



*NOTE: The attachments referred to herein are on file at the Agency and are on the Agency's website. Copies are also available for inspection on request.*

**DRAFT AGENCY MINUTES**

**JANUARY 18-20, 2012**

**WEDNESDAY, JANUARY 18, 2012**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Leilani Crafts Ulrich, Chairwoman  
Richard Booth, Member  
Sherman Craig, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
F. William Valentino, Member  
Cecil Wray, Member  
Judy Drabicki, Designee, NYS Department of Environmental Conservation  
Jen McCormick, Designee, NYS Department of Economic Development  
Dierdre Scozzafava, Designee, NYS Department of State  
Terry Martino, Executive Director  
John Banta, Counsel

**LOCAL GOVERNMENT REVIEW BOARD PRESENT**

Fred Monroe, Executive Director

**AGENCY STAFF PRESENT**

Richard Weber, Deputy Director, Regulatory Programs  
Greg Bendell, Environmental Engineer  
Daniel Kelleher, Special Assistant for Economic Affairs  
Matt Kendall, Associate Natural Resources Planner  
Edward Snizek, Associate Project Analyst (Fresh Water Resources)  
Sarah Reynolds, Associate Counsel  
Keith McKeever, Public Information Director

Chairwoman Ulrich called the meeting to order at 1:35 p.m.

**1. Welcoming Remarks**

Chairwoman Ulrich welcomed those in attendance to the Agency's January meeting and wished all a happy, safe and prosperous New Year. She called attention to the 3-day meeting schedule to

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allow the Board the time needed to complete its deliberations and decision on the ACR project as well as deal with other Agency business.

She expressed her appreciation to the staff on the work that has been done since the December meeting, as well as her thanks to fellow board members. She recalled the months of hearings in 2011, followed by the formation of an Executive Team to guide the Board through the record, with two full months spent publicly exploring the record and identifying areas of concern. During that time, she said, it became clear that a determination could be made based on the record and an additional adjudicatory hearing would not be necessary to make a determination. The Board has spent two months listening and asking questions of the Executive Team, and is finally ready to hear from each other.

Chairwoman Ulrich reviewed the agenda for the meeting, which begins with a final review of the statutory framework for the decision on the ACR project, to be followed by a roundtable discussion in which board members will be asked for their overall impression of the project's compatibility with the Land Use and Development Plan, and continuing areas of greatest concern. This will help guide staff in those areas needing the greatest focus as the Board discusses the proposed order on Thursday morning and addresses the proposed permits in the afternoon. She also referred to the draft order and 14 draft permits that will guide the Agency's deliberations, noting that if approved, this format will enable efficient management of this project as it proceeds and is amended in the years to come.

The Chairwoman then reported that she had made three visits to Albany since her appointment as Chairwoman. She called attention to Governor Cuomo's motto - WE WORK FOR THE PEOPLE Performance\*Integrity\*Pride. She noted that moving forward, the Agency will be working more closely with its sister agencies on improving performance, vigilant of the fact that "We work for the People," and that personal and professional integrity is maintained throughout Agency decisions. She expressed hope that in the coming years the Agency will be part of assisting the Adirondack Park in renewed pride in its communities, forests and open landscape.

### **2. Public Comment**

Brian Houseal, Executive Director of The Adirondack Council, commented on the North Country Regional Economic Development Council, the State Budget, and the Governor's SAGE Commission.

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Daniel Plumley of Adirondack Wild quoted the Open Meetings Law and provided copies to Counsel.

The full comments of Messrs. Houseal and Plumley are available in the webcast of this meeting.

[http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

### **3. Introduction of Special Assistant for Economic Affairs**

Chairwoman Ulrich welcomed the Agency's new economic specialist, Daniel Kelleher, and presented him with an APA lapel pin.

### **4. Approval of December 15-16, 2011 Draft Agency Minutes**

On motion of Mr. Booth, seconded by Mr. Wray, the Agency unanimously adopted the Draft Agency Minutes of the December 15-16, 2011 meeting.

Mr. Booth asked if the intent of the reference to the webcasting in the Adirondack Club and Resort (ACR) matter was to incorporate it into the minutes.

Counsel responded affirmatively, noting the webcast and the PowerPoint presentations are intended to be the record of the deliberation.

The Chairwoman added that in addition to the ACR deliberations, public comment is also incorporated by webcast.

### **5. Recusals**

Mr. Lussi noted his recusal in the matter of Project 2011-181, The Golfery, LLC and Katrina Lussi Kroes.

