Adirondack Park Agency Board Questions/Answers
Project 2005-100, Preserve Associates, LLC
(Adirondack Club and Resort Project)

Friday, November 18, 2011

1. ***Do we have tables containing more detailed phasing information for non-residential and residential buildings?***

   See Exhibit 85, Table II-10 Residential Sales, which presents projected revenue of residential sales during project phasing in the development areas of West Slopeside, Lake Simond View, Sugarloaf North, Great Camps (lots only), West Face Expansion, East Village, Cranberry Village, Tupper Lake View North; and Tupper Lake View South.

   See Exhibit 85, Table II-12 Resort Development Costs and Schedule which presents project phasing in demolition, ski-area improvements; base lodge improvements, West Face Expansion Ski Area, Amenities and West Face Inn.

2. ***To what extent does the order hold the developer to the Phasing Plan?***

   Condition #47 of Agency Hearing Staff's Revised Draft Order states that "No change in the phasing plan described herein shall occur without a new or amended Agency permit or letter of permit compliance…"

3. ***Years 1 – 3 will the ARISE people be able to run the ski area?***

   The ARISE operation of the Ski Area as authorized by Agency Permits 2009-224, 2010-218, 2010-218A and 2011-0165 is for the temporary re-use of the area on a year-to-year basis. The ARISE operation of the ski area is independent of the proposed resort project and no business relation exists between the Project Sponsor and ARISE other than Big Tupper, LLC providing landowner authorization to ARISE to operate the area on a temporary basis as per the above cited Agency permits. The record does not provide a description of what entity will operate the ski area during the three year period of Phase I. (See Agency Hearing Staff Reply, pp. 44-45)

   Drawing PH-1 of the June 30, 2010 project drawing set, Exhibit 83, and other elements of the record indicate the permanent base lodge, parking areas, driveways, bridges,

pond, landscaping, upgrades to snowmaking on the mountain and the ski maintenance building will be constructed by the end of year 3 of Phase I.

4. Total projected cost estimates for Sugar Loaf townhouses and Great Camps, is it for the lot or townhouses/houses.

See Exhibit 85, Table II-4 Residential Infrastructure Costs and Schedule, which presents infrastructure costs for the Sugar Loaf North and Sugarloaf East townhouses and Great Camps.

Sugarloaf North infrastructure costs are projected for both Phase I and Phase II, years 1 – 6 totaling $1,426,274 and to include environmental controls, clearing and grubbing, earthwork and grading, roads, water, sanitary/sewer, storm sewer, driveways, site signage, entryway pillars and landscaping.

Sugarloaf East infrastructure costs are projected for years 5 – 7 in Phase II at $179,117 annually and a total cost of $716,467 for environmental controls, clearing and grubbing, earthwork and grading, roads, water, sanitary/sewer, storm sewer, driveways, site signage, entryway pillars and landscaping.

The eastern and western Great Camp Lot infrastructure costs are projected in Phases 1 – 3 and total $1,059,498.

Exhibit 85, Table II-10 Residential Sales, projects the sales of Great Camp Lots. The table also projects residential sales for Sugarloaf North Townhouses duplexes and single family detached units; Sugarloaf East units are projected as townhouse quads. Exhibit 85, Table II-6, presents project phasing in relation to the number of units and type to be sold.

5. Transportation Corporation will there be more information provided?

Exhibit 226, Town/Village of Tupper Lake Planning Board approved minutes from various meetings.

Exhibit 226, p. 5: “Mr. Sweeney said the town would issue a construction completion, labor and material bond for the plant which ‘is an obligation and one that the developer has to respond to.’ Mr. Sweeney addressed the town’s request for a financial guarantee for operation and maintenance of the plant for at least five years….

Mr. Sweeney said the ‘key’ was the 5-year agreement for maintenance and operation. Mr. Collier remarked this arrangement between the developer and town was ‘interesting.’ He said it was great the developer has agreed to maintain and operate the plant for five-years but added after said time the town in a worse case scenario could be ‘saddled’ with a facility that could deteriorate over the years and be costly to operate, potentially rendering the stock in the transportation corporation to be worthless. Mr. Collier asked where the protection was in that scenario. Mr. Hernandez responded saying that the construction of the plant would be done in a ‘phased approach.’ Adding that it would serve a certain amount of units that could potentially create profit generating utility. And Hernandez said by taking the phased approach the developer is able to start small and add on as more units are constructed thus making it ‘self-supporting and self-sufficient very quickly with the initial phases of the resort.’ Mr. Foxman added that the developer will not build the sewer plant without any lots sold and units built. Those houses that are built and sold would end up paying their share of the sewer plant cost.”

Exhibit 226, p. 16, includes a response from the Applicant to the request from the Planning Board to “Please provide additional information/summary on current private sewage corporation/transportation corporation set-up and continuation plan and contingency plans in the event of default.” Applicant’s response: “The private sewage treatment plant and related sewer system will operate as a “sewage-works corporation under Transportation Corporation Law Article 10, upon consent of the Tupper Lake Town Board. The plans for the system must also be approved by the NYS Department of Health.”

