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Consistency Review Unit
New York State Department of State
Office of Planning, Development & Community Infrastructure
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

CR@dos.ny.gov

Dear Consistency Review Unit:

Regarding Public Notice F-2023-0287, Hudson Highlands Fjord Trail Inc. (“Breakneck Connector and Bridge”)

My concern is with the “Bridge” portion of the application as this is the portion of the project which will have the greatest impact to bodies of water. I also have concerns about the way in which the Bridge portion of the project has been described for the Consistency Review Unit as opposed to the way it is described and justified as a stand-alone project for the Joint Application for permits.

Executive Summary:

The permits requested by the applicants should be denied because of the inclusion of the Bridge portion of their proposal. The Bridge is the portion which is most detrimental to navigable waters and wildlife habitat. It is not justified as part of the stand-alone project for safety reasons but is instead included for reasons connected with the DEP’s CAT-399 project, which is not part of the applicant’s application.

In addition, the requested permits should be denied because of inconsistencies within the applicant’s application.

As per the National Wetlands inventory surface waters and wetlands mapping, this portion of the Hudson River clearly falls within the Estuarian and Marine Deepwater zone and is considered an Essential Fish Habitat and Critical Habitat for the

Endangered New York Bight DPS of Atlantic Sturgeon. It also involves navigable waters. **The applicant states that it is the Bridge portion of the project which will require the use of barges within these waters and the temporary construction of shoreline stabilization.**

As per the required Nationwide permit 14 (18.) Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species.

The applicant has stated on their joint application:

All life stages except eggs of Atlantic sturgeon (*Acipenser oxyrinchus*; endangered) and shortnose sturgeon (*Acipenser brevirostrum*; endangered) have the potential to be present in the Hudson River in the vicinity of the Project Site (NMFS 2022).

The applicant has also stated on their joint application:

Most of the Project will be constructed using land-based equipment with materials delivered by truck and do not require authorization under the Clean Water Act. Project activities occurring on the west side of the MNR tracks, including construction of the bridge and southbound MNR platform, will be facilitated by barges on the Hudson River to avoid vehicles and equipment crossing the MNR tracks. The bridge construction will require approximately 260 linear feet of temporary shoreline stabilization to provide access to the upland construction area from the barges.

The applicant fully acknowledges the need to mitigate the effects of this stabilization (which further impedes the flow of navigable waters and critical habitat):

Full-length turbidity curtain will be used around the temporary shoreline stabilization area to minimize potential impacts of sediment resuspension.

In addition, the applicant answered YES to the following question on their joint application:

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?

The applicant then identified the waters that would be affected by the bridge portion of the project (in bold below):

If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): **A portion of the project is located directly adjacent to the Hudson River (a section of the bridge with four proposed bridge abutments located on the west side of the Metro North Railroad tracks). There are two small federal wetlands within the project area, located between the MNR tracks and the NY State Route 9D.**

Also, on the joint application the applicant responded to the following (again, in bold):

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres: **Two of the four proposed bridge abutments on the west side of the MNR tracks require regrading to a maximum 1.5:1 slope to achieve enough elevation to conceal the abutments. The footprint of this area of adjusted grades is approximately 4700 sq. ft and is upland of the mean high water line. The Wetlands will be maintained as existing catchment areas; there will be some clearing, minor re-grading and planting.**

I understand the basic premise of the CWA section 404 is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment. Under the Alternatives considered the applicant wrote:

No alternatives to barge-supported construction of the bridge and western abutment because heavy equipment is not permitted to cross the MNR tracks.

However, I argue that a practicable alternative would be to eliminate the bridge portion from this project and deny permits as the project is currently proposed. The Bridge portion of the project is justified differently than the primary purpose of the Breakneck Connector. Sandy Collins of AKRF (representing the applicant) writes in the cover letter of the Breakneck Corridor and Bridge joint application that:

The purpose of the Project is to develop and improve access points to the Breakneck Ridge Trail and along NYS Route 9D to safely accommodate the current amount of traffic that arrives by car, rail, and foot. The Project will ultimately connect existing informal and heavily trafficked trails to the Breakneck Ridge Trail and safely separate patrons from NYS Route 9D and the Metro-North Railroad (MNR) tracks within the Project Site.

