STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter

of

the Application for a Project Permit
for the Construction of Certain 90-
and 70-meter ski jump facilities proposed by
the Lake Placid Olympic Organizing
Committee at Intervale (Town of North
Elba) Essex County, New York, to be used
for the 1980 Winter Olympic Games.

EDITED TRANSCRIPT OF PROCEEDINGS in the above-entitled matter at a pre-hearing conference before the Adirondack Park Agency, at the Olympic Arena, Lake Placid, New York, on Monday, November 1st, 1976, commencing at 10:00 A.M.

PRESIDING:

VICTOR JOHN YANNACONE, jr., ESQ.,
Hearing Officer.

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P R O C E E D I N G S

THE HEARING OFFICER: Good morning, ladies and gentlemen.

We are convening a pre-hearing conference on the application for project permit for 90- and 70-meter ski jump facilities in the Town of North Elba, submitted to the Adirondack Park Agency.

My name is Victor John Yannacone, jr. I have been designated by the Adirondack Park Agency to act as the Hearing Officer to preside at the public hearing on the Agency's conceptual review of the 90-meter and 70-meter ski jumps proposed by the Lake Placid Olympic Organizing Committee at Intervale (Town of North Elba), Essex County, for the 1980 Winter Olympic Games.

(Mailgram designation of the Hearing Officer herein was marked for identification as Exhibit Number 1, this date.)

MR. KAFIN: My name is Robert J. Kafin, and I am Special Counsel to the Project Sponsor. The Counsel for Lake Placid 1980 Winter Olympics Inc. is Norman Hess, who is with me today, and for the Town of North Elba Public Parks and Playground District is Roland Urfirer who is also here today.

The Project Sponsors are appearing today by the direction of the Hearing Officer, and this is a meeting or conference which was not initiated by them nor was it asked for. The reason I mention that is that,

as Your Honor knows, since September 1st of this year, adjudicatory proceedings in the State of New York have been proceeding under slightly different ground rules than has been the tradition, and since we now have a state Administrative Procedure Act that . . . makes them more technical, I want to point out that the Project Sponsors are a little reluctant to proceed this morning because of the prohibition in that act against ex parte communications with hearing officers, and I would like if possible for Your Honor or for someone from the Agency staff to set the scene in terms of the statute that we operate under and the rules as to exactly where we are with respect to the project completion, where we are with respect to the notice of hearing and where we are with respect to Your Honor's authority to proceed so that it can not later be said that we had some ex parte meeting and settled issues or narrowed the scope of the proceeding before all of the people who are entitled to participate have had an opportunity to have notice and be here[.] . . .

THE HEARING OFFICER: . . . Mr. Kafin, the only party to this proceeding at this time is the applicant and as far as I'm concerned, the Agency which has appointed me has given me the mandate to hear and determine, making findings of fact, conclusions of law and rendering an opinion on the merits of, the application for the project permit as described in the application that has already

been submitted.

The Agency resolved at a meeting on . . . on Friday, at the Lake George Town Center to accept the application and scheduled a public hearing. Prior to that time, as the Hearing Officer, and cognizant of the Administrative Procedure Act which has become effective September 1st, 1976, and cognizant also of the existence of the Adirondack Park Agency's own enabling legislation and aware of the myriad procedural complexities that involve any consideration of benefit, risk and costs dealing with environmental matters, it is my intention now in that presence of representatives of the Agency staff and in the presence of the applicant who, as far as I am concerned[is the only party]barring applications for intenvention which will be received this morning, . . ., I intend to set certain preliminary rules that will govern the conduct of these hearings.

I also intend to a certain extent to narrow the issues as they may be. In the event there are applications to intervene at any time in the formal hearings, those applications will be considered in accordance with rules we will set forth today that I intend to bind the Agency with, and if there are matters which the Intervenors seek to raise that have not been delineated in the preliminary statement of issues or description of scope of this hearing, they will be considered at that time.

The purpose of these hearings is to per-

mit a full and complete public examination of the application for[a]project permit to construct 90- and 70-meter ski jump facilities to be used for the 1980 Winter Olympic Games.

The nature of our inquiry will be quasi-judicial in that [participants] will be encouraged to be represented by counsel[.] [N]evertheless individual parties in interest who can establish that they are, in fact, parties in interest or parties aggrieved within the meaning of the generally accepted understanding of that term, will be permitted [to appear] without counsel.

Our purpose on behalf of the Agency is to prepare a full and complete record. That record will be considered by myself as the Hearing Officer and eventually reviewed by the Agency. [Thereafter] a decision will be made in accordance with the statute that governs the Agency.

We will, to all extents possible, follow the Administrative Procedure Act as it has been written. However, in the interest of permitting the development of a full record, I will be asking each of the parties and any intervenors to waive, as they occur, technical defects in following the procedures (of that statute] if a waiver will improve the climate for the decision-making effort by the Adirondack Park Agency.

That does not mean that . . . we are going to totally ignore the laws of the State of New York. However, it does mean that we have a matter of enormous

significance to . . . the Agency, the local residents and the United States of America as well as the international winter sports community.

We are not going to permit narrow technicalities or a narrow technical interpretation of the law to prevent a full inquiry into the subject matter and substance of this application. On the other hand, we are not going to permit any of the parties at this time, including the applicant, to be abused or subjected to a more rigorous standard than the law requires that they be subjected to.

To this end, I have convened this meeting by a notice dated October 19th, 1976. That notice has been published in a number of periodicals, the list being attached to the notice[.] . . .

(The notice of meeting with attached list of publications was marked for identification as Exhibit Number 2, this date.)

[T]he Hearing Examiner is prepared on the opening of the formal hearing, to initally entertain motions directed towards disqualification of the Hearing Examiner for whatever reasons . . . might be [presented by the moving party]. I have caused a copy of my biographical or background sheets to be given to the Agency and [made] available for examination by all the parties who might be interested.

Further, the motion to disqualify will be head by me and will be ruled upon by the Agency[.]

Briefly, our policy on behalf of the Agency as to parties is this: There is a party[,] . . . the project applicant. There are, associated with the project applicant, certain project proponents. My understanding is that they have a common interest and may be represented if they wish by common counsel or they may be represented independently.

There is another class of parties and, for the purpose of trying to follow the commonly accepted body of administrative law, since the Administrative Procedure Act in this state has not been judicially considered at great length since it only took effect on September 1st of this year, I'm going to consider parties aggrieved within the classic interpretation of that phrase, to be entitled to be represented here at these hearings and to participate therein.

A party aggrieved is simply any individual -- and that includes a corporation -- who has a direct, immediate and substantial interest in the subject matter of the proceedings in whole or in part. That interest may be evidenced by, in general, residence within the districts concerned immediately with the project, residence within the delimited area of the Adirondack Park or representatives of a group with a substantial interest therein. There are additional individuals who will be permitted on showing cause to intervene.

Now, I am going to recognize for the purpose of these hearings three classes of Intervenors: Intervenors in support of the proposal and the application, Intervenors in opposition to the application and the proposal and Intervenors as their several interests may appear. This last category is recognized in many states as a convenient form for the introduction of testimony and the submission of evidence by parties which do not wish to become associated pro or con with the subject matter of the application, and [it is a procedural device which] can be utilized by any party that has information to present and does not wish to be necessarily considered for or against the application.

. . . [O]n application the intervention any written submission identifying the applicant will be acceptable -- letter, petition, it makes no difference. We are running a relatively informal hearing as far as technical procedures are concerned. The party seeking to intervene shall establish to my satisfaction that they have an interest which should permit intervention. Any of the parties to this proceeding -- proponents, opponents who are, in fact, parties within our previous definition of parties -- may challenge the intervention. Intervention may be permitted on stipulation of all the parties. If it is challenged, all the parties will have an opportunity to explore by way of voir dire the nature of the Intervenor's interest.