Pre-filed Testimony of Eduardo Hernandez for the Applicant, p. 3: “This bond is to be in an amount of the estimated cost of the operation and maintenance of the sewage-works project, less the estimated revenues which are received from properties.”

Cross Examination by Kurt Gagnier representing the Town of Tupper Lake to Eduardo Hernandez, June 6, 2011 Transcript, pp. 3032–3033: “...all those various improvements you do in infrastructure, typically the towns will—will require it to be bonded-construction bonded so that they’re built properly. You wouldn’t want it to be built partially, abandoned, and then—and then stuck on the town. So those bonds and securities would typically do that.”

6. Wastewater treatment system – constructed in 4 phases – is there more information for that?

"During plant design the proposed system will be evaluated and designed for phasing which will likely result in multiple treatment basins." (Exhibit 82, Attachment 5, Wastewater Report) There is limited technical information pertaining to the internal design of the wastewater treatment plant and how it will be correlated to the project phasing. The Agency typically coordinates review and approval of proposed development with the NYSDEC to ensure adequate plant capacity is available prior to lot sales or facility construction.

7. Is the construction of the water system extension the same as the wastewater system?

No. See Exhibit 85, Attachment 3, describing Water District #27 intended to serve the proposed development. The districts are both number "27" but are legally and physically separate entities and locations. With respect to phasing and timing, the water supply network and the wastewater infrastructure collection system will be constructed concurrently.

8. Selected lots built but not enough to fulfill the project, the ones that are built will they have the option of building their own on-site system?

As proposed and as conditioned in the Revised Draft Order, any change to the wastewater treatment facility for any individual structure would require a new or amended permit or letter of permit compliance. Additional options to allow for certain on-site wastewater treatment systems could be built into a decision document.

9. What is the source of the Tupper Lake water supply?

The existing Village Municipal Water Supply System utilizes two sources of water, Little Simon Pond and Tupper Lake. See Exhibit 55 PowerPoint presentation slides on water supply.

10. Water storage tank built on property – would it have to be transferred to the Village?

See Exhibit 82, Attachment 4, for information about the proposed water storage tank. It is assumed that the

Village would own the property under the storage tank but this could not be located within the record.

11. Water – Great Camp Lots hooking up to the system? Village states it can supply water to Phase I but not Great Camps.

Statement is correct. (See Exhibit 243 [Village letter])

12. Has the village determined it has the capacity to provide water to all phases?

No, only Phase I without improvements made to the current water supply network. (See Exhibit 243 and Exhibit 82, Attachment 4)

13. Proportionate Share — are those the marginal costs for extending the system or marginal costs plus contributions to the existing capital plan?

In general, the Project Sponsor proposes to pay all marginal costs and a proportionate share of improvements to the existing capital plant. The Project Sponsor proposes to pay all capital costs for project infrastructure, road maintenance costs (with responsibility transferred to the master HOA), user fees including maintenance and operations for municipal services used by the project and a proportion of costs required to increase electric, water or sewer capacity to serve the project. There are actual cost estimates for this in all phases of the project. This is a commitment in principle, and actual agreements are not in place. (See Exhibit 85, Supplemental Economic Analysis) The 2006 memorandum of understanding between Preserve Associates and the Town and Village (See Exhibit 19, Attachment 2) established the principle of "proportionate sharing" of the costs of necessary increases in capacity. There is further discussion of infrastructure cost issues in the Town's November 2010 determination on the Planned Unit Development, Schedule A list of conditions, found in Exhibit 226. The conditions of preliminary approval require adequate capacity at each phase of the project presented for final Joint Planning Board approval.

14. Do we know what consideration was given to placing more utilities underground?

Agency Hearing Staff’s first NIPA requested additional information regarding whether the utility lines serving the Great Camp lots were to be overhead or underground. (See Exhibit 18, p. 14). The Applicant’s response (Exhibit 21,

p. 74) indicated utility lines along Lake Simond Road Extension and the service lines to the Great Camp Lots would be underground. This response was considered to be satisfactory to Agency Hearing Staff. The Project Sponsor proposes to rebuild an estimated 2.4 miles of existing overhead distribution and approximately 19.75 miles of new electric distribution line of which 2.75 will be overhead line. The location of the proposed layout of the electric distribution system can be found on drawing E-1 of Exhibit 83, Updated Drawing Set for Adjudicatory Hearing. Both underground and overhead lines are shown on the drawing.

Cross Examination by Dennis Zicha of John Bouck, pp. 2926-2927, June 6, 2011 Transcript:

> Zicha Q. You talked about primary distribution facilities and costs and what have you. Secondary is not mentioned. Does that mean that the Tupper Lake Electric Department is not involved in any secondary installation?
>
> Bouck A. All the underground facilities, including secondary levels, are the responsibility of the developer. As with anyone that installs in our territory, an underground service would be their responsibility to come to us to – to maintain it and replace it, if necessary.
>
> Zicha Q. So your involvement then is just bringing the primary to the connection points?
>
> Bouck A. The developer’s also responsible for the installation of the primary facilities – the underground facilities also, okay? And the –
>
> Zicha Q. Inside the project?
>
> Bouck A. Inside the project.
>
> Zicha Q. Okay.
>
> Bouck A. I would only say that in the past what I’ve done with other customers – we provided the terminations inside the transformers.
>
> Bouck A. And we’d be responsible for the metering.

