



**RIVERKEEPER.**

*Via Electronic Mail*

November 18, 2016

Nancy Stoner  
New York State Office of Parks, Recreation and Historic Preservation  
Environmental Management Bureau  
625 Broadway  
Albany, NY 12238  
HHFT.plan@parks.ny.gov

**RE: COMMENTS ON THE DRAFT SCOPING DOCUMENT FOR A DRAFT  
GENERIC ENVIRONMENTAL IMPACT STATEMENT FOR THE HUDSON  
HIGHLANDS FJORD TRAIL**

Dear Ms. Stoner:

Riverkeeper, Inc. appreciates the opportunity to comment on the State Environmental Quality Review Draft Scoping Document for the Hudson Highlands Fjord Trail.

The Fjord Trail would be located in a critical reach of the Hudson River from Cold Spring to Beacon. Over the years, this area of the Hudson has been severely impacted by industrial and recreational development. Rail lines run on both shores and several heavily polluted locations have only been partially remediated. Tourists and hikers already flock to the area to enjoy the natural beauty of the Hudson Valley, adding to the strain on the surrounding environment and local roadways.

Although increasing access to, and enjoyment of, the Hudson River is a worthy goal, those efforts *must not* come at the expense of the River and its aquatic ecosystems.

Riverkeeper expects the Office of Parks, Recreation and Historic Preservation ("OPRHP"), as the lead agency, to undertake a thorough and comprehensive review of all of the environmental impacts associated with the Fjord Trail. In doing so, we urge OPRHP to reevaluate all viable alternatives, and make every effort to *eliminate* impacts to the Hudson River and its aquatic ecosystems.

With these principles in mind, Riverkeeper submits the following comments:

**I. THE DRAFT GENERIC EIS MUST FULLY EVALUATE THE IMPACTS THAT THE FJORD TRAIL WILL HAVE ON THE HUDSON RIVER, LOCAL STREAMS, AND WETLANDS.**

The Fjord Trail will have significant impacts on surface water from in-water structures, water-adjacent structures, and stream and wetland crossings. The draft scope indicates that these surface water impacts will be analyzed in the draft Generic EIS:

Potential physical impacts from the proposed action on surface water resources, including the Hudson River and floodplain, will be discussed and analyzed [in the draft Generic EIS]. These may include fill, excavation, construction and installation of structures along the shoreline and through or adjacent to water bodies.<sup>1</sup>

The Riverfront Trail (also referred to as the Shoreline Trail, or Segment 1.2) runs immediately adjacent to the Hudson River from Little Stony Point to Breakneck Ridge. This segment of the trail, along “a very constricted section of land between steep slopes and the Hudson River,”<sup>2</sup> will undoubtedly have negative impacts. This segment is also “[t]he greatest area of concern for [Department of Environmental Conservation] staff with regard to Protection of Waters.”<sup>3</sup>

Riverkeeper appreciates that OPRHP will conduct a site-specific environmental impact statement for this challenging portion of the project. However, we are concerned because the preferred route will either involve pile-supported structures or shoreline widening.<sup>4</sup> Pile-supported structures would result in habitat disturbances and shading, and shoreline widening would have even more significant environmental impacts:

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<sup>1</sup> New York State Environmental Quality Review Act Draft Scoping Document for a Draft Generic Environmental Impact Statement, Hudson Highlands Fjord Trail 10 (July 6, 2016), available at [http://media.wix.com/ugd/0d79b3\\_43a814432af143bb8775ce416b97f297.pdf](http://media.wix.com/ugd/0d79b3_43a814432af143bb8775ce416b97f297.pdf) [hereinafter “Draft Scope”].

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Attach. A, Letter from the Department of Environmental Conservation to the Office of Parks, Recreation and Historic Preservation 5 (Sept. 18, 2015).

<sup>4</sup> Hudson Highlands Fjord Trail Draft Master Plan, Shoreline from Little Stony Point to Breakneck Ridge 1.2 (July 2016), available at <http://www.hudsonfjordtrail.org/master-plan> [hereinafter “Draft Master Plan”].

The impact of such a design should not be taken lightly. There will be disturbance to the riverbed that will affect an important habitat for many fish species. Using fill to move the shoreline further into the water will also change the coastal bathymetry of the river. This should be minimized whenever possible. This is one of the proposed design concepts to consider during the design and development process.<sup>5</sup>

Neither of these options adequately protects the River. Therefore, we urge OPRHP to reconsider its the conclusion that “the only feasible location to route the trail is along the shoreline,”<sup>6</sup> and to explore other possibilities for this segment, such as expanding the shoulder of Route 9D to safely accommodate pedestrians or locating the trail on the east side of the road.