We may very well, by the end of this hearing, have a large number of parties and Intervenors. Under no circumstances do I intend to permit repetition of testimony nor retrial of matters where the evidence has already been [presented]. A late Intervenor will be deemed bound to have knowledge of the proceedings which have been conducted prior to the intervention. Minutes of all the proceedings will be made available to all the parties in either of two ways: By examining them at the office of the Agency or by purchasing a copy.

[T]o minimize as much as possible the need to maintain voluminous records and files, I propose to edit the daily transcripts. I intend to leave out [any material] [not] germaine[e] relevan[t], competen[t] and material . . . . In this way, I believe we can produce a tidy, well-edited record which can, stand as a record on appeal in any subsequent proceeding.

Objections to the edited transcript will be entertained from all parties and all Intervenors. They will be resolved on a daily basis, [and at the conclusion of the hearings.] The edited transcript is the transcript that will be reproduced in volume and available to all the parties [upon] pay[ment of] the cost of reproduction. . . .

As far as the testimony is concerned, witnesses will all be sworn. Testimony will be given under oath of [by] affirmation. No party will be

permitted to question a witness that has not been sworn and as much as possible we will endeavor to minimize off-the-record discussions. The only reason I'm insisting that we minimize the off-the-record discussion is that we are taking a verbatim transcript and . . . editing that transcript so that much of the material that would normally be considered off the record can be dropped in the edited version. However, I want to make sure in the event that there are later Intervenors as Mr. Kafin pointed out, that there are no claims that there have been ex parte conferences or discussions, [between the parties and the hearing officer.]

Now as far as our own conduct as attorneys, the Hearing Officer, members of the Adirondack Park Agency and residents of the area is concerned, this is not a jury trial. We are not sequestering anyone or any group. We are all civilized human beings. We engage in civilized intercourse and discussion with each other and we can do that at lunch and in other places. As far as I'm concerned, I have no objections if the substance and subject matter in this hearing is discussed at great length among all the parties on the outside. What goes on in this particular forum, in this particular arena, is on the record. The position of the parties as far as I am concerned until it has been established otherwise, is not adversarial. We are not adversaries.

The Agency as an Agency has no position on the application. The Agency staff has no position as the Agency staff on the application and it was with this understanding that I undertook to conduct these hearings. The Agency is interested in making a record. The applicant is a proponent. Its supporters are proponents. To that extent, they will be deemed advocates of their position. Their positions can be and perhaps ought to be questioned. That doesn't necessarily mean challenged. It does mean questioned.

In order to approve this application, my understanding of the state Administrative Procedure Act and the federal Administrative Procedure Act and the state acts from which portions of [the New York] Act were taken, is that the Agency decision, whatever it may be, must be supported by a fair preponderance of the substantial credible evidence. That's euphemistically described as the "substantial evidence rule," . . . . . . [the Courts intend] . . . . We intend to err, if we err at all, in having too much substantial evidence rather than too little. I do not wish to come back here, and have to start all over again because we did not consider some issue that someone raised on appeal. To this end, every single item which is contained in [the] application [before the Agency] is part of the subject matter of this hearing.

Now, as far as I am concerned, the order and the progress of the hearing will be sub-

ject to a great deal of negotiation. When I say "negotiation," I mean that we are not imposing a rigorous agenda on the proponents nor are we seeking to establish rules that constrain any party in its order of proof. As far as objections to specific items in the application, if any are made, the party making them becomes, of course, an opponent. At that point an adversary relation is established between the proponent and the opponent. At that point my function changes somewhat.

In matters where there are no opponents, I will proceed as an active Hearing Officer and the proceeding will be somewhat inquisitorial in the same sense as an inquest in . . . uncontested litigation . . . in the Supreme Court [of the State of New York] would be.

When there are adversaries, my role changes to that of passive Hearing Officer. I make rulings. I hear objections and the parties conduct the hearing as far as I'm concerned.

Now, the issues presented will involve uncontested matters and contested matters. The resolution of uncontested matters is relatively simple and straightforward. I will conduct an inquiry in the nature of an inquest and resolve them.

If an uncontested matter that has already been resolved later becomes contested for

any reason whatsoever by a party or an Intervenor, we will revert to the procedure for contested matters, but all the material which has been presented in the uncontested procedure will be deemed direct testimony or direct evidence on the subject.

The procedure for contested matters will be this: If they are substantial and the measure of substantial will be time of hearing involved, I will propose to conduct a pre-contest conference at which evidence will be presented and exchanged-- I'm thinking particularly of documents and physical evidence -- marked, and it will be conducted much the same as a federal pre-trail conference, the purpose being to minimize the time and expense of the public hearing with the issues framed and the procedures ironed out and the [exhibits] marked.

Now, I will entertain at any time, as a priority matter, motions or simply applications addressed towards our procedures in the conduct of this hearing, my understanding of the Administrative Procedure Act as it applies to this hearing, and any effort I make to frame issues. I would prefer to have these issues raised as they occur so that they can be disposed of as they occur.

As far as the rules of evidence to be recognized by me, as the Hearing Examiner, are concerned, I intend to adhere to the conventionally accepted rules of evidence except in those cases where they can be waived by stipulation of all the parties in interest or where I

believe the rigorous application of an exclusionary rule would interfere with the accumulation of data which ought to be considered by the Agency. To this end, unless there is objection, I will accept what is conventionally considered hearsay evidence with respect to documents that have been published, particularly scientific articles in recognized journals, and materials that have been prepared by others than the witness offering them. In the event objection is made, voir dire will be held on each of those objections and if it is necessary to produce the best evidence we will produce the best evidence.

I have no objection to requests to take judicial notice of almost anything. If notice can be taken on stipulation of all parties, I will take notice of anything the parties agree I ought to take notice of. If there is objection, I will only take judicial notice of that which a judge in the Supreme Court could take judicial notice of.

As far as the Agency and its staff are concerned, the Agency staff has a role to play in this hearing. The Agency has a role to play in this hearing. My understanding of the Agency role -- [the] understanding on which I accepted this assignment -- [is this:]

The Agency exists as the trustee of the Adirondack Park for the benefit, use and enjoyment of the people not only of this generation but those generations yet unborn.

As that trustee, it has a dual mandate: Protection of the values which justified the establishment

of the Park in the first instance and protection of the social and economic concerns of the residents of the Park. Although in theory, there should be no conflict between these positions, in practice I have come to understand that there has been. As far as this hearing is concerned, there is no such conflict.

The Agency is the trustee and only the trustee of the trust property which is the Park itself, and most important its people, not only of this generation but those generations yet to come.

It is conceded in the application that the impact of the 1980 Olympics on this region will extend beyond the year 1980 and be felt beyond the confines of the Park. Because of this concession, we must, of necessity, consider these long-term impacts. The Agency staff is, in fact, the servant of the people. It exists to assist all of its constituents; that is, all the people who live in the Park. It has an additional duty in this particular proceeding and that is its duty to the people of the rest of the State of New York, the United States of America, and the international winter sports community.

As far as the hearing is concerned, I will see that [the Agency] duty is discharged. Any party or Intervenor seeking to call a member of the Agency staff may do so. Because the staff has substantial duties outside of this particular hearing, they're not going to be on call immediately. On reasonable notice, [the Agency will] produce them.

All the Agency records are public records as far as I understand the Freedom of Information Act. . . .

I will try and have them produced and marked and if possible reproduced so we can have enough copies to go around. This does not mean that the Agency staff is going to serve as anybody's expert witnesses. As far as I am concerned, the staff serves its constituents -- the people -- and its larger constituency in this hearing, by furnishing data and information. I will not accept opinion testimony from the staff. I will rule objectionable questions which call for speculation or opinion by any member of the Agency staff.

