent per year. That's what they used to grow the traffic, that's what I used to grow the traffic. It's consistent with their own figures.

Now, what I did in the next table was to -- I'm going to skip some tables here go to 7, page 7.

ALJ WISSLER: "Vehicles Entering and Leaving Belleayre Mountain Ski Center Approximately 2010?"

MR. KETCHAM: That's correct. Assuming 8,000 ski visits. What I did was

take the observed data that I reported earlier for 2003, and increased that 60 percent. So that we have now the activity at the ski resort with their full build-out in 2010, I'm assuming that doesn't change by 2014. I then take that and add that data to Table 5. I'm sorry this is so confusing but this is what you do in doing these analyses. The result is Table 8 -- page 8. The result is page 8.

ALJ WISSLER: So we start with a base, if you will, at page 5, we add to that the increase from the skiers?

MR. KETCHAM: Right.
ALJ WISSLER: Then we total all that up at page 8?
MR. KETCHAM: That's correct, that's for 2014. All of this, we're talking about future conditions. Future conditions reflecting background growth in traffic, State DOT recommends, and the presumed growth in the activity at the ski resort for a peak day, a worst case condition.
ALJ WISSLER: 2014 is an eight-year build-out?
MR. KETCHAM: The eight-year built-out

that they report in the Socioeconomic section of the DEIS.
ALJ WISSLER: Which in your view won't begin until 2006?
MR. KETCHAM: Or later.
ALJ WISSLER: I understand.
MR. KETCHAM: Let's presume it starts in 2006, that's what the DEIS says when it will start, and the DEIS says it will take eight years or as much as 12 years, but I'm assuming eight years -- not two years as was assumed in the traffic section. So we get this -- what is representative, Saturday, ski day, peak ski day, traffic impacts. Now, we need then -- this gives us a future no build condition. Now, we need to estimate what impact the proposed Belleayre Resort is going

to have on the traffic, the surrounding traffic area.

What they did in the DEIS was to use data taken from the Institute of Traffic Engineers, Transportation Engineers, Trip Generation Manual. This is it right here actually. This is the sixth edition or the seventh edition out now, but it's not too

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

different. For what we're talking about here, the three sets of data they took out of this is not different. What they did was to take average conditions that are reported for three different land use types; for single family detached houses, for recreational homes and for hotels. Now, they used average conditions. What ITE provides is a range of conditions from a low to a high, then they take a medium. If you look at the data, what this shows is that the median is pretty close to average -- to the low number.

This is supposed to be a really classy operation, five star operation. One of the things that you see in here, for example, for recreational homes, which they use for certain of their --

ALJ WISSLER: Are you reading to me from the manual?

MR. KETCHAM: No, I'm not, I'm just turning pages. You want to see the manual?

ALJ WISSLER: If there are pages of it that you want to enter, you need to do that.

MR. GERSTMAN: At some point we might do that.

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

ALJ WISSLER: Even though it's an Issues Conference, I don't want you reading from a document that I'm not going to have in front of me when I make the issues ruling. So if that's part of your presentation, I and all counsel need copies of that page.

MR. GERSTMAN: Could we have one minute, your Honor?

ALJ WISSLER: Sure.

(10:22 A.M. - BRIEF PAUSE.)

MR. GERSTMAN: Your Honor, if you turn to page 9 of CPC 1 -- pages 9 and 10. We'll be glad to provide you with the copies of the pages from the ITE manual that provide the basis for the information that's already been provided by Mr. Ketcham. We thought he would be able to interpret it and provide you with that information in his testimony, but if we need to provide that, we certainly will.

ALJ WISSLER: If it's the basis for the numbers that are shown in pages 9, 10 --

MR. KETCHAM: That's correct, they were taken directly out of this manual. (Indicating)

ALJ WISSLER: It will be helpful for me to have that.

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. GOLDSTEIN: We will provide that,

your Honor.

ALJ WISSLER: Thank you.

MR. KETCHAM: If you look at 9 and 10, what I've done here is to present what's in the DEIS, present what is reported in the ITE manual itself, and compare the two. And what I've done on the bottom of the second page is to sum up what they report as worse case conditions versus what is a true worse case condition based on ITE rates would produce; or about double or more than double, maybe two and a half times what the -- the number of trips that they have reported on in the DEIS. What's really important here is that a total number of daily trips that are generated by ITE information are not too different from min. to max.

ALJ WISSLER: Explain that to me.

MR. KETCHAM: Well, it means that the data shown here for a "High trip generation rate" for a particular land use suggests that -- and in careful reading of the ITE Manual -- that a higher proportion of trips are

occurring during peak hours for the so-called high trip generation land use characteristic. I think that probably is representative of what happens with a project like this, which is a four or five-star project where -- classy operation -- where you might get higher peaking.

One of the things that are not

accounted for by ITE are residential units that are two, three, four bedrooms. They average them out. When you get a lot of properties that are -- whether they're private or whether they're the kind that are described in this project -- where you have four bedrooms, you're going to have lots of guests. I know we have lots of guests up here, and they all drive separately. And so they're going to generate a lot more trips than your average rate would indicate out of ITE, and that's what I've tried to present here.

MR. GERSTMAN: Before you go on, Mr. Ketcham, let me ask you about the use of the -- again, to reiterate, or to explain further the use of the median rates in the DEIS based upon the ITE land uses, and why you believe

that this particular project will generate a greater number of trips than is actually reported. Could you explain that again?

MR. KETCHAM: I'll restate that. One of the things that ITE emphasizes very strongly is these are only the best that they get. I'm going to divert a little bit, but what happens with this manual is that all this data is collected on a volunteer basis. Folks like myself fill out a 14-page form that says that they have done data collection and such, and here are the results. And they factored this into this manual. And for some of these

things, they only have two points on a curve. They only have two sets of data that they're attempting to make some estimate of the trip generating characteristics of a project.

So ITE emphasizes, they say if you can go out and get raw data from half a dozen representative properties, it's much better to use that. I know they got some data from one location, Snow Mountain -- Snow Mass. [sic] I don't remember the name. They did get some data. They didn't use it. But they should have gotten a lot more data, like they should

have collected a lot more traffic data for base line characteristics. And I do know that somebody has put some ATR counters out there now, so maybe they're doing that. You're going to have to repeat your point.

MR. GERSTMAN: The use of the traffic generation numbers in the DEIS relies on the median numbers that are set forth in the ITE. You have suggested to the judge that those are inappropriate for the project that is being proposed for this location. I was asking you to explain how come the peak trips for certain hours in your estimation would be much greater than is reported in the DEIS.

MR. KETCHAM: It's my opinion that they have underestimated the trip generation characteristic based on the numbers that are cited in the ITE and based on the characteristics of a facility like this.

ALJ WISSLER: Would you go with me to page 9 of CPC Exhibit 1.

MR. KETCHAM: (Indicating).

