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Division of Environmental Permits
625 Broadway
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Re: Comments to Draft Scoping Document – Belleayre Resort
Town of Hardenburgh

I have been retained by the Town of Hardenburgh to represent them with respect to the SEQRA review and approval process in the referenced matter. The following comments are made to the proposed scoping document on behalf of the Town of Hardenburgh.

1. The consideration and adoption of the scope is premature as there is no application. The AIP cannot constitute an application. We object, in fact, to the notion that the signatories to the AIP can unilaterally determine that the project they have described therein meets the standards for a SEIS review, as opposed to a new DEIS, a determination which must be based upon a review of application materials and a preliminary determination as to their potential impacts. Therefore, the statement in the AIP that, “because several elements of the modified project plan were new and not previously the subject of environmental review, it was recognized that revisions to DEC permit applications and a SDEIS were the appropriate mechanisms to publicly disclose, refine and evaluate the agreed-upon project changes,” in addition to its questionable contractual enforceability, has no meaning in the SEQRA process. Whether the coming review is a SEIS or new DEIS has yet to be properly determined, and must be determined. Only when it has been determined may a proper scope be adopted.
2. The language of the “Background” section is self-serving and in material respects inaccurate. This section should be limited to a recitation of the previously submitted documents (an approach will, among other things, reveal the fact that there is no pending application upon which to base this scope). As it is, it seeks to bootstrap into the SEQRA record conclusory statements of law with respect to the import of the AIP. Initially, we note that the enforceability of the AIP is suspect, and therefore ought not to be incorporated in any SEQRA context except by factual reference to its existence and its role as the genesis of the newly proposed plan. In addition, the draft scoping document states:

The September 5, 2007 agreement commits all signing parties to support a modified project that was designed to address previously expressed concerns as to the original project’s environmental impacts by creating a lower-impact, alternative development proposal.

On the contrary, neither this AIP, nor any such agreement, can be said to *commit* the signing parties (or any of the non-signatories) to “support a modified project.” On the contrary, on its face, at paragraphs 32 through 36, generally, the AIP recognizes that the project must be subject to SEQRA review and a Findings Statement, as to which it is unlawful for an agency to commit prior to the requisite SEQRA hard look. Moreover, while the AIP does contain language which seems to anticipate the approval of agencies where the plan proposed is not “substantially” inconsistent with the project described in the AIP, the AIP cannot act as a self-regulating document when it comes to the SEQRA

process and the issuance of permits. Whether or not the plan is substantially consistent with the AIP plan *may* be relevant to the parties' obligations in a lawsuit seeking to interpret their respective obligations under the AIP, but it has no bearing whatever upon the SEQRA review. The parties may have agreed that "the modified project represents a new, lower impact, alternative which minimizes or avoids the potential for significant adverse environmental impacts identified by several of the Parties and others during the public comment period and issues conference ..." (AIP at ¶10), but that agreement is of no weight at all with respect to substantive SEQRA review and findings. If it meant anything, parties would regularly rush to the bargaining table prior to making an application and "cut their deal" on impacts. SEQRA, not the AIP, molds this discussion.

3. Having questioned the place of the AIP as a *regulating* force in the SEQRA process, the agencies and the public ought to know the extent to which the preferred plan is in fact compliant with the AIP, in the event that it is deemed enforceable. A section should be added wherein the applicant demonstrates on a point-by-point basis the conformance of the plan with the AIP.
4. There needs to be a "Land Use" section which provides much greater detail on several subjects. For instance, the Alternatives section does not explicitly include a heading for development consistent with current zoning and notes the local and regional master planning documents. This should be included.
5. Another Land Use sub-section should be added wherein all departures from existing state and local design standards are sought, such as road standards and length, as well as zoning uses, and the impacts of such altered standards and uses.
6. The project is one of regional significance. There should be a sub-section in the scope, perhaps in the proposed Land Use Section, on Regional Master Planning and Impacts, which should note all aspects of such planning and development impacts, such as traffic, land use, density targets for both residential and commercial, etc, in each case taking into account Greene and Ulster County, all of the permitting municipalities, and neighboring municipalities such as Hardenburgh. Again, the satisfaction of SEQRA is not governed by the AIP, but by the impacts analysis, and regional impacts can't be ignored, especially where DEC has asserted the regional import of the project by acting as lead agency. Parenthetically, the discussion of Master Planning should identify whether amendments to any relevant master plan are necessitated in order to allow lawful approval of the project from a land use perspective.
7. Since the major access runs through neighboring towns which do not have approval authority, DEC, as the lead agency, should require a traffic impacts analysis on road systems and municipalities beyond those in which the project is proposed, such as Hardenburgh. Such studies must include peak and non-peak times during construction and during operation.
8. The off-site impacts on services for municipalities (again, not limited to the municipalities in which the project is proposed) related to housing needs, schools, emergency services, etc., should be studied. Growth, if any, in population, will not confine itself to the municipalities in which the development is proposed. It will impact the surrounding municipalities as well, such as, but not limited to, Hardenburgh. And in many cases, they will do so without the concomitant fiscal benefits of the development. Therefore, both the costs and benefits to each such regional community must be studied.

9. Related to this topic, the inclusion of an affordable housing component or alternative mitigation measure should be considered, and the availability of such housing in connection with anticipated growth within all neighboring communities should be assessed.
10. Impacts on the regional tourism industry should be assessed, which should include not only Greene, but Ulster Counties.
11. A heading on Community Character is necessary, which should address specifically the divergence of the proposed plan from the underlying regional and local master planning, the long term changes in master planning that the development would engender, and an assessment of the impacts related thereto.
12. A full visual impacts analysis including simulations must be required, from the perspective of any municipality within the project's viewshed, including but not limited to Hardenburgh. This should include both daytime and evening simulations and analysis, as well as peak and off-peak simulations.
13. Air and noise impacts must be evaluated at peak and non-peak operation, and during the construction and operation phases. Such impacts as they relate to traffic through Hardenburgh must be considered.
14. The impacts on, and related to, steep slopes must be studied in detail. This should include a slope stability study.
15. A hydrogeological and geological assessment of the site, including test borings, percolation tests, aquifer delineation, and creating products such as fence diagrams, and a better assessment of aquifers and their recharge areas.
16. Alternative stormwater retention and treatment measures must be studied. The property's location in a high-rainfall area, and its potential impact on the NYC Watershed make this an essential point of thorough review.
17. A section should be added for study of the precedential impact of approval of such a project on similarly situated existing resort development sites and within state park areas.
18. The impact on, and the continued viability of the local landfill and other solid waste removal options must be studied.
19. A section should be added on the specific impacts and details of laying all the necessary infrastructure and utility improvements in this environment.
20. Every section of the draft scope lacks sub-headings sufficient to analyze their sufficiency. Greater detail must be provided.

As noted above, we seek a determination by the DEC as Lead Agency that the adoption of the scope is premature. If, nevertheless, DEC acts on the scoping document, we seek a determination that it must serve as the scope for a new DEIS, and not a SEIS, or at least that the categorization of the review document cannot be made absent the submission of a complete

application. If, over these objections, DEC adopts a scope, please incorporate these comments into the revised draft scope.

Joseph P. Eriole, Esq.