### **6. Executive Director's Report**

Ms. Martino described this day as the start of an important point in an important process in the Agency Board's deliberations on the ACR project. She referred to the chronology of this process highlighted on the walls around the room, from pre-application, to application, to conceptual approval, to committee deliberation in 2007, and then to direction to adjudicatory hearing. She reviewed major dates, including the updated application in June 2010, followed by the work of the Agency Project Hearing Staff, and then the hearing; the adjudicatory hearing which received 19 days of testimony from March 22 to June 24, 2011; the Board site visit on October 14, 2011, supervised by ALJ O'Connell; October 24, 2011 when the

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Agency received the reply statements from the parties; October 26, 2011 when ALJ O'Connell certified the record as being complete and the record was transmitted to the Board.

Ms. Martino then reviewed the composition of the ACR record, which is comprised of 49 parties, 23 witnesses, the pre-filed testimony from witnesses for the parties, 4,486 pages of hearing transcript, 12 reply briefs, 17 closing statements from the parties; 258 exhibits and 236 drawings. Among the exhibits are all the project application materials identified in the project history chronology.

Following the transmission of the record to the Board, the Agency began a three-meeting cycle which began on November 17-18, 2011. At that meeting the Board reviewed project plans, elements and phasing. The Board took action on the three appeals to ALJ O'Connell's rulings. There was review of the 2007 order from the Agency directing the adjudicatory hearing and the issues the ALJ scheduled for adjudication. The November meeting also consisted of a review of each hearing issue presented by the Executive Team to the Board. In that session, more than 130 questions were compiled which the Executive Team committed to answering through continued examination of the record.

At the December 15-16, 2011 meeting, the Executive Team provided answers to the 130+ questions to assist the Board in their deliberations on the project. Additionally, specific areas of interest to the Board, including the proposed PILOT, alternative design, the wildlife survey and habitat, Cranberry Pond and the use of the ski area were addressed by the Board. Also at the December meeting, she noted that through the Executive Team's extensive review of the record and preparation for the two meetings, it was the Executive Team's recommendation that there was sufficient information in the record for the Board to continue to deliberate upon the project, as well as adequate information in the record for the Board to reach an approval determination consistent with the project hearing staff draft findings and conditions.

The majority of the December meeting agenda was involved in presentation of the project hearing findings and conditions. The PowerPoint presentations included a reformatting of the findings and conditions from what the project hearing staff had presented. In discussing Compliance Issue #10, it was noted the determination option for an order on conditions was first introduced by project hearing staff in pre-filed testimony. Associate Counsel Sarah Reynolds spoke to this in December, and

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will do so again this month. The order on conditions precedent is the tool used by the Agency for many large-scale project approvals. It is background to the draft order and the 14 draft permits that are presently before the Board.

At the December meeting, the Executive Team also discussed project compliance in relation to project phasing, protections to local government and project management, as well as project implementation and what has been learned from implementation of other projects.

Ms. Martino advised that these highlights of the November and December meetings provide a perspective of the work that will be done by the Board over the next few days. The completion and distribution of the record to the Board in October created an important transition within the Agency to the responsibilities of the Executive Team and the work it has done in preparing for the three-meeting cycle. The Executive Team will continue to be available for aid and advice to the Board during its discussion of the record and draft approval determinations. Under the State Administrative Procedure Act, the work of the Executive Team remains separate from the work of the Project Hearing Team.

Ms. Martino then referred to the draft decision documents, noting the order on conditions that was discussed in December is presented to the Agency in a draft final determination with 14 permits. The documents were assembled using the revised project hearing staff draft order and conditions, taking into account issues and comments from the past two months of deliberations. The Executive Team presents the new draft order and permits with the recommendation that based on the conditions in the permits the entire project can satisfy the criteria for Agency approval. In reviewing the proposed draft order and permits, she noted that each numbered paragraph continues to carry the number used in the project hearing staff draft of October 24 wherever language is identical or similar in content. Due to the major reorganization of the material, it was not possible to provide meaningful "tracked changes."

She noted that the general substance of the new order is the same as the project hearing order. New paragraph additions are marked with "xxx" and lists of paragraph deletions for both the finding and conditions have been provided. The Executive Team acknowledges that during this meeting, the Board will be deliberating on a decision document. Conditions have been taken from the October 2011 project hearing draft order and applied to the individual project sites as appropriate.

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Ms. Martino advised that Associate Counsel Sarah Reynolds would discuss the permit structure and project management, as well as provide an overview of draft flow charts showing how permits would be administered. Ms. Reynolds will also review again the decision criteria from the statute and regulations.

She expressed her appreciation to the Wild Center in Tupper Lake for providing an alternative location for a live webcast of the meeting, and to DEC in Ray Brook for providing their conference room for a live webcast.

Ms. Martino then commented on the Agency's return to a routine meeting schedule beginning in February. She noted that work is underway to review the program highlights of calendar year 2011, with a full Annual Report release planned for March. Staff will discuss the Agency's permit work, responses to jurisdictional inquiries, and the organizational work achieved through the Action, Coordination and Efficiency work, known as ACE, through the JIF, Regulatory and Enforcement programs. Ongoing work is taking place throughout the Agency in all divisions, and staff look forward to scheduled events such as Local Government Day scheduled for March 20-21 in Lake Placid.