The draft Master Plan presents a preferred route and one or more alternatives for several other segments of the Fjord Trail. In those circumstances, Riverkeeper urges OPRHP to not pursue alternatives that would cause greater disturbances than the preferred route. For example, the preferred route for crossing Fishkill Creek, Segment 3.2A, utilizes the Metro North Causeway.<sup>7</sup> However, other alternatives being considered by OPRHP would involve either crossing wetlands or a narrow portion of the creek, potentially resulting in more negative environmental impacts.<sup>8</sup> OPRHP must make every effort to evaluate and fully understand the impacts of not only the preferred option, but any alternatives under consideration.

Moreover, the segment from Brickyards Parkland to Dutchess Junction Park will involve stream crossings. The preferred option, Segment 2.2A, would cross narrow portions of Wade’s and Gordon’s Brooks.<sup>9</sup> The alternative, Segment 2.2B, would cross those same streams with “significantly more infrastructure” and “greater disturbance to the surrounding natural environment.”<sup>10</sup> Again, if OPRHP moves forward, it should do so with a full understanding of the environmental impacts of each option, and with the goal of eliminating those impacts wherever possible.

Similarly, the segment from Breakneck Ridge Train Station to Brickyards Parkland (Hartsook Hill, Segment 2.1) may involve structures over wetlands. The preferred

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Draft Master Plan, Fishkill Creek Crossing 3.2.

<sup>8</sup> *Id.*

<sup>9</sup> Draft Master Plan, Brickyards Parkland to Dutchess Junction Park 2.2.

<sup>10</sup> *Id.*

option, Segment 2.1A, would take ten years to complete, but it would avoid the wetlands.<sup>11</sup> The alternative, Segment 2.1B, would route the trail along and through wetlands to avoid private property, potentially resulting in more negative environmental impacts.<sup>12</sup>

Further, the preferred option for the segment from Dutchess Junction Park to Fishkill Creek, Section 3.1B, will require testing of fill material for environmental contamination.<sup>13</sup> The alternative, Section 3.1A, would involve several structures across streams and wetlands:

Connecting from Dutchess Junction Park to the shoreline here is not easily done. Intermittent seasonal streams and wetland areas would require construction of raised boardwalks, culverts and small trail bridges. The higher terrain throughout this area will require the construction of perched and/or cantilevered structures to navigate the many steep gullies as conventional cut and fill operations required to build a 'perched' pathway would result in large scale destruction of the wetland.<sup>14</sup>

Both of these options risk serious environmental harm. Therefore, Riverkeeper urges OPRHP to fully explore the potential impacts of these options and any other viable alternatives for this segment in the draft Generic EIS.

In sum, OPRHP should conduct a thorough and comprehensive review of surface water impacts for the entire length of the trail, reevaluate all viable alternatives, and eliminate impacts to the Hudson River, local streams, and wetlands wherever possible.

## **II. THE DRAFT GENERIC EIS MUST FULLY EVALUATE THE IMPACTS THAT THE FJORD TRAIL WILL HAVE ON ENDANGERED, THREATENED AND RARE SPECIES.**

There is significant ecological value in the Hudson River along the proposed trail route. This stretch is within a Hudson River Estuary Area of Biological Concern; adjacent to several New York Natural Heritage Program Significant Ecological Communities; and

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<sup>11</sup> Draft Master Plan, Breakneck Ridge Station to Brickyards Parkland 2.1.

<sup>12</sup> *Id.*

<sup>13</sup> Draft Master Plan, Dutchess Junction Park to Fishkill Creek 3.1.

<sup>14</sup> *Id.*

within or adjacent to both the Hudson Highlands and the Fishkill Creek Significant Coastal Fish and Wildlife Habitats.<sup>15</sup>

The Hudson River supports several endangered, threatened, and rare species along the proposed trail route. As noted in the draft scope, in-water activities (i.e., fill and excavation) and shading will impact aquatic species and their habitats.<sup>16</sup> Thus, it is absolutely critical for the draft Generic EIS to fully evaluate the impacts of this project, especially where the trail route contemplates in-water structures and/or shoreline manipulation.

Riverkeeper is particularly concerned about the potential for negative impacts to the Hudson River's two endangered species, Atlantic and shortnose sturgeon, and their habitats. In June 2016, the National Marine Fisheries Service proposed to designate the entire main stem of the River from Troy to the New York Harbor as critical habitat for endangered Atlantic sturgeon.<sup>17</sup> Juvenile Atlantic sturgeon are known to occur from the Tappan Zee Bridge to Kingston, which includes the stretch of the Hudson River along the proposed trail route.<sup>18</sup> In addition, shortnose sturgeon occupy at least the stretch of the Hudson River from Cold Spring to Breakneck Ridge.<sup>19</sup> Given the importance of endangered species' recovery, OPRHP should ensure that this project avoids any negative impacts to sturgeon and/or their habitat.

