

Issue #10

“What are the appropriate mechanisms to coordinate and ensure project compliance with application commitments and permit conditions as the project is undertaken over time [§ 809(13)(b)]?”

Issue #10

Statutory background

APA Act § 809(13): The agency shall have specific authority in connection with its project review jurisdiction:

(b) To impose reasonable conditions and requirements to ensure that a project for which a permit is granted by the agency, when undertaken or continued, will be completed in accordance with the terms and conditions of the permit...

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Witnesses:

- Applicant
 - Kevin Franke
 - Pre-file testimony, Attachment D to March 23, 2011 Transcript
 - March 23, 2011 Transcript
- Agency hearing staff
 - Colleen Parker
 - Pre-file testimony, Attachment C to March 23, 2011 Transcript
 - March 23, 2011 Transcript

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Stipulation on Hearing Issue #10

- “The parties and APA hearing staff recognize that appropriate mechanisms will be needed to ensure that the project complies with any approval issued by the Agency Board, and that [it] is important to develop a full record on compliance mechanisms for consideration by the Agency Board.”
- “Those mechanisms include but are not limited to those discussed in the pre-filed testimony submitted by APA hearing staff.”

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Colleen Parker Pre-filed Testimony

- “Agency staff perceive a need for a number of different types of mechanisms to ensure permit compliance” (p.1)
 - (1) the form of any Agency approval
 - (2) coordination with the filing of subdivision plats
 - (3) requiring prior Agency approval of any changes to the project
 - (4) conditions precedent
 - (5) bonding requirements
 - (6) on-site independent monitors
 - (7) reporting requirements
 - (8) coordination with other state agencies and municipal governments
 - (9) compliance inspections by Agency staff

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Colleen Parker Pre-filed Testimony

- (1) the form of any Agency approval (pp. 2-3)
 - Permit
 - Contains Findings of Fact and Conditions
 - Filed in County Clerk's Office
 - Order on Conditions
 - Contains Findings of Fact
 - Authorizes issuance of permit(s) upon compliance with specified conditions
 - "Agency hearing staff believe that this second form of Agency approval is better suited to this proposed large scale project"

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Colleen Parker Pre-filed Testimony

- (2) Coordination with the finalization and filing of subdivision plats approved by the Town of Tupper Lake (pp. 3-5)
 - Subdivision plats
 - Filed in County Clerk's Office
 - Become part of the property's chain-of-title
 - Enforceable by the Town and by landowners
 - Difficult to modify
 - Coordination with Agency permits
 - Ensure certainty about the proposal
 - Reduce number of amendment requests
 - Permit conditions could be included on the plat
 - Permit conditions would be enforceable by Town and other landowners, in addition to the Agency

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Colleen Parker Pre-filed Testimony

- (3) Requiring prior Agency approval of any changes (pp. 5-6)
 - Ensure that Project Sponsor undertakes project as approved
 - Types of possible Agency approvals:
 - New permit for a request for a material change
 - Permit amendment for a request for a non-material change
 - Letter of permit compliance for “very minor changes to the approved project, where there will be no material or substantive impacts from the change”

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Colleen Parker Pre-filed Testimony

- (4) Conditions precedent to undertaking certain aspects of the project (p. 6)
 - Ex: “ensure that a landowner does not purchase a lot before the infrastructure is provided for the lot”
 - “Staff believes that any approval of this project should include such conditions”

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Colleen Parker Pre-filed Testimony

- (5) Bonding requirements for key aspects of the project (pp. 6-7)
 - “The Agency has imposed performance bonding guarantees in permits to ensure necessary infrastructure gets built and does not leave incomplete work that may result in adverse environmental impacts.”
 - “Staff believes that any infrastructure bonding should have the Town and Village of Tupper Lake involved:
 - In determining the infrastructure costs and bonding limits, and
 - As the primary obligee.”

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- (6) Independent environmental monitors (pp. 7-8)
 - “Because of the size and complexity of this project, independent environmental monitors are a necessary and appropriate mechanism to help ensure project compliance during active construction.”
 - Independent environmental monitors are proposed for monitoring of:
 - Construction activities related to the Stormwater Pollution Prevention Plan
 - Infrastructure installation
 - Building construction
 - Other site work

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Colleen Parker Pre-filed Testimony

- (7) Reporting requirements (p. 8)
 - “The Agency often places conditions in permits that require a project sponsor or a certified professional to report or to certify that certain aspects of the project have been undertaken as authorized.”
 - Examples:
 - Reports certifying implementation of a wetland mitigation plan
 - Reports summarizing infrastructure installation

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Colleen Parker Pre-filed Testimony

- (8) Coordination with other state agencies and municipal governments (pp. 8-9)
 - “The proposed project requires permits from other state and federal agencies, including NYSDEC and NYSDOH” for issues such as stormwater control, water supply, and wastewater treatment.
 - The proposed project also requires subdivision and other approvals from the Town and Village of Tupper Lake
 - “If... approval and any filed subdivision plat are tied closely together,” coordination with other agencies and the Town and Village “will be enhanced.”

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- (9) Compliance inspections by Agency staff (p. 1)
 - “The agency may conduct such investigations, examinations, tests and site evaluations as it deems necessary to verify information contained in an application for a development permit, and the project sponsor, or owner of the land upon which the project is proposed, shall grant the agency or its agents permission to enter upon his land for these purposes.”
 - » APA Act § 809(12)

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- Other mechanisms specific to this proposal (pp. 9-10):
 - Project Sponsor proposed to hire a licensed engineer to oversee the installation of utilities by the construction companies
 - Proposed Homeowners Association “compliance officer” would insure compliance with HOA standards and rules
 - Proposed “Property Design, Architectural Guidelines and Maintenance Standards”
 - All construction proposed to be inspected by Independent Home Energy Raters
 - Agreements with the Town and Village
 - Planned Development District approval
 - Subdivision plat approvals
 - Offering Plan approvals
 - Approval of the proposed bond through the Franklin County IDA

Phasing and Infrastructure

Findings

61. The Project Sponsor proposes a four-phased project development schedule but has not committed to this schedule. According to the Project Sponsor, if sales of lots or units lag, or are accelerated, or vary by type from expectations, then the phasing of the project may be modified to reflect the market.
62. The following represents the Project Sponsor's projected development phasing scenario depicted on Drawing PH-1 of Exhibit 83:

Phase 1 Components (years 1-3)

Resort Development:

Year 1

- install electric infrastructure along Ski Tow Road and at the Marina;
- begin to install utilities and roads in Phase I residential areas;
- reconstruct Ski Tow Road;
- rehabilitate the Lift 2 portion of the ski area;
- construct the new potable water storage tank;
- construct Bypass Road;
- construct the Marina;
- construct wetland mitigation areas; and
- construct one Resort maintenance building.

Phasing and Infrastructure

Findings

Phase 1 Components (years 1-3)

Resort Development:

Year 2

- construct the water tank access road and piping;
- improve Lake Simond Road Extension;
- demolish existing Ski Lift 2;
- construct the wastewater treatment plant;
- construct the ski maintenance building and paved parking; and
- construct the terrain park.

Year 3

- make off-site water improvement payment to Village;
- construct wastewater treatment plant;
- construct the permanent base lodge, parking, bridges, driveways, pond and landscaping;
- demolish the existing T-Bar;
- replace Ski Lift 2;
- rehabilitate existing ski trails; and
- begin upgrading snowmaking on mountain.