### **7. Adirondack Wild Motion**

Counsel referred to the motion by Adirondack Wild, dated December 31, 2011, to reopen the adjudicatory hearing in the matter of the application to construct the Adirondack Club and Resort by Preserve Associates, the applicant. With the certification of the record by ALJ O'Connell, this is now a matter for the Agency pursuant to 9 NYCRR 580.14(c).

He reported that the motion was transmitted by the Agency to all parties as required by SAPA, requesting reply by close of business January 6, 2012. The motion was transmitted electronically and electronic service of reply was accepted. The Agency received timely replies from Adirondack Park Agency; Kevin Jones; John Caffry for Protect!, BG Read of Birchery Camp; Kirk Gagnier for the Town of Tupper Lake; Dan McClelland; Don Dew, Jr.; Fred Schuller; Carol Richer; Phyllis Thompson; Douglas R. Wright for the Tupper Lake Chamber of Commerce; Kyle Ackerman; Curtis Read; and Thomas Ulasewicz, attorney for the Project Sponsor.

The substance of the issues presented in the motion by Adirondack Wild is already on the table as part of the adjudicatory record presented to the Agency Board for final deliberation. The Agency Board has deliberated on this matter at its regular meetings in November and December.

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Pursuant to the authority of the Agency's Delegation Resolution, in a ruling dated January 17, 2012, Chairwoman Ulrich denied the motion of Adirondack Wild.

The appropriate documentation of the motion and response as well as the determination has been shared with the Agency Board. To ensure against any injection of bias to the Agency Board deliberations, this is not an item for further deliberation by the Board. The determination is a public document and available from the Agency's Public Information Officer.

**8. Agency Deliberation of Adirondack Club & Resort P2005-100**

The webcast is the record of this deliberation:

[http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

The PowerPoint presentations used during the deliberation are grouped as Attachment 1.

Following deliberations, the Agency adjourned at 5:45 p.m.

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**THURSDAY, JANUARY 19, 2012**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Leilani Crafts Ulrich, Chairwoman  
Richard Booth, Member  
Sherman Craig, Member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
F. William Valentino, Member  
Cecil Wray, Member  
Judy Drabicki, Designee, NYS Department of Environmental Conservation  
Jen McCormick, Designee, NYS Department of Economic Development  
Dierdre Scozzafava, Designee, NYS Department of State  
Terry Martino, Executive Director  
John Banta, Counsel

**LOCAL GOVERNMENT REVIEW BOARD PRESENT**

Fred Monroe, Executive Director

**AGENCY STAFF PRESENT**

Richard Weber, Deputy Director, Regulatory Programs  
Greg Bendell, Environmental Engineer  
Daniel Kelleher, Special Assistant for Economic Affairs  
Matt Kendall, Associate Natural Resources Planner  
Edward Snizek, Associate Project Analyst (Fresh Water Resources)  
Sarah Reynolds, Associate Counsel  
Keith McKeever, Public Information Director

Chairwoman Ulrich called the meeting to order at 9:10 a.m. She stated she was pleased to announce the Senate's confirmation on Wednesday, January 18, of commissioner Sherman Craig.

**1. Agency Deliberation of Adirondack Club & Resort P2005-100**

The webcast is the record of this deliberation:

[http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

The PowerPoint presentations used during the deliberation are grouped as Attachment 1.

Following deliberations, the Agency adjourned at 4:10 p.m.

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**FRIDAY, JANUARY 20, 2012**

**AGENCY MEMBERS, DESIGNEES AND EXECUTIVE STAFF PRESENT**

Leilani Crafts Ulrich, Chairwoman  
Richard Booth, Member  
Sherman Craig, member  
Arthur Lussi, Member  
Frank Mezzano, Member  
William Thomas, Member  
F. William Valentino, Member  
Cecil Wray, Member  
Judy Drabicki, Designee, NYS Department of Environmental Conservation  
Jen McCormick, Designee, NYS Department of Economic Development  
Dierdre Scozzafava, Designee, NYS Department of State  
Terry Martino, Executive Director  
John Banta, Counsel

**LOCAL GOVERNMENT REVIEW BOARD PRESENT**

Gerald Delaney, Chairman, Adirondack Park Local Government Review Board

**AGENCY STAFF PRESENT**

Richard Weber, Deputy Director, Regulatory Programs  
Greg Bendell, Environmental Engineer  
Daniel Kelleher, Special Assistant for Economic Affairs  
Matt Kendall, Associate Natural Resources Planner  
Edward Snizek, Associate Project Analyst (Fresh Water Resources)  
Keith McKeever, Public Information Director

Chairwoman Ulrich called the meeting to order at 9:40 a.m.