The Department of Environmental Conservation has also expressed concern about the potential impacts that this project will have on the Hudson River and aquatic habitat:

Staff have concerns that there will be significant potential impacts to the Hudson River from some of the preferred alignments and the [draft Generic EIS] should consider the complete Hudson River resource. This should include bathymetry, tides, ice scour, variety of habitats found in the Hudson, and the species that depend on the river for spawning.<sup>20</sup>

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<sup>15</sup> Draft Scope at 5.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> Endangered and Threatened Species: Designation of Critical Habitat for the Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments of Atlantic Sturgeon, 81 Fed. Reg. 35,701 (June 3, 2016) (to be codified at 50 C.F.R. pt. 226).

<sup>18</sup> 81 Fed. Reg. at 35,706.

<sup>19</sup> Attach. A at 2.

<sup>20</sup> Attach. B, Letter from the Department of Environmental Conservation to the Office of Parks, Recreation and Historic Preservation 3 (May 5, 2016).

Riverkeeper shares the Department's concerns, and agrees that the environmental review for this project must clearly identify endangered and threatened species' habitat, the impacts associated with the project, and whether the project will require a take permit.<sup>21</sup> Again, Riverkeeper urges OPRHP to make every effort to eliminate impacts to the Hudson River and its aquatic resources.

### III. THE DRAFT GENERIC EIS MUST FULLY EVALUATE ALL VIABLE ALTERNATIVES.

Riverkeeper appreciates OPRHP's commitment to "re-visit all viable alternatives, potentially including some not previously discussed, and analyze alternatives and potential impacts in a comprehensive and detailed manner."<sup>22</sup> Specifically, OPRHP should look for alternative ways to ensure the safety of the pedestrians and motorists near Breakneck Ridge without further compromising the local environment.

On November 14, 2016, several residents made clear at the Public Scoping Meeting that a new attraction may not solve existing problems. To the contrary, it may exacerbate congestion on village streets, garbage along the roads and trails, and erosion from foot traffic. The status quo alternative, and other minimally-invasive alternatives, deserve serious attention in the draft Generic EIS.

Enjoying the natural beauty of the Hudson Valley should not cause further damage to the environment.

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Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries. Riverkeeper also monitors and protects the drinking water supply of nine million Hudson Valley and New York City residents.

Thank you for the opportunity to submit these comments. Please feel free to contact me at (914) 422-4228 or [edoran@riverkeeper.org](mailto:edoran@riverkeeper.org) with any questions.

Respectfully submitted,



Erin Doran  
Staff Attorney

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<sup>21</sup> *Id.* at 4.

<sup>22</sup> Draft Scope at 1.

## ATTACHMENT A

### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Region 3 Main Office

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September 18, 2015

Nancy Stoner  
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625 Broadway  
Albany, New York 12238

Re: Hudson Highlands Fjord Trail Master Plan  
Village of Cold Spring & Town of Philipstown, Putnam County, and  
Town of Fishkill & City of Beacon, Dutchess County  
**CH 6042**  
**Response to SEQR Lead Agency**

Dear Ms. Stoner:

The New York State Department of Environmental Conservation (DEC) has reviewed the Full Environmental Assessment Form for the State Environmental Quality Review (SEQR) of the Master Plan for the proposed Hudson Highlands Fjord Trail, received August 18, 2015. This project involves drafting of a Master Plan for the development of a 9-mile long non-motorized multi-use trail connecting the City of Beacon Train Station to the Village of Cold Spring Train Station. DEC has no objection to OPRHP assuming Lead Agency status for this Generic review. Potential DEC jurisdiction over the trail development is as follows, with reference to the Environmental Conservation Law (ECL):

- Protection of Waters, ECL Article 15, Title 5, Regulations 6 NYCRR Part 608
  - Stream disturbance, 608.2, applicable to all protected streams – Class A or B streams and C streams with a trout standard. Disturbance of the bed or banks of a protected stream requires a permit.
  - Docks, moorings, and platforms, 608.4, applicable only to projects not requiring a license from the NYS Office of General Services (OGS) for use of land-owned lands-underwater. The proposed boardwalk in the Hudson River would be a platform and subject to regulation if not subject to an OGS license.
  - Excavation & fill in Navigable Waters, 608.5, applicable to the placement of fill or the excavation of material below Mean High Water.
- Freshwater Wetlands, ECL Article 24, Regulations 6 NYCRR Part 663. Most actions in the freshwater wetland or 100-foot adjacent area require a permit.
- Endangered & Threatened Species, ECL Article 11, Title 5, Regulations 6 NYCRR Part 182. Threatened and Endangered species are subject to Incidental Take



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permits for loss of individuals or habitat. Special concern species are not subject to Incidental Take permits, but impacts should be considered a part of SEQR.