Residential Development:

- install utilities, roads, driveways, signage, and general landscaping and prepare building sites in Phase I residential areas (years 1-3);
- sell lots to construct 9 detached single family homes in Sugarloaf North adjacent to the golf course (years 1-3);
- sell lots to construct 44 detached single family homes in Lake Simond View (years 1-3);
- sell lots to construct the 16 eastern small Great Camps (years 1-3); and
- sell lots to construct the eight large Great Camps (years 1-3).

Phasing and Infrastructure

Findings

Phase II Components (years 4-8)

Resort Development:

- reconstruct Country Club Road (year 4);
- install utilities along West Access Road and to service Phase II Resort Development Areas;
- rehabilitate the Lift 1 and Lift 3 portions of the ski area;
- rehabilitate existing ski trails (year 4);
- continue upgrading snowmaking on mountain (year 4);
- upgrade Cranberry Pond snowmaking line (year 4);
- construct the Equestrian Center (year 4);
- construct the Lift 1 Warming Hut (year 4);
- construct six of the Art Cabins in the base area (2 each in years 4, 5 & 7);
- construct the Ranger Cabin (year 5);
- construct the Skier Services building (year 5);
- construct Magic Carpet (year 5);
- construct east satellite parking (years 5 & 6);
- construct West Access Road (year 6);
- demolish existing Ski Lift 1 (year 6);
- install ski area lighting (year 6);
- construct the Spa/Clubhouse in the base area (year 6);
- replace Ski Lift 1 (year 7);
- demolish Ski Lift 3 (year 7);
- replace Ski Lift 3 (year 8);
- construct west satellite parking (year 8);
- construct the Gym and Recreation Center (year 8); and
- construct one Resort maintenance building (year 8).

Phasing and Infrastructure Findings

Phase II Components (years 4-8)

Residential Development:

- install utilities, roads, driveways, signage, and general landscaping and prepare building sites in Phase II residential areas (years 4-8);
- construct 109 townhouse units in West Slopeside (years 4-8);
- sell lots to construct 17 single family homes in West Slopeside (years 4-8);
- construct the remaining 18 duplex units in Sugarloaf North (years 4-6);
- construct 32 townhouse units in Sugarloaf East (years 4-7);
- sell lots to construct 18 detached single family homes in Tupper Lake View South (years 6-8); and
- sell lots to construct 9 of the small Great Camps.

Phasing and Infrastructure

Findings

Phase III Components (years 9-12)

Resort Development:

- construct the two remaining Artist Cabins (year 8);
- construct the Cranberry Transport Lift 5 (year 9);
- construct the Ski Learning Center (year 10); and
- construct one Resort maintenance building.

Residential Development:

- install utilities, roads, driveways, signage, and general landscaping and prepare building sites in Phase III residential areas (years 9-12);
- construct the West Face Inn (30 rooms each in years 9 & 10);
- construct the remaining 24 townhouse units of West Slopeside (year 9);
- construct 60 townhouse units of East Village (years 9-12);
- construct 92 townhouse units of Cranberry Village (years 9-12);
- sell lots to construct 25 single family homes in Tupper Lake View North (years 9-11); and
- sell lots and construct the remaining six small, western Great Camps.

Phase IV Components (years 13-15)

Resort Development:

- construct West Face Expansion Ski Lift 4 and trails (year 14);

Phasing and Infrastructure

Findings

Proposed Project - Infrastructure:

39. The proposed water supply and wastewater treatment systems include a mix of municipal and privately-owned facilities as further described below. It is noted that, as a result of the hearing process, the Sewer and Water Concept Plans provided as Drawings S-1 through S-26 of Exhibit 83 do not accurately represent the current proposal. A further description of the current water and sewer proposals is provided below. The entire project is proposed to be served by municipal electric. The road system is proposed to include public roads dedicated to the Town of Tupper Lake and private roads. The Project Sponsor proposes that the infrastructure will be phased into development areas as necessary.

Phasing and Infrastructure

Findings

Roads

52. The Project Sponsor proposes to construct approximately 10.08 miles of new road to be dedicated to the Town of Tupper Lake. The proposed Town roads are depicted on Drawing TR-1 of Exhibit 83. All of the roads proposed to be dedicated to the Town are proposed to be built to Town standards.
53. The Project Sponsor, through the creation of a Master Homeowner's Association, proposes to assess, collect and remit to the Town of Tupper Lake an amount sufficient to cover annual road and stormwater management maintenance costs.
54. The Project Sponsor proposes to construct 5.38 miles of private roads (the Bypass Road and portions of the Lake Simond Road Extension). The private roads are proposed to be constructed by the Project Sponsor and would be privately maintained by the lot owners being served. Details for all proposed public and private roads are depicted on Drawing D-5 of Exhibit 83.

Phasing and Infrastructure

Findings

Electricity

49. Electricity for all residential and amenity development is proposed to be obtained from the Village of Tupper Lake Municipal Electric Department. The proposed Electric Distribution Diagram is depicted on Drawing E-1 of Exhibit 83. The Project Sponsor proposes to install the on-site infrastructure needed to provide electricity to serve the proposed project including the following:

- 2.75 miles of new overhead distribution lines;
- 2.0 miles of three-phase underground distribution;
- approximately 10 miles of single-phase and two-phase underground distribution (mostly to residential housing types);
- the re-build of the 1.3 miles of existing three-phase single circuit overhead distribution line to three-phase double circuit up Ski Tow Road; and
- the rebuild of 1.1 miles of existing single-phase distribution line to three-phase single circuit overhead distribution line.

Phasing and Infrastructure Findings

Electricity

50. The Project Sponsor proposes to install an additional 5 to 6 mile section of single-phase underground distribution to a portion of the Eastern Great Camp Lots.
51. The Village of Tupper Lake Municipal Electric Department would assume ownership, operation and maintenance responsibility of electric distribution facilities upon completion and commissioning. As stated on page 27 of Exhibit 85, the underground distribution for the 5 to 6 mile section for Eastern Great Camp Lots would be constructed to municipal electric standards, but would not be owned and maintained by the Village Municipal Electric Department.

Phasing and Infrastructure Conditions

47. No change in the phasing plan described herein shall occur without a new or amended Agency permit or letter of permit compliance including, but not limited to, any changes to:
- (a) the numbers, locations or sizes of residential lots, structures, or units;
 - (b) the types, locations, sizes, or uses of amenity, commercial, and mixed use buildings or structures;
 - (c) the type, size, or capacity of sewer, water, electric and road infrastructure or the phase in which it is proposed to be built; or
 - (d) the ownership of the project site.

Phasing and Infrastructure Conditions

54. No residential development shall have wastewater treatment or water supply infrastructure except as authorized by the Permit.

Phasing and Infrastructure Conditions

51. No construction associated with any phase or sale of any lot in any phase of the Project shall occur unless and until the final subdivision plat for that portion of the Project has been determined by the Agency to be consistent with the Order and Permit and filed in the Franklin County Clerk's Office.

Phasing and Infrastructure Conditions

52. Unless authorized by a new or amended Agency permit, or letter of compliance, prior to the conveyance of any lot, or residential unit, Responsible Parties, at their expense, shall submit to the Agency for review and written approval documentation from an independent, third-party New York State licensed professional engineer that all road, water, sewer, and electric infrastructure and stormwater management systems for that portion of the project have been completed according to the approved plans.

