



To: File

From: Rita Kozak - Bergmann

Date: September 22, 2023

Re: Hovey's Island Planned Development District Project  
Environmental Permitting Recommendations

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It is our understanding that the proposed work involves the development of Hovey's Island in the Town of Henderson, Jefferson County, New York. Proposed upgrades will include new cabin sites, new community building, recreation areas and associated water, sewer and electric services. It is our understanding that some work associated with the utility services expansion will occur on Association Island. Additionally, it is our understanding based on conceptual plans dated 5/19/2023 that indicate the proposed development of a boat ramp and docks located within Snowshoe Bay. Environmental permitting considerations for the project were evaluated using the results of the Wetland/Watercourse Delineation conducted on July 13, 2021. The final design of the project will ultimately dictate the environmental permits required for the proposed work. Below is a discussion of the permitting scenarios that may be applicable, based on our current knowledge of the project. The discussion below is specific to environmental permitting and does not include and zoning or other local entitlement approvals that the project may require, nor is it inclusive of any New York State Department of Health (NYSDOH), County Public Health or other project permits associated with utility service to the project site or utilizing waters surrounding the project site for bathing beaches as may be regulated by NYSDOH.

#### Threatened and Endangered Species Consultations

According to the USFWS information reviewed, there is one (1) federally listed bat species that may occur within the project area; the federally endangered Northern Long-eared Bat (*Myotis septentrionalis*). This species is also included on the New York State (NYS) Endangered Species List as a state endangered species. Any part of the project area containing trees greater than three-inch (3") diameter breast height (dbh) is generally considered suitable summer habitat for these bat species and is subject to time of year tree clearing restrictions. The window where tree clearing can occur begins November 1 and ends March 31. If these time of year restrictions cannot be adhered to, presence/absence surveys and/or additional USFWS coordination may be required. If federal permits are required, a Section 7 Consultation with USFWS will be required to determine the project's effects on the species. The Section 7 Consultation would be initiated and carried out by the federal agency issuing a permit.

The project is not within the "Rare Plants and Animals", or "Significant Natural Communities" layers as mapped by the NYSDEC Environmental Resource Mapper (ERM) indicating that there are no records of listed species at the site. No Natural Heritage screening is required.

Timeframe: 35-45 days (if further coordination is required)

#### State Historic Preservation Office Consultations

As the project is anticipated to have federal agency involvement (i.e. Corps permit described below) a Section 106 of the National Historic Preservation Act consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) will be required. If only state agency involvement was to be required, such as a SPDES permit, a consultation under Section 14.09 of the New York State Historic Preservation Act would still be required. Both consultation types are usually conducted via their online CRIS project review process. During this review, the OPRHP would assess the project's potential impacts on cultural resources including archeological and



architectural resources. The project is located in a mapped archeological sensitive area, and as such, a Phase 1A/1B Archeological Survey was conducted by H.A.Z.Ex in October of 2021 and September of 2023. H.A.Z.Ex coordinated with OPRHP through the CRIS website.

Timeframe: 10 to 45 days

#### U.S. Army Corps of Engineers – Section 404 / Section 10

Wetland 1 is a palustrine emergent (PEM) wetland under the federal jurisdiction of the U.S. Army Corps of Engineers (USACE) as a Water of the United States (WOTUS). Lake Ontario is also a federally regulated WOTUS. Impacts to these features would require authorization under Section 404 of the Clean Water Act. Lake Ontario is also a Navigable Water and impacts to this feature would require approval under Section 10 of the Rivers and Harbors Act. The USACE Nationwide Permit (NWP) program issues general permits based on activity type for projects that impact up to 0.5 acres of permanent WOTUS impact. If the project can be designed to impact less than 0.5 acres of WOTUS, coverage under the 2021 NWP 36 for Boat Ramps/ NWP 39 for Commercial Development would be likely. A Pre-Construction Notification (PCN) would have to be submitted to the USACE New York District and written authorization from the USACE is required. Coverage under NWP 36/39 would satisfy the requirements for a Section 10 Permit, if necessary. As described in General Condition 23 of the NWP program, compensatory mitigation is required for WOTUS impacts exceeding 0.1 acre. Generally, this is done by purchasing mitigation credits through a mitigation bank or in-lieu fee (ILF) program. If impacts to WOTUS can be kept under 0.1 acres, mitigation would not be required.

