

MEMORANDUM

PPBS inc.

Planning Programming Budgeting Services Inc. 50 Elmwood Drive Highland Mills, New York 10930 845 827-6407

TO: Town of Gardiner Planning Board

FROM: James M. Freiband, Principal Planner

DATE: November 12, 2018

SUBJECT: Lot Line Revision; Major Special permit -Major Site Plan Application (Taylor Family Partnership) for Heartwood (Electric Bowery); Route 44/55 and Shawangunk Kill (Public Hearing Closed)

1. At the October meeting the Board discussed at length both the history of the application and the procedures for completing action on these three applications. Please refer to the draft meeting minutes.
2. The Board agreed to continue the review at this meeting focusing on the Heartwood seven issues; the prospective activities on the property under an agricultural easement and prospective additional drive access to the site. The Board has received correspondence from Sterling Environmental (November 6) addressing these issues, as well as a revised agricultural conservation easements. The applicant has provided information on the issue of multiple entrances with approval for the entrance as shown by the Fire Commissioners. The neighbor adjacent to the existing drive has also commented (Email October 15, 2018) seeking complete closure of that existing access in favor of the one now shown (Sept 4th plan -DOT approved site).
3. The Board has also received the required DEC permitting for the project as shown in the September 4th plan submittal including the Part 666 Recreational River Corridor Permit and the SPDES permit dated 10/29/2018. Additionally, the DEC in a letter dated 10/29/2018, was sent to one of the public hearing commenters that had questioned the Planning Board's determinations as to setbacks and compliance with NYCRR Part 666 and the Planning Board's SEQR processing. That letter sets forth a detailed rebuttal of those assertions.
4. Additional correspondence dated October 23rd, 2018 was submitted by the applicant's attorney confirming that the Gardiner Code does not provide for Planning Board annual renewals and that the jurisdiction for permit enforcement is established in the Code for action by the Building Inspector. An additional letter by the applicant's attorney (Oct 24, 2018) was received on the matter of the Heartwood 7 as a rebuttal of those assertions. Sterling Environmental Letter of November 6th, requested by the Planning Board, similarly finds no credence in the Heartwood 7 demands.
5. The findings and recommendations of my October 11, 2018 memorandum remain as stated with a recommendation to issue the Site Plan approval with conditions as noted; to Issue the Special Permit with conditions as noted and to approve the Lot Line Revision as submitted. I have attached that Memo for the Board review as well as the filed Negative Declaration to allow the Board to examine the findings statement in detail.

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6. As requested I have reviewed the final revised site plan dated Sept 4, 2018 with revisions to Plan Sheets for Stormwater; Basins 3&4; Firetruck Plan and Highway Improvement plans dated October 2, 2018. The Board has also received an updated SWPPP dated 10/2; Medenbach Response Letter dated 10/2; Draft Conservation Easement; Draft Conservation Easement for Agricultural Parcel; Shinin Yoku – Heartwood responses to public hearing commentary; Heartwood Trespass Mitigation Plan; Updated viewshed transect for the Shawangunk Kill and Wildlife Mitigation Response.
7. The Board now has the complete record of the applications on which to consider the final processing steps to complete pending Lot Line Revision; Special Permit findings required by 220-63B 1- 12 and Site Plan Approvals 220-65 D 1-5. SEQR is complete and a negative declaration has been approved and filed.
8. LOT LINE APPLICATION: I had reviewed the Taylor Family Partnership lot line revision application in June 2017. The application was held in abeyance while the special permit and site plan for Heartwood was in process. I now recommend approval of that application before acting on the special permit and site plan. The lot line application will reallocate lot area between the Special Permit Use and the agricultural use. By limiting the special permit to the resulting Heartwood lot there is no question as to the use of the agriculture lot for the lodging activities.
9. SPECIAL PERMIT APPLICATION: I have compiled the required special permit findings(220-63B) and referenced the record corresponding to those requirements: (The Negative Declaration file is (<http://www.townofgardiner.org/HEARTWOOD%20NEGATIVE%20DEC%20SPCL%20PMT%20SIT E%20PPLAN%20REFERENCES.pdf>)
 - a) Comply with all applicable land use district, overlay district, floating district, and other specific requirements of this and other chapters and regulations, and will be consistent with the purposes of this chapter and of the land use district in which it is located. *Building Inspector Letter February 3, 2017.* Heartwood PH Responses 10/1/18
 - b) Will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances. Negative Declaration #5 #8 #9 #13 #14 #15 #16; Heartwood PH Responses 10/1/18
 - c) Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant. Negative Declaration #12; NYSDOT Ltr 2/28/18 and PERM 33
 - d) Will be accessible to fire, police, and other emergency vehicles. Fire Commissioner Ltrs April 3, 2017 et al; Heartwood PH Responses 10/1/18
 - e) Will not overload any public water, drainage, or sewer system, or any other municipal facility.

