

1 ISSUES CONFERENCE VOLUME 4
2
3 In the Matter of the Applications of
4 CROSSROADS VENTURES, LLC
5
6 for the Belleayre Project at Catskill Park
7 for permits to construct and operate pursuant to
8 the Environmental Conservation Law

8 Margaretville Fire House
9 Margaretville, New York
 June 9, 2004

10 B E F O R E:

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12 Administrative Law Judge

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IDENT.

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(COMMUNITY CHARACTER ISSUE)

601

1 June 9, 2004

2 (9:31 a.m.)

3 P R O C E E D I N G S

4 ALJ WISSLER: I'd like to begin by
5 taking the appearances of counsel.

6 MR. GERSTMAN: Marc Gerstman and
7 Cheryl Roberts for the Catskill.

8 MR. ALTIERI: Vincent Altieri and
9 Carol Krebs for the DEC.

10 MR. RUZOW: Daniel Ruzow and Terresa
11 Bakner for the Applicant.

12 MR. BURGER: Michael Burger, Daniel
13 Greene for the City.

14 MR. BAKER: Jeffrey Baker and Kevin
15 Young for the Coalition of Watershed Towns,
16 Delaware County, Town of Middletown and Town
17 of Shandaken.

18 ALJ WISSLER: The schedule for today
19 calls for us to consider the issues of
20 community character and secondary growth.
21 Before we begin, however, Mr. Baker, I believe
22 you have something for the record.

23 MR. BAKER: Yes, your Honor. The
24 petition submitted previously by the Coalition
25 of Watershed Towns, Delaware County and the

(COMMUNITY CHARACTER ISSUE)

1 Town of Middletown, we request that that be
2 amended to add as a party the Town of
3 Shandaken as represented by the Town Board of
4 Shandaken, and ask that this be accepted as a
5 late petition.

6 The reasons for the late petition are
7 the same as the original motion on behalf of
8 the other parties. The Town of Shandaken
9 simply acted in response to the initiative
10 from the Coalition of Watershed Towns and the
11 Town of Middletown and saw its interests in
12 participating in these proceedings to protect
13 the record for the local interest which it is
14 interested in maintaining and promoting.

15 The Town of Shandaken is not offering
16 any different issues for adjudication than
17 were presented in the original petition. The
18 amended petition which has been handed out to
19 your Honor and the parties elaborates and adds
20 some additional witnesses that may be called
21 on -- primarily on the issues of community
22 character and stormwater impacts in the
23 watershed communities. We're not asking to
24 delay or change any of the schedule that your
25 Honor has set and ask that the amended

(COMMUNITY CHARACTER ISSUE)

1 petition be accepted.

2 ALJ WISSLER: The bottom line is
3 you're adding folks is all you're doing to
4 your original petition?

5 MR. BAKER: Yes, just adding the Town

6 of Shandaken.

7 MR. YOUNG: Just that we also
8 identified some additional witnesses, but on
9 those same issues.

10 ALJ WISSLER: The document I have in
11 front of me, Amended Petition for Party Status
12 dated June the 8th, this is your submission
13 too?

14 MR. YOUNG: Correct.

15 ALJ WISSLER: Nothing additional?

16 MR. YOUNG: And a copy has been given
17 to each party.

18 ALJ WISSLER: We'll mark this as
19 office of Hearings Exhibit 14.

20 (AMENDED PETITION FROM YOUNG SOMMER
21 RECEIVED AND MARKED FOR IDENTIFICATION AS OHMS
22 EXHIBIT NO. 14, THIS DATE.)

23 MR. GERSTMAN: Your Honor, we just
24 received the amended petition, as you
25 mentioned, and I'm not sure if your Honor

(COMMUNITY CHARACTER ISSUE)

1 would accept comments from the CPC at a later⁶⁰⁴
2 date or later time today after we've had a
3 chance to review the amended petition.

4 ALJ WISSLER: I'll hear your comments,
5 sure.

6 Mr. Ruzow, anything you want to say?

7 MR. RUZOW: No, your Honor, it's
8 pretty straightforward. Everyone just has to
9 keep your voices up.

10 ALJ WISSLER: The room is full, and
11 the windows are open. I think we're going to
Page 7

12 be quite a match for the air conditioning
13 today.

14 Are we ready to begin?

15 MR. GERSTMAN: One housekeeping detail
16 from yesterday. We have the resume of
17 Christopher Olney. I'd like to ask your Honor
18 to mark that as CPC Exhibit 10.

19 (RESUME OF CHRISTOPHER W. OLNEY
20 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
21 EXHIBIT NO. 10, THIS DATE.)

22 ALJ WISSLER: Folks, I need to end
23 today as close to 5 o'clock as possible.
24 We're going to proceed. Don't expect anything
25 but a short lunch break. Mr. Gerstman.

(COMMUNITY CHARACTER ISSUE)

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1 MS. ROBERTS: Good morning, your
2 Honor. My name is Cheryl Roberts, I'm an
3 attorney with the law office of Marc Gerstman.
4 I'm here on behalf of the Catskill
5 Preservation Coalition. As you said at the
6 outset of these hearings, in order for an
7 issue to be adjudicable, it must be both
8 significant and substantive. CPC believes
9 that community character is both substantive
10 and significant; yet the DEIS dismisses the
11 issue because they claim the resort will be
12 fairly "self-contained," and thereof will not
13 have an impact on community character beyond
14 the boundaries.

15 Yet from the outset of the DEIS right
16 from the beginning, the sponsor's vision is to

17 really have some kind of renewed ambiance for
18 the entire region, and in fact on Roman
19 numeral III of the DEIS, it says, and I quote:
20 "The resort is intended to be the catalyst
21 that will drive the revitalization of
22 year-round tourism and provide improvements to
23 the quality of life for those who live in, as
24 well as those who visit the Catskill Park."

25 It further says, quote: "Essential to
(COMMUNITY CHARACTER ISSUE)

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1 the success of any resort is a critical mass
2 of first-class and family accommodations,
3 year-round activities, event excitement, an
4 extensive menu of recreational amenities,
5 which taken together, define the area and
6 provide for a range of recreational
7 experiences. The Belleayre Resort at Catskill
8 Park is intended as a major contributor in the
9 provision of such ambiance and renewed
10 regional image."

11 So clearly right from the beginning,
12 this project is about regional image, about
13 affecting an area certainly beyond the
14 boundaries of this project.

15 Based on these contradictory claims in
16 and of itself, CPC believes this issue would
17 lead a reasonable person to inquire further
18 about the issue of community character. Our
19 witnesses will show that, in fact, the resort
20 will have significant adverse environmental
21 impacts to the surrounding communities.

22 You have already heard about some of
Page 9

23 those impacts that related to community
24 character. We'll hear more about traffic.
25 You've heard about visual impact and noise

(COMMUNITY CHARACTER ISSUE)

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1 impacts, all of which have an impact on a
2 community's sense of place.

3 Our experts today will also talk about
4 various socioeconomic impacts related to
5 community character, such as existing land
6 use, natural resource use, recreational
7 resource opportunities, population growth and
8 secondary growth impacts.

9 In subsequent days, the CPC will
10 present witnesses on forest impacts, and these
11 too are related to community character because
12 this area is really defined by the forest and
13 the forest preserve and has been for the last
14 100 years. As you know, the park is
15 celebrating its 100th anniversary this year.

16 Before I introduce our witnesses,
17 however, I wanted to just state the CPC has a
18 fundamental disagreement with the way the DEIS
19 defines, from the outset, the communities. We
20 believe the DEIS severely underestimates the
21 strength and vitality of these communities,
22 and so paints a picture that is fairly
23 depressing, that at best maybe the Catskill
24 Center and others have worked together and
25 succeeded in maybe some small projects,

(COMMUNITY CHARACTER ISSUE)

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1 planting some flowers and painting some

2 facades, but that what's needed here is what
3 they suggest as some kind of community
4 character makeover.

5 Our witnesses are here though this
6 morning to paint a different story about the
7 community, and yet none of these witnesses are
8 anti-development. What they are for is
9 development that's sustainable,
10 environmentally sound and limited, really, to
11 the valleys.

12 At this point I would like to
13 introduce our first witnesses but just run
14 through quickly who our witnesses are. We
15 have Thomas Alworth and Helen Budrock, both
16 from the Catskill Center, followed by
17 Mr. DiModica, Joyce Greenberg who is a local
18 real estate agent. Susanna Margolis to
19 discuss this project from a hiker's
20 perspective. Ms. Judith Wyman to talk about
21 community character of Phoenicia, and then
22 Mary Kopaskie from Peter J. Smith Associates,
23 and she's a planner and will be talking about
24 the overall DEIS.

25 We will also be presenting a couple

(COMMUNITY CHARACTER ISSUE)

1 other witnesses on this issue, a fishing guide⁶⁰⁹
2 who we just couldn't get here today because I
3 guess this is high time for trout fishing, so
4 they're all out, but it's people from out of
5 state, but they're coming in, I think the
6 18th. Then we also --

7 ALJ WISSLER: I guess we should take
Page 11

8 Mr. Alworth first.

9 MS. ROBERTS: Yes, we are. At this
10 point I would like to introduce Thomas Alworth
11 and Helen Budrock, and I have their CV's and
12 their statements, so I can pass those out.

13 ALJ WISSLER: These curriculum vitae
14 are not part of the submission you already
15 gave me?

16 MS. ROBERTS: No, these are not.

17 ALJ WISSLER: Exhibit 1 will be the
18 curriculum vitae of Tom Alworth.

19 (CURRICULUM VITAE OF TOM ALWORTH
20 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
21 EXHIBIT NO. 11, THIS DATE.)

22 ALJ WISSLER: Exhibit 12 will be his
23 statement.

24 (STATEMENT OF TOM ALWORTH RECEIVED
25 AND MARKED FOR IDENTIFICATION AS CPC EXHIBIT

(COMMUNITY CHARACTER ISSUE)

1 NO. 12, THIS DATE.)

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2 ALJ WISSLER: And Exhibit 13 will be
3 the curriculum vitae of Helen M. Budrock.

4 (CURRICULUM VITAE OF HELEN M. BUDROCK
5 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
6 EXHIBIT NO. 13, THIS DATE.)

7 ALJ WISSLER: Exhibit 14 will be a
8 document entitled, "A Sense of Place, The
9 Catskills."

10 ("THE CATSKILLS, A SENSE OF PLACE"
11 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
12 EXHIBIT NO. 14, THIS DATE.)

13 ALJ WISSLER: Exhibit 15 will be
14 Catskill Center Programs, the presentation
15 which appears to be a Power Point presentation
16 we'll be seeing.

17 (DOCUMENTS CONCERNING POWER POINT
18 "CATSKILL CENTER PROGRAMS" RECEIVED AND MARKED
19 FOR IDENTIFICATION AS CPC EXHIBIT NO. 15, THIS
20 DATE.)

21 ALJ WISSLER: Exhibit 16, a document
22 entitled, "Resource Protection and Economic
23 Development Strategy for the Route 28
24 Corridor."

25 ("RESOURCE PROTECTION AND ECONOMIC
(COMMUNITY CHARACTER ISSUE)

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1 DEVELOPMENT STRATEGY FOR THE ROUTE 28
2 CORRIDOR" RECEIVED AND MARKED FOR
3 IDENTIFICATION AS CPC EXHIBIT NO. 16, THIS
4 DATE.)

5 ALJ WISSLER: CPC Exhibit 17 will be
6 "State and Local Governments Partnering for a
7 Better New York."

8 ("STATE AND LOCAL GOVERNMENTS
9 PARTNERING FOR A BETTER NEW YORK" RECEIVED AND
10 MARKED FOR IDENTIFICATION AS CPC EXHIBIT
11 NO. 17 THIS DATE.)

12 ALJ WISSLER: CPC Exhibit 18 will be
13 pages from the "West of Hudson Economic
14 Development Study for the Catskill watershed
15 Corporation, Technical Appendix Number 1."

16 ("WEST OF HUDSON ECONOMIC DEVELOPMENT
17 STUDY FOR THE CATSKILL WATERSHED CORPORATION"
18 TECHNICAL APPENDIX 1" RECEIVED AND MARKED FOR

19 IDENTIFICATION AS CPC EXHIBIT NO. 18, THIS
20 DATE.)

21 ALJ WISSLER: Ms. Roberts.

22 MS. ROBERTS: I'll turn it over to
23 Mr. Alworth.

24 MR. ALWORTH: Thank you, your Honor,
25 and I apologize with the snafu for my name.

(COMMUNITY CHARACTER ISSUE)

1 These were notes, and after I realized I would⁶¹²
2 be reading most of it, I thought it would
3 better serve everybody if I just submit it, so
4 I apologize for that.

5 You have my CV for the background. I
6 do want to just say I've had a second home in
7 the Catskills since 1962, temporary second
8 home obviously. I think what I would want to
9 do, really, to set the context for today in
10 terms of community character, because I think
11 the Catskill Center is unique to do so in that
12 we are -- I wouldn't say the only -- but one
13 of the few organizations, not only in the
14 Catskills but in a lot of places, that is
15 committed to both conservation as well as
16 economic development and community growth.
17 And it's very hard work, it's difficult, and
18 as I'll get to, we learn as we go, to a great
19 extent.

20 I will not be too long here. Let me
21 begin with the mission statement of the
22 Catskill Center. The Catskill Center
23 stimulates, conducts and supports integrated

24 actions to protect vital ecosystems and unique
25 landscapes --

(COMMUNITY CHARACTER ISSUE)

1 ALJ WISSLER: You're reading from CPC⁶¹³
2 Exhibit 12.

3 MR. ALWORTH: The Catskill Center
4 stimulates, conducts and supports integrated
5 actions to protect vital ecosystems and unique
6 landscapes, to enhance economic opportunities
7 for all the region's residents, to preserve
8 cultural and historic assets and to further a
9 regional vision and spirit. We conduct our
10 work through four general program areas. We
11 are a land trust, so we hold conservation
12 easements on properties.

13 we have a cultural program; and in
14 that program, there's an arts gallery at the
15 Catskill Center.

16 we also have an artist-in-residency
17 program on the Platt Clove on the eastern
18 escarpment of the Catskills, and we have an
19 education program where we developed a
20 standards-based interdisciplinary curriculum,
21 The Catskills, a Sense of Place, and we
22 submitted one of the five modules. It's
23 Module 5, Culture and Arts of the Catskills.
24 We think this is important, particularly
25 Lesson 5 of that module which is entitled,

(COMMUNITY CHARACTER ISSUE)

1 "Building Catskill Communities." It's⁶¹⁴
2 important because we believe if we hope to
3 maintain community character, it's not only

4 done in proceedings like this but also by our
5 teachers in our schools everyday.

6 Lastly, the fourth program area, what
7 is most important for today is our community
8 planning work. I also want to note we receive
9 funding from diverse sources, from members --
10 we are a membership organization -- state,
11 federal funding, as well as private
12 foundations.

13 We were born out of the modern
14 conservation movement in the sixties, and have
15 evolved through the past 35 years, hopefully
16 upward. Like the environmental movement in
17 general, we have begun more often to consider
18 community and economic development in the
19 Catskills, and in general, because we
20 recognize fully that poverty is enemy number
21 one of environmental health, not just here but
22 worldwide.

23 Building sustainable communities is
24 our goal. Sustainability has been rendered
25 almost useless as a word. I think, I read

(COMMUNITY CHARACTER ISSUE)

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1 somewhere there's 125 definitions of
2 sustainability. Who does it? How do we do
3 it? Part of the issue here is we're all
4 victims of our training, our dogma. Nobody
5 over the age 40 is really trained -- maybe
6 even younger -- in developing sustainable
7 communities. We're learning this as we go.
8 There is no major in college, "sustainable

9 community growth."

10 This project, the Belleayre Resort at
11 Catskill Park has forced all of us, everyone
12 in this room and beyond, to think hard about
13 the future of this region, to think about it
14 probably faster than we're prepared to think
15 about it. But that's not all bad. We
16 probably are pushing our thinking forward 15
17 to 20 years ahead of schedule because of this
18 project, and perhaps a lot could have gone
19 wrong had we not been here doing this.

20 Community character is difficult to
21 measure. It's not like measuring the flow
22 rate of water, cfs, cubic feet per second, but
23 we do recognize it when we see it and when we
24 hear it too in the Catskills, and we are part
25 of it, which is also part of our challenge

(COMMUNITY CHARACTER ISSUE)

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1 here, to look objectively at it. We are
2 actually part of the equation.

3 I'd like to provide a little context,
4 more specifically, to communities in the
5 Catskills and their character. Part of that
6 character is our rich history, which I think
7 all of us in the room are proud of this. The
8 richness of this region -- I want to begin
9 with approximately -- not going too far
10 back -- with the Romantic Movement, late
11 1700's into the 1800's, natural landscapes
12 became the focus of art and literature in this
13 country during that period. And they focused
14 more at that time on man's place in nature.

15 out of that movement came Thomas Cole, Asher
16 Durand, Frederick Church, all made famous the
17 Hudson River School of Painting, which really
18 put American landscape painting on the map,
19 and in some ways the Catskills.

20 Also, approximately at that time was
21 Washington Irving who, writing as Diedrich
22 Knickerbocker, introduced Rip Van Winkle, and
23 along with James Fenimore Cooper and the
24 naturalist writer John Burroughs, put the
25 Catskill region at the center of the American

(COMMUNITY CHARACTER ISSUE)

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1 Romanic movement.

2 The Catskills were also an important
3 catalyst for what became the first
4 conservation movement in America, thanks in
5 great measure to the writings of John
6 Burroughs and his interaction with John Muir
7 and both of their influence on President
8 Roosevelt.

9 The Catskills was the birth of
10 flyfishing in America. England still holds
11 the claim, and they remind us of that. It was
12 popularized firstly in the Catskills by
13 Theodore Gordon in the late 1800's. Later in
14 the 1800's, private clubs with a focus on
15 nature were formed, including the Balsam Club
16 in 1863, and the willowemoc Club in 1868.

17 Art colonies were also formed,
18 including the Pakatakan, which is just down
19 the road. Byrdcliff and the community of

20 Woodstock became a magnet for the creative
21 energy, including the Maverick Festivals of
22 the twenties, to the Woodstock concert of
23 1969, even though it actually took place in
24 Bethel.

25 Meanwhile, industrial growth within

(COMMUNITY CHARACTER ISSUE)

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1 urban areas, particularly in New York City,
2 began to take its toll and people began to
3 seek the wilderness. Through the first half
4 of the seventeenth century, early 1800's, the
5 Catskills became a popular destination. The
6 Catskill Mountain House became the one of the
7 first of several large hotels in the
8 Catskills. It opened in 1823, I believe.

9 Ironically, it was most popular when
10 it was most difficult to reach. It was an
11 overnight steamboat ride and a four-hour
12 stagecoach ride from New York City to get
13 there. The railroad's incursion onto the
14 landscape brought urban folk people to the
15 hotel in about four hours. These are indeed
16 different times from those.

17 The Catskills were visited often and
18 slowly abused throughout the 1800's and early
19 1900's. They were mined, somewhat harshly in
20 some cases, for charcoal and bluestone, burned
21 for farming, clearcut for timber, and
22 particularly the Hemlock for its tannic acid
23 used for the tanning of hides. Hides shipped
24 from South America to New York City were
25 tanned with Hemlock tannic acid from the

(COMMUNITY CHARACTER ISSUE)

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1 Catskills. It was a huge operation.

2 This exploitation offered a renewed
3 interest in the Catskills. On May 15th, 1885,
4 the New York State Constitution designated all
5 state-owned land in 11 Adirondack counties and
6 the counties of Greene, Ulster and Sullivan in
7 the Catskills as forever wild. Delaware was
8 added later on. The significance of the
9 creation of wilderness, the constitutional
10 protection of open space, cannot be
11 overstated. Environmental benefits are
12 somewhat obvious, but open space is an
13 important economic engine for this region.
14 Indeed, we believe it's our golden egg.

15 The Catskill Park was created on April
16 5th, 1904, celebrating its 100th anniversary
17 this year. In fact, the Governor passed,
18 offered a proclamation this year that 2004 is
19 the year of the Catskill Park Centennial in
20 recognition of its significance to this State
21 and nation. And with respect to its glorious
22 past as we hail a new century of celebration
23 of the Park, its people, communities and
24 setting of unsurpassed beauty.

25 The Catskill Park is a unique mixture,

(COMMUNITY CHARACTER ISSUE)

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1 similar to the Adirondacks, of private and
2 public lands: 705,000 approximately acres in
3 total; 287,000 state-owned, and about 400,000
4 either owned privately or other than the

5 state. Catskill Park is a grand experiment in
6 how human communities can coexist with
7 wilderness, geographically intermingled and
8 historically entwined.

9 The Catskills are also blessed with
10 fresh water which serves to quench the thirst
11 of the metropolis of New York City at the rate
12 of over one billion gallons per day. New York
13 City completed its first reservoir, the
14 Ashokan, in 1915, and completed the last
15 reservoir, the Cannonsville, as recent as
16 1965. The Catskills gave a lot up for the New
17 York City water supply: Land, neighborhoods,
18 its main streets, even its cemeteries -- some
19 of its culture, some of its community
20 character indeed. And we still wrestle with
21 this today.

22 Many people before us have given
23 similar issues thought in terms of community
24 character, and I just want to talk briefly
25 about the Route 28 corridor, planning history

(COMMUNITY CHARACTER ISSUE)

1 right on this road in question. First, in the ⁶²¹
2 late 1950's, Central Catskill communities on
3 Route 28 were dealt a blow which severely
4 impacted, in my opinion, community character.
5 It was the straightening of Route 28.
6 Route 28 used to be Main Street for many of
7 our communities. Now we must exit Route 28 to
8 get into our downtown areas in many cases
9 along Route 28. Important water bodies
10 parallel 28, the Esopus, Birch Creek,

11 Binnekill, East branch of the Delaware, which
 12 makes planning and development along it more
 13 challenging. This is a unique and sensitive
 14 area and many talented people have given
 15 thought to how to protect its character while
 16 creating jobs and economic stability.

17 One such study was the Route 28
 18 Corridor Study, a study with many sound and
 19 thoughtful recommendations. In general the
 20 study suggested a maximization of facilities
 21 at Belleayre Mountain, which is the site of
 22 the state-run ski center, and the
 23 revitalization of the two villages at its
 24 base, Pine Hill and Fleischmanns. The study
 25 states, and I quote: "The various hamlets

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1 along the corridor provide services to the
 2 visitor, and should serve as the hubs for
 3 future concentrated development." The study
 4 went further stating, quote: " Four or five
 5 100-room hotels built over a five- to ten-year
 6 period would be far more viable than either a
 7 multiplicity of smaller units or dependence on
 8 a mammoth new resort."

9 More thought was given to our
 10 community character and economic well-being --
 11 there's a typo -- as a result of EPA's
 12 filtration avoidance determination. Out of
 13 the filtration avoidance determination came
 14 the Memorandum of Agreement, a landmark
 15 document, and out of that agreement and

16 document came the Catskill Fund for the
17 Future, which was a result of the MOA.

18 The Catskill Fund for the Future is
19 approximately \$60 million fund that is
20 administered by the Catskill watershed
21 Corporation to invest in our community's
22 economies. In total, the City, New York City
23 DEP, has invested over one billion in the west
24 of Hudson watershed, not including taxes.

25 HR & A study is another study that I

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1 just recently mentioned that addressed some of⁶²³
2 these similar issues. The HR & A study that
3 CWC commissioned was conducted by the firm of
4 Hamilton, Rabinowitz and Alschuler to study
5 how to best utilize the Catskill Fund for the
6 Future to ensure a balance was struck between
7 economic development and water quality
8 protection. The results of the HR & A study
9 were not unlike that of the Route 28 corridor
10 study and supported many of its conclusions.

11 The HR & A study emphasized focusing
12 development within existing hamlets. The
13 study said: "The hamlets and villages are
14 among the watershed's most important assets
15 from an environmental protection standpoint.
16 New economic activity within these centers can
17 make use of existing infrastructure, thereby
18 limiting the amount of land that would be
19 cleared to accommodate new development."

20 It continued: "Active recreation in
21 the watershed can create conditions that are

22 detrimental to water quality; in particular
 23 skiing and golf can have greater impacts due
 24 to water use for snowmaking or irrigation from
 25 clearing large sections of land. Also, the

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1 use of herbicides and fertilizers on cleared
 2 land such as golf courses present possible
 3 water quality impacts."

4 It continued: "Communities felt
 5 strongly that their desire -- they desire and
 6 strive for a sense of place for their
 7 residents. There was a sense of pride when
 8 people spoke of their communities and a
 9 willingness to preserve the existing character
 10 end."

11 More recently, under the leadership of
 12 Governor George Pataki, the Quality
 13 Communities Interagency Task Force laid out a
 14 vision for community development for the state
 15 that also emphasized quality of life for all
 16 residents. The study concluded that: "A
 17 quality community is a safe family
 18 environment. It's a vitality and community
 19 pride with the residents. It is growth in
 20 accordance with local plans and policies. It
 21 is concern for the environment. It's
 22 protection for the character of our
 23 communities." The task force called for
 24 revitalizing main streets and small towns and
 25 conserving open space and other critical

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1 environmental resources through sustainable
2 development.

3 If you would allow us, we'd like to
4 now just provide some tangible examples of
5 what -- grassroot community growth, and as I
6 say here, it's defining community character
7 through actions. How do we actually --
8 ultimately define the community character?
9 We're going to provide some examples, and if I
10 may present Helen Budrock to do that.

11 MS. BUDROCK: I should apologize in
12 advance because I tend to talk very fast, so
13 you may have to stop me. First of all, I
14 don't know if it's helpful to provide a little
15 background. I know you have my resume. I
16 have a Bachelor's Degree in Environmental
17 Science and a Master's Degree in Urban
18 Planning from New York University. I'm a
19 certified planner, and I've been with the
20 Catskill Center for the past eight years.
21 I've essentially dedicated my career as a
22 planner to the whole concept of sustainable
23 development and building sustainable
24 communities.

25 As Tom said before, the Catskill

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1 Center has always had this interesting dual
2 mission of balancing environmental conservation
3 and sustainable economic development in the
4 Catskills. Whenever I do presentations to
5 community groups and others about the Catskill
6 Center and what we do, I always refer to

7 myself as sort of the development half of the
8 Catskill Center's mission.

9 I know a lot of people in this room
10 are probably most familiar with our
11 conservation work and the environmental part
12 of what we do, so I thought it would be
13 helpful to talk a little about the development
14 half of who we are, why we do what we do, and
15 I wanted to expound a little bit on some of
16 what we saw on the site visit on Monday,
17 specifically the communities along the
18 Route 28 corridor that we visited.

19 I'll start off just to remind
20 everybody of the Catskill region. Even though
21 our headquarters are in Arkville --

22 ALJ WISSLER: Excuse me. For the sake
23 of the record, you're going to take us through
24 what is CPC Exhibit 15; am I right?

25 MS. BUDROCK: Yes. Just to put things

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1 in perspective, I think sometimes people
2 forget that even though our office is right
3 down the road and we do a lot of work here in
4 the Central Catskills, along the Route 28
5 corridor, our service area actually
6 encompasses the greater part of seven
7 counties, and there are over 100 units of
8 local government in our service area, and my
9 job is to provide those communities with
10 assistance on planning and community
11 development issues, so we're spread out very

12 broad geographically.

13 Our community planning and development
14 program in a nutshell is designed to engage in
15 projects and activities that help communities
16 grow and prosper in ways that complement the
17 qualities that make the Catskills unique. I
18 do that in a number of different ways.
19 Basically my job is to provide information and
20 technical assistance to over 100 different
21 communities on planning, land use and
22 community revitalization issues. My approach
23 as a planner, and the way I approach my
24 program is always focused on grassroots
25 citizen participation and helping communities

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1 develop that collective vision for the future⁶²⁸
2 and then helping those communities realize
3 that vision by helping them leverage grant
4 dollars and access resources to make their
5 ideas a reality.

6 So it's very bottom up, it's not top
7 down. It's working with communities at the
8 grassroots level to help them realize their
9 dreams for their communities.

10 I also sponsor workshops and forums
11 and do education throughout the region on a
12 wide variety of topics, including cell towers,
13 barn preservation, Main Street design, things
14 that relate to communities and community help.
15 I do spend a significant amount of my time
16 focusing on Main Street revitalization. I
17 actually am a board member of the New York

18 Main Street Alliance, which is a state-wide
19 organization focused on revitalizing downtowns
20 throughout New York State.

21 What I do with Main Street
22 revitalization is that I assist communities
23 with revitalizing their downtowns through
24 things like training workshops. We've done
25 things called downtown design team assessments

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1 where we assemble a group of downtown design
2 experts and do an assessment of a community's
3 Main Street and other similar initiatives.

4 One of the things that I've been
5 focusing on over the past two years is
6 providing free architectural design assistance
7 to Main Street property owners to help them
8 fix up their downtown buildings. Basically
9 what we do is we pay for the architectural
10 design assistance, and then those designs are
11 then used to leverage grant dollars to
12 actually perform the restorations themselves.
13 To date, over the past two and a half years or
14 so, we've managed to leverage over \$260,000 in
15 grant funds from the Catskill Watershed
16 Corporation to restore a total of 24 buildings
17 in four communities.

18 This is an example of what I'm talking
19 about. This is a Main Street building on Main
20 Street in Tannersville. This is the design
21 that our architect did for the property owner.
22 We were able to leverage some funds working in

23 partnership with the Hunter Foundation, which
24 serves this area, and they in turn were able
25 to assist the property owner in fixing up his

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1 building, and that is the end result.

2 I want to touch very briefly on
3 something called the Community Empowerment
4 Initiative, which is something I've been
5 working on since 1999. It was started as a
6 pilot program shortly after the Memorandum of
7 Agreement was signed, and it was designed to
8 assist watershed communities, and work with,
9 again, at the grassroots level, local
10 residents, business owners and local leaders
11 to help them make a difference in their
12 community and improve quality of life.

13 A total of ten communities
14 participated in this program, and literally
15 dozens of projects were implemented by scores
16 of volunteers and community residents. Those
17 are just some examples there in the
18 photographs.

19 This shows you the ten communities
20 that participated in the program, starting
21 with Andes and Phoenicia, which were my first
22 two pilot communities, and we then moved on to
23 eight others over the past three or four
24 years.

25 I want to focus some attention on

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1 Phoenicia, Pine Hill and Fleischmanns since
2 those were some of the communities we visited

3 on Monday and which are part of the discussion
 4 of the impact of community character in these
 5 discussions. I want to start off by saying
 6 that the community empowerment initiative,
 7 it's important to emphasize that it was a
 8 planning process, not a planning document. It
 9 was a process where we worked with people at
 10 the grassroots level in trying to help them
 11 make a difference in their communities, so the
 12 focus was less on the planning process itself
 13 and more on the tangible results and getting
 14 people involved and engaged in making a
 15 difference in their community.

16 The first thing we did was we
 17 conducted a downtown assessment. I talked
 18 about that before. We had a team of design
 19 professionals, Main Street experts, come in
 20 and work with the community on identifying
 21 their strengths and weaknesses of their Main
 22 Street. Then we did a two-part community
 23 visioning workshop where we worked with the
 24 community in an interactive process where they
 25 identified what they liked and what they

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1 didn't like about their community and their
 2 downtown. We broke up into focus groups and
 3 identified what the community's assets,
 4 problems and needs were in some specific
 5 areas. And then at the end of the community
 6 visioning process, the community actually
 7 brainstormed about some specific tangible

8 ideas for projects that they'd like to
 9 implement to further their goals, address some
 10 of the problems or capitalize on an
 11 under-utilized asset. We didn't stop there.

12 After the community had an idea what
 13 they wanted to do, we did some capacity
 14 building. We did some grant writing training.
 15 We worked with the community on how you
 16 package your ideas so they're attractive to
 17 funding sources, how do you form project
 18 teams, how to get people involved in making a
 19 difference. And the most important thing
 20 which I think is part of the success of the
 21 program is that we didn't just stop at the
 22 planning process and say good luck, have a
 23 good time implementing your project ideas,
 24 we'll see you later.

25 In each of those communities, there

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1 was a certain amount of follow-up for six
 2 months, meeting monthly with the communities
 3 and with the community leaders to help them
 4 get a handful of these projects off the ground
 5 and running. And the purpose of that was to
 6 get some small tangible projects that would
 7 build confidence and momentum and knowledge to
 8 tackle larger things in the future.

9 I'll start off quickly with just a
 10 couple of case studies. The hamlet of
 11 Phoenicia was one of the first pilot
 12 communities. As a result of the community
 13 empowerment process, the small projects that

14 Phoenicia undertook originally were creating
15 that interpretive hiking trail that we saw on
16 Monday, the Tanbark Trail. They installed
17 planter barrels along Main Street. They did
18 some landscaping to the east entrance of town
19 underneath the welcome sign. We initiated a
20 facade improvement program in partnership with
21 the SHARP committee, which is a local
22 community development organization that serves
23 the Town of Shandaken. And with that program,
24 we were able to secure funding to restore the
25 facades on seven buildings in downtown

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1 Phoenicia, which are undergoing right now. So⁶³⁴
2 the funding is in place, but the construction
3 hasn't started yet. That will be this year.

4 Finally, as we talked about at the
5 site visit, this is an example of a community
6 starting out with some small projects and then
7 building their way up to some larger ones.
8 For the past six to nine months, I've been
9 working with folks in Phoenicia on developing
10 a concept of a river walk along the Esopus,
11 including expanded public parking, visitor's
12 information center, public bathrooms and some
13 of the other things we discussed earlier.

14 To date, since we started working with
15 Phoenicia back in 1999, we've helped them
16 leverage over \$125,000 for community projects,
17 including the facade improvements and some of
18 the things I talked about before.

19 Moving on to the hamlet of Pine Hill.

20 As I explained in the site visit, one of the
21 issues that were identified during the
22 visioning process was the need to better
23 promote the hamlet, to let people know it
24 existed and what it had to offer. What they
25 focused on on their small projects immediately

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1 after the planning process was designing and
2 installing some new welcome signs. They also
3 printed and distributed a promotional brochure
4 as well. They developed a community website.
5 They installed a business directory and a
6 community bulletin board, which you saw on
7 Monday. And again, moving on to some larger
8 projects, we were able to help them leverage
9 some funding and start getting them focused on
10 some physical streetscape improvements. The
11 first priority is new sidewalks on Main Street
12 in conjunction with the water project that
13 they have coming up.

14 To date, Pine Hill is one of the more
15 recent communities; I've been working with
16 them, I think, for the past year and a half to
17 two years. We have helped them leverage a
18 little over \$30,000 for community projects to
19 date.

20 Moving on to Fleischmanns. Some of
21 the things that Fleischmanns has been working
22 on -- again, that's one of the more recent
23 communities; I've been working with them for a
24 little over a year. We were able to help them

25 leverage funding to restore the facade on
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 1 their old fire hall building on Main Street.
 2 They're in the process of converting a vacant
 3 building on Main Street into a visitor's
 4 center chamber office. They're expanding
 5 their sign campaign, installing new welcome
 6 signs and business directories at the
 7 entrances into town. Finally, as we saw on
 8 Monday, they are focusing on sprucing up and
 9 repaving the municipal parking lot downtown
 10 and creating a pocket park along the river.
 11 So far we've helped leverage about
 12 \$35,000 for Fleischmanns to help them with
 13 their community revitalization projects. I
 14 want to shift gears for a moment.
 15 I want to talk about Margaretville.
 16 That was one of the other communities we
 17 visited on Monday. And Margaretville didn't
 18 participate in the community empowerment
 19 initiative, but we have been involved with
 20 them under the umbrella of some quality
 21 community's issues.
 22 Just for the record, quality community
 23 is analogous to the concept of smart growth.
 24 And New York State defines quality communities
 25 as a process that promotes growth that is
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 1 economically sound, environmentally friendly
 2 and supportive of community values. And there
 3 is a -- the Governor's Quality Communities

4 Interagency Task Force developed a series of
5 quality community principles.

6 And just to go through them quickly:
7 Quality communities is about encouraging
8 sustainable economic development. It's about
9 helping communities create, implement and
10 sustain a vision for the future, a lot of what
11 we do: Revitalizing our downtowns and
12 community centers, conserving open spaces and
13 critical environmental resources, promoting
14 agriculture and farmland protection,
15 strengthening intergovernmental and community
16 partnerships, enhancing transportation choices
17 and creating more livable neighborhoods, and
18 finally enhancing and encouraging the use of
19 the technology.

20 As you go through those quality
21 community principles, what the Catskill Center
22 does is similar, and what we're doing in
23 communities is analogous to what the state has
24 been focusing on.