15. Total amount $35 million for infrastructure or $39 million?

Exhibit 85, p. 38 presents the four phases of the Franklin County IDA Bond which total at $35,980,863:

- Phase I $10,317,939
- Phase II $12,301,185
- Phase III $ 8,051,031
- Phase IV $ 5,310,708

Exhibit 85, Table II-11, provides the Estimated Total Annual Bond Payment with a 7.5% fixed interest rate through a twenty-five amortization.

Estimates for infrastructure were aggregated in the Applicant's presentation to the Agency in Exhibit 85, updated financial information, and in brief summary statements to the FCIDA, Exhibit 204, and the Joint Planning Board, Exhibit 226. The total figures depend on what is included. In general, disaggregated cost estimates were provided in Exhibit 90, the response to Protect!, PRO-4, which is a large spreadsheet prepared by Delaney Construction and is cited as the source for numbers in the Updated Financial Report, Exhibit 85.

A review of the cost estimates shows that the $35 million number is an estimate of "public" infrastructure costs selected from roughly $70 million in development costs for the project identified in the estimate sheets. (See $42 million in Exhibit 204, p. 2; $45.225 million in Exhibit 31, Attachment 5 [2006 estimate])

Changes to the project in the course of the hearing would affect the $35 million estimate from June 2010. Those effects are not specifically quantified in the record, but some can be inferred from the detailed estimate spreadsheets prepared by Delaney Construction. (See Exhibit 90, Protect! PRO-4)

16. What does the "facility" refer to regarding FCIDA controlling interest?

General Municipal Law (GML) Section 854 Definitions refers to the following:

> "Agency" shall mean an Industrial Development Agency created pursuant to this act;"

> "Project" shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or … other economically sound purposes identified…"
>
> "Financial Assistance" shall mean the proceeds of bond issued by an agency, straight leases, or exemptions from taxation claimed by a project occupants as a result of an agency taking tile, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.
>
> "Payments in lieu of taxes" shall mean any payment made to any agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.

Exhibit 204, A Draft Proposed Payment-in-Lieu-of-Tax (PILOT) Agreement with the Franklin County IDA, October 2010, provides Proposed Pilot Terms on Page 4:

- All ACR land other than that in the Empire Zone will be in Tier 1 as long as it is owned by an ACR entity.
- Once a lot is sold by an ACR entity, it will become part of Tier 2.
- At closing, a Tier 2 property owner will enter a PILOT agreement with FCIA and will have a direct obligation to FCIA to make PILOT payments.
- All tier 2 lots will be reassessed upon sale, improvement with a home, and upon a town-wide revaluation.

The "facility" includes the Tier 1 property that will be owned by Preserve Associates and the Tier 2 property that will be purchased by buyers.

17. Are there exhibits that show the IDA and their review of the bond issuance?

Exhibits 199-207 address the involvement of the Applicant with the Franklin County Industrial Development Agency. Exhibit 204 is a Draft for Discussion Purposes to a Proposed Payment-in-Lieu-of-Taxes (PILOT) Agreement with the Franklin County IDA dated October 2010.

Exhibit 81, the June 2010 Applicant's Updated Information for Adjudicatory Hearing, includes Attachment 15, the County of Franklin Industrial Development Agency April 21, 2010 correspondence from Executive Director John Tubbs to Michael Foxman:

> "We continue to be ready with financing options to assist in the build-out of your project, and as an issuer of bonds believe these can be configured in a cost-effective manner. We have talked about the desirability of issuing these at intervals, and our bond counsel confirms that we can work on this basis…. I know you are going back to the APA with your project, and when enough modifications have been made and questions have been answered to finally obtain approval to move forward, you will have the support of our Agency for the next phase of the project."

18. Better define what a controlling interest is?

Exhibit 201, email regarding PILOT Mortgage and PILOT Question-ACR:

> "A PILOT mortgage is generally used to secure a Company's obligation to the Agency** under a PILOT agreement (very much in the same way a homeowner grants a bank a mortgage to secure the repayment of a loan). The Agency (because the Agency has an interest by either deed or lease) and the Company will grant the Agency a mortgage lien on each of their respective interests in the project facility as security for the Company's obligations under a PILOT agreement. If the obligation of the Company under the PILOT agreement are discharged or paid in full, the PILOT mortgage is satisfied and the lien on the PILOT mortgage is released. If the Company fails to make a PILOT, the Agency can foreclose on the mortgage."

**Please note that the term “Agency” refers to the Franklin County Industrial Development Agency (FCIDA). In this instance, the “Company” refers to Preserve Associates.