Negative Declaration #2 SWPPP ; Sterling Env Report 3/20/18 et al

- f) Will not materially degrade any watercourse or other natural resource or ecosystem, or endanger the water quality of an aquifer. Negative Declaration # 2 #3 #6 # Other Factor Listing; Miller Hydrologic Reports; DOH ltr
 - g) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads. Negative Declaration #1 #2 #3 #4 #5 #6 #8 #10 #17 #18 Sterling Ltrs March 12 , Aug 18; Ulster Cty DOH Ltr August 9 2017; Heartwood PH Responses 10/1/18
 - h) Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas or screening as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town. Negative Declaration #1; # 6 #7 #8 #9#17 #18 Cerami Report April 9;
10. RECOMMENDATION ON SPECIAL PERMIT: As provided in 220-63 the Planning Board has received a completed application and by virtue of the prior hearing records and the reports of its consultants as well as relevant agency report, is now able to act on the SPECIAL PERMIT application. Based on my examination and recitations above, I recommend that the Planning Board grant the requested special permit on condition for specific performance of the plans and specifications presented and subject to the determination of the DEC action on Part 666 regulations.
11. SITE PLAN APPLICATION: As set forth in 220-65 the Board is also required to complete specific findings on the PROPOSED SITE PLAN APPLICATION. Those criteria are listed in 220-64D. While it is not required that these be written findings, given the public hearing commentary I have provided a synopsis as follows:
- a) Illustrated design guidelines: Applicable to residential development forms only.
 - b) Layout and design: design preserves natural features; are integrated within the site; are not visible from public roads and are compatible with adjacent structures; all setbacks are met or exceeded throughout the site; are provided with pedestrian access throughout the site and adjacent public space; do not impact on historic resources and all utilities are underground.
 - c) Landscaping: The landscape design is extensive and sensitive to use of native species and are professionally detailed to enhance the year-round backdrop of the natural landscape as a resource. Landscaping requirements for parking areas are met.
 - d) Parking and circulation: The site has established circulation pathways consistent with the activities proposed on the site and minimize the impact on the natural landscape. The specific internal circulation features are sufficient to provide safe and convenient access, including handicapped access to virtually the entire site: not just structures. Highway access has been endorsed by NYS DOT and meet commercial drive requirements from Rte 44/55. Emergency access has been reviewed by local responders; parking area wheel stops are provided. Items (g) and (h) are not applicable.
 - e) Reservation of parkland: While there is no requirement per code for this use; the applicant has designed the site as a recreation resource and has also set aside 33 acres as continued permanent agricultural use which also serves as visual continuity along Rte 44/55 consistent with the Comprehensive Plan and the SPO Zone.
 - f) Miscellaneous Standards: Noise has been addressed both by site selection and by continuous monitoring and sound limiting; Drainage has been addressed by emphasizing onsite recharge and measures documented in the approved SWPPP; There is no construction or demolition debris associated with the project; there is no contaminated

material on the former agricultural site.

12. Ulster County Planning Board has also reported on the project plans in referral 2018- 116 and 117. The County provided 3 recommended modifications. The Board has addressed each of those recommendations during the completed SEQR process including information in the application and utilities. The suggestion to use some of the open site area to install a solar farm would run contrary to the Part 666 requirements to minimize the visual impact within the recreational river corridor. The applicant's clear intention is to blend the development into the landscape to the extent possible including all underground utilities. As a U.C.P.B. *recommendation*, no Board override is required.
13. ACTION ON SITE PLAN: An action on site plans is outlined in 220-66 F(2). One of the zoning code drawbacks is that there is no provision for preliminary and final actions which means that many of the plan components (Water supply; Sewerage; Part 666 permitting; Highway Access; SWPPP; SPEDES) which are regulated by NYS DEC; Ulster County DOH and NYS DOT and are left to those agency actions, following the Town Planning Board action. Usually these approvals result in additional changes to the site plan which will then return the applicant to this Board for required amendments. An inherent condition in this current Board action is that any changes required to *site plan features* (as opposed to system design) by other agencies must be submitted to this Board for the final site plan to be filed with the Building Inspector.
14. Based on the criteria of 220-65D and the prior action on the special permit, the Board should consider a number of conditions for action on the site plan as follows:
 - a) Specific performance of the site plan of the various dates cited in paragraph 1; the SWPPP ; the required conservation easement filing (to be completed with the Board Attorney and Town Board); the agricultural property easement filing (also be completed); the updated Signage plan A4.00 of 9/1/18; The March 1 Heartwood Responses to Brennan Comments; The October 1 Heartwood Responses to the "7 Requests"; Sound Mitigations Equipment listed in the October 1, Heartwood Response; The representations listed in the Negative Declaration as published in the ENB.
 - b) Subsequent modifications required by the DEC; Ulster County DOH or NYS DOT to the site plan features shall require filing of a site amendment as provided in 220-68D.
 - c) Payment of fees and plans in final form with applicant's signature.
15. RECOMMENDATION: As set forth above in detail for the Lot Line Revision; for the Major Special Permit and for the Major Site Plan.

MEMORANDUM**PPBS** inc.

Planning Programming Budgeting Services Inc. PO BOX 471 Highland Mills, New York 10930

TO: Town of Gardiner Planning Board

FROM: James M. Freiband, Principal Planner

DATE: June 12, 2017

SUBJECT: Lot Line Revision – Taylor Family Partnership – Rte 44/55 and Shawangunk Kill [42.100 and 42.100-1-41.20

1. As requested I have reviewed the application for a lot line revision dated June 3, 2017 for two lots totaling 141 acres located adjacent to the Taylor Family Partnership property. These lots are presently under review for the Heartwood Lodging Special Permit. The applicants are proposing to realign the lot boundaries of two lots that will be the future boundaries of the lodging use versus the continuation of the agricultural use (former tree farm).
2. The principal requirement for lot line revisions is that the Board must determine that the proposed revision does not create or increase a non-conforming status of any proposed lot. The Lot Line Revision Map dated June 2nd, 2017 shows the proposed lot boundaries and the resulting new property lines. The lot line revision should be addressed in conjunction with the action on the proposed new construction to make the required findings based on property setback requirements.
3. This project is a Type II action and should be so noted in the record. The action information is already addressed in the Heartwood EAF.

RECOMMENDATION: The application should be held to be coordinated with the Heartwood Special Permit and site plan. That application will set building locations required for setback findings.