- State Pollutant Discharge Elimination System (SPDES), ECL Article 17, Titles 7, 8, Regulations 6 NYCRR Sub Part 750-1. Stormwater discharges from construction activities of over an acre of disturbance require a SPDES permit.
- Water Quality Certification pursuant to Section 401 of the Clean Water Act will be required for any work requiring a Section 404 permit from the Army Corps of Engineers. In NYS, issuance of these certifications is delegated to DEC.
- Environmental Remediation, ECL Article 27, Titles 13 & 14, Regulations 6 NYCRR 375. A number of sites are in or adjacent to the trail area. A permit is not required, but review will be needed for compliance with any Records of Decision.

Please note, the FEAF Part 1 Attachment, Section B, Government Approvals, as well as the Master Plan, makes reference to NYS Tidal Wetlands. NYSDEC regulates Tidal Wetlands pursuant to ECL Article 25 and 6 NYCRR Part 661. Although the Hudson River is tidally-influenced north to the dam at Troy, the mapped wetlands under this regulation do not extend north of the Tappan Zee Bridge. Therefore, none of the project area is mapped as NYSDEC Tidal Wetlands and a Tidal Wetlands permit is not required. Section B also did not include Protection of Waters nor possible Endangered & Threatened Species Incidental Take.

### POTENTIAL DEC JURISDICTION BY SECTION

State-regulated resources are grouped below by trail section. The potential Protection of the Waters jurisdiction is identified by waterbody name and NYS Waters Index Number (WIN), and freshwater wetlands by wetland identification number. Species are identified by common name with reference to the applicable areas of potential habitat.

#### A. Section 1 - Cold Spring Station to Breakneck Ridge Station Pedestrian Bridge

##### 1. Protection of Waters:

- a. Stream Disturbance: Breakneck Valley Brook, WIN H-86, Class B, protected (section 1.2)
- b. Excavation/Fill: Hudson River; (section 1.2)
- c. Docks, moorings, platforms: Hudson River boardwalk (section 1.2)

##### 2. Endangered (E), Threatened (T), Special Concern (SC) Species

- a. Northern long-ear bat (T), uplands (section 1.1, 1.2)
- b. Shortnose sturgeon (E), Hudson River (section 1.2)
- c. Fence lizard (T), uplands (all section 1)
- d. Timber Rattlesnake (T), uplands (all section 1)
- e. Bald Eagle (T), shoreline (all section 1)
- f. Eastern wormsnaek – (SC) uplands (section 1.2)
- g. Peregrine falcon (E), shoreline (all section 1)



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3. Remediation:
  - a. Cold Spring MGP, State Superfund Program, 340026<sup>1</sup>, (section 1.1)
  - b. Hudson River PCB Sediments, State Superfund Program, 546031 (section 1.2)
4. Water Quality Certification: Excavation/fill in the Hudson River, Breakneck Valley Brook, and any associated wetlands under Corps jurisdiction

### **B. Section 2 - Breakneck Ridge Station Pedestrian Bridge to Dutchess Junction Park**

1. Protection of Waters:
  - a. Stream disturbance: none, all streams are Class C<sup>2</sup>, not protected
2. Endangered (E) & Threatened (T), Special Concern (SC) Species
  - a. Timber Rattlesnake (T), uplands (all section 2)
  - b. Bald Eagle (T), shoreline (all section 2)
  - c. New England Cottontail (SC), uplands (all section 2)
3. Water Quality Certification: Excavation/fill in the Hudson tributaries<sup>2</sup> and any associated wetlands under Corps jurisdiction

### **C. Section 3 - Dutchess Junction Park to Beacon Train Station**

1. Protection of Waters:
  - a. Stream disturbance: none, WIN H-95, Fishkill Creek, Class C, not protected (section 3.2)
  - b. Excavation/Fill: Fishkill Creek mouth, navigable (section 3.2)
2. Freshwater wetland: WT-1, Class 2; Fishkill Creek mouth (all section 3)
3. Endangered (E) & Threatened (T), Special Concern (SC) Species
  - a. Timber Rattlesnake (T), uplands (section 3.1)
  - b. Bald Eagle (T), shoreline (all section 3)
  - c. Pied-billed grebe (T), shoreline (all section 3)
4. Remediation and Solid Waste:
  - a. Hudson River PCB Sediments, State Superfund Program, 546031 (section 3.2, Fishkill Creek mouth)
  - b. Beacon Terminal, Brownfields Cleanup Program, C314117 (section 3.2, Tioronda Bridge Crossing option)
  - c. Dia Center for the Arts, Voluntary Cleanup Program, V00299 (section 3.3)
  - d. Long Dock Beacon, Brownfields Cleanup Program, C314112 (section 3.3)<sup>3</sup>
  - e. CH - Beacon MGP, Voluntary Cleanup Program, V00293<sup>4</sup> (section 3.3)

1 The defunct Environmental Restoration Program for this site (# E340026) was also listed in the FEAF.

2 Unnamed Hudson River tributary (WIN H-86A), Wades Brook (WIN H-91), and Gordons Brook (WIN H-92)

3 V00096 (listed in the FEAF) is a former Voluntary Cleanup Program site, Ferry Road Waterfront, which is now part of the Long Dock site.