**1. Continued Agency Deliberation of Adirondack Club & Resort P2005-100**

The webcast is the record of this deliberation: ([http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)). The PowerPoint presentations used during the deliberation are grouped as Attachment 1.

Following deliberations, the Agency temporarily adjourned at 10:35 a.m., and reconvened at 10:50 a.m. to take final action on the project.

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**2. 2005-100, Preserve Associates LLC**

Agency Member Mezzano moved that the Agency approve APA Order 2005-100 and the 14 permits authorized thereunder, and further to delegate to the Chairwoman and Executive Director the authority to make non-material changes to ensure consistent language throughout and/or any other correction prior to issuance of the order and authorized permits.

Agency Member Thomas seconded the motion.

Chairwoman Ulrich requested a roll call vote in recognition of the substantial size of the project and review process, adjudicatory hearing, and time involved.

At the Chairwoman's request, Executive Director Martino called the roll, calling first on Member Richard Booth. Mr. Booth cast his vote against approval. He said he did so with a good deal of reluctance and with recognition of Tupper Lake's great need of a significant economic boost and a strong sense of how much Tupper Lake wants this project to succeed. Mr. Booth noted three reasons for his vote against project approval, in increasing order of significance:

- (1) The project sponsor failed to provide any realistic estimate of project sales in terms of prices and rapidity with which the sites will be sold. They do not seem to be realistic and the information provided is not grounded on any specific information that relates to sales in Franklin County. Mr. Booth pointed out that it is not the Agency's job to determine if a project will be successful economically; however, the socio-economic benefits are critical to determining undue adverse impact. He said he believed there is sufficient information in the record to satisfy the statute's requirement that there not be undue adverse impact on the ability of government to provide necessary services. However, he said the estimate of other benefits that would be derived from the project is unrealistic and therefore very difficult to count as offsetting environmental impact. A project of this size, even if well done, will have significant environmental impact, he said. The statute requires the Agency to consider economic benefits in determining how much environmental impact is acceptable. The uncertainty surrounding the project sponsor estimates in terms of volume, rate of sales and price numbers suggests the Agency should largely discount the claims of economic benefits beyond satisfying the minimal tax requirements for the various jurisdictions.

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- (2) The project sponsor did not do any wildlife assessment that is remotely comparable to what would be expected for a project of this size. Mr. Booth suggested environmental impact statements are done throughout the state for considerably smaller projects with significantly more effort given to inventorying and assessing project impacts on wildlife. He said the wildlife inventory is important in terms of designing the project and then assessing the impacts of the designed project on the environment. He noted that persons with limited or no access to the project site provided far more information about wildlife than the project sponsor, and that their information indicated much more substantial and varied wildlife resources on the project site than the project sponsor indicated.
  
- (3) Most importantly, the project is not consistent with the purposes of Resource Management. The project sponsor has created essentially residential development connected to a recreational development, and has chosen to spread much of this residential development across thousands of acres of Resource management. The statute was designed to recognize there will and should be development in Resource Management areas, but it should be consistent with maintaining the integrity of the basic resource areas. Mr. Booth said in his opinion this project does not do that. Instead it spreads dozens of lots across hundreds upon hundreds of acres, miles of roads and utilities, in a way that is unnecessary and unacceptable. He said the approval of the project would send a very negative message about use of large Resource Management areas in the Park. He added that the Agency has approved many small projects by small landowners where 25-30-40 acre lots in Resource Management areas are divided into 2-4 lots, which is appropriate. However, this particular project is a large-scale project where the project sponsor has many more alternatives available than the vast number of project sponsors who have come to the Agency in the last few decades.

Mr. Booth also said that he does not agree with all of the arguments from those who oppose the project. He expressed disagreement, for example, with the argument that the project would result in undue adverse visual impact. Also, he disagreed with the argument that overall intensity guidelines could not be transferred across Read Road. The fact that intensity guidelines can be moved across the road makes them a valuable tool in planning for the resources of the Park, he said. He further stated that the draft order before the Agency is correct in that regard, and suggested that if the opponents' argument on

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that point were to be upheld, the statute would be far weaker than it is.

He said that his negative vote was based on the three flaws described in his comments which led him to conclude that the project is not consistent with the land use and development plan and that there is undue adverse impact.

Ms. Martino called upon Member Sherman Craig. Mr. Craig stated that because the project design as currently conditioned rises to the level of the ability for the Agency to permit, his vote would be yes. He said that although the process has been long and difficult, and a source of frustration to varying degrees, nevertheless he believed it worked. He credited the Agency staff, project sponsor, and hearing parties for their contributions and making this a better proposal. Assuming the project is approved, Mr. Craig wished the project sponsor success, and noted they have an opportunity to move forward and make a better future for Tupper Lake. Mr. Craig also extended a welcome to future seasonal and permanent residents to the Park.