ALJ WISSLER: Take the first top section there.

MR. KETCHAM: Yes.

ALJ WISSLER: Walk me through that.

MR. KETCHAM: It says, "DEIS lodging units." Says 168, then it gives the rate per lodging unit that vehicle trips will be generated both for weekdays, Saturdays for the a.m., p.m -- weekday peak hours, and Saturday peak hours.

ALJ WISSLER: Again, when we're talking about peak hours, we're talking about 8:30, 9:30 in the morning, and 4:30, 5:30 in the afternoon?

MR. KETCHAM: Basically. The morning peak hour varies, but I think it's 8:30 to 9:30 in this case. They vary from project to project.

ALJ WISSLER: What is Dir. split, what does that mean?

MR. KETCHAM: If you look at the next one, it says a directional split, and they didn't give a directional split. But the ITE recommends a directional split based on their various observations. In this case, for recreational homes, the rates that I show there are based on two studies, just two

studies. So it's a pretty limited data base.
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

224

ALJ WISSLER: What does the term directional split mean?

MR. KETCHAM: That means the number of vehicles that are entering -- in this case, it says 49 percent in, 51 percent out. These rates calculate -- if you go down to the next part of that section under recreational homes, says 260 recreational homes. You'll see that for a.m. peak hour, there would be -- under average conditions, you're generating 50 trips.

ALJ WISSLER: Where is that?

MR. KETCHAM: If you go to the a.m. peak hour, go down that column, ten lines down, says, "Recreational homes, average 168, 531, 516, 50." And for a full day, they're assuming 50 percent in, 50 percent out, but for the hour for the a.m. peak, they're assuming there 49 percent entering the site, 51 percent exiting the site. They mean roughly 25 vehicles entering, 25 vehicles exiting.

ALJ WISSLER: When we look at vehicle trips up at the top --

MR. KETCHAM: At the top is rates.
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

225

ALJ WISSLER: 3.16 vehicle trips?

MR. KETCHAM: Per dwelling unit per day.

ALJ WISSLER: What does that mean? Is

a trip in and a trip out two trips?

MR. KETCHAM: It's either a trip in or a trip out.

ALJ WISSLER: It's a one-way passage some way, either in or out?

MR. KETCHAM: That's correct. So I did this for each of the -- pages 9 around 10, I did this for each of the land use types that they report on. There's a lot of missing pieces. They have a lot of restaurants in here which are dealt -- are not really dealt with directly. Restaurants typically generate a lot of trips, especially if they're destination restaurants. We don't have a lot of great restaurants around here, so we might welcome some great destination restaurants and lots of people might use them. So that's not even a part of this calculation.

ALJ WISSLER: So if you use the resort numbers from the ITE of the successful resorts, you're saying on top of that, you

also need to put in a count for restaurants that may be at this resort and may be independently patronized apart from the resort facility?

MR. KETCHAM: Yes.

ALJ WISSLER: So there's an added factor there?

MR. KETCHAM: There could be additional trips associated with destination

restaurants.

ALJ WISSLER: Have you made any estimation with respect to that?

MR. KETCHAM: No, I haven't, but it would be in addition to what I'm reporting here in the worst case.

ALJ WISSLER: Okay.

MR. KETCHAM: Understand that they may or may not occur during a -- the peak hours that we're talking about. Destination restaurants typically are not breakfast places. They may be lunch, they certainly are dinner, but they might occur after your peak ski hour, 4 to 5 p.m. But it adds to the roadway congestion, and I can tell you, since I drive the road frequently, Route 28 can be

crowded -- not just from 4 to 5 -- 5 to 6, 6 to 7. So it adds to the complexity of this project's impact.

ALJ WISSLER: You did not do that analysis, correct, for the restaurants? You're saying the DEIS doesn't show that either?

MR. KETCHAM: I didn't do it and the DEIS ignored it. I have just been reminded that while ITE does address golf courses, there is nothing in ITE about ski resorts whatsoever. So we don't have a data base that reports on trip generation, generating characteristics of a complex like the Belleayre Ski Center or associated activities.

These rates are taken out of context of a concentration of activity like that.

ALJ WISSLER: I've recently been given to understand that Belleayre is used as a concert venue during the summer months?

MR. KETCHAM: Yes.

ALJ WISSLER: Did you consider that factor in your analysis; and to your knowledge was that factor considered by the DEIS?

MR. KETCHAM: Well, they considered

-- yeah, they did. They considered peak period, leaf peaking times, and I guess that sort of substitutes for an event like that, but I personally concentrated on ski season since that's the worst traffic period. I really got nothing to say about the other time periods.

MR. GERSTMAN: In your estimation, did the DEIS evaluate the issue of vehicle trips generated by the summer concerts at the Belleayre Ski Center?

MR. KETCHAM: Not specifically, no.

MR. GERSTMAN: Thank you.

ALJ WISSLER: Before we move on, going back to page 9 here, that -- those estimations and so forth for vehicles, residential units and so forth, they would have year-round applicability?

MR. KETCHAM: Sure. This is not specific to a ski weekend, this is specific to

what is proposed --

ALJ WISSLER: But your earlier concerns addressed traffic impacts --

MR. KETCHAM: During ski season.

ALJ WISSLER: -- during ski season.

MR. KETCHAM: In terms of trip generation, these same numbers of trips -- there's nothing in ITE that differentiates seasons. They just report on average and peak trip generating characteristics of a variety of land uses, irrespective of season.

ALJ WISSLER: I guess a question that I have is: When you use these figures and talk about 2 percent growth rate and so on, what's proposed here is a four-season facility?

MR. KETCHAM: That's correct.

ALJ WISSLER: So I'd like, if you could, to tell me how impacts will be felt on a year-round basis as opposed to just -- do you understand what I'm saying?

MR. KETCHAM: Sure.

ALJ WISSLER: You're saying it's going to be bad in the wintertime, but is it going to be as bad in the summertime?

MR. KETCHAM: In my judgment, no. There's two issues here. First of all, this project, by my best estimate, will attract about a half million cars a year. There's a half million cars entering, half million

leaving, plus making various trips during the day in addition to that.

ALJ WISSLER: That's over the course of an entire year?

MR. KETCHAM: That's an entire year. It turns out that traffic operating on Route 28 passing County Road 49A is about a million, maybe a million and a half a year. So we're talking about a project that could double the amount of traffic on an annual basis; double the amount the traffic, at least at that site along Route 28.

ALJ WISSLER: Are those volumes to your knowledge broken out by DOT or anybody else on a monthly or seasonal basis?

MR. KETCHAM: They could be, they should be. I don't have them myself. But I showed you a table already that shows the volume along 28 without the ski resort. And what I did was just to rough-out the amount of traffic along there as to take the average traffic at that location, along 28, multiply it out by 365, to get a rough idea of how much traffic moves along 28. And it's on the order of a million, million and a half vehicles in

both directions a year. So this is a substantial impact.