25 In Margaretville in particular, we

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1 have been working for the past couple of years⁶³⁸
2 on a quality communities demonstration
3 project, and that started in 2000 when we
4 helped the village with the MARK project,
5 which is another nonprofit organization that
6 serves the area. We helped the village secure
7 one of only 28 quality communities
8 demonstration grants that were awarded by the
9 state that year as a means to provide examples

10 of what quality communities really mean on the
11 ground out there in the real world.

12 With that initial funding, which was,
13 I believe, around \$20,000, we helped prepare,
14 again, in partnership with the MARK project, a
15 revitalization and recreational use plan for
16 Margaretville that was focused on the
17 utilization of 22 FEMA flood buyout properties
18 on Main Street that were a result of the flood
19 that swept through Margaretville in 1996.

20 Basically what the plan was intended
21 to do was to look at those DEP-owned
22 properties along Main Street and see how they
23 could be used for recreational purposes, how
24 they could connect to existing recreational
25 sites in the village, how we could connect a

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1 series of interconnected walking paths
2 throughout the downtown to create a more
3 liveable, friendly community, and how we could
4 tie that to revitalization of the business
5 district and enhancements to Margaretville's
6 gateway along Bridge Street.

7 The plan was formally adopted by the
8 village in December 2001, and we've been
9 working over the past two years to implement
10 the recommendations that were contained in
11 that plan.

12 That's the study area that you saw on
13 Monday, downtown Margaretville. The pink
14 properties along Main Street are the FEMA

15 buyout properties, and the yellow ones are
16 properties that were owned by the village
17 where they were trying to make connections
18 between the two.

19 MS. ROBERTS: Let me interrupt for a
20 second. This is the plan that has been
21 adopted by the village?

22 MS. BUDROCK: Yeah, it was a document,
23 but this is the actual visual plan. So you
24 can see what the village came up with through
25 design charrettes and other public

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1 participation. We got input from the
2 community about how they wanted to see these
3 flood buyout properties utilized and how to
4 connect it to revitalization of Main Street.
5 You can see the interconnected walking paths
6 and the utilization of the flood buyout
7 properties for recreational purposes.

8 As I said before, over the past two
9 years, the village government, the greater
10 Margaretville Chamber of Commerce, the MARK
11 project and the Catskill Center have been
12 working collaboratively to implement the
13 recommendations that were contained within
14 that plan. And these were just a few of the
15 accomplishments that the community has done
16 over the past two years.

17 First of all, they installed over 80
18 flower barrels along Main Street. Three
19 downtown buildings have received new facades.
20 They created a new entry park using the flood

21 buyout properties to access the ballfield
22 behind the A&P. They created a river walk, a
23 series of looping trails long the east branch.
24 They secured funding for the Bridge Street
25 enhancements that were contained in the plan.

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1 They created an open-air amphitheater on a
2 vacant parcel of land on Main Street. They
3 created a pocket park on Bridge Street, on a
4 previously vacant property and landscaped some
5 of the alleyways connecting different sites in
6 the village.

7 To me, this is an amazing achievement.
8 In less than two years, the communities, with
9 our help and other folks helping, were able to
10 leverage almost \$100,000 in funding for
11 community projects to make these things
12 happen. Even more impressive is the fact that
13 Margaretville was recently honored just two
14 weeks ago by the Governor and given the
15 Governor's Award for Quality Community
16 Excellence. It's only the second time that
17 that award has been given out; once last year
18 and once this year, making Margaretville one
19 of only eight communities statewide that's
20 been recognized as being really exemplifying
21 what quality communities are all about.

22 I'm almost done; I promise. I want to
23 talk about what we have done, focusing on the
24 communities on the 28 corridor, but I wanted
25 to give you sort of a glimpse into the future

1 to give you an idea of what we see as the
2 future of the Catskill Center in our role with
3 community development.

4 Tom and I have been working over the
5 past year in putting together something called
6 the Community Development Support Center which
7 we're going to launch this year. It's an
8 initiative that enables us to take all of the
9 different technical assistance and services
10 that we offer to communities, and package it
11 into a program, sort of a Chinese menu, that
12 communities can choose from. It includes
13 things like community visioning for
14 communities who are starting out at the ground
15 level and need some help formulating that
16 vision for the future. It includes free
17 design assistance, helping communities access
18 architects, landscape architects and other
19 design professionals to help them visualize
20 their ideas before they package the funding,
21 free grant writing assistance, helping
22 communities access the resources that they
23 need to make their dreams a reality. And
24 thanks to Senator Bonacic, this year we're
25 going to be able to offer some Main Street

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1 microgrants, some small grants to communities
2 in the Catskills to help get some small
3 downtown revitalization projects off the
4 ground and running.

5 One of our future plans right now is

6 we're exploring the possibility of adding a
7 microenterprise assistance component to the
8 Community Development Support Center really do
9 more to address the small business needs out
10 there in the region.

11 Very briefly, I just want to touch on
12 where the funding comes from to support our
13 community development work and particularly
14 the Community Development Support Center,
15 because I think it demonstrates the breadth of
16 support that we receive.

17 One of the major funding sources is
18 the U.S. Department of Agriculture, a program
19 called the Rural Community Development
20 Initiative. This is federal funding. It's
21 highly competitive. The Catskill Center, this
22 year, was one of only 27 recipients nationwide
23 to receive funding. This is the second time
24 we have received it, and of all the recipients
25 nationwide in all the funding rounds that the

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1 U.S. Department of Agriculture has given under ⁶⁴⁴
2 this program, they have chosen the Catskill
3 Center and the work that we're doing in this
4 region to highlight in a publication that
5 they're putting out this year, celebrating 50
6 years of rural development.

7 So it shows you how people are looking
8 at work that we're doing in the Catskills, not
9 just locally, not just statewide, but
10 nationally, as an example of how to

11 successfully work with rural communities and
 12 help them balance economic needs and
 13 environmental concerns at the same time.

14 MS. ROBERTS: And that publication
 15 will come out this summer?

16 MS. BUDROCK: Yes. The New York State
 17 Council on the Arts is another source of
 18 funding for our work, the Architecture
 19 Planning and Design Program. We receive
 20 support from private foundations, including
 21 the O'Connor Foundation. We've received
 22 support from the Catskill watershed
 23 Corporation, in this case for the design
 24 assistance component of our Community
 25 Development Support Center, and finally

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1 support from Senator Bonacic, which I
 2 mentioned earlier.

3 MS. ROBERTS: would you say the
 4 smallest amount of your funding comes from
 5 membership?

6 MS. BUDROCK: well, membership kind of
 7 supports the organization in general.

8 MS. ROBERTS: But your big funding
 9 sources --

10 MS. BUDROCK: The big funding sources
 11 are federal and state.

12 I just wanted to end, if I might, on a
 13 bit of a personal note. I started off talking
 14 about how I introduced myself in various
 15 settings as the development half of the
 16 Catskill Center's mission, and I've been with

17 the organization eight years; and in that
 18 time, I have heard a fair amount of criticism
 19 of the organization. Some of it deserved,
 20 some of it not. But the most frequent
 21 criticism that I hear is that the Catskill
 22 Center should just drop development from its
 23 name and just call itself the Catskill Center
 24 for Conservation because we don't do anything
 25 to affect economic development in the

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1 Catskills. And I just wanted to say in
 2 closing that I'm the first one to admit that
 3 I'm not out there moving mountains, I'm not
 4 directly creating jobs, but the work that we
 5 do does make a difference, and it does have an
 6 impact on community character. And this is
 7 one of the reasons how I know that what we do
 8 is working.

9 This is in the words of the president
 10 of the Andes Chamber of Commerce who describes
 11 the impact of what we've done on the community
 12 of Andes, and he said: "Your organizing work
 13 in our midst four years ago planted seeds that
 14 are blooming and bearing good fruit today.
 15 Instead of bashing the town, we dreamed, then
 16 planned with your firm and focused guidance to
 17 serve. You can't be blamed entirely for Andes
 18 being called Destination of the Year in 2001
 19 or for The New York Times writing two articles
 20 about this town in the last four months. But
 21 the sense of a future here, of a place to

22 invest a business, started back in 1999. And
 23 that's what we do, and that's what we focus
 24 on, and that's why, in my mind, community
 25 character is so important because we are

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1 helping to build communities, places where
 2 people want to live, places where people want
 3 to invest a business, and that's what we're
 4 all about.

5 ALJ WISSLER: Ms. Budrock, may I ask
 6 you a question?

7 MS. BUDROCK: Absolutely.

8 ALJ WISSLER: I think what you do is
 9 really commendable.

10 MS. BUDROCK: Thank you.

11 ALJ WISSLER: what I take from this in
 12 kind of broad perspective is with respect to
 13 these communities, you kind of act as a
 14 facilitator of the communities, evaluate who
 15 they are, what their place is in the Catskill
 16 region and help to articulate a vision for
 17 themselves where they want to go and in
 18 specific terms suggest projects that might
 19 help them on the way toward that vision, all
 20 with an effort to enhance their quality of
 21 life.

22 Do I have that?

23 MS. BUDROCK: Absolutely.

24 ALJ WISSLER: You are familiar with
 25 this application and what is proposed?

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1 MS. BUDROCK: Yes.

2 ALJ WISSLER: I don't want to put you
3 on the spot.

4 MS. BUDROCK: But you're going to put
5 me on the spot anyway.

6 ALJ WISSLER: In what way, in your
7 view, would this project if completely built
8 as proposed, in what way would it impede the
9 vision within those communities? In what way
10 would it negatively impact what you are trying
11 to do in those communities?

12 MS. ROBERTS: If I might, your Honor,
13 jump in for one second, I guess we would
14 rather have Tom answer that question.

15 ALJ WISSLER: I'm posing the question.
16 I'm impressed with what you're doing, but I
17 want to understand for the purposes of this
18 process how this proposed project is going to
19 hurt what you are trying to do. Do you
20 understand my question?

21 MS. BUDROCK: I understand what you're
22 asking.

23 MR. ALWORTH: I'll do that now, wrap
24 up.

25 MS. ROBERTS: Tom is going to do that

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1 now.

2 MR. ALWORTH: So, yes, we have done a
3 lot of work, but there's a lot of work left to
4 be done, and the Catskills has a lot of
5 challenges. We do need better paying jobs, we
6 do need more hotel beds. There's a lot

7 happening. We've discussed these on our site
 8 visits to some extent. We met with one of the
 9 new -- there are two hotel proposals, in the
 10 early stages in Pine Hill, one in later
 11 stages, we met with the hotel owner in
 12 Margaretville.

13 we have had rejuvenation of local
 14 railroads, a new grocery store in
 15 Margaretville is on the planning table, a
 16 housing project in Pine Hill, perhaps a
 17 Belleayre Ski resort expansion, a Watershed
 18 Museum, a plan which I serve on the education
 19 committee planned over very closely to here.
 20 Catskill Interpretive Center has been on the
 21 block for a long time. Rehab of a shopping
 22 plaza in Mount Tremper is recent, to name a
 23 few things that are there. The developer of
 24 this project has made significant
 25 contributions to Catskill communities. The

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1 renovation of the Emerson, as we saw the other
 2 day, is quite spectacular. Catskill Corners
 3 across the street, including the Emerson, is
 4 an example, in our mind, of how to grow a
 5 community while maintaining the community
 6 character, revitalized the Emerson resort
 7 quite nicely.

8 But we believe that the Belleayre
 9 Resort at Catskill Park is different. It does
 10 not contribute to the community character of
 11 our communities, quite the contrary. Here are
 12 some specific examples in how we think it does

13 not contribute to community character and may,
14 indeed, impede it.

15 Construction period is prolonged, up
16 to an eight-year multi-phase build-out. Land
17 use pattern is markedly different from current
18 land use patterns. Higher elevations,
19 significantly steep slopes in some cases as we
20 showed on maps yesterday from the DEIS. It
21 will certainly compete head on in some cases
22 with local businesses. We believe it could be
23 a magnet for new growth, sprawl as a result of
24 this kind of influx, and I just drop down,
25 there's over 600,000 new visitors per year

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1 which will increase -- at least increase
2 traffic, and along with that, all of the
3 associated issues that our traffic expert
4 touched on a few when he presented.

5 We know from the DEIS and a couple
6 other exhibits, that there will be viewshed
7 impacts; and we believe having read and, in
8 fact, support the Route 28 Corridor Study and
9 HR & A study, are not -- the scale of this
10 project is not in keeping, in our opinions,
11 with what is laid out in those two documents.

12 It's not irrational to me that if
13 a -- it is, in fact -- I'm sorry, double
14 negative. It's somewhat irrational to me that
15 if this project is, indeed, unprecedented in
16 size for the Catskills, then by definition all
17 other resorts are smaller. Yet according to

18 the DEIS, a smaller alternative is not
19 economically feasible. We believe providing a
20 significantly smaller alternative, better
21 sited in a less sensitive area that provides
22 economic gain for the developer, and mitigates
23 many and hopefully most environmental and
24 community character concerns, seems to be, in
25 our mind, of paramount importance.

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1 A lot is at stake here for all of us, ⁶⁵²
2 and we need to get this right. Revitalizing
3 our main streets and encouraging small
4 business development, while conserving open
5 space and other critical environmental
6 resources, is the means by which we can
7 preserve community character and create
8 sustainable economic growth. To that end, we
9 will continue to move forward the ideas
10 articulated in the HR & A study and the
11 Route 28 Corridor Study, and the Governor's
12 Quality Community Interagency Task Force and
13 agreed upon in the Memorandum of Agreement;
14 and we'll continue to try to provide support,
15 leadership and expertise to attain them.

16 MS. ROBERTS: Your Honor, I don't mean
17 to cut you and your questioning off.

18 ALJ WISSLER: You wouldn't be able to.

19 MS. ROBERTS: You don't know me. But
20 Helen, as you can appreciate, works with
21 developers, works with every different type of
22 person in a community and so has to remain
23 neutral, which is why I asked that Tom answer

24 it. We have a planner from Peter Smith &
25 Associates who will come on and do a Power

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1 Point, and I think that's a better time to get⁶⁵³
2 into this.

3 Do you have other questions for these
4 witnesses?

5 ALJ WISSLER: No.

6 MS. ROBERTS: I have one question for
7 you, Tom. You brought up the fact that this
8 area does have a history of large resorts.
9 Can you talk about differences you might see
10 from those large resorts to what's being
11 proposed?

12 MR. ALWORTH: Yes. I think from the
13 DEIS, there may have been as many as 10,000
14 beds at one time in the Catskill region, and
15 we have to think back, we're going back
16 roughly 100 years and --

17 ALJ WISSLER: Is that a statement you
18 disagree with, 10,000 beds?

19 MR. ALWORTH: No, no. I don't know.
20 I haven't looked it up. I don't know the
21 right answer. I'm taking it on face value.
22 There were a lot. Those hotels in general
23 were placed fairly high. The Grand Hotel
24 which was out here on the eastern escarpment,
25 there was an overlook, the Kaaterskill. But

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1 there are some fundamental differences, and I⁶⁵⁴
2 think most of which have to do with when that

3 occurred versus 2004.

4 First of all, access to them, as I
5 alluded to, was somewhat challenging, somewhat
6 slow; and at least early on it was a steamboat
7 ride and stagecoach. Railroad changed that,
8 the railroad that comes along the 28 corridor
9 started bringing more hotel-goers to the
10 hotel. That's how they got there in general
11 was on that train, went to the hotel, for the
12 most part stayed at the hotel because they
13 didn't have their cars to jump in and drive
14 around with a significant road system. Got
15 back on the train, went home. There is no
16 question that that is an important part of
17 Catskills' legacy and history. Because of
18 that, and I think an argument being made is
19 that if -- that this project brings us back to
20 those times, and what I am arguing is that's
21 not necessarily a good thing. That is, there
22 are parts of our heritage where we did things
23 very right, and there are other parts of our
24 heritage where we did things wrong.

25 Very near the same time was when we

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1 were also clear-cutting a bunch of the
2 Catskills. We learned some things over 100,
3 250 years. One of them is don't clear-cut,
4 because we stopped doing that, with the forest
5 preserve we have a high quality of water.
6 Also, don't build at high elevations and steep
7 slopes. Back then, the learning curve is kind
8 of steep now, we've learned, so what we're

9 saying it was done, it's part of our legacy,
10 but let's be careful and therefore make the
11 assumption that it should be okay to do it
12 again.

13 ALJ WISSLER: You made a statement
14 earlier that one of the largest hotels was
15 difficult to get to, and in fact that seemed
16 to make it more popular; is that a function of
17 the allure of the wilderness?

18 MR. ALWORTH: I can't answer that. I
19 don't think it had anything to do with that
20 particular hotel. I think it had to do with
21 the times. Getting to the hotel, just so
22 happens, it was difficult. It was steamboat
23 and stagecoach. But there was great demand to
24 do it. That's how people traveled. That was
25 normal, get on the steamboat -- but as the

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1 hotel industry -- there are many, many
2 theories of why it began to decline. Even
3 though it got easier to get there, fewer
4 people were going, so it's an irony that I
5 find peculiar.

6 MS. ROBERTS: These witnesses are done
7 for now. Ms. Budrock is going to leave now,
8 so you have -- if you have any other questions
9 for her?

10 ALJ WISSLER: I know where you live.

11 MS. ROBERTS: We'd like to call Peter
12 DiModica and enter 19 and 20; Mr. DiModica's
13 CV, and a brief statement.

14 ALJ WISSLER: CPC 19 will be the
15 curriculum vitae of Peter DiModica.

16 (CURRICULUM VITAE OF PETER DI MODICA
17 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
18 EXHIBIT NO. 19, THIS DATE.)

19 CPC 20 will be Mr. DiModica's
20 statement.

21 (STATEMENT OF PETER DI MODICA
22 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
23 EXHIBIT NO. 20, THIS DATE.)

24 ALJ WISSLER: When you referred to the
25 HR & A study, you were referring to the West

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1 of Hudson -- CPC Exhibit 18?

2 MR. ALWORTH: Yes, Hamilton,
3 Rabinowitz & Alschuler.

4 ALJ WISSLER: Okay.

5 MS. ROBERTS: To clarify your
6 question, your Honor, the exhibits Mr. Alworth
7 referred to were CPC Exhibits 18 and 16, and
8 Ms. Budrock referred to CPC 17.

9 Mr. DiModica.

10 MR. DI MODICA: I moved into the area
11 in 1976 to escape the overdevelopment in
12 New Jersey. I found Pine Hill in 1977 while I
13 was living in Fleischmanns and running a
14 secondhand store.

15 When I first moved to the Incorporated
16 Village of Pine Hill in early 1978, it was
17 pretty rundown. There were vacant buildings
18 and seedy bars. A few businesses were
19 surviving, most needing lots of work to bring

20 them up to standard. The house I occupy now
21 with my home and business had been vacant for
22 a long time. I was attracted to Pine Hill for
23 several reasons. It had village sewer and
24 water, important for a boy from the suburbs of
25 New Jersey who never had to deal with wells or

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1 septic systems, and it was surrounded by State⁶⁵⁸
2 land, the Catskill Park -- also important to
3 this boy from the suburbs of New Jersey.

4 In the years that followed, many
5 changes took place. People started to try to
6 improve their lot. We started an annual Pine
7 Hill Festival that ran into some bumps along
8 the way, and the Village disincorporated, a
9 result of the growing pains felt by many small
10 municipalities in transition.

11 The main point was that people were
12 trying to make things better in their little
13 corner of the world. It was always a tough
14 place to make a living, but when I made the
15 trip up Route 28 and saw the beautiful
16 mountain vistas, all I could think about was
17 that people come here on vacation to hike,
18 fish, hunt, ski and swim, and I live here.

19 I was involved in a minor way in the
20 community early on while trying to get my feet
21 on the ground, but my role grew deeper when we
22 became involved in trying to purchase our
23 water supply that had been bought by the
24 developer. I was appointed chairman of the

25 newly formed Pine Hill Water District

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1 Coalition, and we were trying to negotiate
2 with the developer for the Pine Hill Water
3 Company. I was then asked to run for
4 supervisor and did successfully negotiate a
5 deal for the water as supervisor.

6 During my term as supervisor, I worked
7 closely with Helen Budrock at the Catskill
8 Center for Conservation and Development, and
9 the Shandaken Area Revitalization Project on
10 many projects, including the Phoenicia
11 Riverwalk Study, the Pine Hill Empowerment
12 Initiative, that resulted in grant money for a
13 hamlet directory, website, brochure and
14 signage. The grant money for repairs to our
15 beautiful library building, a national
16 historic site. The facade rehabilitation
17 grants in the hamlets of Phoenicia and
18 Pine Hill.

19 I also worked with the community as
20 Town Supervisor on obtaining a \$40,000 DOT
21 grant for the Connected Community Corridor
22 feasibility study for a trail network along
23 the Esopus and the Catskill Mountain railroad
24 from Phoenicia's proposed Riverwalk clear up
25 to Pine Hill.

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1 The Town obtained the grant --
2 obtained grant money to improve and expand the
3 Shandaken Theatrical Society Community theater
4 building to filter Phoenicia's water to

5 rebuild Pine Hill's water system, and many
6 other community projects.

7 These projects had wide bipartisan
8 support and were in sync with the
9 Comprehensive Master Plan Committee Survey and
10 series of visioning workshops that were
11 facilitated by Ms. Budrock, that were
12 conducted during the administration preceding
13 mine. As Supervisor, I sent support letters
14 for the grants we applied for, and any monies
15 that were administered by the town had the
16 relevant resolutions authorizing spending the
17 money.

18 As your Honor has seen in the off-site
19 tour, some of the projects have been
20 completed, some are in the works. It is my
21 opinion as a former Town Supervisor, a
22 participant in the Comprehensive Master Plan
23 Committee Survey and workshops, and as a local
24 business owner for over 20 years, and resident
25 for nearly 30 years, that this development is

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1 way out of scale for this area, is totally at ⁶⁶¹
2 odds with the wishes of the community, and
3 will do irreparable harm to the character of
4 our hamlets.

5 I sincerely believe that it will cause
6 a shift in tourist dollars away from the local
7 businesses that are finally stabilizing in the
8 hamlets to a destination resort that will take
9 money out of the area. Simply put, we will

10 lose the people who support our local economy
 11 by coming to an area as yet unspoiled by
 12 overdevelopment. Peter DiModica, former Town
 13 Supervisor, and a partner in Cloudspinners
 14 Antiques and Custom Furniture.

15 MS. ROBERTS: I don't have copies, I
 16 will have them after lunch. I want to
 17 supplement Mr. DiModica's statement with
 18 providing you a copy of the Comprehensive
 19 Master Plan that he referred to. I should
 20 have included that as well. It's here. I
 21 will get that to you after lunch.

22 MR. DI MODICA: It is part of the
 23 record also. I handed that to you when I did
 24 my statement at the hearing at Belleayre.

25 ALJ WISSLER: If you want to put it in
 (COMMUNITY CHARACTER ISSUE)

1 as an exhibit in this hearing, I'll let you do⁶⁶²
 2 that.

3 MS. ROBERTS: Okay.

4 Your Honor, I wanted to take note of
 5 the fact that we did a tour of Pine Hill
 6 yesterday, and there were a lot of active
 7 businesses, as Mr. DiModica stated, and that
 8 it does appear to be a vibrant community, much
 9 different than what Mr. DiModica described
 10 when he first got there, and that a lot of
 11 these improvements came under his watch in
 12 cooperation with the Catskill Center and
 13 others.

14 ALJ WISSLER: The visit you referred
 15 to was the 7th; am I right?

16 MS. ROBERTS: I'm sorry, yes, on
17 Monday.

18 ALJ WISSLER: Okay.

19 MS. ROBERTS: The next witness we'd
20 like to call is Joyce Greenberg. She's a
21 licensed real estate salesperson with Wetwood
22 Metes & Bounds.

23 Joyce, I'm going to need to submit
24 your CV for the record, so give us a minute
25 before we start. CPC Exhibit 21.

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1 (CV OF JOYCE GREENBERG RECEIVED AND
2 MARKED FOR IDENTIFICATION AS CPC EXHIBIT NO.
3 21 THIS DATE.)

4 MS. ROBERTS: Her CV, and also a chart
5 of the Multiple Listing Service statistics
6 from the years 2001 to 2004.

7 ALJ WISSLER: That will be CPC 22.

8 (MLS LISTING WETWOOD METES & BOUNDS
9 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
10 EXHIBIT NO. 22, THIS DATE.)

11 MS. GREENBERG: My name is Joyce
12 Greenberg. I moved from Long Island to
13 Highmount in 1991. We'll start again.

14 My name is Joyce Greenberg. I bet you
15 all know that by now. And I moved here from
16 Long Island to Highmount in 1991.

17 I retired from our family business
18 which is Merrick Tackle Center, which is
19 located in Shandaken, and I became a Realtor
20 for the second time in my life as a licensed

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21 salesperson in 1999. I joined Wetwood Metes &
22 Bounds Realty in West Hurley, and that company
23 is the largest privately owned real estate
24 company in the county, and it is the number
25 one in sales for the past 11 years.

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1 Most of our business is weekenders,
2 especially in Shandaken, and when I ask people
3 who come to my office why they want a vacation
4 home in Ulster County, they reply, peace and
5 quiet, rural charm, opportunity to relax,
6 escape from the frantic pace of their daily
7 lives, beautiful views, unspoiled terrain, the
8 opportunity to ski, hike, fish, hunt, kayak
9 and bird-watch, to get away from commercially
10 dominated traffic-clogged environments, and
11 refresh their soul in natural, unpolluted
12 surroundings. Some say: We just want to get
13 away from it all, and we don't even want to
14 see other people.

15 This area is truly unique. It's an
16 oasis within striking distance of several
17 major metropolitan centers. Second homeowners
18 are a mainstay of our local economy. We also
19 serve people who relocate here from all over
20 the country in work-related transfers, as well
21 as local families who wish to simply change
22 their homes. The reasons they want to be here
23 or stay here are basically the same. It's a
24 quality of life issue.

25 The real estate market in Ulster

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1 County is very strong, having recovered from
2 the devastating effect caused by the closing
3 of IBM in Kingston a little more than ten
4 years ago. According to statistics compiled
5 by the Multiple Listing Service of Ulster
6 County, in 2001, the average selling price for
7 a house in Ulster County was \$154,221. In
8 Shandaken, it was \$143,922, which was only
9 slightly lower than the county average.

10 So far in this year of 2004, the
11 average selling price of a home in Ulster
12 County is \$241,686. In Shandaken, the average
13 selling price is \$246,462, which is now
14 slightly higher than the rest of Ulster
15 County. The market is robust.

16 Compared to Westchester, Long Island
17 and New Jersey, prices here are a bargain; but
18 as in all areas of the country, we need
19 development of low and moderately priced
20 housing. In my experience selling in Delaware
21 County, this is the case there also. I can't
22 give you statistics for Delaware County
23 because they do not have a central Multiple
24 Listing, MLS.

25 It would profit the real estate market

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1 if growth here proceeds in a gradual and
2 well-conceived manner. An explosion of growth
3 would be destructive in that it would diminish
4 the reasons people come here in the first
5 place. I believe based on my experience with

6 buyers, they would elect to purchase real
7 estate in other locations if we compromise the
8 pristine natural beauty and lose the rural
9 character.

10 MS. ROBERTS: Thank you,
11 Ms. Greenberg.

12 ALJ WISSLER: Ms. Greenberg, going
13 back to your last statement there. You
14 indicated that, in your view, growth should be
15 gradual and not rapid. Are you suggesting
16 that this resort as proposed would be that
17 form of rapid growth you believe is
18 detrimental to the community?

19 MS. GREENBERG: I do believe it would
20 be overwhelming.

21 ALJ WISSLER: In what way?

22 MS. GREENBERG: People come here
23 because it's -- because it's small. They like
24 the smallness of it. They like the community
25 of it. They're not looking -- they like

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1 simple things. They're not looking for glitz.⁶⁶⁷
2 Many of the people who come here just want to
3 be in a quiet place, someplace where there's
4 not a lot of activity. They're not coming
5 here looking for activity. They're coming
6 away from metropolitan areas where there is
7 lots of activity, and they want something
8 that's peaceful. Privacy is one of the main
9 words people say to me, "We want privacy."

10 ALJ WISSLER: And that tranquility
11 will be irreparably impaired by the presence

12 of this project?

13 MS. GREENBERG: I believe it will be
14 disturbed in that there will be considerably
15 more traffic. I live nearby. In the
16 wintertime when I try to get out of my street
17 near Belleayre Mountain, I often have to wait
18 for 30 or 40 cars to pass before I can turn
19 onto 28, and that's without a resort.

20 ALJ WISSLER: The resort would
21 exacerbate such things in your view?

22 MS. GREENBERG: In my opinion,
23 definitely. On a Friday when I come home from
24 my office, there's bumper-to-bumper traffic
25 from West Hurley out to Highmount. Other

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1 times when they're leaving on a Sunday and I'm⁶⁶⁸
2 going into my office, the traffic on Route 28
3 from my home to West Hurley is almost bumper
4 to bumper now.

5 ALJ WISSLER: Ms. Roberts.

6 MS. ROBERTS: Mr. Gerstman has a
7 question.

8 MR. GERSTMAN: The Judge asked it.

9 MS. ROBERTS: Thank you.

10 We'd next like to call Susanna
11 Margolis and provide her CV and statement.
12 Her CV will be CPC Exhibit 23, and CPC 24 will
13 be her statement.

14 (CV OF SUSANNA MARGOLIS RECEIVED AND
15 MARKED FOR IDENTIFICATION AS CPC EXHIBIT NO.
16 23, THIS DATE.)

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(STATEMENT OF SUSANNA MARGOLIS

RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
EXHIBIT NO. 24, THIS DATE.)

ALJ WISSLER: Before we begin, I have
one more question for Ms. Greenberg. The
rising trend in house prices that you outlined
in your statement, what effect would the
resort have on that trend, in your view?

MS. GREENBERG: I think I would need a
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crystal ball to answer that. I really don't
know. I know the reasons people come here
now. I know prices have been rising
considerably. They have pretty much reached a
height, I think. They are still rising, but
not as rapidly as they had been rising in the
past few years, for the reasons of the
economy, or maybe they're worried about
interest rates going up. Prices are not
skyrocketing like they were. I cannot -- I'd
really have to think about whether or not I
think prices would change. I think in general
real estate prices over the course of history
have always gone up. There have been periods
when they have gone down; but if you look at
charts from the 1920's until now, there's dips
and there's rises, but it's always on the
rise, so I don't know what the effect would be
of the resort.

ALJ WISSLER: Correct me if I'm wrong,
but I think you made a statement that there is
a need in the area for more affordable

23 housing?

24 MS. GREENBERG: Yes.

25 ALJ WISSLER: How in your view would

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1 the proposed resort work against that goal? 670

2 MS. GREENBERG: I think it would
3 create more demand for affordable housing than
4 we possibly could supply. Right now
5 affordable housing is very scarce, and this
6 would make precious to have more affordable
7 housing that we cannot provide.

8 MS. ROBERTS: Can I ask a question
9 too -- you're not done, sorry.

10 ALJ WISSLER: I'm done.

11 MS. ROBERTS: Just wanted to clarify.
12 This rising trend, some people attribute this
13 trend to 9/11. Do you see that the market was
14 already getting better before 9/11?

15 MS. GREENBERG: I don't think 9\11 had
16 any effect; or if it did, it's minimal. Right
17 after 9/11, the phones were ringing off the
18 walls -- we have to get out of New York City;
19 what do you have? Then people would come up
20 and say: Oh, I didn't realize it was so far.
21 You cannot commute here daily. Some people do
22 commute into New York City one day or two days
23 a week, but I feel the effect of 9/11 was
24 minimal. For myself personally, I rented one
25 house to one couple in Phoenicia, and that was

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1 the only activity I had directly from 9/11. 671

2 MS. ROBERTS: So in your opinion, the
3 robust market started quite a few years ago?

4 MS. GREENBERG: Definitely the robust
5 market started before 9/11. No question.

6 MS. ROBERTS: Susanna Margolis is
7 next.

8 MS. MARGOLIS: My name is Susanna
9 Margolis. I live in Fleischmanns and New York
10 City. To establish my hiking credentials, let
11 me say first that I have been a member of the
12 Appalachian Mountain Club, the AMC, for more
13 than 30 years, and of the Sierra Club for
14 about the same. I have hiked extensively with
15 both organizations, as well as with the
16 Adirondack Mountain Club, the Catskill 3500
17 Club and the New York Ramblers -- and I was
18 regularly a volunteer hike leader for the
19 New York\North Jersey chapter of the AMC.

20 MR. RUZOW: We can't hear.

21 MS. ROBERTS: Do you need her to start
22 again?

23 MR. RUZOW: We couldn't hear.

24 MS. ROBERTS: Would you like her to
25 start again?

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1 MR. RUZOW: No.

2 MS. MARGOLIS: I am establishing my
3 credentials. I also served on the AMC's
4 August Camp Committee, which organizes a
5 four-week hiking camp in a different location
6 every August. I was an August Camp hike
7 leader and was the head hike leader for camps

8 in New Hampshire, Maine and Glacier National
 9 Park. I am a member of the
 10 New York\New Jersey Trail Conference, was a
 11 trail maintainer on the
 12 Wittenberg-Cornell-Slide trail, and on the
 13 Dry Brook Ridge trail. I'm currently the
 14 supervisor of the Dry Brook Ridge, volunteer
 15 maintainers for the Trail Conference.

16 I am the author of two books touching
 17 on the subject of hiking. Both were published
 18 by the Sierra Club Books in its adventure
 19 travel series. One, entitled walking Europe
 20 From Top to Bottom, is about a 1500-mile hike
 21 from the North Sea to the Mediterranean, a
 22 hike which obviously I did; and the other
 23 book, Adventuring in the Pacific, addresses
 24 hiking opportunities on the islands of
 25 Polynesia, Melanesia and Micronesia.

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1 In addition, I have hiked the
 2 mountains of five continents from the
 3 Grand Canyon to the Himalayas, from the Andes
 4 to the Atlas. I hope you'll agree that this
 5 qualifies me to say something very briefly
 6 about why people hike. We don't do it to
 7 arrive someplace; there are far faster means
 8 of getting somewhere. We don't it to cover
 9 territory; there are far more efficient ways
 10 to do that. We don't even do it for the
 11 so-called reward of a view from the top, if
 12 one is granted, although to have had the

13 opportunity, as I did a couple weeks ago on
14 Giant Ledges, to watch a young bald eagle ride
15 the currents back and fourth across woodland
16 valley was certainly a thrill.

17 We hike because doing so offers a
18 quality of contact with a place that is
19 simply not possible any other way. I will
20 give myself permission to quote from my book
21 about that 1500-mile hike down Europe and
22 assert that: "An awareness of place
23 accumulates in the hiker. Sights, sounds,
24 smells, climate, landscape, experience are all
25 gathered in through the muscles, through the

(COMMUNITY CHARACTER ISSUE)

1 pores, and mostly, through the feet. One step⁶⁷⁴
2 at a time."

3 Hiking, therefore, provides a unique
4 acquaintance with the character of a place,
5 and people hike in a place precisely because
6 of its character. That makes hikers something
7 akin to the canary in the mine when it comes
8 to the well-being of a community's character,
9 and right now, where the proposed Belleayre
10 Resort at Catskill Park is concerned, hikers
11 smell danger.

12 To explain this danger, I must speak
13 for a moment about the people who come here,
14 in great numbers, to hike these mountains. I
15 myself first began hiking the Catskills in
16 earnest some 30 years ago, on trips sponsored
17 by hiking organizations throughout the entire
18 New York metropolitan region. These trips are

19 routine among such organizations.

20 Let me give you some numbers: The
21 current summer schedule of the AMC's
22 New York/North Jersey Chapter offers some 18
23 Catskill region trips during the season. Nine
24 are day hikes, four are backpack trips, and
25 the rest are hotel stays for day hiking. These

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1 trips are almost always heavily subscribed. On⁶⁷⁵
2 every three-day weekend from Memorial Day
3 through Columbus Day, for example, one or more
4 AMC groups of some 50 or so hikers each will
5 converge on a local inn for the three days.
6 Backpack trips will usually consist often of a
7 dozen people, while single-day hikes may
8 attract upwards of 20 people or more per trip.
9 They typically car-pool or come by Trailways
10 bus to points along Route 28 that afford
11 access to trailheads.

12 It's important to keep in mind that
13 these 18 AMC trips represent the offerings of
14 just one chapter, of just one organization out
15 of many that routinely run hiking trips in
16 this region.

