

New York State
Department of Environmental Conservation
Commissioner's Determination
of Lead Agency
Under Article 8 of the
Environmental Conservation Law

PROJECT: Proposed Hudson River Valley Resort, Town of Rosendale, Ulster County

DISPUTING AGENCIES: Town of Rosendale Planning Board and the New York State
Department of Environmental Conservation (Region 3)

I have been asked to designate a lead agency to conduct the environmental review of the proposed Hudson River Valley Resort in the Town of Rosendale, Ulster County, under the New York State Environmental Quality Review Act (SEQR)[Article 8 of the New York State (NYS) Environmental Conservation Law (ECL); regulations at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 617]. This designation of the New York State Department of Environmental Conservation, through its Region 3 Office (hereafter referred to as NYS DEC) as lead agency for that review is based on my finding that the NYS DEC is the most appropriate lead agency given the substantial potential regional and statewide impacts of the proposed project.

ACTION AND SITE

The action involves the proposal by Hudson River Valley Resorts, LLC (HRVR) to create a resort complex on properties which include and surround the site of the Williams Lake Hotel and Williams Lake (a/k/a Fifth Binnewater Lake). HRVR proposes:

- demolition of the existing 57-unit Williams Lake Hotel plus some of its accessory facilities;
- construction of a new lakeside hotel complex on the northeast side of Williams Lake, to contain 94 hotel rooms, 22 lakefront suites, and 14 detached "hotel cabins";
- construction of 160 single-family residential units including 101 attached and 59 detached units, placed in clusters northeast, north, west, south, and southeast of Williams Lake;
- creation of multiple new accessory and recreational facilities scattered throughout the eastern and southern portions of the property (consisting of a welcome center, wellness center, fitness center, yoga/meditation center, courtyard/skating rink, interpretive center, teahouse, spa, amphitheater, family recreation center, and organic gardens);
- retention of the existing family beach on the east side of Williams Lake;
- excavation of up to 4 acres on the northeast corner of Williams Lake;
- creation of an expanded internal road network, substantially routed along existing ski and hiking trails;
- excavation of new stormwater lagoons concentrated near the new hotel and roads;

- rerouting of the Wallkill "Rail Trail" from the historic railbed to a location along the property margin;
- creation of a central water supply system for the hotel and attached dwelling units plus individual wells for some or all of the detached dwelling units;
- development of a central sewage treatment system for the entire resort; and
- probable blasting in support of several development elements.

The entire property consists of approximately 779 +/- acres. The northern 400+ acres of the property, including two more lakes to the north of Williams Lake, is protected by a Conservation Easement held by the Rondout-Esopus Land Conservancy. The proposed development would occur on approximately 300 - 325 acres of the remaining acreage.¹ The property is entirely within the Town of Rosendale, and is generally located west of the NYS Thruway and NYS Route 32, approximately midway between Kingston and New Paltz.

SITE RESOURCES AND HISTORY

The site and surroundings are generally rural in nature. The property and adjoining lands were at the heart of the Rosendale or "Natural" cement industry in the late 1800s through early 1900s. There are many residual structures and features relating to that prior use remaining on the site, including remains of kilns, surface and deep mine elements, at least one industrial structure, and the Wallkill Railroad bed. Rosendale cement was eclipsed by Portland cement after the early 1900s, and cement production in the area ceased by the 1920s. A designated historic district focused on the Rosendale cement industry adjoins the HRVR property to the south. The Williams Lake Hotel complex operated on about 50 acres on the east side of Williams Lake from the 1920s through about 2006, while the remainder of the site has reverted to natural wooded conditions.

The property supports several known bat hibernacula in natural caves and abandoned mines in and adjoining both the easement and proposed development areas, collectively supporting about 50% of the United States' (U.S.) east coast's overwintering population of the state- and federally-endangered Indiana bat (*Myotis sodalis*), as well as the small-footed bat (*Myotis leibii*), a NYS Species of Special Concern.

Additional habitat areas adjoining the proposed development areas and on the easement lands support known populations of the NYS-endangered northern cricket frog (*Acris crepitans*) and Allegheny woodrat (*Neotoma magister*) as well as the NYS-threatened pied-billed grebe (*Podilymbus podiceps*). The area generally is recognized for its biodiversity by the Hudson River Estuary Wildlife and Habitat Conservation Framework, and large portions of the acreage proposed for the HRVR development are mapped as "significant habitats" under the NYS Natural Heritage inventory system. Further, the area was included within both the Shawangunk

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There are variations in cited acreages among several of the narrative submissions; figures cited in this decision are generally consistent with the maps and overall plans submitted by the project sponsors.