Alternatively, Responsible Parties must post a performance guarantee in the amount of the total estimated cost for completion of any unfinished roads or other infrastructure for that portion of the project, plus a 20 percent contingency.

Any performance guarantee provided under this option shall specify the Town of Tupper Lake as primary beneficiary or obligee.

Phasing and Infrastructure Conditions

53. Within 60 days of the issuance of a Certificate of Occupancy for any residential structure on the Project site, the Project Sponsor or other Responsible Party who is undertaking residential development authorized by the Permit shall provide the Agency with “as-built” plans for that development showing the location, type and size of all roads, water and sewer infrastructure, electric systems, stormwater management and erosion control practices, grading, structures, free-standing lighting fixtures and parking areas.

The “as-built” plans shall be certified by a New York State licensed professional engineer or architect.

The “as-built” plans shall also show clearing limits around all development areas and final landscaping certified in writing by a NYS registered landscape architect.

Phasing and Infrastructure Conditions

48. The Project Sponsor or other Responsible Party shall be responsible for the development and capital costs of all on-site public infrastructure including but not limited to roads, electric, wastewater and water supply infrastructure. Public wastewater infrastructure shall include the pump station intended to serve the Lake Simond View neighborhood.

Phasing and Infrastructure Conditions

49. The Project Sponsor or other Responsible Party shall be responsible for operation and maintenance costs associated with public infrastructure on the site until such time as such costs are covered by user fees or, in the case of public roads, by payments from the ACR Master Homeowners Association.

Prior to the installation of specific public infrastructure on the project site, cost-sharing agreements consistent with this condition shall be developed with the affected municipality.

The municipality may waive or modify this condition in writing.

Phasing and Infrastructure Conditions

50. The Project Sponsor or other Responsible Party shall be responsible for its proportionate share of the development and capital costs of any off-site public infrastructure made necessary by the project.

In particular, the Project Sponsor or other Responsible Party shall pay all development and capital costs for any upgrades to the Tamarack Booster Pump Station prior to the initial connection to Town of Tupper Lake Water District #3.

The Project Sponsor shall also pay its proportionate share of the development and capital costs related to a new water filtration plant for the Village of Tupper Lake.

Prior to the undertaking of any portion of the project requiring such off-site infrastructure, cost-sharing agreements consistent with this condition shall be developed with the affected municipality.

The municipality may waive or modify this condition in writing.

Independent Environmental Monitors

Independent Environmental Monitors

Findings

Proposed Commitments for Ensuring Project Compliance

95. The Project Sponsor proposes the following commitments for ensuring project compliance:

- A full-time, onsite Certified Professional Erosion Control Specialist would be hired to monitor construction activities and the effective implementation of the Stormwater Pollution Prevention Plans (SWPPPs), including grading plans, erosion control plans, and stormwater management plans.
- Contractor certification of compliance, including contractor and subcontractor signatures, would be a requirement of all SWPPPs.
- An APA-approved Independent Environmental Monitor would be employed through all phases of construction.
- The ACR-HOA would obtain or appoint a “compliance officer” to insure compliance with the Declaration of Covenants, rules of the HOA, and the various government permits.
- All construction would be inspected by Independent Home Energy Raters (HERS Raters) to ensure compliance with permit conditions regarding energy conservation.
- The Project Sponsor would hire a licensed engineer to oversee the construction companies’ installation of utilities and prepare reports, shop drawings and as-builts.

Independent Environmental Monitors Conditions

75. Responsible Parties shall provide independent third-party environmental monitors (“IEMs”) for all phases of active construction of the Project. The IEMs shall directly oversee active construction in these three areas: (a) water, sewer, electric and road infrastructure; (b) site layout, site clearing and grading, stormwater management, erosion and sediment control, and planting; and (c) energy conservation, including building construction and the selection and installation of appliances, heating and ventilating equipment, windows, plumbing fixtures, lighting, ski lifts, snowmaking equipment, and ski hill lighting.

Independent Environmental Monitors Conditions

76. At least 30 days prior to undertaking any land disturbance activities, the Responsible Party undertaking such development shall provide the Agency, for its review and written approval, with the name and qualifications of potential independent third-party IEMs with appropriate education and experience for each of the three above mentioned construction areas. The IEMs shall be New York State licensed design professionals (i.e. licensed professional engineer, licensed architect, licensed land surveyor, registered landscape architect) or other appropriately trained individuals (e.g. Certified Erosion Control Specialist). Agency approval of the prospective IEMs, if given, will be in the form of an Agency letter of permit compliance within 21 days of receipt of the required information for each IEM.

Independent Environmental Monitors Conditions

77. All IEMs shall be fully familiar with the findings and conditions contained in the Order and Permit, other municipal and state approvals and permits, and with all of the approved plans and drawings, specifications, and technical reports. The Agency reserves the right to require an IEM to be immediately terminated and replaced if not performing to the Agency's satisfaction. The Agency reserves the right to shut the Project down until replacement IEMs are hired and on the project site during active construction.

Independent Environmental Monitors Conditions

78. The IEMs shall monitor all aspects of Project infrastructure and active building construction on a daily basis. The IEMs shall contact the Agency within 24 hours of any site, building or environmental related problems or any violations of any Agency permits. Quarterly reports shall be submitted to the Agency which fully document the status of compliance with the project plans and the findings, terms, and conditions herein and shall describe all site and building related problems that have resulted and the date and type of corrective actions taken.

Coordination with Local Approvals

Coordination with Local Approvals

Findings

234. The Village and Town of Tupper Lake Joint Planning Board approved the ACR Planned Development Preliminary Plan for the project on November 17, 2010. The Planning Board has fully engaged the proposed project consistent with its responsibilities and mandate. Additional approvals in the form of approved final subdivision plats must still be reviewed and approved by the Planning Board before development of the project can proceed.
235. The Project Sponsor's plan to phase development of the project indicates that it is likely that approval of multiple plats involving different aspects of the project will be sought from the Planning Board over the projected build-out of the project.

Coordination with Local Approvals

Findings

236. By requiring Agency review of preliminary plats for consistency with the Permit and Order, the Agency can better ensure compliance with the terms and conditions of the Permit, and coordination with the Planning Board's review process. Such review will also help to avoid any inconsistencies between the project as approved by the Agency and the Planning Board.

Coordination with Local Approvals

Conditions

12. No development approved by the Permit may be undertaken until a final plat authorizing such development approved by the Joint Planning Board of the Village and Town of Tupper Lake has been filed in the Franklin County Clerk's Office and satisfactory written proof of such filing has been provided to the Agency.

13. A preliminary plat for any development approved by this Permit shall be submitted to the Agency prior to its consideration by the Joint Planning Board of the Village and Town of Tupper Lake. The Agency shall review the preliminary plat for consistency with the Permit and Order. Within 30 days of receipt of any such preliminary plat, the Deputy Director, Regulatory Programs shall certify in a letter of permit compliance whether or not the preliminary plat is consistent with the Permit and Order, and shall identify any inconsistencies. A copy of such letter shall be copied to the Chairperson of the Village and Town of Tupper Lake Joint Planning Board.

