

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, NY 12561-1620

P: (845) 256-3054 | F: (845) 255-4659

www.dec.ny.gov

October 29, 2018

Hilary Adler
184 McKinstry Road
Gardiner, New York 12515

RE: Response to Comments Received -
Heartwood Lodging Facility Within Shawangunk Kill Recreational River Corridor
Town of Gardiner, Ulster County
DEC Permit No. 3-5124-00213/00001 *Wild, Scenic & Recreational Rivers*
DEC Permit No. 3-5124-00213/00002 *SPDES (SPDES #NY0281077)*

Dear Ms. Adler:

The Department received your initial comments via email on September 14, 2017, concerning the proposed Heartwood Lodging Facility (Heartwood), located on NYS Route 44/55 in the hamlet of Tuthilltown, Town of Gardiner. I responded electronically to you via email briefly that same day, advising you that DEC would respond to your concerns at the appropriate time (following the close of the public comment period after application deemed "complete" by DEC). On September 15, 2017, we received additional comments and materials (reports), submitted electronically via email, concerning the Heartwood project. Submitted materials include a copy of comments submitted via email directly to the Town of Gardiner Planning Board, which is acting as SEQR lead agency for environmental review of the project. We thank you for providing the supplementary information and reports, which were received by DEC prior to the application being deemed complete. Although your comments were received prior to the open of the public comment period for the complete application, I am writing in response to concerns you had expressed regarding the Heartwood project in your emails received September 14th & 15th, 2017, respectively.

Background: DEC's primary jurisdictions over the Heartwood project are specified within Part 666, *Regulations for the Administration and Management of the Wild, Scenic and Recreational Rivers System* (Wild Scenic & Recreational Rivers regulations), and Part 750, *State Pollutant Discharge Elimination System* (SPDES) regulations. The Shawangunk Kill, a (Class B) NYS protected waterbody, is also classified as a *Recreational River* under Part 666 Wild Scenic & Recreational Rivers regulations.¹ The Heartwood project, located adjacent to the Shawangunk Kill, is located within the regulated Shawangunk Kill Recreational River corridor, and thus regulated under Part

¹ See ECL § 15-2714(3)(gg).

666. However, as no disturbance to the bed or banks of the Shawangunk Kill is proposed, no Part 608 Protection of Waters (*Stream Disturbance*) permit is required for the project.

In response to DEC guidance, and following multiple submissions made by the sponsor, the application was eventually determined to be complete, and *Notice of Complete Application* was published June 21, 2018 in the official newspaper of the Town of Gardiner, the Times-Herald Record, and State-wide in the Environmental Notice Bulletin (ENB). The public comment period remained open until August 10, 2018. No comments were received by DEC during the public comment period.

Following below are DEC's response to your comments: For your convenience, I have excerpted below (in italics) questions and comments directly from your submitted e-mail(s), in order to answer your concerns:

Q1. *The Heartwood Developers state in an email that they "retained a DEC-recommended environmental expert." Our question is, does the DEC recommend environmental experts? If so, who did the DEC recommend? And/or does the DEC have a list of "environmental experts" and, if so, where can we find the list. If the DEC did not or does not recommend environmental experts, please state as much.*

Answer: DEC does not recommend environmental experts. In fact, contrary to what is indicated above (i.e., "*the Heartwood Developers state in an email that they "retained a DEC-recommended environmental expert."*"), Department staff generally make an effort to state clearly and directly to applicants and their consultants that DEC makes no recommendations regarding environmental consultants [or other "experts"]. As no such "list" of environmental consultants, or other "experts", is kept at Region 3 headquarters in New Paltz, DEC cannot provide you the requested [non-existent] list.

NOTE: DEC is not responsible for statements made by other parties.

Q2. *The Heartwood Developers orally stated that the DEC was requiring paths/access to the river (Shawangunk Kill River). We did not see the actual correspondence between DEC and Heartwood/Phillip. Did the DEC actually require said paths. If so, we would like to see the actual document stating this requirement as well as the name of the DEC agent that voiced the requirement to ascertain exactly what was said.*

Answer: The project sponsor initially contacted DEC October 19, 2016, to begin discussions regarding the proposal. Over the course of application processing (which spanned approximately two years), and concurrent SEQR review of the proposal, multiple contacts were made between project consultants and DEC, including telephone calls, exchanges of email, and in-person meetings, in order to provide guidance to the applicant and further refine proposed project design. As DEC's jurisdiction over the project involves implementation of Part 666 regulations, which in the instance of a *recreational river* (such as the Shawangunk Kill), generally guides land uses within the defined corridor towards the *preservation and enhancement* of those *recreational values* which define the