Mountains and Karst Aquifer priority project areas of the 2006 NYS Open Space Conservation Plan, in recognition of rich habitat, geologic and recreational values as well as, for the Karst Aquifer area, significance in water resource protection.

REGULATORY SETTING

The role of lead agency may only be assumed by an involved agency with authority to make discretionary decisions on one or more components of the overall plan. The two agencies contesting to be designated as lead agency for the review of the HRVR proposal are the Town of Rosendale Planning Board (Rosendale Planning) and NYS DEC.² A number of private individuals and entities also submitted letters of opinion concerning the choice of lead agency for this proposed project.

For the project to proceed as planned, Rosendale Planning would need to grant subdivision approval and grant special use permit(s) for the hotel and related recreation and service facilities, and the Rosendale Town Board has been requested to issue a zoning amendment to authorize a "Planned Resort Special Permit". Based on HRVR's project description and layout as currently proposed, NYS DEC would also need to grant the following permits or approvals:

- water supply (ECL Art. 15, Title 15; 6 NYCRR Part 601);
- NYS Pollutant Discharge Elimination System (SPDES) permit for the proposed sewage treatment system (ECL Art. 17; 6 NYCRR Part 750);
- assessment of the project's conformance with the SPDES General Permit for Stormwater Discharges (also ECL Art. 17; 6 NYCRR Part 750);
- disturbances of regulated freshwater wetland adjacent areas (ECL Art. 24; 6 NYCRR Part 663);
- shoreline and lakebed disturbances (Protection of Waters, ECL Art. 15, Title 5; 6 NYCRR Part 608);
- Water Quality Certification under the federal Clean Water Act (United States Code Title 33, Chapter 26; 6 NYCRR Part 608); and
- one or more permits for taking of endangered species, including habitat alterations, would probably be required (ECL Art. 11; 6 NYCRR 182.4), based on the known areas identified by NYS DEC as occupied by one or more endangered species plus the general habitat requirements of those species.

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in 6 NYCRR Part 617.6(b)(5)(v):

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The Town Board of the Town of Rosendale had originally proposed to serve as co-lead agency with Rosendale Planning but has now endorsed Rosendale Planning's bid to serve as lead agency.

- whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
- which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and
- which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

DISCUSSION

A. First Criterion

The first criterion asks whether potential impacts from the proposed action are of local, regional or statewide significance. Both disputing agencies acknowledge that the project would likely cause a variety of impacts at the local, regional and state levels but differ in attributing significance to those various impacts. Rosendale Planning, and the Rosendale Town Board in its endorsement of Rosendale Planning, stress the local importance of quality-of-life and socio-economic impacts, as well as likely increases in traffic and demands on local open space, infrastructure and community resources. Further, Rosendale Planning argues that the infrastructure-related permits which NYS DEC must issue would primarily address local impacts, and that some or all of the natural resource-based jurisdictions might be designed away during the course of project review, leaving no impacts of significance to NYS DEC.

On the other hand, NYS DEC argues that the most significant impacts are those of regional and broader significance. It specifically notes that impacts to endangered species and their habitats are of state and even, in the case of the Indiana bat, of national significance. While the records submitted show only point locations for the listed species and thus are not indicative of full patterns of habitat usage by those species, NYS DEC observes that many of the proposed activities (several of which involve blasting) are likely to impact one or more listed species or their habitats, and that any such losses would be of at least statewide significance. Further, given the disease crisis which affected many NYS and other northeastern U.S. bat hibernacula during the past winter, any diminishment of the overwintering habitat used by 50% of the east coast Indiana bat population raises the importance of potential loss of or damage to those essential cave habitats to the national level.

Beyond endangered species, designation of the entire project area and its surroundings as significant for biodiversity by two separate, regionally-focused work groups indicates the broader, regional and statewide importance of likely reduction or elimination of highly productive or unusual natural biological communities and open space.

NYS DEC additionally pointed out the high volumes of the proposed water supply withdrawals and wastewater discharges (nearly ten times of that previously authorized for the Williams Lake Hotel). It also observed that such high levels of withdrawal from surface and subsurface sources, plus subsurface discharge to a different drainage system, could have impacts

well beyond the project site and its immediate surroundings. The significance of this potential impact is further highlighted by the fact that the Karst Aquifer Open Space Plan priority project area was listed in part due to the importance of the karst area to protection of water quality supply and quality. NYS DEC notes that this project would be of a relatively intense scale in an essentially rural area, with very low density of existing development, and generally removed from major settled areas or major travel corridors. Finally, NYS DEC observed that the entire project area is identified as "sensitive" for (i.e., likely to contain) archacologic resources and may further contain structures eligible for historic designation (especially those related to the Rosendale cement industry), both of which may be of regional or even statewide significance.