Coordination with Local Approvals Conditions

(Continued)

14. All preliminary and final plats for any development approved by this Permit shall include a note that the development is subject to the terms and conditions of Adirondack Park Agency Permit 2005-100 as filed in the Franklin County Clerk's Office, and shall include the book and page number for such filing. At the request of the Agency, relevant conditions of the Permit shall be added to the final plat. The note, any conditions and their placement on the plats shall be subject to approval by the Agency's Deputy Director, Regulatory Programs, in consultation with the Chairperson of the Village and Town of Tupper Lake Joint Planning Board.

15. All preliminary and final plats for any development approved by the Permit shall, at a minimum, include the baseline resource information showing wetlands and waterbodies on the project site in relation to the development as depicted on the approved plans referenced in the Order.

Agency Review of Future Subdivision and Development

Agency Review of Future Subdivision and Development Conditions

126. Beyond the development authorized by the Permit, no further new land use and development or subdivision shall be undertaken on the Project site without a new or amended permit, or letter of permit compliance.
127. No new land use or development shall be undertaken on the “Lot to be Transferred for Access Purposes” without a new Agency permit.

Implementation

Implementation

- Modified approach for large projects
- Designed to enhance clarity, efficiency, and predictability of permit documents for:
 - Project sponsors
 - Agency
 - Municipalities
 - Prospective investors
 - Prospective buyers
 - Contractors
 - etc...

Phasing

The project shall be undertaken in accordance with the latest approved chart and Phasing Plan included as Attachment ??? to this permit.

Subdivision Plats

Prior to construction on or conveyance of any lot on the project site, the Project Sponsor or its successor shall submit to the Agency a preliminary or proposed final subdivision plat for the associated phase.

Upon receipt of written approval from the Agency that this preliminary or proposed final plat complies with the latest approved phasing chart and plan referenced herein, and prior to construction on or conveyance of any lot depicted on this plat, the Project Sponsor or its successor shall record in the Office of the ??? County Clerk a fully approved final subdivision plat that matches the preliminary or proposed final plat.

Independent Environmental Monitor

The Project Sponsor shall engage an independent environmental monitor during all phases of construction of this project.

The IEM shall be either a licensed professional engineer or licensed architect, except that the IEM who oversees the installation of water, sewer, roads, and utility infrastructure must be a licensed professional engineer.

The IEM shall notify the Agency within 24 hours of any deviation from the approved final plans.

Water Supply

Prior to construction of any structure or conveyance of any lot on the project site, the Project Sponsor or its successor shall submit to the Agency plans for water supply for all structures to be constructed as part of the associated phase.

Upon receipt of written approval from the Agency that these plans comply with the maps and plans referenced herein, and prior to construction of any structure or conveyance of any lot depicted on these plans, the Project Sponsor or its successor shall obtain a Water Supply Permit for these plans issued by the New York State Department of Environmental Conservation (DEC) and the New York State Department of Health (DOH), as necessary.

Wastewater Treatment

Prior to construction of any structure or conveyance of any lot on the project site, the Project Sponsor or its successor shall submit to the Agency conceptual plans depicting the type, location, and method of wastewater treatment for all structures to be constructed as part of the associated phase.

Upon receipt of written approval from the Agency that these conceptual plans comply with the maps and plans referenced herein, and prior to construction of any structure or conveyance of any lot depicted on these plans, the Project Sponsor or its successor shall obtain approval from the DEC, DOH, and Town of ??? for these wastewater treatment plans.

Ground and Surface Water Resources

Prior to construction of any structure or conveyance of any lot on the project site, the Project Sponsor or its successor shall submit to the Agency plans depicting stormwater management for the associated phase.

Upon receipt of written approval from the Agency that these plans comply with the maps and plans referenced herein, and prior to construction of any structure or conveyance of any lot depicted on these plans, the Project Sponsor or its successor shall obtain approval from the DEC and Town of ???, as necessary, for these stormwater management plans.

Infrastructure

Prior to the conveyance of any lot, unit, or structure on the project site, the Project Sponsor or its successor shall submit to the Agency for review and written approval documentation from the Independent Environmental Monitor that all wastewater treatment and water supply infrastructure, stormwater management, roads, electric and cable systems, grading, and landscaping for that phase of the project have been completed according to the approved plans.

Agency Review of Future Subdivision and Development

Any request to amend only the latest approved phasing plan included as Attachment ??? shall be authorized by Agency letter of permit compliance upon completion of the Project Sponsor or its successor of the requirements established in Conditions ??? (Subdivision Plats), ??? (Water Supply), ??? (Wastewater Treatment), and ??? (Ground and Surface Water Resources) above.

Any other land use and development or subdivision on the project site not specifically authorized herein shall require a new or amended permit or letter of permit compliance.

Any Agency permit amendment or letter of compliance shall require the filing of conforming Attachments ??? - ??? to this permit.

Other Approvals

All required federal, state, and local approvals shall be obtained.

Project Site Ownership	
2	Preserve Associates, LLC owns tax map parcel 510-1-80, as described in Deed recorded in Liber 897 at Page 36. Big Tupper, LLC owns Tax parcels: 510-4-1 (445+-acres, which includes the ski area) described in a deed recorded November 4, 2005 in the Franklin County Clerk's Office in Liber 897 of Deeds at Page 35; and 510-1-36.2 (0.1 acres with 15 feet of shoreline on of Tupper Lake) described in Deed recorded in Liber 897 at page 23. Tupper Lake Boat Club, LLC owns tax parcel 500.73-1-1, (the marina site). The remaining project site parcels are owned by Oval Wood Dish Corporation Liquidating Trust ("OWD") as described in a deed recorded in Liber 538 at Page 640 and include Section 501 Block 1 Parcel 8, 10, and 12; and Section 511 Block 5 Parcel 3; and Section 500.80 Block 1 Parcel 2. Preserve Associates LLC entered into an agreement with OWD dated February 16, 2004 to purchase the parcels it owns (approximately 5,800 acres). Exhibit 9.
Fiscal and Economic Impact Analysis	
63	The Project Sponsor submitted a "Fiscal and Economic Impact Analysis" report (F&EIA Report), dated June 2010, which is Exhibit 85. The report addressed, among other topics: existing local and regional economic conditions; proposed project elements; project phasing; the proposed Franklin County Industrial Development Agency ("IDA") bonding for public infrastructure; the proposed payments-in-lieu-of-taxes ("PILOT") arrangement; projected short-term and long-term economic impacts; and the projected fiscal impact of the proposed project on municipal expenses and revenues.
64	Exhibit 85 contained numerous tables showing public infrastructure costs and schedules; proposed residential development by phase; anticipated residential sales; projected resort costs and schedules; projected employment; projected visitor expenditures; projected expenditures by resort owners/users; and potential demand for new business square footage.
65	The tables in Exhibit 85 assume a scenario in which all residential properties (lots, dwellings, great camps, and townhouse units) would be sold and fully developed within each year of each phase as projected. When they are fully developed, these properties could be assessed at the full market value and would generate the maximum amount of local revenues.
66	As the proposed project is marketed as a resort destination, the Project Sponsor maintains it is important that development of the ski area and marina amenities and the public infrastructure occur simultaneously with lot and unit sales. Lot and unit sales will help provide capital for the construction of the project amenities.
67	Delay in residential lot sales or unit sales could affect the pace or occurrence of amenity development, including the ski area.
Public Infrastructure Construction and Maintenance Costs	
68	The capital costs of constructing the public infrastructure (roads, sewer, water and electric) are proposed to be funded by the Project Sponsor through IDA bonds, conventional bank financing, and private capital. The IDA has not authorized issuance of bonds for the proposed project at this time. The Project Sponsor has proposed to pay for all on-site public infrastructure capital costs. Exhibit 85.
69	Maintenance and operational costs of the public sewer, water and electric infrastructure are proposed to be paid by landowners as utility user and connection fees to the municipal entity supplying the service.
70	The Project Sponsor acknowledges that IDA bonds beyond the first phase of the proposed project would only be sought for additional public infrastructure if actual or anticipated lot sales justifies installing such additional infrastructure. Exhibit 85.
Parking	
96	All project-related parking needs for both residential and commercial project components are proposed to be supplied on-site as detailed on the project plans. The general design is proposed to be a shared use of parking lots for the purpose of reducing vegetation removal, grading and site disturbance, and stormwater runoff. Surface lots are proposed to be paved and located in close proximity to the intended land use to be served. Each parking space is proposed to have an area of 162 square feet (9 ft x 18 ft). The proposed storm drainage collection system has been sized and designed to collect runoff from all project parking areas.
97	The residential components, i.e., single and multiple family dwellings, are proposed to have dedicated surface parking adjoining each building or dwelling unit. Parking for multiple family dwellings is proposed to be provided at a ratio of two spaces per dwelling unit.
98	Parking is proposed to be minimized at the base lodge complex and the great majority of parking is proposed to be located in satellite lots. A car drop-off would also be developed, and a shuttle system would be the primary means of transporting skiers from the satellite lots to the base lodge complex. The base lodge would have two close-in parking areas; the main parking west has 47 parking spaces and the main parking east has 75 parking spaces, which also serves the ski services building.
99	The west satellite lot located near the gym and recreation center is proposed to have 195 parking spaces. The east satellite lot is proposed to have 519 car parking spaces and 12 bus parking spaces. Portions of this lot are proposed to be used for boat and trailer storage during alternate seasons.
100	The following structures are proposed to have dedicated parking spaces adjoining the building: 60-room West Face Inn, 73 spaces; spa/clubhouse building, 28 spaces; equestrian center, 12 spaces, and owner's clubhouse, 14 spaces.
101	Trailhead parking areas are proposed to typically have gravel parking areas containing 10-24 parking spaces each.