Ms. Martino then called upon Commissioner of Environmental Conservation Designee Judy Drabicki. Ms. Drabicki expressed her belief that the application has been studied and analyzed and assessed, and that the multiple parties involved in the project have proven to be very beneficial to developing a full record. She thanked everyone involved for their hard work, and her appreciation for the opportunity to work with Agency Board members, who have shown incredible commitment to ensuring the best possible process with the best possible outcome. Ms. Drabicki stated her belief that in the end the permits as proposed and finalized will in fact protect the natural resources and are consistent with the APA Act. On behalf of Commissioner Martens, she voted yes on the motion to approve. She referred to the wetland mitigation requirement, deed restrictions protecting approximately 4,600 acres of open space, and the amphibian biological survey required prior to commencement of any work in that area of the project site. She also noted the independent environmental monitors who will be an important part of the project and will provide the opportunity to provide coordination between the agencies and ensure permit compliance. Ms. Drabicki stated that DEC looks forward to working with the applicant in DEC's permitting process which will entail a full and complete review of the required permits. She commended the Agency's permit format of 14 individual permits for providing a manageable process for the project. She noted that no one permit on its own is bulletproof, and that the will of the project manager and coordination among agencies are critical components to the success of the project. Ms. Drabicki

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expressed her approval of the format for the order and set of permits as demonstrated by her vote in favor of the motion.

Ms. Martino called upon Member Arthur Lussi. Mr. Lussi stated that for many it would seem that as the Economic Committee chair his vote would be easy because the project represents economic development in the Park. However, he noted the difficulty for him in reaching a decision. He recalled friendships that had developed between him and people from Tupper Lake since the early 1970's through ski racing, and the hardship of having to take a side on an incredibly important issue for the Park. Mr. Lussi said that he saw the development as an opportunity for the area. Having voted in favor of an adjudicatory hearing on the project, he appreciated what he learned from that process. He noted in particular the substantial information provided by the environmental groups that were involved, information that led to a more informed decision by the Board and which contributed to his appreciation for the sensitive environmental impacts created by development. Mr. Lussi noted the project sponsor's receptivity to some of the most sensitive issues, such as the withdrawal of the proposal for an Orvis shooting school and removal of a number of upland development proposals. The proposal currently before the Agency is thoughtfully designed, and resembles a mini-community with the majority of development focused around the ski area. He referred to the Great Camp proposals, which some people have referred to as sprawl, as opportunities for a select number of people to enjoy and appreciate the Park. The development plan enables people from varying income levels to become investors in the Park. Mr. Lussi expressed his disappointment with the gargantuan sales estimates which lacked substantiation. He noted that the opponents of the project did a better job by providing information on successful and unsuccessful resorts in the Northeast. He also advised future applicants that the Agency would be seeking better information in this regard. Mr. Lussi noted a major turning point for him was the description of the Cranberry Pond area as a boreal habitat and the difficult decision of a respected analyst of environmental impacts as to whether it would be better to intensify development around the pond and eliminate great camps for the better good of the environment. Mr. Lussi concluded that the plan provides an opportunity for thoughtful development in the Park and for that reason he would support it with a vote of yes.

Ms. Martino called upon Commissioner of Economic Development Designee Jen McCormick. Ms. McCormick voted yes. She stated her belief that the project would provide tremendous economic benefits for the region. With regard to the issue of undue

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adverse impacts, Ms. McCormick referred to the meaning of "undue" as "excessive" or "unjustifiable," which she did not see evident anywhere in the project. She acknowledged the adverse impacts associated with the proposal as well as the possibility of adverse impacts that are not yet evident. However, the creation of jobs and the effect that the project will have on the Tupper Lake community, in the North Country and in the Adirondacks is fantastic. Ms. McCormick added that the past seven years has resulted in a product before the Agency that not only balances economic and environmental considerations, but also plays one off the other and maximizes both, taking an existing ski resort and making it even better. Approximately three-quarters of 6,200 acres are now protected where they were not before this. There are 4,600 acres of open space that did not exist before now. Those are environmental benefits of the project that are immediate. The project represents the essence of what Governor Cuomo is talking about in his economic agenda for the state. It is a public-private partnership in that the public, in terms of government agencies, are helping private investors and private funding to invest and strengthen the economy. Regarding process, Ms. McCormick commended the contributions made by everyone involved in the project and hearing.

Ms. Martino called upon Member Frank Mezzano. Mr. Mezzano said he would not repeat what had already been said because he agreed with much of it, including Mr. Booth's concerns with regard to sales projections, the wildlife and biological survey. At the same time, he called attention to offsets to those concerns, such as the dedication of most of the property, especially on the Great Camp Lots, to open space, and limiting building to the building envelope. Mr. Mezzano said there were many considerations in this project. The project does not rise to the level of undue adverse impact. He admitted there are portions of the project that he agrees with, and some that he does not agree with. However, considering the proximity of the project site to the village and the ski center, and the fact that it has been heavily logged for decades, Mr. Mezzano said he could think of no better use for the property than a good and orderly development consistent with the proposed order and permits. He voted yes on the motion to approve.