As far as public participation is concerned, these hearings are open and public and that means just what it says. They are open to anyone who can fit in wherever we hold them. They are public in that the public has a right to participate. Participation is going to be limited by only the rules as to parties and intervention. If an individual citizen feels they wish to participate at any time in the proceeding, all they have to do is put their name, their address and their reason for participating on a piece of paper, hand it up, and we'll consider their application. If they're a resident, they're going to be permitted to participate. If they're an Intervenor, there's going to be some inquiry as to their need to intervene. The only thing we ask from all the people who participate without counsel is that if we suggest to you that the material has already been covered, please be brief. On the other hand, if we have new material being introduced and it is relevant to the subject matter of the hearing, if you are unrepresented, [I will act] essentially as your counsel for the purpose of

inquiring and getting the matter into the record in question and answer form. I will, of course, entertain motions from attorneys and I may have to rule on [claims] that one of my questions is objectionable or one of your answers should be stricken and if that's the case, you'll be given the opportunity to be heard.

There is also the problem and the opporunity of dealing with widespread national and international concerns which, of necessity, bring to these hearings representatives of the media. As far as I'm concerned, the media is welcome provided they don't interfere. I have personally participated in televised hearings and I don't really like the idea of klieg lights in a place like this. However, if it has to be done it can be done. On the other hand, I would prefer the media to be as unobtrusive as possible.

As far as I am concerned, every statement I make publicly, privately, informally or formally, is on the record. I would like to encourage counsel for all the parties and Intervenors to proceed likewise. That means think about what you're saying before you say it outside the confines of the hearing room.

I have no authority to, nor would I, impose anything akin to a "gag" rule. I think many public issues ought to be debated in the public forums. This particular hearing, because of its rules, provides a structure for such a dialogue. So does the lunchroom, the coffee shop, evening dinners, whatever.

As far as public information is concerned, the record is, of course, going to be available. Any portion of

it may be quoted with impunity. All I can plead, on behalf of the Agency, with all of you is that we try and conduct this hearing with as little need to adopt the adversary form as possible, with as much cooperation among the parties, recognizing that we have here a multi-million dollar concern in an area where multi-million dollar concerns are not often considered. We have here a unique national resource treasure, the Adirondack Park. We all know why it's unique. Many of you live here because it's unique. What many of you don't realize is how unique it is nationally and what a treasure it is nationally. There have been, I am sure, mistakes and misunderstandings by local residents and the Agency in the past. Please do not let them haunt this hearing. We are going to build a record which will permit the agency to rule fairly and promptly on this application.

And now as to the matters of timing. There are certain timetables set forth in the Agency Act which we must, of course, adhere to, to provide due notice and opportunity for participation by outsiders. We will adhere to those [requirements]. However, my primary concern from my reading of the application is to avoid the possibility of destroying [the] project by delay. It has happened in the past in other areas of the country. As far as I'm concerned, as far as this hearing is concerned, it's not going to happen here. Therefore, I want . . . testimony on the opening day of the hearing from the project proponents as to the construction timetable. My understanding is construction must begin in April of 1977. If that is, in fact, the case

we must conclude these hearings by Christmas and the Agency should rule by the New Year.

[all] [T]he substance of my remarks to the Agency, on Friday [was] that I would probably deliver my findings of fact, conclusions of law, hearing report and opinion on New Year's Eve so that they could celebrate by writing their decision and we could start afresh on New Year's Day.

Now, that isn't too far out of line. That gives everyone who may object to the determination of the Agency at least three months, 90 full days, to take whatever legal action might be necessary. My intention is to have a record so complete that no court can require a rehearing and that the matter can be ruled on expeditiously[.] . . .

It has come to my attention from the Agency staff that there may, of necessity, be another application for another permit dealing with another aspect of the games[.] That application is expected in the near future. If the Agency decides to conduct the hearing on that application, since the proponents of the application are the same and since the substance of the background information in both applications will of necessity be the same. I propose to consolidate the hearings if I'm asked to serve as the Hearing Office in that case and again wind it all up by Christmas.

To that end, I am willing to serve at the convenience and pleasure of all the parties.

If the parties -- and I am particularly concerned with the proponents, require the services of expert

witnesses such as their consultant, who require access to their offices that are outside the confines of the Park, if it will prevent delay and expedite matters, I will consider holding hearings at the convenience of the consultants. . . . I will do everything possible to expedite the hearing, [and] minimize the [bulk] of the record. I will try and serve you all as fairly and as impartially as I can.

For those of you that wonder, I have no experience whatsoever with winter sports. I do not skate; I do not ski; I have never seen a ski jump other than on ABC Television. I have never been on a bobsled or a toboggan.

MR. KAFIN: Pretty good [credentials].

THE HEARING OFFICER: However, I did establish for the Town of Brookhaven, a small town in eastern Long Island, the downstate Long Island area's first actual ski slope that worked although I've never used it.

My understanding is that the scope of the hearing shall be limited only by the extent of the application and include all matters contained in the application and those ancillary matters within the scope of concern of the Adirondack Park Agency or the applicants as they may be raised from time to time. It is possible to conduct a hearing on matters of environmental concern much as one peels an onion, constantly finding layer after layer after layer after layer and going on ad infinitum. I think you're all familiar with the famous couplet, "Big fleas have little fleas upon their backs to bite them/ and little fleas still smaller fleas,"/ so on ad infinitum. That is the way

many environmental hearings proceed. We are not going to do that here unless some court orders me to.

I am particularly concerned [at] the beginning of the hearing to establish on the record, preferably from witnesses who have direct personal knowledge of the subject matter, the regional sports history of this area.

First I would like an overview of it; then I would like evidence on the 1932 Olympics, in particular its direct, . . . immediate and proximate socioeconomic and environmental impacts and its long-term impacts down to today.

I would like to hear about the interval sports history from 1932 to [the present time] and I would like to hear from the proponents their description of the 1980 effort and, most important, I want to hear from the residents of the community, preferably those who have experience back towards 1932, about their long-term concerns for the region, their village and their town follow[ing] the Olympic Games.

I am interested in hearing also as part of the basic record the regional development history in the areas of business and commerce, industry, recreation and land development.

I request the committee to produce evidence preferably from those directly knowledgeable, on the nature of the Olympic Winter Sports Competition for 1980, first in general and then in particular with reference to jumping. In the jumping testimony, I want to hear from the designer of the jump or the party directly charged by the international regulatory body with approving the jump and I want

a full and complete exposition of the technical requirements of a ski jump from a knowledgeable designer of ski jumps who preferably also jumps off of what he designs.

I wish [to have] evidence presented in detail from the experts involved on the site selection process for the ski jump. I then wish to hear evidence from the village representatives, the town representatives, regional representatives, and those concerned with Olympic winter sports nationally, of the proposed after uses of this project.

To give you an example, I was somewhat surprised upon reading the application, that in light of the proposed after use for international competition there is a statement made that all the telecommunications facilities incident to the 1980 Olympics will be removed. The question then is raised in my mind again as a layman reading the application in the first instance: "How are you going to handle international competition subsequently?" Perhaps this is something that should be considered. There are probably going to be many other questions raised during the course of the hearing.

My intention is not to permit each question raised to lead to another application and another hearing. However, I have the authority delegated from the Agency to accept at any time amendments and modifications to the application . . . based upon evidence adduced at this hearing. I will accept such amendments and modifications, the sole purpose of which is not to conclude with a determination that you ought to go back and do it all over again from the beginning. This has happened in a great many

federally sponsored projects. To the best of my knowledge it generally kills the project effectively. This has become, and I make no secret of my awareness of it, a tactic actually used by opponents of certain public works projects to stop those projects when they cannot otherwise be stopped on the merits. It is a very effective procedure. I believe it is an inappropriate procedure in a matter such as this. I intend to do my best to see that it cannot happen as a result of this hearing on this application.