<i>Vehicular Access and Circulation</i>	
102	Vehicular access to the ski area and those residential portions of the project site west of Read Road is proposed to be directly from NYS Route 30 along existing Country Club Road (and Ski Tow Road) and from the proposed new West Access Road. Vehicular access to residential developments east of Read Road would be off of Lake Simond Road. Internal circulation would be on newly-constructed project site roads constructed to Town standards. Most roads are proposed to follow the routes of old logging roads.
103	Primary signage and entry pillars are proposed to be provided at the West Access Road intersection with NYS Route 30. Secondary signage will identify the various project amenities. Entry pillars will be located at the roadway intersections throughout the project site to identify the various neighborhoods.
<i>Are the proposed great camp lots "substantial acreage...on carefully and well designed sites?"</i>	
126	Great Camp Lots A-H each exceed the average lot size in Resource Management (42.7 acres/principal building) by 2-1/2 to almost 20 times.
127	Great Camp Lots 1-31 are each smaller than the average lot size in Resource Management.
128	The Type II and Type III open space lands shown on Drawing R-1 of Exhibit 83 are adjacent to the small Great Camp Lots and, if those Resource Management lands are permanently protected as open space, contribute to the overall open space on the project site contemplated by Executive Law § 805(3)(g).
129	The Project Sponsor should be required to install the septic lines for Lot 22, 23 and 24, to avoid potential impacts to the Village of Tupper Lake's water supply line.
130	The Project Sponsor should be required to limit the development envelopes, including the area of the on-site wastewater treatment absorption field, to no more than 3 acres for Great Camp lots 21-26, 29-31 and A-H. In addition, the development envelopes for Lots A, 6 and 21 to include a 50-foot stream buffer from the development envelope.
131	Except for Lots E, 20, 23, 26, 29, 30 and 31, the Eastern Great Camp Lots are all on carefully and well-designed sites. If the individual on-site wastewater treatment systems for those lots can comply with NYSDOH and Agency standards, they will also be on carefully and well designed sites. Development on the Eastern Great Camp Lots is proposed within development envelopes that avoid steep slopes, wetlands and other sensitive resources. Visual impacts from proposed development is minimized as discussed in relation to Issue #11 below. Driveways on several of the Eastern Great Camp Lots are longer than preferable, but are considered necessary by the Project Sponsor in order to produce the full value and benefits of the project. With the exception of Lots E, 20, 23, 26, 29, 30 and 31, the Eastern Great Camp Lots all have proposed individual on-site wastewater treatment systems that will comply with NYSDOH and Agency standards. The Project Sponsor's willingness to install sewer lines for Lots 22, 23 and 24 and adjust development envelopes contributes to this finding.
132	The Western Great Camp Lots are on carefully and well- designed sites. Development on the Western Great Camp Lots is proposed within development envelopes that avoid steep slopes, wetlands and other sensitive resources. Visual impacts from proposed development is minimized as discussed in relation to Issue #11 below. The Western Great Camp Lots are proposed to be served by a community wastewater treatment system as site conditions including shallow soils and bedrock severely limit the possibility that these Lots could be served by individual on-site wastewater treatment systems that comply with NYSDOH and Agency standards.

