

GERALD N. JACOBOWITZ
DAVID B. GUBITS
JOHN H. THOMAS JR.
GERALD A. LENNON
PETER R. ERIKSEN
HOWARD PROTTER
DONALD G. NICHOL
LARRY WOLINSKY
ROBERT E. DINARDO
J. BENJAMIN GAILEY
MARK A. KROHN*
JOHN C. CAPPELLO
GEORGE W. LITHCO
* LL.M. IN TAXATION

JACOBOWITZ AND GUBITS
COUNSELORS AT LAW

158 ORANGE AVENUE
POST OFFICE BOX 367
WALDEN, NEW YORK 12586-0367

(845) 778-2121 (845) 778-5173 FAX

Writer's Email: lw@jacobowitz.com

SANFORD R. ALTMAN
MARK T. STARKMAN
MICHELE L. BABCOCK
GARY M. SCHUSTER
WILLIAM E. DUQUETTE
ALYSE D. TERHUNE
KARA J. CAVALLO
TOBIAS A. LAKE
DAVID M. GANDIN
MICHAEL L. FOX
PATRICK D. DONNELLY
ELIZABETH K. CASSIDY
MARCIA A. JACOBOWITZ
F. BRYAN PAZ
CARMEE G. MURPHY**
**OF COUNSEL

May 10, 2010

Ms. Rebecca Crist
New York State Department of Environmental Conservation
Division of Environmental Permits, Region 3
21 South Putt Corners Road
New Paltz, New York 12561-1620

Re: Hudson River Valley Resort
DEC Tracking#: 3-5146-00063/00007
Our File: 9517-1

Dear Ms. Crist:

This firm has been retained by Hudson River Valley Resorts, LLC to assist it with its State Environmental Quality Review (SEQR) compliance responsibilities in connection with the proposed redevelopment of the Williams Lake Resort in the Town of Rosendale, Ulster County, New York. The purpose of this letter is to request that NYSDEC reconsider the grounds upon which it determined that the submitted Draft Environmental Impact Statement (DEIS) has "major deficiencies" and is incomplete. Those grounds are set forth in the Department's letter dated April 20, 2010 and relate to wildlife survey protocols and karst geology.

1. Protocols:

The required wildlife survey protocols were submitted to the Department on March 11, 2010. In the April 20, 2010 rejection letter it is stated that the protocols have been reviewed and DEC will be responding with comments shortly. No comments have been received and we have been advised that no comments will be received until a broader statewide effort at developing an "assumed presence" policy is completed. It is respectfully submitted that awaiting the outcome of this broader statewide effort is not a valid basis upon which to declare the DEIS incomplete. The effect of that is to hold the DEIS hostage to an indeterminate time frame. Instead, the approach should be to evaluate the submitted protocols under current guidelines and, assuming the submitted protocols meet those guidelines, allow the process to proceed. If a new "assumed presence" policy is subsequently (and presumably timely) developed, we can collectively look at it to determine whether it is at such variance with the original analysis that further investigation is warranted. If so, that investigation can occur during the development of the FEIS. Indeed, the regulations specifically contemplate revisions and supplements to the DEIS be incorporated in the FEIS. 6 NYCRR 617.9 (b) (8).

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2. Karst Geology:

The second ground upon which the DEIS was determined to be incomplete is that a karst expert has yet to be retained. The demand for a karst expert was not made until December 30, 2009. This requirement, made a full nine months after the final scope was adopted, is contrary to the purpose of scoping which is intended to narrow all relevant issues **before** the issuance of a final scope and preparation of the DEIS (6 NYCRR 617.8 (g)). Further, the April 20, 2010 letter indicates that the expert will be employed to review protocols used by the applicant in its hydro-geological investigations to determine whether impacts have been adequately assessed. Review functions of this nature are more appropriately the subject of comment on the DEIS as distinct from a determination of completion which focuses on whether the DEIS is adequate for purposes of commencing public review. In any event, in situations which arise after the final scope has been issued, the regulations allow the applicant to either include the additional information in the DEIS or to treat it as public comment for response in the FEIS. (6 NYCRR 617.8 (f)) In this case, in order to avoid delay, the applicant opts to have the expert review undertaken as part of the FEIS process although the applicant will proceed to retain the expert now. We are also skeptical of the Department's statement that it cannot determine completeness unless an expert is retained. There is certainly sufficient expertise at the Region and/or State NYSDEC to be able to assess whether the document is adequate to commence public review. But if that is not the case, the Department should have known it and required the expert at the time of the final scope. It did not and the record appears to indicate that the expert was required only after a request was made by the Town of Rosendale.

We also note with some degree of concern that the April 20, 2010 letter advises that submissions should be copied to the Town of Rosendale and other involved agencies. As you are well aware, the SEQRA regulations for good reason do not require DEIS's be circulated to involved agencies in advance of acceptance. It is the lead agency's sole responsibility to determine completeness. Circulating a preliminary DEIS to agencies, in advance, may invite comments on completeness which, in turn, could draw out the process and cause further delay. It would seem to us that the recommendation is contrary to SEQRA's mandate that its procedures be carried out with minimum procedural and administrative delay. Having said that, we recognize the heightened importance of the Town's role in this matter and will continue to copy it with our EIS submissions.

In sum, it is important for you to know that the comments set forth in this letter are not in any way intended to communicate any reticence on the applicant's part to a full and thorough assessment of the environmental impacts of the proposed action. They are solely aimed at the appropriate administration of the process in order to avoid unnecessary delay. Toward that end, we look forward to your response and

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receipt of any other completeness comments you have at this time. We are also available to meet with you if you believe such a meeting would be beneficial to address and resolve these issues.

Very truly yours,

Jacobowitz and Gubits, LLP

By: 
Larry Wolinsky, Esq.

IW/kmk

CC: Willie Janeway, DEC Regional Director
Alexander Ciesluk, DEC Regional Permit Administrator
Hon. Patrick McDonough, Supervisor, Town of Rosendale