NY STATE ENVIRONMENTAL QUALITY REVIEW
NEGATIVE DECLARATION
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

This notice is issued pursuant to 6 NYCRR Part 617, implementing Article 8 (State Environmental Quality Review Act (“SEQRA”)) of the Environmental Conservation Law. The Town of Gardiner Planning Board, as Lead Agency, has determined that the proposed action described below will not have a significant impact on the environment and a draft environmental impact statement will not be prepared.

Name of Action: Heartwood

SEQRA Status: This is a Type I Action.

Conditioned Negative Declaration: No.

Description of Action and SEQRA Status: The above-referenced project is situated within the RA (Rural Agriculture) Zoning District on 141± acres of lands owned by Shinrin Yoku LLC, as Applicant, located along NYS Route 44/55 and Tuthilltown Road, in the Town of Gardiner, Ulster County, New York (S/B/L Numbers 93.4-1-42.100 and 93.4-1-42.120). The proposed project consists of seventy (70) lodging cabins, an event barn, main lobby structure, food/beverage facility, related accessory uses and appurtenances. The project is classified as a Type I Action pursuant to 6 NYCRR Parts 617.4(b)(6)(i), 617.4(b)(8) and 617.4(b)(9). In this regard, there are several involved agencies for discretionary permit related approvals, including the Ulster County Health Department, the New York State Department of Environmental Conservation, the New York State Department of Transportation and the Town of Gardiner Planning Board.

Therefore, in accordance with 6 NYCRR Part 617.6(b)(3)(i), a coordinated review has been undertaken. The Town of Gardiner Planning Board declared its intent to act as Lead Agency under SEQRA by motion adopted on March 21, 2017. The Planning Board circulated a notice of its intent to serve as Lead Agency. After the requisite circulation and waiting period, the Town of Gardiner Planning Board declared itself Lead Agency under SEQRA and began the environmental review process on May 16, 2017. The proposed project consists of a new lodging facility comprised of 28 eco-cabins and 42 cabins, as well as a separate lobby structure and accessory buildings. All cabins will be situated on permanent wooden platforms. Accessory to the cabins and eco-cabins will be a main lobby structure, food and beverage facility, an event barn for various uses such as yoga and meditation classes, company retreats, workshops and weddings for guests only. The site will also feature a vegetable farm, a pool, and potential amenities such as bocce courts, tennis courts and spa facilities.

Vehicular access to the site is off of Route 44/55, with on-site parking dispersed among main buildings. All parking lots are to be screened with natural landscape comprised of trees relocated from the existing site and new, native species introduced to supplement the screening.

The proposed development will be primarily in a pre-existing cleared area formerly used as agricultural lands with a number of the cabins clustered at the top of the slope up, from the riverbank. Slopes running down to the Shawangunk Kill will be preserved and maintained, with the exception of minimal disturbance for a footpath to bring guests down to the riverbed to enjoy the river designated for recreational use under the Wild, Scenic and Recreational Rivers Act (Environmental Conservation Law Article 15, Title 27 and implemented by 6 NYCRR Part 666). During the course of the environmental review many comments were made as to the accuracy and/or adequacy of the Full Environmental Assessment Form Part I responses and information.

Following detailed review, Sterling Environmental Engineering, P.C. (“Sterling Environmental”) issued a letter dated November 8, 2017 that indicates that “[t]he revised EAF appears complete and the identified omissions and discrepancies summarized by [the] prior comment letter [dated September 14, 2017] appear resolved.” While the Lead Agency is aware that this action is classified as Type 1 pursuant to SEQRA procedures and that such classification under the Regulations makes it more likely that an Environmental Impact Statement will be required, under the circumstances of the particular action as hereinafter evaluated, the Lead Agency finds that the facts and information available to it support a determination that all probable and relevant adverse environmental effects have been identified and that they will not be significant and therefore an Environmental Impact Statement is not necessary. The environmental analysis of the reasonably related long-term, short-term, direct, indirect, sequential and combined impacts of these related and simultaneous environmental factors started with an analysis of the existing conditions of the project site. The review then analyzed the environmental impacts of the proposed changes and actions while comparing those impacts with the impacts on existing land use to determine if the proposed action may have a significant adverse environmental impact. Accordingly, this Negative Declaration of Environmental Significance sets forth the Lead Agency’s Findings pursuant to SEQRA.

No other related or subsequent actions are included in any long-range plans for the proposed site, nor likely to be undertaken, nor dependent on the actions which are now under consideration. In rendering all of the SEQRA Findings, the Lead Agency's examination of the specific environmental impacts of the proposed actions and changes and their magnitude is as follows. Reasons Supporting this Determination:

1. *Impact on Land:* The proposed project will result in a change in land use from vacant open space (a former agricultural nursery) to a lodging facility with related amenities.

The various ground cover types for the site are identified as pond/ditch 1.2 acres, field 119.8 acres, mixed upland forest 20 acres, for a total of 141 acres. Of that, 5.5 acres of the fields are proposed to be impacted with the site development. Of the cover types, the pond/ditch is described as a manmade straightened ditch about 1,900 feet in length and 4 feet in width, which flows west of the project area from north to south and to a manmade pond (0.8 acres) reportedly used as a water source for the nursery that previously existed at the site. The site interior is largely an open field with access roads located throughout the interior previously used to maintain nursery stock. The field is level and contains numerous small holes caused by the previous removal of nursery stock. The Shawangunk Kill is the southern boundary of the site and contains an adjacent wooded flood plain, which extends north to the steep slopes located on the site. The slope extends a variable distance (generally about 75 feet) up to a mixed forest plateau that contains large white pines approximately 24 inches DBH, mixed with smaller oaks, maples and black cherry in the canopy. The understory is sparse and easy to traverse and contains saplings of oak and maple.