Are there alternatives, and if so, what are the relative impacts on these resources?	
133	The overall design of the proposed project has not changed significantly since conceptual review of the initial design by the Regulatory Programs Committee in 2004. The Project Sponsor has largely retained its preferred design, rejecting alternative development schemes of differing scales or magnitude due to its assessment of financial feasibility and site development constraints.
134	The Project Sponsor has consistently sought Great Camp Lots on Resource Management lands in its 2004, 2005, 2006 and 2010 application submissions, albeit of differing sizes and in differing configurations.
135	The Project Sponsor has worked with Agency staff to make site-specific design changes to the proposed project and has made many changes to mitigate specific impacts of the proposed project.
Issue No. 3: What are the impacts of the upper portions of the West Slopeside and the Westface developments on the existing land topography, vegetation and soils [DC (a)(2),(c)(1), (e)]; will the development as proposed cause excessive stormwater run-off, erosion and slippage in these areas [DC (a)(2)]; what will be the visual impacts during the day and night of these proposed sections [DC (a)(7)]?	
136	The Project Sponsor revised the proposed project to eliminate the East Ridge neighborhood (36 proposed single family dwellings in Resource Management) and the upper portions of the West Slopeside neighborhood (14 proposed single family dwellings in Moderate Intensity and 5 single family dwellings in Resource Management) and the West Face Expansion neighborhood (2 quadplexes in Moderate Intensity).
137	The elimination of residential development from these higher elevations of the proposed project site mitigated or eliminated the impacts requiring adjudication as part of Issue No.3.
138	The Project Sponsor should be required to comply with conditions to help define and/or minimize stormwater runoff, and erosion and slippage impacts on the remaining portions of the West Slopeside and West Face Expansion neighborhoods. Such conditions will minimize impacts to existing topography, vegetation and soils in those areas.
Issue No. 5: [DC (d)(1)] What are the fiscal impacts of the project to the governmental units should any phase or section of the project not be completed as proposed; what is the public vulnerability should the project either fail or not proceed at its projected pace relating to on- and off-site infrastructure for which cost-sharing has been proposed between the developer and local governments (e.g. drinking water plant improvements, road maintenance) or on-site private infrastructure that may be subject to eventual operation by the Town; what is the ability to provide municipal and emergency services to any section in light of the road design or the elevation?	
146	The Project Sponsor has proposed to pay for on-site infrastructure costs and to pace development so that infrastructure is undertaken only as needed to support the proposed development. Conditions that ensure these aspects of the Project Sponsor's proposal will limit fiscal impacts to the Town and Village of Tupper Lake.
147	There are no cost-sharing agreements in place between the Project Sponsor and the Town or Village of Tupper Lake relative to off-site infrastructure or other capital costs necessary for the development. The Project Sponsor should pay its proportionate share of such costs. A condition requiring such cost-sharing agreements, or the waiver of the need for such agreements by the affected municipality, prior to the undertaking of related development is appropriate and will limit fiscal impacts to the Town and Village of Tupper Lake.
148	The Project Sponsor proposes that public infrastructure operation and maintenance costs would be covered by user fees or, with respect to public road maintenance, by the homeowner associations. However, until user or homeowner association fees from the project are to pay those costs, it is appropriate for the Project Sponsor to pay the municipalities the proportionate share of any such costs to save the municipalities from those costs. A condition requiring such cost-sharing agreements, or the waiver of the need for such agreements by the affected municipality, prior to the undertaking of related development is appropriate and will limit fiscal impacts to the Town and Village of Tupper Lake.
149	The Joint Planning Board for the Town and Village of Tupper Lake is aware of these issues and has the authority to impose requirements that it deems necessary to protect the municipalities from fiscal impacts.
150	Municipal and emergency services can be provided throughout the entire project with two possible exceptions: (1) Fire protection for Great Camp Lots that are not served by public water; and (2) Portions of the project site with steep grades that may require specialized equipment for fire protection. This local issue is more appropriately addressed, if necessary, by the Joint Planning Board for the Village and Town of Tupper Lake.

Issue No. 6: Section 805(4) requires the consideration of the burden on and benefits to the public. What are the positive and negative impacts of the project (including fiscal impacts) to the governmental units? What are the impacts of the project on the municipalities' electric system's ability to meet future demand? To what extent will energy conservation mitigate demand impacts? What are the assumptions and guarantees that the Big Tupper ski area can be renovated and retained as a community resource; what are the current and expected market conditions relating to available housing for the project's workforce; what are the impacts of the proposed project on the local housing market?	
<i>Project Benefits to Municipalities</i>	
151	The Project Sponsor did not adequately support its projections concerning the fiscal benefits of the proposed project that might be derived by the Town and Village of Tupper Lake. The projected amount and pace of residential unit sales are overly optimistic, and the financial benefits to the municipalities may not occur to the extent or at the pace projected by the Project Sponsor.
152	The Town of Tupper Lake will receive fiscal benefits from the proposed project as a result of a higher assessed value for the lands comprising the project site. To the extent that the Great Camp Lots and the other residential development is undertaken, those benefits will increase.
<i>Housing</i>	
159	It is difficult to predict whether and at what pace the proposed project will develop, and how that development might affect the housing market and costs in the community. Based on the record, the Village of Tupper Lake's conclusion that the "risk to the Village of a significant detrimental change in its housing characteristics and costs are not high" is the most accurate assessment available at this time. The Joint Planning Board of the Village and Town of Tupper Lake will be best situated to impose any requirements it deems necessary to ensure adequate affordable housing in the community.
Issue No. 10: What are the appropriate mechanisms to coordinate and ensure project compliance with application commitments and permit conditions as the project is undertaken over time? [§809(13)(b)]	
177	The proposed project is large, complex, and is proposed to be built out over a projected fifteen-year period. During that time, it is possible that various aspects of the proposed project may change due to many different factors ranging in significance. There are many potential persons who may be legally responsible for undertaking portions of the proposed project.
178	Because of all of these factors, there is a need for a number of different types of mechanisms to ensure permit compliance including: (1) coordination of any Agency approval with the finalization and filing of any subdivision plats approved by the Town of Tupper Lake; (2) requiring prior Agency approval of any changes in the project by new permit, permit amendment, or letter of compliance; (3) conditions precedent to undertaking certain aspects of the project; (4) bonding requirements for key aspects of the project; (5) on-site independent monitors; (6) reporting requirements; (7) compliance coordination with other State agencies and municipal governments; and (8) compliance inspections by Agency staff.
<i>Project Benefits</i>	
225	The proposed project has the potential to provide public fiscal benefits and private economic benefits to the local communities and to the region.
226	The viability of the proposed project is not guaranteed and the Project Sponsor's projections regarding the pace and price of residential unit sales are not reliable.
227	There is no guarantee that the Project Sponsor will hire local or regional workers for the proposed project, or buy local goods and services for the project, and a condition is appropriate that requires this to occur to the extent possible.
228	Based on the project proposal, the public will benefit from access to the Big Tupper Ski Area as long as it operates, or for 50 years from the date of this Permit and Order, whichever comes first. Continued operation of and public access to the Ski Area is an important benefit of the proposed project from the perspective of the local community.
<i>Nearby Land Uses</i>	
229	Due to the expanse of the project site, adjacent land uses vary widely and include year round and seasonal residences, commercial uses, tourist accommodations, public land uses and open space recreational uses. At full build-out the project could potentially change the character of the community and neighboring land uses. Some argue the changes will be positive in revitalizing the neighboring community and some argue the changes will cause the area to lose its small town atmosphere.
230	Components of the originally proposed project have been modified or eliminated in order minimize some potential visual, and noise impacts to adjacent land uses.

231	The Project Sponsor contacted local service providers including police, hospital, emergency services, utilities, public transportation, public schools and health services to determine what if any actions would be required to serve the proposed development at full build-out. Responses from service providers indicate that while there may be a need to hire additional police and emergency medical technicians as the project builds-out, adequate services can be provided.
Historic Sites or Structures	
232	The OPRHP has stated in a letter dated September 28, 2007 that the project will have no effect upon cultural resources in or eligible for inclusion in the National Register of Historic Places. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing '14.09 of the New York State Historic Preservation Act of 1980.

Project Site Ownership

Preserve Associates, LLC owns tax map parcel 510-1-80, as described in Deed recorded in Liber 897 at Page 36. Big Tupper, LLC owns Tax parcels: 510-4-1 (445±-acres, which includes the ski area) described in a deed recorded November 4, 2005 in the Franklin County Clerk's Office in Liber 897 of Deeds at Page 35; and 510-1-36.2 (0.1 acres with 15 feet of shoreline on of Tupper Lake) described in Deed recorded in Liber 897 at page 23. Tupper Lake Boat Club, LLC owns tax parcel 500.73-1-1, (the marina site). The remaining project site parcels are owned by Oval Wood Dish Corporation Liquidating Trust ("OWD") as described in a deed recorded in Liber 538 at Page 640 and include Section 501 Block 1 Parcel 8, 10, and 12; and Section 511 Block 5 Parcel 3; and Section 500.80 Block 1 Parcel 2. Preserve Associates LLC entered into an agreement with OWD dated February 16, 2004 to purchase the parcels it owns (approximately 5,800 acres). Exhibit 9.