4 CH - MGP - Beacon Street, 314069 (listed in the FEAF) is a closed site with no remaining contamination. However some contaminants from 314069 migrated to the adjacent property, V00293.

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*f. Former Beacon Landfill, 314046 (section 3.3)<sup>5</sup>*

5. Water Quality Certification: Excavation/fill in Fishkill Creek and any wetlands under Corps jurisdiction

Although no acreage was included in the FEAF, the proposed trail development will likely include more than one-acre of disturbance and would therefore require coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. Obtaining coverage would also include review and approval by the relevant MS4 (Municipal Separate Storm Sewer System) communities – the Town of Philipstown, Town of Fishkill, and City of Beacon (the Village of Cold Spring is not an MS4).

### **SPECIFIC COMMENTS ON THE MASTER PLAN**

Staff previously provided some preliminary comments on the February 2015 draft of the Hudson Highlands Fjord Trail Draft Master Plan (Master Plan). The following are specific DEC comments on the current Master Plan:

Page 4: “Most route segments will require significant environmental review, while others that have less impact may be able to be implemented in the short-term”. The level of impact does not negate the need to undertake SEQR prior to implementation. An important concept in SEQR is reviewing the “whole action” to avoid the various activities or stages being addressed as though they were independent, unrelated activities needing individual determinations of significance. This statement should be revised to state that all elements of the proposal will be reviewed under SEQR, and that a comprehensive review will be undertaken. However, some specific stand-alone elements may be undertaken to address safety issues or to accomplish projects that are not dependent on the overall Fjord Trail project, such as the improvements to the existing Route 9D corridor. However those elements must still be reviewed under SEQR but as separate review.

Page 14: The “Opportunities and Constraints Mapping” should remove the ambiguous “Tidal Wetlands” and add the DEC-mapped Freshwater Wetland WT-1.

Page 15: The text indicates federal wetlands may need field delineation; this is also true of DEC-regulated freshwater wetlands for which the mapped areas are only approximate. Field studies may also be required to determine areas of endangered or threatened species potential habitat.

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<sup>5</sup> Not included in the FEAF; note that this is a closed and monitored landfill subject to Solid Waste regulations, not Environmental Remediation.

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Page 16: Under “Habitat Preservation, Protection, and Restoration”, the discussion of endangered and threatened species does not include shortnose sturgeon. Under “Hazardous Materials”, it is stated that the “proposed trail corridor runs near but not within any NYSDEC remediation sites”. However, it appears that the area of proposed trail in Long Dock Park is within the Long Dock Beacon site and the Tioronda Bridge alternative would have to pass through the Beacon Terminal site on the north side of the creek.

### Page 17: Permits Which May Be Required

- SEQR is included in this list, but should be broken out under its own section since SEQR is not a permit. The phrase “SEQRA approval based on findings once the lead agency accepts a Final Environmental Impact Statement” is not completely accurate. Each state and local agency that has jurisdiction must make their own Findings once the lead agency accepts a Final Environmental Impact Statement.
- “NYSDEC Wetlands Permits” is listed. It should read “Protection of Waters Permits and Water Quality Certification pursuant to Section 401 of the Clean Water Act and potential NYSDEC Freshwater Wetland Permit and Incidental Take Permit”. The list states that it is presumed that the project will qualify for Army Corps of Engineers Nationwide Permits. Please note that although the DEC has a Blanket Water Quality Certification for some Nationwide Permits, this does not cover any work within a NYDOS Significant Coastal Fish & Wildlife Habitat Area. Though not included in the Master Plan, the proposed trail route includes work in two Significant Coastal Fish & Wildlife Habitat Area – Fishkill Creek and Hudson Highlands.
- As with SEQR, the Stormwater Pollution Prevention Plan (SWPPP) for the SPDES stormwater general permit must include the entire project.
- “Timing restrictions” are listed under Permits required. Timing restrictions are an option to avoid potential impacts to a species which would then necessitate an Incidental Take Permit.

Please note that, while not a permit in itself, a determination of impact to historic/cultural resources by the State Historic Preservation Office (SHPO) will be a requirement of a complete application to DEC for any necessary permits.

### GENERAL COMMENTS ON DEC JURISDICTION

#### Protection of Waters and Freshwater Wetlands:

The greatest area of concern for DEC staff with regard to Protection of Waters is the Little Stony Point to Breakneck Ridge shoreline. The proposed trail development in this area will require disturbance to the Hudson River shoreline. The descriptions presented for different shoreline options do not currently include discussion of the potential impacts associated with each option:

- Partially pile-supported structure: Sections 2A & 2B (page 36) include fill in the river and on the banks as well as cantilevering over the river. The map does not indicate

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the lengths of each section so it is difficult to make a more detailed assessment. An extended area of fill could result in unacceptable impacts. If this option is pursued, as the designs are engineered, they will have to minimize the fill to the greatest extent possible to meet issuance standards.