Also, in answer to #6 of the joint application form, the applicant writes:

Purpose of project is to improve visitor safety at the Breakneck Ridge Trail with respect to traffic, parking, pedestrian, and cyclist conditions; and enhance access for all persons to this area by building trails and parking areas that meet generally accepted accessibility standards and formalize trails that are already in place and currently in use.

While the safety concerns are being used to justify the Breakneck Corridor, they are not being used to justify the Bridge portion of the project. Rather, for justification of the Bridge the applicant states:

The proposed Breakneck Bridge will provide lightweight vehicular (H-10 rated) access for DEP maintenance vehicles to the HRDC on the west side of the tracks, to which they currently have no vehicular access... In addition, the Bridge will provide DEP employees and contractors with daily access to the HRDC during the DEP's planned CAT-399 facility upgrade project..."

I object to this bridge being attached to the proposed Breakneck Corridor project firstly because the DEP's planned project is not currently being reviewed, nor is it included with this application, so how can it be used to justify building this bridge?

Secondly, the applicant goes on to state:

“During the CAT-399 Project, DEP will barge larger, heavier equipment to the HRCD site...”

Besides the fact that the DEP’s project will probably require additional review, here the applicant is acknowledging that larger, heavier equipment will be needed. Will this larger, heavier equipment exceed the capacity of the lightweight (H-10 rated) vehicles on the bridge? Does this imply that DEP will be needing a larger bridge in the future? Or does the DEP even need a bridge for their larger, heavier equipment? These questions cannot be answered from the information provided. However, we do know that the bridge represents the largest impact to navigable waters and fish habitat.

The justification for the bridge being included with the joint proposal rests on the DEP’s potential use of it, but with no DEP CAT-399 proposal attached for clarity of purpose and need, the Breakneck Corridor and Bridge proposal for permits as such should be denied.

Further: Section 404 of the Clean Water Act states that no general permit issued under this subsection shall be for a period of more than five years after the date of its issuance...

The timetable as per the Breakneck Corridor and Bridge application involves barges being mobilized before construction of the Bridge can begin. The applicants have stated that the Bridge portion of the project will take 24 consecutive months (with no clarity as to what might prolong construction such as ice, hurricanes, or massive rains—all of which have happened in the past 12 years). During construction some barges will come and go while others will remain in place. The applicants also state that the MNR Southbound Platform construction, (occurring only after the bridge is completed), will take an additional 15 weeks (a little over 1/3 of a year), and will also utilize the barges. Only after the Breakneck Corridor and Bridge project’s construction has been completed, will the DEP come in (as per the Bridge’s reason for being) to begin work on their CAT-399 project, which will also require the barges and cranes for even heavier equipment.

Without knowing the timetable of the DEP CAT-399 construction (the bid for the engineer to oversee construction was for 2,010 days!), barges could easily continue obstructing navigable waters and disrupting habitat for a period exceeding five years. Therefore, there is not sufficient information in the application to warrant granting a permit.

Furthermore, there are inconsistencies within the applicant’s proposal: The applicant has stated on the Federal Consistency Acceptance Form that the purpose of this project is:

to formalize trails that are already in place and currently in use, improve safety where there are dangerous traffic, parking, pedestrian and bicycle conditions, and to enhance access for all persons to this area by building trails and parking that meet generally-accepted accessibility standards.

Yet, the applicant has failed to mention that the Bridge portion of the project is slated to be part of a much longer shoreline project extending well beyond 500 linear feet, as per their description on the Environmental Questionnaire:

This Joint Application requests authorization for the Breakneck Connector and Bridge (BNCB) Project (Project), which is an approximately 0.58-mile section of a larger planned 7.5-mile shared- use trail between Beacon and Cold Spring...

Also on the Federal Consistency Acceptance Form, under C—Coastal Assessment (will the proposed result in any of the following), concerning H (mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters) the applicant has answered: YES. Whereas in the Joint application form under project description (e) the applicant answered:

No excavation, dredging, or material removal is proposed.

Which is it?

In summary, the permits requested by the applicants should be denied because of the inclusion of the Bridge portion of their proposal. The Bridge is the portion which is most detrimental to navigable waters and wildlife habitat. It is not justified as part of the stand-alone project for safety reasons, but is instead included for reasons connected with the DEP's CAT-399 project, which is not part of the applicant's application.

In addition, the requested permits should be denied because of inconsistencies within the applicant's application.

Thank you for your time and attention to this matter,
Susan Peehl