I know that the DEIS says it's only using 30 percent of the capacity of the road -- I'll get to this in a minute -- but if you

look at travel behavior along 28 between -- I'm getting ahead of myself -- between the project site and I-87, I-87 -- I think near I-87, they're moving 13, 14,000 vehicles a day versus, say, 3,000 here at the site. So the proportional impact as you move east of this project is going to be substantial, and it's just not accounted for in the DEIS. But let me go back to what I'm trying to present here.

If you go next to page 11. Again, this is part of my original submission. I have summed up what is in the DEIS versus what I think, in fact, will happen, taking into account that the DEIS is targeted at 2008 and I'm 2014. So what I presented here are the morning and evening volumes. These are the total volumes along -- just for comparison purposes -- along Route 28 East of -- be consistent now -- east of County Road 49A.

What they measured is -- their base

line is 436 vehicles in the morning and 687 in the evening. They grow that by 27 percent to 550 in the morning and 870 in the evening, and then add their project impacts, as you can see there, so they get a total in 2008 of 752 in the morning, and the evening is far worse, it's 1,062. This represents a 72 percent increase in volume from base line by 2008 according to the DEIS in the morning, and a 55 percent increase in the evening. I'm doing this a little differently but it's all listed

here. I calculated 519 vehicles in the morning on February 15th, 2003, and 850, 853 in the evening, and the two percentages, 19 percent and 24 percent, are the differential -- the difference between what they reported in the DEIS.

I then grow that number -- my number, by 2 percent per year compounded to 2014. That adds 126 in the morning and 208 in the evening. I then add the impact of the growth of Belleayre Mountain, which was left out of the DEIS entirely, and that adds 153 in the morning and 229 in the evening. Then I am assuming the project impact that they have

reported is double based on what I've already said. There are other reasons that I'll get into in a minute where I think a lot of traffic has simply been left out of the DEIS analysis. So that brings me to 2014, total of 1,202 in the morning and 1674 in the evening. At the bottom, that indicates that my volumes are -- overall for Route 28 are 60 percent higher in the morning and 58 percent higher in the evening. I think that is a realistic worse case scenario during a ski day for this project.

Now, to move on. If you go to page 12, here I'm applying all this stuff. What page 12 shows is the resulting temporal characteristics -- this would be called a no

build condition -- but this shows it not just for a single hour but for the 24-hour period of vehicles moving along 28, east of 49A. Again, taking all the information, I'm compiling all the information I just presented and creating a temporal characteristic for 2014 without this project. You can see the resulting characteristics there.

I want to touch briefly on pages 13

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

and 14.

ALJ WISSLER: Briefly define the term, temporal distribution.

MR. KETCHAM: 24-hour, temporal. In this case, it's showing you the vehicles going southbound and northbound and the total of both directions, hour by hour.

I just want to touch briefly on page 13 and 14. What I have done here is attempt -- there's no data like this in the DEIS. This is my first cut at -- first stab at making sense out of the project for each of the locations, and so what this shows is a guess at the temporal characteristics of vehicles moving into and out of each of these sites. This is what should have been presented in the DEIS. This needs to be obviously adjusted by the Applicant for what they feel is important but -- not important, what they feel is a reasonable estimate on their part based on what they understand to be the operating characteristics of facilities

like this, but this is my best judgment.

The importance of this is over to the right on these tables, says "Accumulation".

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

235

These are the number of vehicles that would be on-site at any one time. This is what establishes your parking limits. For example, for Big Indian Plateau, it looks like they're going to have about 620 parking spaces to accommodate everybody who would attend. This is assuming an 85 percent occupancy, it's not a hundred percent occupied.

ALJ WISSLER: You get to 620 because for that 12 to 1 p.m. period, that's the highest accumulation in that column there?

MR. KETCHAM: That's correct. All this is is a calculation of vehicles entering and vehicles leaving. The 383 at the top are the number of people who would be staying overnight on a continuing basis. It's an estimate on my part. It's the kind of information that needs to be provided in the DEIS so we have a clear understanding of whether or not they have sufficient parking. There's nothing provided that I can find in the DEIS about parking, other than they're providing 170 off-site spaces for employees, and that for spill-over events, they'll use their lawn to park cars. But I have no idea

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

236

how much parking is being provided at the

site.

Assignments. They have -- they report that 97 percent of the vehicles that are entering or leaving both sites will be coming from and going to the east. I don't know how they get this. They say on the one hand it's based on origin destination surveys that are not reported. They also say that it's based on existing travel behavior. Well, existing travel behavior suggests, at least for Belleayre Ski Resort, that about 35 percent of skiers come from and return to west of the site. So I don't know how they get this but in their favor, it does present a worst case along Route 28, but I don't know how realistic it is.

Then in terms of trip assignments, we come to the issue of shuttle buses during ski times. I have -- first of all, if you look at -- I've been asked to explain trip distribution and assignments. What they have done for -- and is presented very clearly in the DEIS, they spell out how for each of the project sites, how vehicles will be

distributed on at least the nearby roadway network as a proportion of total trips. Then they multiply that times their trip generation to get basically the assignment of real trips. The distribution is all within a couple miles of the site, however, and it really does not -- well, actually no, I'm sorry, I'm wrong

about that. It does go down to 214 and 42, and they have some distribution there.

I am not in agreement with some of their assignments. For example, for the 21 private homes at the top of, I guess Wildacres, they have 40 percent of the trips heading into the boondocks. I don't know how many people have driven that, but you can get lost going down there. I've driven it plenty of times going up hiking. It takes hours to find your way out of it. So I don't know where these vehicles are assigned to, perhaps everybody up there is going hiking. It doesn't make sense.

Use of Route 47 through the mountains to get -- on a snowy winter day to get to Route 17, I think that's the route that they assign a substantial amount of traffic to. It

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

doesn't make sense. Those roads are almost impassible in the wintertime.

I disagree with some of the assignments, but most distressing is what happens to shuttle buses, because if you look at their assignments, you have -- both shuttle buses and -- I get these projects confused. First of all, the shuttle bus operation, if you look at the next -- they're assuming 80 percent of all skiers are going to use the shuttle buses. I did a quick calculation. It's the one actually that's in the -- the

sheet that is independent of the package. I guess is marked number 2.

MR. GOLDSTEIN: Exhibit 2.

MR. KETCHAM: What I did there, based on my experience at Belleayre, because I use the shuttle buses, and the distance that they would travel based on the routes that are provided, I worked out a round-trip schedule for three different scenarios, and they take a long time to make a trip. For the first one, one-way trip, all stops is about 80 minutes. So the average travel time for users would be about half of that, 40 minutes. Yet with that

length of travel time in a project, I think of this quality and likely cost, I'm not so sure that folks are going to want to stand and sit on -- wait up to 40 or 50 minutes to get from their hotel to the ski slopes -- at least not 80 percent of them.

