



Board of Directors

August 29, 2023

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Chair

Benjamin M. Shubert
NYSDEC Region 5
1115 State Route 86
Ray Brook NY 12977

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Re: DEC Project No. 5-1546-00209/00001
The Lodge at Schroon, LLC
Proposed Docking Facility on Schroon Lake
Town of Schroon, Essex County

David Quinn
Treasurer

Dear Mr. Shubert:

Nancy Bernstein
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Protect the Adirondacks submits these comments to urge the NYS Department of Environmental Conservation ("DEC") and the Office of General Services to uphold the NYS Constitution and the relevant statutes relating to the proposed docking facility that is to be located on underwater lands of the State on a river protected by the Wild, Scenic and Recreational Rivers Act.

The proposed project is not permissible pursuant to the NYS Constitution and the Wild, Scenic and Recreational Rivers Act. Even if a project of this type were permissible, it must be significantly reduced in overall size, the width parallel to the shoreline must be reduced to six feet, and the distance of the outside perimeter of the project from the shoreline must be shortened to no more than 100 feet from the shoreline. The proposed facility should be no more than is necessary to accommodate a few boats.

In addition, the application is deficient in adequately addressing the aesthetic, and recreational impacts of the proposed docking facility. Because the proposed docking facility will result in increased boat traffic on Schroon Lake, a comprehensive carrying capacity study should be conducted by DEC before making decision on the application.

Staff

Peter Bauer
Executive Director

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
**Conservation Director
and Counsel**

Project Site

The proposed facility is located in the Town of Schroon Lake, Essex County, on Schroon Lake, which is part of the Schroon River. The bed of Schroon Lake is owned by the State of New York. The Schroon River is designed and protected by Wild, Scenic and Recreational Rivers Act.

Protect the Adirondacks

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Photo (by Protect the Adirondacks): Site of the Proposed Project (showing existing staircase, existing deck, and new dock currently extending from the deck; compare new, current dock to the Photo 2 in the application materials showing the preexisting dock)

Proposed Project

The applicant, a commercial resort facility, proposes to construct an over **13,000 square foot** (inclusive of docks, pier and gangway) docking facility to provide 32 docks spaces for paying guests of the applicant, which also owns The Lodge at Schroon property, a separate parcel that is located uphill from the shoreline parcel where the proposed facility would be located. The docking facility containing the dock spaces would extend approximately **180 feet from the shoreline** and would be **230 feet in width**, spanning across almost half the distance of the parcel's shoreline property.

The docking facility would be anchored by twenty-five (25) 3-inch diameter pipes driven into the lake bottom. There would also be a 7' x 7' by 8.5' deep concrete dock anchor near the shoreline that would support a 24' long gangway that would connect the shoreline deck to a ~100' long pier leading out to the docks.

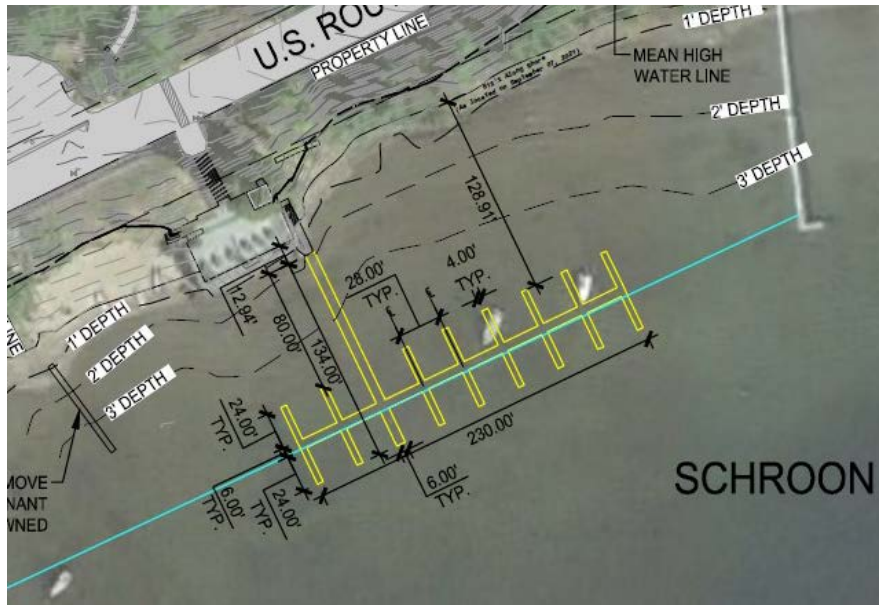


Image (from application materials) of Proposed Docking Facility

State Lands Cannot be Used for Private Commercial Purposes

Article 14 § 1 of the New York State Constitution, adopted over 120 years ago, states that:

The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed. (emphasis added)

This section of the Constitution ensures that the Forest Preserve will “be forever kept as wild forest lands” and prohibits private persons or corporations from taking possession or control of the State lands that constitute the Forest Preserve. See ECL § 9-0105; ECL § 9-0301(1). The Forest Preserve is defined as the lands and waters owned by the State within 12 counties in the Adirondacks and four counties in the Catskills, with limited exceptions. See ECL § 9-0101.