17 Among some other organizations sending
18 groups of hikers our way are any of the nine
19 chapters of the Adirondack Mountain Club; the
20 Catskill 3500 Club, of course; the Union
21 County Hiking Club, based in New Jersey; the
22 New York Ramblers; the New York Hiking Club;
23 the Outdoors Club; The Rip Van Winkle Hikers;

24 the Ramapo/Catskill Group; the Sierra Club,
25 also with numerous local chapters; and the

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1 woodland Trail walkers, to name just a few
2 known to me personally.

3 In addition, of course, there are
4 families and individuals, both local and from
5 outside the region, who hike here all the time
6 without being part of any group. So there are
7 a very, very great number of people who are
8 drawn to this area to hike, and there always
9 have been.

10 The reason is simple: If you live in
11 the greater metropolitan area of New York or
12 in Connecticut or in north Jersey or in the
13 lower Hudson valley or in the counties between
14 here and Albany, the Catskills are your
15 mountains. There are hills in other places,
16 there are heights of land, there are forested
17 trails for walking, but these are the
18 mountains. Route 28 is the portal to the
19 forested slopes and pristine streams, clear
20 skies, and undisturbed wilderness of the upper
21 elevations that hikers love to explore.

22 I cannot emphasize too strongly what a
23 miracle this place is for people from cities
24 or suburbs, especially for city-dwellers who
25 don't own cars. That described me for a

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1 number of years. From the Port Authority Bus
2 Terminal at the heart of the bustle and noise
3 and neon and crowds of midtown Manhattan, it

4 is three hours to this mountain community -- a
 5 haven of natural resources that we have been
 6 assured is protected by our state government.
 7 Undermine the existing character of this
 8 community, as the proposed resort would do,
 9 and the nearest "replacement," so-called, for
 10 the hikers who come here now is eight hours
 11 away, or 12 hours, or a plane ride -- no
 12 longer possible for a day trip or even a
 13 weekend.

14 But the fact is: There is no
 15 replacement for hiking in the Catskills. The
 16 experience is unique because the character of
 17 the place is unique, and to anyone who has
 18 hiked here, that character is absolutely
 19 distinct and absolutely recognizable: The
 20 woods that are thick and downright dreamy in
 21 any season, the reliably steep pitches, the
 22 rock faces treacherous with ice in the winter,
 23 the first trillium in the spring, the sudden
 24 glimpse outward through the trees to range
 25 upon range of hills that appear blue in summer

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1 and on fire in the fall, the side trail to a
 2 surprising, welcome, delicious spring where
 3 you can replenish your water supply, the climb
 4 up a trail-less peak followed by the search
 5 for the canister in which to register your
 6 name -- that's usually the hard part -- the
 7 terraced tops, with their minty, evergreen
 8 smell, each terrace seeming to promise that

9 the summit has been reached, each promise
 10 turning out to be false -- except for the last
 11 one, of course.

12 Nor is it just the mountains and
 13 trails that define the character of this
 14 mountain community. There are the hamlets and
 15 villages where hikers and backpackers stock up
 16 on supplies, ply the shops, patronize the
 17 restaurants and hostelryes. I well remember
 18 how it felt, heading up here from the City for
 19 a weekend of hiking or backpacking, to stop at
 20 some nice restaurant on Friday night and
 21 ingest, along with the meal, the sensation
 22 that I had stepped into a different world, far
 23 from noise and clutter and grasping. I think
 24 also of the winter backpacks when we tumble
 25 out of the snow and right into a hot breakfast

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1 in Phoenicia or Fleischmanns or Margaretville,⁶⁷⁹
 2 and of the warm, slow summer hikes when the
 3 last mile is a race to an ice-cold beer in
 4 Pine Hill or Big Indian.

5 All of this defines the very specific
 6 community character that brings people here to
 7 hike. And the particular part of the
 8 community where the developers propose to
 9 situate their resort is at the very heart of
 10 it, right smack dab in the middle of the "high
 11 peaks" region, just exactly at the focal point
 12 to which hikers are drawn.

13 I, for one, came here to live
 14 precisely so that I could be in the midst of

15 this hiking. I came here for the hiking.
 16 Belleayre, in fact, is my mountain. From my
 17 house, I look over onto the mountain's west
 18 slope. I am aware that if the resort should
 19 be built, I would no longer be looking at a
 20 mountain, but rather at a golf course, hotel,
 21 retail establishments, maintenance buildings,
 22 and a small city of homes and time-share
 23 units.

24 For now, however, it is still a
 25 mountain, and in ten minutes, I can be at the

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1 Trailhead in Pine Hill for walks up Cathedral
 2 Glen or the Pine Hill west Branch Trail. In
 3 20 minutes, I can be at the parking lot for
 4 Lost Clove or Rider Hollow. Depending on
 5 which trail I choose, conditions, and my pace
 6 that day, I can be on the top of the mountain
 7 in a couple of hours or spend the day poking
 8 around the woods.

9 I went up the mountain from Rider
 10 Hollow some weeks ago, in late April or early
 11 May, as best I recall. There were still
 12 patches of snow, and the trees were not leafed
 13 out. On a prior trip up that trail, I had
 14 spotted a red fox. This time the only
 15 wildlife I saw were a young couple and their
 16 baby, who was riding high in a backpack on her
 17 father's shoulders. There's a rock outcrop at
 18 about where the trail pitches up to a level
 19 place, and we stood there together looking

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20 east past Balsam to the Slide-Panther
 21 wilderness. At that point, we were also
 22 staring north/northeast right onto the ridge
 23 where this resort would be built.

24 Please do not tell me that the resort
 25 will not be visible from state-owned trails.

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1 It will. Given the topography and depending
 2 on air currents, it might also be audible from
 3 where I stood that day. Moreover, if the
 4 resort brings as many people in cars as its
 5 would-be developers claim, and again if air
 6 currents are right, hikers might even be able
 7 to smell the fumes from residents' automobile
 8 exhaust, as well as hear and see the cars. It
 9 would be the only place in the Catskills, to
 10 my knowledge, where car fumes might actually
 11 penetrate to within the vastness of the
 12 mountains.

13 These are hypotheses, but that
 14 construction of the resort would ruin forever
 15 the view I saw in late April or early May is a
 16 certainty. The view is not all it would ruin,
 17 and others have testified and will testify to
 18 the many adverse impacts on our natural
 19 resources. Yes, the resort will wreck that
 20 trail view, my view from home, the views from
 21 surrounding mountains, from Route 28, from the
 22 town of Pine Hill.

23 Yes, it will kill the night sky, so
 24 that backpackers like me will never again
 25 really be sleeping out under the stars here.

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1 The stars will have been rendered almost
2 invisible in the diffused artificial light
3 from the resort.

4 Yes, the proposed mega-resort would
5 bifurcate a wildlife habitat, leaving the
6 animals unable to jump the gap, restricting
7 them to smaller islands. With their options
8 reduced, many species would likely disappear
9 from the area, and there's evidence that the
10 more infectious species would be the ones
11 remaining. Recent studies have shown that the
12 loss of biodiversity that results from
13 breaking up wild environments greatly
14 increases the risk of Lyme disease, already
15 prevalent in the Northeast.

16 And, yes, the resort would harm our
17 watershed, impose an awful traffic burden on
18 our country roads, and very likely raise my
19 property taxes to a level I would find
20 insupportable.

21 But even more fundamentally than all
22 these negatives, the proposed resort is a
23 direct threat to the quintessential character
24 of this community, to the very specific sense
25 of place I've talked about. It would so

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1 profoundly alter the character of these
2 mountains as to destroy that character once
3 and for all. The loss will be irretrievable.
4 Once you have blasted a mountain apart, you

5 cannot piece it together again. Once you have
 6 planted a city in a wilderness, you can't call
 7 it wilderness anymore. Once you have
 8 undermined the character of a community,
 9 sapping the very thing it is based on, there's
 10 nothing on which to rebuild. That is true
 11 whether you can see the resort or not.

12 No one has said it better than a man
 13 from New Jersey named Richard wolff, a veteran
 14 hiker and skier who has been leading trips
 15 here for AMC since 1964 -- probably more than
 16 a hundred trips, by his estimate. He leads
 17 three every summer, including this summer, and
 18 four or more trips in fall and winter. On
 19 seeing the plan for the resort, Dick said, and
 20 I quote: "That's not a resort; it's a city.
 21 If they build it, I simply won't come here any
 22 more."

23 I wonder, Your Honor, how many times
 24 we need to learn the lesson of what
 25 environmental degradation can do to a place.

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1 There are examples of mountain towns from New
 2 Hampshire to Colorado to California where the
 3 once unique sense of place has been diminished
 4 at best, destroyed at worst by cookie-cutter
 5 "destination resorts," as they are implausibly
 6 called, and where local people all too often
 7 have been priced out of their homes and their
 8 hometowns. I wonder if such a loss is worth
 9 yet another up-market retail mall selling
 10 scented candles and high-priced casual wear.

11 I think it is not.

12 Besides, we already have our share of
13 such facilities, from the costly swank of the
14 huge Mohonk Mountain House to our south to the
15 Windham Mountain golf-and-ski resort to our
16 north, which proudly claims, by the way, that
17 it is one in a ring of nine golf courses in
18 the area. Indeed, golf courses abound in this
19 part of the world. Together, Delaware,
20 Greene, and Ulster Counties boast more than
21 40. Two golf courses are within steps of
22 where we now gather. Must a mountain be
23 broken and a sense of place destroyed to build
24 yet another?

25 That is precisely what the proposed

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1 resort, quite simply and quite fundamentally,⁶⁸⁵
2 will do. It will destroy the sense of place
3 of the Catskills. It will wreck the existing
4 unique character of this community that now
5 derives organically from the protected natural
6 resources here. Instead, it will give us an
7 imposed, artificial, easy-to-replicate gloss
8 on our mountains, Mountains Lite, mountains as
9 theme park, mountains as pretty backdrop for
10 golfing or gambling or whatever ends up here.

11 Such an impact is, indeed, adverse.
12 It deserves to be considered in this
13 environmental quality review. Thank you.

14 ALJ WISSLER: Ms. Margolis, let me ask
15 you this: You're familiar with the trails

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around the proposed site?
MS. MARGOLIS: Yes.
ALJ WISSLER: Pine Hill/West Branch
Trail; you've hiked that?
MS. MARGOLIS: Yes.
ALJ WISSLER: Fox Hollow, Panther
Mountain, Giant Ledges, so forth?
MS. MARGOLIS: Yes.
ALJ WISSLER: You indicated you're a
backpacker?

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MS. MARGOLIS: Yes.
ALJ WISSLER: Can you camp along these
trails?
MS. MARGOLIS: Yes, you can.
ALJ WISSLER: what are the rules with
respect to camping?
MS. MARGOLIS: You can't camp -- you
cannot camp above 3,000 feet, except during
some of the winter months. You must be
250 feet off the trail, 250 feet from any
course of water.
ALJ WISSLER: So the trails that
surround this site, Pine Hill\West Branch,
Giant Ledges, the trail that leads from
Belleayre over to Balsam --
MS. MARGOLIS: I wouldn't say Giant
Ledges surrounds the site, four trails on the
mountain.
ALJ WISSLER: You've taken that trail;
the Panther trail?

22 ALJ WISSLER: And the there are views
23 of this site from that trail?

24 MS. MARGOLIS: From Giant Ledges?

25 ALJ WISSLER: Not Giant Ledges, over

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1 towards Panther Mountain?

2 MS. MARGOLIS: Panther Mountain is a
3 wooded peak, and from the top of Panther, you
4 look east. I'm not sure. I don't know.

5 ALJ WISSLER: But Pine Hill/West
6 Branch Trail and the trail that goes over to
7 Balsam are all trails you could backpack and
8 camp along?

9 MS. MARGOLIS: Sure.

10 ALJ WISSLER: You could camp in areas
11 along in there where you would have a view of
12 the proposed site?

13 MS. MARGOLIS: Yes, certainly. Even
14 more so than from the trail, yes, indeed.

15 ALJ WISSLER: Question 2, you
16 indicated that the experience of a hiker could
17 be impacted by sound -- audibly as a result of
18 the resort?

19 MS. MARGOLIS: I hypothesize that.

20 ALJ WISSLER: I understand you
21 hypothesized, but can you be more specific
22 what you mean by that?

23 MS. MARGOLIS: If cars are going up --
24 this is on the west slope of the mountain --
25 if cars are going up to that resort, hotel, to

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1 whatever activity is going on there -- if cars
2 are parking there, if trucks are bringing
3 things up and back during the period of
4 construction, I think it's -- depending on the
5 time of year and time of day and the air
6 current, I think it's possible to hear it.

7 ALJ WISSLER: But would it be limited
8 to the time of construction?

9 MS. MARGOLIS: I'm hypothesizing you
10 would be able to hear cars going up and down.

11 ALJ WISSLER: That is based on what?

12 MS. MARGOLIS: Hypothesis only.

13 ALJ WISSLER: But based on your
14 experience as a hiker where you have been in
15 proximity to highways and so forth where you
16 have heard traffic?

17 MS. MARGOLIS: Yes, absolutely.

18 MR. GERSTMAN: Would it be helpful to
19 refer to CPC 5?

20 ALJ WISSLER: You can show it to her.

21 MR. GERSTMAN: Ms. Margolis, the
22 question the Judge is asking you about the
23 trails in and around the proposed Belleayre
24 project, I refer you to what's been identified
25 as CPC Exhibit 5 which is New York\New Jersey

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1 Trails Conference Map. Can you identify which⁶⁸⁹
2 trails, when the Judge was asking you
3 questions, you were referring to based upon
4 this map?

5 MS. MARGOLIS: This is Pine Hill\West
6 Branch Trail, and this is the Mine Hollow

7 Trail leading up to it. This is the walk I
8 was talking about in my testimony. From here
9 you look directly onto the ridge where it
10 would be. If you were camping off the trail,
11 you would -- if you went in that direction,
12 you would most certainly be looking directly
13 at it, and I think being the fact there's kind
14 of a clove between one ridge and the next --

15 MS. BAKNER: I'm sorry, we have to
16 object to that.

17 MS. MARGOLIS: I'm hypothesizing. I'm
18 not an expert.

19 ALJ WISSLER: I understand.

20 MR. GERSTMAN: What other trails were
21 you referring to in response to the Judge's
22 question in referring to CPC Exhibit 5?

23 MS. MARGOLIS: All of them, Cathedral
24 Glen, Pine Hill/West Branch and Lost Clove,
25 and the feeder trails into them. Mine

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1 Hollow -- I forget what this is called, the 690
2 OM Red Trail, Oliveria Mapledale Trail. These
3 are feeder trails into the Pine Hill/West
4 Branch Trail.

5 MS. ROBERTS: Are you able to camp off
6 of any of those trails?

7 MS. MARGOLIS: Yes, if you adhere to
8 the restrictions, yes.

9 ALJ WISSLER: Thank you.

10 MS. BAKNER: Your Honor, before they
11 call the next witness, and not wanting to

12 unnecessarily lengthen the proceedings of
13 things, we want to note for the record that
14 she is an adjoining landowner, she obviously
15 has an objection to the project, that it's not
16 clear what she's looked at; she has no
17 qualification to assess noise, she has no
18 qualification to assess visual impacts. We
19 certainly respect her hiking experience, but
20 since this is going in, almost as if it's
21 testimony, although you have assured us it's
22 not, I think it's important to note for the
23 record her interest in the proceeding, and the
24 lack of foundation that's been set for the
25 most basic of conclusions.

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1 ALJ WISSLER: Your concern is so
2 noted. I think her input is absolutely
3 essential to the issues before us.

4 MS. ROBERTS: We can't really say much
5 more than we agree with what you say.

6 ALJ WISSLER: I'm not asking you for a
7 comment. I'm asking you to call your next
8 witness.

9 MS. ROBERTS: I'd like to call Judith
10 Wyman and introduce CPC 25, which is
11 Ms. Wyman's resume; and CPC 26, which is her
12 statement.

13 (CV OF JUDITH WYMAN RECEIVED AND
14 MARKED FOR IDENTIFICATION AS CPC EXHIBIT NO.
15 25, THIS DATE.)

16 (STATEMENT OF JUDITH WYMAN RECEIVED
17 AND MARKED FOR IDENTIFICATION AS CPC EXHIBIT

18 NO. 26, THIS DATE.)

19 MS. WYMAN: My name is Judith Wyman.

20 I moved to the Town of Shandaken 23 years ago
21 and settled in the hamlet of Chichester which
22 is one of the hamlets adjacent to and served
23 by the Village of Phoenicia. At the time
24 there were many abandoned houses in the
25 hamlet. Many had not been lived in for years

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1 and were in various stages of disrepair. The ⁶⁹²
2 Realtor who showed me the house prefaced the
3 showing with an apology for its condition;
4 and, indeed, it was extremely rundown and in
5 need of a great deal of work to make it a
6 comfortable, functional home.

7 After spending time with the house in
8 the immediate area, I began to see advantages.
9 At the end of the dead-end road where the
10 house was, there was a 56,000-acre tract of
11 state-owned wilderness. I could hike and
12 cross-country ski from my front door. Just 15
13 minutes away in either direction, there were
14 two major ski areas which would enable me to
15 do more downhill skiing than I had been able
16 to do in years. There were beautiful creeks
17 with crystal clear water and swimming holes
18 that were extremely inviting, and there were
19 many rural roads for bicycling.

20 In spring, which was the season I
21 first came to the area, the woods were
22 abundant with wildflowers, some of which I

23 hadn't seen in years, such as trilliums,
24 lady's slippers, wild ginger, Dutchman's
25 breaches, trout lilies, wood betony and more.

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1 The fields were full of wild thyme and wild
2 marjoram so when you walked, the fragrance
3 wafted up. wild roses and dame's rocket,
4 which are in bloom now, added more fragrance
5 to the area.

6 when I realized how much protected
7 land there was in the area, I was sold.
8 Phoenicia, although somewhat rundown and not
9 the vibrant village it is today, had its own
10 unique charm and provided needed services to
11 the area. There were empty storefronts and
12 some of the buildings were rundown, but there
13 was a food market, pharmacy, a bank,
14 fishing/hiking supply, bus stop, gas station,
15 restaurants and a few other shops.

16 I bought the house and began a
17 six-year renovation project. Others
18 discovered the area and bought neglected and
19 abandoned houses, and we became a community of
20 renovators. There were some who had lived in
21 their homes for years, even generations, while
22 the rest of us were living in homes that were
23 works in progress. We had neighborhood
24 gatherings where all, new-comers and long-time
25 residents alike, were included; and we

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1 encouraged, supported and assisted each other
2 while our works in progress became functional

3 homes. Those who had lived here for
4 generations gave us tips about our projects
5 and life in the area. We hired locally,
6 bartered for each other's services and had
7 work parties. For example, several neighbors
8 helped me put a badly needed roof on my house.

9 Today we are a vibrant and diverse
10 community, and most of the abandoned
11 properties have been claimed and given the TLC
12 they deserved. The area seems to be a magnet
13 for resourceful people who have a wide range
14 of interests and abilities. The following is
15 a list of the occupations and professions of
16 the people in my neighborhood, which I feel is
17 a representative slice of the people who live
18 in this area. Many of them work from their
19 homes. The list is as follows: Teacher, fine
20 woodworker, snowplower\excavator\firewood
21 provider, family therapist, plumbing and
22 heating repair, artist\custom builder
23 combined, builder specializing in post and
24 beam construction, waitress, food prep. worker
25 in a restaurant, individual store employee,

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1 someone who does odd jobs and snowplowing,
2 writer, glass blower, a person who does art
3 restoration, and she specializes in restoring
4 old prints, website design, lawn and grounds
5 maintenance, shop owner in Phoenicia, Internet
6 commerce, somebody who runs an Internet
7 commerce business selling toys, home business

8 creating an herbal product, a fine artist, she
 9 is a painter, comic book artist, retired
 10 postal worker and highway worker, trucker,
 11 telecommuter who spends two days a week in
 12 New York City, a B & B operator and publisher
 13 of a local newspaper.

14 There are also several retired people
 15 and some second-homers. Many who have second
 16 homes buy them with the intention of retiring
 17 in the area.

18 Phoenicia, as we saw on the field
 19 trip, as come a long way. Now the empty
 20 storefronts are filled, the businesses that
 21 are here are solid, and the village is
 22 vibrant. On the weekends, it is not unusual
 23 to have to wait for an hour and a half to have
 24 pancakes at Sweet Sue's.

25 I have seen this area grow organically

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1 into a beautiful and desirable community that
 2 is diverse, inclusive and very alive. I am
 3 extremely concerned that the addition of the
 4 Belleayre Resort, which would be an exclusive
 5 develop separate from what is currently here,
 6 would harm the community that has been built
 7 from the bottom up and the inside out by the
 8 people who live here.

9 MS. ROBERTS: Thank you, Ms. Wyman. I
 10 just have one question for you. You talked
 11 about that there was a time when the
 12 businesses were not doing very well. Did
 13 there come a time when businesses started to

14 stick and take hold?

15 MS. WYMAN: Absolutely. I think you
16 would -- it was within the last 10 to 15 years
17 that that happened. There's been a steady
18 incline since then. I remember when Sweet
19 Sue's came in, it was a turning point because
20 it started with thrift shop furniture, just
21 old tablecloths and things, but it really
22 grew, and it was so popular. And the
23 Tenderland came, and then the hardware store
24 came, and they all started to stay instead of
25 the come-and-go businesses that were happening

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1 in the early '80's when I first came to the 697
2 area. So it has, absolutely.

3 MS. ROBERTS: Are there vacancies now?

4 MS. WYMAN: There's one vacancy now,
5 but it's only been vacant for nine days, end
6 of May, and the woman who ran that business
7 chose to do something else. She wants to do
8 something else with her life. So there is one
9 vacancy right now that's been there for nine
10 days.

11 MS. ROBERTS: Nothing further of this
12 witness.

13 Our last witness for today is Mary
14 Kopaskie. She's with Peter J. Smith
15 Associates.

16 We'd like to mark this as CPC
17 Exhibit 27. Ms. Kopaskie's resume has been
18 already introduced to you as Exhibit -- it's

25 impact, and then some of the deficiencies of
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1 the DEIS in addressing those impacts.

2 In defining community character, the
3 America Planning Association, which is the
4 national professional organization throughout
5 the country -- they have, I believe, over
6 30,000 members -- defines it as the image of a
7 community or area as defined by such factors
8 as its built environment, natural features and
9 open space elements, the types of housing,
10 architectural style, infrastructure and the
11 type of quality of public facilities and
12 services. Then they say also "See sense of
13 place" which is another thing a lot of people
14 have talked about today that's hard to grasp
15 and define.

16 They have two definitions for sense of
17 place. Those include the constructed and
18 natural landmarks and social and economic
19 surroundings that cause someone to identify
20 with a particular place or community. The
21 characteristics of a location that make it
22 readily recognizable as being unique and
23 different from its surroundings, that provides
24 a feeling of being to or being identified with
25 that particular place.

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1 Another professional organization,
2 group of professionals out there in defining
3 sense of place define it as from the

4 Dictionary of Human Geography, define it as:
 5 Geographers have examined both the character
 6 intrinsic to a place as a localized bounded
 7 and material geographical entity, and the
 8 sentiments of attachment and detachment that
 9 human beings experience, express and context
 10 in relation to that specific place.

11 You can see there are a lot of
 12 identifiable things, and there are a lot of
 13 things people feel about in terms of coming up
 14 with what community character is, what sense
 15 of place is.

16 Unlike a lot of the other aspects of
 17 an Environmental Impact Statement, this is not
 18 necessarily a science. I am going to try to
 19 turn it into quantifiable aspects of impacts
 20 so that we can almost turn it into that
 21 science.

22 what is community character? The
 23 trades or attributes of a region that are
 24 identifiable and bind residents and visitors
 25 together. These can include historic and

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1 cultural aspects, natural, built, political
 2 and economic aspects of a community.

3 when we start to look at the Catskill
 4 region, and in particular the Towns of
 5 Shandaken and Middletown and the other
 6 Route 28 corridor communities, there are
 7 really four things that I think everybody
 8 could agree are part of the community
 9 character. The peaks and valleys, villages

10 and hamlets, scenery and the rural aspects of
 11 it. All of these things have different
 12 aspects of them that tie into these historic
 13 cultural, natural, built, political or
 14 economic aspects of the community.

15 For example, the villages and hamlets
 16 have that small town, quaint, historic quality
 17 that are both political and economic, as well
 18 as built. We've got scenery that is serene
 19 and quiet. That's part of the natural
 20 environment. You can see there's a tie-in to
 21 all of these aspects that I have defined as
 22 sense of place, community character in with
 23 these very identifiable characteristics of the
 24 Catskill region.

25 I want to now talk about community

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1 character impacts. When we first started
 2 working on this project and I saw this quote
 3 in the DEIS that says that: "The proposed
 4 project will involve development of
 5 approximately 29 percent of the assemblage, or
 6 only approximately 573 acres. The project
 7 will provide for most of the needs of its
 8 guests, including lodging, dining, recreation,
 9 spa facilities. Because the resort will be
 10 fairly self-contained, there will not be an
 11 effect on community character."

12 When I read that statement, I felt
 13 there really was a fundamental
 14 misunderstanding of what community character

15 meant. Simply because the project is a
16 self-contained site development, that will
17 really have impacts on more than just the
18 573 acres that are being developed. It
19 impacts more than just the Towns of Shandaken
20 and Middletown. It has to be considered in
21 holistic manner. Every community along the
22 Route 28 corridor is going to be impacted by
23 this project. Every one of the little
24 villages and hamlets within this area are
25 going to be affected by this development.

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1 The function of SEQRA is to look at
2 that holistic manner, not to simply say
3 because this development is self-contained,
4 there will be not be any community impacts.
5 So I want to address some of those impacts.
6 I'm going to look at them in the five
7 categories I have identified: Cultural and
8 historic, the natural, the built, the
9 political -- I'm going to ignore the political
10 because I don't want to get into the political
11 aspects of the community -- and the economic,
12 so I'm going to talk about those four
13 characteristics.

14 Under them, under natural, I'll look
15 at visual and open space impacts. Under
16 built, I'm going to look at noise, land use
17 which has both the natural and built impacts,
18 and traffic. And then under economic, I'm
19 going to talk about socioeconomic and
20 secondary growth.

21 So the cultural and historic aspects:
22 As Tom had so eloquently talked earlier today
23 about the history of the area, historically
24 the Catskills have been a tourism destination.
25 In the early 1800's, there were large-scale

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1 resorts. Over the years, the economy has
2 changed. We went from the borscht belt of the
3 Nevele and the Concord, and those types of
4 resorts, to now the hamlets really are the
5 focus of a lot of the development that are
6 occurring. People are still coming up to see
7 the spectacular scenery. It's been the
8 inspiration of the artists, as Tom talked
9 about.

10 The DEIS doesn't really address the
11 trends of the history, the trends of the
12 economy over the years, and how this area
13 really has changed from what it once was. We
14 don't sit in time ever. Things evolve and
15 change, and the trends of what's happening
16 really have to be looked at from a historical
17 context, so that we don't necessarily step
18 back into history, but that we learn from
19 that.

20 The natural aspects of a community,
21 the visual and open space. I want to start
22 with visual impacts. I know that you had a
23 lot of visuals yesterday on the visual impacts
24 and some of the changes that would be
25 occurring. One of the things that would

1 happen is a change in contours. The DEIS
2 states there will be blasting that occurs and
3 regrading that occurs. Most of these visual
4 impacts may be from private property, but the
5 State in their 2002 Open Space Conservation
6 Plan has actually identified some areas they
7 would like to acquire. While at this point
8 these aspects might be private property, at
9 some point the State may actually take hold of
10 these areas.

11 So visually the forested mountaintop
12 would forever be changed because of the
13 blasting and regrading of these contours. The
14 DEIS doesn't address these impacts, especially
15 from Route 28, and it really doesn't consider
16 the impacts on the surrounding properties.

17 I know that you saw this graphic
18 yesterday. It was completed by one of the
19 landscape architects in our office. It shows
20 a little clearly what a grass landscaped area
21 of a golf course would look like, where in the
22 DEIS, they tend to make it look more like a
23 wooded area as opposed to a lawn, grassed area
24 that you would see in a golf course.

25 The stockpile areas through the

1 construction period, they're very susceptible
2 to erosion, which is a different issue. 500
3 plus acres would be clear-cut for the
4 development. That would accommodate for the
5 buildings and the golf course. The visual

6 impacts. For a duration of eight years,
7 stockpiled areas where they would put the
8 topsoil that they were going to grade onto the
9 site, because they are looking at balancing
10 cut and fill, although I have a slide that's
11 going to address that later. Those visual
12 impacts of that stockpile area have not been
13 addressed, the visual mitigation of those.

14 MS. ROBERTS: The previous slide, you
15 talked about views really being from private
16 property?

17 MS. KOPASKIE: Primarily, yes.

18 MS. ROBERTS: As we're hearing, there
19 are going to be views from campsites and
20 trails and from Route 28. I want to clarify
21 that you're not suggesting the impact is only
22 private.

23 MS. KOPASKIE: This happens to be from
24 a private area. Yes, there will be impacts
25 from Route 28 and from some of the state

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1 trails.

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2 MS. ROBERTS: Thank you.

3 MS. KOPASKIE: The clear-cutting and
4 the panoramic views. 500 acres of forested
5 land. These are 100 year-old trees. We at
6 one point learned 100 years ago when
7 everything was clear-cut and people were
8 logging, a lot of these trees are 100-year-old
9 trees. There are long-distance and short
10 vistas to this area. Right now the State is

11 limiting the amount of clear-cutting at their
12 own ski center because they realize what the
13 visual impacts may be.

14 MS. BAKNER: Your Honor, we hate to
15 interrupt; but again, I would point out for
16 the record that the trees on-site are not
17 100-year-old trees, that's clearly covered in
18 the Draft Environmental Impact Statement, and
19 yesterday they showed absolutely no evidence
20 or proof with respect to views from lands that
21 the State may or may not choose to buy in the
22 future. Some of this information is being
23 presented as fact, and it's clearly wrong.

24 So should we stop at each point and
25 point out where it's wrong or wait until the

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1 end? What would you prefer?

2 ALJ WISSLER: Why don't we wait until
3 the end of the presentation. Certainly if
4 your experts differ with this -- but again,
5 we're looking at this in terms of the issue of
6 community character and the various factors
7 that contribute to community character, so
8 this isn't about visual impacts, per se, or it
9 isn't about future land acquisition, things
10 like that.

11 MS. BAKNER: I couldn't agree with you
12 more, your Honor.

13 ALJ WISSLER: And I'm taking -- I'm
14 looking at this in the context -- the issue of
15 community character.

16 MS. BAKNER: I understand, your Honor;
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17 but if the underlying facts that are being
18 presented as proof to tend to show something
19 with regard to community character are, in
20 fact, completely wrong, then what can it say
21 about community character?

22 ALJ WISSLER: You know what? I'll
23 allow you to do it. You have the Power Point
24 presentation. As we go through this, make
25 notes that you would like to bring us back to,

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1 and we'll bring Ms. Kopaskie back to whatever⁷⁰⁹
2 slide it is and let you make a record.

3 MS. BAKNER: Thank you.

4 MS. KOPASKIE: So 100 years of growth
5 have occurred in many areas where the project
6 site would be located. This is a natural
7 regrowth. Yet the DEIS, and what they are
8 proposing, proposes tree planting ornamental
9 plants which have nothing to do with the
10 forests that exist on the mountaintop right
11 now. And a golf course with just lawned area
12 which has nothing to do with the forest that
13 lives on the mountain right now. 444 acres,
14 which the DEIS is claiming will be
15 re-vegetated and that will be allowed to go to
16 a natural state. I don't know how the DEIS
17 can state that ornamental plants and golf
18 courses are a natural state.

19 Lighting and light pollution.
20 Historically the mountaintop is dark.
21 Historically all of the mountaintops are dark

22 within the Catskill area. Light pollution and
 23 the dimming of the night sky is an issue that
 24 has been researched, and is becoming much more
 25 of an issue in rural communities.

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1 There are dark sky organizations out
 2 there. We are working with communities in
 3 developing dark sky regulations to limit the
 4 amount of lighting of the rural area because
 5 the night sky, viewing of the stars, all of
 6 those things are being impacted by lights
 7 within the rural areas. Lighting historically
 8 has been in the valley so that the
 9 mountaintops themselves have been dark.

10 Yes, the DEIS proposes down-lighting.
 11 There are ways to minimize the impacts of
 12 lighting, but when you look at a mountain and
 13 there are lights for parking lots and trails
 14 and things like that, because of security
 15 reasons, they're going to have to have lights.
 16 There are going to be lights from the
 17 buildings. Those lights are going to be
 18 visible as you look at the mountain. There's
 19 nothing that can be done to minimize that
 20 light coming off the mountain in an elevation
 21 perspective. It's contrary to the existing
 22 conditions, and it's totally dismissed. We
 23 suggest a lighting simulation of the proposed
 24 development be done from the surrounding areas
 25 to show how that would impact surrounding

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1 views.

2 The scenic drive along Route 28. I
3 know Tom touched on this. It's really --
4 turning Route 28 into a scenic byway at both
5 the state and the national level has been
6 considered for over 30 years. The New York
7 State first considered it in 1969, the New
8 York DEC. It was reiterated in the 1990 study
9 called the Catskill Gateway Conservation
10 Study, a design strategy for land protection.
11 It was reiterated in the 1999 Route 28 Scenic
12 Road Study, and it was reiterated in the 1994
13 Route 28 Corridor Study. And the DEIS
14 dismisses the impacts of the project and the
15 visual impacts that it would have from Route
16 28.

17 Although it's not a designated scenic
18 byway at this point, it's obvious it has been
19 considered a scenic byway in the immediate
20 area and at the state level, and I know there
21 are local groups that are working at trying to
22 get Route 28 designated as a byway.

23 The open space impacts. The DEIS
24 doesn't address the source of topsoil and
25 where that topsoil would be coming from.

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1 Typically topsoil is drawn out of agricultural⁷¹²
2 lands which is one of our most precious
3 non-renewable resources. There are so many
4 efforts within the state to protect
5 agricultural land. They are looking at
6 importing 240,000 cubic yards of topsoil for

7 two golf courses. They require 108,000 cubic
8 yards each; and for the landscaped areas,
9 they're looking at 11,000 cubic yards each
10 needed for those.

11 So we did a calculation to see how
12 much land would be consumed by that. If we
13 assume a depth of six inches over the entire
14 area, we're looking at 300 acres of
15 agricultural land that could be lost because
16 of using the topsoil and importing 240,000
17 cubic yards. That's a significant impact, and
18 we don't think that the DEIS addresses it
19 adequately.

20 The loss of forested land. According
21 to the USDA, in Ulster County in the Catskill
22 Mountains, there are approximately 555 trees
23 per acre at a five-inch diameter depth at
24 breast height. 555 trees lives on each and
25 every acre that this project is proposed on.

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1 The DEIS is planting 4,100 trees, which is
2 eight trees per acre. We're looking at a loss
3 of over 270,000 trees in the clear-cut areas
4 that this project will be built on. That not
5 only impacts visually, but it also impacts
6 wildlife habitats, and we don't think the DEIS
7 adequately addresses those impacts.

8 There's also the potential to lose an
9 additional 1,387 acres of forest land. Right
10 now the DEIS says those areas will be forever
11 protected, but there's no guarantee. There's
12 no guarantee that after these 500 acres are

13 developed that the Applicant is not going to
14 come in and want to expand onto those
15 1,400 acres, which then has another huge
16 impact on the community and its character.

17 There are no details on protection,
18 yet Appendix 4A shows the covenants for
19 Highmount Estates and how they're going to
20 protect that area. So we think if these
21 1,400 acres are going to be protected, that
22 there should be some guarantee that in
23 perpetuity they would never be developed, and
24 that that needs to be part of the DEIS.

25 I want to talk a little about the

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1 built environment; noise, land use and
2 traffic. The noise impacts from blasting -- I
3 don't remember the trail expert's name --

4 MS. ROBERTS: Susanna Margolis.

5 MS. KOPASKIE: Susanna. She talked
6 about viewing out over the site, and really
7 what's going to happen with the blasting is
8 you're going to have this amphitheater effect.
9 The blasting, while intermittent, is
10 definitely going to be noticeable, and with
11 the amphitheater, those sounds are actually
12 going to be increased as they go out from the
13 mountaintop.

14 The time and duration of construction
15 would be April to November, the prime time
16 when people are outside. They have their
17 windows open six days a week, 10 hours a day.

18 Those noise impacts are incredible on people
19 who live in the surrounding area, as well as
20 people coming up throughout the summer to hike
21 and visit and be out on those trails.