My first problem is I'm not convinced that 80 percent will use it. Maybe 50 percent, I don't know, but I think that this is the kind of analysis that should have been done to make a case of whether or not they can move people through that network of roads in any efficient way. Maybe they used 15 buses instead.

Now, the buses. If you look at their assignment of trips, in the morning they have some vehicles going into the ski area but none leaving during the peak hour. Shuttle buses

would normally go in and go out and continue their rounds. They have just nothing leaving that's been assigned in the morning, and a similar pattern in the evening. They have vehicles that leave but nothing that returns.

Moreover, from Big Indian, if you do the calculations, there may be 50 or a hundred

people that actually drive to these sites, and they're nowhere to be found. And it's my guess that they're leaving out maybe 100 vehicles during the morning and evening peak hours that have disappeared. I can't find them. And logic dictates that they have to be there somewhere.

The DEIS says about 40 percent of the folks, maybe half, are going to ski. And the question then you're left with is what do the other 50 percent do? Do they stay at the resort? Do they travel around? There's no evidence of people traveling to -- here to Margaretville to shop or perhaps traveling to other ski centers around the area. We have four others that people might want to try out. They're just -- either that was an oversight or what, but they're missing.

Let me -- before I continue, I just wanted to briefly summarize what I've said so far. Before I do that, I have to have a drink of water. First, I talked about base line conditions and the fact that I think they

under-reported base line by 40 percent.
That's important because that multiplies out
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

241

for future conditions. So they've underestimated future conditions on that basis alone.

Secondly, I said the build year, 2008, is simply wrong. It's not consistent with the rest of the DEIS. It should be 2014, or perhaps even 2018.

They have not accounted -- they have not accounted for the expansion, the planned expansion of Belleayre Ski Center. Now, maybe that's why they chose 2008, because the ski center in all likelihood won't be fully expanded before 2008.

Their trip generation characteristics are not worse case for a project of this scale and quality, and I think they have underestimated the project's impacts in that regard. There's no basis described within the DEIS for how trips are assigned to the area. There's no justification for 97 percent entering and leaving from the east.

ALJ WISSLER: From the west?

MR. KETCHAM: 97 percent of all trips generated by the project are assigned to Route 28 to east of the site. In other words, 97
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

242

percent come from the east and 97 percent return to the east. I don't know how they get that. They need to explain that.

Then there's the issue of where the shuttle trips go, have disappeared to, and where private -- where guests who have decided to drive to the ski area are. They just don't seem to be accounted for. So that's where I am so far, and that's -- there's more. I have more to talk about.

MR. GERSTMAN: Let me interrupt for one second. In Office of Hearings Exhibit 8, attached to your report is a report on transit use in resort villages in North America and Europe. That was prepared by Konheim & Ketcham for Craig Manning Associates and the LA Group concerning Lake Placid transportation?

MR. KETCHAM: Right.

MR. GERSTMAN: Would that report have equal applicability to the proposed project here?

MR. KETCHAM: Yeah, it would. This was a report that we did with Chuck Manning. We did -- they did a terrific job developing a

transportation plan for Lake Placid. We were subcontractors on that, and we basically looked at transit opportunities for Lake Placid by looking at transit use at ski areas throughout the country and Europe. We were a little bit astonished that that wasn't used and referenced in the DEIS because it was -- with the exception of us -- it was the same

team of consultants who did this job as well. Yeah, it's applicable. I think it's actually -- actually we were reading through the final report last night and it's right on target for this project.

ALJ WISSLER: So it's applicable because there was a level of analysis that was done in the Lake Placid case that you're saying wasn't done here?

MR. KETCHAM: Right. What happened in Lake Placid, they took a real hard look at transit improvements, using shuttle buses, among other things, and that hard look hasn't been made for this project.

ALJ WISSLER: The answer to my question is yes?

MR. KETCHAM: The answer is yes.

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. GERSTMAN: Let me ask you a question about the Ferradino Report submitted by the planning board of the Town of Shandaken. Have you had an opportunity to review that report?

MR. KETCHAM: Yes, I have.

MR. GERSTMAN: What are your conclusions with respect to that report?

MR. KETCHAM: I agree with much of what's included in there. Basically that report did a line by line assessment of the traffic analysis. I haven't done that. They have looked at a lot of issues that I haven't looked at. But I have read their report and I

have obviously read the traffic analysis for -- transportation analysis for this project, and I agree with most of what they said. That's not giving you much information.

We are now to mitigation. There is not a lot -- mitigation of project traffic.

MR. GERSTMAN: Your Honor, if we could talk about logistics for a minute. It's 11 o'clock. We can find out how much time Mr. Ketcham needs to conclude, and maybe how much time the project sponsor needs to rebut so we

can advise our experts who are supposed to be meeting us at 12.

ALJ WISSLER: If Mr. Ketcham is going to talk about mitigation and then conclude -- there's still an Exhibit I in your application that I need to have him walk through for me regarding level of service at intersections. We haven't done that yet. If I understand your initial opening remarks, there were concerns you have about the Route 28 corridor?

MR. GERSTMAN: That is also correct.

ALJ WISSLER: And I believe Mr. Ketcham makes a reference to impacts this project could have as far away as the New York State Thruway. I would like to hear some expansion on that. If you want to do logistics --

MR. KETCHAM: I can talk about level

of service if you want to talk about that now.

ALJ WISSLER: How much time do you need?

MR. GERSTMAN: Approximately a half-hour, 45 minutes.

ALJ WISSLER: Mr. Ketcham, are you

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

going to be available to us on another day? Let me put that differently. You need to be available to us on another day.

MR. GERSTMAN: Is it your intention to break?

ALJ WISSLER: It's my intention -- as a practical matter, unless there's some objection from the Applicant and staff, we'll allow Mr. Ketcham to complete his presentation on your behalf and any response -- we can take the response from the Applicant and staff at some subsequent time. I'm not -- I don't know how else to do this.

MS. BAKNER: I'm sorry, we do have a scheduling problem with that approach because Mr. Manning is not available to us during the other weeks that we have scheduled for the Issues Conference.

ALJ WISSLER: Then we can reschedule the site visit.

MS. BAKNER: That may be better, your Honor, and complete traffic today if you want to do that.

MR. GERSTMAN: We have two experts who have stayed over and are available for the

247

site visit.

MS. BAKNER: We made it very clear from the beginning, Marc, that Chuck is available in a limited window.

MR. GERSTMAN: And I also made it clear, Terresa, that our experts cost us resources that we do not have. To have our experts stay over, to make extra trips that they don't need to make is of great concern to us.

MR. KETCHAM: It would be really convenient for me to be here on a Friday or Monday if you have to continue.

MR. RUZOW: Our limited windows for continuing -- we had the week of the 8th through 11th and 22nd through 25th. Mr. Manning, you are scheduled during those weeks? You were not available?