With respect to the location of the eco-cabins and moving them out of the woods/mixed forest, the November 1, 2017 Heartwood submission indicates that the vast majority of the project is already in the clear area including all common buildings and almost all the cabins. A limited number of eco-cabins are proposed in the shaded/tree area. Tree density in this area was actively managed by the prior owner of the land, and as such the small footprint eco-cabins can be sited between existing trees with the expectation of only minor tree removal may be required. There will be no loss of contiguous forest area. As with all cabins on the project, these eco-cabins will be built upon helical piers (“ground screws”) to create an elevated foundation. Helical piers eliminate the need for a traditional foundation,

minimize soil and root disturbance, reduce the heavy machinery necessary to install ecocabins, allow storm water to reach the ground, and are made from recyclable materials. The eco-cabins are expected to be fabricated offsite and assembled/installed on the elevated pier foundations with minimal disruption to the ecosystem. Animal habitats will be preserved by the inclusion of 54 acres of preserved open space (including 20 acres along the Shawangunk Kill) and the limited amount of site disturbance (identified as 5.5 acres out of the 141 acre project site – See Site Plan Sheet ___ - Table of ____). Any limited tree removal that may be required will occur between October 1 and March 31 per Sterling Environmental and Mike Nowicki's (Project biologist) review.

In response to public and Planning Board feedback, the Applicant voluntarily reduced the number of eco-cabins from 40 to 28 (a 30% reduction) and voluntarily increased the setback of the remaining eco-cabins to more than double the setback mandated by the Town of Gardiner Code.

The Applicant has offered to place land totaling approximately 54 acres into a deed restricted negative easement or a conservation easement to ensure that the land is preserved, including 20 acres along the Shawangunk Kill.

Based on the foregoing, impact on the use or intensity of use of land as a result of this Project is considered small given the overall size of the parcel as compared to the size of the Project including its footprint, and will not result in any significant adverse environmental impact.

2. Impacts on Surface Waters, Including Wetlands: There are no anticipated significant adverse impacts on surface waters, including wetlands. Federal wetlands identified on the Project site have been delineated by a qualified expert and shown on the proposed plan. The project has been designed to avoid impacts to this area. It is noted there are no mapped NYSDEC wetlands on the Project site.

Significant temporary construction-related impacts are not expected to result. Any potential impacts to the surface waters and wetlands are not considered significant and will be minimized or eliminated by the implementation of a site specific Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NYSDEC General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) to ensure that any impacts to surface water from construction activities are minimized to the greatest extent practicable. In addition, as the Shawangunk Kill is regulated by 6 NYCRR Part 666, the NYSDEC will be exercising its regulatory authority when issuing a permit for the project which will provide an additional level of review, conditions and oversight to the Project in addition to that which has taken place under the review process.

The SWPPP details the storm water management for the project which includes 'temporary erosion controls during construction as well as permanent post construction controls, such as swales, culverts, bio-retention zones and pocket ponds... meeting standards of design of Storm Water Management Practices (SMP) of the State of New York in accordance with National Pollutant Discharge Elimination System (NPDES). When all proposed practices are constructed they will reduce all post-development peak flows from the site to less than peak development rates.' Stated differently, the changes to the project site will not result in a greater rate, amount or quality of water leaving the site due to the measures to be employed. Per the Storm Water Pollution Prevention Plan, there will be no negative impacts on downstream waters or adjacent lands caused by increased peak flow rates.

As to the wetlands, the Applicant indicates that the property was assessed for wetlands in accordance with the Army Corp of Engineers (USACE) Wetlands Delineation Manual (January 1987), routine determination method and recent northcentral/northeast supplement.

The report concludes that there are no New York State Department of Environmental Conservation (NYSDEC) regulated wetlands on the site. With respect to federal wetlands, they are located in the project area at the top of the bank of the manmade ditch, which is about 0.17 acres and the pond that is 0.8 acres in size. These areas are not to be disturbed by the project. Accordingly, there is no impact to federal or state wetlands. **Exhibit A** to the Negative Declaration is a color location map, which outlines the overall property and clearly identifies the pond at the southern end of the site, with the man-made ditch that feeds it from Route 44/55. Also, clearly evident is the wooded area along the bank of the Shawangunk Kill, which is also clearly identified at the southern or bottom portion of the photo. As to the SWPPP and Notice of Intent (NOI), the Town's engineer, Sterling Environmental, indicates that, on preliminary review, these appear complete and responsive to NYSDEC program and permit requirements.

Based upon the Lead Agency review of the documentation provided of record by the Applicants and the Lead Agency's engineering consultants, the above recited stormwater management is reasonable and will mitigate potential stormwater impacts so that the same are classified small to moderate and not significant.

3. Impact on Groundwater: The Project site is not served by a municipal water supply and will rely on on-site drinking-water wells. The use of on-site wells is not expected to result in any adverse impacts to ground water resources.

The Applicant has performed a ground water pump test summarized by a July 27, 2017 report prepared by Miller Hydrogeologic, Inc. Sterling Environmental reviewed the July 27, 2017 report and notes that "...documentation regarding the UCDOH consultation has been provided and is adequate." Sterling Environmental further notes that "...the applicant must conduct further evaluations deemed necessary by UCDOH to ultimately obtain a water supply permit for the project."