22 The DEIS implies that there's no
23 increase to the current noise levels, that the
24 wind rustling is about a 40 to 50 decibel
25 level, and they claim that the blasting will

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1 not significantly contribute to the overall 715
2 construction noise. We're disagreeing with
3 that finding in that one construction truck, a
4 large diesel truck, its noise level is about
5 90 decibels, and that's double what the
6 current levels of noise are in this area right
7 now.

8 The truck noise for the hauling isn't
9 considered. As I had said, the DEIS states
10 that about 216,000 cubic yards would be used
11 at the two golf courses, and another
12 22,000 cubic yards would be used in the
13 landscaped areas. If we assume 15 cubic yards
14 per truck, that could result in over 15,000
15 trucks being used to haul this fill up 28 to
16 build the golf courses and these built areas.
17 If we do a calculation out of how many trucks
18 per hour that is, we assumed a five-year
19 construction period based on a 52-week
20 construction time, 10 hours a day, six days a
21 week, that comes out to approximately 15
22 trucks per hour that would be on Route 28
23 throughout that entire time.

24 As I mentioned, the decibel level of a
25 truck is about 90 decibels, which is twice the

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1 existing levels. So the DEIS isn't adequately⁷¹⁶
2 considering the trucks hauling the fill, and
3 it doesn't consider the noise or the air
4 quality impacts of those trucks hauling that
5 fill.

6 MS. ROBERTS: Ms. Kopaskie, let me
7 interrupt for a second. Even if -- if we take
8 away the noise impacts for a second, will this
9 number of trucks have an impact on traffic?

10 MS. KOPASKIE: If you have 15
11 construction trucks on these roads every hour,
12 there could be backups because construction
13 vehicles obviously don't move as fast as an
14 automobile, and I'm not a traffic expert but
15 having driven on roads --

16 MS. ROBERTS: As a planner.

17 MS. KOPASKIE: Having driven on roads,
18 you get behind construction vehicles, yes,
19 there's the frustration and all those things
20 that go with getting behind a slow-moving
21 vehicle.

22 The increased traffic, service
23 vehicles at the resort. In the traffic
24 analysis, those service vehicles after the
25 resort is built, garbage is going to have to

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1 be picked up, supplies are going to have to be⁷¹⁷
2 brought up to the resort. Those vehicles are

3 not considered as part of the traffic analysis
4 that's been done.

5 Belleayre Ski Center is planning an
6 expansion, and there are cumulative impacts
7 that have not been addressed in the DEIS. The
8 DEIS totally ignores the Belleayre Ski Resort
9 Center expansion, and we think that the DEIS
10 is negligent in not looking at those areas
11 also.

12 I want to talk a little about the land
13 use impacts and the New York State Quality
14 Communities Initiative, and I know that Helen
15 had brought up some of the principles from
16 that initiative. Those are two policies that
17 come from the New York State Quality
18 Communities Initiative, and they are directly
19 related to this project and its impact on
20 community character.

21 The first is that the protection and
22 enhancement of our air, land and water
23 resources are important to the stability and
24 diversity of the ecological systems, while
25 also contributing to the health and well-being

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1 of New Yorkers. Appreciation of our natural 718
2 landscapes, such as, mountains, forests,
3 lakes, rivers and coastlines, adds beauty and
4 value to our lives.

5 The second policy in the New York
6 State Quality Community Initiative is that the
7 architectural variety of history and unique
8 characteristics of our cities and downtown

9 areas provide a sense of place, which we all
 10 talked a lot about today, and of home for all
 11 of us. New York communities also see their
 12 downtowns as an opportunity for future growth.
 13 keeping existing developed area economically
 14 vibrant and environmentally healthy, and
 15 breathing life into abandoned downtown areas
 16 are especially critical to the quality of life
 17 in New York.

18 By putting this resort away from the
 19 two hamlet areas, we ignore this policy
 20 adopted by New York State to revitalize our
 21 downtown areas; and by blasting the top of a
 22 mountaintop, we ignore this policy in the New
 23 York State Quality Community Initiative.

24 It is a significant land use change.
 25 Taking an historically undeveloped for

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1 approximately the last 100 years area, it's
 2 wooded mountains, we're changing the land use
 3 intensely by putting in 400 acres of grassed
 4 lawn area for a golf course, and over a
 5 hundred buildings. That's a huge impact and
 6 huge change in the existing land use
 7 character.

8 Another significant land use change
 9 that I want to talk about is the introduction
 10 of gated communities. The DEIS states there
 11 will be gates at the -- at each of the resort
 12 areas. These are one of the things that tend
 13 to cause disconnections in communities, and

14 the American Planning Association has adopted
15 a Smart Growth Policy Guide. What they do is
16 each year they look at different policies
17 based on different communities.

18 Smart growth is obviously something we
19 hear a lot of. They have actually talked
20 about how gated communities promote
21 disconnections, and that they should be
22 discouraged in communities, rather than
23 encouraged. Historically gated communities
24 have not existed in the Towns of Shandaken and
25 Middletown, and the DEIS doesn't address how

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1 these economic enclaves are going to impact
2 the character in the hamlet, that the
3 introduction of gated communities is really in
4 direct conflict to what is occurring in these
5 communities today.

6 The scale of the hotels. We talked a
7 little -- I know we heard a little about this.
8 The Wild Acres architecture -- yes, it does
9 reflect the Catskill architecture -- but
10 previous trends over the last 50 to 100 years
11 has been to nestle those into the valleys.
12 Big Indian has no cultural, historical or
13 natural connection to the Catskills. The roof
14 terrace is going to have low-lying plants. It
15 won't reflect the forest that is there now.
16 It talks about hiding the building within the
17 natural landscape, yet the glass, the lights
18 will be visible in looking at the mountaintop.
19 There's no amount of planting on top of the

20 building that will minimize that impact to the
21 glass in the building. It will never replace
22 the indigenous maple-beech forest that exists
23 there now on the mountain.

24 And the DEIS downplays the scale of
25 400,000 square feet of building which, to put

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1 it in perspective, is about the size of four ⁷²¹
2 walmarts. That's a lot of building to put on
3 a mountaintop that today is forest.

4 I want to talk a little about adopted
5 plans and policies. The New York State Open
6 Space Conservation Plan has identified the
7 Catskill unfragmented forest as a top priority
8 in this region, that the high peak areas
9 should be protected, that the areas highly
10 visible from Route 28 should be protected.
11 And we don't think the DEIS addresses this
12 part of the plan.

13 The Land Use Plan for Ulster County
14 tries to discourage the removal of vegetation
15 because it deprives the soil of the
16 stabilizing function of its roots so wind and
17 water erosion occurs. It says development on
18 hillsides increases runoff, not only by
19 creating impermeable surfaces, such as roads
20 and buildings, but by altering natural
21 drainage patterns.

22 It says the degradation of hillsides
23 also destroys a community's character. That's
24 right out of the Ulster County Comprehensive

25 Plan. The surrounding hills are an aesthetic

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1 resource which gives the community its
2 distinctive setting. It also in the plan
3 encourages small-scale facilities that don't
4 infringe on environmentally sensitive areas.
5 And we think the DEIS ignores these policies
6 and that plan.

7 The zoning codes of both communities
8 require special use permits. Both of the
9 zoning codes state they have to be in harmony
10 with surrounding land uses. The DEIS simply
11 states that they're in harmony, it doesn't
12 show how they're in harmony with it. There
13 are special considerations under special use
14 permit processes that they really have to show
15 how they're fitting into what's going on in
16 the community, and we feel the DEIS does not
17 adequately illustrate that.

18 MS. ROBERTS: Let's assume that these
19 hotels in terms of density would be
20 permissible under the local zoning codes.
21 Does that necessarily translate into some kind
22 of guarantee or even suggestion that it's
23 ultimately approvable or that it would be
24 approved in the end?

25 MS. KOPASKIE: It would only be

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1 approved if it met those special permit
2 conditions. It's not a use by right -- a use
3 by right is something that would automatically
4 be permitted, so it's not a use by right. It

5 is a specially permitted use which means that
6 there is potential of having impacts on the
7 communities; water, sewer, drainage, you know,
8 all the different aspects; and without
9 addressing those special considerations as a
10 specific permit, that the project would not
11 necessarily be approved.

12 MS. ROBERTS: Let's assume this
13 project, again, is -- fits within the zoning
14 of these two towns. I think I heard you say
15 earlier it's your opinion that there would be
16 major impacts to other surrounding communities
17 not just the two host communities?

18 MS. KOPASKIE: Correct, especially the
19 traffic along Route 28.

20 The Route 28 Study which was completed
21 in 1994, some of the recommendations that came
22 out of this -- I know Tom touched on some of
23 these -- that the hamlets should provide the
24 services to visitors and be the hubs for
25 future commercial development. The

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1 communities should capitalize on those
2 hamlets. That four to five 100-room hotels in
3 four to five years are more viable than a
4 multiplicity of smaller units or the
5 dependence on a mammoth new resort, which this
6 would be characterized as a mammoth new
7 resort.

8 It would also spark the construction
9 of lodging and entertainment facilities at

10 appropriate spots along the Route 28 corridor.
11 This sits away from the corridor, through the
12 two towns, particularly at the two gateway
13 development areas, Phoenicia and
14 Margaretville; and we feel that this project
15 is in direct conflict with all three of those
16 recommendations that came out of that plan.

17 The West of Hudson Economic
18 Development Study for the Catskill watershed
19 Corporation, this is the HR & A study that's
20 often referred to, talks about the tourism
21 sector and how it's going to be stabilizing;
22 that the tourism sector should be building
23 upon niche markets, again, focusing
24 development in the hamlets, which they called
25 the most important assets among the watershed

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1 communities; that the use of herbicides and
2 fertilizers on cleared land, such as golf
3 courses, present possible water quality
4 impacts; and that larger non-competitive
5 resorts should give way to those small niche
6 players to encourage small business
7 development. Again, we don't feel that the
8 proposed project complies with the
9 recommendations of that study.

10 I don't want to necessarily talk about
11 all the numbers up here. The Catskill Center
12 had identified the survey that had been
13 completed. They talked about the workshops
14 that they had done in each of the three
15 hamlets and villages. This is just some of

16 the results that came out of that. The survey
 17 that was done for Shandaken as part of their
 18 Comprehensive Planning Process, people were
 19 asked to rank on a scale of 1 to 5, five being
 20 the highest or the most important to them,
 21 what were the important aspects of their
 22 community.

23 when they talk about character, they
 24 talk about protecting the rural character,
 25 protecting the existing hamlets and protecting

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1 the scenic views. For development pattern,
 2 they want to encourage development in the
 3 hamlets. Encourage development in other areas
 4 was ranked below encouraging development in
 5 the hamlets.

6 They talk about the type of economic
 7 development they would like to see; arts and
 8 theaters, small inns and bed and breakfasts,
 9 tourism. Housing, the type of housing they
 10 envision as part of their future is
 11 single-family dwellings. Townhouses and
 12 apartments ranked far below the single-family
 13 dwellings.

14 Reasons for living in Shandaken,
 15 included the natural surroundings, the rural
 16 lifestyle and the low crime rate. We believe
 17 that the Applicant's project is really in
 18 conflict with a lot of the desired goals of
 19 the people who are here today. The people who
 20 have been part of that economic turnaround of

21 the Town of Shandaken and the Town of
22 Middletown.

23 The survey also showed these are the
24 types of businesses or industries they would
25 like to see encouraged, such as arts and

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1 theaters, small inns and B&B's, crafts,
2 tourism, home-based businesses, visitor
3 interpretive centers. We won't go down
4 through the whole list.

5 Hotels ranked only at 33 percent.
6 when you look at the highest type of business,
7 it was arts and theaters at 76 percent.

8 Asked what type of entertainment
9 facility or activity should be encouraged,
10 they saw hiking trails, arts and theaters,
11 hunting and fishing, theater, cross-country
12 skiing. All the way towards the bottom of
13 that list were golf courses at 32 percent.
14 This is what the people who live here today
15 see as their community character, and this
16 project really is in conflict with what these
17 people see as their community character today,
18 and this project would really impact their
19 quality of life.

20 The community workshops in Shandaken
21 done by the Catskill Center as part of their
22 Comprehensive Planning talked about
23 encouraging hamlet revitalization; preserving
24 and promoting cultural, historic and economic
25 character of the hamlets -- hamlets, hamlets,

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1 hamlets, we hear that over and over again --
2 encouraging clean, low-impact, small
3 businesses; promoting Route 28 as a scenic
4 highway; placing a cap on the scale of the
5 development; and preserving and enhancing the
6 beauty of the area.

7 In Fleischmanns, they did community
8 workshops, not necessarily as part of a
9 Comprehensive Planning process, but this is
10 the work Helen had talked about at the
11 Catskill Center; and the top goals that they
12 came up with that were the things they liked
13 most about their community are nature,
14 scenery, mountains, water and its serene view,
15 the town and its amenities, the architecture
16 and library, its proximity to Belleayre
17 Mountain, the local history, and the quaint
18 environment.

19 In Pine Hill, the things they liked
20 most about their community are the strong
21 sense of community, friendly people,
22 small-town feel, the natural beauty, the
23 mountains, and then the activities such as
24 skiing, fishing and hiking.

25 In Phoenicia, the things that they

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1 liked most about their community are the
2 beautiful setting in the mountains, the
3 small-town look and feel, the small and quaint
4 community, and the community spirit and
5 cooperation.

6 I want to talk a little now about
7 traffic impacts as the built environment. Due
8 the construction of the project, we talked
9 about the trucks and the hauling and the
10 construction vehicles coming into the area.
11 There's also the operation of the project.
12 And I know that you've had a traffic expert
13 here who has talked about 300- to 400,000
14 trips per year would likely increase
15 accidents. You get stuck behind slow-moving
16 vehicles, what do you do? You pass; you make
17 stupid decisions.

18 The expansion at Belleayre Resort
19 could accommodate up to 8,000 skiers a day,
20 which is a 60 percent increase from what they
21 have now. That expansion, combined to this,
22 really puts a lot more cars onto Route 28. It
23 impacts the local use of Route 28. We've had
24 a couple of testimonies talk about how they
25 sit and they wait for 30 or 40 vehicles to go

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1 by. That could really be exacerbated by the 730
2 amount of cars that come up to go to both the
3 resort and to the ski center, and we think the
4 DEIS is underestimating those traffic impacts.

5 I want to talk a little about the
6 economy and those impacts. I want to talk
7 about the socioeconomic and then secondary
8 growth. I want to start with the data issues
9 in the economic impact. The DEIS economic
10 analysis uses zip code data to define the
11 study area. Between 1990 and 2000, those

12 boundaries have changed. You can see here,
 13 the dark areas that are white, those are the
 14 1990 zip code areas. What has happened in
 15 2000, the gray shaded areas are the 2000 zip
 16 code areas, so the study area has changed.
 17 That makes comparisons difficult. The data at
 18 that small of a level, a lot of that is
 19 suppressed because of confidentiality reasons.
 20 So a lot of the information is not available.

21 It's much more conventional in doing
 22 any kind of statistical analysis using the
 23 census to use block groups, towns or counties.
 24 And we think that's a real problem with the
 25 data within the DEIS.

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1 Another problem is that the study area ⁷³¹
 2 changes throughout the economic analysis.
 3 Sometimes, they're looking at a study area,
 4 sometimes they're looking at the county,
 5 sometimes they're looking at the town. So
 6 they're not always comparing apples to apples.
 7 and we think that's a real problem.

8 For example, in Table 2.1 of
 9 Appendix 21, they compare the study area to
 10 the counties, and that's not really a fair
 11 comparison because they're two different
 12 areas. They have two different data sets
 13 they're drawing that information from --

14 MS. ROBERTS: Mary, you just said
 15 Appendix 21. You meant Appendix 26?

16 MS. KOPASKIE: Yes, 26, I'm sorry.

17 There are typographical errors in that data.
18 There are negative symbols missing. They talk
19 about a declining forecast for population for
20 2005. These things are unexplained. So
21 really looking at this analysis, you start to
22 wonder what the information is really going to
23 tell you.

24 Another issue with the economic
25 analysis is that it uses projections based on

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1 1980 and 1990 census data. Secondary data is ⁷³²
2 a viable use. People use secondary data
3 sources all the time.

4 MS. ROBERTS: Can you describe what
5 secondary data sources are?

6 MS. KOPASKIE: There is an
7 organization out there that will do
8 projections based on -- I don't know if I
9 should name them or not -- they do projections
10 if the census data is not available so you can
11 see based on the past trends what the
12 information for the 2000 census or the next
13 area census might be.

14 So this organization does -- I mean we
15 buy economic data from them -- everybody who
16 does planning probably buys economic data from
17 them. The problem is that when you look at
18 their projections, they're far off from what
19 the 2000 census actually shows. And my
20 understanding is that this economic study
21 began in 1999 when the census information was
22 not available, yet it was submitted in 2003,

23 and the census data really became fully
24 available in 2002. We think that it's a
25 problem because if they went and looked at

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1 these projections from the secondary data
2 source, they would have seen how far off it
3 was from the actual 2000 census information.

4 MS. ROBERTS: So your point is that
5 the data is not up to date?

6 MS. KOPASKIE: Well, it's not accurate
7 because they used the secondary source as
8 opposed to the 2000 census. The secondary
9 source can only project based on past trends.

10 MS. ROBERTS: Is there a standard in
11 the industry or in this kind of analysis?
12 would you normally use secondary, or would you
13 use other sources?

14 MR. RUZOW: We can't hear your
15 question.

16 MS. ROBERTS: I'm asking what is the
17 standard in the industry, to use secondary
18 data?

19 MS. KOPASKIE: We would always use
20 census data when available, and only go to a
21 secondary source if it wasn't available
22 through one of the summary tape files, which
23 is what the STF means on there. That's going
24 to be the most accurate information out there.

25 MS. ROBERTS: The STF.

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1 MS. KOPASKIE: Summary tape file. The

2 U.S. Census Bureau data will be the most
3 accurate, not the secondary data source.

4 ALJ WISSLER: Summary tape what?

5 MS. KOPASKIE: Summary tape file. For
6 example, the population analysis. It shows,
7 using the secondary source that the population
8 will increase by 0.8 percent from 1990 to
9 2000. If you look at the census data, it
10 actually increases by 9.7 percent. That's a
11 significant difference. If they look at
12 estimated households.

13 First of all, the DEIS confuses
14 households with housing units. A household is
15 someone who moves into the area. They move
16 into a vacant unit; where a housing unit is
17 something that's new, new building. So that's
18 an issue, is that they mix those up. The
19 actual households increase by 12 percent if
20 you look at 1990 to 2000. So those are the
21 kinds of errors and inaccuracies that you get
22 when you use secondary data sources.

23 Another issue we have with the data
24 they use, is they use all of New York State
25 rather than eliminating New York Metro area.

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1 The cost of living in New York City,
2 Westchester County, the New York City Metro
3 Area, much higher than all of Upstate New
4 York. That really inflates the numbers and
5 makes the economic conditions of these two
6 towns appear far worse than they are.

7 They also don't clarify if they're

8 using base year dollars. So for example, if
 9 you compare 1990 census data to 2000 census
 10 and don't bring it into the same base year,
 11 say \$2,000, that will really start to skew
 12 your results. So we have a problem with that.

13 The other thing is they talk about
 14 community destinations and attribute them to
 15 the Census Summary Tape File 3A, and it's not
 16 part of the data set. As we go -- continue to
 17 go through the economic analysis that they had
 18 done, we saw more and more of these types of
 19 data errors.

20 I want to talk now about some specific
 21 issues that -- some assumptions they made
 22 specifically in the DEIS based on their
 23 analysis. They talk about 747 full-time
 24 equivalent jobs in the DEIS. Right now
 25 service occupations, which is wait staff,

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1 people who might clean the hotel, people who ⁷³⁶
 2 are in the service industry, retail. They
 3 make up about 18 percent of the Shandaken and
 4 Middletown population employment.
 5 Professionals make up about 30 percent, sales,
 6 about 25 percent, and construction about four
 7 percent.

8 The DEIS is stating that the commuting
 9 workers are a volatile segment of the labor
 10 pool. They have no justification for a
 11 statement like that, and what they're claiming
 12 is that people who are living here now are

13 going to take jobs at the resort.

14 We have a problem with that assumption
15 in that people who are commuting to a
16 professional job in Kingston are not going to
17 give up a professional job to go and work at
18 the resort as a golf course maintenance
19 person. It's just not going to happen.

20 So we think those assumptions are
21 really way off base. Right now there are only
22 200 unemployed people, according to the 2000
23 census, in Shandaken and Middletown. If
24 there's 747 jobs created, only 200 unemployed
25 people, they're assuming that everyone who is

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1 unemployed is going to also want to work at
2 the resort.

3 The low unemployment rates.
4 Unemployment rates are actually low when you
5 look at the unemployment rates in Shandaken
6 and Middletown. For example, the entire
7 region is low. The state right now
8 is -- according to the 2000 census,
9 7.1 percent. Shandaken's is 5.4 percent,
10 which is lower than the state. Ulster County
11 as a whole is 6.3 percent. When you compare
12 it to -- those are low employment rates, yet
13 the DEIS makes a claim there's a high
14 unemployment rate in the area. The fact that
15 there are only 200 unemployed people in the
16 area, 747 jobs being created, we think will
17 likely increase population.

18 There was discussion earlier about the
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19 need for housing. There will have to be a
20 place where these people can live. If the
21 average price of a house right now is \$240,000
22 in Shandaken, someone making \$17,000, which is
23 what the DEIS states, a typical house staff in
24 the resort might make, will not be able afford
25 to live in a \$240,000 house. We think that

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1 the increase in population are ignored in the ⁷³⁸
2 DEIS; they need to be addressed. The need for
3 additional housing has been ignored in the
4 DEIS; that needs to be addressed. And the
5 need for services, for schools, fire, EMS,
6 recreation services, police and health care,
7 and the associated costs with those impacts
8 have been ignored; and we think that's a real
9 shortage in the DEIS.

10 Job creation and salaries. The DEIS
11 really overstates the positive impacts of the
12 jobs created. The small number, three
13 percent, the DEIS states, that will be mid and
14 upper management, and the DEIS actually states
15 that they'll probably be bringing them in from
16 outside the area. The salaries range
17 from -- actually I said \$17,000 before. It's
18 \$16,390 for guest services; up to \$150,000 for
19 the executives in the management.

20 When the DEIS looks at the average
21 salaries, they're actually inflating the
22 positive economic impacts, and that top three
23 percent should really not be considered as

24 part of the average salary because it's such a
25 small number, what it's doing is it's skewing

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1 that average salary coming out of the DEIS and ⁷³⁹
2 their projections. We also think there should
3 be a breakdown by job description, to show
4 exactly who is making what, how many jobs are
5 being created at what level, and that
6 the -- right now, you'll see that the lower
7 paying jobs, their average income would
8 actually be well below what the average
9 household income is in the area.

10 Finally, on the average household
11 income, it's really an unconventional
12 statistic because the number can be so skewed
13 when you get 3 percent that are making the
14 \$150,000 range; and we think it would have
15 been more appropriate to use the median income
16 because there would have been less distortion.

17 We find when looking at the DEIS, that
18 the actual 2000 figures are actually not
19 consistent with what they have in the DEIS.
20 They've underestimated it for all the
21 jurisdictions, except the state, they
22 overestimated it. It states that the average
23 household income in the study area has
24 declined; where if you look at the 1990 to
25 2000 census and you take the 1990 dollars and

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1 put them into 2000 dollars, it's actually ⁷⁴⁰
2 increased by 16 percent. There has not been a
3 decrease in the average household income. We

4 think it's exaggerating the conditions of the
5 region to make it look in worse condition than
6 it truly is.

7 I have a couple of tables just to
8 clarify some of this. You'll see the DEIS
9 states what the average household incomes are.
10 For Delaware County, they state \$40,000;
11 Greene County, about \$44,000; Ulster County,
12 \$49,000; and the study area, as they defined
13 it, at \$39,000; and then New York State at
14 \$66,000. If you look at the actual 2000
15 census figures and you figure it out, Delaware
16 County is almost \$2,000 higher; Greene County
17 is almost \$2,000 higher; Ulster County, \$2,000
18 higher; the study area, \$7,000 higher; and New
19 York State is actually \$5,000 lower.

20 So what they've done is they have
21 created this great disparity in the census
22 figure in the average household income by
23 using this whole convoluted method of showing
24 what the economic condition is.

25 If you look at Shandaken, it's

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1 actually almost \$47,000 is the average
2 household income. When you compare that to
3 upstate New York, Upstate New York is \$51,000.
4 There's not that huge disparity in Shandaken
5 when you compare it to Upstate New York. We
6 think they're underestimating the economic
7 conditions of the two towns, of the counties
8 and shows that this actually will have a

9 greater economic impact than it truly will.

10 Per capita income; the DEIS doesn't
11 use this as a measuring tool to see what the
12 health of the economy might be. The
13 per capita income is the average income
14 computed for every man, woman and child. It
15 helps to reflect the earning power of the
16 residents, and it also shows the quality of
17 jobs. If you look at the per capita incomes
18 for Shandaken and Middletown compared to
19 Upstate New York, Shandaken is actually \$2,000
20 higher than the per capita income for Upstate
21 New York; and Middletown is only about \$2,000
22 lower. So this area is comparable to the rest
23 of Upstate New York. The economy is not as
24 bad as the DEIS states.

25 Housing issues. We talked a little

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1 about the need for affordable housing with
2 workers having to move into the area to fill
3 those 747 jobs. And right now, the current
4 housing stock is primarily single-family
5 detached units. There are 300 units of
6 attached housing being added. That's ten
7 percent of the housing stock. They're not
8 going to be in the hamlets as the APA Smart
9 Growth Policy Guide recommends or the New York
10 State Quality Community Policy recommends.
11 That new housing be developed near your
12 population or your development area. Housing
13 for the work force has totally been ignored,
14 because, as we believe we have shown, the

15 population will likely increase.

16 In 2000, there were only 144 vacant
17 housing units for rent, and only 88 vacant
18 housing units for sale in Shandaken and
19 Middletown. With 750 new jobs, we're not sure
20 where those people are supposed to go and
21 live.

22 The cost of housing. According to the
23 2000 census, the median gross rent in the two
24 towns, it was \$573 in Shandaken, and \$450 in
25 Middletown. If you start to look at that in a

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1 yearly cost, that's about \$5,500 to \$6,800.

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2 That could, at \$17,000 a year, be about 32 to
3 40 percent of someone's income, which is
4 incredibly high, and the DEIS doesn't address
5 that.

6 MS. ROBERTS: So if people can't
7 afford housing here at a \$17,000-a-year job,
8 they really can't also commute, can they,
9 because they're only making \$17,000 a year?

10 MS. KOPASKIE: Commuters don't tend to
11 be the lower paying jobs. People who have
12 lower paying jobs tend to live near to their
13 work because of the cost of vehicles and gas
14 and maintenance and all of those things.
15 Usually your commuters tend to be
16 professionals because they have more
17 disposable income.

18 Maintenance of Route 28. The DEIS has
19 not considered these maintenance costs during

20 construction. 6-9-04Crossroadsx There's going to be the
21 construction vehicles, we talked about 15,000
22 vehicles hauling 230,000 cubic yards of fill.
23 The increased traffic volumes will require
24 resources to upgrade the roads, to keep them
25 safe, and God forbid to turn them into four

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1 lanes. It could result in up to 300- to
2 400,000 new trips per year, which those
3 increased trips will increase accidents and
4 increase the need for EMS or fire or police,
5 and none of that has been considered in the
6 DEIS.

7 MS. ROBERTS: Let me interrupt for a
8 minute, Mary. I want to introduce CPC
9 Exhibit 28, and give this to you. Are you
10 familiar with the Ferradino report?

11 MS. KOPASKIE: Yes.

12 MS. ROBERTS: This is a letter to the
13 Judge from Robert Cross, and it talks about
14 the inadequacies of the DEIS in these very
15 areas: Ambulance service, fire service,
16 police service. So I wanted to introduce this
17 into the record at this point.

18 (LETTER DATED 4/21/04 FROM ROBERT G.
19 CROSS RECEIVED AND MARKED FOR IDENTIFICATION
20 AS CPC EXHIBIT NO. 28, THIS DATE.)

21 MR. GERSTMAN: Before we proceed,
22 we've already heard testimony from CPC's
23 traffic expert, Mr. Brain Ketcham, that refers
24 to and incorporates much of what Ms. Kopaskie
25 is testifying here today. He has also been

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1 requested when he comes back on June 18th to
2 provide you, your Honor, with the source
3 material for his computation of the
4 externality costs. Some of those costs
5 include calculations involving accident rates,
6 road maintenance and other things, and he will
7 be prepared to present that to you on that
8 date. Thank you, Judge.

9 MS. KOPASKIE: I want to talk a little
10 about secondary growth impacts. We believe
11 the DEIS doesn't address these at all. The
12 first is the potential for secondary and
13 vacation homes. They should be evaluated.
14 And we've heard testimony that a lot of people
15 who are coming up are looking for those
16 secondary homes. We think that as this resort
17 develops, more and more people may want the
18 secondary or vacation homes, and that the
19 impacts on services, secondary homeownership
20 trends, what's been happening over the last 10
21 to 15 years, and especially the impacts on
22 undeveloped land that surrounds the site has
23 to be considered with those secondary impacts.

24 Year-round housing growth should be
25 considered. Population growth has been

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1 ignored in the DEIS, and how they're going to
2 fill the jobs at the resort. The housing
3 stock will be changing. It will be going from
4 primarily single-family homes to all of a

5 sudden having all these attached units. The
 6 affordable housing needs and the impacts of
 7 affordable housing in the community needs to
 8 be addressed, and the rental house
 9 inventory -- rental housing inventory and
 10 needs has not been addressed as part of the
 11 DEIS.

12 The economic impacts on the villages
 13 and hamlets. There's obviously been a lot of
 14 work done in the villages and hamlets. What
 15 is the impact? And it hasn't been considered
 16 for creating this self-contained development,
 17 as the DEIS calls itself. The head-on
 18 competition in the village and hamlet
 19 businesses. What will that potential business
 20 loss have? What kind of visual impact will it
 21 have on the streetscape, on the urban fabric
 22 of those small hamlets and villages when
 23 there's the potential of these businesses
 24 closing and boarding up, and suddenly that
 25 cute streetscape that you walk down and go to

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1 a restaurant and go to a hardware store
 2 changes. What are those impacts?

3 Then an inventory of the existing
 4 vacant buildings and the ones suitable for
 5 redevelopment should be part of the analysis
 6 on economic impacts on the villages and
 7 hamlets.

8 Additional commercial development.
 9 The DEIS states that an expected 76,000 square
 10 feet of additional commercial space will be

11 needed, but they don't talk about where it
 12 will be located, how it would impact the two
 13 communities, because most of that will
 14 probably be located in Shandaken and
 15 Middletown; how that would impact the road
 16 condition. What would those impacts be on the
 17 villages and hamlets when all of a sudden
 18 Route 28 starts seeing a lot of commercial
 19 development, or wherever it was locating, the
 20 impacts on the villages and hamlets?

21 And then what type of commercial
 22 development is that? 76,000 square feet of
 23 additional commercial space is great if it's
 24 all five-star restaurants and cute boutiques
 25 and that type of thing. It's a lot different

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1 if it's 76,000 square feet of gas stations,
 2 which not that they're not needed to service
 3 the residents and the people at the resorts,
 4 but fast-food restaurants and service stations
 5 have a different impact on a community's
 6 character than cute boutiques and five-star
 7 restaurants.

8 The cumulative impacts of expansion at
 9 Belleayre Ski Center have not at all been
 10 addressed. It doesn't consider these planned
 11 improvements at Belleayre when it comes to the
 12 traffic and the noise and those types of
 13 community impacts. It doesn't talk about --
 14 the do-nothing alternative, does it consider
 15 that there's still going to be that expansion

16 at Belleayre, and the community character
17 impacts of that.

18 Finally, the overall fiscal impacts.
19 We talked a little bit about the cost benefits
20 to the town. What is the cost of services in
21 residential development? Servicing
22 residential development is far more expensive
23 to a community than servicing open space
24 forested land. And so we feel that those
25 overall fiscal impacts need to be addressed.

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1 My last three slides are actually just ⁷⁴⁹
2 my list of sources for you, so I don't really
3 need to read those; but I just wanted you to
4 know where I had gotten my data and my
5 resource from.

6 ALJ WISSLER: We'll take five minutes;
7 then, Ms. Bakner, you can walk Ms. Kopaskie
8 back through the slides and we'll do that.

9 This is your last witness?

10 MS. ROBERTS: For today. Not on
11 community character, because we are bringing
12 somebody back.

13 ALJ WISSLER: But your input for
14 today?

15 MS. ROBERTS: I wanted to just make a
16 brief statement to wrap up.

17 ALJ WISSLER: You want to do that
18 first?

19 MS. ROBERTS: I would like to hear
20 these comments first.

21 ALJ WISSLER: Fine. We'll take five
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22 minutes and come back and review
23 Ms. Kopaskie's slides, and Ms. Bakner will
24 have her opportunity to make her comments with
25 respect to those slides. Then we will take a

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1 very short lunch break.

2 (12:41 - 12:49 P.M. - BRIEF RECESS
3 TAKEN.)

4 MR. GERSTMAN: Your Honor, before we
5 go on the record with Ms. Bakner, I would like
6 that we request we not depart from our
7 ordinary procedure with the issues conference.
8 Ms. Bakner was testifying before that our
9 expert had some information that was not
10 accurate in her report. Ordinarily what we
11 would do in this process is to allow each of
12 the experts and each of the parties to present
13 their rebuttal, and I suggest that we should
14 stay with that mode of presentation at this
15 point. I'm not sure there's any exception or
16 any cause that Ms. Bakner has demonstrated for
17 departing from that procedure, and it seems to
18 me it's the most appropriate way to address
19 these issues.

20 ALJ WISSLER: You want to respond to
21 that?

22 MS. BAKNER: My only response, my only
23 justification for it is there's going to be
24 many more speakers today than we typically
25 had, and my particular concern is that given

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1 how towards the end of the day we tend to rush
 2 when our people are up, I want to be sure that
 3 we don't leave anybody with the sense that the
 4 information that was presented was accurate.
 5 And since the information that we're talking
 6 about here is exactly information that we have
 7 in the DEIS, I feel constrained to point it
 8 out on my client's behalf because it was just
 9 so incorrect.

10 MR. GERSTMAN: We actually believe --

11 ALJ WISSLER: What I want you to
 12 do -- it's an issues conference. We're
 13 talking about offers of proof here. I will
 14 allow you to respond briefly.

15 MS. BAKNER: Briefly.

16 MR. GERSTMAN: Then I ask for a
 17 rebuttal.

18 MS. BAKNER: First of all, your Honor,
 19 the visual impacts with respect to the Open
 20 Space Conservation Plan, they have provided no
 21 proof of view, and they're completely
 22 speculative and not required. Under the
 23 department's policy.

24 MR. GERSTMAN: Excuse me, your Honor,
 25 that's not a misstatement, that's an

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1 issue -- we discussed on the record already, 752
 2 it's a question we should be raising in
 3 briefing as to whether or not the State Open
 4 Space Conservation Plan has any legal
 5 relevance either to visual impacts, community
 6 character or anything else.

7 ALJ WISSLER: I note your concern. Go
8 ahead, Ms. Bakner.

9 MS. BAKNER: With respect to Slide 20,
10 there's, again, a statement that we have
11 on-site, 100-year-old forest. For anyone who
12 has reviewed the DEIS or been on-site, it's
13 obvious the site has been regularly logged,
14 and that information is set forth in the
15 report.

16 ALJ WISSLER: The DEIS says the site
17 has been logged since as early as the '90's?

18 MS. BAKNER: Yes.

19 MS. ROBERTS: Would you like our
20 expert to respond to that right now?

21 ALJ WISSLER: I'm just interested
22 in -- Ms. Bakner is commenting to things
23 Ms. Kopaskie has said. Go ahead.

24 MS. BAKNER: The slide on visual
25 impacts, 22, says that there was no

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1 consideration of visual impacts along
2 Route 28. The DEIS does extensively discuss
3 such visual impacts.

4 Open space impacts. There is clearly
5 a statement in our document that we're buying
6 topsoil and sod from existing suppliers who
7 have permits who have not been put in place
8 for this particular project. That's a
9 commitment that's made in the DEIS.

10 The next slide, Slide 24, suggests
11 somehow that we're replanting eight trees per

12 acre. Your Honor, this is a golf course. We
13 are planting the 4,100 trees in the areas
14 around the golf course and the proposed
15 development.

16 With respect to open space impacts,
17 the assertion is that we have not committed to
18 protecting the remaining land in perpetuity.
19 That's absolutely wrong. We have made an
20 absolute commitment to do that. We did not
21 include a conservation easement because a
22 holder of such an easement has not yet been
23 identified, but the commitment is there.
24 There's no further development.