[T]hat concludes my preliminary remarks. I would ask now if there are any supporters of the application, project proponents, who intend to appear by counsel and I ask the counsel to identify themselves, note their appearance for the record and if they wish to join in Mr. Kafin's preliminary application, they may . . .

MR. KAFIN: Mr. Hearing Officer, the project sponsors -- deeply appreciate the extensive exposition that you've just given and, of course, we're also interested in a full record . . . compiled in a fair and expeditious proceeding and we are willing to go along with any reasonable . . . and creative procedure to achieve that end. However, Your Honor's statement covered a broad variety of procedural and substantive matters and we don't want our silence at this time later to be construed as a waiver of any objections to any of those things. . . . [A]t this time [we don't want] to waive whatever objections we might have to the full statment of matters that you just set forth.

THE HEARING OFFICER: At no time is any specific waiver . . . [to] be deemed a permanent waiver.

At no time shall anyone who is a party or their counsel be estopped or deemed estopped from raising an issue that they might have raised at a prior time in this proceeding. . . . I don't expect acquiescence from the parties at this time. That's why this is a preliminary meeting.

[T]he initial subject matter of the first day's hearing will be motions directed toward disqualification of the Hearing Examiner and next, motions directed toward the procedures. Any of you who [wish to] suggest proposed procedures, treat them as requests to charge or precharge in [a] regular proceeding. If you can get them to me before the hearing, fine. If you want a prehearing conference on them, fine. I'll try and accommodate all of the wishes of all the parties' counsel towards the end that we get the matter resolved as quickly as possible with a minimum of red tape and with a minimum of legal wrangling during the course of the hearing.

MR. HANNA: Mr. Hearing Officer . . . . I would like to address a question to counsel for the Agency as to whether the Agency rules on the application of the Adirondack Council to be a party as of right to the proceeding.

THE HEARING OFFICER: Now that ruling is to be left to the Chair. The determination at the Friday meeting of the Agency was that I will make the preliminary inquiry into these matters and the Agency itself will rule on each of them through the delegation to its Chairman, Mr. Flacke.

. . . -- on behalf of the Council, do you have an application to intervene?

MR. HANNA: We have previously submitted an application to intervene.

THE HEARING OFFICER: All right. The application dated October 26th, 1976 from the Adirondack Council . . . shall be deemed marked by the Hearing Officer as Exhibit No. 3 and subject to review by the Agency, accepted.

(The application of the Adirondack Council dated October 26th, 1976 further described above, was marked for identification as Exhibit Number 3, this date.)

MR. HANNA: Mr. Hearing Officer -- my name, is John Hanna, Jr., of the firm of Whiteman, Osterman & Hanna, appearing as co-counsel with Rosemary Nichols, as co-counsel for the Adirondack Council.

Could you clarify your statement that the statement of the Adirondack Council is accepted as a party of right pursuant to Title 8, Subtitle Q, Section 581.5 of the Adirondack Park Act?

THE HEARING OFFICER: I am accepting the application by the Council to appear as a party . . . -- my acceptance can be overruled by the Agency. If it is not overruled by the Agency it stands. You are a party. You have the right to call witnesses. You have the right to cross-examine witnesses. As to the technical matter of whether you're a party under the particular statute or not for the purpose of this hearing, that's a moot point. You are a party in interest. You have demonstrated substantial interest. I think on stipulation of . . . the applicant, I would like

to accept you as a party because of the long-standing existing concern [of the Council] . . . area.

MR. KAFIN: Mr. Hearing Officer, although this is something one would expect staff counsel to raise, as I'm sure Your Honor knows, the particular act under which the Park Agency operates has a curious dichotomy of parties that has an interesting legislative history. Some of us in this room have had vast experiences under that statute. We are interested in as broad a participation as possible. We don't want the record to be tainted in some way, in some future judge's mind by overriding . . . what seems to be a rather strong legislative intent to limit parties except upon the very specific showing of a certain kind of interest.

I would hope that the Agency staff are going to protect the record in that regard and would speak to it. I just mention it so that it's before Your Honor and you are aware of this legislative curiosity.

THE HEARING OFFICER: I'm aware of the strange ruling on parties that appears in the act and I'm aware of its legislative history and I'm delegated by the Agency to make this ruling.

As far as this hearing is concerned I am accepting the appearance [of the Adirondack Council] as a party subject to the rulings I made previously on what a party can and cannot do. I am reserving to all the other parties including the applicant the right to object to such appearance and the right to make motions directed towards such appearance at the close of the record, including the right to make motions

to strike any evidence produced by the Adirondack Council.

However, for the conduct of this hearing, if we are going to err, we are going to err towards letting everybody who wishes to intervene, intervene. . . . -- in view of your objection now, [however] I would ask Mr. Hanna on behalf of his client, the Adirondack Council, if he would accept a determination by the Chair [that the Adirondack Council may] intervene as its interests may appear and reserve the issue of whether you are a party of right to determination if necessary by a court. This intervention as your interests may appear, accepted by the Hearing Officer, will still permit you to offer evidence, cross-examine witnesses and will resolve Mr. Kafin's technical objection.

MR. KAFIN: No, Mr. Hearing Officer, -- maybe I should be more precise. -- as I understand the statute and the rules here, in order to permit this party to be a party as of right, Your Honor has to make a certain finding and I want to be sure that when you make the finding that we have the record that supports the finding so we don't end up later in court. Now, we've had one litigated decision where the Agency prevented the Natural Resources Defense Council from being a full party as of right and we have no objection to Your Honor making whatever ruling you would like, but we want to make sure that the record is complete and that your findings, you decision which requires a specific finding that this party has a substantial and tangible economic right or interest, and they may or may not, but I want to be sure that you have a record on which

it can be based so that we don't end up in court on it later on.

THE HEARING OFFICER: Counselor, as far as I'm concerned, I do not intend to make that determination at this time in this hearing. At the close of the hearing after we've resolved the substantive matters [as to], all those parties that cannot be admitted of right on stipulation but who have been admitted as their interests may appear as Intervenors for the purpose of this hearing, we will conduct extensive examination within the language of the statute and I will make findings specifically thereon; but as far as this hearing is concerned and its conduct, I intend to take [the application of] every party to whom an objection to an intervention of right is made pursuant to the statute, [as an application to intervent] and if I'm satisfied that they show substantial interest in the subject matter of the proceeding I am disposed to admit them as their interests may appear on whatever side, proponent or opponent, or as their interests may appear as Intervenors for the purpose of the conduct of this hearing with the right to direct and cross-examination of witnesses and the submission and examination of evidence.

Now, I think that will resolve technical difficulties with the statute and prevent what I don't want to see happen in this hearing, a series of intermediate or interlocutory procedural appeals on such matters as whether or not a party should be permitted to intervene or right or not.

Now, I recognize the position of the Agency

is rather delicate. They didn't write the statute, [and they are bound by] what the statute says. For this hearing, the intent of the Agency is to encourage participation by the public. Where the public is represented by an organized group with a direct interest in the subject matter of the hearing, namely the Adirondack Council, which even I can take notice of is concerned with the subject matter of the hearings and the area, I propose to let them intervene as their interests may appear. It would be nice if we could get a stipulation from all parties that they are, in fact, parties in interest, but I don't need that to let them in and at the end of the hearing we will review all of these parties and their status. If we do it in the beginning, we will never get to the substance of the hearing and we will wind up going well past your Aprol deadline because this can happen every single time someone comes in. In view of the litigation history of the NRDC case, I don't propose to have that happen in this case. There is too much substance to let form take over in this case.

MR. KAFIN: Well, if Your Honor please, although once again I feel this is really something that staff counsel ought to be doing, and I'm a little curious as to staff's silence, but the risk . . . to the process is . . . precisely what Your Honor talked about before: If you are wrong and if the decision is not made on the basis of what is in the rules here, we may be directed to hold this hearing a second time because the whole nub of intervention here relates to the cross-examination, and it will probably

be impossible to take the record and break it into pieces if you're wrong. That's why it's so important that you make the decision in a correct manner[.] We're not objecting here. What we're doing is we're objecting to a decision being made in a summary fashion rather than in a fashion with a proper presentation on the record.