- The Section 3 (page 37) depiction of the living shoreline is unrealistic. In this area, the shoreline has to sustain both wave and ice action. DEC staff are not confident that vegetation alone can provide a resilient shoreline in this location as depicted. At a length of approximately 540 feet, this section will undoubtedly have an impact on the river. If pursued, the design will likely need to be revised significantly to account for all the forces in the river, which could result in additional impacts.

As part of meeting the protection of waters permit issuance standards, the project must not cause "unreasonable, uncontrolled or unnecessary damage to the natural resources". Minimizing impacts to the shoreline and benthic habitat will be crucial to meeting this standard.

Except for the Tioronda Bridge option, all the Fishkill Creek crossing options would involve disturbance to the DEC freshwater wetland or regulated adjacent area. Of these options, the Metro-North Causeway would likely be the least impactful, as modification to the existing structures would be minimal and most if not all work in the adjacent area. The options for a wetland bridge to Madam Brett Park would be the most impactful; new structures would likely be classified as "Usually incompatible" or "Incompatible" with the preservation of the wetland, in accordance with the freshwater wetlands regulations. To meet permit issuance standards for a Class 2 wetland, it must be demonstrated that the "proposed activity satisfies a pressing economic or social need that clearly outweighs the loss of or detriment to the benefit(s) of the Class II wetland". Additional information on the freshwater wetland regulatory standards can be found in §663.5(e) & (f).

### **Endangered and Threatened Species**

Impacts to threatened and endangered species will need to be assessed for any construction in the area (new trails and/or improvements to trails). Impacts can include both the construction activity itself and the resultant increase in human activity in the area from increased access. A full impact assessment should be undertaken for each area of potential habitat identified above, and potential impacts fully avoided and minimized. If impacts to the state-listed threatened and endangered species cannot be avoided and minimized, a take permit may be required.

One area of particular concern for protected species is Section 3, an area of importance for bald eagles. In addition to wintering eagles associated with Denning's Point, a bald eagle nest is known within 330-foot of proposed trail line. Construction within 330-feet of nests should be avoided at all times. If this remains the proposed route, we would require a full impact analysis following the National Bald Eagle Management Guidelines

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and an ECL Article 11, Title 5 Incidental Take Permit. The USFWS should also be contacted and involved in the review of impacts to bald eagles.

**DEC CONTACT INFORMATION**

The NYS Title 6 Department of Environmental Conservation regulations are available on-line through the Westlaw Next website. Links to specifically referenced regulations can be found on the DEC website at <http://www.dec.ny.gov/regulations/regulations.html>.

The DEC program contacts are as follows:

Protection of waters and freshwater wetlands - Heather Gierloff, NYSDEC Bureau of Habitat, (845) 256-3086 or [heather.gierloff@dec.ny.gov](mailto:heather.gierloff@dec.ny.gov).

Endangered and threatened species - Lisa Masi, NYSDEC Bureau of Wildlife, (845) 256-2257 or [lisa.masi@dec.ny.gov](mailto:lisa.masi@dec.ny.gov).

Remediation sites, George Heitzman - Division of Environmental Remediation at (518) 402-9682 or [george.heiztman@dec.ny.gov](mailto:george.heiztman@dec.ny.gov).

Former Beacon Landfill, Steve Parisio - DEC Division of Materials Management, at (845) 256-3126 or [steve.parisio@dec.ny.gov](mailto:steve.parisio@dec.ny.gov).

If you have any questions on the DEC permitting process, please feel free to contact me at (845) 256-3014 or at [rebecca.crist@dec.ny.gov](mailto:rebecca.crist@dec.ny.gov). Please address all submissions to my attention at the DEC Region 3 office in New Paltz.

Sincerely,



Rebecca Crist  
Environmental Analyst

Ecc: Village of Cold Spring, Mayor  
Town of Philipstown, Supervisor  
Town of Fishkill, Supervisor  
City of Beacon, Mayor  
Bill Rudge, NYSDEC Natural Resource Supervisor  
Lisa Masi, NYSDEC Bureau of Wildlife  
Heather Gierloff, NYSDEC Bureau of Habitat  
George Heitzman, NYSDEC Division of Environmental Remediation  
Steve Parisio, NYSDEC Division of Materials Management

## ATTACHMENT B

### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Department of  
Environmental  
Conservation

May 5, 2016

Nancy Stoner  
Environmental Analyst  
New York State Office of Parks, Recreation and Historic Preservation (OPRHP)  
625 Broadway  
Albany, New York 12238

Re: Hudson Highlands Fjord Trail Master Plan  
DEC Pre-application Tracking ID #: 3-9903-00108/00001  
Village of Cold Spring & Town of Philipstown, Putnam County, and  
Town of Fishkill & City of Beacon, Dutchess County  
**Preliminary Draft Scoping Document**