25 On blasting, I refer your Honor to the

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1 conversations we had yesterday --

2 ALJ WISSLER: You're referring to
3 slide 27?

4 MS. BAKNER: slide 27 and slide 28.
5 We evaluated the impact of noise from hauling
6 fill.

7 slide 29, they say we have not
8 considered service vehicles in our analysis.
9 That's completely wrong. Our ITE code data
10 clearly includes service vehicles. I mean,
11 your Honor --

12 MR. GERSTMAN: I reiterate my
13 objection. What we're doing here is having
14 rebuttal in the form of legal testimony from
15 Ms. Bakner.

16 ALJ WISSLER: First of all, I would
17 suggest to you that the purpose of an issues

18 conference is offers of proof; and,
19 technically speaking, that can be accomplished
20 through counsel for the respective parties.
21 So if the attorney for the Applicant wants to
22 tell me a statement is flatly made that the
23 DEIS does not include something and if counsel
24 for the Applicant wants to tell me, yeah,
25 Judge, it does, I will let her do that. And

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1 if you want some time to respond, I'll let you⁷⁵⁵
2 do that too, as long as it is within the scope
3 of what she is speaking about and not new
4 material.

5 MS. BAKNER: Your Honor, slide 31 says
6 these properties are historically undeveloped.
7 The DEIS clearly shows that we have two
8 historic mansions on the property, numerous
9 hunting cabins, which your Honor has seen, a
10 former hotel, as well as a ski area, all of
11 which were intensely used in these -- those
12 areas. It has not been undisturbed for a 100
13 years. It has been logged in addition to
14 that.

15 Your Honor, with respect to the land
16 use impacts and the policies and plans, our
17 consultants will address that later.

18 ALJ WISSLER: That's it?

19 MS. BAKNER: That's it.

20 MR. GERSTMAN: We will, if that's okay
21 with you, address the responses when we put
22 rebuttal together after everybody is done with

23 their presentation.

24 ALJ WISSLER: Are you telling me we're
25 ready to go to lunch?

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1 MR. GERSTMAN: Well, your Honor,
2 you're asking the wrong person.

3 ALJ WISSLER: Ms. Roberts, are we
4 ready to go to lunch?

5 MS. ROBERTS: I just wanted to make a
6 five-minute summary of our witnesses. I think
7 our witnesses have clearly shown that the DEIS
8 fundamentally mischaracterizes the nature of
9 this existing community, not only in terms of
10 the community's own envisioning statements,
11 but also from the economic perspective.

12 This area is not a depressed area. It
13 actually has been, for quite a while now, a
14 vital area and is growing. To suggest that
15 this project will somehow be self-contained
16 and, therefore, not spill over into the
17 surrounding communities and host communities
18 is, as I think our witnesses have pointed out,
19 an irrational assumption to make.

20 Clearly there will be traffic impacts,
21 and from Town of Shandaken's own supervisor,
22 concerns about impacts to fire, police and
23 ambulance service that were not addressed.
24 There will certainly be visual impacts as
25 we've already discussed, also housing impacts.

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1 Really, as Ms. Kopaskie pointed out, where
2 will all these people live? None of that has

3 been assessed.

4 So we think there's clearly
5 substantive and significant issues involved
6 with community character that the DEIS simply
7 and utterly ignored.

8 ALJ WISSLER: Thank you. We're going
9 to take a short break for lunch. When we come
10 back, we're going to hear from the City.

11 MR. RUZOW: Ward Todd is here, and
12 we're going to hear from him prior to the
13 City.

14 ALJ WISSLER: Do you want to take him
15 now or after lunch? We're talking
16 about -- I'm talking about a very short lunch
17 break. We're going to be back on the record
18 by 1:30 at the latest, so only about 30
19 minutes.

20 MR. RUZOW: Go to lunch. People are
21 tired.

22 (1:00 - 1:30 P.M. - LUNCHEON RECESS
23 TAKEN.)

24 ALJ WISSLER: On the record. Anything
25 preliminary before we take Mr. Todd -- am I

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1 right there, Mr. Ruzow?

2 MR. RUZOW: Yes. We'll keep our
3 voices up because the fans are blowing.

4 Your Honor, thank you. And thank you
5 for the City for taking us out of turn. The
6 Applicant would like to present ward Todd of
7 Shandaken, New York. Mr. Todd is president

8 and CEO of the Chamber of Commerce of Ulster
9 County. I have a copy of his CV which we can
10 make copies of, but let me just -- in the
11 interest of time, Mr. Todd, would you please
12 explain to the group assembled here your
13 background in terms of official appointed
14 positions and elected official positions.

15 MR. GERSTMAN: Before Mr. Todd begins,
16 it's my understanding that Mr. Todd is an
17 owner of property immediately adjacent to the
18 proposed development site, and as Ms. Bakner
19 has suggested in connection with our witness,
20 I would like your Honor to take note that, in
21 fact, on information and belief, we believe
22 Mr. Todd owns property immediately adjacent to
23 the site. We believe that will influence the
24 testimony that you're about to hear.

25 MR. RUZOW: Thank you. Mr. Todd.

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1 MR. TODD: As Mr. Ruzow said, I'm
2 currently president of the Chamber of
3 Commerce, have been so for just less than a
4 year. Before that was a representative of the
5 Town of Shandaken on the Ulster County
6 Legislature, served four terms; three of the
7 last three years as chairman. I'm currently
8 First Vice President of the Catskill Watershed
9 Corporation, and I'm on the Watershed
10 Partnership Protection Board.

11 Just so you know some of my other
12 routes, locally I'm on the Benedictine
13 Hospital Board of Directors, the Phoenicia

14 Rotary Club, Special Fund Treasurer of our
 15 local church, Shandaken Methodist Church. I
 16 was Deputy Director of Tourism for the County
 17 and a former member of two local school
 18 boards. My wife is a two-term councilwoman on
 19 the Shandaken Town Board. I mention these
 20 facts not boastfully but to indicate our level
 21 of concern for the quality of life here in the
 22 Catskills and our interest in helping our
 23 neighbors.

24 I have a brief statement. May I read
 25 it?

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1 ALJ WISSLER: Sure.

2 MR. TODD: I have lived in Shandaken
 3 all my life. I'm a descendent of two families
 4 first settled in these mountains in the
 5 seventeenth century; and I have, I think, a
 6 long range of heritage perspective on the
 7 subject of community character.

8 It seems to me that while change is
 9 inevitable in any community, the people most
 10 justified in describing that area's character
 11 are those who, by reason of long-time
 12 residence, are able to bring a historical
 13 perspective --

14 Historically the most prevalent and
 15 steadfast base for the economy of this region
 16 has been tourism. Tourism has been the
 17 mainstay. Since the Catskill Mountain House
 18 was built in 1823, whether in bungalow

19 colonies or in campgrounds, boarding houses,
 20 small inns or mighty hotels like the Grand
 21 Hotels, accommodations for visiting from the
 22 City desiring outdoor recreation and escape
 23 from metropolitan bustle have been the
 24 mainstay of our economy.

25 Even today the bulk of economic

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1 activity is centered around these
 2 tourism-based assets, and the largest employer
 3 in the region remains the Belleayre Ski
 4 Center. In fact, outside of Belleayre, there
 5 are very limited employment opportunities in
 6 our region. Tourism then is both the region's
 7 past, but also its present, and without
 8 question, in my mind, its future.

9 The vast majority of the mighty hotels
 10 that lasted until just 40 years ago were
 11 situated on mountains and hilltops. The
 12 Catskill Mountain House, the Overlook, the
 13 Grand, Stony Clove, Scribner Hollow, Breezy
 14 Hill, all were placed where the views were
 15 most dramatic and the likelihood of cooling
 16 breezes most prevalent. That is our history
 17 and character, and it has shaped the lives of
 18 people who lived and worked here as recently
 19 as 40 years ago.

20 I was fortunate to work in the hamlet
 21 of Fleischmanns for my father and grandfather.
 22 I can personally recall more than 40 shops and
 23 stores on Main Street in Fleischmanns,
 24 including no fewer than four supermarkets, one

25 of which was an A&P. The stores bustled with

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1 activity. The economy, as I recall, in my
 2 youth was robust. My family's business was
 3 the first place most visitors saw in this
 4 region of the Catskills. The bus stopped
 5 first at AH Todd & Sons where my father, and
 6 his father before him and his father before
 7 him, sold new Ford cars and trucks, as well as
 8 gasoline, fuel oil, kerosene and coal. Their
 9 business would not have been able to succeed,
 10 and, in fact, thrived for decades without
 11 tourists staying in the High Peaks Hotels.

12 I know you have had a chance to walk
 13 through Fleischmanns this week. I can assure
 14 you the Fleischmanns I knew just 40 years ago
 15 was dramatically different. If you didn't
 16 like the Shell gas my father sold, you could
 17 fill up at Sully Darling's, the wolf gas
 18 station, Robert Dreams Esso station or Laden
 19 Smith's Gulf station.

20 There were first-run movies shown
 21 every night of the week at the Fleischmanns
 22 Theater. We had our own bowling alley just
 23 off Main Street; fresh fish available at
 24 Miller's Fish Market; for candy and ice cream,
 25 you would go to Charlie Muller's or Leon

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1 Finch's place or Milt Hirsch's where adults
 2 could also buy their cigars. The best egg
 3 cream sodas we found came from Gail's Soda

4 Fountain. Fresh bread we got at the B&G
 5 Bakery. Got your prescriptions filled at
 6 Kaplan's Drug Store, just a couple stores down
 7 from Paul Schuger's Hardware store.

8 Down the street a bit was Hackert's
 9 Clothing Store, next to the Joseph Sport
 10 Clothing Store and Klein's Clothing Store.
 11 There were also on this one street a handful
 12 of taverns, just off Main Street a lumberyard,
 13 Halpren's Plumbing Supply, Tony's Barber Shop,
 14 Izzy Silverman's paint store, two banks and a
 15 post office, all on Main Street. This was at
 16 a time when there were thousands of rooms for
 17 tourists in these hills and mountains. Now
 18 there are perhaps a few hundred.

19 I cannot tell you how sad it is to see
 20 an area that my ancestors helped to build in
 21 such a state of disrepair and neglect, caused
 22 not by any one particular person or group, but
 23 simply by the absence of places for travel
 24 visitors to stay and outdoor recreational
 25 activities to attract them here in the first

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1 place. It is, in my opinion, abundantly clear⁷⁶⁴
 2 that a project that includes hotels and golf
 3 courses like this project is very much in
 4 keeping with our long-standing, nearly two
 5 centuries old community character.

6 I brought also with me the photos the
 7 family collected, I collected, of the -- some
 8 of those great high peaks resorts, including
 9 the Grand Hotel, and I must have 30 or 40

10 others which I would offer as testimony if
11 they wanted to be scanned.

12 ALJ WISSLER: Are they included in
13 this?

14 MR. RUZOW: Some of them are. This is
15 in an exhibit that is in Appendix 5 of the
16 DEIS. It is folded in half and photocopied.
17 I would just ask Mr. Ward to just identify
18 some of the local hotels that are here. It's
19 in the DEIS itself. It's Appendix 5, Mark.

20 MR. TODD: My eyes weren't what they
21 used to be. The pictures I have of the Grand
22 show the Grand in this view, and also there's
23 a view from the sky. It's fairly dramatic,
24 similar to this one here. And although it was
25 not at the absolute top of the mountain, it

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1 was close to the top. (Indicating)

2 MR. RUZOW: That's Monca Hill? [sic]

3 MR. TODD: Yes. Here is the Cornish,
4 another example on a plateau, with a slight
5 hill behind. Again, these were very cool
6 areas. The higher the elevation, the cooler
7 the temperature, more breezes. I have
8 postcards which say words, in effect: A
9 scenic view of the Catskills, with these types
10 of pictures showing some of those
11 turn-of-the-century and later hotels.
12 Dramatic looking and very appealing to the
13 eye. Catskill Mountain House, of course one
14 of the most famous, is there. I don't know if

15 you have one of Mohonk, but that is, of
16 course, still standing in New Paltz.

17 MR. RUZOW: The Turner Mansion, I
18 believe is --

19 MR. TODD: I believe.

20 MR. RUZOW: In terms of the setting.
21 when you were growing up -- you're 57?

22 MR. TODD: Yes.

23 MR. RUZOW: So in the 1950's, can you
24 describe what the setting was like from a
25 landscape point of view in this area? we

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1 heard earlier testimony of the area having
2 been deforested a hundred years ago, but
3 basically it's grown up since then. Can you
4 share with us what the landscape was just 50
5 years ago?

6 MR. TODD: Sure. Through the blight
7 which was at the turn of the last century, and
8 later -- I live in Shandaken, and I have a
9 mountain as my backdrop. It was a mountain we
10 hiked all the time. We could get to the top
11 in two and a half hours, and down in 45
12 minutes. It was not a high peak, but it was a
13 typical mountain of the Catskills in the
14 fifties with some very, very green patches of
15 evergreen, but nothing else. Most everything
16 had been logged or cleared or lost because of
17 the blight.

18 MR. RUZOW: I want to clarify for the
19 record, you are a member of the Catskill
20 Watershed Corporation Board of Directors?

21 MR. TODD: That's correct.

22 MR. RUZOW: But you're not here
23 speaking on their behalf?

24 MR. TODD: I am not.

25 MR. RUZOW: We took a site visit of

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1 the hamlets on Monday. We went to
2 Fleischmanns and Phoenicia and Margaretville
3 and to Pine Hill. Can you describe what the
4 economic climate is like today in those hamlet
5 areas from your perspective?

6 MR. TODD: A couple of things. We
7 often have difficulty, I know, finding a
8 restaurant open mid-week. I think restaurants
9 locally continue to be driven by weekend
10 traffic. We were in Fleischmanns a week and a
11 half ago, and I hadn't stopped in the
12 supermarket in a while, and I was curious how
13 things had been because I know there were a
14 couple new structures that were renovated, and
15 I spoke to the person who was running the
16 market and asked him how long he had been
17 here, and he said, "15 years." And I said,
18 "How is business?" He said, "It's about the
19 same as when I got here 15 years ago. It
20 hasn't changed. It's very poor."

21 MR. RUZOW: So the level of economic
22 activity within the hamlet areas -- we saw
23 Margaretville, there seems to be a difference
24 in Margaretville than certainly with Pine Hill
25 or with Fleischmanns, but is that a summer

1 trade? Is it a weekend trade? what is it
2 like during the weekend?

3 MR. TODD: In Margaretville?

4 MR. RUZOW: Yes, in Margaretville.

5 MR. TODD: Margaretville is doing
6 well. The area is doing, I guess, okay. It's
7 been a tough 40 years probably. A number of
8 things happened in the sixties. Route 28
9 bypassed the hamlets. Air traffic became more
10 popular. The hotels, I don't think adapted to
11 the change in people's vacation habits. There
12 was very little recreational opportunities
13 instead of just rocking on the front porch.
14 The reality is things have not been good for a
15 long time. Phoenicia has some growth; we're
16 thrilled to see that. Margaretville -- it's
17 an exciting area, but I don't think it changes
18 the fact that the vast majority of business
19 takes place from Friday afternoon to Sunday
20 afternoon, and that's pretty much 12 months a
21 year.

22 MR. RUZOW: The Chamber of Commerce of
23 Ulster County has taken a position with
24 respect to this project?

25 MR. TODD: Yes.

1 MR. RUZOW: Can you share when that
2 occurred?

3 MR. TODD: That occurred in October of
4 2002, and I believe a letter was sent to the
5 Commissioner of DEC, almost two years ago.

6 The board did a review of the project based
7 upon a number of the issues they raised in the
8 letter and gave their support to the project.

9 MR. RUZOW: Were you then the chairman
10 or the president of the board?

11 MR. TODD: No, I had no affiliation
12 with them.

13 ALJ WISSLER: I have that letter as
14 part of the public comment?

15 MR. TODD: You should.

16 MR. RUZOW: In 2002 was the letter.
17 We'll double-check that, your Honor. It may
18 be already in the EIS.

19 with respect to concerns voiced about
20 this project not being either in harmony or
21 somehow in conflict with the hamlet, the
22 redevelopment that is beginning to occur in
23 the hamlet, do you have a view with respect to
24 that?

25 MR. TODD: In my opinion, I think they

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1 can coexist very well, and I think that what
2 needs to help drive the hamlets and improve
3 what's going on in the hamlets is for there to
4 be some type of recreational activities. When
5 I worked for the Tourism Department in the
6 County ten years ago, and currently the
7 Chamber of Commerce, that continues to be the
8 main question. People call and say: what is
9 there to do up there? And the summertime, we
10 have some tubing and you can hike, and the

11 wintertime we have Belleayre Ski Center, but
12 people are looking for different recreational
13 opportunities. And that continues to be an
14 issue.

15 MR. RUZOW: The golf is, obviously,
16 the main element of this project. There have
17 been nine-hole golf courses in the area. What
18 do you see the relationship between what this
19 project is proposing with golf and the
20 recreational needs that you have identified?

21 MR. TODD: If done environmentally
22 correct and sensitive, I think that golf is a
23 wonderful recreational support. It has a
24 tremendous draw. There's no question that
25 there are some fairly magnificent -- some of

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1 the municipality-owned golf courses right in 771
2 the Hudson Valley, but Ulster County does not
3 have a municipally-owned golf course, and I
4 can't -- I would strongly believe it would be
5 very successful based upon the people I know
6 who are golfers.

7 MR. RUZOW: One of the earlier
8 exhibits introduced today was a report called
9 the HR & A report. It was a preliminary
10 report to the West of Hudson Economic
11 Development Center. Do you have some
12 familiarity with that?

13 MR. TODD: Yes.

14 MR. RUZOW: In the context of that
15 report structure, can you just summarize for
16 us what the purpose of that West of Hudson

17 Economic Study was in relation to the Catskill
18 Fund for the Future, what role it was supposed
19 to play?

20 MR. TODD: Sure. The Catskill Fund
21 for the Future has been, I think, one of the
22 important parts of the programs the CWC
23 administers. I don't think any of us ever
24 thought it was going to be the end-all and the
25 be-all of the public and private funding for

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1 projects for economic development. It has 772
2 been a good supplement.

3 One of the unfortunate things is that
4 the HR & A study predicted there would be a
5 five percent interest return on investments
6 when they did the study in 1997 and '98; and
7 we've seen, obviously, some pretty dramatic
8 changes in interest rates the last couple of
9 years.

10 So the CWC, in fact, at our last
11 meeting suspended all future grants so that we
12 can ensure that the loan funds will be still
13 available in the future.

14 MR. RUZOW: The level of CWC funding
15 available, grant funds that are available and
16 which many of the Catskill Center and other
17 areas have been made available to them, at
18 least for the moment may not be currently
19 available in the future?

20 MR. TODD: That's correct.

21 MR. RUZOW: Is there any other

22 observations you would like to make -- or your
 23 Honor, any questions you may have for
 24 Mr. Ward -- Mr. Todd?

25 ALJ WISSLER: No.

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1 MR. RUZOW: Then, your Honor, I have
 2 nothing further. Thank you. Thank you for
 3 taking him out of turn.

4 ALJ WISSLER: Mr. Greene.

5 MR. GREENE: Michael Burger from the
 6 City of New York will be presenting his
 7 testimony for us, along with our expert.

8 ALJ WISSLER: Mr. Burger.

9 MR. BURGER: This afternoon the City
 10 will supplement its submitted offer of proof
 11 with testimony that demonstrates that the DEIS
 12 fails to provide an adequate analysis of
 13 secondary or induced growth. We want to make
 14 clear that the City's interest in these issues
 15 relates to potentially significant impacts on
 16 water quality rather than community character
 17 per se.

18 We raise these issues at this point in
 19 the conference rather than at stormwater or
 20 wastewater issues, precisely because secondary
 21 growth analysis is a "community character
 22 issue" under SEQRA.

23 Moreover, as the City's testimony will
 24 demonstrate, the analysis of secondary growth
 25 in the DEIS is insufficient. The point we're

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1 making is that without a complete analysis of

2 induced growth that can reasonably be
3 predicted to follow from this project, it is
4 not possible for us or anyone else to assess
5 the potential water quality impacts associated
6 with such induced growth.

7 Though we raise these issues due to
8 our concerns about potential water quality
9 impacts associated with the likely secondary
10 growth the project will inspire, we want to
11 emphasize up-front that we're focused squarely
12 on the inadequacy of the environmental review.

13 The City is not opposed to new
14 residential or commercial development in the
15 Catskills provided the development in question
16 is responsible, environmentally sensitive and
17 not result in adverse impacts to water
18 quality.

19 Indeed, DEP has approved the
20 overwhelming majority of applications
21 submitted since the 1997 Watershed Regulations
22 became effective, including nearly 1,500 new
23 and expanded homes, and almost 200 new and
24 expanded commercial projects in the West of
25 Hudson Watershed alone. Our raising these

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1 issues here today does not signal a change in
2 DEP policy with respect to development, nor
3 does it, as some have erroneously suggested,
4 constitute involvement by DEP in matters
5 beyond what's appropriate.

6 As an involved agency under SEQRA and

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7 as a water supplier to nearly half the state's
8 population, we simply must ensure that the
9 environmental review of this project, by far
10 the largest in the West of Hudson watershed in
11 decades, is done correctly.

12 The City remains committed to the
13 partnership and the balance of water quality
14 and economic vitality embodied in the MOA. We
15 are not raising 158 new residences, 323 new
16 residences, 80,000 square feet of new
17 commercial space or 15 kilograms of increased
18 phosphorus loadings -- numbers our consultants
19 were able to derive from the Applicant's
20 highly problematic input data -- as issues for
21 adjudication. These numbers merely illustrate
22 that the DEIS ignored areas that obviously
23 require a more rigorous analysis.

24 We are not able, nor are we required
25 to, perform the Applicant's analysis for the

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1 Applicant. Our point simply is that this DEIS ⁷⁷⁶
2 is inadequate, uses inappropriate analytical
3 models in the relevant case studies and thus
4 understates qualitative and quantitative
5 induced growth impacts that are reasonably
6 likely to occur.

7 One vivid example is that the DEIS
8 dismisses entirely the likelihood of secondary
9 commercial growth along Route 28. As our
10 experts will testify, this doesn't make sense
11 given typical patterns of development and
12 ignores the existing conditions in these

13 communities. Because of the mistaken
14 assumption that commercial growth will occur
15 solely within the hamlets, the DEIS fails to
16 analyze the potential impacts on critical
17 water courses, such as Birch Creek, the Esopus
18 Creek, Emery Brook, and the East Branch of the
19 Delaware River.

20 As for the other shortcomings, I will
21 turn now to the testimony of consultant, Jeff
22 Donohue and Craig Seymour.

23 ALJ WISSLER: We'll call this Resort
24 Matrix, City 5.

25 ("RESORT MATRIX BELLEAYRE RESORT
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1 COMPARISON PROPERTIES SEPTEMBER 2003" RECEIVED 777
2 AND MARKED FOR IDENTIFICATION AS CITY EXHIBIT
3 NO. 5, THIS DATE.)

4 ALJ WISSLER: Mr. Burger. Our first
5 witness, Craig Seymour.

6 MR. SEYMOUR: If I may stand, your
7 Honor.

8 MR. BURGER: Mr. Seymour, if you could
9 provide your professional education.

10 MR. SEYMOUR: My name, for the record,
11 is Craig Seymour. I'm vice president and
12 principal of RKG Associates. We're an
13 economic planning and real estate consulting
14 firm with offices in Durham, New Hampshire;
15 and Washington, D.C.

16 My background is I have 25 years'
17 experience in economic development and

18 finance. I have a Bachelor's Degree in
19 economics and a Master's Degree in business
20 administration. I have been working for both
21 public and private sector clients as a
22 consultant for the past 18 years doing
23 everything from community planning, economic
24 development strategies, as well as development
25 financing.

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1 Today what I would like to talk about
2 in the next few minutes and I'm going to
3 summarize the findings that were reported in
4 the technical memoranda that we prepared which
5 looked at the impacts, the secondary impacts,
6 induced impacts of the Belleayre Resort as
7 reported in the DEIS, and our analysis using
8 an alternative methodology to obtain
9 additional information relative to the
10 project.

11 We evaluated the -- our task was to
12 evaluate the DEIS for the resort that was
13 submitted by the Applicant, and to evaluate
14 the reasonableness of those impacts that would
15 be claimed, and also to identify any
16 additional specific impacts that could then be
17 used to look at a more narrow impact that is
18 going to occur here in the local community.

19 The DEIS utilized for its estimated
20 secondary impacts what's called RIMS 2, a
21 Regional Input\Output System which is a
22 standard input\output modeling system which is
23 available from the Department of Commerce.

24 It's a methodology that lets you estimate
25 multiplier impacts of investment or new jobs

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1 in the economy. This approach relies on
2 national input\output tables which in
3 non-economic parlance are when a dollar is
4 spent in a particular sector of the economy,
5 an industry in the economy, that dollar is
6 then re-spent as that industry buys supplies,
7 pays labor, down through a chain of other
8 industries.

9 when you look at the entire national
10 economy, and put all of the industries on one
11 side of the matrix and all the others on the
12 other, what you can do is over a period of
13 time, based upon data provided through census
14 sources and through the government, analyze
15 what the impacts are on any given expenditure
16 in one economic sector, and how it ripples
17 through the rest of the economy.

18 It's a standardized econometric tool
19 that is used to look at not only the direct
20 impacts, how much is paid in wages, how much
21 is spent in construction, but also to look at
22 the longer-term impacts in the overall economy
23 that comes out of that initial investment.

24 what the RIMS 2 does is calculate what
25 I call a cumulative investment. It's also

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1 what I call a static model. It takes the
2 inputs from the expenditures or the employment

3 in these sectors for a particular economic
4 occurrence, such as the construction of the
5 resort, and applies mathematical formulas that
6 come up with a lump sum impact over the larger
7 economy.

8 The RIMS 2 can be customized from the
9 National level down to the County level, which
10 was done in the DEIS. It looked at both the
11 state of the impacts in the State of New York,
12 as well as the impacts on the three-county
13 region, more specifically.

14 Just to illustrate that very briefly,
15 is that different industries that spend money
16 or have economic impacts have different
17 economic impacts in different regions of the
18 country based upon the kind of employment
19 available, the kind of demand that is
20 generated within that economy. A large
21 impact, such as a development of a very large
22 resort like this in a relatively rural county
23 like Ulster County, has a much different
24 impact on the local economy than it would if
25 it occurred in Westchester County or it

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1 occurred in a more populous region.

2 The results that were reported in the
3 DEIS from the RIMS 2 analysis indicated that
4 the total construction cost of \$241 million
5 that the developers estimated, would generate
6 an average of 264 direct and 221 indirect jobs
7 on an annual basis over the eight-year
8 construction period they used, and a total

9 economic output throughout the entire State of
10 New York of just over \$451 million.

11 In addition, it estimated that a total
12 of 665 -- 665 full-time jobs that are
13 generated from the operations of the resort
14 would also generate an additional 211 jobs
15 within this three-county region that they
16 dealt with. Just to put it -- this is fairly
17 dry economics -- but to put it in perspective,
18 someone working at the resort comes home from
19 work, spends some money at the local store,
20 that helps support the paycheck of someone
21 working at that store, who then subsequently
22 goes out and spends some of their paycheck in
23 another establishment here in the county or
24 elsewhere; and as a result, you have this
25 ripple effect.

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1 So how the model calculates that, or 782
2 totals it, is again 665 direct jobs which was
3 the initial estimate that the developers
4 originally -- the DEIS originally claimed --
5 would generate an additional 211 jobs
6 throughout the three-county region.

7 What we attempted to do
8 was -- basically I agree with that methodology
9 and the results of that. The issue is what it
10 does is -- what we're trying to do is focus
11 on what those impacts mean to the local
12 economy. To say an additional 221 jobs are
13 created throughout the three-county area is

14 fine for some purposes; but looking at the
15 impacts on secondary growth here in the
16 watershed area and here along the Route 28
17 corridor, we wanted to be a little more
18 refined with that; and as a result, we ended
19 up using another methodology that we feel is a
20 little bit more appropriate for this.

21 what we did was use another economic
22 modeling approach called the REMI approach.
23 what that is is a structural economic
24 forecasting and policy model that integrates
25 traditional input\output, general equilibrium,

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1 econometric and economic geography
2 methodologies.

3 It is a dynamic model based upon a
4 model of the entire United States' economy
5 that's then broken down into the county level
6 that's developed and maintained by a professor
7 at the University of Massachusetts. It allows
8 for looking not at a just a static picture of
9 the economy as a whole, but to be able to look
10 at the impacts of economic changes over
11 periods of time, as well as looking at the
12 flows between geographic regions that result
13 from those impacts. It uses some of the same
14 information in the RIMS 2, but it's more rich
15 in its detail of using a lot of additional
16 information from other sources to be able to
17 be as accurate as possible in trying to model
18 how the economy works, and subsequently how
19 changes to the economy, i.e., the development

20 of a new resort, would impact not only the
21 larger national or local county or state
22 economies, but also the more local economies
23 here in this region.

24 It's extensively used by both public
25 and private agencies around the country. A

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1 lot of states use it for modeling, a lot of
2 counties use it, as well as universities and
3 private sector firms like ourselves.

4 The approach that we used to test the
5 findings presented in the DEIS and provide
6 additional data regarding the social and
7 economic impacts were as follows: The first
8 thing the REMI model does is generate a
9 baseline forecast for the economy for the area
10 that you're studying, and what you do then is
11 make changes to the inputs into that model and
12 compare the new results with the original
13 standard baseline. It allows you to look at
14 the incremental impacts that an event, an
15 economic event, such as development of a
16 resort like this, would have on the economy.

17 It also allows you to look at a wide,
18 wide variety of different economic variables.
19 These can range from population, consumer
20 prices, wage rates, market share, employment
21 in 53 different industry sectors. It's a
22 very, very detailed model. What we did,
23 though, was concentrate on -- really three
24 specific things: Changes in employment,

25 changes in population resulting from that, and

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1 then changes in investments in the asset base
2 within the local economy that may give us a
3 clue as to how -- what kind of secondary
4 impacts are generated by this development,
5 would impact on the local economy.

6 MR. BURGER: These economic variables
7 that you're plugging into the REMI model,
8 this is not a capability -- is this a
9 capability that the RIMS 2 model allows?

10 MR. SEYMOUR: Not in the detail or on
11 a temporal basis as the REMI model does.

12 ALJ WISSLER: That's what you meant
13 when you said it was dynamic?

14 MR. SEYMOUR: It is dynamic. Dynamic
15 over a period of time, and dynamic among
16 differences in -- structural differences.
17 Although the REMI model allows us to forecast
18 out 35 years, we used a 20-year time frame.
19 Most of our interest is looking at the next
20 ten years. The control forecast was done
21 looking at the impacts of this economy, using
22 primarily the Ulster County economy, and the
23 state as a whole over 43 industry sectors, and
24 then compared that -- we went in and made
25 policy level changes in various inputs into

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1 that model.

2 what we tried to do in our analysis
3 was to use the very same inputs that the
4 DEIS -- that were used in the DEIS in the

5 RIMS 2 model so that we could look at the
6 differences between the outputs of the model
7 and also to look further to see what those
8 numbers actually meant.

9 what we did in several simulations
10 that we ran was to try to emulate the exact
11 same numbers that were reported in the DEIS,
12 included the construction costs, employment,
13 off-site spending by visitors and so on. For
14 the construction inputs, we used the
15 \$241 million, but rather than saying, as the
16 RIMS model does, say that it all happens at
17 once -- it's a static model, you have to say
18 it occurs all at one time. what we were able
19 to do in the REMI model is allocate it year by
20 year as the construction progressed using the
21 methodology or using the reported building
22 program that was in the DEIS report.

23 So it stretched out over an eight-year
24 period and differed by the different
25 construction projects that were in there. And

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1 those were entered as an exogenous final
2 demand. what that means is it's demand coming
3 from outside the region.

4 The model treats that a little bit
5 differently than if it's a very small level
6 project, which the demand for which would be
7 satisfied internal to the local economy. This
8 one we felt is a large enough project, and it
9 would be bringing in investment, it would be

10 bringing in economic activity from a much
11 wider region.

12 The operational impacts that we input
13 were based on the anticipated employment.
14 What we used was the revised anticipated
15 employment that totaled 747 full-time
16 equivalent jobs for the operation of the
17 resort, the hotels, the time-share, the
18 restaurants and golf courses. But we also,
19 again, brought those in, staggered those in
20 over a period of time to reflect the actual
21 construction and development of the resort,
22 rather than all at once. This allowed us to
23 see what the shorter-term impacts are on the
24 economy, and in the longer term if those
25 numbers stabilize out.

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1 One adjustment we made -- we didn't
2 make -- what we had to do, we had to adjust
3 the model -- is that the DEIS assumed that the
4 average wage that was going to be paid for
5 operations was significantly higher than what
6 our model, our baseline model told us was the
7 average wage in the industries that they were
8 reporting in, as well as from the New York
9 Department of Labor data. So we had to go in
10 and increase the wage rate paid in those
11 industries for this particular investment,
12 again, to try to emulate the DEIS as closely
13 as possible.

14 The last series of inputs into the
15 REMI model was the expenditures made in the

16 local economy by visitors to the resort. The
 17 DEIS did a very good job of estimating the
 18 number of visitors, as well as their
 19 expenditures, recognizing much of their
 20 expenditures would be in the resort itself.
 21 Some would trickle down to the local economy.

22 So using their numbers, we used that
 23 as another input into the model to see what
 24 the impact would have on the local economy
 25 relative to the flow-through, job creation,

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1 population change and economic impacts that
 2 would take place. Along those lines, I
 3 believe it totaled almost \$12 million based on
 4 the 200-plus thousand visitor parties that
 5 annually would come to the resort.

6 we ran several simulations of the
 7 model after putting those impacts in, which
 8 included alternatives, looking at
 9 staggering -- changing the time variables of
 10 money going in, changing the geographics of
 11 which county it was invested in. The problem
 12 with trying to do these models in kind of a
 13 theoretical sense, like the RIMS 2 does, and
 14 like REMI model does, is it doesn't account
 15 for changes internal to a county, since data
 16 is available only at the county level. This
 17 particular project is located right on the
 18 boundary of a couple -- actually three
 19 counties, and so the impacts are going to
 20 spill out among those.

21 what we looked at is a variety of
22 alternatives and came up with the one which we
23 felt that was most conservative, looking at
24 impacts solely in Ulster County in making
25 adjustments, which I'll discuss in just a

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1 moment, relative to the local impacts along
2 the Route 28 corridor. The results of our
3 REMI simulation, which again emulated the
4 DEIS, actually came up fairly close in a
5 cumulative total to what the RIMS 2 reported
6 in the DEIS. It reported a total of 3,875
7 direct and indirect construction jobs during
8 the eight-year period. Ours came out a bit
9 lower, at 2,848 jobs for that, part of which
10 is how each model differs in terms of the
11 estimate of the local construction trades, the
12 kinds of jobs that might go into that type of
13 project and the ability to spread that out.
14 So the RIMS model -- REMI model was a little
15 lower than that.

16 On the operations side, the DEIS
17 reported a total of 876 direct and indirect
18 jobs, ours came out to 859. Again, fairly
19 close on a cumulative basis.

20 One of the things that the REMI model
21 does that the RIMS doesn't is that the
22 economic shock of investing in a project like
23 that within a relatively small economy is that
24 it's going to create a demand for workers.
25 Some of those workers will come from the local

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1 economy; others will come from outside from
2 neighboring economies, who are drawn to the
3 area, drawn to the opportunities that are
4 there for the wages that are paid and also
5 perhaps for some other reasons.

6 what happens when a worker takes a
7 job, a worker from, let's say, another part of
8 Ulster or Greene County comes here for a
9 job -- some are going to commute and leave
10 every day, others are going to come and stay.
11 Those that stay may bring families with them;
12 and as a result, the population over time is
13 going to grow.

14 That population generates changes in
15 the economy. You're going to have a greater
16 demand for housing, greater demand for other
17 services, greater demand for more retail, for
18 example, in an area. Eventually after this
19 occurs, the economy stabilizes and absorbs
20 that shock. And the difference between the
21 baseline study and this new event become
22 closer and closer over a period of time, 10 or
23 20 years. It's that change in population and
24 those indirect impacts, that is what we were
25 trying to capture with the REMI model.

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1 To allocate the impacts to the very
2 localized economy, we had to make some other
3 adjustments. We recognized, as the DEIS
4 recognized, that the construction impacts are
5 going to be primarily outside the county.