Fiscal and Economic Impact Analysis

The Project Sponsor submitted a "Fiscal and Economic Impact Analysis" report (F&EIA Report), dated June 2010, which is Exhibit 85. The report addressed, among other topics: existing local and regional economic conditions; proposed project elements; project phasing; the proposed Franklin County Industrial Development Agency ("IDA") bonding for public infrastructure; the proposed payments-in-lieu-of-taxes ("PILOT") arrangement; projected short-term and long-term economic impacts; and the projected fiscal impact of the proposed project on municipal expenses and revenues.

Exhibit 85 contained numerous tables showing public infrastructure costs and schedules; proposed residential development by phase; anticipated residential sales; projected resort costs and schedules; projected employment; projected visitor expenditures; projected expenditures by resort owners/users; and potential demand for new business square footage.

The tables in Exhibit 85 assume a scenario in which all residential properties (lots, dwellings, great camps, and townhouse units) would be sold and fully developed within each year of each phase as projected. When they are fully developed, these properties could be assessed at the full market value and would generate the maximum amount of local revenues.

As the proposed project is marketed as a resort destination, the Project Sponsor maintains it is important that development of the ski area and marina amenities and the public infrastructure occur simultaneously with lot and unit sales. Lot and unit sales will help provide capital for the construction of the project amenities.

Delay in residential lot sales or unit sales could affect the pace or occurrence of amenity development, including the ski area.

Public Infrastructure Construction and Maintenance Costs

The capital costs of constructing the public infrastructure (roads, sewer, water and electric) are proposed to be funded by the Project Sponsor through IDA bonds, conventional bank financing, and private capital. The IDA has not authorized issuance of bonds for the proposed project at this time. The Project Sponsor has proposed to pay for all on-site public infrastructure capital costs. Exhibit 85.

Maintenance and operational costs of the public sewer, water and electric infrastructure are proposed to be paid by landowners as utility user and connection fees to the municipal entity supplying the service.

The Project Sponsor acknowledges that IDA bonds beyond the first phase of the proposed project would only be sought for additional public infrastructure if actual or anticipated lot sales justifies installing such additional infrastructure. Exhibit 85.

Parking

All project-related parking needs for both residential and commercial project components are proposed to be supplied on-site as detailed on the project plans. The general design is proposed to be a shared use of parking lots for the purpose of reducing vegetation removal, grading and site disturbance, and stormwater runoff. Surface lots are proposed to be paved and located in close proximity to the intended land use to be served. Each parking space is proposed to have an area of 162 square feet (9 ft x 18 ft). The proposed storm drainage collection system has been sized and designed to collect runoff from all project parking areas.

The residential components, i.e., single and multiple family dwellings, are proposed to have dedicated surface parking adjoining each building or dwelling unit. Parking for multiple family dwellings is proposed to be provided at a ratio of two spaces per dwelling unit.

Parking is proposed to be minimized at the base lodge complex and the great majority of parking is proposed to be located in satellite lots. A car drop-off would also be developed, and a shuttle system would be the primary means of transporting skiers from the satellite lots to the base lodge complex. The base lodge would have two close-in parking areas; the main parking west has 47 parking spaces and the main parking east has 75 parking spaces, which also serves the ski services building.

The west satellite lot located near the gym and recreation center is proposed to have 195 parking spaces. The east satellite lot is proposed to have 519 car parking spaces and 12 bus parking spaces. Portions of this lot are proposed to be used for boat and trailer storage during alternate seasons.

The following structures are proposed to have dedicated parking spaces adjoining the building: 60-room West Face Inn, 73 spaces; spa/clubhouse building, 28 spaces; equestrian center, 12 spaces, and owner's clubhouse, 14 spaces.

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Vehicular access to the ski area and those residential portions of the project site west of Read Road is proposed to be directly from NYS Route 30 along existing Country Club Road (and Ski Tow Road) and from the proposed new West Access Road. Vehicular access to residential developments east of Read Road would be off of Lake Simond Road. Internal circulation would be on newly-constructed project site roads constructed to Town standards. Most roads are proposed to follow the routes of old logging roads.

Primary signage and entry pillars are proposed to be provided at the West Access Road intersection with NYS Route 30. Secondary signage will identify the various project amenities. Entry pillars will be located at the roadway intersections throughout the project site to identify the various neighborhoods.

Are the proposed great camp lots "substantial acreage...on carefully and well designed sites?"

Great Camp Lots A-H each exceed the average lot size in Resource Management (42.7 acres/principal building) by 2-1/2 to almost 20 times.

Great Camp Lots 1-31 are each smaller than the average lot size in Resource Management.

The Type II and Type III open space lands shown on Drawing R-1 of Exhibit 83 are adjacent to the small Great Camp Lots and, if those Resource Management lands are permanently protected as open space, contribute to the overall open space on the project site contemplated by Executive Law § 805(3)(g).

The Project Sponsor should be required to install the septic lines for Lot 22, 23 and 24, to avoid potential impacts to the Village of Tupper Lake's water supply line.

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Are there alternatives, and if so, what are the relative impacts on these resources?
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There are no cost-sharing agreements in place between the Project Sponsor and the Town or Village of Tupper Lake relative to off-site infrastructure or other capital costs necessary for the development. The Project Sponsor should pay its proportionate share of such costs. A condition requiring such cost-sharing agreements, or the waiver of the need for such agreements by the affected municipality, prior to the undertaking of related development is appropriate and will limit fiscal impacts to the Town and Village of Tupper Lake.
The Project Sponsor proposes that public infrastructure operation and maintenance costs would be covered by user fees or, with respect to public road maintenance, by the homeowner associations. However, until user or homeowner association fees from the project are to pay those costs, it is appropriate for the Project Sponsor to pay the municipalities the proportionate share of any such costs to save the municipalities from those costs. A condition requiring such cost-sharing agreements, or the waiver of the need for such agreements by the affected municipality, prior to the undertaking of related development is appropriate and will limit fiscal impacts to the Town and Village of Tupper Lake.
The Joint Planning Board for the Town and Village of Tupper Lake is aware of these issues and has the authority to impose requirements that it deems necessary to protect the municipalities from fiscal impacts.
Municipal and emergency services can be provided throughout the entire project with two possible exceptions: (1) Fire protection for Great Camp Lots that are not served by public water; and (2) Portions of the project site with steep grades that may require specialized equipment for fire protection. This local issue is more appropriately addressed, if necessary, by the Joint Planning Board for the Village and Town of Tupper Lake.

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Project Benefits to Municipalities

The Project Sponsor did not adequately support its projections concerning the fiscal benefits of the proposed project that might be derived by the Town and Village of Tupper Lake. The projected amount and pace of residential unit sales are overly optimistic, and the financial benefits to the municipalities may not occur to the extent or at the pace projected by the Project Sponsor.

The Town of Tupper Lake will receive fiscal benefits from the proposed project as a result of a higher assessed value for the lands comprising the project site. To the extent that the Great Camp Lots and the other residential development is undertaken, those benefits will increase.

Housing

It is difficult to predict whether and at what pace the proposed project will develop, and how that development might affect the housing market and costs in the community. Based on the record, the Village of Tupper Lake's conclusion that the "risk to the Village of a significant detrimental change in its housing characteristics and costs are not high" is the most accurate assessment available at this time. The Joint Planning Board of the Village and Town of Tupper Lake will be best situated to impose any requirements it deems necessary to ensure adequate affordable housing in the community.