Ms. Martino called upon Secretary of State Designee Dierdre Scozzafava. Ms. Scozzafava voted yes on the motion on the floor. She said that regardless of one's stance on the project, she was confident that everyone could agree on their love for this area, for the Park, for the North Country, for the natural resources that have been protected here for years and years, and

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for the people of this area who live, work and play in this region. She said that while opinions differ as to the outcome of the decision, and regardless of which side people are on, what is important in the outcome of this decision is the process that was followed. Ms. Scozzafava expressed her appreciation for the input and for all of the information that was gathered as well as for the opportunity for the Board to review all of it. She said she felt the public process was followed and there was ample opportunity for people to have their voices heard, which strengthened both the order and the permits that are before the Agency today. She noted one of the difficulties with the project was the time that had elapsed during the course of review, and the economic climate was much different in 2004, 2008 and 2012, and will be different in the years to come as various segments of the project are undertaken. The economic climate will be different, with different variables in place that might provide more opportunities or more risk. An economic analysis for this type of project is very difficult, she said. However, the one constant is the need for balanced development in the Park, and approval of this project is a reasonable conclusion to this process. It provides reasonable protections for the environment and opportunity for reasonable development of a part of the Park that is in need of such development.

Ms. Martino called upon Member William Thomas. Mr. Thomas voted yes on the motion. He noted the importance of the input from the Agency's economic specialist in helping with his decision on the overall project, and he also thanked the Agency staff for all of their work on the project. Mr. Thomas pointed out that the project would not be approvable without the conditions. He noted the substantial adjustments that have been made to the project and the permit documents. He also referred to the tour of the project site and its importance in helping in the review and consideration of the project. Mr. Thomas said that as a former local government official he looked for ways for the project to be acceptable, but also saw a lot of negative. He noted his agreement with many of Mr. Booth's comments. In the end, he said, the project protects large areas with the Great Camp Lots. He acknowledged a concern regarding the invasive issue, but felt the conditions addressed that. The overriding factor is the opportunity for economic development in Tupper Lake, which is badly needed in that community as well as other communities in the Adirondack Park.

Ms. Martino called upon Member William Valentino. Mr. Valentino referred to criticisms of the long and arduous process. He acknowledged his own concerns regarding aspects of the process, but his overall feeling that the Agency performed due diligence

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and the public was served. He expressed his hope that the next large-scale project finds new and better ways to incorporate current research and best practices along the way. He emphasized that his criticism of process was not directed at the staff who worked on the project or at the Judge. He noted that in the beginning there were three areas sufficient enough for him to vote against the project: finance, sewer/stormwater, and wildlife. Over time, however, his additional review, presentations from the record, and the proposed conditions provided sufficient reassurance for him. Mr. Valentino referred to several visits to the site, and walking the terrain with his topo map until he understood it. Comparing the existing roads, houses and logging trails compared to the wild lands, he stated his belief that the project would not result in the desecration of a pristine place, and despite his concerns regarding the process and the application, he believed the project is within existing regulations and meets the minimum standards of land use and development plan intensity guidelines and falls within the law. Also, while he saw significant environmental impact, it does not cross the undue adverse impact threshold. Mr. Valentino voted to approve the project.

Ms. Martino called upon Member Cecil Wray. Mr. Wray stated he was satisfied with the language of the decision documents. At the same time, he said he was sympathetic to Mr. Booth's concerns. He expressed his own concerns in terms of the required findings for project approval as set out in Section 809 of the Act, namely, whether the project is compatible with the purposes, policies and objectives of the Resource Management land use area, and that there is no undue adverse impact. Mr. Wray concluded that while there is an adverse impact from the project, it is not undue and therefore can be justified as being within the purposes and objectives of the Resource Management land use area. Mr. Wray voted yes on the motion to approve.

Ms. Martino then called upon Chairwoman Leilani Ulrich. The Chairwoman referred to the transition from the Revised Draft Hearing Order into 14 individual permits and an order. She described it as a very thoughtful and methodical transition from the hearing, moving into enforceable decision documents while at the same time staying within the rules of ex parte. She thanked the Executive Director and Counsel for their leadership throughout this process. The Chairwoman said she believed that the project site is the correct and unique location for this project, and that she has been reassured and persuaded by the record as well as the presentations by the Executive Team addressing the various areas of concern. She said the message that the Agency will be putting out with this decision is not

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only a message to those who may wish to have year-round or seasonal homes or businesses in the Tupper Lake area and within the Adirondacks, but also to the children and grandchildren of the Park, that there can be civil debate and respect for differences of opinion that contribute toward a better outcome. She voiced her own respect for all that the parties have done to illuminate these issues over the past several years, and called on them to turn to the next phase as the project moves forward with greater protections on the land than would have been had the land been developed one lot or house at a time. She concluded that this thoughtfully designed and carefully regulated project is for the good of the Park, and is a wonderful example for the rest of the state and the world in terms of resource protection with development. The onus is now on the other agency reviews and the applicant to prove this right. She added that she was honored to be a member of the board at this moment in the history of the Agency. The Chairwoman voted yes on the motion.