19. Explain when the bond funds in regard to the payments vs. sales.

Sales price establishes taxable value (assessment) that is then subject to the PILOT levy. The revenue from this levy is collected by the IDA instead of the local tax authority and goes first to the IDA bonds, and then to the municipalities as "in lieu" of taxes. Depressed sales prices will depress the revenue per unit which will either short the in lieu payment, or restrict the bond sale that can be supported, or both. The parties that challenged the economics said that the project cannot generate enough revenue to support bonds that will pay for the infrastructure necessary for the development phases. The Applicant and municipality argue that property offered in sections that make efficient use of infrastructure (e.g. start with lots that use existing municipal capacity) should result in incremental financing in balance with the properties sold and developed. The Protect! expert estimated $5,000,000 annual sales at lower prices than the Applicant projected. The Applicant's projection is approximately $38,000,000 annually. The higher figure is much more than the minimum necessary to support the proposed bond. There was agreement that these figures are highly dependent on many variables beyond the control of the Applicant and linked to the regional and national economy.

20. More detail about individual lots being sold with PILOT Agreements and PILOT Mortgages.

June 1, 2011 Hearing Transcript, page 2283 - 2284, Cross of James Martin by Kevin Jones:

> Jones Q: So that land, would that be then PILOT land or would it not be PILOT land? … Well, if I buy a piece of property from the — from ACR, is it - is it now part of that PILOT or is it not?
>
> Martin A: It’s part of the PILOT, but my understanding is the ownership transfers. The buyer’s name is on the deed, but the responsibility in the form of how the real property tax is paid is changed.

Jones Q: How would it - how would it change?

Martin A: If I understand it, the exemption kicks in. And at that point, the PILOT arrangement takes over. And whatever the arrangements are, that's how the payments are made. And we have a projection here of how that PILOT payment is made.

Page 2286:

Martin A: And the suggested term of this PILOT that's included in this projection is a – a PILOT payment that's consistent with the tax rate of the local community.

21. How does Tier Structure relate to Plan to sell components to a third party?

A "third party" is no different than a lot purchaser for the Tier 2 status. The property moves into Tier 2 status at the time of the sale and would continue to have value adjustments as individual lots are sold. These details have yet to be finalized.

22. Citation to the transcripts in regards the PILOT agreement of opponents contested by projection?

Protect the Adirondacks! Closing Statement, pp. 26-34, stated: "The Applicant has not proven that its proposed PILOT funding arrangement have been, or can be, approved by the FCIDA."

23. More information on the bonds?

June 1, 2011 Transcript, p. 2290, Cross of James Martin by Paul Van Cott:

Van Cott: "Given the importance of the IDA approval to the overall viability of the project, would you have any concerns-or the project sponor have any concerns if the Agency were to impose a condition that required approval of the IDA prior to undertaking any aspect of the project?"

Mr. Ulasewicz for Applicant: "I'm going to object again Judge. You're asking them to base their testimony on knowledge of the legal process that's associated with the IDA process. That's

> in essence, what you're asking them to do, and they're not qualified to do that… We're here under the APA regulatory process to determine whether we get a permit or not or a condition permit. We're not here to determine whether the IDA is going to give us approval and under what circumstances they will grant that approval." (p. 2291)

24. Private roads-does Tupper Lake Fire Department supply service to these areas?

In Exhibit 23, Document #42, dated October 14, 2005, the Tupper Lake Volunteer Fire Department reported the following in correspondence from the 1st Assistant Chief Mark Picerno:

> "As for the upgrading of the Lake Simond Road Extension, this would alleviate any concerns that our fire equipment would not be able to access the area from that end of the proposed development. In closing, the Tupper Lake Volunteer Fire Department has a proud tradition of providing fire suppression services to the Village of Tupper Lake and the Town of Tupper Lake for 102 years. We will continue to provide these services whatever the future presents."

25. Any consideration to dry hydrants of areas without municipal water?

The June 2010 drawing set (Exhibit 83) contains Drawings S1-S26 entitled "Sewer and Water Concept Plans." The drawings include plans and details for the water supply system which includes hydrant locations and standard details connected to the proposed pressurized water distribution system. No locations or construction details are provided on the plans for dry hydrants.

26. Does emergency services have access across McCormick Road?

Not answered in the record.

27. 401 Water Quality service and Transportation Corp are also permitting that needs to be obtained.

These points are noted.

28. The witnesses identified in Issue 5 are the same in Issue 6?

Yes, there is overlap in the pre-filed testimony and hearing record between the two issues and the witnesses who testified.

29. 524 persons with 4 job categories-is more detailed information provided in Exhibit 85?

Exhibit 85, p. 43:

> "The resort complex is anticipated to employ 524 persons within four job categories. The first employment category is associated with the general operation and administration of the resort and includes a manager, accountant and maintenance and security personnel; the second category is associated with operation of the marina and includes staffing of the fishing school (five guides and two administrative positions) a manager, boat mechanic and boat rental person; the third category is associated with the restaurant, the skier cafeteria and the inn, and the final category is associated with the operation of the health club and recreation center.
>
> The positions are projected to breakdown as follows: 100 FTYR position, 151 PTYR positions, and 114 FTS positions and 78 PTS positions will be created once the resort is at completion.
>
> It is estimated that operations at the expanded ski area will result in the employment needs that are consistent with the statewide average of 81 employees for ski areas in New York State."

Exhibit 81, Table III-1 provides the Projected Employment by Category of Employment at Build-Out.