Timeframe: Six (6) to Nine (9) months for permit.

#### New York State Department of State – Federal Coastal Zone Consistency Determination

The proposed project is located within the New York State Coastal Zone. If the project requires federal action (i.e. Corps permit) the project will require a Coastal Zone Consistency Review in accordance with the Coastal Zone Management Act. The New York State Department of State (NYSDOS) objected to the Corps coastal consistency determination issued for 2021 NWP 36, and as such, any project within the New York State Coastal Zone that requires authorization under NWP 36 is required to obtain an individual consistency concurrence determination from NYSDOS if impacts to federally-jurisdictional waters are proposed, which they currently are for this project.

Timeframe: One (1) to Five (5) months for permit.

#### New York State Department of Environmental Conservation – SPDES GP-0-20

If the proposed work requires greater than one (>1) acre of earth disturbance, a State Pollutant Discharge Elimination System (SPDES) GP-0-20-001 may be required. This includes the preparation of a Stormwater Pollution Prevention Plan (SWPPP) and weekly inspections. A Notice of Intent (NOI) must be submitted to the NYSDEC prior to the start of construction. This permit is anticipated to be required for this project.

Timeframe: 20 to 40 days for permit.

#### New York State Department of Environmental Conservation – Section 401 Water Quality Certification

For any project that has federal action (i.e. requires a Section 404 or Section 10 Permit) a Section 401 Water Quality Certification (WQC) from the NYSDEC is also required. NYSDEC has issued a “blanket” 401 WQC for Nationwide Permit 36 meaning that if the project is authorized under NWP 36 and meets all the WQC conditions, the certification is automatically issued.



The blanket 401 WQC is not applicable for impacts to Significant Coastal Fish and Wildlife Habitats. The Stony Point – Lyme Barrel Shoals Significant Coastal Fish & Wildlife Habitat is mapped on the project site. As impacts to this feature are proposed, an Individual Section 401 WQC will be required. Please note that 30 days prior to application for a Section 401 Water Quality Certification, a pre-filing meeting request must be submitted to the NYSDEC. The NYSDEC is not obligated to grant or respond to a pre-filing meeting, but the form must be submitted.

Timeframe: - Six (6) to Nine (9) months for permit.

New York State Department of Environmental Conservation – Article 15 Protection of Waters Permit

Lake Ontario and Henderson Bay are classified by the NYSDEC as Class A waters and navigable. As such, impacts to these features will require an Article 15 Protection of Waters Permit from the NYSDEC Region 6. The project would likely be classified as a “Major Project” pursuant to NYS Uniform Procedures Act. A public notice in the local newspaper and associated fee will be required.

Timeframe: Six (6) to Nine (9) months for permit.

New York State Department of Environmental Conservation – Article 24 Freshwater Wetlands Permit

As described in the Wetland/Watercourse Delineation Report, the project is in close proximity to NYSDEC Freshwater Wetland (FWW) HB-5. This wetland has a 100-foot regulated adjacent area (refer to Figure 7). Impacts to the FWW or its regulated 100-foot adjacent area would require an Article 24 Permit. As currently designed, the project may require an Article 24 Permit from the NYSDEC due to encroachment of the 100-foot regulated adjacent area. This will have to be confirmed with an updated wetland delineation to include the area of potential impact.

Timeframe: Six (6) to Nine (9) months for permit.

New York State Department of Environmental Conservation – Coastal Erosion Management Permit

There is a NYSDEC mapped CEHA within the project area. Any disturbance within the CEHA would require a Coastal Erosion Management Permit from NYSDEC. A Coastal Erosion Management Permit is anticipated to be required for this project based on the proposed design.

Timeframe: Three (3) to Six (9) months for permit.

New York State Office of General Services – State Owned Lands Under

Lake Ontario may be considered a state-owned waterbody, and as such, the NYS Office of General Services (OGS) would have jurisdiction of lands below the ordinary high water mark of Lake Ontario. As impacts below the ordinary high water mark are proposed, an OGS State Owned Lands Under Water Permit is anticipated to be required.

Timeframe: Three (3) to Six (9) months for permit.

If you have any questions or require additional information, please feel free to contact me by phone at 567-318-1547 or email at [rkozak@bergmannpc.com](mailto:rkozak@bergmannpc.com).

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