Dear Ms. Stoner:

The New York State Department of Environmental Conservation (DEC) has reviewed the preliminary Draft Scoping Document for the Draft Generic Environmental Impact Statement (EIS) for the State Environmental Quality Review (SEQR) of the Master Plan for the Hudson Highlands Fjord Trail. This project involves drafting of a Master Plan for the development of a 9-mile long, non-motorized, multi-use trail connecting the City of Beacon Train Station to the Village of Cold Spring Train Station. DEC offers the following comments on the overall organization and content of the scope and specific comments on potential DEC jurisdiction, with reference to the Environmental Conservation Law (ECL):

#### **Scoping Document:**

A Scoping Document enumerates the potential impacts to be included in an EIS and sets out the required information and analysis for these impacts. The DEC SEQR Handbook provides guidance on the process and is available on-line at <http://www.dec.ny.gov/permits/47636.html>. As stated in the handbook, the scoping document should:

- Identify the significant environmental conditions and resources which may be affected by the project;
- Focus on the relevant environmental impacts to those environmental conditions and resources, thus providing the preparers with the specific issues to be addressed in the EIS;
- Eliminate irrelevant impacts or issues, and eliminate or de-emphasize non-significant impacts;
- Describe the extent and quality of information needed.



Department of  
Environmental  
Conservation

## ATTACHMENT B

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The current preliminary draft includes far more detail about the project than is typical in a scoping document. In general, many of the sections begin to provide the information rather than specifying what will be included in the DGEIS; this is particularly true of the alternatives section. Maps and other graphics are also not typically included in scoping documents.

The List of Involved And Interested Agencies should include the NYS Office of General Services and the US Department of Transportation as both are included in the list of Approvals, Reviews and Permits.

The list of Approvals, Reviews and Permits for NYS DEC should be:

| Current List   | Correction   |
|--|--|
| Protection of Waters ... Article 15, Stream bank or Bed Disturbance... possible State-Owned Lands Under Water dock permits | Article 15, Title 5, Protection of Waters – Stream Disturbance, Excavation/Fill in Navigable Waters, Docks (where not subject to an NYS OGS license) |
| Potential freshwater wetland permits   | Article 24, Freshwater Wetlands <sup>1</sup>   |
| SPDES with a SWPPP and Erosion and Sedimentation Control Certification   | State Pollutant Discharge Elimination System (SPDES) for stormwater discharge from construction  |
| Water Quality Certification  | Water Quality Certification pursuant to Section 401 of the Clean Water Act   |
| possible Endangered & Threatened Species Incidental Take permit  | Article 11, Title 5 Endangered & Threatened Species Incidental Take permit <sup>1</sup>  |
| Environmental Remediation compliance   | <remove> <sup>2</sup>  |

Please note that this section does not mention that an Essential Fish Habitat Analysis may be required by the Army Corps of Engineers and the correct permitting for the Army Corps of Engineers should be Section 404 Clean Water Act and Section 10 Rivers and Harbors Act.

The Environmental Setting section details resources that will be described in the DGEIS. It is then followed by a lengthy Alternatives section before Environmental Impacts and Mitigation are considered. Staff found this organization difficult to follow. DEC recommends that the preferred alternative be the focus of the main DGEIS with Environmental Settings followed by Environmental Impacts and Mitigation and the other options included as an appendix of alternatives, including the related impacts to each. The preferred route can be described in the Project Description.

<sup>1</sup> The preferred alignment will require both a freshwater wetland permit and an incidental taking permit.

<sup>2</sup> This is an item for consideration in the document, not an approval or permit unless work in contradiction to a Record of Decision was proposed.



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The resources itemized in the Environmental Setting section should either be included in the Environmental Impacts and Mitigation section or the Scoping Document should convey why there are no impacts expected to that resource.

The Breakneck Connector has been separated from this Generic SEQR, with the Town of Fishkill as Lead Agency. Inclusion in the Scope and DGEIS should be by reference only.

### **Protection of Waters and Freshwater Wetland Jurisdiction:**

The project area includes a state regulated wetland, protected streams, and the navigable Hudson River and Fishkill Creek mouth. The Protection of Waters permit issuance standards include no reasonable damage to natural resources of the state, which include both other regulated resources like endangered/threatened species, and unregulated resources such as Hudson River Submerged Aquatic Vegetation. To meet freshwater wetland standards for a Class 2 wetland, the project will have to demonstrate that it is compatible with the preservation of wetland benefits or that the loss of benefits have been minimized such that the social/economic benefit is greater than the loss. These requirements should be considered in discussing the setting and impacts.