30. What is the space heating fuel?

Municipal electric in Tupper Lake prohibits the use of new electric heat:

> "We put in a moratorium on electric heat – the Village did – for a new development period. That was pretty much to deter further growth and

> incremental power costs. And also if we look at our responses to energy conservation measures, this is also an invitation of help conserving energy." (June 6, 2011 Transcript, p. 2953 [Cross Examination by Dennis Zicha to Curtis Wilson])

31. More information about the 50 year commitment for the public use of the ski area.

The April 15, 2009 Agreement between the Village of Tupper Lake and Preserve Associates, Big Tupper LLC includes seven commitments from the Project Sponsor with regards to the ski area. With regards to continued public use of the ski area, the agreement states "for as long as the Ski Area is operating during the first fifty (50) years after its initial operating under APA Permit for the ACR (APA Project No. 2005-100) the down-hill skiing will be open to the public. (See Agency Hearing Staff Closing Statement, pp. 59-62)

32. More information on the financing of improvements to the ski area?

The ski area was initially identified with an "Empire Zone". (See Exhibit 36, Attachment 5, p. 39) The Empire Zone designation has expired and the record has no specific details regarding financing and operation of the ski area other than HOA assessments of $1,000.

33. 50 year commitment—also marketed for the public outside Tupper Lake?

Exhibit 85, p. 44, presents information on Visitor Expenditures. "The proposed re-establishment of skiing at the Big Tupper Ski Area combined with use of the facility during the summer is expected to result in increased activity both locally and regionally. From an economic perspective, the return of skiers, year-round utilization of resort amenities and occupancy of the seasonal housing units represent a potential source of revenues for local and regional businesses in the form of expenditures for goods and services. ...the reopening of the ski area year-round is expected to result in over 100,000 visits annually to the facility upon completion of the planned improvements."

34. Have there been any conversations with the Community Housing Trust regarding future affordable housing conditions if the project is approved and succeeds?

As noted in Exhibit 81, the June 2010 Applicant's Updated Information for Adjudicatory Hearing, p. 60, "the Town and Village of Tupper Lake recently participated in the Tri-Lakes housing Assessment project in June of 2010. Attachment 16 to Exhibit 81, pp. 20–21, provides information about the "Administration of the Housing Delivery System" and presents an overview of the Adirondack Community Housing Trust's (ACHT) utilization of the Community Land Trust (CLT) model to offer perpetually affordable housing. "This model allows ACHT to build an inventory of housing that will perpetually remain affordable within the Adirondacks."

35. How can we get additional help/expertise in assessing the economics of the project?

The Special Assistant for Economic Affairs staff member will join the Agency on December 12 and will be a member of the Agency Executive Team.

36. Anything in record that deals with beaver dams and implications if it fails?

Pre-filed statements by Agency Hearing Staff regarding the beaver dam in Cranberry Pond. (See May 4, 2011 Transcript, Attachment B, p. 7, line 21 through p. 9, line 9 [LaLonde pre-filed])

37. Testimony on actual cost of Cranberry Pond vs Tupper Lake for snowmaking – contested or agreed upon, figures by all parties?

Agreed upon, "The preliminary capital cost estimate for Cranberry Pond is $575,000 compared to $3,347,500 for Tupper Lake. The estimated electrical pumping costs to get water from each source is $4,175/year for Cranberry Pond compared to $12,800/year for Tupper Lake." (See May 4, 2011 Transcript, Attachment B [LaLonde pre-filed])

38. How much water per day will be used for snowmaking vs how much water per day flows into Cranberry Pond?

"The pond volume configuration of 20,203,623 gallons potentially represents available storage for snowmaking purposes and essentially represents the best case scenario

since it captures all of the drainage within the watershed subcatchment area." "…for the months of December, January, and February the long-term average rates of water flowing into Cranberry Pond are approximately 844,642 gallons per day which equates to 587 gallons per minute…" "The snowmaking pumping rates for the 1997-1998 ski season were 800 gallons per minute for a single pump and 1,600 gallons per minute with two pumps operational." (See May 4, 2011 Transcript, Attachment B, p. 4, line 22 through p. 11, line 5)

39. If the beaver dam fails what is the outlet and where does it cross Route 30? What would its impact be on snowmaking?

"The beaver dam controls the current configuration of Cranberry Pond. The level of beaver activity dictates the area and volume of Cranberry Pond" and "The Project Sponsor estimated there would be 759,000 gallons of water remaining in the pond if the beaver dam failed compared to 20,203,623 gallons…In my opinion this essentially represents no available storage for snowmaking." (See May 4, 2011 Transcript, Attachment B, p. 7, line 21 through p. 8, line 9) Outlet location described during May 4, 2011 testimony as requested by ALJ, impact on snowmaking. (See LaLonde and Franke pre-filed for Issue #8)

40. Any discussion on climate change and its impact on snowmaking demand?

Testimony on June 24, 2011, Attachment B, Phyllis Thompson, with respect to birds, not snowmaking; Exhibit 25, Applicant's response to the second NIPA, Volume 1, pp. 49-52; Exhibit 26, p. 23; Exhibit 35, Attachment 19.

41. Is there concern regarding the use of wetlands associated with Cranberry Pond for sewer outflow and use of Cranberry Pond?