What are the appropriate mechanisms to coordinate and ensure project compliance with application commitments and permit conditions as the project is undertaken over time?

The proposed project is large, complex, and is proposed to be built out over a projected fifteen-year period. During that time, it is possible that various aspects of the proposed project may change due to many different factors ranging in significance. There are many potential persons who may be legally responsible for undertaking portions of the proposed project.

Because of all of these factors, there is a need for a number of different types of mechanisms to ensure permit compliance including: (1) coordination of any Agency approval with the finalization and filing of any subdivision plats approved by the Town of Tupper Lake; (2) requiring prior Agency approval of any changes in the project by new permit, permit amendment, or letter of compliance; (3) conditions precedent to undertaking certain aspects of the project; (4) bonding requirements for key aspects of the project; (5) on-site independent monitors; (6) reporting requirements; (7) compliance coordination with other State agencies and municipal governments; and (8) compliance inspections by Agency staff.

Project Benefits

The proposed project has the potential to provide public fiscal benefits and private economic benefits to the local communities and to the region.

The viability of the proposed project is not guaranteed and the Project Sponsor's projections regarding the pace and price of residential unit sales are not reliable.

There is no guarantee that the Project Sponsor will hire local or regional workers for the proposed project, or buy local goods and services for the project, and a condition is appropriate that requires this to occur to the extent possible.

Based on the project proposal, the public will benefit from access to the Big Tupper Ski Area as long as it operates, or for 50 years from the date of this Permit and Order, whichever comes first. Continued operation of and public access to the Ski Area is an important benefit of the proposed project from the perspective of the local community.

Nearby Land Uses

Due to the expanse of the project site, adjacent land uses vary widely and include year round and seasonal residences, commercial uses, tourist accommodations, public land uses and open space recreational uses. At full build-out the project could potentially change the character of the community and neighboring land uses. Some argue the changes will be positive in revitalizing the neighboring community and some argue the changes will cause the area to lose its small town atmosphere.

Components of the originally proposed project have been modified or eliminated in order minimize some potential visual, and noise impacts to adjacent land uses.

The Project Sponsor contacted local service providers including police, hospital, emergency services, utilities, public transportation, public schools and health services to determine what if any actions would be required to serve the proposed development at full build-out. Responses from service providers indicate that while there may be a need to hire additional police and emergency medical technicians as the project builds-out, adequate services can be provided.

Historic Sites or Structures

The OPRHP has stated in a letter dated September 28, 2007 that the project will have no effect upon cultural resources in or eligible for inclusion in the National Register of Historic Places. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing '14.09 of the New York State Historic Preservation Act of 1980.

Other Conditions in Revised Draft Order

CONCLUSIONS OF LAW	
1	The "Project" as approved shall be defined and undertaken as described APA Project Findings and Order 2005-100 (the "Order"), the official record for APA Project 2005-100, and the conditions of the permit for APA Project 2005-100 (the "Permit"). Within 90 days of the issuance of the Permit, the Project Sponsor shall submit to the Agency a full set of plans updating the June 2010 submission (Exhibit 83) to address the findings and conditions herein which shall be incorporated into this Order as the "approved plans" and shall be enforceable under the Permit. The terms and conditions of the Permit are binding on all Responsible Parties as defined herein who are or may be legally responsible for undertaking all or a portion of the Project.
2	"Responsible Party" or "Responsible Parties" shall include the Project Sponsor (as that term is defined in Executive Law § 802(53), any Permit Holder (defined in 9 NYCRR § 581-1.2(i) to include any person that has been issued an Agency permit or any person that has assumed the benefits and obligations of an Agency permit pursuant to law, regulation, permit condition or property ownership), their heirs, successors and assigns, any lessees, or other person with any legal interest in the Project site or any portion of the Project, and any agents, contractors or other persons undertaking any portion of the Project on their behalf.
3	"Person" shall have the meaning defined in Executive Law § 802(47).
4	"Project Sponsor" is Preserve Associates, LLC.
5	Failure by a Responsible Party to comply with any terms or condition of the Permit shall be a continuing violation and may subject the Responsible Party or Responsible Parties to civil penalties and other legal proceedings, including modification, suspension or revocation of the Permit pursuant to 9 NYCRR Part 581.
6	Prior to the undertaking of any land or vegetative disturbance or construction activity on the Project site, Responsible Parties shall provide to all persons undertaking all or a portion of the Project on their behalf copies of the Order and Permit, and copies of each and all of the approved plans that contain on them the portion of the Project site, lot, structure or infrastructure being disturbed, constructed or otherwise undertaken. Prior to sale or lease of any lot or structure on the Project site, the Responsible Parties shall provide to the prospective future owners or lessees of any portion of the Project site copies of the Order and Permit, and copies of each and all of the approved plans referenced in the Order that contain on them the lot or structure being conveyed or leased.
7	All deeds conveying all or a portion of the lands subject to the Order and Permit shall contain the following language: "The lands conveyed are subject to Adirondack Park Agency Permit 2005-100 issued _____, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
8	The Agency will conduct such on-site investigations, examinations, tests and evaluations on the Project site as it deems necessary during the undertaking of the project to ensure compliance with the terms and conditions herein. Such activities shall take place at reasonable times and upon advance notice to Responsible Parties where possible.
9	The Project Sponsor shall provide the Agency with at least 72 hours written notice prior to the initial commencement of land-clearing or other construction activities on the Project site related to infrastructure or amenity installation. Thereafter, Responsible Parties shall provide the Agency with at least 72 hours written notice prior to undertaking any other land-clearing or construction activities on any individual residential lot or townhouse neighborhood.
10	The Project shall be undertaken in compliance with all other applicable federal, state, county, and local requirements, permits and approvals.

Permit Recording/In Existence

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The Permit shall expire unless it is recorded in the Franklin County Clerk's Office within 60 days of its date of issuance under all of the names listed in the caption of this Order. No portion of the Project may be undertaken unless and until the Permit is properly recorded. Thereafter, the Project shall not be undertaken or continued unless it is in existence within **ten** years from the date the Permit is recorded in the Franklin County Clerk's Office. For purposes of the Permit, the Project shall be in existence when Phase I of the Project as described herein has been completed, **or as hereafter amended**, and a quantitative biological survey and habitat impact analysis has been completed as required by condition 89 below.

If the Project is not in existence within **ten** years of the recording of the Permit, the Permit shall expire with respect to any portion of the Project that has not yet been undertaken. Prior to such date, upon request by the Responsible Parties for the portions of the Project that have not been undertaken, the Agency may renew the Permit pursuant to Executive Law § 809(8)(b) and 9 NYCRR § 572.20(c)(3).

If the Permit expires because it is not in existence, any portion of the Project that has already been undertaken pursuant to the Permit shall continue to be subject to all terms and conditions of the Permit applicable to those activities or uses. Thereafter, no Responsible Party shall undertake any other portion of the Project as approved herein without a new Agency permit.

In the event of litigation challenging any approval issued for the Project while the litigation is pending, the ten-year period for determining that the Project is "in existence" shall be tolled until such time as a final and binding order determining the litigation has been issued by a court of competent jurisdiction, and all appeals thereon have been resolved, or the time for the filing of such appeals has expired.