MR. MANNING: The first week I'm not available, and the Monday of the following week --

MR. RUZOW: The week of the 14th, we had a problem with it. I'm just trying to see what is available as a practical matter.

ALJ WISSLER: If it comes down to me

248

making the choice here, I'm going to finish Mr. Ketcham this morning from CPC's perspective, and then we'll take your response at some later date. We'll -- I really want to

get the site visit done.

MR. RUZOW: We all do.

(11:07 - 11:31 A.M. BRIEF RECESS TAKEN.)

MR. GERSTMAN: I refer your Honor to various sections of the DEIS where the 2014 date for construction period is identified. It's page 3-196, talks about eight-year construction.

ALJ WISSLER: This is sections of the DEIS?

MR. GERSTMAN: Pages. 3-196, 3-197. The duration of the construction period is discussed as the period from four to eight years, that's on page 2-54.

There are also references to various build years on Table 7-2. There's also an eight-year construction period referred to in the Executive Summary in Roman (iv). And also Executive Summary 14 -- withdraw the last one.

Your Honor, we also want to address an

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

issue that's come up in connection with the interpretation of Table 1, and use of the Martin Luther King holiday as the base line years. Mr. Ketcham, would you address that.

MR. KETCHAM: Yes. It's been brought to my attention that I may have misspoke about this. I mentioned we had collected data on February 15th, a Saturday, in which the Belleayre Ski Center had observed about 4,000 skier trips. And for the Martin Luther King

weekend, that Saturday they had 4700 skier trips, which was about 15 percent greater than what occurred on the day we did data collection. So our data was obviously down. I actually said that earlier, that we had collected data on a low day, that's why I suggested there would be 20 percent more skier traffic on a peak day.

This may be interpreted that the data that was collected on the Martin Luther King weekend for the DEIS may have accounted for that. I don't know because I don't have data for the number of ski visits on that day for comparison. But my assertion that there was a -- one, an observed 20 percent -- my observed

traffic day is 20 percent greater than they report in the DEIS. And then I suggested on top of that, there would be another 20 percent if there was a 5,000 skier day event rather than a 4,000 skier day event, I think still holds. I don't want you to misinterpret the fact that it says here for Martin Luther King day, it's 2928 visits. I don't think it makes a difference but it could be confused and I don't want it to be confused.

I have two other clarifications. On the various tables I have been talking about showing temporal characteristics, there is a northbound and a southbound shown on each of those. Those, in fact, are -- the southbound

would be eastbound and the northbound would be --

ALJ WISSLER: What are you specifically referring to?

MR. GOLDSTEIN: Page 2 of CPC Exhibit 1, for example, your Honor.

MR. KETCHAM: I believe I'm using the nomenclature that's in the DEIS.

ALJ WISSLER: Southbound and northbound?

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. KETCHAM: Northbound would be westbound, southbound would be eastbound. I just want to make sure there's no confusion there.

ALJ WISSLER: North is west and south is east?

MR. GOLDSTEIN: That's correct, your Honor.

MR. KETCHAM: Again, I just don't want any -- that to be misconstrued. I just want to reinforce a point that was also made regarding -- that you brought up about ITE, trip generation rates. They are -- they're not seasonally adjusted, they are for any time period, and for a project like this where there are strong seasonal characteristics, those trip rates need to be adjusted up, and that is what I have done. But I just wanted to emphasize that.

ALJ WISSLER: Let me ask you this: Applying the same -- applying the same

analysis and so forth, but knowing what the totals are for the Martin Luther King day that was used in the DEIS, if you want to submit something that recalculates the numbers, I'll let you do that.

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

MR. KETCHAM: My numbers?

ALJ WISSLER: Yes.

MR. KETCHAM: I don't think my numbers would change because we're talking about two different years. I don't know what the number of skiers were on Martin Luther King Saturday weekend in 2000 when their data was taken, I know what mine were.

ALJ WISSLER: I'm sorry, did I -- I'm not understanding. What was the correction you wanted me to know about?

MR. KETCHAM: It's just making sure that its understood that when I referred to that table, I wasn't referring to Martin Luther King day which was the actual Monday where there were 3,000 skiers, I was talking about the fact that we took counts on February 15th, where there were 4,000 skiers, and on that day we reported 20 percent more traffic than is reported on, as a peak condition in the DEIS. Then I said further that because the resort has exhibited -- the ski center has exhibited upwards of 5,052 maximum skiers, that that represents another

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

25 percent of skier trips to the area, and I was correcting for that. That's where I get the 40 percent increase. I don't want to make --

ALJ WISSLER: So that would remain valid?

MR. KETCHAM: Yeah, I don't think my numbers are any different. I just don't want anybody wrongly interpreting how I used this information.

ALJ WISSLER: Okay.

MR. KETCHAM: I want to now go to level of service calculations, and just briefly discuss this. And I want to just work from page -- I guess that's 15 and 16. Throughout the DEIS, they've used standard procedures for calculating service levels for the operation of Route 28 and of those roads that are servicing both of the sites. By standard procedures, I'm talking about the Highway Capacity Manual which reports on service levels in terms of the amount of delay -- it's like a report card that you would get when you have reports on the amount of delay that motorists would suffer as traffic gets

worse. They reported on some fairly good service levels except at the entrance of the ski resort during peak periods.

ALJ WISSLER: For the sake of the record, I am looking at CPC Exhibit 1, pages 15, 16, 17 -- 16 and 17, and you also have

Exhibit I in your application?

MR. KETCHAM: Could I come look?

ALJ WISSLER: Sure. I need you to walk me through Exhibit I. I need to have it in front of me when you do it.

MR. GOLDSTEIN: We'll see if we can find our copy of that.

ALJ WISSLER: So is CPC 1's exhibit incomplete? Does it need those extra pages of that Exhibit I?

MR. KETCHAM: Let me talk about what you have in front of you.

ALJ WISSLER: Part of it is part of CPC Exhibit 1?

MR. KETCHAM: Right.

ALJ WISSLER: Since everybody has that, if you want to start with that, that's fine. I'm just pointing out that there is an additional diagram and explanatory data in

Exhibit I, so why don't we do what we all have.

MR. KETCHAM: What I did was I just described the level of service calculations of the Highway Capacity Manual, and the standard test procedures for estimating how an intersection works. What I did was to go a step beyond that to actually simulate the operation of this intersection. I just did the one, the p.m. peak hour at CR 49A and Route 28. What I did was to simulate

conditions as described in the DEIS, and then I looked at conditions that would occur with what I think is a more realistic 2014 traffic load for that area. What we get -- with a signalized intersection which is part of the mitigation proposed in the DEIS -- and what's shown there is that for 2008, for the much lower traffic volumes, the intersection worked pretty well with the traffic signal. It will process the traffic that they report will occur.