Ms. Martino then reviewed the vote on the motion for approval of APA Order 2005-100 and the 14 permits authorized therein, with further delegation of authority to the Chairwoman and Executive Director to make nonmaterial changes to ensure consistent language throughout and/or any other correction prior to issuance of the order and authorized permits. The motion passed by a vote of 10 to 1 (Chairwoman Ulrich, Members Craig, Lussi, Mezzano, Thomas, Valentino, Wray, and Designees Drabicki, McCormick and Scozzafava voting in favor; Member Booth voting against).

A copy of the order and permits, as approved by the Agency and as further revised with nonmaterial changes and corrections, is attached to the official minutes.

### **3. Committee Reports**

#### **a. Regulatory Programs Committee**

##### **(1) 2011-181, The Golfery, LLC and Katrina Lussi Kroes**

(Mr. Lussi was not present for the deliberation and vote on this matter due to his recusal.)

The project involves the construction of a 97-unit hotel, greater than 40 ft. in height in a Hamlet area in the Town of North Elba, Essex County.

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On motion of Chairwoman Ulrich, seconded by Mr. Booth, the Agency unanimously approved the project. A copy of the permit as approved by the Agency is attached to the official copy of the minutes.

### **b. Local Government Services Committee**

Mr. Thomas called attention to Local Government Day 2012 scheduled for March 20-21 in Lake Placid.

### **c. Economic Affairs Committee**

Mr. Lussi commended the Agency's new economic specialist Dan Kelleher for his assistance with the ACR project.

## **4. Public Comment**

Don Dew, Jr., a Tupper Lake businessman; Jim LaValley of ARISE, Tupper Lake; William Farber on behalf of the AATV; Tim Coughlin, formerly of Malone and currently from Atlanta, Georgia; Paul Maroun, Tupper Lake Mayor and Franklin County Legislator, all spoke in support of the ACR project.

Dan Plumley, a partner with Adirondack Wild and resident of Keene, offered his support for the people of Tupper Lake and their opinions for and against the project. He also expressed concerns over process.

The full comments are available in the webcast of this meeting. [http://nysapa.granicus.com/ViewPublisher.php?view\\_id=2](http://nysapa.granicus.com/ViewPublisher.php?view_id=2)

## **5. Local Government Review Board Comment**

Gerald Delaney, Chairman of the Review Board, described the Agency's approval of the ACR project, the largest project reviewed in the Agency's history, as a historic moment. He thanked the Board and staff at the Agency for their work, and expressed hope that the experience gained would help find ways to streamline without losing the integrity of the process. He referred to the permits associated with the project, and noted they provide significant environmental protections at substantial financial cost to the developer. The project represents a good balance that has been needed in the Park since 1973. The Agency's approval of the project is an important moment for the 130,000 residents of the Park, which needs jobs, industry and people to remain what it is.

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### **6. Member Comment**

Mr. Valentino described this as an emotional experience, and he looked forward to next month's meeting.

Ms. McCormick thanked her colleagues on the Board, Agency staff, DEC and others who have worked so hard on the ACR project.

Mr. Thomas noted that planning discussions for Local Government Day, which is scheduled for March 20-21 in Lake Placid, are ongoing, and that he looked forward to resuming dialogue with local government.

Mr. Mezzano thanked Agency staff for their work, and especially the Chairwoman, Executive Director, and Counsel for their leadership throughout this process.

Ms. Drabicki echoed Mr. Mezzano's comment. As a Regional Director within DEC, she commended Agency staff's work on the ACR project as well as the leadership shown throughout the process. She also thanked the people of Tupper Lake for their comments expressing heartfelt interest and desire for the ACR project. She expressed confidence that the environmental and community concerns had been satisfied.

Mr. Lussi expressed his appreciation for Judge O'Connell for a phenomenal job of streamlining the hearing process and maintaining focus on the issues. He said he was excited for the opportunity that Tupper Lake has before it. He thanked the developer for having the staying power to make it through the project review process, and also for having chosen a special place in the Park to invest. He conveyed his best wishes for a successful project.

Mr. Craig added his appreciation for the assistance provided to him by staff, fellow board members, and the Chairwoman. He asked for their continued guidance as he moved forward as a board member.