Here, Schroon Lake is owned by the people of the State of New York and located in a Forest Preserve county. As such, the underwater lands and waters of Schroon Lake are part of the Adirondack Forest Preserve and are protected by Article 14 § 1. See generally People v. Patenaude, 286 A.D. 140, 141 (3d Dept. 1955) (indicating that lands owned by the State located in Mechanicville, Saratoga County “whatever they may be in fact, they are in law a part of the ‘forest preserve’”); Adirondack Wild: Friends of the Forest Pres. v. New York State Adirondack Park Agency, 34 N.Y.3d 184, 205 (2019) (dissenting opinion) (describing history of Adirondack Forest Preserve).

Therefore, the proposed commercial use of the underwater lands and waters of Schroon Lake by the applicant is prohibited by Article 14 § 1. “Under the N.Y. Constitution, land designated as...forest preserve...cannot be sold or encumbered with an easement.” Thomas Gang, Inc. v. State of New York 19 A.D.3d 861, 863 (3d Dept. 2005); see NYS Attorney General Opinion 96-F2 (a copy

of which is enclosed for your reference). Accordingly, the application for the proposed project must be denied because it would violate the Constitution.

Wild, Scenic, Recreational Rivers Act Requires Denial of Permit

The Wild, Scenic, Recreational Rivers Act protects rivers that are designed by the Legislature because they “possess outstanding natural, scenic, historic, ecological and recreational values”. ECL § 15-2701. “Improvident development and use of these rivers and their immediate environs will deprive present and future generations of the benefit and enjoyment of these unique and valuable resources”. ECL § 15-2701. For a “Recreational river,” “[m]anagement shall be directed at preserving and restoring the natural scenic and recreational qualities of such river areas”. ECL § 15-2707(c)(2). Some development for “agricultural uses, forest management . . . residential developments and public recreational areas” is allowed. ECL § 15-2709(2)(c). Additionally, “existing land uses . . . may continue, but may not be altered or expanded”. ECL § 15-2709(2).

Here, the Schroon River is a designated Recreational River. See ECL § 15-2714(3)(z). Therefore, development along the Schroon River is strictly regulated and is limited to the uses identified in the statute, along with the existing land uses that are present on the parcel. See ECL § 15-2709(2). Accordingly, the expansion of the existing deck on the shoreline for the proposed docking facility to accommodate a commercial docking facility, on State-owned land in Schroon Lake, is prohibited by the Wild, Scenic, Recreational Rivers Act. As a result, the proposed application must be denied pursuant to that statute as well as pursuant to the State Constitution. See ECL § 15-2721 (“the more restrictive provisions” of the constitution “shall apply”); 6 NYCRR § 666.8(f) (“Before a river system permit is issued, it must first be determined that (1) the proposed land use or development is consistent with the purposes and policies of the act”).

Protection of Waters Requires Denial of Permit

Finally, pursuant to the statutory authority to protect the waters and natural resources of Schroon Lake and Schroon River, and to protect the healthy, safety and welfare of the people of New York State, a Protection of Waters permit should not be issued for the proposed docking facility. See ECL § 15-0503. The new docking facility is not a “reasonable and necessary” proposal for Schroon Lake. 6 NYCRR § 608.8(a). There are no other docking facilities of the same or similar size and scale as that of the proposed facility on Schroon Lake. The existing deck structure had a small dock attached to it (see application materials Photo 2), near the shoreline, that was able to serve the upland property owner. Nearby properties have a single, small dock that provides slips for one to three boats.



Photo (by Protect the Adirondacks): Neighboring properties have a single, straight dock providing space for one to three boats.

Additionally, the applicant appears to have a single floating dock/pier that is currently serving the property; it is unclear how or when that dock was approved or permitted.



Photo (by Protect the Adirondacks): Swimming area is in the foreground; the new, straight dock at the site of the proposed facility is in the middle of the photo; the neighboring properties with a single dock are shown in the background.

These photos demonstrate that the proposed docking facility is not “reasonable and necessary”, and that there are other alternatives such as using the preexisting dock that was next to the deck, or a much smaller dock that would have space for one to three boats. 6 NYCRR § 608.8(a). At the very least, 80 feet or more of the length of the proposed pier would need to be eliminated, so that the distance of the facility is no more than 100 feet from the shoreline. See e.g., 6 NYCRR § 646-1-1(c)(2) (limiting docks on Lake George to no more than 100 feet from the mean high water mark). Additionally, the overall scope of the docking facility must be reduced to a single pier (six feet in width). See e.g., 6 NYCRR § 646-1-1(c)(4) (limiting the maximum surface area of a dock to 700 square feet, including the walkway). These reductions to the length and width would lessen the negative impacts of the docking facility on Schroon Lake and the surrounding properties.

Conclusion

The proposed docking facility is not a permissible project pursuant to the Constitution and the Wild, Scenic, Recreational Rivers Act. Notwithstanding those provisions of law, the proposed docking facility is far too large for the proposed location. The project would need to be reduced in size and scope so that it does not cause undue adverse impacts on the natural resources of the Adirondack Park. The total perimeter of 92,940 square feet must be reduced by reducing the length and width of the proposed docking facility.

One final point is that due to the above concerns the proposed docking facility has the potential to cause a significant adverse impact. Since the proposed docking facility is undergoing an uncoordinated review pursuant to the State Environmental Quality Review Act, both DEC and the Office of General Services should issue a positive declaration for this proposal and prepare an environmental impact statement to review the adverse impacts, alternatives, and mitigation measures that would be necessary to consider this project, if it were allowed by law.

On behalf of the Board of Directors of Protect the Adirondacks, please accept our gratitude for the opportunity to share our comments on the proposed docking facility.

Sincerely,



Claudia Braymer,
Deputy Director

cc: Office of General Services
Adirondack Park Agency