### *Environmental Setting, Regional Setting, Physical and Biological Characteristics of the Region*

This section calls for description of the Hudson River. The Hudson River is a complex resource to describe and there is no indication in the scope of what will be described in the DGEIS. Staff have concerns that there will be significant potential impact to the Hudson River from some of the preferred alignments and the DGEIS should consider the complete Hudson River resource. This should include bathymetry, tides, ice scour, variety of habitats found in the Hudson, and the species that depend on the river for spawning.

### *Environmental Setting, Physical Resources, Water, Surface Water and Hydrogeological Setting (Including Wetlands, Floodplains)*

Both this section and the "Ecological Communities" section include freshwater wetlands. It is not clear why they are being listed in two different locations or how these sections will differ.

### *Environmental Setting, Biological Resources, Ecological Communities*

This section does not mention Submerged Aquatic Vegetation (SAV) that may be found in the Hudson River. SAV should be depicted on a map and the qualities and functions of them should be documented.

### *Environmental Impacts and Mitigation, Biological Resources, Ecological Communities*

The potential to impact the SAV should be documented and methods to minimize impacts of the proposed walkway in the Hudson.



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### *Alternatives*

- The trail Section 3.1 alternatives do not include the in-water option previously considered and discarded because of the breadth of impacts.
- The discussion on trail Section 2.1 mentions the desire by the City of Beacon that an off-road alternative be considered. It is not clear where this alternative would be located and if it will be fully considered as part of the DGEIS.
- The trail Section 3.2 alternatives analysis must include potential for impacts to the Class 2 DEC freshwater wetland WT-1. The two alternatives besides the Tioronda Bridge would both likely be in the wetland or adjacent area. The boardwalk alternative would potentially require mitigation for the significant impacts to the freshwater wetland.

### **Endangered and Threatened Species**

DEC has previously identified nine threatened and endangered species in the project area. As they are directly regulated and potentially subject to a permit, the sections on these species should more specifically identify their habitats, the impacts, and the potential need for a taking permit. The Scope should specify impacts be fully assessed based on project details and trail operation and impacts should be addressed through avoidance and minimization measures. If impacts cannot be fully addressed, then mitigation and net conservation benefit to the species will be required through the Incidental Taking permit process.

### *Environmental Impacts and Mitigation, Biological Resources, Fauna*

The language in this section appears to focus on impact to the species, but must include impact to their habitats. The alteration of habitat and interference with essential behaviors is also regulated as taking.

Currently the Scope identifies the potential for impact to “these species directly during construction or indirectly through the effects associated with trail use”. This is not correct. There are potential direct impacts that are temporary construction impacts as well as permanent impacts from operation of the trail and there are indirect impacts that are both temporary and permanent.

In particular, the permanent, indirect impacts should include increased use of the trail which will bring more people into sensitive areas not part of the trail itself. The Breakneck Ridge area and Denning's Point are particular concerns.

### *Alternatives*

- The preferred option for trail Section 3.1, as currently laid out and shown as 3.1b on the Preliminary Preferred Alignment, will required an Article 11, Title 5 permit for incidental take of an eagle nest as the route falls within feet of the nest. New disturbance where there are no current trails and in such close proximity to the nest

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will interfere with essential behaviors. This needs to be discussed in the impacts assessment and the mitigation will need to include consideration of the net conservation benefit requirement of the permit.

- The preferred option for trail Section 3.2 will increase the existing impact to bald eagles from use by the public of Denning's Point during the wintering season. The existing impacts must be included in the Environmental Settings and the impact from increased use considered in the Environmental Impacts and Mitigation section.

### **Other Comments:**

#### *Environmental Setting, Local Setting, Land Use and Zoning*

Environmental Remediation sites and areas of historic fill are to be identified in this section, but there is no corresponding consideration of impacts other than a mention in the Alternatives section that it will be a factor in selecting the route. The preferred route will border several sites, but if there will be no disturbance within the sites, an impact analysis is not warranted. Only the Tioranda Bridge alternative appears to have potential to directly impact a site.

#### *Environmental Setting, Physical Resources, Biological Resources, Flora*

The description just states that the document will identify the types of Invasive Plants. The DGEIS should include a map that indicates the location of known invasives and if they are contained in the proposed corridor area.

#### *Environmental Impacts and Mitigation, Biological Resources, Invasive Species*

This section should describe how the project may impact the spread of invasive species and specify which Best Management Practices will be implemented to mitigate this potential.

If you have any questions on the DEC permitting process, please feel free to contact me at (845) 256-3014 or at [rebecca.crist@dec.ny.gov](mailto:rebecca.crist@dec.ny.gov). Please address all submissions to my attention at the DEC Region 3 office in New Paltz.

Sincerely,



Rebecca Crist  
Environmental Analyst

Ecc: Bill Rudge, NYSDEC Natural Resource Supervisor  
Lisa Masi, NYSDEC Bureau of Wildlife  
Heather Gierloff, NYSDEC Bureau of Habitat