THE HEARING OFFICER: Counselor, I understand your concern and as far as I am concerned, if that is going to be an issue I would rather someone took the appeal now than later. If, at the close of this hearing, after we have amassed all of the relevant substantial credible evidence on the [merits of the] subject matter of this hearing, the application for the 90- and 70-meter ski jump facility at Lake Placid, if there is an appeal taken [on the issue] that a party was permitted to cross-examine who should not have been permitted to cross-examine and a court actually wants to direct the rehearing of this matter as to all of those items in which that party participated in cross-examination, then this is a risk the Agency is going to have to take.

MR. KAFIN: But at the expense of the project sponsors, Your Honor.

THE HEARING OFFICER: Counselor, if you want rulings made on that issue now, you're going to have to appeal to the Agency directly and if necessary take it to court. I do not intend to make those determinations now because to make them properly requires a day, maybe two days, maybe three days of testimony and, worse than that, requires a reopening of that [issue] every time a new party comes in

and wants to question the magic word "economic [interest"] which is the key to that statute. In view of the Supreme Court's position in the Sierra Club v. Morton case, the Mineral King Case in California, I do not wish to subject the Agency to that [burden.]

As far as I'm concerned, we are going to permit as many people as possible to participate in this public hearing. If we err, it will be on the side of inclusion rather than exclusion and my interpretation of the cases and my interpretation of the history of the concept of standing is such that all parties with any recognizable interest should be permitted to participate.

Now, I am going to restrain cross-examination as best I can -- within the limits of the parties' demonstrated interest. However, I believe that the Adirondack Council has a right to participate in these hearing and I do not wish to make the determination as to whether they are a party of right within the meaning of the statute.

For the purpose of the interim specific rules that govern this hearing under these circumstances with this Hearing Officer, they are going to be deemed Intervenors as their interests may appear and they are going to be permitted to make offers of direct proof. They're going to be permitted to cross-examine witnesses within limits and they're going to be permitted to present a case if they wish.

Now, that's my ruling at this time. You can renew your motion on the opening day of the formal hearing.

You can submit briefs on it. You can also, in the interim, direct a short-form letter petition to the Agency itself.

As far as staff counsel for the Agency is concerned, that is not a determination that can be made by staff counsel for the Agency. For these hearing, I am making these determinations on behalf of the Agency. The [application for] review is to the Agency itself.

MR. HANNA: Mr. Hearing Officer . . . The Adirondack Council's position is that it is a party as of right and is so appearing in this proceeding. I'm not entirely clear as to your ruling. I gather what you're saying in substance [is] that we have those right.

THE HEARING OFFICER: I am granting you those privileges for this hearing in the interests of justice. At the close of the substantive matters of this hearing, I will conduct a second level of hearings on these procedural issues. At that time, if you still wish to put forth your claim that you are entitled to intervention directly of right in accordance with the language in the statute, you have the burden of pro[of] and you will have to [establish by] a fair preponderance of the substantial credible evidence [your interests.] ... if there are objections raised thereto, we will have to make a ruling and a determination thereon. But for the purpose of the conduct of this hearing and obtaining of the evidence necessary for this Agency to render a decision, I am going to accept your appearance.

MR. HANNA: Mr. Hearing Officer, we have filed an application. I don't understand that I hear any objection to it and the application sets forth the basis for the

application, [is], as a party as of right.

THE HEARING OFFICER: For the record, I am going to reserve decision on your application until the close of the hearing. I am going to permit you to intervene as [the] interests [of your client] may appear . . . and I am going to note an exception on behalf of all parties which will be resolved at the close of this hearing.

MR. HANNA: I don't understand any party has made an exception.

THE HEARING OFFICER: I'm deeming one made for the purpose of preserving all rights until the close of the hearing. At the close of the hearing, if any party wishes to withdraw its exception or permit it to be withdrawn, then there will be no question that has to be resolved.

MR. MORETTE: My name is Edwin Morette, 315 LaPortage, Ticonderoga, New York.

THE HEARING OFFICER: Are you a resident of the Park area, sir?

MR. MORETTE: Yes, sir, Ticonderoga, New York.

THE HEARING OFFICER: All right. Ask your question, sir.

MR. MORETTE: Could you tell us who the Adirondack Council is in those paper they filed, exactly what organizations they represent?

"The Council is an unincorporated association formed in January 1975 for the purposes of promoting the protection, the conservation and orderly development of the Adirondack Park and adjoining areas of New York State. The chief technique employed by the Council in furthering these purposes is participation in adjudicatory proceedings as an advocate of responsible environmental public policy. Membership consists of both organizations and individual members. There are no restrictions on membership. Organizations which

are presently members of the Council are: 'The Adirondack Mountain Club,' 'The Association for the Protection of the Adirondacks,' 'National Audubon Society,' 'The Natural Resources Defense Council,' 'The Sierra Club, Atlantic Chapter' and 'The Wilderness Society.'"

MR. HANNA: I would just like to say on behalf of the Adirondack Council with respect to our position in this proceedings, that we're not aware of any broadly recognized environmental group in the state that opposes the successful completion of the Olympics in this area, nor does the Council.

The Organizing Committee for the Olympics has stated that it wants an environmentally sound Olympics and has asked the cooperation of the Adirondack Council and its constituent members in that endeavor and that cooperation has been given. Mr. Courtney Jones, who is the Chairman of the Council, has twice testified before Congress in support of the Olympics here in this area. The first time he testified was [on] the Congressional resolution which was required by the International Olympic Committee for national support for such an Olympics, and the second time with respect to the federal funding. In both cases, Mr. Jones [testified] at his own expense.

He also served on the screening and selection committee for the environmmental consultant that has largely prepared the environmental impact statement and the application before us. He also served on the Environmental Council of the Lake Placid Olympic Organizing Committee and he has spent hours and hours and hours of time.

There have been some suggestions that

environmentalists are opposed to the Olympics. Those positions tend unnecessarily to cause polarization that does not exist and makes some of the Adirondack Council's constituency wonder whether there's any hope for a real dialogue and responsible participation. The responsibility that the Council has taken on to assist in making sure there's an environmentally sound Olympics does not mean that they must in all cases agree with all aspects of all proposals and, indeed, there may be differences. In this particular proceeding we have not as yet had a chance to study or indeed even see the application. We have concerns, and I stress "concerns" is not necessarily a conclusion, that alternatives have not really been considered. We are concerned that the conclusions drawn with respect to the aesthetics may be underestimated and we believe that there can be objectively framed standards for aesthetics. We do not mean the mere subjective judgements of a small number of people (over) which reasonable men can differ. We have concern about the economic burden of this site in the post-Olympics.

On all these issues, we are entering this proceeding with a view of finding out. We may find that those concerns are sharpened as a result of this hearing. We may also find that our concerns are moderated so they are no longer of such strong interest to us.

With that in mind, we have some substantial concerns (that) the timetable which you seem to be setting

(may not) give us adequate time to examine this situation, and it seems to me that as a matter of procedure we could approach this from a number of (positions). There is a concern about moving forward to decision. That is something we share. We have no interest in a long protracted hearing which would be time-consuming and expensive for us and in our view not necessarily productive. We are willing to cooperate in measures to reduce the amount of direct testimony that has to be put into the record on an oral basis. But if direct testimony can be done in writing, we have no desire to spend endless hours listening to that testimony being produced orally. However, we do need adequate time to study the application and to prepare a viable cross-examination and if necessary, (present) direct evidence of our own.