However, if you load in the traffic I think will occur by 2014 with the project, it doesn't work so well, even with all of the

mitigation, with the left turn and the added right turn lanes, and optimizing the intersection for best performance. You still have significant delays occurring in the westbound direction -- I'm going to use westbound and northbound. I know it's different on the tables, but you get a level of service here in the evening peak hour entering the site going westbound off of Route 28 and exiting the site, where, by 2014, with the expansion of the ski area, you may have as many as 1100 vehicles trying to get out of the site in one hour.

ALJ WISSLER: What you have just said, is that summarized in 16 and 17 of CPC 1?

MR. KETCHAM: Yes.

ALJ WISSLER: Take me to page 17 of

CPC 1.

MR. KETCHAM: 16?

ALJ WISSLER: 16 is the diagram of the intersection.

MR. KETCHAM: It's 15 and 16 on mine.

ALJ WISSLER: You're right. 15 is the diagram.

MR. KETCHAM: 16 is the results. Let

me briefly describe the simulation model. Basically what the simulation does is to visually characterize the Highway Capacity Manual, only it goes many, many steps beyond that, not just to exhibit how vehicles will operate, but statistically manages the traffic flow. The problem with the Highway Capacity Manual is that it's static. It takes an hour's worth of travel, it adjusts for a 15-minute worst case and calculates a result. What the model does is look at how traffic actually moves through an intersection over an hour, and it continually adjusts that. So you have random vehicles entering and leaving, and you can actually visually see that, and the calculation of performance of the intersection is reflected as well. What you have in 15 is just a snapshot of what's on the screen here showing you the configuration, as I understand has been proposed in the DEIS. Then the next page is --

ALJ WISSLER: Before we move on. 15,

each one of the little rectangles represents a vehicle?

MR. KETCHAM: It's a car.

258

ALJ WISSLER: But it doesn't represent a quantity of vehicles, one car?

MR. KETCHAM: One car.

ALJ WISSLER: And the space between them is --

MR. KETCHAM: The headway.

ALJ WISSLER: Does an inch equal 10 seconds or something like that on that? Do you know what I'm saying?

THE WITNESS: It's scaled pretty well, but I wouldn't go so far as to say that. This program will tell you what the average travel speed is along here, if that's what you're getting at. Carolyn is just whispering it goes minute by minute, actually it goes second by second, and it varies continuously. It's driven by -- statistically driven so that each minute that you're observing, looking at it, is different from the previous one or the next one. It gives you a snapshot on how the real world really works. This is moving actually four times real speed. If I put it on real speed, you would be astonished how slow the traffic is moving.

ALJ WISSLER: Is that something you

259

want to offer?

MR. GERSTMAN: Yes, I would like to

offer the simulation but we don't have any copies now for any of the parties or your Honor.

MR. KETCHAM: How are you going to do that? I can give you a copy of the software, of the program.

ALJ WISSLER: Is that something that -- just that simulation, can that be copied to a three and a half inch floppy or to a CD?

MR. GERSTMAN: We can look into it.

MR. KETCHAM: I don't know -- without the software --

ALJ WISSLER: Whether you can run it?

MR. KETCHAM: -- which is expensive, you can't run it. We haven't done this before so I don't know. We might be able to put it on CD so you can actually see it operating. I would have to go back to my office and see if my guys could do that. We've never done it before.

ALJ WISSLER: You're going to have to. If you're going to rely on it and you want to talk about it, it has to be in the record.

MR. GERSTMAN: I agree, your Honor.

MR. KETCHAM: Actually, I've seen other people do it.

MR. GERSTMAN: What's the model?

MR. KETCHAM: Synchro.

ALJ WISSLER: Can you make a little video of that running, a little CD of that

running?

MS. BAKNER: Your Honor, since they do have the software, we would like to request it so that we can inspect it.

ALJ WISSLER: That would be great, since I don't have the software --

MR. GERSTMAN: Before we agree to provide anything, I'm not quite sure what the request was for.

MS. BAKNER: It's for exactly what the Judge requested, which is the run, the information, the data, so that we can enter the same data in our system.

MR. GERSTMAN: I'm sure they can coordinate what the information is. There's no discovery in this proceeding, as we know, so I'm not going to provide information other than to provide --

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

ALJ WISSLER: If that can be downloaded to a CD so that I can view it.

MS. BAKNER: We withdraw the request. We don't need it. We have the numbers so we'll be fine. We'll run them ourselves.

MR. GERSTMAN: We'll try and provide you with a copy of it.

ALJ WISSLER: It still leaves me traffic-less, program-less.

Mr. Ketcham, can you briefly run me through 16; how those numbers break out, how I should be reading them.

MR. KETCHAM: 16 is one of the data

sheets that shows the volume of traffic, the movement of traffic. I think there's enough here for Chuck Manning to re-create what we have done, and it gives you the levels.

ALJ WISSLER: I need to understand what you did, sir.

MR. KETCHAM: I understand. So all this does is show you what data, what the assumptions are that were entered into the model, and what the results are of that modeling effort. And if you go to the bottom -- sort of two-thirds of the way down the

page, it says LOS. So that gives you both the level of service for each approach lane to the intersection, as well as the total level of service for the approach. It also gives you the delay for both, each approach lane and for the total approach to the intersection.

ALJ WISSLER: Just define some terms for me; protected phases, permitted phases, what is that?

MR. KETCHAM: If you look at the bottom of the -- this is just the nomenclature that controls the signal timing and phasing at the bottom. Do you see that diagram?

ALJ WISSLER: Okay.

MR. KETCHAM: So that just represents the signal timing and phasing that's shown in that diagram.

ALJ WISSLER: Control delay, cue

delay, total delay?

MR. KETCHAM: The important thing here is the total delay for each approach. And you see, for example, under the westbound left turn, it says 78.4 seconds. That's the delay suffered by each vehicle.

ALJ WISSLER: Whose westbound left

lane?

MR. KETCHAM: That's turning into the ski area. That's got a level of service E. It's very close to breakdown conditions. Very close to level of service E.

ALJ WISSLER: With respect to the lane groups; east, west, those designations are all accurate?

MR. KETCHAM: They are the same --

ALJ WISSLER: Is east, west, northbound -- the same corrections you made earlier?

MR. KETCHAM: I see. Well, it's the same deal. For example, northbound is really eastbound -- I'm sorry, northbound is northbound. This is true. This is laid out with an aerial map of the area so its -- so the program itself assigns the direction, and so the northbound is northbound on CR 49A leaving the ski area, ski center. And the westbound -- you see the westbound left turn is the westbound traffic entering into the ski area.

What this shows is as compared to the

previous analysis for 2008, that the
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

intersection, even as signalized, does not function anywhere near as well. You're still going to get back-ups along -- particularly along County Road 49A. Today you leave the ski area with even 4,000 vehicle trips, and traffic backs up to the upper parking area. They have the police out there directing traffic and they're still -- for an hour, there's still a huge back-up. That's basically reflected in these numbers with the traffic signal.