Sterling Environmental issued a letter dated November 8, 2017. As to water and sewer, Sterling Environmental indicates that "[m]ore detail has been furnished regarding proposed sewer and water facilities. We have not independently evaluated the designs. These elements of the project are the subject of review, approvals and permits by the UCDOH and/or NYSDEC. The Town should require the applicant to provide copies of all communications with involved agencies and any Site Plan approval by the Town should be conditioned on receiving all requisite permits and approvals for sewer and water."

Subsequent to this letter, Sterling Environmental reviewed the preliminary designs and noted that required design elements for an application to the UCDOH are complete including the engineering design and proposed layout of the wastewater treatment system. With respect to sewage for the facility, it will be provided by septic tanks, pre-treatment aeration chambers, pump stations to provide dosing and subsurface soil absorption fields. The facility will be served by four separate systems.

The Ulster County DOH has reviewed the 24 hour pump test results as well as the soils data for the sewage disposal system and found both to be acceptable.

Based upon the information provided by the applicant, the project will not result in a significant impact to groundwater.

4. Impacts on Flooding: The project and its structures have been located to take advantage of building sites on suitable soils and existing topography which will preserve and enhance the present drainage channels on site corresponding to the requirements of Gardiner Zoning. In addition, the Project site is not located in a designated area of flood hazard. Based on the foregoing, no adverse impacts are anticipated.

5. *Impact on Air.* There are no anticipated significant impacts on air quality. The proposed Project, does not include any uses that would result in a substantial change in existing air quality nor are any significant sources of air pollution proposed. In addition, each cabin will not be provided with a camp fire pit. There will be a limited number of communal camp fire pits (approximately three anticipated) which will limit the amount of camp fire smoke produced.

Site construction potential impacts will be reduced by employing protective site construction practices in order to control the potential for fugitive dust and sediment. Among these various practices will be the employment of dust/sediment mitigation measures through the use of hay bales, site watering during periods of dry weather, stabilization seeding, straw mulching, on site grading, limiting site disturbances, drainage, intermittent working hours and the employment of other best management practices.

As to long term quality impacts from the project, the Lead Agency finds that there is no potential for adverse impacts from vehicle emissions occurring at the site, or as a result of the proposed development. Based upon the number of cabins, as well as a separate lobby structure and accessory buildings, and proposed roadways, as well as the proximity of the project to the existing Route 44/55 infrastructure, there will not be large volumes of idling vehicles introducing pollutants into a concentrated locality.

Based upon all of the above, the project will not result in a substantial adverse change in existing air quality.

6. *Impact on Plants and Animals:* A review of the US Fish and Wildlife Service website lists of federal threatened and endangered species indicates that there is potential for three species including Indiana Bat (*Myotis sodalists*), Northern Long-eared Bat (*Myotis septentrionalis*) and Bog Turtle (*Glyptemmys muhlenbergii*) to be located on or in the vicinity of this site. The New York Department of Environmental Conservation Natural Heritage program was also consulted and in correspondence dated February 24, 2017 indicated that Riverweed (*Podostemum ceratophyllum*) is a State threatened plant species located in the Shawangunk Kill downstream of the site.

Project information indicates that the area of the site that contains habitat suitable for the Indiana Bat and the Northern Long-eared Bat is the southern section of the site, which contains the Shawangunk Kill and associated wooded flood plain and mixed forested upland buffer. Project information identifies that the area is wooded and there will be limited removal of individual trees, which may be required for the installation of utilities for each cabin. Michael Nowicki of Ecological Solutions, a project consultant, determined that there would be no adverse effect to occur to the bat species by the selective removal of individual trees since there will be no loss of contiguous forest area and the trees that will be impacted to not contain loose exfoliant bark, crevices, holes or fractures which are the type of trees that bats roost in during the summer. The typical mitigation imposed by regulatory agencies includes limiting the clearing of trees to the winter months when the bats are located within the hibernation period so as to not impact roosting. Based upon the regulations, to the extent that tree removal is limited to trees not suitable for roosting, no mitigation is required. To the extent trees that contain loose exfoliant bark, crevices, holes or fractures are to be removed, this removal needs to occur during the winter hibernation period in accordance with regulatory guidance.

The property has been evaluated for Bog Turtle habitat by Michael Nowicki. Upon review it was determined that the project area has none of the characteristics of Bog Turtle habitat. More specifically, there is no suitable hydrology, soil or wetlands on the site. Accordingly, Mr. Nowicki determined that there will be no impact to this species due to the lack of

suitable habitat.

Riverweed is a plant that grows submerged up to 75+ centimeters deep to seasonally exposed encowls and bedrock substrate and fast-flowing, relatively large streams or rivers. It often occurs in rapids and fast-moving streams or rapidly flowing water and is associated with confined rivers. Common features of confined rivers include plunge pools, flumes, chutes, cascades, alluvial fans, and mussel beds. The predominant source of energy is generated in the stream. These streams have high water clarity, are well oxygenated and typically of cool water. The Nowicki report indicates that the species was not observed on the site and would be confined to the Shawangunk Kill itself and not the land of the project. The project is not proposing any dock space.

Additional site surveys were conducted by Michael Nowicki during June and September 2017 to confirm the prior vegetative identification. The environmental assessment indicates that tree removal will only occur between October 1 and March 31 per the US Fish and Wildlife Service Guidance.

Sterling Environmental issued a letter dated November 8, 2017 that indicates that the “[s]upplemental information provided by Ecological Solutions LLC adequately addresses our prior comments regarding” rare and threatened and endangered species.

By letter dated March 25, 2018, Michael Nowicki, project biologist further indicated that “no Riverweed was observed in the section of the Shawangunk Kill that borders the site.” The report further states that the recreational use of the Shawangunk Kill is not considered a significant threat to this species and that the extensive Storm Water Prevention Plan proposed for this site will ensure that there is “no impact to water quality in the Shawangunk Kill.”