Not with regard to use of wetlands. Discharge location of the wastewater treatment plant may change as a result of DEC review. (See May 4, 2011 Transcript, Attachment D, pp. 10-11 [Ed Hernandez pre-filed testimony for Issue #4])

42. Is there evidence in the record of historical use of Cranberry Pond for snowmaking and what its peak demand was?

Data from the 97-98 snowmaking season as a condition of a prior Agency permit was used in the Applicant's analysis to predict future withdrawals. (See May 4, 2011 Transcript, Attachment B, p. 5, line 19 through p. 7, line 20)

43. Boats at the dock will be able to go out directly into the Lake?

Yes, the buoyed channel at McDonald's Marina is connected directly to the main channel leading to Tupper Lake.

44. How would paddlers get their boats in the water?

The Project Sponsor originally proposed a canoe launch for the south end of Lake Simond for use by resort residents. "As per the Master Plan Drawings in Attachment 2, the canoe launch is no longer proposed." (See Exhibit 81, p. 23) No additional information pertaining to the use of canoes and kayaks at either the NYS Boat Launch or McDonald's Marina was found in the record except in Paul Maroun's Cross of Colleen Parker, which established separate canoe/kayak launch capability at the State Boat Launch.

45. What is the historic use of Canoe vs. motorized craft at the State Boat Launch?

No information could be found in the record.

46. What season was the visual analysis done?

The visual analysis work was done in summer and through late fall to early winter. The original application materials containing a visual impact assessment may be reviewed in Exhibit 14, Appendices 19 and 20. The methodology used during this initial inventory of potential visibility is described in narrative in Exhibit 11, Volume 1, April 18, 2005, pp. 3-22 to 3-30. The areas of potential visibility were studied in both leaf-on (June 2004) and leaf-off (November and December 2004) conditions. The identification of potential impacts, including the Applicant's description of methodology and the assessment of significance of potential impact are provided in pages 5-17 to 5-27 of Exhibit 11.

Of the 11 simulations provided in the completed application materials (see Exhibit 23, Volume 3, Attachment 47) three simulations were provided in the leaf-off condition and the remaining eight simulations were provided in a leaf-on condition.

The process for selecting the photos used for the simulations is described in Tab 27 of Exhibit 21:

> "Conditions for photographing were somewhat less than ideal during both balloon flight dates due to haze/humidity that is not uncommon in summer. Because of this, photograph locations were re-visited on numerous occasions including the following dates, July 4, July 11, July 12, July 13, July 19, August 19 September 23, October 4, and October 31, 2005. The photographs and simulations included in Attachment 47 represent the best conditions encountered during the multiple dates listed above." (See Applicant's Response to Notice of Incomplete Permit Application Issued May 23, 2005, p. 125)

47. Verifying the height of the structures in the simulations and whether there were any changes in the site location?

The photo-simulations provided by the Applicant in Exhibit 23, Volume 3, Attachment 47, February 2006, use the same structure heights for the structures proposed in the later "Updated Drawing Set for Adjudicatory Hearing", Exhibit 83, June 30, 2010. Some locations of buildings, however, were changed between the time of the visual simulations prepared in 2006 and the Updated Drawing Set in 2010. The Project Sponsor's June, 2010 submission did not include any new or modified visual simulations. Agency Hearing Staff compared the 2010 site plan sheets with the 2006 site plans to perform their assessment of potential visual impact without new or modified visual simulations. (See Agency Hearing Staff Closing Statement, p. 80)

48. Where in the record is the architectural guidelines containing height limitations?

See Exhibit 82, Attachment 23, p. 13 of the Revised Property Design, Architectural and Maintenance Standards, Revised June 2010.

49. Is East Ridge included in Exhibit HD 4?

No. HD 4 prepared by Harry Dodson does not show proposed development on the East Ridge, which is consistent with A.4 of the Applicant's submission.

50. There is a new Observatory in Tupper Lake and has there been a comment from the Observatory?

Yes. The Board of Trustees of the Adirondack Public Observatory, Inc., provided a statement of support for the resort project, stating in part: "…the Adirondack Park Observatory supports the Adirondack Club and Resort project as a significant economic solution to the region's future. The ACR has agreed to work as a team with APO to define appropriate lighting specifications in their development plans (including full cut-off lighting) that will maintain our dark skies as a condition of responsible property ownership, in perpetuity." The letter is a part of the record identified as Exhibit 104.

51. Explain the Visual Simulation process and why there was such discrepancy?

The process the Project Sponsor used to prepare their visual simulations is cited in the answers to Questions 46 and 47 above. The process used by Dodson Associates for the Adirondack Council in order to evaluate the effectiveness of the Applicant's analysis is described in the pre-filed testimony of Mr. Dodson. (See March 24, 2011 Transcript, Attachment B, pp. 10-15) Both the Applicant and Mr. Dodson used similar digital terrain models and software to analyze the project's potential visibility. The primary differences in results of the daytime visual simulations discussed during the Hearing included the degree to which the existing vegetation would effectively screen the project visibility from the various selected view points and the color of the roof structures used in the simulations.