[Shawangunk Kill] river corridor, DEC provided such guidance to the sponsor in such manner as was deemed appropriate during those on-going discussions. No specific "requirement(s)" was/were discussed; rather, an approach which increases *public access* and *education of the protected resource* was promoted. In general, the applicant was guided towards the incorporation of project revisions which promote *greater public access*, and which promote *public education of the Shawangunk Kill Recreational River Corridor* specifically. Such measures which were included as a result of those discussions include the posting of new signage along that portion of walking path to be constructed on the Heartwood site, on that portion of land which abuts the Shawangunk Kill as shown on submitted plans, which announces to the viewer (including anglers, kayakers & others), that he or she is currently within [and therefore enjoying the recreational benefits of], the *Shawangunk Kill Recreational River Corridor*.

Response to Comment Regarding Development Within 1,000 Feet of Shawangunk Kill River: Regarding recommendations which may be included in published reports (or other document), including reports and documents published by the Department: Generally, recommendations contained in such documents are for guidance purposes only. Such *recommendations* are not regulatory requirements, and as such do not carry the force of enacted law. Although the Department (or other agency) may consider such recommendations in its review and decision-making, the Department is not obligated to honor any such recommendation or request. However, the Department must strictly adhere to, and consistently apply and administer, implementing regulations of New York State Environmental Conservation Law (ECL), including Part 666 (Wild Scenic & Recreational Rivers regulations) and Part 750 (SPDES regulations).

Regarding comments which you have submitted to the Town of Gardiner Planning Board: Thank you for sharing your concerns which you had directed to the Town of Gardiner Planning Board. However, DEC has no authority over the Town of Gardiner Planning Board or its jurisdictions over the project. In fact, the DEC, acting as an involved agency for the purpose of the SEQR review of the project in accordance with Part 617, is bound by the Negative Declaration issued May 21, 2018 by the Town of Gardiner Planning Board, acting as lead agency for SEQR review of the Heartwood project. Therefore, we recommend that you contact the Town of Gardiner Planning Board directly in order to resolve your concerns regarding the Heartwood project at the local (Town) level. By copy of this letter, we are advising the Town of Gardiner Planning Board of your continued concerns regarding the Heartwood project.

To summarize briefly, the project sponsor has incorporated certain project revisions which avoid and/or reduce disturbance within the *Shawangunk Kill Recreational River Corridor*, such as deleting design elements from the embankment of the Shawangunk Kill (stone platform, improved path), and reducing and/or eliminating development within 150 feet (150') of the Shawangunk Kill. In addition, certain design elements were added which enhance recreational and educational opportunities afforded by the *Shawangunk Kill Recreational River Corridor*, such as new kayak landing and new portion of walking path

to allow greater public access to the river, and new signage requirements promoting public education of the *Shawangunk Kill Recreational River Corridor*.

The Department wishes you to be aware that we have thoroughly reviewed this project in accordance with applicable regulations, and in particular Part 666, *Wild Scenic and Recreational Rivers* regulations. We believe that the project, as currently designed, has been improved through guidance provided by DEC to the sponsor throughout the [iterative] application review process. Specifically, disturbances within the 150' of the streambank of the Shawangunk Kill have been avoided to the maximum practicable degree, and no development is proposed on steep embankments. Additionally, enhancements to public access and public education of the Shawangunk Kill recreational river corridor have been incorporated into project design. The Department considered the above project modifications, along with your comments, when making its final decision.

From the Department's review, we have determined that the proposed project meets the standards for permit issuance contained in Part 666 Wild Scenic & Recreational Rivers regulations, and Part 750, *State Pollutant Discharge Elimination System* (SPDES) regulations, specifically Parts 750-01 and 750-02, regulations which pertain to obtaining, and operating in accordance with, the SPDES permit. We have therefore issued the requested permits to the applicant as of this date; a copy of each is attached for your information. We also wish to thank you for your concern in protecting the natural resources of New York State and especially the values and benefits of the *Shawangunk Kill Recreational River Corridor*.

Please contact this office at (845) 256-2250 with any questions you may have regarding the above.

Very truly yours,



Scott Ballard
Deputy Regional Permit Administrator
Region 3

Attachments: 1) WS&RR Permit No. 3-5124-00213/00001 issued 10/19/18 (7 pages)
2) SPDES Permit No. 3-5124-00213/00002 issued 10/19/18 (6 pages)

Cc: Town of Gardiner Planning Board
B. Drumm