There is a document consisting of 6 pages captioned “Heartwood, Hudsonia, DECEcological, Biological and Wildlife Comparison.” This was prepared on behalf of Friends of Gardiner. It should be noted at the outset that the document identifies that the findings of DEC and Hudsonia studied the entire length of the Shawangunk Kill, not just the Heartwood site. The project sponsor responded to this document in a submission dated February 1, 2018 and the lead agency finds that the potential for environmental impacts associated with this area of inquiry are not significant.

With respect to plants and animals that are not endangered or threatened, the project is proposing to place 54 acres of the site into a conservation easement. That, in conjunction with the fact that only 5.5 acres of the site will be disturbed, leaves ample room for any other native species of plants and animals to remain on site and to suitably adapt to the changes at the site.

As a result of there being no suitable habitat on the project site along with mitigation measures imposed with respect to tree removal, as well as the amount of open space retained and the limited amount of disturbance, there is no adverse impact on plants or animals.

7. Impacts on Agricultural Resources:

There are no prime agricultural soils located on the project site (categories 1-4) and no unique or irreplaceable agricultural lands will be adversely impacted by this project. The site was formerly used as a nursery. That use was discontinued in or about 2005. For the last 13+ years there has been no agricultural use at the property. The project itself will not impact any other nearby agricultural use.

Based on the foregoing, no adverse impact to agricultural resources is anticipated.

8. Impacts on Aesthetic Resources: No significant impacts on Aesthetic Resources are anticipated or identified. A visual impact assessment that was provided documents that there

is only limited visibility issues from the scenic overlooks (three + miles away) and visual appearance from the existing roadway will be limited due to the distance from the road and the topography.

Renderings have been prepared by the Applicant dated March 1, 2017 and incorporated herein as **Exhibit B**. The renderings include visualizations of the main building, the main building as viewed from the road, and the cabins and the eco-cabins.

The buildings are set back a minimum of 1,000 feet from Route 44/55 and will maintain a low profile and minimum visual impact from the main road.

The primary buildings are set back 900 feet from the Shawangunk Kill. All cabin structures are set back a minimum of 150 feet from the Shawangunk Kill and are nestled within trees and an elevation of 64-68 feet minimum above the water away.

9. Impacts on Historic and Archeological Resources: There are no anticipated significant adverse impacts on historic and archeological resources.

A Phase I Archeological Investigation for the proposed Heartwood project prepared by Joseph E. Diamond, PhD. dated November 27, 2017. The report identified four pre-contact (prehistoric) sites listed within a one-mile radius of the project area in its literature review. The Dr. Diamond indicates the literature search at OPRHP produced evidence of four unknown prehistoric sites within a one-mile radius of the project area. None are within the project area and the closest is 3,000 feet away. However, the presence of four unknown prehistoric sites within a one-mile radius would suggest under customary protocols that the project area is in a location that has potential for prehistoric activity and high sensitivity. Based on that finding, subsurface testing was conducted. The site was examined during a walk-over and failed to present any historic or archeological resources such as foundations or cellar holes. The report further notes that the area of the former tree farm is fenced off and the site is completely disturbed. The report notes that the type of disturbance for a tree farm is distinguishable from plowing, which does not include the kinds of disturbances produced by tree farm cultivation. Tree farm cultivation involves the use of large machines to dig below the root mass of the tree, in some cases up to four feet, and remove the soil to tie the roots into a root ball for transport after sale of the tree. In such situations, the disturbances would destroy the integrity of any potential archeological sites within the area farmed. The OPRHP reviewer for Ulster County informed the Dr. Diamond that due to the disturbances inherent in tree farming, that subsurface investigation (i.e., shovel test) is not warranted for the area within the fence. However, it was recommended that hand-excavated, handscreened shovel tests be placed at 50-foot intervals or less within the Area of Proposed Effect (APE) on the bluff edge and areas outside the fence that are not disturbed. A total of 152 shovel tests were laid out. Only two of them were not excavated due to excessive slope. A review of the testing indicated that no historic or pre-contact (prehistoric) artifacts were found in any of the test pits. As a consequence, no further work is recommended by the archeological investigator and a letter received from the Office of Parks, Recreation and Historic Preservation (OPRHP) dated January 5, 2018 indicates that “the project will have no impact on archeological and/or historic resources.”

10. Impacts on Open Space: No significant adverse impacts to Open Space are anticipated as a result of the proposed Project. As stated previously, the proposed project will result in a change in land use from vacant open former nursery space to preserved open space and lodging use.

More than 54.2 acres on the Project site will remain as a voluntary mitigation measure for open space, protected from development in perpetuity by a conservation easement.

Considering only 5.5 acres of the 141 acre site will actually be disturbed, a significant

amount of open space will be protected from future development, with no documented significant adverse impacts to open space resources.

11. Impacts on Critical Environmental Areas: According to the FEAF and the NYSDEC Mapper, there are no critical environmental areas on or near the Project site. Therefore, no adverse impacts to critical environmental areas are anticipated.

12. Impact on Transportation: There are no anticipated significant adverse impacts on transportation infrastructure as part of the action. As with all development projects, there will be an alteration of the present patterns of movement of people and/or goods posed by this project. The Project will marginally increase the level of traffic on a well-improved State Highway and said alterations will result in a small to negligible impact. The Lead Agency further notes that this peak rate of trip generation is below the Institute of Transportation Engineers [ITE] recommended 100 trips per hour which would customarily suggest the preparation of a full traffic study. Heartwood has provided copies of email correspondence with the New York State DOT indicating their preliminary approval of the access configuration for the property as well as the ITE traffic generation associated with the project.