6 Ulster County and the three-county region
7 doesn't have the kind of construction trades
8 necessary to build a resort like that. And
9 they estimated that most of that impact would
10 take place elsewhere in New York State. The
11 investment would be coming from outside; the
12 money would flow outside; only a relatively
13 small portion would stay here.

14 We agree with that, and based on the
15 data we analyzed, we used -- estimated about
16 35 percent of construction impacts would occur
17 locally, within what we call the Route 28
18 corridor, these hamlets and towns along the
19 corridor that are closest to the project.

20 The operational impacts, those are the
21 people working day-to-day at the resort, would
22 be much greater than that. Many of these
23 people will live here, a number of them may
24 very well have to commute from Kingston or
25 other places, but still they'll be spending

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1 money, and we estimate in that case about
2 80 percent of that spending -- the overall
3 economic impact would take place in the very
4 local area -- I'm sorry, about 50 percent of
5 that will take place.

6 For the off-site spending by visitors
7 who come to play golf or stay at the hotel and
8 come into town, about 80 percent of their
9 off-site portion -- the on-site portion of
10 their spending is captured within the DEIS and
11 within the employment basis that we use for

12 estimating those impacts -- but the money they
13 spend down here, about 80 percent of that, we
14 say, is going to stay down here in the local
15 economy.

16 As a result of that, and adding up
17 those impacts in employment and population, we
18 estimated in total about 709 new employees
19 would be generated as a result of the economic
20 impacts of the Belleayre Resort, and a
21 population corresponding to that of a little
22 over 700 people would be -- over the first
23 10-year period would also take place. Outside
24 of that period, over the next 10 years,
25 another, I think it's another 700 -- 650 or so

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1 people also -- this process would continue
2 over a period of time.

3 Again, pointing back to the principal
4 focus of our analysis, is on the economic
5 factors that result in induced growth within
6 the local economy, and some of those primarily
7 are the physical growth factors, in this case,
8 looking at what kind of impacts you have on
9 the residential market and on the
10 non-residential market.

11 One of the variables the REMI model
12 provides is something -- you can estimate
13 what's called capital stock, changes in the
14 asset levels within an economy necessary to
15 support the increase in population, the
16 increase in economic activity of that

17 particular instance that it happens. We
18 estimated out those capital stocks, and over
19 ten years, the residential capital stock
20 increases by a little over \$30 million in the
21 county, and about \$14 million for
22 non-residential. That does not include
23 producer's equipment. This is pretty much
24 fixed assets.

25 Applying those for the estimates we

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1 used relative to allocating those impacts to
2 the very local economy, we came out with an
3 estimate of almost \$16 million over a ten-year
4 period of impacts for the residential
5 component of the economy, and \$8 million in
6 the non-residential.

7 We then applied some factors relative
8 to the average cost of residential and the
9 average cost of commercial property to come up
10 with -- really an estimate of the number of
11 residential units that might be generated if
12 all of that capital stock goes to the
13 residential, as well as the square footage of
14 non-residential space that could be created.
15 And as we reported, it works out in the first
16 ten years to be about 158 new residential
17 units on average might be created as a result
18 of this indirect growth of the resort, and
19 about 80,000 square feet of non-residential or
20 commercial growth would be supported by that
21 secondary impact.

22 That's in the first ten years. Beyond
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23 that, you have another roughly 65,000 square
24 feet of non-residential and another 170, 160
25 residential units over the next ten years of

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1 our 20-year forecast.

2 Now, that's based just upon the
3 induced growth from the expenditures
4 employment that takes place at Belleayre
5 Resort. It does not include any induced
6 growth, particularly changes that might occur
7 in the residential or the commercial markets
8 based upon visitors to the time-share portion,
9 those people who come up to look at
10 time-shares and perhaps buy, but don't.

11 The EIS actually reports, and there's
12 a page in one of their studies there, that
13 estimates that about 56,000 prospects will
14 visit the resort, and of those about half are
15 going to be visitors that stay there and play
16 golf, and the other half will be virtually
17 coming up for a marketing program, looking
18 around, and then leaving. And they even
19 estimate that around 10 percent of those
20 people might be interested in buying something
21 else within the local economy. And we don't
22 know whether that 2,500 people, looking over
23 that eight- or ten-year period, are really
24 going to buy anything; but again, even if a
25 small portion of those do, it does generate

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1 demand for real estate, demand for second

2 homes within this local market.

3 That, in turn, may very well, in fact,
4 create a substantial demand in the structure
5 of the housing market, in that people coming
6 up to buy second homes may very well buy
7 single-family homes, and make seasonal homes
8 out of them. Thus, particularly if the price
9 is appropriate, creating a demand for the
10 people to move out of the single-family homes,
11 the workers in the resort and elsewhere,
12 looking for additional single-family houses.
13 And again, the cycles continues through.

14 So there's many facets to this,
15 inducing the secondary growth that I think
16 needs to be analyzed in more detail than what
17 was in the EIS.

18 MR. BURGER: Does the REMI model take
19 into consideration speculative developments
20 that enter the economy prior to any of the
21 initial investment in the proposed project?

22 MR. SEYMOUR: No, it does not take
23 into account developments that occur prior to
24 the event occurring. It does not have the
25 capability of doing that, nor does it take

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1 into account, as I mentioned, the potential
2 for people who come and visit, the time-share
3 people, who are then looking for a home
4 elsewhere. The model simply doesn't have the
5 capability at the level we used it at to do
6 that.

7 In conclusion, a couple of key points

8 I would like to make relative to our analysis;
 9 one is that the direct and indirect impacts,
 10 the jobs and overall economic output reported
 11 in the DEIS using that static economic
 12 multiplier technique, are in line with the
 13 results and the outcomes that we ran in the
 14 REMI model if you look at it on a cumulative
 15 basis.

16 what it doesn't do, it doesn't take
 17 the next logical step. what do these numbers
 18 mean? what does it mean at the local level in
 19 terms of the induced physical growth that may
 20 take place? I did not adequately identify or
 21 describe the social and economic changes
 22 associated with the development in operation
 23 of the Belleayre Resort. And as I pointed
 24 out, it is our belief that this induced
 25 growth, from our fairly quick calculations

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1 using the REMI model we did are relatively
 2 substantial, relatively significant, and they
 3 really need to be analyzed in more detail.

4 MR. BURGER: Jeffrey Donohoe will talk
 5 more about what he did with the numbers that
 6 were generated, as well as other
 7 considerations.

8 MR. DONOHOE: My name is Jeff Donohoe;
 9 and up until May 31st, I, too, was a vice
 10 president and principal at RKG Associates. As
 11 of June 1st, I am a founder and managing
 12 member of my own company, but I managed RKG'S

13 work in the evaluation of the EIS.

14 My background and experience is very
15 similar to Craig's. I have an undergraduate
16 and a graduate degree in business
17 administration, 20 years' experience in
18 evaluating real estate transactions,
19 feasibility studies, market studies, economic
20 development programs.

21 One of the things that we looked at in
22 evaluating the DEIS was the case studies that
23 were provided. If Craig's presentation sort
24 of put you to sleep, this might wake some of
25 the people here up.

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1 The DEIS indicates: "Case study
2 reviews provide an opportunity to gain an
3 insight into the potential secondary
4 development consequences generated by the
5 Belleayre Resort based on observations of
6 development patterns and experiences from
7 other resorts." I agree. That's the part
8 that's supposed to wake everybody up.

9 The real purpose of using case
10 studies, or comparables as we sometimes call
11 them, is to get a sense of who else has been
12 up the learning curve that you all are trying
13 to go up, and what have been the results to
14 their community over time.

15 And so to the extent that we can, we
16 want to talk to some other communities, find
17 out what kind of facilities were built, and
18 what their experiences have been, and get real

19 world indications of impacts based on the
20 experiences of people who are on the ground in
21 those communities.

22 It's primarily qualitative in nature.
23 There's not usually published statistics on
24 the number of secondary jobs that occurred.
25 Someone doesn't know if the new chicken shack

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1 came in because of the resort or because of
2 something else in the economy; but town
3 municipal officials, local real estate
4 professionals, planners can all provide input
5 into what the impacts of the resort
6 development were.

7 The question is: How do you pick
8 those comparable developments? what criteria
9 do you use to select your comps? One of the
10 things that we think is important is to
11 evaluate projects which have similar
12 development components. It wouldn't make
13 sense to evaluate the United States' largest
14 water park facility down in Texas as a
15 comparable for the Belleayre Resort, totally
16 different market.

17 You want to consider some quantitative
18 measures as well. We're two hours from New
19 York City, the largest population center in
20 the country. To look at something out in the
21 middle of the desert wouldn't make much sense
22 as a comparable.

23 The other issue to consider is

24 geographic proximity and whether that is more
25 important than products of a similar type. I

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1 guess that's where we differ with what's
2 presented in the DEIS. Our feeling is that
3 you need to make an apples-to-apples
4 comparison, and our opinion is in this case
5 that the DEIS sort of makes an
6 apples-to-oranges comparison because the
7 oranges are close by.

8 The case studies referenced in the
9 DEIS are all in relatively close proximity to
10 this location, and we don't feel they
11 necessarily reflect or are similar to what's
12 proposed here in the community. The first
13 case study presented is the Windham Mountain
14 area. Windham Mountain is not a
15 master-planned mixed-use development. The
16 DEIS indicates that it has a strikingly
17 different history and development pattern. It
18 was a private club up until 1981, and it
19 evaluates it as a ski area; and although the
20 proposed resort is in close proximity to a ski
21 area, it is not a ski area, it is a golf and
22 hotel development.

23 The Gore Mountain development also
24 does not have a golf component. The closest
25 golf course is near Lake George, a significant

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1 distance away. It's not a master-planned,
2 mixed-use resort development. It sprung up
3 essentially over time in relationship to the

4 Olympic events that were held in proximity to
5 Lake Placid, and there's no real residential
6 or lodging component directly associated with
7 that development.

8 The third comparable is the Greylock
9 Glen Project in western Massachusetts. That
10 is a master-planned, mixed-use recreation
11 resort development just recently approved, and
12 so it's going up the same learning curve that
13 this community is going up. There's no
14 long-term evidence over what the impacts are
15 to that plan because it hasn't been
16 implemented as yet.

17 Our concern stems from what we see as
18 a true lack of comparability in those resorts.
19 From our perspective, you have been given a
20 copy of our resort matrix; and again, it
21 wasn't our function to evaluate what was
22 comparable; but we thought we would take a
23 look at it and see what kind of projects we
24 might be able to identify. The first thing we
25 did was cast a wide net, to get information

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1 from anyone and any source that we could on
2 what people thought might be comparable.
3 whether that was from talking to people in
4 this community and somewhere they may have
5 vacationed, looking on the Internet, talking
6 to people at DEP, talking to people in
7 communities where we work, or reading trade
8 magazines, golf magazines, Traveler, that sort

9 of thing, to get a large pool of comparables
10 that somebody along the way thought might be
11 relevant.

12 Once we gathered that pool, we
13 gathered some baseline data on as many of
14 those as we could; where the nearest
15 metropolitan area was; how far in miles the
16 resort was from the that metropolitan area,
17 what the population was within a 1,500 mile
18 radius; and some of the characteristics about
19 the amenities that were offered, whether it
20 was lodging, rentals, whether they had
21 time-shares, whether they had golf on-site or
22 in close proximity, whether they were skiing
23 on-site or in close proximity.

24 Based on that sort of baseline
25 information, we grouped the comparables into

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1 three groups. You can see on the resort
2 matrix, the top section contains nine
3 comparables, and those were the things that
4 were considered most comparable. They had
5 much more in common with the proposed resort
6 than the second and third level resorts that
7 we evaluated.

8 ALJ WISSLER: You're looking at
9 City 5, the first group that starts with
10 Northstar Village and ends with Blue Mountain
11 Village?

12 MR. DONOHOE: Yes. The resorts
13 considered most comparable included Northstar
14 Village, Old Greenwood, Mountain Creek

15 village, Snowshoe Mountain, Keystone,
16 Steamboat --

17 ALJ WISSLER: The top group of nine?

18 MR. DONOHOE: Correct, the top group
19 of nine. Then the middle group of four were
20 sort of on the edge as far as comparability,
21 and the bottom group of eight or ten were
22 considered easy to eliminate as being
23 comparable, but we investigated them
24 preliminarily based on recommendations from
25 people.

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1 MR. BURGER: Are any of the
2 comparables used -- any of the comparables
3 that were used in the DEIS wound up on this
4 list of the resorts they found to be most
5 comparable across the nation?

6 MR. DONOHOE: No, they are not.

7 Once we had stratified the
8 comparables, we took a look at a couple that
9 were in close proximity to where we are on the
10 East Coast. We looked at one in West
11 Virginia, we looked at one in New Jersey just
12 to get a sense from those communities what
13 their experiences have been.

14 Some of the key findings from those
15 case studies were that speculative development
16 proposals are likely to occur, including
17 hospitality and residential developments.
18 This is something that we heard about on our
19 tour on Monday. The Margaretville Motel is

20 proposing a doubling of their size. There's a
21 new proposed supermarket here. There's
22 another 96-room hotel proposed, clearly at the
23 conceptual stage, and a significant
24 residential development proposal in Pine Hill.
25 These issues are, for the most part, ignored

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1 by the DEIS.

2 The communities that we talked with
3 also indicated a need to improve traffic
4 access and capacity. They also indicated that
5 the majority of development pressure occurs in
6 those areas with public sewer service
7 available. You know, there's been a lot of
8 discussion here today about focusing
9 development on the hamlets. I think what goes
10 sort of unnoticed by a lot of people is that
11 it's not only the hamlets proper that are
12 serviced by municipal sewer. The
13 Margaretville Motel has public sewer service
14 available. Just east of the Margaretville
15 Motel is what I consider to be a highly
16 developable parcel of land right on 28 that's
17 used for a flea market on the weekends.

18 So the communities we talked to
19 indicated the availability of sewer is a
20 significant issue, and those areas that front
21 along Route 28 with sewer service available,
22 we feel, are most likely to see intense
23 development pressure going forward.

24 MR. BURGER: The flea market was also
25 something that we had seen on our off-site

1 visit on Monday?

2 MR. DONOHOE: Yes, correct.

3 MR. BURGER: Can you describe it a
4 little more so people know what you're talking
5 about?

6 MR. DONOHOE: To the east of when we
7 left the Margaretville Motel, we sort of
8 talked about it before we left, it was just to
9 the east and actually the flea market parcel
10 is up level with 28, and behind it and below
11 it is the small nine-hole golf course.
12 There's three or four tents there. I haven't
13 been here on a weekend, so I don't know what
14 it's like on the weekend. I'm not one of
15 those weekend tourists. But the parcel looks
16 to be maybe four or five acres, could support
17 a significant amount of development, and with
18 proximity to the sewer, it's likely to see
19 pressure.

20 MR. BURGER: Just one more question:
21 The DEIS said there would be no development
22 along the Route 28 corridor; is that correct?

23 MR. DONOHOE: The DEIS indicates
24 development will be focused in the villages
25 and hamlets and calls primarily for infill

1 rather than new construction; and again,
2 that's being contradicted at the present time
3 by the Margaretville Motel. Their plan is to
4 knock down what they have after they build

5 something new; and a new proposed hotel down
6 in the Pine Hill area, as well as the
7 residential subdivision that's proposed in
8 very close proximity to 28.

9 ALJ WISSLER: Part of your argument is
10 that that is because development will occur
11 where the infrastructure is in place, like
12 sewers and so on?

13 MR. DONOHUE: From the perspective of
14 the developer, and we'll get into it a little
15 bit in the next section, which is commercial
16 growth, but from the perspective of the
17 developer, enhanced access, visibility and
18 parking area are important; but also the
19 availability of sewer is much more preferred
20 than having to get a subsurface disposal
21 permit, which is a much more complex process.

22 I will switch to commercial growth
23 then. As Craig indicated in his discussion of
24 the REMI model, we essentially agree with
25 the -- I think the DEIS says 76,700 square

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1 feet of new commercial demand will be
2 generated. The REMI model estimated 80,000
3 square feet. It's easier to stay, it's a
4 round number. The majority of that we feel is
5 likely to be in three or four major
6 categories; dining and drinking, gas and oil,
7 groceries and souvenirs. Those are the types
8 of retail development that are supposed
9 to -- that's what's typical in a resort area.
10 That's what people spend their money on when

11 they're on vacation.

12 As we saw during our tour, some of the
13 villages and hamlets are performing quite well
14 from a real estate perspective. There's
15 limited vacancy here in Margaretville.
16 Margaretville probably has the best parking
17 situation than many of the communities that we
18 stopped and visited. There has been, I think,
19 some significant benefit from the programs we
20 heard about this morning which have resulted
21 in some upgrades here in the community, facade
22 improvements and that sort of thing.

23 Arkville is a little bit different
24 story. There are vacant buildings in Arkville
25 that we saw. I think that area, from a market

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1 perspective, suffers from the fact that it is ⁸¹¹
2 on 28, that 28 is a high-volume, higher-speed
3 road; and, again, parking is an issue. It
4 would be difficult for me to get out on the
5 north side of 28 and walk across to the
6 railroad with my four-year-old daughter. Not
7 impossible, but less likely, again, from a
8 developer's perspective. I want the easiest
9 access and easiest parking for my clients to
10 be able to spend money.

11 Fleischmanns -- Mr. Todd, he talked
12 about a Fleischmanns that I didn't see on my
13 tour. He was talking about 40 years ago.
14 Today that community suffers from apparent
15 disinvestment. Pride of ownership seems

16 sporadic at best. There seems to be a lot of
17 deferred maintenance, and property is
18 suffering from that. And vacancy is the
19 highest among the communities that we visited.

20 From a development perspective, I
21 believe that the only way significant
22 development will come to that community is if
23 there's a significant investment of public
24 money in advance to upgrade the overall
25 appearance and desirability of the community.

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1 Pine Hill, again, a very compact
2 business area, virtually no vacancy,
3 significant parking issues. It's bounded by
4 two motels, and there's maybe a half dozen
5 shops closed now. Over the years,
6 historically Pine Hill had more commercial
7 space; but over the years, much of it has been
8 converted to residential. In order for any
9 new commercial activity to occur there, it's
10 likely those residential units would have to
11 be converted back to commercial uses.

12 Phoenicia, I think, was the strongest
13 market that we visited on our tour. Again, we
14 heard about the parking plans for that
15 community. They do have significant parking
16 problems. And so from the perspective of the
17 DEIS saying there's probably going to be
18 demand for 80,000 square feet of new space,
19 the question for this group, I think, is where
20 can that space go? Where can it be supported?

21 And the evidence is that that support
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22 area is not available in the villages and
23 hamlets. New construction is likely to occur,
24 and from a development economics perspective,
25 developers are likely to look for the access,

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1 visibility and available parking that a
2 Route 28 location would offer. If you pile on
3 top of that the desire to have access to
4 public sewer, those areas on 28 with the
5 availability of public sewer, I think, will
6 see the most development pressure; and some of
7 that is occurring today. There's a proposed
8 supermarket, I understand, here in
9 Margaretville, that fronts on Route 28.

10 MR. BURGER: You mentioned that what
11 we would have to see in Pine Hill would be
12 this reconversion of residential uses to
13 non-residential uses, and I'm wondering if you
14 could talk to what kind of impacts that might
15 have on the community.

16 MR. DONOHOE: I will preface it by
17 saying I'm not a traffic engineer any more
18 than the planner who was here earlier was a
19 traffic engineer. Businesses generate more
20 traffic trips than residential units do.
21 Businesses require more parking than
22 residential units do. Therefore, you end up
23 with more impervious surface. That's about as
24 far as I can go in my environmental analysis
25 of the differences. In general, you'll have

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1 more traffic, more cars, and more impervious
2 surface.

3 ALJ WISSLER: Just if you know,
4 80,000 feet of proposed commercial space, how
5 does that impact parking requirements? Is
6 that a function of the business that --

7 MR. DONOHUE: Most zoning
8 requirements, they do vary by type of
9 business; but typically for retail and
10 commercial uses, it's on average four to five
11 spaces per thousand square feet of building.
12 And an average parking space is around 350
13 square feet by the time that you add in travel
14 lanes and turning and back-up area. So four
15 spaces would require 1,400 square feet of
16 parking area to support 1,000 square feet of
17 buildings. Five spaces would be 1,750 of
18 parking to support a 1,000 square feet of
19 building.

20 Craig says his calculator indicates
21 112,000 square feet of parking area to support
22 80,000 square feet of commercial development.

23 ALJ WISSLER: Is that a REMI input?

24 MR. DONOHUE: That's not a REMI input.
25 The other sort of issue with the DEIS that's a

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1 concern, I guess, is that the DEIS indicates
2 that the study acre is 107,000 acres, and
3 essentially takes the position that this
4 80,000 square feet of development is
5 insignificant in the context of 107,000 acres.
6 I agree with that.

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7 Realistically, the 80,000 square feet
8 doesn't have the opportunity to go on
9 107,000 acres. It is very a limited area
10 where it can go because of slopes, because of
11 access, because of zoning, because of
12 availability of developable land.

13 Our analysis indicated -- or I guess
14 the DEIS indicates 3,900 acres roughly of
15 available land. To support 80,000 square feet
16 of development, you need between 10 and
17 20 acres at the most. So as the developer,
18 the person who wants to build some or all of
19 that 80,000 square feet, I have my pick of
20 3,900 developable acres. I'm going to go
21 where I get the best return on my money.

22 Again, that, from a development
23 economics perspective, that would lead me to
24 Route 28 because of access, visibility,
25 parking. So I believe that additional

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1 development in the hamlets is less likely
2 unless some existent structures are knocked
3 down.

4 MR. BURGER: The City wants to add
5 that even assuming that there will be some
6 in-fill development in hamlets in existing
7 spaces, it's our position that it was
8 unreasonable of the DEIS to basically assume
9 that all or almost all of the commercial
10 development will happen in those areas, and
11 therefore, will have totally ignored any

12 analysis of potential impacts from secondary
13 growth along the Route 28 corridor.

14 In addition, we'll just note now that
15 the REMI model also predicted, as Mr. Seymour
16 pointed out, 158 new residences on top of any
17 unrelated growth in the primary market area;
18 and in addition, there would be 155 residences
19 outside the primary market area in the first
20 ten years -- this 158 number represents a
21 50 percent increase over the rate of growth
22 throughout the 1990's.

23 The DEIS identified zero new
24 residences. We've already heard testimony
25 today from Joyce Greenberg and from Mary

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1 Kopaskie to the effect that this project is 817
2 going to result in new residential demands and
3 new residential construction.

4 Another part of our argument is quite
5 simply that it was unreasonable to
6 assume -- to conclude there would be zero
7 residential growth and, therefore, ignore any
8 analysis of the potential water quality
9 impacts that such growth would have.

10 Just in summary, assuming your Honor
11 has no further questions for these two?

12 ALJ WISSLER: No.

13 MR. BURGER: Our experts have
14 testified today that the modeling employed
15 by -- in the DEIS winds up estimating that
16 there would be zero residential growth;
17 whereas, we find there would be a 50 percent

18 increase in the primary market area in the
19 first ten years.

20 In addition, Mr. Donohoe testified
21 that the case studies illustrate that there
22 was a kind of development that we're already
23 seeing that the DEIS totally discounts. For
24 these simple reasons, we feel the issues
25 raised here are substantive and significant

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1 and the DEIS is insufficient and inadequate.

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2 ALJ WISSLER: Thank you, Mr. Burger.

3 Mr. Greene, anything else?

4 MR. GREENE: City rests.

5 ALJ WISSLER: Mr. Baker.

6 MR. BAKER: Can we ask for a
7 five-minute recess?

8 ALJ WISSLER: You certainly can, and
9 I'll give it to you.

10 (2:52 - 3:07 P.M. - BRIEF RECESS
11 TAKEN.)

12 ALJ WISSLER: Let's go back on the
13 record so we can get done at a reasonable
14 hour.

15 Mr. Baker, how many players do we have
16 here?

17 MR. BAKER: Four or five.

18 ALJ WISSLER: Will they be able to
19 speak from back here?

20 MR. BAKER: We'll try from back here.
21 Thank you, your Honor.

22 On behalf of the watershed

23 communities, I want to first address the
24 points made by DEP in the presentation they
25 made here in an issue raised in our brief

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1 regarding the DEP comments on presumptions of⁸¹⁹
2 development areas; and I'm going to turn it
3 over to my partner, Kevin Young, who is going
4 to address specifically some of the community
5 character issues with witnesses from the towns
6 and the counties involved in local planning
7 issues. We'll do our best to keep it short.

8 Getting to the first issue of DEP, as
9 I understand from what Mr. Burger was saying,
10 and I was pleased to hear it, is a recognition
11 that a 15-kilogram increase in phosphorus
12 loadings associated with their estimates of
13 secondary growth induced by this project is
14 not significant or substantive, and they seem
15 to have conceded, have recognized that they're
16 not arguing that that is a substantive or
17 significant point.

18 But I understood his point to be that
19 it was not the obligation of DEP, or any other
20 party to this proceeding, other than the
21 Applicant, to undertake the analysis of
22 secondary growth created by this project, and
23 presumably they were finding fault in the
24 analysis undertaken by the Applicant.

25 Now, the watershed communities have

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1 not taken an independent analysis as to the⁸²⁰
2 accuracy of the modeling for the induced

3 growth associated with this project; so we're
 4 not in the position of saying which side is
 5 right, whether it's the RIMS 2 model or REMI
 6 model. I believe from the watershed
 7 communities' perspective, we're actually
 8 pretty happy with the numbers and the analysis
 9 put forward by DEP as part of their REMI
 10 model, because it does show greater growth in
 11 the communities and in the watershed to
 12 provide a greater benefit to the watershed
 13 communities. Whether that's a position that
 14 the Applicant wants to adopt, that's up to
 15 them, and it will get resolved as a later
 16 issue.

17 Our point on this one is that after
 18 having said that it was not DEP's obligation
 19 to undertake a proper analysis, they then went
 20 ahead and did it, and they should be commended
 21 for it, and I assume they did a good job. I
 22 don't question the capabilities of the people
 23 from RKG.

24 The fact of the matter is, as
 25 Mr. Donohoe noted, and Mr. Seymour, they're

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1 not environmental scientists. And DEP has not
 2 made any connection to water quality from that
 3 induced growth analysis, and we are left to
 4 the connection and the projection put in by
 5 their comments as part of -- in the petition
 6 for party status and in their comments on the
 7 EIS -- and under that analysis, they said that

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8 all of that growth over a ten-year period of
9 time will result in total phosphorus loading
10 of an additional 15 kilograms a year over at
11 least two watersheds, the Ashokan and
12 Pepacton, and maybe even a third, depending on
13 how it gets spread out among the areas when
14 you're talking about the residential
15 development.

16 we have said and we are prepared, not
17 today, but when we get to the stormwater
18 issues when we're prepared to put on our
19 experts, that's not significant. That is an
20 inconsequential number regarding water quality
21 impacts, and DEP has acknowledged that today.

22 Therefore, it is by definition not a
23 substantive and significant issue, and to
24 require this detailed induced growth analysis
25 by a party whose environmental standing in

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1 this proceeding is limited to the impact on
2 water quality stops the analysis. If there's
3 any question as to the accuracy of the
4 secondary growth analysis, the secondary
5 growth analysis stops. When you take their
6 worst-case scenario, translate it into a
7 possible water quality impact and find there
8 is, in fact, no water quality impact.

9 You can get into some of the more
10 specifics, and I'm going to leave that to
11 other people who are going to speak to
12 regarding Mr. Donohoe's comments about where
13 this growth may likely occur. He says it is

14 likely to occur in hamlet areas or in areas
 15 served by public sewer systems. Great.
 16 That's what the watershed communities want,
 17 especially Middletown and Shandaken. In fact,
 18 it would be nice if New York City facilitated
 19 the hookups to those areas so that those
 20 properties could be taken care of, and their
 21 wastes could be properly treated, and you
 22 could have concentrated development in the
 23 hamlet and the hamlet extension areas.

24 All of those areas identified by
 25 Mr. Donohoe, Mr. Seymour are either villages,

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1 hamlets or hamlet extension areas. They are
 2 areas where the MOA was designed to foster
 3 development so that it was easier to control
 4 the manifestations and the impacts associated
 5 with that development.

6 Regarding that there's potential great
 7 chance of development down at the flea market
 8 site in Margaretville, I'll leave that to the
 9 people in Middletown to talk about, but I
 10 believe that's a floodplain. It's not an area
 11 that is likely to get developed. It is simply
 12 not a substantive and significant area.

13 I'd also like to address what was
 14 identified as Issue D in our petition for
 15 party status, which hasn't been directly
 16 addressed here, but it's been touched upon in
 17 various consequences. It goes to DEP's
 18 statement in their comments on the DEIS that

19 the MOA envisioned that development was to be
20 encouraged in town centers with supporting
21 infrastructure. Growth was not envisioned as
22 appropriate on steep slopes or at locations
23 outside of population centers on large tracts
24 of undeveloped land with mature forests. This
25 is an issue we're happy to address in

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1 briefing, and it may be most appropriate to
2 address in briefing as we go forward on this.
3 And I think that this is the appropriate time
4 in the issues that we're going toward, to at
5 least raise it and discuss it here, and that's
6 why I'm doing so.

7 There is no mention in any single
8 document associated with the City's Watershed
9 Protection and -- Protection Program whether
10 it's the Watershed Regulations, the MOA or the
11 water supply permit, which supports that
12 statement. There is no provision that
13 restricts development outside of the hamlet
14 area. There's no provision that says there
15 cannot be large-scale resorts, that there
16 cannot be new ski areas, that there cannot be
17 new golf courses; that there can be anything
18 that's designed to affect land use planning in
19 and of itself.

20 The regulations do provide some easier
21 regulations that will make -- that will
22 facilitate development in the hamlet areas,
23 and the primary example of that, and regarding
24 the prohibitions on impervious surfaces, it

25 provides that the otherwise prohibition of new
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1 impervious surfaces within 100 feet of a water⁸²⁵
2 course does not apply in hamlets or village
3 areas, and it may be allowed in those areas
4 subject to an individual stormwater pollution
5 prevention plan.

6 The reason for that was if you didn't
7 have that exception so at least you had the
8 ability to apply for a permit to do it, and it
9 was a complete prohibition as applies
10 elsewhere in the watershed, there would be no
11 development in the hamlet areas because
12 virtually every hamlet area is on the bank of
13 a stream; hence, the historic nature and
14 development in the Catskills. So it was
15 designed to at least provide a relief valve
16 and allow that those hamlets can be
17 redeveloped.

18 Areas outside of the hamlets have to
19 maintain the buffer distance of a water
20 course, but there is no prohibition and
21 provision for steep slopes or anything else
22 that says you cannot develop in those areas.

23 So we would ask, your Honor, that you
24 reject in your findings, and if this
25 proceeding goes forward, any recognition or

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1 any weight to an argument that development⁸²⁶
2 outside of the hamlet areas, doing golf
3 courses, doing ski resorts, doing large

4 resorts on hillsides, is, per se, incompatible
5 with the water quality protection or the MOA,
6 because it's simply not true. It has to meet
7 the objective standards of showing that it
8 won't have an adverse impact on water quality,
9 and that's a matter of engineering. If it can
10 meet that engineering proof, that answers the
11 question, and there is no other presumption
12 otherwise.

13 In terms of offering witnesses on
14 that, I don't have a specific list now, but I
15 can list everybody who participated in the
16 watershed negotiations, including all the
17 members of the Coalition of Watershed Towns,
18 past and present counsel at DEC, the
19 Commissioner of DEC, and we can have a
20 wonderful time and bring everybody in. I
21 don't think that's necessary. I think this
22 really is a matter of briefing and looking at
23 the record of what's there, and demonstrating
24 that this is not an issue that can be
25 presented.

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1 That's all I have on that one. I turn ⁸²⁷
2 it over to Mr. Young.

3 ALJ WISSLER: I take it you're going
4 to shift gears and talk about community
5 character --

6 MR. YOUNG: Yes.

7 ALJ WISSLER: Do you want to very
8 briefly respond to this? Mr. Baker is
9 absolutely correct, some things probably will

10 be more appropriate for briefing; but if you
11 want to respond to his comment, I'll give you
12 the opportunity to do that.

13 MR. BURGER: My very brief response to
14 those comments, that Issue D is not -- this
15 wasn't raised as an issue by the City, so
16 therefore, it's not an issue that we
17 potentially raised as being substantive and
18 significant.

19 It's an excerpt from a comment in a
20 long list of comments to the DEIS, but it is
21 not an issue that we raised; and therefore, I
22 do not think it would be appropriate for me
23 to -- certainly to the extent that Mr. Baker
24 is responding to issues we have raised, we
25 have not raised -- we have not argued anywhere

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1 that the MOA precludes development outside
2 villages and hamlets. That is not the City's
3 position.

4 As far as the other issues, let me
5 know if I miss anything here, Mr. Baker
6 characterized my preliminary statement as
7 having conceded that 15 kilograms of
8 phosphorus loadings is not significant. I
9 didn't concede that. I did, however, as
10 Mr. Baker said, claim that the DEIS was
11 insufficient; and that was the point of that
12 argument.

13 Mr. Baker was also correct that we
14 undertook the analysis on our own using, as we

15 stated, the data that was highly faulty, as
16 was testified to earlier by Mary Kopaskie, to
17 arrive at these numbers. Again, we would like
18 to reiterate, it is not our obligation to
19 undertake that analysis. Our analysis really
20 goes to show that the analysis that was
21 undertaken in the DEIS was insufficient.

22 The connection to water quality,
23 between our comments and water quality, is
24 simply that the DEIS failed to identify what
25 we understand to be a significant increase in

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1 residential development, or potentially
2 significant increase in residential
3 development.

4 The number 158, again, based on data
5 that was derived from the DEIS represents a
6 minimum perhaps; and in addition, the proposed
7 development, the focus of development that
8 Mr. Donohoe testified to along the Route 28
9 corridor represents a potential for
10 significant water quality impacts, given its
11 proximity to critical water courses that feed
12 directly the water supply system, that was not
13 identified or analyzed in the DEIS.

14 We certainly contend that our
15 environmental standing in this case is not
16 solely limited to water quality issues in the
17 way that it was characterized by Mr. Baker.
18 We are an involved agency under SEQRA, and
19 while certainly our jurisdiction over -- over
20 this project is limited to water quality

21 issues, the extent to which we can comment on
22 and raise issues having to do with
23 environmental review, we do not believe it's
24 strictly limited to that. We would -- in this
25 case, we are making these arguments and these

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1 comments solely because of the connection
2 between secondary growth and water quality.

3 Another characterization of
4 Mr. Donohoe's testimony that Mr. Baker stated
5 was that Jeff said that development would be
6 only in the hamlets. That, in fact, is
7 exactly not what Mr. Donohoe testified to.
8 That is the position of the Applicant. Our
9 position is that development will be
10 focused -- it's likely to be focused along the
11 Route 28 corridor. That would be our brief
12 response.

13 ALJ WISSLER: Thank you, Mr. Burger.

14 MR. BAKER: Can I respond and ask for
15 some clarification?

16 ALJ WISSLER: Sure.

17 MR. BAKER: From the watershed
18 communities' perspective, we don't understand
19 what New York City's role is on this issue of
20 secondary growth. And if it is a water
21 quality connection, what is the presumed water
22 quality impact from the secondary growth
23 numbers that the City is projecting? Is it 15
24 kilograms, or is it some different number?

25 MR. BURGER: The numbers -- the City's

1 projection is based on -- is not an analysis
2 that should form the basis of a conclusion of
3 water quality impacts. The Applicant is
4 required to provide an environmental analysis
5 that will provide an adequate basis on which
6 to determine what the water quality impacts
7 would be.

8 Our 15-kilogram number is not the
9 number that should be relied on. Rather, we
10 assert that the environmental impact of the
11 DEIS does not adequately analyze the localized
12 impacts of secondary growth on water quality.
13 It would be up to them to derive a number that
14 we could all then use to determine whether or
15 not the project's secondary growth is likely
16 to have adverse impacts on water quality.

17 MR. BAKER: Our position is that the
18 City has not satisfied its burden of proof.
19 If it wants to raise an issue that's
20 substantive and significant, rather than
21 simply saying, "you haven't done enough
22 secondary growth analysis," and then come up
23 with analysis with a number, they have to take
24 it to that next step and say, "what is the
25 water quality impact," and present an offer of

1 proof as to what that number is.

2 Their comments do provide a number.
3 It says 15 kilograms. Presumably that came --
4 it was a derivation of running the REMI model.
5 That is, by itself, not substantive and

6 significant.

