

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3

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December 19, 2023 RESPONSE TO PUBLIC COMMENTS DEC APPLICATIONS FOR EXCAVATION/FILL IN NAVIGABLE WATERS PERMIT 3-9903-00108/00004 and STREAM DISTURBANCE PERMIT 3-9903-00108/00005

This application by Hudson Highlands Fjord Trail Inc is for permits pursuant to Article 15, Title 5 of the Environmental Conservation Law, Protection of Waters (Excavation/Fill In Navigable Waters and Stream Disturbance). The project includes disturbance to ~325 linear feet of the bed and banks of the Hudson River (Class B) and excavation and fill below mean high water of 106 cubic yards. The disturbance is for temporary shoreline stabilization associated with the expansion of an existing trail and a bridge over the railroad tracks at Breakneck Ridge. The project will also be covered by the DEC's Blanket Water Quality Certification for Nationwide Permits, issued pursuant to Section 401 of the federal Clean Water Act. The project will incorporate avoidance measures to preclude the need for a permit for Incidental Taking of an Endangered or Threatened Species pursuant to Article 11, Title 5 of the Environmental Conservation Law. The project, referred to as the Breakneck Connector and Bridge, is anticipated to later form part of the proposed Hudson Highlands Fjord Trail (Fjord Trail).

The public comment period for the above referenced permit applications began on July 12, 2023 and ended on August 3, 2023. Comments related to the permit applications are summarized below with DEC's response to the comments; some specific comments are quoted. General comments and issues not related to the permit applications are summarized with a brief response. Please note that all responses below are provided by DEC except where noted. The applicant was offered the opportunity to provide a response to DEC on public comments and their responses are identified as "Applicant Response." Comments expressed by multiple commenters are summarized, and quoted comments are cited.

PUBLIC NOTICE

Commenters questioned the sufficiency of the public comment period. One comment stated that "two weeks" was not enough time.

DEC response: The minimum 15-day comment period is specified for this permit type in the Uniform Procedures regulations and is not typically lengthened except for unusual circumstances.

There were also comments questioning whether the Notice of Complete Application was published in a local paper.

DEC response: In addition to publication in DEC's online Environmental Notice Bulletin, the Notice of Complete Application was published on July 19, 2023 in the Poughkeepsie Journal.



The Poughkeepsie Journal was chosen by DEC because the majority of the proposed work for the project is in the Town of Fishkill, Dutchess County.

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

Comments expressed general opposition to the project. Commenters expressed concerns that the review of this proposal, which is separate from the ongoing State Environmental Quality Review (SEQR) for the larger Fjord Trail, is segmentation pursuant to the SEQR regulations at 6 NYCRR Part 617. Commenters expressed concerns about visual impacts, traffic, and effects of increased visitorship on community character.

DEC response: These comments are not within DEC’s purview as they are not directly related to DEC’s jurisdiction pursuant to Environmental Conservation Law Articles 11 or 15, or the Clean Water Act Section 401. The NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) coordinated for Lead Agency pursuant to SEQR in August 2015 and was subsequently established as Lead Agency for this proposed project. NYS OPRHP issued a Negative Declaration on December 27, 2022. As DEC was not the Lead Agency for SEQR, questions about the SEQR process are beyond the scope of this application review and outside of DEC’s purview. Topics such as visual impacts, traffic, and effects on community character are evaluated as part of the SEQR process.

COMMENTS RELATED TO THE DEC PERMIT APPLICATIONS

Natural Resource Impacts

Comments/Summary	Response
<p>Work, including ground disturbance and construction of structures, within an area occupied by endangered and threatened species will adversely effect habitat for these species.</p>	<p>DEC: Staff have reviewed the application materials and determined that the proposed activity is not likely to result in the incidental taking of threatened or endangered species, so an Endangered and Threatened Species Incidental Take Permit is not required for this project.</p> <p>The actions required for avoidance of a take of endangered and threatened species are conditioned in the permit and include the following: Onsite Species Monitor to locate, and, if necessary, remove, any individuals of the species that are found in the work area Education & Encounter Plan with mandated training for all workers Signage to alert trail users to the presence of listed species Measures to avoid creating attractants for species</p>

<p>Increased visitorship could adversely affect the endangered and threatened species habitat on the approach to Upper Overlook</p>	<p>Applicant: Use of the Breakneck Ridge Trail has increased steadily over the last decade and is expected to continue increasing with or without the Breakneck Connector and Bridge. Project activities in the Upper Overlook will harden and define the existing trail loop to make it easier to use and will close tangential social trails and restore native vegetation. This will direct visitors in a more organized fashion and consolidate them to the designated trail around the Upper Overlook, thereby reducing the number of visitors wandering along the ridge and protecting more of the habitat in this area (FEAF Part 1, Attachment A, page 8).</p>
<p>The bridge does not provide access for heavy equipment. Does that mean there may be additional future impacts for the New York City Department of Environmental Protection CAT-399 project?</p>	<p>Applicant: The construction periods for the Breakneck Connector and Bridge Project and NYCDEP’s CAT-399 project do not overlap and would not result in cumulative impacts related to barge use or shoreline disturbance. Potential impacts of the CAT-399 project were also evaluated by NYCDEP in accordance with SEQRA, and NYCDEP issued an Environmental Assessment/Negative Declaration to the involved agencies on 6/30/2023.</p> <p>DEC: Permit applications for the CAT-399 project are under separate review by the Department.</p>