13. Impacts on Energy: There are no anticipated significant adverse impacts on energy generation, or use, as part of the action. While development of the Project will require the use of energy and fuel during construction and occupation of the lodging facility, nothing in the proposed development contemplates a major change in the use or type of energy that is already present and utilized in the community. The project is proposing to install solar panels to provide an on-site source of electricity and to reduce its reliance of power purchased from conventional sources.

14. Impact on Public Services: There are no anticipated significant adverse impacts on public services as a result of the action. The Project contemplates the creation a lodging facility in an area of residential and hospitality based uses, upon lands properly zoned for the use. The Fire Department has been consulted and project changes including widening and straightening the access roads and providing unimpeded access to the project facilities have been incorporated based upon the project review by the Fire Department.

15. Impacts on Noise, Odor, and Light: There are no anticipated significant adverse impacts on Noise, Odor, and Light as a result of the proposed action. The proposed construction of the roadways, drainage facilities, cabins, separate lobby structure and accessory buildings and related appurtenances will be limited in duration and will not generate noise levels which would be substantially objectionable to the public at large. Owing to the 141+/- acre parcel size, topographic characteristics, its immediate proximity to Route 44/55 and vegetative cover, construction related noise will be somewhat muted and will take place during daylight hours. As a result, while some noise and odor from construction equipment during work hours is anticipated during Project construction, these impacts are considered minor and will be temporary in duration.

With respect to noise, Heartwood indicates that the location of the lobby building, pool, restaurant and event space is nearly at the center of the 141 acres. The buildings are set back 1,200 feet from Route 44/55 and 900 feet from the Shawangunk Kill. It is expected that these buildings are where guests will congregate and is the location where weddings and other group events will take place with amplified music. Heartwood has committed to

enforcing quiet hours after 10 pm on the property and the Planning Board will impose enforceable conditions on any site plan/special use permit. It is the stated aim of the applicant for the facility to provide an ambiance of rest and relaxation to guests and excessive noise will negatively impact the guests as well as neighbors.

The noise evaluation conducted by the applicant concludes that the noise levels at perimeter locations will not increase by more than 3 dBA, a level that NYSDEC considers as no appreciable effect on receptors. Heartwood has committed to using “noise limiters” – technology that cuts power to the speaker system if dBA limits are exceeded to ensure that the project does not create a significant adverse noise impact. In addition, the Planning Board will impose enforceable conditions on any site plan/special use permit to regulate noise that exceeds the representations made by the applicant during the SEQRA evaluation. For example, the Planning Board may make certain aspects of any special use permit subject to annual renewal. For example, outdoor events and the use of an amplification system for music may be so conditioned to ensure that the stated noise levels are adhered to and if they are not, then further conditions imposed on the renewal application or the renewal denied. The project proposes cut-off style lighting fixtures and the minimum amount of parking lot lighting as is necessary for safety. Other areas will have low level cut off fixtures. There will be no stadium lighting or the like for common areas or recreational areas. There will be a minor amount of light associated with the interior occupation of the buildings until people retire for the evening. As result, there will be no significant adverse impact from light. With respect to odor, as noted above camp fires will be limited and there are no other sources of odors at the Project.

16. Impact on Human Health: There are no anticipated significant adverse impacts on public health as a result of the project. As the site was previously used as a nursery information was provided on pesticide and herbicide use.

There is a report dated December 31, 2016 from William L. Going and Associates, Inc. which analyzed the soil and pond water at the property to determine whether or not there are still pesticides present in the soil or pond water as a result of controlled use of pesticides ten years ago. The report indicates that none of a wide range of pesticide analytes were detected at or above the method detection limit or reporting limit.

According to the report, a variety of standard, lawful agricultural products were used under controlled conditions by a licensed pesticide applicator to control weeds and various pests. Products were reportedly utilized from late 1980s until about 2005. The nursery operation has been fallow for approximately ten years. According to the report, current scientific literature indicates that all of the products that were utilized have or had relatively short half-lives, i.e., ranging from hours to months. Therefore, it is very unlikely that any significant concentration of any of these products remain in the soil or pond water at the subject property. The company collected four soil samples and one pond water sample and had them tested at a New York State certified lab. The analysis included a wide range of pesticides that were known to have been used onsite. According to the report, no significant concentration or any pesticide analyte was detected in any of the samples. It is noted that the Ulster County Health Department has not indicated that the former pesticide use on the property is cause for environmental concern.

With respect to the sampling protocol for agricultural chemicals, there is a letter dated November 29, 2017 from Brinnier and Larios, P.C. signed by Alan M. Dumas, III, P.E. who opines as to the nature of the sampling for agricultural chemicals as well as the protocols followed “[i]t is my professional opinion the site evaluation and associated sampling/testing performed was proper for the proposed site, use and that the analytical results are

representative of potential site soils.” This matter was similarly reviewed by the Town’s Engineer (Sterling Environmental) which concurred with the assessment. Given the information from the sampling and the transient nature of the use of the project site by guests and staff, there are no concerns that there is a potential for impact to human health from the project.

17. Consistency with Community Plans: The Project will not adversely impact the community’s adopted land use plans and is in accord with those plans as well as the RA Zoning District Schedule of Uses. The Project Site is located entirely within the “RA” Residential Zoning District wherein a lodging facility is allowed by Special Use Permit under the Town of Gardiner Zoning Law.