7 It is not the City's position, and it
8 is far in excess of their jurisdiction as both
9 involved agency and as interested party in
10 this proceeding -- because it is outside their
11 jurisdiction in environmental interests to
12 care about the nature of land use planning in
13 the Catskills. To use an extreme example, and
14 one obviously the towns don't want to do, but
15 if a town wanted to turn an area of Middletown
16 into a red light district, and that would be a
17 community character and land use planning
18 decision, it is not the City's interest.
19 There has to be a water quality connection to
20 a decision of what happens in the plan for the
21 growth. And their offer of proof is either 15
22 kilograms, which is by definition not
23 significant, or it's some unstated number, and
24 there's been insufficient offer of proof to
25 say that this is significant enough to go

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1 forward.

2 And not to waste your time anymore, on
3 the issue of is development limited to the
4 hamlets, and are resorts frowned upon by the
5 MOA, the Coalition of Watershed Communities
6 are raising that as an issue for adjudication,
7 and asking for a definitive ruling from the
8 Commissioner as to whether that is a
9 presumption that applies not only to this
10 project but all projects in the future coming

11 forward in the watershed, because that is a
12 fundamental issue, and we want that issue
13 settled for good so it does not come back to
14 haunt any future project in the watershed,
15 regardless of scale.

16 ALJ WISSLER: Thank you, Mr. Baker.

17 MS. GEARY: Your Honor, before we move
18 off that point, Mr. Baker is saying he's
19 seeking a ruling from the Commissioner. Is
20 that ruling now the oral application that is
21 going for that ruling, or is this something
22 that is beyond what we have here?

23 MR. BAKER: It was raised as an issue
24 in our petition, and it will get briefed
25 afterwards, and then we'll be asking for a

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1 ruling from your Honor on the issues ruling. 834

2 MS. GEARY: Thank you.

3 MR. YOUNG: I don't quite know how
4 we're going to do witnesses. We're here
5 today -- at least I'm here on behalf of the
6 Town of Middletown, the Town of Shandaken and
7 Delaware County, in addition to the Coalition
8 of Watershed Towns. And we have a fundamental
9 disagreement as to whether community character
10 is a proper issue to be adjudicated in this
11 proceeding. This is not Texas; this is not
12 something in Virginia; this is an area of the
13 state that is part of the New York City
14 watershed, and we in the watershed, have given
15 up a lot of our self control and struck a
16 deal.

17 we have, across the state -- everyone
18 else has to deal with SPEDES permits. We have
19 to deal with the Department of Health
20 regulating septic systems. We have to deal
21 with the Department of Health and DEC in
22 regulating water supply.

23 MS. ROBERTS: Your Honor, we can't
24 hear.

25 MR. YOUNG: They have to deal with

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1 wetland regulation for both the Army Corps and⁸³⁵
2 DEC. They have to deal with a very complex
3 set of regulatory programs. We -- the
4 watershed communities agreed in the 1997
5 Memorandum of Agreement to accept, on top of
6 that, a whole set of new regulations which
7 basically, in a large part, prohibits
8 development in most of the watershed, and I
9 think that's kind of what Mr. Jeff Donohoe was
10 saying.

11 MS. GEARY: Your Honor, I'm sorry, we
12 need to object. This is an issue that is not
13 relevant to the issues conference, in my mind.
14 It's raising issues about MOA negotiations. I
15 don't understand where he's going with this.

16 ALJ WISSLER: I would like to hear
17 Mr. Young's position.

18 MS. GEARY: I would indulge him to
19 wrap it up.

20 MR. YOUNG: It gets to the issue of
21 community character. As Mr. Donohoe was

22 saying, what we agreed to as part of the
23 watershed regulations is we agreed to a whole
24 new set of sewage treatment plant regulation.
25 This new sewage treatment plant regulation

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1 makes it cost-prohibitive -- there's no
2 question -- it's cost-prohibitive for a
3 private party, absent the scale of this
4 project, to fund a new wastewater treatment
5 plant. we cannot have -- and we will show you
6 during the hearing if this is an issue -- for
7 example, we're attorneys for Elka Park. It's
8 a 20-unit residential vacation place in Greene
9 County, been there since 1890. The cost of
10 upgrading that facility to meet the City's
11 regulations is in excess of \$2 million. The
12 operating costs to those homeowners, after the
13 upgrade, is going to be \$100,000. That's 2-
14 or \$3,000 per unit.

15 we have in the Village of Andes --
16 someone mentioned the Village of Andes,
17 economic development, Chamber of Commerce in
18 the Village of Andes. We have in the Village
19 of Andes constructed a wastewater treatment
20 plant. we cannot turn that plant on because
21 we cannot afford to operate it. And the
22 numbers that we currently have which show that
23 a typical residential -- but for a City
24 subsidy -- will pay \$3,000. There's no
25 subsidy for commercial. The supervisor of the

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1 Town of Andes will not turn that sewage

2 treatment plant on.

3 The Town of Shandaken is supposed to
4 get a sewage treatment plant. That's been
5 stalled because they're concerning about the
6 ability to pay the operating costs associated
7 with it. Working in the New York City
8 watershed with these set of regulations has
9 made it cost prohibitive for us to have any
10 new private wastewater treatment plants.

11 So that controls where development is
12 going to be, because otherwise you have to do
13 development with a septic system. But we
14 have -- like everyone else -- have DEC or DOH
15 regulating septic systems, or the local
16 Department of Health, we have the City
17 regulating the septic systems.

18 In the hamlet areas, we have a high
19 water table. We have proximity to streams,
20 which makes it practically impossible to site
21 a new septic system in these hamlet areas.
22 And as these uses change -- we have a building
23 today that happens to be a retail store. If
24 it goes to be a bakery, the City to going to
25 come in and say: It's a change of use, you

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1 have a non-conforming septic system, and they
2 may or may not allow the change from a retail
3 store to a bakery because the septic system
4 that they currently have doesn't conform.

5 Then we have impervious surfaces. We
6 have restrictions. No development within

7 100 feet of impervious surfaces, except in a
8 few cases. In those cases, you have
9 individual stormwater permits that have to be
10 approved by DEP.

11 So the concept that we're going to
12 have development in hamlets, or the concept
13 that we're going to have development along the
14 Route 28 corridor is really not true. What we
15 gave up for that -- we gave that up. But what
16 we understood is what little development we
17 could have, what area was still going to be
18 qualified for development, the uses on that
19 were our decision. They weren't New York
20 City's decision. They weren't DEC's decision.
21 They were local decisions -- whether there's
22 enough parking, whether it's going to create
23 jobs, whether it creates the need for
24 additional houses, those were local decisions;
25 and we'll show that we have expertise in that

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1 area, that we have planning boards with site
2 plan approval, subdivision approval, and a
3 whole host of planning tools that we have
4 implemented to address those issues, and we're
5 prepared to address those issues.

6 We don't want New York City to come in
7 and tell us that as a use, a destination
8 resort is not a permitted use because it's too
9 big; and that's essentially what's being
10 litigated here. CPC and the DEP are both
11 saying the destination resort is too big to be
12 permitted within the New York City watershed.

13 ALJ WISSLER: wouldn't that be an
14 issue for consideration just under SEQRA
15 anyway?

16 MR. YOUNG: SEQRA doesn't change the
17 jurisdiction between the agencies. I've never
18 seen DEC come down and say: We don't think
19 this should be a Home Depot; it should be a
20 Shop Rite. DEC doesn't get into land use
21 decisions. Here, when you have secondary
22 growth, the secondary growth still has to
23 comply with not only the state, federal and
24 local regulations; but it still has to comply
25 with the DEP regulations; and by complying

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1 with the DEP regulations, that so severely
2 restricts it that it's hard to imagine how
3 even any growth would have any significant
4 environmental impact.

5 That's kind of the compromise of the
6 MOA. We will accept these additional
7 regulations, however, if we can have growth in
8 accordance with those regulations, that growth
9 would be allowed, subject to a local decision.

10 ALJ WISSLER: Tie your position to
11 this project.

12 MR. YOUNG: Our position is, your
13 Honor, that community character is not a
14 proper issue for adjudication because we have
15 already -- we have protected the environment
16 through these other programs, and the
17 compromise reached in the MOA was community

18 character issues, development consistent
19 that's with all the other programs, those
20 issues would be left up to the local
21 communities, and not to the state agencies,
22 and not to DEP.

23 with that, I'd like to introduce
24 Shelly --

25 MS. GEARY: Your Honor --

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1 ALJ WISSLER: I understand Mr. Young's⁸⁴¹
2 position, and I'm going to let him -- you have
3 some folks you want to speak?

4 MR. YOUNG: Yes.

5 ALJ WISSLER: I'm going to let him
6 speak. I want to see his entire presentation,
7 and I'll allow response.

8 MR. YOUNG: Could you identify
9 yourself.

10 MS. JOHNSON: My name is Shelly
11 Johnson. I'm the chief planner for Delaware
12 County, and I oversee the Town Planning
13 Adviser Service, which is a contractual
14 service Delaware County provides to the towns
15 and villages in Delaware County for
16 professional planning services.

17 we attend all of their planning board
18 meetings, zoning board meetings, town board
19 meetings when necessary. we help them develop
20 land use legislation, with help them with
21 their comprehensive plans; but most
22 importantly, every single month and every
23 single application in our communities, we

24 assist them in the review of.

25 For instance, a subdivision or site

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1 plan, we assist them in getting through the
2 process, including SEQRA, and we coordinate
3 involvement of all other involved agencies,
4 including the State and the City, and any
5 other involved interested agency that may be
6 required. We do all of that coordination on a
7 contractual basis with the towns.

8 In Delaware County, we have 29
9 municipalities, 28 of them belong to our
10 program. The only town that does not doesn't
11 have any land use regulations.

12 So based on those qualifications, we
13 have been able to provide them, not only with
14 planning expertise, but we also bring in our
15 DPW staff to give them engineering expertise.
16 If there's a road proposed or parking issues
17 proposed, DPW engineers will always review a
18 project with us.

19 We also provide them with access to
20 our economic development department who
21 assists us with any secondary growth issues,
22 or economic or socioeconomic issues that may
23 arise, and we bring in our watershed affairs
24 issues to make sure that we're in compliance
25 with all rules and regulations as stated by

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1 the MOA which Kevin has discussed.

2 I don't know how much more detail of

3 the program you want to get into. It's pretty
4 comprehensive, I guess, is what I'm getting
5 to.

6 MR. YOUNG: Can you explain the review
7 that the Town of Middletown has done to date,
8 although you haven't done an application for
9 site planning?

10 MS. JOHNSON: No, the town has not
11 received an application for site planning.
12 They were introduced to the project --
13 approximately 2001 is when we were originally
14 introduced to it. The developer came to the
15 board; they proposed it; there were several
16 changes. And actually at that point, the
17 planning board said to them: Until you have a
18 complete idea of what you really want to do,
19 you need to get through the SEQRA process.
20 That's when the whole lead agency stuff
21 happened. DEC became lead agency, and then
22 the environmental review started.

23 The planning board to date does not
24 have an application before them; and because
25 of that, they have not made a determination

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1 whether they favor or don't favor the project. 844
2 They are simply neutral. The position the
3 planning board took in their comments, in the
4 town's comments, a lot of them did address
5 local issues like community character, but
6 they felt that those issues were local and
7 could be addressed through their site plan and
8 special permit requirements. They are

9 anticipating that they will have to do
10 mitigation through special permit and through
11 SEQRA findings. They're already thinking
12 about that doing that. They have utilized the
13 assistance of Fraser and Associates, which is
14 a private consulting company that they have
15 been using for their review itself. The
16 town's review has really very much been in the
17 periphery to date, until they get a formal
18 application before them.

19 MR. YOUNG: Who reviewed traffic for
20 the town?

21 MS. JOHNSON: The traffic was reviewed
22 by our DPW staff.

23 MR. YOUNG: Who reviewed economic
24 impacts?

25 MS. JOHNSON: Economic impacts were

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1 actually reviewed by Fraser, but they were
2 also reviewed by Glen Nealis, our Director of
3 Economic Development in Delaware County.

4 MR. YOUNG: Does the Town of
5 Middletown have a Comprehensive Plan?

6 MS. JOHNSON: The Town of Middletown
7 has a Comprehensive Plan adopted, I believe,
8 in 1988, and they're in the process of
9 currently amending that to bring it more up to
10 date.

11 MR. YOUNG: What is that process?

12 MS. JOHNSON: Basically what they have
13 done is a town survey. They used the

14 assistance of an advanced program class at the
15 high school to assist them with that. They
16 did a town-wide survey mailing. They
17 tabulated all of those things, and they came
18 up with things that are of most importance and
19 least importance to the residents of the
20 community.

21 The planning board is now taking that,
22 and using all other documents like the
23 Route 28 corridor, we've heard about, the west
24 of Hudson Economic Development Plans, we heard
25 a lot about -- community development plans

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1 that have been done by the Catskill Center,
2 including the ones Helen spoke about this
3 morning for the village of Margaretville.
4 We've also embarked on wellhead protection
5 studies in the village of Margaretville and
6 the village of Fleischmanns, and both of those
7 studies incorporated impacts to the village
8 wells and village supplies to those wells.

9 They have not been adopted yet, but
10 the town has already been made aware that
11 based on the findings, the town itself will
12 actually end up amending some of its zoning
13 laws to incorporate large lot zoning issues,
14 anything to protect the wells and the water
15 quality of those systems in the villages
16 themselves. And all of that has been done as
17 part of their comprehensive planning process
18 in the town itself.

19 MR. YOUNG: How does this project
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20 compare to the local land use regulations in
21 the Town of Middletown?

22 MS. JOHNSON: It's bigger than most
23 projects they see, but it complies with. They
24 do allow for outdoor recreational uses under a
25 special permit and site plan review. They

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1 allow for retail. They allow for hotels. So⁸⁴⁷
2 all the components of this project, they do
3 allow for. All of them with special permit
4 and all of them with site plan review.

5 ALJ WISSLER: There is a Comprehensive
6 Plan in place in Middletown?

7 MS. JOHNSON: It was adopted in the
8 late eighties, I believe 1988.

9 ALJ WISSLER: Is your zoning code in
10 effect?

11 MS. JOHNSON: The zoning code was in
12 effect -- it was in effect in 1989. So their
13 zoning and their subdivisions were actually
14 adopted after the Comprehensive Plan.

15 ALJ WISSLER: Is there any
16 architectural review board or anything like
17 that?

18 MS. JOHNSON: There is no
19 architectural review board. The planning
20 board takes some of that on themselves.

21 ALJ WISSLER: Is that to specific
22 regulatory guidance that the planning board
23 has?

24 MS. JOHNSON: Under their site plan

25 law, they have a list of things that they

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1 review, and one of them is architectural and
2 landscape and viewshed, and visual aesthetics;
3 and based on that, they quite often get
4 involved in the State Historic Preservation
5 Office if it's a historic building or a site
6 that could potentially be historic, and then
7 they comply with the requirements the SHPO
8 might put on something.

9 MR. YOUNG: Do they regulate the type
10 of lighting that a project like this might
11 have?

12 MS. JOHNSON: Yes. Actually in some
13 of their review comments, they did talk about
14 lighting and sky glow, and one of the things
15 they mentioned is that they wanted to make
16 sure there were down-cast lightings. They
17 even talked about, as they get into the
18 findings and the special permit, is the
19 possibility of requesting that only certain
20 lights, like safety lights, be on at night;
21 and other lights not be allowed at night. So
22 they have taken that into consideration
23 already.

24 MR. YOUNG: Do they look at the impact
25 on municipal services as part of their site

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1 plan special use permit review?

2 MS. JOHNSON: Yes, you mean like
3 emergency squads, police protection?

4 MR. YOUNG: Yes.
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5 MS. JOHNSON: Yes, and that's also
6 something they've addressed in their comments.
7 They were concerned that there might be an
8 additional burden on emergency services and
9 the Margaretville Hospital and police forces
10 in the community. And they have spoken to the
11 Applicant and expressed this concern,
12 understanding that they may ask that some kind
13 of agreement be made that the Applicant
14 actually provides some sort of additional
15 assistance.

16 ALJ WISSLER: These comments are
17 comments by the planning board?

18 MS. JOHNSON: The comments were
19 prepared by Fraser and Associates, hired by
20 the planning board to the DEIS, and submitted
21 to the DEC.

22 ALJ WISSLER: As part of the SEQRA
23 process?

24 MS. JOHNSON: Yes.

25 ALJ WISSLER: But there has not yet

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1 been a formal application to the planning
2 board?

3 MS. JOHNSON: Right, for a site plan
4 review. As an involved agency, they reviewed
5 the EIS, and that's where these comments have
6 come from.

7 ALJ WISSLER: Got it.

8 MR. YOUNG: Did you hear the testimony
9 previously about noise; there was testimony

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10 regarding noise?

11 MS. JOHNSON: Yes.

12 MR. YOUNG: Is noise an issue that is
13 reviewed by the planning board when reviewing
14 a project under site plan review?

15 MS. JOHNSON: Yes. And actually the
16 town has some noise requirements in their
17 codes. They have a decibel meter already in
18 place, and they have gone out on other
19 applicants and applications and done decibel
20 metering and brought people back into
21 compliance. Everything from sawmills, to --
22 in the village itself, they have had issues
23 with nighttime bands at some of the local
24 taverns, and they've used the decibel meters
25 to mitigate those issues.

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1 MR. YOUNG: What about traffic?

2 MS. JOHNSON: Traffic was addressed,
3 and their site plan law requires them to
4 address traffic and parking requirements. And
5 again, the traffic was reviewed by our DPW
6 staff.

7 MR. YOUNG: Going forward, will the
8 town have any additional assistance when they
9 actually get a site plan review?

10 MS. JOHNSON: Yes, the town
11 has -- they'll have us, of course, because
12 we're there all of the time, and any
13 assistance that both my staff, as well as the
14 staff of the other county agencies can
15 provide, and they have already in formal

16 contract negotiations are already contracting
17 Fraser and Associates to assist them with the
18 next phases of this project, when and if it
19 gets there.

20 MR. YOUNG: Who will pay for that?

21 MS. JOHNSON: Actually, they have had
22 conversations with the Applicant that the
23 Applicant would put monies in escrow for that.

24 MR. YOUNG: Anything else you want to
25 say?

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1 MS. JOHNSON: Not unless you or the 852
2 Judge have questions.

3 ALJ WISSLER: Comprehensive Plan, is
4 that a single document?

5 MS. JOHNSON: The current one is a
6 single document, and the new one will be as
7 well, with some references to the Route 28
8 Corridor Study.

9 ALJ WISSLER: Can I have those made
10 available?

11 MR. YOUNG: Yes.

12 ALJ WISSLER: I'd also like -- I can
13 recognize them as a matter of law, the zoning
14 code. If there are adopted regulations --

15 MR. YOUNG: What you're saying,
16 correct me if I'm wrong, there is a zoning
17 code, there is subdivision regulation or code,
18 and there is site plan?

19 ALJ WISSLER: Separate?

20 MS. JOHNSON: Yes, site plan is a

21 component of zoning.

22 MR. YOUNG: And a site plan. Explain
23 also a little bit on site plan.

24 ALJ WISSLER: Site plan, the guidance
25 that they would go through --

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1 MS. JOHNSON: The Zoning Law
2 incorporates site plan as part of their
3 zoning. Like in certain districts, the R-5
4 District --

5 ALJ WISSLER: Does that articulate the
6 things that the planning board --

7 MS. JOHNSON: Yes, they have very --

8 MS. BAKNER: Your Honor, we have a
9 copy of the zoning code.

10 ALJ WISSLER: I want to take it into
11 the record.

12 MR. YOUNG: Explain how site plan
13 dovetails with zoning.

14 MS. JOHNSON: Basically the town
15 zoning code set out the specific districts and
16 the allowed uses within those districts. But
17 recognizing growth, when they developed their
18 Zoning Law, they put a lot of
19 their -- especially their commercial and
20 large-scale development -- requires special
21 permits. And as part of their special permit
22 section of their zoning, they require site
23 plan review.

24 So site plan review has become a
25 component of their zoning itself, and they

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1 relate back and forth; but it has its own
2 special, specific requirements of what you
3 have to include on a site plan and what the
4 planning board has to review. And all of that
5 includes SEQRA and 239 review with the County
6 and all that.

7 ALJ WISSLER: That's all in here?

8 MS. JOHNSON: Yes, it's all in the
9 zoning code.

10 MR. YOUNG: And the zoning code gives
11 you area setbacks and lot coverage and green
12 space requirements?

13 MS. JOHNSON: Yes, for each
14 independent district.

15 MR. YOUNG: On top of that, when the
16 planning board is doing site plan review, they
17 took at the particulars of each site and help
18 design that site layout so it meets the
19 community's objectives?

20 MS. JOHNSON: Yes. So it meets not
21 only the zoning requirements, but it meets all
22 of the other issues, including community
23 character, viewshed, aesthetics, parking
24 requirement. A lot of times, the planning
25 board will require -- somebody might come in

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1 and say they want to put a 25 used car lot in.
2 The planning board takes that into
3 consideration, along with public hearings
4 which are required for site plan. They will
5 go in and decide, maybe you can only have 10

6 cars instead, and it has to be screened on one
7 side because there's a house there, and they
8 do this all the time.

9 MR. YOUNG: Thanks, Shelly.

10 Can you identify who you are.

11 MR. UTTER: My name is Len Utter, I
12 appreciate, your Honor, to be here. My name
13 is Len Utter. I'm supervisor for the Town of
14 Middletown. I've been supervisor for five
15 years.

16 MR. YOUNG: Do you also serve any
17 other role with the county?

18 MR. UTTER: Yes, as you know
19 our -- the way our county government is set
20 up, the town supervisor represents the town at
21 the county level. I happen to be the Chairman
22 of the Department of Public Works Committee
23 which is in charge of all the roads and
24 bridges and landfill in the county. I'm also
25 Chairman of the Watershed Committee that was

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1 formed to deal with such subjects that comes
2 before the watershed. I've also been very
3 active in my community. I served ten years on
4 our school board. I was one of the founding
5 members of our town planning board. I've been
6 very involved in the fire and emergency
7 services and -- in our community.

8 I have lived -- I was born here, and I
9 have lived all of my 72 years here in this
10 community. In fact, my family came to this
11 community long before the Revolutionary war.

12 The land that this building sets on originally
 13 belonged to my family. So I have been in this
 14 community for some time. Until 1988, I was a
 15 farmer. We still have the farm that my
 16 great-grandfather bought with his severance
 17 pay when he was discharged from the Civil War.
 18 We had a small trucking business, along with
 19 the farm. And in 1988, due to an accident, my
 20 son-in-law was severely injured -- we sold the
 21 cattle, and I went to work in the bridge
 22 construction business, and I done this until
 23 just a few years ago.

24 I've been asked to give a little
 25 character of the town of Town of Middletown.

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1 The Town of Middletown has basically been an
 2 agricultural community until about the 1950's.
 3 This was a farming community. In the 1950's,
 4 early 1950's, several things happened. One
 5 was the advent -- the building of the Pepacton
 6 Reservoir which annihilated four small
 7 communities, and many, many farms which, along
 8 with farming, they supplemented their incomes
 9 with tourism. Many of these farms were on the
 10 borders of the valley.

11 At the same time, we had a downturn in
 12 the agricultural economy in this country, and
 13 also at approximately this time, there seemed
 14 to be a large influx of people and money from
 15 the New York City area, I assume probably due
 16 to the Thruway and better road systems, and

17 our sons and daughters were in competition for
18 this land with city dollars, and they just
19 couldn't compete, so many of our farms were
20 sold to developers.

21 The eastern end of Delaware County
22 historically, the Fleischmanns area, has been
23 a haven for tourists. Probably during their
24 heyday, tourism brought in many more dollars
25 than agriculture did in Fleischmanns, or the

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1 eastern end of Delaware County, Fleischmanns.
2 At that time, probably better transportation,
3 better roads, people begin to migrate further
4 away, and the tourism in the Fleischmanns area
5 began to decline.

6 MR. YOUNG: What period of time is
7 that?

8 MR. UTTER: I would have to stay the
9 decline started in the forties and continued
10 right on through until now. You heard
11 Mr. Todd give you a walk-through of
12 Fleischmanns in this area in the fifties. I
13 would like to give you a walk-through of the
14 village of Margaretville, which I'm sure you
15 have all went through.

16 In 1950, you would have seen two feed
17 stores, a large creamery that handled many
18 thousands of gallons of milk everyday. We had
19 three new car agencies, six gas stations,
20 eight repair shops, two farm equipment
21 dealers, four grocery stores, one department
22 store, our hospital and our churches that we

23 still have, and many of the other support
24 stores that we still have. We had a couple of
25 sawmills -- and that brings up a matter I read

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1 in some of the responses in the DEIS of the
2 thousands of trees that's going to be taken
3 off from the mountain for development.

4 I would guess that these two sawmills
5 processed this many trees every month or two,
6 and I really don't see any big gaping holes on
7 the side of the mountains where they have been
8 denuded. Today if you go down here, we've
9 lost our feed stores, our creamery, our three
10 new dealerships. We have one gas station, one
11 repair shop, no farm equipment, one gas
12 station, no department store -- we actually
13 had two dairy farms within the village limits
14 of Margaretville. That would be an idea of
15 what has happened in this end of Delaware
16 County in the last 50 years.

17 MR. YOUNG: Does Margaretville have
18 its own sewage treatment plant?

19 MR. UTTER: The sewage treatment plant
20 that's available to the citizens of
21 Margaretville is owned and operated by
22 New York City.

23 MR. YOUNG: You heard one of the
24 consultants from New York State -- City
25 discussing the fact that there was a proposal

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1 for a local hotel to expand. Can you identify

2 what hotel that was, and what occurred there?

3 MR. UTTER: That is the Margaretville
4 Motel, and plans were set forth for a large
5 expansion, I think maybe in the 60- to 70-room
6 expansion; and when the owner of this motel
7 brought all the involved agencies forward to
8 lay his plans on the table, he was presented
9 with a document from New York City stating
10 there has been a moratorium on any expansion
11 or increased flow into this plant.

12 So consequently, the plan stopped
13 right there. And I have not seen any
14 advancement of these plans to this day.

15 MR. YOUNG: Does the Town of
16 Middletown have a right to demand that someone
17 be allowed to connect up to the City sewer
18 system? Does the town or village have a right
19 to demand a connection?

20 MR. UTTER: We can demand, but it's at
21 the City's discretion whether anybody will be
22 allowed to hook in; and as recently as the
23 20th of May, on a visit with New York City DEP
24 officials, we were emphatically told that
25 there will never be any expansion of the

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1 Margaretville treatment plant, and that we
2 could take that to the bank.

3 MR. YOUNG: Did you ask the City for
4 additional capacity for your industrial park
5 because the capacity that was allocated to the
6 industrial park was being used for the
7 Catskill Museum and the senior citizen house?

8 MR. UTTER: Yes, we have a proposed
 9 watershed museum, proposed senior citizens'
 10 complex on our industrial park, and there is
 11 still room for a little expansion. We own
 12 some property across the road, and we would
 13 like to have permission to be able to tap in
 14 for a little extra capacity, and we were
 15 denied.

16 MR. YOUNG: Is there anything else you
 17 want to talk about?

18 MR. UTTER: Not really. The only
 19 thing that I might say at this time, we view
 20 the opportunity -- and when I say we, I'm
 21 speaking for the town -- we view the
 22 opportunity for any industry, tourism. We
 23 welcome it to our community, we need it. The
 24 dollars generated by tourism or industry
 25 probably, I would say, might be insignificant.

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1 The most significant impact is the support
 2 facilities, the support people that would work
 3 in one of these facilities, and I like to use
 4 the Belleayre Ski Slope as an example.

5 Yes, in the wintertime, every weekend
 6 when there's 5- to 6,000 skiers up there, yes,
 7 there is some gas bought, there is a few that
 8 stay overnight. These are dollars that are
 9 brought into the community, but the biggest
 10 impact on our community is the 200 employees
 11 who work full-time at the Belleayre Ski Slope,
 12 and they spend their dollars between Kingston

13 and Oneonta.

14 I believe that's about all I have to
15 say. I hope I've painted kind of a picture of
16 the Delaware -- Town of Middletown.

17 MR. YOUNG: Who are the main employers
18 right now in Middletown?

19 MR. UTTER: The largest employer in
20 our town is the Margaretville Memorial
21 Hospital; second, the Margaretville Central
22 School; and then you go to the highway
23 department, both town and county, and -- like
24 the telephone and electric light company.

25 MR. YOUNG: The school district, is

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1 that --

2 MR. UTTER: Yes, the school district.

3 MR. YOUNG: Thank you.

4 ALJ WISSLER: Supervisor Utter, thank
5 you very much.

6 MR. GERSTMAN: Before Mr. Cross
7 testifies, or if your Honor prefers, we can do
8 this in rebuttal, we have some issues
9 concerning Mr. Cross's testimony here today.
10 I understand it's an offer of proof and
11 consistent with your Honor's prior rulings, I
12 also understand the issue of conflict of
13 interest is not necessarily one which you will
14 preclude a witness from testifying; however,
15 we do have information that we believe is
16 relevant to take into account when considering
17 Mr. Cross's testimony.

18 If you would like, I can do it now

19 while Mr. Cross is here before he offers his
20 proof, or I can do it in rebuttal.

21 ALJ WISSLER: How long is it going to
22 be?

23 MR. GERSTMAN: Five minutes or so,
24 maybe ten.

25 ALJ WISSLER: We'll hear his

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1 testimony.

2 MR. GERSTMAN: Today we have presented
3 a letter to --

4 ALJ WISSLER: If you're going to be
5 ten minutes, I'll let Mr. Young inquire of the
6 witness, and you can have your rebuttal.

7 MR. YOUNG: Mr. Cross.

8 MR. CROSS: Yes, I'm Bob Cross, Jr.
9 I'm the Shandaken Town Supervisor. I've been
10 a lifetime area resident. My family dates
11 back to the seventeenth century for the
12 Catskill Mountain region area. I am the
13 current supervisor for the Town of Shandaken,
14 member of several different sportsman's clubs,
15 and what I'd like to talk a little about is
16 community character and a couple other
17 features.

18 The 1997 MOA between the Coalition of
19 Watershed Towns and the New York City DEP,
20 while dealing with many water quality and
21 water quantity issues, did not give the New
22 York City jurisdiction pertaining to community
23 character, which is a home rule item.

24 The Town of Shandaken, back in 1900,
25 had a population of over 3,000. In 1990, the

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1 population in the Town of Shandaken was almost⁸⁶⁵
2 the same; it was just slightly less. There's
3 reasons to substantiate how that happened. In
4 1900, there were at least a thousand jobs
5 pertaining to the hotel industry and based on
6 tourism. Those jobs today don't currently
7 exist. So in 1900, you were looking at a
8 totally tourist-backed economy that was
9 driving the Town of Shandaken.

10 The other businesses that soon came in
11 or that we had in the same proximity, we had
12 furniture factories. There was a large
13 furniture factory over the hill in
14 Fleischmanns, as well. I believe that
15 building is abandoned, or now there's just
16 some cars in it, but that's a 50- to 60,000
17 square foot building that's sitting right
18 alongside 28, that really hasn't been used for
19 15 or 20 years.

20 Getting back to it, after the
21 furniture factories went on, a lot of people
22 found employment, but we were in a dwindling
23 economy because we had lost jobs. People
24 found employment in Kingston working for
25 different businesses, IBM, Rotron,

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1 Micronetics, several large firms. Those⁸⁶⁶
2 companies all started to leave in the
3 eighties. The population was still staying

4 stagnant, but because of the vacancies created
5 by people not having jobs in the community,
6 they were filled up because people had to put
7 their houses for sale and move out of the
8 community, and they were filled by second
9 homeowners coming up from the City purchasing
10 their land because if they didn't have a job,
11 they could no longer afford the taxes.

12 Shandaken has developed very little
13 for the last 100 years. If you look at the
14 number of people, we're slightly larger now
15 than we were in the year 1900 but not a great,
16 significant number.

17 The hamlet of Phoenicia is in the
18 process of designing a wastewater treatment
19 facility. This district has been allowed a
20 ten percent expansion by the New York City
21 DEP. The one thing that is not known by many
22 people is that the area, predetermined by the
23 City to constitute this district, does not
24 allow for very much expansion because the
25 hamlet is built out to almost full capacity.

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1 The St. Francis deSales Church
2 property and, basically, only one other
3 property offer room for subdivision. When the
4 town was into negotiations with the New York
5 City DEP to set the district boundaries, the
6 DEP officials denied a subdivision that had
7 existing lots from being allowed to enter this
8 district. They said that they wouldn't expand

9 it. They said that the laterals were too long
10 and so forth.

11 The one thing that is very important
12 here is if you have sewer and water, your
13 density requirements by our zoning regulations
14 are cut in half. So what could have been
15 allowed to happen was the expansion of
16 five-acre lots into smaller lots for
17 residences because they would have come under
18 this jurisdiction. Other than the Route 28
19 corridor and the hamlets in the Town of
20 Shandaken, all the remaining land is located
21 on sloped, forested lands or within
22 approximately 200 feet of water courses.

23 The statement Mr. Baker referred to
24 affects basically the entire Town of
25 Shandaken. This would curtail all subdivision

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1 now and in the future. And that's a statement ⁸⁶⁸
2 that wasn't envisioned appropriate for
3 subdivisions or this type of development
4 outside of the hamlets where there's
5 infrastructure and to be on steep-sloped,
6 forested land. That's pertaining to the
7 65-page document that the DEP filed. That's
8 in there.

9 Getting back to what I'm trying to
10 refer to about the loss of jobs. Last year
11 the second largest employer in the Town of
12 Shandaken was the bat factory. The bat
13 factory employed approximately 40 employees.
14 Some were from the Town of Middletown. Some

15 were from Shandaken. That factory is closed.
16 I can't think of any businesses with any
17 substantial number of employees that have
18 moved into the town in quite some time. All
19 the large employers are gone, except minus
20 one. There's been one employer that moved
21 into the town, and that was probably about
22 eight or nine years ago, that has hired a lot
23 of people.

24 Commercial growth along the Route 28
25 corridor is an issue that if and when it

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1 arises will be dealt with by the planning
2 board, zoning board, and the town board if
3 needed under home rule.

4 At this time each project will be
5 dealt with individually and under town
6 regulations, New York City DEP regulations,
7 Health Department regulations, and any other
8 regulations that apply. All projects will
9 have to conform with these regulations at the
10 time of their presentation.

11 The DEP talks about development in the
12 community centers and the -- and the hamlet of
13 Phoenicia does not have available open space.
14 Did you see any new buildings when you went to
15 Phoenicia or Pine Hill, anything that was
16 newly constructed when you took your tour?
17 Basically there haven't been.

18 In Phoenicia, we just put a filtration
19 plant up for the water system. It's in the

20 process of being completed. The new
21 regulations pertain to the following: You
22 have to have a first floor elevation one foot
23 above freeboard. This is so that you're out
24 of the floodplain.

25 The hamlet of Phoenicia is in a

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1 floodplain. To construct this building, we
2 had to move it 12 to 14 feet above the
3 existing grade, and it's right below the
4 hamlet of Phoenicia. So if you were to go in
5 there and tear down a building and have to get
6 another building permit to rebuild the
7 building today under the current regulations,
8 it would sit several feet for the first floor
9 above the highway, above the road, to meet the
10 requirements that you have to work with today.

11 There's a lot of things that people
12 don't realize. So when you make a statement
13 that you need to do the building in the
14 hamlets where the infrastructure is, to
15 pertain to those regulations and do what's
16 stated, it's extremely difficult. How is it
17 going to look if all your shops are at one
18 level and all of a sudden the next shop jumps
19 up six feet in the area to conform with
20 zoning? That's what you're faced with there.
21 There are a lot of problems that are arising.

22 Water issues. We have water issue
23 problems. We are 100 percent in the
24 watershed, the Town of Middletown. We're
25 under their regulations. We're working with

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1 the agencies, trying to get things ahead.

2 When you go into community character,
3 community character is the village, the
4 network of people and how they work and how
5 they associate. You go to Moore's Market any
6 morning you want, there's community character
7 inside the building. It's a group of people
8 talking. They're talking about their
9 livelihoods, and they're talking about it.
10 It's the character of the communities, the
11 people and how they work and relate together.
12 And it takes somebody from within the
13 community to understand community character
14 and how it works. It doesn't take an outsider
15 coming in and saying: we want to take control
16 of community character, or we want to address
17 community character. It takes somebody from
18 within the community to first understand how
19 that character exists and where it comes from.

20 Len has been in this township a long
21 time. He has talked to all the local people,
22 and he can relate to what I'm saying. You sit
23 down, you know somebody, you feel comfortable,
24 you talk, and it's brought forward.