Comments Related to DEC Protection of Waters Permit Issuance Standard of “Reasonable and Necessary”

Comments	Response
<p>Gretchen Dykstra: “Hudson Highlands Fjord Trail Inc touts “the “Independent Utility” of the Breakneck Bridge, arguing that it is needed for NYCDEP construction vehicles to access the NYC water tunnel, making it essential infrastructure. Meanwhile in other documents, the independent utility of the bridge focuses on pedestrian safety and connections to the existing trail system, but drawings reveal that the bridge does not even connect to the proposed trails!”</p>	<p>Applicant: The Project Sponsor asserts the independent utility of the entire Project, not solely of the Bridge. However, the Project will serve multiple purposes, one of which is to improve NYCDEP access to its Hudson River Drainage Chamber facility both during its planned construction project and for future routine maintenance and operational purposes. Hudson Highlands Fjord Trail Inc’s understanding is that the bridge is needed to bring personnel safely to the work site during NYCDEP’s construction project which would</p>

Comments	Response
	<p>otherwise have to be provided by other costly, and only temporary means.</p> <p>DEC: Although the trail area on the west side of the tracks is limited in size, the project will provide closer access to the Hudson River shoreline than is currently available.</p>
<p>Peter Henderson: “Clearly, if the DEP requires heavy equipment or materials for the CAT-399 project, then the bridge will be of no use. Since the purpose is simply “[to enable] the transport of employees and light tools and equipment over the MNR tracks” during CAT-399, this is a marginal one-time use.”</p> <p>Andrew Hall: “... in terms of the DEP access for needed repairs, no scope of work or budget is available that would allow a cost-benefit analysis for the bridge construction, especially considering the possible impacts to the shoreline & aquatic habitat based on the current application.”</p>	<p>Applicant: Vehicular use of the bridge will be restricted to H-10 load rated vehicles (16,000 lbs/axle) operated by NYCDEP, OPRHP and its designated trail operator, and emergency responders for maintenance and emergency response only.</p> <p>While larger construction vehicles and heavy equipment will not be permitted to use the Breakneck Bridge, the greater benefit to NYCDEP is the permanent access solution to their critical water supply infrastructure. NYCDEP staff currently accesses the Hudson River Drainage Chamber by foot along the Breakneck Ridge Trail and over the rock face, or they access it by boat on the Hudson River.</p>
<p>Dave Merandy: “Since construction of the Hudson River Drainage Chamber facility at the foot of Breakneck Mountain, the need for access has been minimal. What maintenance or upgrades are scheduled that require the kind of access as proposed in this \$85 million dollar bridge?”</p>	<p>Applicant: It cannot be inferred that NYCDEP’s need for access “has been minimal” from the fact that access has been physically impossible. The Project will not only provide long-term, safe, and convenient access to NYCDEP personnel and lightweight vehicles over the Metro-North tracks but will also include utility conduits to run permanent power and communications to the Hudson River Drainage Chamber facility.</p>
<p>Dave Merandy: “Currently, there exists safe access for pedestrians to the hiking trail north of Breakneck Mountain. Metro-North has upgraded their stop and added a fenced in walkway that connects to a short section of path running parallel to Route 9D, behind a guardrail to the Breakneck Mountain trailhead. The elaborate bridge, estimated at or above \$85 million, does little, if anything, to provide safety to pedestrians...”</p>	<p>Applicant: The safety measures established by Metro-North at its Breakneck Ridge Station are intermediary and were partly funded and implemented by Hudson Highlands Fjord Trail Inc to create safer train station conditions while a permanent plan was implemented (the Breakneck Connector and Bridge Project).</p>

Comments Related to DEC Protection of Waters Permit Issuance Standard of “will not endanger the health, safety or welfare of the people of the State of New York”

Comments	Response
<p>Dave Merandy: “If completed, the elaborate bridge and massive shoreline platform proposed by Hudson Highlands Fjord Trail Inc, by their own preliminary calculations, will draw 35% more visitors to the area, most of which will arrive by vehicle. The noise and pollution from vehicles traveling to the Breakneck Connector will undoubtedly adversely affect the health of the residents and visitors of the surrounding area and the additional traffic caused by this proposal can only increase the safety risk for pedestrians in the area.”</p>	<p>DEC: Based upon our review of the permit applications and associated materials, the projection of a 35% increase in visitorship has been associated with the larger Fjord Trail, not for the Breakneck Connector and Bridge.</p> <p>Applicant: The Breakneck Connector segment is not anticipated to be a driver of that increased visitation. While there may be initial curiosity at reopening after construction that might result in a temporary spike in visitation to the trailhead, the number of hikers seeking to hike these existing trails because of these safety improvements is not anticipated to have a net increase.</p>