This area of the Town is known as the Tuthilltown Hamlet. The Hamlet of Tuthilltown is explicitly identified in the 2004 Town Master Plan as a good candidate for ‘more tourist-oriented and recreation-oriented uses’. There are several existing, neighboring commercial businesses (Stone Wave Yoga and Tuthilltown Spirits / Grist Mill Restaurant, and others along the Route 44/55 corridor).

18. Consistency with Community Character: No adverse impacts to the Community Character are expected as a result of the proposed action. The Project is in accord and consistent with the character of the surrounding neighborhood which is characterized by single family residences, some of which are on large lots and other recreational and lodging uses. As noted above, this area of the Town is known as the Tuthilltown Hamlet. The Hamlet of Tuthilltown is explicitly identified in the 2004 Town Master Plan as a good candidate for ‘more tourist-oriented and recreation-oriented uses’. There are several existing, neighboring commercial businesses (Stone Wave Yoga and Tuthilltown Spirits / Grist Mill Restaurant, and others along the Route 44/55 corridor).

Neighborhood characteristics – the property is in the RA zone of the Town of Gardiner directly adjacent to the Tuthilltown Distillery. The site is bound on the southern side by the Shawangunk Kill recreational river with views to the west of the Shawangunk Mountains. In the surrounding neighborhood there are primarily agricultural and residential properties. A mile away, across the Shawangunk Kill, there is a campground (Yogi Bear’s Jellystone Park). The property is approximately two miles west of the main street in the hamlet of Gardiner.

The inclusion of a permitted lodging use in a zoning district is tantamount to a legislative finding by the Town of Gardiner that the use is in harmony with the general zoning plan and will not adversely affect the neighborhood or local community.

Other Factors and Considerations

Based on the foregoing discussion and the materials in the Record, the Planning Board has determined that:

(i) The construction of the Project will not cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels. With respect to the generation of solid waste, it will be accumulated in screened dumpsters and disposed of by commercial haulers. Due to the size of the project along with the above listed mitigation measures, there is no substantial increase in potential for erosion, flooding, leaching or drainage problems.

(ii) The project will not result in the removal or destruction of large quantities of vegetation or

fauna. Because the site is largely open, there will be no interference with the movement of any resident or migratory wildlife species. The existing rural property does not contain a significant habitat area. As described in detail above, no adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species or other significant adverse impacts to natural resources have been identified.

(iii) There are no designated critical environmental areas on or near the premises. As a result no impact on such an area will occur.

(iv) As described above, the proposal will not result in the creation of a material conflict with a community's current plans or goals as officially approved or adopted.

(v) As noted above and throughout this document, the project will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.

(vi) The proposed facility will use energy for power, heating and cooking. There are ample sources of energy for the project and no significant utility upgrades are required. As a result, there is no major change in the use of either the quantity or type of energy.

(vii) the creation of a hazard to human health. This item is discussed in detail above. The finding of no creation of a hazard to human health is not repeated here.

(viii) The proposal does not a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.

(ix) The proposal does not encourage or attract of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action. The site is of significant size and is capable of accommodating the people who will visit and lodge there. Upon completion, the project site will be occupied by invitees and guests only, its roadway will not be utilized as a major collector street, and the site will not be utilized for a mass gathering. Based upon the foregoing, modest numbers of persons will be assimilated over the project site and surrounding area over time, and large numbers of people will not be attracted to the site or area for more than a few days as a result of the action.

(x) There is nothing in the record to suggest that the proposal will cause the creation of a material demand for other actions that would result in one of the above consequences. The construction of the proposed development and related infrastructure on the 141+/- acre parcel will not create any material demand for other actions which would result in one of the previously discussed consequences.

The site characteristics, planning, and engineering methodology and low density of the project render the site capable of accommodating the project without adverse environmental effect. In this regard, the Lead Agency finds that the proposed action will create employment. However, the employment will be intermittent, of short duration, and will not displace other workers. The Lead Agency further finds that, as with any development project, the proposed action will create some demand for additional community services (schools, police, and fire). However, this impact is mitigated to a small to moderate impact and rendered deminimus by the following:

- a.) Adequate numbers of police, fire, and emergency personnel and modern response vehicles and apparatus presently exist to accommodate the project in the Town of Gardiner.
- b.) The project will result in no children being introduced into the School District.

c.) Modern roadway construction of the roads servicing the project site, together with grade, driveway, turnaround radius, and emergency measures which do not require the purchase or employment of additional emergency apparatus or personnel.

d) The Lead Agency further finds that town-wide cumulative impact analysis is not required, based upon this Negative Declaration's entire environmental analysis and for the following additional related reasons:

i.) The proposed project does not have significant common impacts with other proximate projects in the Town.

ii.) The proposed project is not included in a common plan or policy of other projects in the Town.

iii.) The other related projects in the Town have not been specifically identified and consequently cannot be related to the proposed project.

Based upon all of the foregoing, this action will not create any material demand for other actions which would result in one of the previously discussed consequences.

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment. This consideration does not apply as multiple minor impacts have not been identified that could aggregate and be elevated to a substantial adverse impact. See also analysis submitted by Applicant's attorney, incorporated herein by reference.

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision. This item does not apply as there is no second action proposed.

NEGATIVE DECLARATION

After reviewing the Full EAF submitted herewith, together with the documentation provided by the Applicant and the information provided by the Town's consultants, the Planning Board of the Town of Gardiner hereby concludes that an Environmental Impact Statement (EIS) will not be required for the proposed Project because (a) this Action will result in no adverse environmental impacts, or (b) the identified adverse environmental impacts will not be significant (*see* 6 NYCRR § 617.7(a)(2)).

Dated: May 15, 2018