Mr. Wray reflected on the ACR process, comparing it to making sausage in that everybody likes to eat sausage but does not like to watch it being made. He commended his colleagues on the Board as well as staff, and joined in wishing success to the developer and his colleagues. Finally, he asked fellow board members to join him in a resolution by acclamation expressing appreciation and confidence in Chairwoman Ulrich for the admirable job she had done.

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Mr. Booth added his thanks to the staff for a great effort over a lengthy process. He also commended Ms. Drabicki for being a strong voice for DEC throughout this process. He noted that at the end of the process it is important to note that with the different opinions, civility has always been an important factor at the table. He noted the purpose of the statute in terms of board membership, which is to assemble a board with different views, who then articulate those views and come to a decision. While the permit process has worked, in a larger sense the APA has worked and will continue to work, he said.

Ms. Scozzafava thanked the Executive Director, Counsel and Agency staff for their work and dedication on the ACR project. She noted the approval of the project is only one step in the process, with significant amount of time to be spent going forward and following through on everything outlined in the order. She highlighted the Governor's goal to increase coordination among agencies, which she felt had been demonstrated in this process through the involvement of the State agency designees on the Board. To that end she thanked Ms. Drabicki and Ms. McCormick, and also Mr. Booth, whose input together strengthened the order and permits.

Counsel expressed his appreciation to the Agency staff as a whole for their efforts.

Ms. Martino thanked the Board for the thoroughness of their review of the project, and the Chairman for her leadership. She recalled when the Board approved the Executive Team's proposal for a three-meeting cycle for decision on the project in July 2011. The Team reviewed the massive amount of material and information that needed to be moved forward to the Agency. She thanked the members of the Executive Team - John Banta, Sarah Reynolds, Matt Kendall, Greg Bendell, Ed Snizek, Rick Weber and Dan Kelleher - for their commitment.

She also noted that while the work of the Executive Team could be seen in a public setting, the work of the Project Hearing Team was a much longer process and less visible. She credited the members of the Project Hearing Team - Paul Van Cott, Mitch Goroski, Shaun LaLonde, Colleen Parker and Dan Spada - for their work, and she also recognized the contributions of Mark Sengenberger, George Outcalt, Jr., and Steve Erman, who retired from State service prior to conclusion of the matter.

Additionally, Ms. Martino expressed her appreciation to Keith McKeever, Mary Palmer and Deb Lester for providing important support to the Teams. She noted the project has provided the

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opportunity for the Agency to engage the legal, scientific, economic and regulatory staff, and workload made many demands on staff not involved in this project. She discussed the love of place in the Adirondacks and how it is a motivating factor in the staff work.

Ms. Martino also thanked the Board for their high level of engagement, as well as everyone else involved for all they brought to the process. The combined input on environmental issues, community perspectives, the applicant's perspective, and other important aspects of the project worked together to see the successful and meaningful implementation of the APA Act. She said that with the approval of the project, there is much left to do in terms of its implementation. Additionally, in the coming year the Agency will continue its work to improve and reengineer efficiencies including streamlining small and major projects, engagement with the public, coordination and partnering with State agencies and other stakeholders.

Chairwoman Ulrich took the opportunity to thank the Project Hearing staff with whom ex parte regulations prevented communication throughout the ACR process. She also thanked the Executive Director and Counsel for their leadership, organizational skills and patient communication over the past few months.

The Chairwoman then referred to a comment about choices people had to make throughout this process, and recalled back when her father, who was once a town supervisor, and some close friends from church did not speak for 30 years until family illness led to reconciliation and healing. She also recalled the words of former Agency Chairman Ross Whaley that the people of the Adirondacks would rather fight than win. She expressed her hope that people who are unhappy with the Agency's decision on the ACR project would turn their energies to the healing that needs to take place. She also referred to Tupper Lake Mayor Paul Maroun's words that all eyes are watching us. The work is not done and the challenge goes forward on doing the project right and making it a statewide and worldwide model.

### **7. Adjournment**

The Agency unanimously adjourned at 12:20 p.m.

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LCU:dal

Attachments:

APA Project Findings & Order 2005-100, Preserve Associates,  
LLC

APA Project Permits:

- 2005-100.1, Ski Area and Resort
- 2005-100.2, Marina
- 2005-100.3, Large Eastern Great Camp Lots
- 2005-100.4, Small Eastern Great Camp Lots
- 2005-100.5, Lake Simond View
- 2005-100.6, Sugarloaf North
- 2005-100.7, Cranberry Village
- 2005-100.8, East Village
- 2005-100.9, Tupper Lake View North
- 2005-100.10, Tupper Lake View South
- 2005-100.11, Sugarloaf East
- 2005-100.12, Small Western Great Camp Lots
- 2005-100.13, West Face Expansion
- 2005-100.14, West Slopeside

PowerPoint Presentations

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Leilani Crafts Ulrich, Chairwoman