Now, with respect to the NEPA statement, it appears that the earliest that that could be finalized would be early January. It would seem that certainly that ought to be considered in connection with the final impact statement and ought to be considered as part of the proceeding. What we would suggest in terms of timing would be that the applicant's direct testimony (could be put on) during early December. Cross-examination would begin on the earliest working day in January and the hearing would proceed at that point on a day-to-day basis. It seems to me at that point we could proceed directly from cross-examination to our direct and again we would work with counsel.

Obviously, one can't always promise to agree but I have worked with special counsel for the applicant, and

I would assume that we could find ways of shortcutting testimony to as much an extent possible.

Without an adequate opportunity for us to prepare, it seems to me that the process would suffer. We are not anxious, indeed we would be reluctant, to seek judicial review unless absolutely essential. Our disposition is that we've been asked to cooperate. We will cooperate. We have no reason to believe the Olympic Committee is any less interested in cooperation than we are and we would prefer to make sure that the hearing process is proper than to use three months for litigation thereafter and indeed it seems to me that -- a full hearing process is more likely to be productive of real settlement and acceptance of any decisions made and that that should be the timing of it.

MR. KAFIN: The project sponsors have some of their own ideas as to how we ought to proceed. Mr. Hanna's suggestion of a timetable sounds a little extended to us. One of the philosophies that the project sponsors proceeded on was that the process would best be served by a full and complete application and that we have tendered. (W)e would be looking for something this way, that perhaps in two weeks or so we might be able to have a further pre-hearing conference at which the issues could be narrowed, because there are clearly some things in the application as to which there will be no contest. At that time we could take the subject matter, identify those things that are really in issue. We'd

like to put on as much of our direct case as possible through documents rather than having someone stand up and read from the application. If people want us to produce a witness either to sponsor that portion of the application and be available for cross-examination, we'll do so.

If we were to have a further pre-hearing conference approximately two weeks from now, that would certainly give the parties an additional two weeks to review the application and at least identify their contentions or concerns. Then following the pre-hearing conference, if we could start presentation of the direct case about two weeks from that which would be the last week in November, I think that would give ample time for the parties to figure out what it is they are concerned about.

Under those circumstances, unless we present direct testimony that's considerably different than what is in the application, I don't see why a long adjournment would be necessary to get to the question of cross-examination. The direct testimony will go in quickly in a few days and it will be primarily what is in the application unless we identify some issues that we don't know about right now. That should permit us to conclude cross-examination in the month of December barring some unforeseen circumstance.

That would be the timetable that we would be looking for and, of course, that will require everybody to do a lot of work before the hearing convenes to determine what are the real issues and what the various parties'

contentions are with respect to those issures.

MR. HANNA: Mr. Hearing Officer, a part of our concern relates to having a shot at going through the application (we are) concerned with getting the appropriate specialist of our own to review it and report back. That all takes time. I am not adverse to a suggestion of Mr. Kafin to have another pre-hearing conference with respect to the issue. One of the disadvantages we have right now is not having studied the application. We have an uncertainty. In terms of preparing, I agree that to a large extent preparation should occur outside of the hearing process so we can make the hearing process more brief. I, of course, date our ability to respond (with) cross-examination from the date that we can actively start using the application.

MR. HANNA: We will have to make copies of the copy we get and start distributing it and the mechanics of that take time.

THE HEARING OFFICER: In every case where a witness has a statement in writing, I will accept the statement from whoever proffers it or offers it and ask them whether it can be stipulated that the witness will testify substantially in accordance therewith on direct examination and then admit the statement as direct testimony.

Now, I will also admit any material contained in the application on the same basis subject to cross-examination (upon) review. We are going to have to have at least one copy of these applications for each party, one copy for each Intervenor and we should also provide as a courtesy to

everybody concerned one copy to each counsel. My suggestion is that this document be reproduced in quantity by SASAKI and the cost be shared among all the parties. There is, of course, a copy at the Adirondack Park Agency that everyone is welcome to use and there is my copy that no one is welcome to use.

MR. KAFIN: Why don't we try among counsel to work out (the matter of) copies?

MR. HANNA: I'm agreeable to that.

MR. KAFIN: If we can't work it out that (we can) come back to you for a ruling.

MR. KAFIN: Let me say also that the application is not only the booklet but there are a series of maps that go with this and the Park Agency is in possession of mylar reproducible copies of that map.

MR. KAFIN: We (will) each have to pay the Agency whatever it costs to reproduce them so that everybody has a copy of the other supporting documents and that we have them today, relative to the proceedings so they don't dribble in as the hearing goes along.

THE HEARING OFFICER: That's why I suggested a ruling. I want to make sure that the issue is not raised that (a party) has had no time to examine (the evidence or exhibit).

MR. HANNA: The Adirondack Council would have no problem with a further pre-hearing conference in approximately two weeks, and it would have no problem with going

to the applicant's direct case starting two weeks thereafter. I would ask that the question of cross-examination dates be left flexible . . . .

It may be that, we can't start any cross-examination until early January. It may be that we can start all cross-examination in December and it may be we could do part and it seems to me that to come to an ironclad decision at this point would just start uproars that may not be necessary.

THE HEARING OFFICER: All right. Then let us have a further pre-hearing conference on Friday, the 12th, and I will call upon the Agency to prepare notice similar to today's notice and distribute it by the same mean.

THE HEARING OFFICER: Now, in order to avoid the time delay (due to) the technical time requirements of notice, I am proposing to open the hearings formally on Friday, the 19th. I have no objections to adjourning after that first day nor do I have any objections to scheduling continuations of the hearing on a mutually convenient basis. I understand the problem with reference to cross-examination which is why I'm making arrangements for daily copy (of the transcript). I understand the problem with procuring experts. I have been in the position of both of you gentlemen before this.

On the other hand, counsel for the Adirondack Park Council raised a question with reference to the draft

environmental impact statement prepared by the Economic Development Administration of the United States Department of Commerce that I intend to comment on in a moment. I am not asking the Agency to prepare the appropriate formal notice of hearing, commencement of these hearings, for Friday, the 19th, and have the same published with the time limit.

MR. KAFIN: Are you going to begin the hearings with an opportunity for members of the public to make statements?

THE HEARING OFFICER: Not really.

MR. KAFIN: O. K. Because it has been the custom, and I was going to suggest if that were the case, we'd plan on Friday, the 19th, to listen to anybody who wants to make a statement and maybe save the afternoon for marking documents and exhibits and the like.

THE HEARING OFFICER: Well, I have no objection to anybody who is a resident and who qualifies as a party who just wants to make a statement and not necessarily participate, to make their statements. That's perfectly all right. I'll take them at any time. Opening day would be fine.

Also, I would prefer that statements wherever possible be submitted in writing and be preceded by a notation of the resident of the party and (their) interest in the subject matter of the hearings and, yes, I have no objections to utilizing much of that opening day for things like marking (exhibits) and stipulating as to statements to be deemed admitted as direct examination and the like.

Now, as far as the draft environmental impact statement referred to by Mr. Hanna is concerned, it is

unfortunate that the proliferation of concern with the environment since 1969 has produced a proliferation of procedural mechanisms whereby in the name of environmental protection, public works can be delayed to the point where they are no longer public and no longer work. The draft environmental impact statement which I have just received a copy of and have not read with the detail I've read your permit application is a rather substantial document -- dealing with a great many issues other than the subject matter of this permit application or other permit applications with the jurisdiction of the Adirondack Park Agency and as such, those would be essentially irrelevant in this proceeding unless a party demonstrated by a fair preponderance of the substantial credible evidence that they were, in fact, relevant.

On the other hand, I will take judicial notice and incorporate as a part of this record any material from this (federal) proceeding that the parties wish to incorporate in this record. There is, however, a fundamental problem with procedures being conducted by federal government (agencies) at this time; (under NEPA).