Agency Hearing Staff, in their review of the Applicant's Visual Impact Assessment (VIA), indicated the simulations took into account the proposed clearing around buildings, roads and ski trails. The simulations evaluated daytime conditions according to the APA "Visual Impact Assessment Methodology" and Agency Hearing Staff did not require winter daytime or nighttime visual impact simulations. (See Agency Hearing Staff Closing Statement, p. 78)

Agency Hearing Staff believe some of Mr. Dodson's simulations overstated the visibility of the proposed residential structures. It is Agency Hearing Staff's opinion [Mr. Dodson's] simulations depict more extensive clearing and grading than proposed, and do not take into account all existing lighting on and adjacent to the site. (See March 24, 2011 Transcript, p. 656) Mr. Dodson stated in his opinion that the simulations prepared by the Applicant understated the potential impact of the project. Specifically, he stated his concern for the potential size of the Great Camps which he believed was depicted at the small end of the range of permitted structures. (See March 24, 2011 Transcript, p. 624) Mr. Dodson also believed the screening effect of the existing vegetation, particularly on the slopes, was overstated in the Applicant's materials because the individual landowners over time would open views from their property, an activity that would be difficult to monitor and control. (See March 24, 2011 Transcript, pp. 625-627)

Finally, the Applicant's simulations used green for the roofing in their visual simulations while Mr. Dodson used the color brown for the roofs in his simulations. Mr. Dodson did indicate that the color brown was more visible than the green roofs shown in the Applicant's simulations but had used brown because it was the color depicted in the Applicant's plans. (See March 24, 2011 Transcript, p. 494).

52. Why was McCormick Road not included as an issue similar to Read Road with regards to principal buildings?

Both McCormick Road and Read Road are "privately owned roads that traverse the center of the project site." (See Exhibit 6, p. 5) McCormick Road provides access to the former Follensby lands (See June 21, 2011 Transcript, pp. 3562-63) while Read Road provides access to lands owned by the Read family. (See Birchery Camp Closing Statement, September 20, 2011; Little Simon Properties, Inc.'s Closing Remarks for the ACR Adjudication Hearings on Project No. 2005-100, September 19, 2011)

Members of the Read family received a request related to Read Road from the Project Sponsor on September 12, 2004 (Exhibit 237), participated as parties in the adjudicatory hearing process (See March 22, 2011 Transcript, pp. 140-154), and requested to know "on what legal grounds the APA plans to allow" for construction of the 63 principal buildings proposed for the west side of Read Road without

approval from the Read family (See March 22, 2011 Transcript, p. 151).

There was no similar participation or request for information from the owner of McCormick Road. However, the ALJ's November 10, 2010, ruling allowing inclusion of Issue 12 does not specify why the legal issue should be briefed in relation to Read Road but not McCormick Road.

53. Did parties that proposed alternatives abide by their positions on the Read Road issue?

The Resource Management lands west of Read Road on the project site contain sufficient acreage for approximately 38 principal buildings (See March 23, 2011 Transcript, Attachment E, p. 8 [Parker pre-filed]). The Project Sponsor proposes to construct 63 principal buildings on these lands, for a total of 25 principal buildings more than the acreage would support. In their closing statements and reply briefs, Protect the Adirondacks! Inc. and the Adirondack Council, Inc. assert that approval is required from the Read family for the construction of more than 38 principal buildings west of the road.

Both Protect! and the Adirondack Council suggest alternative resort proposals. Protect!'s proposal calls for a reduction in size of the Great Camp Lots, with the result being that "all 39 of them would fit on the 837 acres in the vicinity of the ski area that are currently slated for the 31 smaller Great Camp lots. The entire 2,781 acres that is currently slated for the 8 larger Great Camp lots would be preserved..." (See Post-Hearing Brief and Closing Statement of Protect the Adirondacks! Inc., September 23, 2011, p. 66). This alternative proposal suggests the construction of up to 83 principal buildings west of Read Road, for a total of up to 45 more principal buildings than the acreage of this area would support.

Expert witness Harry Dodson and the Adirondack Council prepared three alternative development proposals (Exhibits HD-30, HD-31, and HD-32). Dodson refers to Alternative 1 (HD-30) as "the most viable" of the three (April 26, 2011 Transcript, p. 908, lines 11-12), and explains that "In alternative number one… we moved all the development in – in this area west of Read Road… in a more compact configuration… And the area east of Read Road is undeveloped. And the ability to do this is because the density of the proposed ACR project is – is very low… and we've been able to transfer all this development density

into this area here." (See April 26, 2011 Transcript, p. 901, lines 14-24)

Jeff Anthony for the LA Group overlaid Dodson's Alternative 1 with a "green dash line… with RM being to the south of that green line and MI generally being to the north" (April 27, 2011 Transcript, p. 1237, lines 13-15; see Exhibit 176). He then counted "the dots on that map" and found that the alternative proposal appears to call for the construction of a minimum of 175 principal buildings on Resource Management lands west of Read Road (April 27, 2011 Transcript, p. 1244, lines 5-9). Anthony's calculation indicates that Dodson's proposal would involve construction of at least 137 more principal buildings than the acreage of this area would support.

54. Adjacent vs adjoining property regarding the statute 809(10)(c)?

The word "adjacent" appears in APA Act §809(10)(c): "In determining the land use area upon which the intensity guideline is calculated and which is included within a project, the landowner shall only include land under his ownership and may include all adjacent land which he owns within that land use area irrespective of such dividing lines as lots lines, roads, rights of way, or streams...." The word "adjoining" does not appear in §809(10)(c).