I guess my bottom line here is that conditions along -- not just at the entrance but along Route 28 are going to be considerably worse with full build out in 2014 under the conditions I have described and have been described in the DEIS.

You had asked earlier about -- not just near the site but along 28. I have not analyzed conditions that are east of the site all the way to I-87. I can only tell you that I drive that all the time and that a traffic increase of this magnitude is going to propagate along there. I think you're going to see, in particular during peak periods like
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

a Friday night where people are trying to get to the slopes, and on a Saturday and a Sunday night when they're leaving, there will be

greater delays. Right now, you can travel at 50, 55 miles an hour where it's posted for that. My experience, when you get -- any significant amount of traffic that occurs today -- that those speeds decline to 45 miles an hour.

And you can run the numbers, and I did a quick calculation of that. You can run the numbers for the delay that we'll experience with this growth of travel, and you may face during a typical Saturday 1500 to 2000 additional hours of delay, person hours of delay, as a consequence of the kind of traffic that I'm talking about because of the slower operation of vehicles along 28.

ALJ WISSLER: I want to go back to one final point here. The percentage of folks -- there was some assumptions about whether they would be coming from the east or the west?

MR. KETCHAM: Right.

ALJ WISSLER: The percentage of folks that would be coming along the Route 28

corridor from Kingston over to the site, what percentage of the total --

MR. KETCHAM: They report -- I don't remember the details at Kingston, I don't think they reported it at Kingston. But they report that 97 percent of vehicles that are arriving at the two project sites will come from the east and return to the east. Some of them by roads other than Route 28. There's

some assignments to Route 42, there's some assignments to Route 47, but basically the lion's share are traveling to and from the east along 28. That doesn't match existing travel patterns we have reported on and that they reported on.

ALJ WISSLER: Explain that to me. What do you mean?

MR. KETCHAM: If you look at the traffic volumes moving through CR 49A and Route 28, you'll see that 35 percent are moving to and from the west, 65 percent the other direction, to and from the east.

ALJ WISSLER: Those percentages, is that an annualized percentage or is that --

MR. KETCHAM: That's just for the

measurements that they took and that I took for a peak Saturday.

ALJ WISSLER: So this would be during the ski season?

MR. KETCHAM: During the ski season, that's right. I think there would be a very different pattern off season, but I personally have not examined that.

ALJ WISSLER: Okay.

MR. GERSTMAN: Let me ask, Mr. Ketcham: In terms of the Route 28 corridor, is it your opinion that the DEIS accurately reflects the available capacity for the Route 28 corridor at the time that you indicated the

project would be built to completion?

THE WITNESS: No, of course they didn't estimate those conditions in 2014. What they did report is near the site that there would be considerable available capacity on Route 28. That will be significantly diminished in 2014 with the numbers I presented.

MR. GERSTMAN: Would you say that the seven intersections analyzed in the DEIS is an adequate evaluation of the potential traffic

impacts from the project, or would you have suggested or recommend, as I believe you are doing, that the entire Route 28 corridor ought to be evaluated?

MR. KETCHAM: I think the entire corridor should be evaluated, and I'll get to something relating to that, and I think demonstrating the significance of doing that. The answer is yes.

ALJ WISSLER: How much more do you have, Mr. Ketcham?

MR. KETCHAM: Just a few minutes. I want to get into some stuff that is new, and if you permit me, I can go through this very quickly. I basically already talked about mitigation, so I'm going to skip that. They don't have a lot of mitigation. The mitigation does occur at the traffic signal at CR 49 and 28. I think the other mitigations are the shuttle buses, which I've already

discussed, remote park and ride. And something that needs to be accounted for by them is the scheduled check-in\check-out during off peak hours. That would affect travel behavior, and we need to understand

that on a 24-hour basis, not just as a one-liner.

I've already covered the travel times along Route 28. I've already covered the parking needs that demonstrated that they can calculate how much parking they need. And we just don't know -- they need to do that so they can demonstrate whether or not they're providing sufficient parking.

The one new issue that I would like to introduce is on externality costs. These are the costs associated with adding more traffic to the Route 28 corridor, and along I-87, among others. Externality is a thing like increased travel times, congestion, lost productivity, increased traffic accidents, costs that are not covered by insurance, and the environmental impacts of adding traffic to the area.

I've already said that I believe the project over a period of a year will add about a half million new cars to the area, particularly those two corridors. I have calculated that that would generate about 77 million added miles of travel which will

impact everybody else who is currently on the roadway system.

If you turn to page 17, you'll see my summary of a calculation of those externality costs. They come to about $27 million a year. These are costs to society that will be created by adding 77 million miles of travel to the corridor. The congestion loss is traffic accident costs not paid for by insurance are the big ticket item, but there are environmental -- you can see there the environmental damages.

There's also damages to our roadway system. Every time a car obviously drives on the highway system, it produces some wear and tear. And we can actually calculate these damages, both to the pavement and to the cars that smash into potholes and the like. And it comes to about 27 million dollars in a year. Very substantial.

I have to say that frequently people just scoff at this and write it off, but I don't know if anybody has seen the latest issue of National Geographic. Here's a conservative magazine that did an article just

recently about our looming oil crisis, and even they acknowledge that there are very substantial externality costs to auto driving. The costs are real. They are borne by society every single day, and they should be part of

the calculation of the benefits and costs of any kind of project. So I'm offering that.

ALJ WISSLER: What's vibration damage?

MR. KETCHAM: Vibration to nearby buildings. Basically heavy trucks that would be servicing this facility. Going along 28, they hit a pothole, they cause a vibration to occur, and they have real costs to those people who live and work along the Route 28 corridor. These are -- the damage to private vehicles are just that. A vehicle is driving along, hits a pothole, breaks an axle. Those are real costs to the motorists. All of this can be quantified today, and we do it as a matter of course.

ALJ WISSLER: Real quickly, what did you use to calculate these numbers?

THE WITNESS: I've been doing this for projects for 25 years based on research that's been done in this country and Europe, and

developed analogs that calculate these things. It's really very simple. Over the years we have been able to establish what the cost is, what the externality costs are per mile of travel for various types of vehicles. And if you want, I can provide you with some of that information that demonstrates the background for that and what those characteristics are.

MR. GERSTMAN: In your professional opinion, are these costs generally accepted in

your profession as representing the externalities of increased traffic in vehicle use?

MR. KETCHAM: Well, I was glad to see that the U.S. Department of Transportation provided the data to National Geographic for their report. So yes, clearly increasingly, they are used. And in fact, if you look at the next page -- this is a little different way of calculating it. This is using New York State Department of Transportation accident rates and the cost of the accident, cost per accident, and calculating out. Their number is based -- we're looking at, for example, another traffic death a year as a consequence

of this project, another 37 people injured as a consequence of adding 77million miles of traffic.