I understand there are two public hearings, scheduled on the draft environmental impact statement. (EIS) These are public information hearings. If you have a statement to make you stand up and you make it. There is no cross-examination of witnesses. There is no inquiry into the relevance, competence and materiality of any of the statements made. There is no procedure for determining the competence of any of the

parties preparing any of the material submitted in the draft. Further, the draft environmental impact statement is prepared by a consultant for the Economic Development Administration of the United States Department of Commerce. Should a party aggrived, whoever that might be, with the meaning of the Federal Administrative Procedure Act, commence an action next April against the Department of Commerce to require them to go back and redo this whole environmental impact process for any one of a dozen reasons and a court grants that application there is a substantial block of money which is not going to come to the Lake Placid Olympic Organizing Committee for some time. It may then be impossible to have the Games go on in 1980 in Lake Placid.

Now people have asked me many times: "What does it take to commence an action under the National Environmental Policy Act with the possible long-term effect of killing a federal project that requires an environmental impact statement?" And I am forced to give them the answer that all it takes is a lawyer and a typewriter and in many cases it doesn't even require the lawyer.

Now, what we're saying here in this proceeding and what I am trying to do and what the Agency wants me to do is prepare a record which indicates (that) a full, fair and complete discussion of all of the issues involving the 1980 Olympics and the application that this Agency has jurisdiction over (has been held) and which can be incorporated by reference by this Agency for submission should an action be brought to require any federal agency to go back and redo

their environmental impact statement.

If the federal government had a procedure for conducting the kind of hearing we are going to conduct in this matter on these environmental impact statements, the hundreds of NEPA cases that have cluttered up the Appellate Courts in the last six years might not have occurred and many of the decisions would have been otherwise. But, unfortunately, the federal agencies do not have any procedure for doing that; the Adirondack Park Agency does. We are going to try and short circuit and short cut whatever might occur in (any) federal proceeding and while I would like very much to include the final environmental impact statement in the proceeding before us here, I have reviewed on behalf of federal agencies enough draft and final environmental impact statements to know that there is very little difference between the draft and the final. If there are changes made that are relevant to the applications before us here, I'll accept them. I'll also accept the draft with comments thereon by any of the parties at the hearings which are occurring in November as part of this record subject to cross-examination.

On the other hand, I am now constrained because of the existence of hearings on the draft environmental impact statement which I assume that the Adirondack Council is going to participate in, to question whether they are so unfamiliar with the application (before us here). They are obviously going to make comments on the federal draft EIS.

I will take those comments in this proceeding as they are relevant, subject, of course, to whatever develops and evolves in the course of this proceeding. I will give all counsel reasonable opportunity to prepare cross-examination. However, as a practicing lawyer, I am aware of the desire on the part of all counsel to have as much time as possible for preparation.

In this proceeding we're all going to have to work hard. We're going to have to work nights. We're going to have to work weekends.

No one will be denied the opportunity to present a witness if the witness can't get here. No one will be denied the opportunity to send testimony to a witness who has to prepare and no witness will be abused because they haven't had the opportunity to become familiar with everything that's preceded, (their testimony). We're going to act like gentlemen and we're going to try and get as much done in as short a period of time as possible.

I again wish to hear on the opening day the construction timetable for this project and that includes, if any of the engineers involved are here, that includes your PERT chart, your CMP program and that includes when you expect to get your money from the federal government. I will do the best I can to help all of you.

I do not think there is an issue on the part of any of the parties concerned here as counsel pointed out with

respect to the conduct of the 1980 Olympics at Lake Placid. I think everybody supports the application to bring it to Lake Placid. There may be some issues as to how it's going to be done or where it's going to be done, but we all want the 1980 Olympics to take place here in the region and be a credit to the community and the country at large.

MR. HANNA: Mr. Hearing Officer, I don't think I or my client or indeed any of the counsel at this table need be told that we have to work hard.

Next, the regulations, particularly 581.5(e) have a time frame which (fixes) a 90-day period in a complex proceeding. I would, frankly, think that a 90-day period in this proceeding, given the complexity of this record, would not be inappropriate. We have indicated that we would try to vastly short circuit that kind of time period. I think it's imperative, however, that in order to do that effectively, that we have access to further records if we should wish it.

THE HEARING OFFICER: Are you talking about Agency records, counselor?

MR. HANNA: Well, I'm talking about more than Agency records. We would like to see and to have access to all memoranda, reports and other writings of Agency staff relating to the state of completion of the application. We would also like access in Cambridge or here as is convenient for SASAKI (to) all writings including correspondence, memoranda, conferences, maps and studies relating to the preparation of the application (to the agency).

THE HEARING OFFICER: As far as I'm concerned, I will direct the Agency staff to segregate a file from its regular files on all the materials that are involved in the consideration of the 1980 Olympics and you may have access to them during regular business hours at the Agency headquarters. I'm not familiar with the Agency's physical plant but we'll try to make it fairly convenient for everybody who has to have access to them to work on them without disturbing the rest of the Agency activities.

Now, as far as the consultants are concerned, these are the applicant's consultants. I would call upon the applicant, although I do not believe I have the authority to direct the applicant, to direct its consultant to make available their materials in a similar manner.

MR. KAFIN: Now, Mr. Hearing Officer, I think that a little pre-hearing discovery is good and appropriate and it prevents the hearing from becoming a discovery device. We'll respond to any reasonable inquiry.

We've got consultants from Washington, D.C. to Burlington, Vermont and, you know, I couldn't in good faith tell you that I could assemble all of that in one place. If there are some specific issues that inquiry is directed to, if there are some specific tests, memoranda, field inspections, that anybody wants we'll endeavor to make them available, but the request has to come with some specificity so we can identify what's being asked for.

THE HEARING OFFICER: As a ground rule then,

I'm going to ask that any party or Intervenor that has a request for the production of materials, documents and the like from any other party or from anywhere, make that request as it sees fit in writing directed to the party, copy to the Hearing Officer. If the matter cannot be resolved among counsel, I will make a ruling if and when the material is needed for the hearing.

I would also suggest that all the counsel involved, whenever possible, make offers of proof on the record and if they're not challenged that will save us a great deal of transcript, a great deal of time, and a great deal of expense.

MR. HANNA: I have nothing further at this time.

THE HEARING OFFICER: All right. As a courtesy point for everybody, the media usually proceed faster in the dissemination of information than the Postal Service, and it's often disconcerting to counsel to see who will testify and when in the newspapers.

I would suggest wherever possible that all the counsel let each other know who they expect to call, when and for what(purpose) just as a matter of professional courtesy.

MR. MORTON: Mr. Hearing Officer, my name is William Morton. I'm a senior aquatic biologist and I work for the Environmental Analysis Unit (of the Department of Environmental Conservation) out of the Ray Brook office.

THE HEARING OFFICER: And you're appearing on behalf of the New York State Department of Environmental

Conservation, Peter A. A. Berle, Commissioner?

MR. MORTON: Yes

I will accept this application on behalf of the (New York State) Department (of Environmental Conservation) as an application for intervention as its interests may appear and, subject to review by the Agency, I will grant the application of the New York State Department of Environmental Conservation as an Intervenor as its interests may appear.

(A letter dated October 22nd, 1976 signed by Philip H. Gitlen, further described above, was marked for identification as Exhibit Number 4, this date.)

(A notice of intent to participate dated November 1, 1976 signed by Richard S. Booth, further described above, was marked for identification as Exhibit Number 5, this date.)

THE HEARING OFFICER: Are there any other applications this morning for leave to intervene in any fashion?

MR. GLENNON: Mr. Examiner, Bob Glennon, Counsel for the (Adirondack Park) Agency. A number of documents have come to the Agency either by formal letter or notation of a phone call, which I think ought to be place before you as matters for your determination as to parties at this time.

THE HEARING OFFICER: May I have them in chronological order, counselor?

MR. GLENNON: You made a reference to the

possibility of consolidating the Field House Project herein. We have delivered an information request for the project to the project manager.