Longstanding Agency practice holds that the phrase cited above allows for landowners to aggregate the acreage of their lands, including lands divided by lot lines, roads, rights of way, or streams, when calculating the overall intensity guideline for a project site (see, e.g., Exhibit 6, p. 5; Agency Hearing Staff Closing Brief, September 23, 2011, p. 117). In its Reply Brief and Closing Statement, Protect the Adirondacks! Inc. argues for a different interpretation of this phrase, based on the use of the terms "adjoining" and "contiguous" in other provisions of the statute.

55. What discussion of Read Road ownership exists in the record?

Read Road is referenced throughout the record as a "private road". (See Exhibit 6, p. 5; Exhibit 21, Tab 20) As described in the "Closing Remarks for the ACR Adjudication Hearings on Project No. 2005-100," Read Road is owned by the Read family jointly through Little Simon Properties, Inc., and The Birchery Camp.

56. What would be the wider ramifications to the Agency of accepting the Adirondack Council and Protect!'s position of transferring building rights across Read Road?

The immediate ramification for the Project Sponsor would be that the project would have to be re-designed. (March 23, 2011 Transcript, Attachment E, Parker pre-file, p. 8). The wider ramification for the Agency would be that adoption of this position would constitute a change or inconsistency in Agency practice. (See, e.g., Exhibit 6, p. 5; Agency Hearing Staff Closing Brief, September 23, 2011, p. 117)

57. What happens if the Board recommends alternatives that are not in the record?

The APA Act allows the Agency "to impose reasonable conditions and requirements" when approving a project (§809[13]). In his supplemental pre-filed testimony, Mark Sengenberger states that "it is my opinion that only the Agency Board can decide whether it would be reasonable to impose" a condition that "would substantially modify the proposed project and could affect the financial viability of the project" (April 26, 2011 Transcript, Attachment B, p. 2). 9 NYCRR §572.22(b) allows for a Project Sponsor to request that the Agency reconsider any action taken on a project.

A decision document can contemplate findings and conditions not present in the Revised Draft Order.

58. Additional information in the record that would lead to a different conclusion than staff has taken regarding the economic impact?

June 1, 2011 Project Hearing Record, Direct of Shanna Ratner by John Caffry, pp. 2101–2012:

> Ratner: They've essentially taken statewide multipliers for the State of New York and attempted to apply them to a project that by their own admission, they suggest the impact area will be 4 counties: St. Lawrence, Franklin, Essex and Hamilton.

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> Ratner: The whole theory of economic multipliers is based on the notion of the re-spending within a particular geographic area. So to use

statewide multipliers to predict the impacts on this area of this project is extremely misleading.

59. What happens if this project goes into default? And what are the consequences on the various stakeholders?

Default is a technical term that will only have meaning for specific "responsible parties" for specific contract or financial obligations. (See November Issue 5/6 slides).

For the Transportation Corporation proposed for the resort's sewer treatment plant, State law specifies bonding and procedures to provide significant protections for users of the plant in the event of financial failure.

For most project elements, the draft offering plan indicates that there are no financial guarantees in the event of financial failure of the Project Sponsor or one or more responsible parties developing elements of the project.

With respect to the proposed PILOT Exhibit 226 with the Applicant's response to the Joint Planning Board includes a very general discussion of potential consequences of default for Tier 1 or Tier 2 PILOT payments.

The APA Act in Section 809(13) grants specific authority to require "performance bonds in favor of the local government as obligee" to ensure adequate provision of services or improvements required by proposed development. "The agency shall consult with the affected municipalities and give due consideration to their views." With respect to the project's common infrastructure, it is the policy of the Agency in the past to "build it or bond it" prior to offering building lots for sale and Agency permit conditions are generally designed to ensure this. This is typically coordinated with local government which has similar authority for new subdivisions and in light of the specific direction of the APA Act.

As a general matter, the Development Considerations of Section 805 and the "undue adverse impact" determination of Section 809 do not address the financing or financial character of a project that otherwise meets the various statutory tests of Section 809(10).

60. What is status of the U.S. Army Corps of Engineers wetland permit? How much wetland is jurisdictional with USACE and is any of it overlapping with state wetlands?

There is a reference in the record (see Exhibit 21, Tab 29, p. 137) that states "Materials were submitted to the USACOE and a meeting was held in their Albany field office on April 26, 2005. Additional permitting materials are being submitted to the USACOE in the immediate future." There is no additional information in the record concerning USACE review or permit issuance after that date.

APA impacted jurisdictional wetlands equal 1.47 acres and USACE wetlands overlap all of the APA wetlands plus an additional 0.6 acres.

61. Where in the record is the best explanation following Shanna Ratner's direct and cross regarding the Applicant's response to the economic benefits and multipliers of the project?

The Applicant's updated financial data in Exhibit 85 is the primary information about financial benefits of the project. The Applicant did not provide any specific rebuttal except argument in the Reply Statement. (See Applicant's Reply Statement, pp. 4-27 and 58-63)