And the State DOT is very conservative. Their analysis, this is in 2002 dollars. It's about seven million dollars in damages to society. I can tell you, we use these numbers in every single accident analysis that we do for the New York State Department of Transportation. These are official numbers.

ALJ WISSLER: Was there a base annual vehicle miles traveled number that you used to arrive at that?

MR. KETCHAM: It's listed right here. I calculated the -- I calculated, estimated

that it says 76,617,000 miles. If you look at page 18, look over to the top left, that's the annual BMT by roadway type that I've estimated for this project. That's not based on a whole lot of information because the DEIS doesn't address this. I've had to estimate these figures. I would say these are ballpark results, they're probably pretty close. It would be helpful for the DEIS to provide a

(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

sufficient body of information to actually calculate this, or should calculate these numbers themselves. And that concludes my remarks.

MR. GERSTMAN: If I might, your Honor, we would like to supplement the record possibly at the next appearance concerning the pages from the ITE handbook that you have inquired about. We will inquire certainly about how to replicate the Synchro model for your use.

ALJ WISSLER: I had a question about the correlation of the numbers on the first two pages.

MR. KETCHAM: You want me to develop a memo describing that or sit down and show it to you?

ALJ WISSLER: No, just show me how I can do the same math.

MR. GERSTMAN: Finally, your Honor, we do -- have contended in our petition that the

traffic impacts, we're starting to see, have a direct impact on community character, both in terms of delay, in terms of the externalities that Mr. Ketcham has identified in terms of
(BRIAN T. KETCHAM, P.E. - TRAFFIC ISSUE)

275

the type of impacts on rural experienced mountain landscape, and the forest preserve impacts. We will, subject to connection with our other experts, identify why traffic will have an adverse significant impact on community character.

ALJ WISSLER: If during that presentation, you need to have Mr. Ketcham provide extra remarks, that's fine.

MR. GERSTMAN: I'm not sure that we would, your Honor, I think the summary of his report and the additional information you require --

ALJ WISSLER: I'm just telling you I won't preclude you from doing that.

MR. GERSTMAN: Thank you, your Honor.

ALJ WISSLER: Anything else?

(NO AFFIRMATIVE RESPONSE.)

ALJ WISSLER: What we're going to do then at this time is to adjourn the Issues Conference until June the 7th.

MR. RUZOW: The 7th if Marc can confirm that.

MR. GERSTMAN: Your Honor, I do want to make --
(CLOSING REMARKS - CROSSROADS VENTURES)

276

ALJ WISSLER: You wanted to make some

remarks?

MR. GERSTMAN: Yes.

ALJ WISSLER: But I mean, the Issues Conference in this matter will be continued on June the 7th, 9 o'clock in this building.

MR. GERSTMAN: Subject to confirmation.

ALJ WISSLER: Subject to confirmation, and definitely June the 8th at 9 o'clock in this building. Mr. Gerstman.

MR. GERSTMAN: Thank you, your Honor, I'll be brief. I know we have some of our experts waiting and we're set for the site visit.

Your Honor, the other day, I guess was Tuesday, the beginning of the Issues Conference, I made an application that the press be allowed to attend the site visit. Your Honor issued your ruling that you would neither compel, nor deny the press -- correct me if I'm misstating what your ruling was -- the obligation of the press. And you left it essentially to the developer to consent to access, and with the developer's consent, that

opportunity would have been afforded to the press. That's my understanding of what your Honor had stated.

The press has made an application to Crossroads Ventures to obtain entry to the site. Mr. Powers has informed me that he has

been denied access by the project sponsor. We believe that this is a fundamental denial of the press to have an opportunity to report on a significant aspect of this public hearing process.

As you know, your Honor, we are -- you have precluded us from offering opinion and argument concerning any of the substantive issues, that the site visit is being used as a way to identify for your Honor those areas that are significant and important, and will, in fact, be discussed later on in the hearing process or the Issues Conference. With that understanding, however, it is important for the press to have access to represent to the public, to be able to identify to the public these areas that your Honor has either expressed interest in or that the project sponsor or our experts have identified as

being significant. There were many of those instances that took place in our site visit on Wednesday, not the least of which was the lightening strike while we were walking through the forest.

Your Honor, we believe that it's an essential part of the Issues Conference, the hearing process, that the press be provided access, and we take exception to the Applicant's refusal to allow, in this case the Phoenicia Times, to have access. We don't believe that a special press opportunity to

visit the site without your being present, without us being present, is sufficient to substitute the right of the press to be present during this public hearing process. Thank you.

ALJ WISSLER: Mr. Ruzow.

MR. RUZOW: We have provided -- the Applicant has provided the press with an opportunity to visit the site. We respectfully decline to provide an opportunity to -- for the press to attend the site visit by your Honor and counsel. As we discussed before, we tried to limit the number of people

coming on the site, for both the importance of being able to timely visit the site, and get through all the things we need to do. And we just -- there's nothing further that needs to be said.

The opportunity would be provided if the press is interested in seeing the site to a larger press group than an individual representative of a particular paper.

ALJ WISSLER: Mr. Ruzow, have there been any plans made with respect to that subsequent site visit by the press?

MR. RUZOW: Not yet. We need to contact -- provide an opportunity and contact the press that's interested. Most of the press that has expressed an interest in visiting the site have already been provided

with opportunities, along with most of the members of the CPC organizations. And we'll been glad to try to set something up. But as you know, this just came up in the last day or so, and all we did was contact the two representatives that expressed an interest at Tuesday's meeting.

MR. GERSTMAN: Your Honor, one brief response. Whether there's one member of the press corps who wants to get on or many, this has been a publicly reported proceeding, the press understands when it was going to take place. The Phoenicia Times, Mr. Powers was here and made that application. It doesn't matter that others could have and didn't make that application or request. The fact of the matter is that he did. Thank you.

ALJ WISSLER: Okay. I'm not sure a response is really required from me. My ruling is as it is. It is, however, my understanding that the Applicant will be providing the press opportunity for a future site visit.

Again, I'm going to emphasize what I said the other day. There are no decisions, there is no argument with respect to the features that we are seeing, the environmental features that we are observing. It's just to make sure that all participants in this Issues Conference have familiarity with the site in order to facilitate the Issues Conference

process.

We are done here, and we're off to Big Indian I guess.

(12:18 P.M. - WHEREUPON, THE ABOVE ISSUES CONFERENCE PROCEEDINGS ADJOURNED FOR THE DAY.)

C E R T I F I C A T I O N

I, THERESA C. VINING, hereby certify and say that I am a Shorthand Reporter and a Notary Public within and for the State of New York; that I acted as the reporter at the Issues Conference Proceedings herein, and that the transcript to which this certification is annexed is a true, accurate and complete record of the minutes of the proceedings to the best of my knowledge and belief.

THERESA C. VINING

DATED: May 28, 2004.