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DEPARTMENT OF STATE
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ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

October 22, 2008

Mr. John Smith
PO Box 237
West Shokan, NY 12494

Re: F-2008-0326
U.S. Army Corps of Engineers/New York District Permit
Application
DEC # 3-5122-00168/00001
Construct 300' long bulkhead, place rip-rap in front of and
backfill behind proposed bulkhead, construct 6' wide x 100'
long private dock with 8' wide x 12' long gangway.
Rondout Creek, Town of Esopus, Ulster County
Objection To Consistency Certification

Dear Mr. Smith:

The Department of State has completed its review of the above-referenced proposal and the consistency certification provided for it.

Pursuant to 15 CFR Part 930.63, the Department of State objects to the consistency certification for this proposed activity. As a result of this objection, the consistency provisions of the federal Coastal Zone Management Act (CZMA) prohibit the U.S. Army Corps of Engineers from authorizing this activity unless this objection is overridden on appeal to the U.S. Secretary of Commerce.

Subject of the review

You have applied to the U.S. Army Corps of Engineers for a permit to construct 300 linear feet of new bulkhead fronted by rip-rap, a 8-foot wide by 12-foot long gangway, and a 6-foot wide by 100-foot long private dock. Construction of the proposed bulkhead would involve the placement of 6,967 cy. of fill below Mean High Water (MHW) and within the State designated and locally important Rondout Creek Significant Coastal Fish and Wildlife Habitat. The proposed project is located in the Rondout Creek, adjacent to 69 Old Route 9W, in the Town of Esopus, Ulster County, NY.

Project Purpose: To construct a bulkhead, revetment, and private dock (i.e. filled-in wharf) to accommodate five or fewer vessels, including an 86-foot long personal vessel and a 45-foot long power boat for private use by the applicant, his family, friends, and business associates so that they may "take full advantage of the privacy" offered by this property.

Factors Relevant to this Review:

Pursuant to the consistency provisions of the CZMA, certain activities requiring federal agency authorizations are required to be consistent with the policies of the New York Coastal Management Program (CMP). The proposed activity, which requires authorization from the U.S. Army Corps of Engineers, is subject to the federal consistency provisions of the CZMA, and is required to be consistent with the enforceable policies of the CMP. The enforceable policies of the CMP in the area

where the activity is proposed are contained in the Town of Esopus Local Waterfront Revitalization Program (LWRP).

Applicable Policies:

TOWN OF ESOPUS LWRP POLICY 14: ACTIVITIES AND DEVELOPMENT, INCLUDING THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES, SHALL BE UNDERTAKEN SO THAT THERE WILL BE NO MEASURABLE INCREASE IN EROSION OR FLOODING AT THE SITE OF SUCH ACTIVITIES OR DEVELOPMENT, OR AT OTHER LOCATIONS.

A flood and erosion control structure, such as a bulkhead, is generally appropriate where erosion is affecting the shoreline. In this case, the proposed bulkhead is not needed as an erosion control structure as there is no evidence of erosion at this site nor are there any upland structures requiring erosion protection. Furthermore, the construction of such a structure could adversely impact significant coastal resources at the site and increase the severity and adverse effects of erosion in adjacent areas. Since the proposed bulkhead is proposed only to accompany the construction of a private dock and is not needed to protect the upland property from flooding or erosion, its construction would not be consistent with this policy.

TOWN OF ESOPUS LWRP POLICY 7B: THE LOCALLY IMPORTANT RONDOUT CREEK HABITAT SHALL BE PROTECTED AND PRESERVED SO AS TO MAINTAIN ITS VIABILITY AS A HABITAT.

Pursuant to Article 42 of the State Executive Law and the implementing regulations at 19 NYCRR Part 602, the State has designated the Rondout Creek, including the area where the structures would be constructed, a Significant Coastal Fish and Wildlife Habitat (SCFWH). That designation implements policies # 7 and 7b of the Town of Esopus LWRP.

The proposed filling and bulkhead construction would result in a direct loss of streambed area that contributes to the overall habitat values associated with the Rondout Creek Significant Coastal Fish and Wildlife Habitat (SCFWH). This area was designated by the State as a SCFWH under Article 42 of the State Executive Law and the implementing regulations at 19 NYCRR Part 602. Policy 7 and 7B of the Town's CMP protects locally important habitats from uses or activities which would destroy habitat values or significantly impair the viability of the designated habitat.

The habitat narrative for the Rondout Creek indicates that it is one of the major freshwater tributaries of the Hudson River. Rondout Creek is accessible to, and used by, anadromous fishes, including striped bass, white perch, shad, alewife, blueback herring, smelt, and many resident freshwater species including largemouth and smallmouth bass, as a spawning ground, nursery area, and feeding area. The concentrations of these various anadromous and resident freshwater fish species within the Rondout Creek are unusual in Ulster County. Recreational fishing and waterfowl hunting opportunities associated with the Rondout Creek attract visitors from throughout the mid-Hudson Valley contributing to the habitat's regional significance.

The impact assessment section of the Rondout Creek SCFWH narrative indicates that "potential effects of stream bed disturbances are of particular concern." The proposed filling and wharf construction would result in a disturbance and direct loss of in-stream area that contributes to the overall habitat values associated with the Rondout Creek SCFWH. The permanent placement of approximately 6,967 cubic yards of fill below mean high water level (MHW), along the stream bed, within a State-designated significant habitat to accommodate the construction of a private wharf would destroy protected habitat and as indicated in the NYS Department of Environmental Conservation letter dated May 8, 2008, "would result in unnecessary and unreasonable damage to the natural resources of the State."

In addition to the placement of fill, the proposed activity would also involve excavation and grading along the shoreline area where the bulkhead would be constructed and the road would be extended which would require the removal of vegetation from the shoreline, banks, and adjacent slope. The impact assessment section of the Rondout Creek SCFWH narrative indicates that "existing areas of natural vegetation bordering Rondout Creek and its tributaries should be maintained to provide bank cover, soil stabilization, and buffer areas." According to information submitted with your consistency certification, the slope along the waterfront has remained undisturbed and vegetated. The existing road constructed by the previous property owner was constructed more than 50 feet away from the shoreline "so that the banks and/or wetland buffer would not be disturbed." The proposed activity would result in the loss of this vegetation and disturbance of the stream bank. Therefore, the proposed activity would not be consistent with this policy.

Alternatives

Pursuant to 15 CFR Part 930.63, the Department of State may identify alternatives, if they exist, which, if adopted by an applicant, may permit the proposed activity to be conducted in a manner consistent with the New York State Coastal Management Program.

A dock consisting of a single open pile structure, up to four feet in width and 55 feet in length, would provide berthing for a dingy or small launch with which to access navigable waters and larger moored vessels.

The preceding alternative would be consistent with the New York Coastal Management Program.

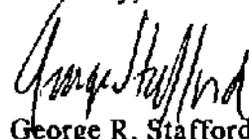
Conclusion

Given the foregoing, the proposed activity would not be consistent with Policy #14 and #7b of the Town of Esopus LWRP.

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the U.S. Secretary of Commerce (Secretary) override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New York Department of State and to the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

The appeal process can be a lengthy one, therefore, if you would like to continue discussions with this office while pursuing an appeal, please call Mr. Fred Anders at (518) 473-2477. If you or your client are represented by counsel, kindly have your attorney contact Mr. Anders for referral to our Legal Division.

Sincerely,



George R. Stafford
Deputy Secretary of State

c: OCRM - John King
COE/NY - George Nieves
NYSDEC/Region 3 - Scott Sheeley
Town of Esopus LWRP - Marion Zimmer