THE HEARING OFFICER: And is that information request similar to the information request that was submitted to the (same) project manager with reference to the 90- and the 70-meter ski jump facilities?

MR. GLENNON: It's not quite as voluminous but yes, it is similar.

THE HEARING OFFICER: All right. (The letter dated October 8th, 1976 from Gerald A Looke to the Adirondack Park Agency and a copy of a letter dated October 18th, 1976 from Richard A. Persico, Executive Director, Adirondack Park Agency to Mr. Looke were marked for identification as Exhibits numbered 6 and 7 respectively, this date.)

THE HEARING OFFICER: Now, as I said before, should that application be submitted during the course of this hearing and should the Agency decide to submit it to public hearing, I will entertain an application either by the Agency or by any of the parties concerned to consolidate the hearings and, if possible, consolidate the record and the admissions made prior to that time.

MR. HANNA: Mr. Hearing Officer, just to make clear, we're remaining silent on that point which doesn't mean that we're accepting that position or rejecting it as far as that's concerned, but this is the first we've heard of that and we're not in a position to speak for our client at this

point on that issue.

THE HEARING OFFICER: Again, counselor, all rights of all parties and counsel to accept or reserve or move against any rulings by the Department shall be reserved to all parties and resolved at the conclusion of the hearings.

(The letter from the Town of North Elba Planning Board to the Adirondack Park Agency dated October 13th, 1976 was marked for identification as Exhibit Number 8, this date.)

THE HEARING OFFICER: All parties' -- counsel shall receive copies of all the exhibits so long as it's practical to make them, subject to whatever arrangements are made among counsel and with the Agency staff to reproduce them. As far as I'm concerned, every attorney should have a complete exhibit file if at all possible, and I would like one also.

Is the attorney for the Town of North Elba present?

MR. URFIRER: I am the attorney for the Town of North Elba.

THE HEARING OFFICER: Counsel, do you intend to make an appearance in any way in this proceeding?

MR. URFIRER: Only if it should be necessary.

THE HEARING OFFICER: All right. Do you require notice of all proceedings and matters?

MR. URFIRER: Yes, we do.

THE HEARING OFFICER: All right, let us have

notice sent to the Town of North Elba and that notice will serve as notice to all the agencies of the Town of North Elba.

THE HEARING OFFICER: Mr. Cole, do you intend to participate individually or on behalf of the Olympic Commission in these hearings?

MR. COLE: Only if necessary.

THE HEARING OFFICER: (The telephone memo of October 20th, 1976 described above was marked for identification as Exhibit Number 9, this date.)

THE HEARING OFFICER: Mr. Chapman, do you intend to participate in the hearings as a party?

MR. CHAPMAN: No, I might wish to make a statement in opposition. That's all.

THE HEARING OFFICER: (The letter dated October 18th, 1976 from Mr. Chapman to Mr. Persico and copy of reply from Mr. Glennon to Mr. Chapman dated October 21st, 1976 were marked for identification as Exhibits numbered 10 and 11 respectively, this date.)

THE HEARING OFFICER: Mr. Damp, do you intend to appear either individually or on behalf of Lake Placid Ski Club and participate in the hearings?

MR. DAMP: I intend to appear for the Lake Placid Ski Club and participate.

THE HEARING OFFICER: Do you wish to be a party?

MR. DAMP: No.

(The letter from Edward Damp dated October 26th

1976 was marked for identification as Exhibit Number 12, this date.)

THE HEARING OFFICER: In other words, the Sierra Club Atlantic Chapter is a participating member of the Adirondack Council and joins in the application of the Adirondack Council.

MR. HANNA: That's correct.

THE HEARING OFFICER: (The letter of the Sierra Club Atlantic Chapter was marked for identification as Exhibit 3-A, this date.)

THE HEARING OFFICER: Are there any other parties present here or any representatives of any parties not present who wish to participate in the hearings directly as parties in interest or as Intervenors?

(There was no response.)

Are there any persons present here today who wish to make any statements to add to the substance of this particular preliminary meeting?

(There was no response.)

Do any of the attorneys involved have anything to add?

MR. GLENNON: Mr. Examiner, I merely wish to note and re-emphasize that you made a statement that you don't expect acquiescence in any of the proposals or tentative rulings or schedules or agenda at this point, and with that I'm perfectly content. I assume by some exchange of letters over the next two weeks any procedural issues can be sharpened and

focused.

THE HEARING OFFICER: Yes, and the next preliminary meeting will be largely devoted to those procedural issues. By the way, gentlemen, I would appreciate it if copies of all of the materials submitted by the proponents to the Economic Development Administration, United States Department of Commerce in support of or in amplification of the draft environmental impact statement being considered by that agency, be made part of this record by submitting a copy to us at our office in New York and to the Agency at their office in Ray Brook. I believe this will expedite matters in the future when we consider any portions of that which are relevant to this proceeding.

MR. KAFIN: All I was trying to do was identify what (documents)the Hearing Officer wanted.

THE HEARING OFFICER: I want whatever is there that might come into this hearing. It makes it easier if the Hearing Examiner has the opportunity to read these things before the hearing. If there is a DOT plan I would appreciate that. I'm particularly interested in materials that have been prepared by government or quasi-governmental agencies because unless I hear to the contrary, I intend to take notice of them and admit those portions that are relevant and it will save us a great deal of repetitive testimony.

MR. JONES: It's my understanding, Mr. Examiner, that there is a DOT plan, the final version of which is sche-

duled for completion in March of 1977 but I think there is a preliminary document, some sections of which have been incorporated in the draft environmental impact statement, but I think not all of them.

THE HEARING OFFICER: Let's produce whatever we can get. I don't care whether it's draft or preliminary. It will be deemed relevant to the extent it (is) understood. If we waited for everything to be complete we'd never get anything through.

MR. JONES: True.

MR. KAFIN: Is it your intention to treat documents such as the draft environmental impact statement as an exhibit or shall we treat it as a category such as items by reference or something just so we know what the record is?

THE HEARING OFFICER: We're going to treat them as (the) need arises as whatever they need to be treated as. Some of them will be treated as substitutes for direct testimony by the agencies involved. Some of them will be treated as simply exhibits. Some of them will be included by reference in the testimony of others. Others will be treated as simply data to be submitted and utilized by any of the parties here. We'll decide on how we're going to treat them categorically as they are offered. Although I will take judicial notice of the entire book, I don't see any reason for putting the entire book into our record except as it's necessary and only to the extent of those portions that are relevant.

MR. LŌŌKE: My name is Gerald Lōōke and I'm the project manager for Gilbane Building Company and if it's appropriate and if it's possible, we'd like to go forth with the consideration of the Field House and the ski jump being done at the same time. I was wondering if you might be able to put a timetable on the submission of that application.

THE HEARING OFFICER: In the interests of expediting matters, a project officer has been appointed for the Agency. I suggest you sit down with that project officer in the next couple of days, submit what you've got and call it a preliminary application for project permit. We'll incorporate it, if the Agency consents, into this hearing and as the questions arise, you can improve it or modify it or amend it as you go along. We'll try and follow an orderly process. I assume you're ready to go with submissions fairly soon anyway. We'll call it preliminary so no one is embarrassed by any incompleteness and at least we can get started and know what the issues are. It would be appropriate to have it before the November 12th meeting so that if there are special procedural questions raised at that time, we can consider them.

MR. GLENNON: Would it be appropriate at this point to try and develop a service list for correspondence from this date forward or do you want to postpone that to the 12th?

THE HEARING OFFICER: As far as I'm concerned all the parties who appeared here today -- shall be given due notice of all further proceedings and a service list can be made therefrom.

Ladies and gentlemen, any party can be added to the service list.

(Whereupon at 12:38 p.m. the pre-hearing conference in the above-entitled matter was adjourned to reconvene on Friday, November 12th, 1976 at 11:00 a.m.)