In considering the first criterion, I conclude that the most significant potential impacts of this project are not primarily local. While the proposed HRVR project is not exceptionally large, an extraordinary number and diversity of sensitive resources are found on the site and within its surrounding area. Having weighed the possible impacts on those resources, I conclude that it would be most appropriate to designate NYS DEC as the lead agency for the environmental assessment of the proposed HRVR project.

B. Second Criterion

As to the second criterion, breadth of authority to conduct the environmental review, I find no significant distinctions between the two competing agencies. NYS DEC has the unique statutory obligation to evaluate and analyze water supply capacity and allocation; a broad array of statutory mandates to protect natural resources, as stated above; and explicit state and federal authority to regulate wastewater and stormwater discharges. Together, these jurisdictions provide DEC with substantial authority to attach conditions to any possible future approvals, to avoid or minimize impacts identified during review. NYS DEC will also be required to ensure that a cultural resources assessment of the site is prepared and submitted for review by the NYS Office of Parks, Recreation and Historic Preservation, so that potential impacts to any on-site archaeological and historic resources are identified along with means for avoiding or mitigating any such impacts. Rosendale Planning, on the other hand, has broad local land use authorities, including subdivision and special use permit approvals, which would allow it to evaluate the proposed project as well as the site and broader surroundings, and to attach substantial conditions to any approvals which it might issue. Thus, both agencies possess broad authorities relative to the proposed HRVR project, and consideration of the second criterion does not persuade me that either agency would be more appropriately designated as lead.

C. Third Criterion

Similarly, in considering the third criterion, the capacity of each competing agency to conduct the required environmental assessment, I note that both NYS DEC and Rosendale Planning presented strong evidence of their capability to conduct the necessary environmental assessment of the proposed HRVR project. NYS DEC staff includes members with technical specialities which will enable it to most effectively address the whole range of potential impacts of the proposed project, specifically including the regional and wider impacts of potential losses


of endangered species and their habitats; impacts on designated regionally-important resources, including those due to habitat fragmentation; and impacts related to the large infrastructure and resource demands of the proposed HRVR project. Rosendale Planning noted its ability to use local as well as SEQR fees to pay for consultant services to assist it in its analyses of applications, and stressed its long-term working relationship with an engineering and environmental consulting company in the conduct of such analyses. Though both agencies possess capable staff, I find that DEC's expertise in endangered species is critical to the conduct of this environmental review and is a capability not readily found outside of DEC. This expertise further supports the selection of NYS DEC as lead agency to conduct the environmental assessment of the HRVR proposal.

FINDING

In summary, based on the regional, statewide and potentially national significance of the possible impacts of that proposed project, I conclude that the New York State Department of Environmental Conservation through its Region 3 Office should serve as lead agency for the environmental review of the proposed Hudson River Valley Resort.

This decision does not in any way change or diminish the jurisdiction of the involved agencies. As noted in several of the NYS DEC letters submitted with its initial request for designation, the impacts identified by Rosendale Planning, along with other involved agencies, must be considered in the review of this project. The record developed during that review must support the decisions of each of those agencies. Accordingly, I encourage Rosendale Planning and the Rosendale Town Board, with the other involved agencies, to actively participate in all phases of the environmental review of this project. In particular, I encourage the involved agencies to identify the information needs and impact evaluations necessary to support local land use decisions. I further encourage NYS DEC staff to openly facilitate that participation, as offered in their earlier letters.

Dated: JUL 02 2008
Albany, New York



Alexander B. Grannis, Commissioner

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Agencies/Applicant

Planning Board, Town of Rosendale

Attn: Billy B. Liggan, Chair AND

Mary Lou B. Christiana, Esq. AND

Dave Plante, Rosendale Town Planner, c/o C. T. Male Associates, P.C.

Rosendale Town Board

Attn: Patrick McDonough

Rosendale Zoning Board of Appeals

Attn: Robert Hendrickson

Ulster County Department of Health,

Attn: Dean Palen

Ulster County Planning Department

Attn: Dennis Doyle

Ulster County Highway and Bridges Department

Attn: David Sheeley

Ulster County Development Corporation

Attn: Lance Matteson

NYS Office of Parks, Recreation & Historic Preservation

Attn: Ruth Pierpont

Region 3, NYS Department of Environmental Conservation

Attn: Willie Janeway, Regional Director AND

Margaret Duke, Regional Permit Administrator

Hudson River Valley Resorts, LLC

Attn: Joseph P. Eriole, Esq., Veneziano & Associates AND

Tim Miller, Tim Miller & Associates

Mr. Edward Williams

New York State Department of Environmental Conservation, Albany

William Little, Esq., Office of General Counsel

Betty Ann Hughes, Division of Environmental Permits