25 To come in and do it this way -- I'm

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1 opposed to the DEP having the ability to judge
2 community character. I don't know how they
3 get the right and how they can even make the
4 assertion that they belong in community

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5 character. I just can't see it.

6 MR. YOUNG: Can you tell us about the
7 tools the town has to regulate community
8 character? Does it have a Site Plan Law,
9 Zoning Law?

10 MR. CROSS: Well, we have a Site Plan
11 Law. The planning board does site plan.
12 Right now we're working on a Comprehensive
13 Plan. It's been in the works for several
14 years. We're taking it to completion. We
15 have two grants going forward on that; one
16 from the DOS and one from the DOT.

17 The DOS grant has been initialized,
18 I'm waiting for the final part of the DOT
19 grant. So we're looking for the projection of
20 the future, we're looking to get this all
21 done. Site plan review is a planning board
22 portion, and we do have regulations pertaining
23 to it.

24 MR. YOUNG: What approvals does this
25 project require from the Town of Shandaken?

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1 MR. CROSS: From the planning board or ⁸⁷³
2 Town Board?

3 MR. YOUNG: Let's do planning board
4 first.

5 MR. CROSS: Planning board, of course
6 they will start with site plan approval, and
7 they will have to approve everything on the
8 site plan. You have the infrastructure of the
9 roads, you have the building, the parking
10 lots, they'll be looking at the extensive

11 amount of clearing; everything that you look
12 at with site plan, which is the project in its
13 entirety.

14 MR. YOUNG: Do you have subdivision
15 approval?

16 MR. CROSS: Yes, we do. Subdivision
17 approval will be under the regulations and
18 will be done by the planning board.

19 ALJ WISSLER: When you say the
20 regulations --

21 MR. CROSS: The zoning regulations
22 that we have. It has to comply with the
23 district. There's maps that designate
24 districts. There's setbacks for the
25 buildings. It will also have to come under --

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1 ALJ WISSLER: Can you make me copies 874
2 of that?

3 MR. YOUNG: Yes.

4 Is the proposed project an allowed use
5 under your zoning code?

6 MR. CROSS: Currently, yes.

7 MR. YOUNG: Have you made any
8 plans -- have you evaluated the DEIS with
9 respect to emergency services?

10 MR. CROSS: I talked to the people
11 involved in the fire department, the police
12 department, the ambulance squad, and we had
13 sent a letter in. It should have come in, I
14 believe, to the hearing. It came from me.
15 Yes, we did. I've talked with the different

16 personnel from those departments, yes.

17 MR. YOUNG: Has the planning board
18 submitted any comments on this project?

19 MR. CROSS: It hasn't got a formal
20 application or review.

21 MR. YOUNG: Do they submit comments on
22 the DEIS, the planning board?

23 MR. CROSS: The consultant did for us,
24 Ferrandino. They submitted his comments.

25 MR. YOUNG: When you do finally get a

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1 site plan application, how is a planning board⁸⁷⁵
2 going to afford to review that application?

3 MR. CROSS: Well, there was a
4 provision made last year which was an increase
5 in the revenues on the amount, because a
6 project of this size and nature is going to
7 take a lot of review. There was a provision
8 made last year which increased the monetary
9 compensation for that work by the planning
10 board by higher fees, and I think this is
11 somewhere around the \$60,000 mark, if I
12 remember correctly.

13 MR. YOUNG: Do you have any idea
14 whether a destination resort at this location
15 is going to have a positive or negative impact
16 on the businesses within the hamlet?

17 MR. CROSS: That is going to be total
18 speculation on me, but I can't envision it as
19 being negative. It would be speculation. I
20 haven't sat down and done a total review on
21 this project. It hasn't been before us to do.

22 MR. YOUNG: Thank you.

23 MR. CROSS: Thank you, your Honor.

24 ALJ WISSLER: Mr. Cross, thank you
25 very much.

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1 MR. YOUNG: Dean Frazier.

2 Can you identify who you are and what
3 your position is.

4 MR. FRAZIER: My name is Dean Frazier.
5 I'm the commissioner of the Delaware County
6 Department of Watershed Affairs.

7 MR. YOUNG: What is the Department of
8 Delaware County Watershed Affairs?

9 MR. FRAZIER: It's a department formed
10 about -- fall of 1999 to act as a coordinating
11 department of issues related to the watershed
12 so that the Board of Supervisors would have a
13 unified voice relative to New York City
14 watershed issues and issues in the Susquehanna
15 Basin. We have a coordinating role in the
16 different departments in Delaware County
17 relative to watershed issues.

18 MR. YOUNG: Have you initiated any
19 water quality initiatives as part of your
20 division?

21 MR. FRAZIER: Yes, as a -- in response
22 to the watershed rules and regulations, in
23 order to get expansion of a wastewater
24 treatment plant in a phosphorus-restricted
25 basin over in Delhi, in the Cannonsville

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1 Basin, we had to develop a strategic plan.

2 Out of that strategic plan -- that was
3 required to get the variance to allow a
4 wastewater treatment plant to expand so we
5 could have growth in some of the businesses in
6 the Delhi community.

7 MR. YOUNG: Can you explain what that
8 strategic plan is?

9 MR. FRAZIER: Number one, I'd like to
10 point out, we did this on a voluntary basis.
11 We had to respond to the watershed rules and
12 regulations, the section of the watershed
13 rules and regulations.

14 The requirement was -- we could have
15 just put that on the shelf and let it alone,
16 but the Delaware County Board of Supervisors
17 felt that, in the interest of protecting their
18 right to home rule, they decided to implement
19 a plan called the Delaware County Action Plan,
20 which is simply a Comprehensive Watershed
21 Management Plan that takes into account,
22 obviously, water quality. We are addressing
23 water quality specifically because it's
24 important to us. It's also important to the
25 consumers of the New York City Watershed, but

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1 it enabled us to deal with the regulations
2 easier than what we might otherwise be able to
3 do.

4 Along with that, we had our interest
5 of home rule, local decision-making, as you've
6 heard expressed by Shelly, and we feel it is

7 relevant to our future economic prosperity.

8 MR. YOUNG: Can you identify some of
9 the programs that you have initiated under the
10 Delaware County Action Plan?

11 MR. FRAZIER: Yes, we've initiated --
12 it's quite comprehensive. We address
13 agriculture, we address highway management --
14 highway systems in the towns and the county.
15 The planning department, through their TPS
16 program, works -- is working on community
17 stormwater management plans; and let's see, we
18 have a strong scientific base. We have
19 employed Cornell University, ESF at Syracuse
20 to make sure we're on sound scientific footing
21 and we have credibility behind what we're
22 doing.

23 Part of this is the units of local
24 capacity. In other words, part of what we're
25 doing is trying to ensure that the likes of

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1 Glen, Shelly, our Cornell Cooperative
2 Extension, our conservation district, have a
3 staff in place to help communities make
4 decisions, and so that's where we feel we have
5 a strong case for issues related to home rule.

6 MR. YOUNG: Can you briefly describe
7 some of the agricultural programs you have to
8 reduce phosphorus?

9 MR. FRAZIER: We developed a new, kind
10 of innovative approach which involves the
11 reduction of phosphorus import on the farm

12 called Precision Feeding. It's been adopted
13 by New York State Ag. and Markets as a tool
14 that they want to utilize state-wide,
15 low-cost, potential benefits to the farmer,
16 potential reduction of 25 to 30 percent
17 reduction of phosphorus on farms, which is the
18 primary source of phosphorus in the basin.

19 MR. YOUNG: Can you give us an idea
20 what that turns out to be on a -- say a farm
21 that has 300 cows; any idea?

22 MR. FRAZIER: I can respond that if
23 this was implemented on 50 percent of the
24 farms, we would reduce phosphorus loading of
25 the Cannonsville Basin by 7,000 kilograms a

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1 year. Its current load is around 50,000
2 kilograms. That same program is being
3 implemented in the Pepacton Basin as well,
4 although there's not as many dairy farmers.

5 MR. YOUNG: You mentioned something
6 about stormwater plans for the communities.
7 Can you explain what that program is?

8 MR. FRAZIER: Simply that as part of
9 the comprehensive plans that the planning
10 department is developing, stormwater
11 management plans would be part of that. The
12 planning department has done an inventory of
13 all the stormwater structures and all the
14 communities in the New York City watershed.
15 We have that inventory. We're in the process
16 of trying to prioritize where are the problems
17 from stormwater, and that will help the

18 communities to prioritize where they spend the
19 money to reduce pollutant load from the
20 stormwater.

21 There's one underway -- I know there's
22 been an inventory done here, and I believe
23 Middletown -- Margaretville does have one.
24 We're in the process, different stages of
25 having those developed, each and every

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1 community in the New York City Watershed, and ⁸⁸¹
2 outside the New York City Watershed.

3 MR. YOUNG: What did you say about the
4 county highways? What's the program to
5 address stormwater on county highways?

6 MR. FRAZIER: We look at the highway
7 system as a conduit of delivery of different
8 pollutants. We've done an inventory at this
9 point of just the county roads to determine
10 what is out there in terms of the
11 infrastructure, how does it relate to the
12 different land uses that it intersects with,
13 and we're in the process of prioritizing.

14 Along with that, to help us in
15 determining where to go to spend the money, we
16 have invested well over a million dollars in
17 developing a watershed model called Salt Water
18 Assessment Tool. It's been peer-reviewed by
19 DEP, EPA, a whole variety of different
20 regulatory agencies. So it has good standing.
21 And we're applying that model in the
22 Cannonsville Basin to help us determine what

23 is the loading reduction if we implement
24 certain projects in that basin.

25 we would like to take that and extend

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1 that into the Pepacton Basin. In fact, it's 882
2 interesting that we're working with DEP and
3 EPA right now to apply for a joint grant to
4 work on a unified approach to watershed
5 modeling in the Cannonsville Basin, which
6 would be extended into the Pepacton Basin as
7 well. So we have done that quite extensively.

8 I might add that we haven't done this
9 in a vacuum. You heard me mention EPA, DEP.
10 All these agencies have standing on our policy
11 committee or our scientific committee. We
12 have DOH, we have Department of State, we have
13 DEC, New York State Ag. and Markets, EPA, a
14 variety of different businesses, business
15 interests and things like that.

16 So we've really reached out to make
17 sure we're working in partnership with the
18 different organizations.

19 MR. YOUNG: Can you put in
20 perspective -- I think we heard 15 kilograms
21 of potential increase in phosphorus from
22 secondary growth. Is that significant based
23 on the studies you've done?

24 MR. FRAZIER: We don't believe it's
25 significant in reviewing the -- I guess it's a

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1 Draft SPEDES permit for the project up here. 883
2 15 kilograms relative to the TMDL, total

3 maximum daily load -- I lost track of that,
4 but I think the actual load is 35,000
5 kilograms a year going into the Pepacton, and
6 15 kilograms relative to that is obviously
7 minimal.

8 MR. YOUNG: Is the Pepacton currently
9 stressed for phosphorus?

10 MR. FRAZIER: It is not on the City's
11 phosphorus-restricted list; however, every New
12 York City water body has a total maximum daily
13 load on it for phosphorus, that if you want to
14 expand, that total maximum daily load has to
15 be adjusted through a SPEDES permit.

16 So that's where things are at. We
17 don't view it as a major factor. I think
18 its -- I'm only speculating, but I'm sure it's
19 less than one percent of the load going into
20 either basin.

21 MR. YOUNG: Anything else you want to
22 say?

23 MR. FRAZIER: Being called up here
24 cold, I'm kind of -- I'm a little caught
25 short, but that basically covers it.

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1 ALJ WISSLER: Thank you, Mr. Frazier.

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2 MR. YOUNG: That concludes our
3 presentation.

4 ALJ WISSLER: You want some kind of
5 response?

6 MR. GERSTMAN: We would like to
7 respond, your Honor, if this is the

8 appropriate time.

9 ALJ WISSLER: Go ahead.

10 MR. GERSTMAN: First, your Honor, we
11 appreciate the Coalition of Watershed Towns
12 participating in the hearing on the issues.
13 Ms. Roberts will address the particular
14 substantive issues in a few minutes. I want
15 to introduce for your Honor several documents
16 that I believe should be reviewed in the
17 context of the offers of proof that have been
18 made here today.

19 You can mark them as CPC exhibits.

20 ALJ WISSLER: Do these relate to the
21 issues, correct, not to credibility to be
22 given to any -- to an offer of proof?

23 MR. GERSTMAN: Both, your Honor. The
24 first would be a Town of Shandaken Resolution,
25 which indicates clearly that the Town of

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1 Shandaken's position is not in support or in 885
2 opposition to the project, that it's only
3 related to the issue of home rule, and to the
4 extent that Mr. Cross has suggested here today
5 that he couldn't imagine any negative impacts
6 from the project, that could be construed as a
7 positive statement or endorsement, and we
8 would like to introduce this.

9 That would be CPC 29.

10 ALJ WISSLER: How many exhibits?

11 MR. GERSTMAN: There are several
12 newspaper articles that go to the issue of a
13 conflict of interest, and while I understand

14 your Honor will consider the issue but not
15 necessarily rule on the issue in terms of the
16 qualifications of witnesses. The issue of
17 Mr. Gitter's employee, in fact, is Supervisor
18 Cross's wife.

19 So to the extent that there is some
20 influence exercised by the project developer
21 through the financial benefits to the
22 supervisor's spouse who works at, I believe,
23 the Catskill Corners project, she was hired
24 after the election when Mr. Cross got elected.
25 Mr. Gitter was a substantial contributor.

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1 MS. BAKNER: Are you providing proof ⁸⁸⁶
2 of that?

3 MR. GERSTMAN: I'll be glad to. I'm
4 just trying to explain, Ms. Bakner, in
5 response to the Judge's question.

6 ALJ WISSLER: What is the next
7 exhibit?

8 MR. GERSTMAN: The Citizens for
9 Progress is an organization that was financed
10 heavily by Dean Gitter and his corporations
11 and associates. They endorsed Mr. Cross for
12 supervisor. Mr. Cross has been an advocate
13 for the project during various public
14 meetings.

15 And finally, your Honor, we would like
16 to submit for the record the issue of whether
17 or not the zoning that went into effect that
18 authorized golf courses to be located in the

19 districts that they are under home rule were
 20 appropriately enacted. We believe that the
 21 town, essentially, was hoodwinked at the time
 22 because Mr. Gitter was an advocate for an
 23 amendment to the zoning which allowed golf
 24 courses to be permitted uses.

25 MR. RUZOW: Your Honor, we object to
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1 this. A 1999 ordinance?

2 MR. GERSTMAN: At the time that
 3 Mr. Gitter was contemplating -- the EIS came
 4 out, publicly announced that he wanted to
 5 promote a project in 1999.

6 ALJ WISSLER: How is that relevant to
 7 the issues that are before us at this issues
 8 conference?

9 MR. GERSTMAN: It's relevant to the
 10 issue of whether home rule and the exercise of
 11 home rule is being appropriately exercised in
 12 this community. We put in a petition to the
 13 Town Board to reevaluate the SEQRA
 14 segmentation that took place. It wasn't
 15 challenged at the time.

16 MR. RUZOW: And the statute ran how
 17 many years ago?

18 MR. GERSTMAN: It ran many years ago,
 19 and unfortunately it was a conscientious
 20 effort to avoid review.

21 MS. BAKNER: His Honor lacks subject
 22 matter jurisdiction over that issue. He is
 23 not the Appellate Division. He cannot rule on
 24 the validity of the local zoning law.

25 MR. GERSTMAN: I'm not suggesting he
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1 should.

2 MS. BAKNER: Then how is it relevant
3 to this proceeding?

4 MR. GERSTMAN: It's relevant to
5 identify that the appropriate environmental
6 review to allow golf courses to take place on
7 the slope of a mountain did not take place
8 when it should have in connection with this
9 resort.

10 MR. YOUNG: Your Honor, again, there's
11 been no application in front of this site plan
12 review application. Essentially what he's
13 saying, that the political system in the Town
14 of Shandaken doesn't work; that Mr. Cross, who
15 testified today, doesn't represent the Town of
16 Shandaken; that somebody else, maybe somebody
17 he represents, represents the Town of
18 Shandaken. This is bizarre. We have a
19 political process. Mr. Cross was elected and
20 if they went to go through and see whether he
21 was properly elected or not, they can do that,
22 but outside of this proceeding.

23 MR. GERSTMAN: We identified for the
24 record, your Honor, the issues of conflict of
25 interest and what might be motivating

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1 Supervisor Cross to take a position in favor
2 of the project.

3 ALJ WISSLER: I think you made your

4 record.

5 MR. GERSTMAN: Thank you.

6 ALJ WISSLER: With respect to the
7 substantive matters that were addressed, do
8 you want to --

9 MS. ROBERTS: Yes, I would like an
10 opportunity.

11 First of all, Mr. Baker started out by
12 saying that basically DEP and CPC were somehow
13 anti-development; and while we don't know
14 enough about DEP's position on the development
15 issues and home rule, we certainly think we
16 have established that record this morning that
17 CPC is not anti-development at all. What they
18 want is smart growth, environmentally
19 sustainable, concentrated in the valleys.

20 I think we can even -- we saw for
21 example, the Hanna Resort. Although we're not
22 going to take a position on whether it's good
23 in terms of the golf course, that kind of
24 scale is at least something that the Catskill
25 Center could think about. So we're not

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1 opposed to development. We wanted to make
2 that clear.

3 Also this is not, as Ms. Geary stated
4 at the outset, this is not about the MOA,
5 we're not re-litigating the MOA; and as far as
6 I'm aware, the MOA did not exempt projects in
7 this area from SEQRA, within the Catskill area
8 or outside the Catskill area. A project, if
9 it's large enough and significant enough and

10 presents adverse environmental impacts, has to
11 comply with SEQRA.

12 So it's a little confusing that they
13 seem to be suggesting that this home rule
14 somehow trumps SEQRA. Maybe they can point to
15 something in the MOA to suggest that, but I'm
16 not aware of anything.

17 Also with respect to the local zoning
18 laws, while we respect the local zoning laws,
19 Ms. Kopaskie is going to talk a little bit in
20 a minute about why those local zoning laws are
21 really not going to be as protective as they
22 need to be.

23 ALJ WISSLER: But zoning laws and
24 comprehensive plans articulate a vision that a
25 community has of itself, which may, in fact,

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1 be helpful in evaluating community character. 891

2 MS. ROBERTS: As far as we read, about
3 the only thing that -- as far as these plans
4 that were mentioned by the towns, was about
5 density and whether it's approved. They're
6 fairly outdated, as you'll hear from Mary, and
7 they totally ignore the visioning, the much
8 more recent visioning work that the community
9 has done.

10 MR. RUZOW: But not adopted.

11 MS. ROBERTS: That's right. It is not
12 adopted, but it is in place. And DEC hearing
13 decisions certainly suggests that adopted
14 master plans and zoning is one indication, but

15 not the only indication; and it doesn't,
16 per se, end the discussion. It is one factor.
17 There are other factors here, and we've shown
18 those; and in fact, I'm going to copy some of
19 those vision statements and get them on the
20 record for tomorrow.

21 On the issue of -- again, whether or
22 not a local zoning code addresses an issue, as
23 Mr. Baker well knows from other cases
24 involving large projects, the DEC has said
25 that while they're taking into account, for

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1 example, noise regulation, that doesn't end
2 the discussion. If an Applicant meets some
3 kind of local noise ordinance, the DEC still
4 has authority through SEQRA to look at the
5 project's noise impacts. And that goes
6 without saying on all these issues we're
7 looking at on community character.

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8 I think it was Mr. Utter seemed to
9 suggest the Margaretville Motel was not going
10 forward. And we met the owner two days ago,
11 and he seemed to indicate that his project was
12 going forward. So I'm a little confused about
13 that, but I wanted to just point that out.

14 I wanted to turn it over to Mary for a
15 second to talk about these specific codes.

16 MS. KOPASKIE: Middletown and
17 Shandaken?

18 MS. ROBERTS: Yes.

19 MS. KOPASKIE: The zoning codes for
20 the two communities, both of them were written

21 in the late '80's, and they've been piecemeal
22 updated over the last 14 or 15 years. And
23 there's really a lot of research, there are a
24 lot of techniques that are now being
25 incorporated into zoning codes that are not at

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1 all included in this.

2 So while statements are being made
3 saying that through site plan approval, we'll
4 take a look at landscaping and lighting and
5 noise and all of those kinds of impacts; in
6 fact, there are no standards, no design
7 standards, no design guidelines that
8 specifically say these are the kinds of things
9 we want to look at. There's no percentage of
10 landscape cover, there's no heights on
11 lighting fixtures, there's no information on
12 building facades and window coverage, and
13 these are really techniques that over the last
14 seven to eight years are standard in a zoning
15 code.

16 So while they may look at a site plan,
17 they're really only looking at it in a
18 subjective manner based on what the zoning
19 code is saying, but there's nothing in there
20 to clearly indicate what should be included on
21 the site plan.

22 So it's really up to five people on
23 the planning board -- yes, they're appointed
24 by the local board -- but there's really
25 nothing for them to use as a guideline or as a

1 measuring stick, per se, to say whether or not
2 these are adequate site plans.

3 ALJ WISSLER: Okay.

4 MS. ROBERTS: I just wanted to mention
5 that, as a matter of law, the towns have not
6 raised a substantive and significant issue on
7 community character that would allow them to
8 really comment on this issue. They've really
9 limited their comments to the MOA, which
10 really isn't the issue.

11 ALJ WISSLER: Which is something you
12 can brief.

13 MR. GERSTMAN: Judge, I'm going to
14 submit these two letters after Mr. Ruzow's
15 last comment concerning formally adopted
16 plans. It certainly is relevant to the way
17 the plan is adopted and the unfortunate
18 segmentation that took place at the time that
19 golf courses were authorized. We can
20 certainly brief the relevance.

21 I offer CPC 29 and CPC 30; 29 is the
22 Shandaken Town Resolution dated May 26th,
23 2004, and CPA 30 is a June 9th letter to me
24 from the supervisor --

25 MR. CROSS: Can you speak up? We

1 can't hear you.

2 MR. GERSTMAN: -- is a letter from me
3 to you dated June 9th, 2000.

4 MR. CROSS: I'd like to hear that.

5 MS. BAKNER: Your Honor, for the
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6 record, we object to entry of these documents.

7 MR. YOUNG: We also object.

8 ALJ WISSLER: I understand.

9 ("TOWN OF SHANDAKEN" RESOLUTION # 114
10 RECEIVED AND MARKED FOR IDENTIFICATION AS CPC
11 EXHIBIT NO. 29, THIS DATE.)

12 (LETTER FROM MARC S. GERSTMAN DATED
13 6-9-04 RECEIVED AND MARKED FOR IDENTIFICATION
14 AS CPC EXHIBIT NO. 30, THIS DATE.)

15 MR. GERSTMAN: There are attachments
16 to the letter that I would be glad to provide,
17 the deeds and other things.

18 ALJ WISSLER: Ms. Roberts, anything
19 else? Are you finished?

20 MS. ROBERTS: Yes.

21 ALJ WISSLER: Mr. Burger.

22 MR. BURGER: Very briefly, we would
23 like to respond to the comments put forth by
24 Mr. Young and those called by him to testify.
25 In general, we would like to affirm the

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1 statements made by counsel for CPC, that we do⁸⁹⁶
2 not believe anything in the MOA supersedes the
3 requirements of SEQRA, and that the issues we
4 are raising here are solely SEQRA issues
5 related to the adequacy of the environmental
6 review, because of the inadequate review of
7 secondary growth and the likely impacts that
8 that will have on the water quality in this
9 area.

10 Mr. Young talked about various city

11 regulations and the costs associated with
12 developing residential properties under the
13 city regulations. The DEIS identified
14 3,900 acres along the Route 28 corridor that
15 were testified to by Mr. Donohoe that were
16 developable under city regulations and state
17 regulations; those are 3,900 acres along the
18 Route 28 corridor. That's the acreage that we
19 think needs to be analyzed more closely to
20 determine what kind of impact development
21 along that route will have on water quality.

22 Miss Johnson, planner for Delaware
23 City, mentioned that the Town of Middletown
24 has not received an application for the site
25 plan, and that they would look to deal with

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1 any mitigation, that they -- that they were
2 told that the application needed to get
3 through SEQRA and that they would look towards
4 mitigation through the SEQRA results.

5 That's exactly what we are trying to
6 understand here is what kind of mitigation
7 would be required for the impacts. But an
8 inadequate environmental review of potential
9 impacts due to secondary growth, we do not
10 think that they would have necessarily all the
11 information required to determine what
12 appropriate mitigation would be.

13 As to Mr. Cross, Mr. Cross testified
14 that Mr. Donohoe had testified that
15 development will be in the hamlets. We just
16 want to clarify. The Applicant states in the

17 DEIS that all or most development will be
18 funneled towards the hamlets. We believe that
19 most of it will be channeled towards Route 28,
20 or at the very least that that likelihood
21 needs to be analyzed. In fact, Mr. Cross's
22 testimony seems to go directly against the
23 assumptions of the DEIS.

24 In addition, we would also just like
25 to request an expedited transcript of today's

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1 testimony from the witnesses called by CWT. 898 A
2 lot of this is information that we have no
3 other access to; and so in order for DEP and
4 the City to review this and respond to it
5 adequately, we request an expedited request.

6 ALJ WISSLER: I think you can make
7 that request of the reporter yourself.

8 Mr. Baker.

9 MR. BAKER: Your Honor, briefly, I
10 want to clear up what seems to be a
11 misunderstanding of what the watershed
12 communities' position is regarding the MOA and
13 SEQRA. We are not making any claim that the
14 MOA provides an exception from SEQRA for a
15 large project. Regarding CPC, there's been no
16 allegation from the watershed communities that
17 CPC is anti-development.

18 There may be disagreements on some of
19 their positions, but that was certainly not
20 the position of the watershed communities, nor
21 do we think that CPC is precluded from raising

22 issues associated with community character
23 under a SEQRA process. They have standing,
24 they're an environmental organization;
25 obviously community character is a relevant

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1 SEQRA issue.

2 However, New York City's jurisdiction
3 was not expanded by the MOA. New York City,
4 and its status as an involved agency, is
5 limited solely by water quality, and unless
6 the actions under the SEQRA review are related
7 to water quality, they don't have standing.

8 Similarly, if they're raising an issue
9 about the visual impacts, they shouldn't be
10 heard on it. They don't have standing on
11 visual impacts. It's not part of their
12 jurisdiction. Obviously DEP is not a person
13 in the sense of a citizen or an environmental
14 organization with the same breadth of interest
15 as the CPC groups are, and that is the
16 distinction that has to be.

17 Finally, with regard to Ms. Roberts'
18 allusion to the St. Lawrence Cement case, this
19 is obviously a materially different type and
20 nature of the case. In that case, the ALJ did
21 find that zoning and land use plans are a
22 factor to be taken into consideration. At
23 times there should be deference to the
24 communities, and in that case what is
25 materially different from this one is the

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1 primary host community for that project does

2 not have zoning, and so does not have an
3 articulated vision for its community or
4 implement anything in which deference should
5 be provided.

6 And there were significant and
7 substantive issues raised in regards to
8 St. Lawrence's application and its dramatic
9 change, as it loomed over the community with a
10 smokestack 400 feet tall and a six-mile plume,
11 and I don't need to get into that.

12 ALJ WISSLER: That's another hearing.

13 MR. BAKER: But the position of the
14 watershed communities in this case is that as
15 regards CPC, community character can be a
16 relevant issue; however, we have not seen that
17 they have met their burden for raising an
18 issue that's substantive and significant to go
19 forward for adjudication.

20 ALJ WISSLER: Mr. Young.

21 MR. YOUNG: I just want to address two
22 things. The Margaretville Hotel -- I
23 represent the Town of Margaretville, and we
24 are working with the City -- we're trying to
25 work with the City to get approval over who

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1 can connect up to that sewage treatment plant.⁹⁰¹
2 And the City is refusing, basically, to give
3 us any approval authority over that plant.
4 The City reserves that right exclusively.

5 So if we have a new project coming
6 along in the hamlet, we have no say. The

7 decision is left solely to the City.

8 ALJ WISSLER: Frankly, as an aside,
9 that was part of our site visit the other day,
10 and that's exactly the impression that I was
11 left with after that.

12 MR. YOUNG: If there is some analysis
13 that the City has done which indicates that
14 there are 3,900 acres of land along the
15 Route 28 corridor that could probably be
16 developed -- is that right?

17 MR. BURGER: It's in the DEIS.

18 MR. RUZOW: We said 3,900.

19 MR. YOUNG: I want to clarify
20 what -- what we are saying is that community
21 character is an issue to be addressed under
22 SEQRA, but it shouldn't be an issue
23 adjudicated in front of DEC. Whether or not
24 this project, a destination resort, is
25 consistent with the community character should

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1 primarily be determined in the zoning boards 902
2 and planning boards in the Town of Shandaken.

3 ALJ WISSLER: Because that's your
4 understanding of the signatories to the MOA?

5 MR. YOUNG: Yes. And that's my
6 understanding of SEQRA too. I couldn't
7 imagine DEC issuing a finding statement
8 saying: we would like this to be some other
9 type of use. That is not your expertise. It
10 is not your jurisdiction. And SEQRA doesn't
11 change the jurisdiction. We're not saying the
12 City doesn't have an opportunity as part of

13 its findings to address it. Just that if they
14 were to address it by outlawing something that
15 we permitted, we would find that invalid.

16 ALJ WISSLER: Again, a matter that I
17 hope to see fully briefed in the final briefs
18 in this matter. It is 20 minutes of five.
19 How much time do you need?

20 MR. RUZOW: We need a lot of time. It
21 will be several hours.

22 ALJ WISSLER: Then we're not going to
23 start today unless you have -- do you have
24 somebody you need to put on?

25 MR. RUZOW: I would like -- I've been
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1 very quiet.

2 ALJ WISSLER: The record should so
3 reflect.

4 MR. RUZOW: I would like to make a
5 comment with respect to what I'm hearing with
6 regard to the role of SEQRA in this proceeding
7 with regard to this issue if I might.

8 ALJ WISSLER: Will we see this
9 published as an article?

10 MR. RUZOW: We might very well, your
11 Honor. I have avoided doing that until this
12 proceeding.

13 I would like to point your Honor and
14 the parties to Section 624.4, subparagraph 3,
15 which deals with legislative hearing and
16 issues conference matters, and where a DEIS
17 accompanies the application and the Department

18 is lead agency. 624.4, subparagraph A3.

19 We will certainly brief, and we will
20 respond tomorrow to the various presentations
21 on CPC and the City with respect to what
22 issues the secondary impacts and community
23 character issue -- their views of those
24 issues. And I would join CWT and the Delaware
25 County comments, that we have not heard things

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1 that we believe rise to the level of
2 substantive and significant issues that DEC,
3 in the peculiar circumstances of being lead
4 agency in connection with the permit
5 application, should be adjudicating.

6 Nevertheless, the Department as lead
7 agency, and we as the Applicant, have an
8 obligation to respond to all of the
9 substantive comments, and we've heard many
10 substantive comments; some less substantive
11 than others, but not many substantive and
12 significant comments. And no matter what
13 position is ultimately ruled upon by you, your
14 Honor, or Commissioner Crotty with respect to
15 what needs to be adjudicated, if you were to
16 conclude or she were to conclude that these
17 issues are not significant enough to be
18 adjudicated, we would still have the
19 obligation, and the Department Staff would
20 have the obligation, to respond to all of
21 these comments. And to the extent that they
22 require some further analysis, to do that
23 further analysis. It doesn't go away.

24 we have 5,000 pages of additional
25 comments. We have their comments with respect

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1 to their characterization of what we failed to⁹⁰⁵
2 do, notwithstanding the fact that their
3 consultants have suggested in their own
4 analysis, confirming two-thirds of what we
5 have done, and beyond my conception of
6 understanding, how it could rise to the
7 difference that they're talking about, either
8 the 15 kilograms of phosphorus or their words,
9 12 acres of disturbance, impervious surface
10 over a 3,900-acre potential area along 28,
11 could ever rise to a level of a significant
12 adverse impact on the environment, beyond my
13 conception -- but we'll argue that later.
14 Nevertheless, all of that is relevant.

15 All of this information that has come
16 in, all of the great studies that the Catskill
17 Center has done -- we heard from Helen Budrock
18 in terms of what the communities of those
19 other hamlets are there -- will enable the
20 Applicant to consider ways in which,
21 programmatically, they can design their
22 project and the interaction to make sure that
23 there's an opportunity for the hamlets to take
24 advantage of the visitors to the area.

25 All of that stuff has got to be

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1 responded to; but your job, and the⁹⁰⁶
2 Commissioner's job, is to look at a very

3 narrow area which is: Does any of this rise
4 to the level of affecting permit issuance in a
5 particular way? With all due respect, what
6 we've heard so far, and we'll address it issue
7 by issue starting tomorrow, none of that rises
8 to the level of issuing a permit issuance on
9 these issues.

10 With respect to what Mr. Baker and
11 Mr. Young had to say, I agree with them. When
12 the issue of community character comes into
13 play, where there is an involved agency at a
14 local level that does have local zoning boards
15 and planning boards, et cetera, it is
16 different for the department than when the
17 department, in most of the cases that this
18 issue has been considered in, are mining cases
19 where the Department has a special legislative
20 role different than almost any other
21 circumstance, where it has a responsibility
22 under state law to look at both the ultimate
23 reclamation land use, as well as the mining
24 itself, the industrial activity. So that's
25 driven most of the Commissioner's decisions on

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1 this issue.

2 The Commissioner, to my knowledge,
3 hasn't decided the St. Lawrence issues on
4 community character. So that is an anomaly
5 that's hanging out there. You have ALJ
6 Goldberger's ruling, but there isn't much case
7 law on the subject. This is an area that has
8 typically not -- there hasn't been case law

9 where you have a conflict between, in effect,
10 agencies, and the issue of SEQRA changing
11 jurisdiction between or among agencies, or the
12 obligation, if you will, for agencies to
13 respect the jurisdictional authority of each
14 other when applying SEQRA.

15 It was a fundamental principle that
16 was added to the statute, I believe, as an
17 add-on to get it passed in '75. It may have
18 come in the '76 amendments. But it was added
19 at the request of the power authority because
20 they were worried the DEC was going to decide
21 all energy issues in New York State, and that
22 provision came in in the context of that
23 amendment.

24 So it is something that hasn't been
25 litigated. It is incredibly important,

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1 particularly in the home rule context. The
2 City's watershed program has highlighted the
3 significance of that issue. And while the
4 language of the MOA will not say SEQRA is not
5 applicable, you wouldn't find that -- we
6 didn't talk in those terms -- but there was
7 still the issue hanging out there of what the
8 additional power of New York City would or
9 should be as applied to SEQRA, applying SEQRA
10 rules with respect to the communities in the
11 watershed. This is a different place. The
12 rules are different here. And that has to be
13 taken into account in the context of your

14 rulings and the commissioner's rulings as
15 well.

16 It affects community character. It
17 affects what can be developed over time. I
18 mentioned it in the opening remarks, and we
19 can bring it up again tomorrow. I have gotten
20 some additional information regarding City
21 land acquisition. Every day that goes by, God
22 bless them, they're acquiring additional land.
23 The opportunity for further development, that
24 secondary growth is diminishing. We passed a
25 sign on one of our visits on a field up on a

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1 hill, "Posted, no trespassing. Permit
2 required to access this land. Contact New
3 York City DEP."

4 We learned there was a 463 -- not
5 posted on the exhibit offered by Mr. Olney.
6 He doesn't have the land acquisitions post
7 December 31st by the City within the Ashokan
8 Basin. But the first quarter report just came
9 out, and there's an additional 243, 244 acres,
10 sounds very close to what is in the Pepacton
11 part of the wildacres development park, which
12 has now been acquired by the City. Closed.
13 Contract closed insofar as land in the
14 Pepacton Basin in the Town of Middletown since
15 December, since that was listed.

16 And a January 9th press release by the
17 City -- haven't been able to find out where
18 its located -- in Shandaken of 463 acres of
19 conservation easement, taking out of

20 development opportunities within the Town of
21 Shandaken. So all of this is continuing. It
22 all affects community character. But in terms
23 of the risk and the threat, which is the
24 City's greatest concern about secondary
25 growth, we have not heard the magnitude of

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1 where that is going to occur as a result of 910
2 this project, and we will address that in more
3 detail tomorrow.

4 ALJ WISSLER: Then we are concluded
5 for today, and we will start again tomorrow
6 morning at 9 o'clock.

7 (4:55 P.M. - WHEREUPON, THE ABOVE
8 PROCEEDINGS ADJOURNED UNTIL 9 A.M. ON JUNE 10,
9 2004.)

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

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THERESA C. VINING

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DATED: July 8, 2004

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