

CONSERVATION BOARD
238 Main St., Cold Spring, NY 10516
July 10, 2018 7:30 PM

MEETING AGENDA

1) Approval of Minutes:

- June 12, 2018

2) Return of Escrow:

Ribeiros, 65 Steuben Road

TM# 91.5-1-26

(The applicant is requesting Escrow be returned for WL 08-133 which was issued back in 2008 and expired in 2009. The applicant has been approved for a new wetland permit which all fees have now been collected for, including Escrow.)

2) Old Business (all old business pending):

3) New Business:

Twin Bridges Road

TM# 82.-1-69

(The applicant is seeking to repair a section of or replace the entire culvert pipe running under Twin Bridges Road.) (Work was performed without a permit and a violation was issued June 11th.)

4) Stormwater Discussion:

5) Other Discussion:

TOWN OF PHILIPSTOWN CONSERVATION BOARD
238 MAIN STREET, COLD SPRING, NY 10516
June 12, 2018
DRAFT MINUTES

The Conservation Board held its regular meeting at Philipstown Town Hall on Tuesday, June 12, 2018.

Present: Mark Galezo, Chairman
Robert Repetto
MJ Martin
Andrew Galler
Jan Baker
Eric Lind
Max Garfinkle (Natural Resources Review Officer)
Lew Kingsley
MJ Martin

****PLEASE NOTE that these minutes were abstracted in summary from the meeting and a taped recording.**

Chairman Galezo opened the meeting at 7:33 pm.

Old Business:

Garrison Property Holdings LLC, 88-92 Whipoorwill Pond Rd.

TM# 90.-1-21

Tom Lewis of Trillium ISM, Inc. was in attendance on behalf of the applicant. He stated the proposed project is to control an invasive plant, *phragmites australis*, which is growing along the edges of the pond and into the water. Mr. Lewis explained they went through and cut a lot of the dead material out and will do so again in July, in order to harm and reduce the height of the plant in hopes of minimizing the use of herbicides. The next step would be to treat the plant with an herbicide in the late summer. Mr. Lewis stated there would be 2 treatments with an herbicide with follow ups in subsequent years.

Ms. Martin questioned what the method of treatment would be, how the herbicides will be applied. Mr. Lewis stated he would be using backpack sprayers for the herbicide application and that at this location they would treat from the shoreline as well as from a canoe in the pond. Ms. Martin expressed her concerns about the herbicide being broadcast in that area. Mr. Lewis explained that they have a lot of control with the equipment they use and being able to spray from a canoe in the water will help keep the chemical out of the water and have less of an impact.

Mr. Kingsley questioned if the chemicals are aquatically offensive. Mr. Lewis explained that he generally likes to practice judicious use when applying the herbicides. The goal is to use as little herbicide as possible in the most targeted manner, and for this kind of plant, which can grow

very tall, having it cut first allows it to be lower and spraying from both the perimeter and from the water allows to not be spraying into off target areas.

Mr. Kingsley questioned what the breakdown period is. Mr. Lewis stated it has a wide range but believed the average to be somewhere around 45 days for half-life. He added, it is accelerated by highly productive systems, it's primarily broken down by bacteria, so when you have a lot of moisture and really productive soil it's broken down very quickly. It's also absorbed very strongly and has low potential for movement.

Ms. Martin questioned why they did not choose to use the 'clip & drip' procedure. Mr. Lind stated, there is such a large infestation that it would be impractical. That procedure would be helpful in small clusters of the invasive plant but not for the large quantity that has impeded on this pond. Mr. Lind stated the backpack sprayer is the best option in this case. Mr. Lind reiterated that it would be done on a windless day to minimize any drift. He stated, with backpack sprayers it seems to work well and explained that it is not so much a mist but dribbled, fat droplets, so the applicator has a fair amount of control over where it goes. Mr. Lind stated there aren't many other options. He added, you use as little as possible in as controlled a manner as possible.

Mr. Garfinkle stated that looking at the management plan provided, it is evident that as the infestation reduces, Mr. Lewis plans on adjusting the methodology in terms of how applications are conducted but reserve the right to use the backpack sprayer if necessary. Mr. Garfinkle also noted that the concentration of the chemical that is to be applied is lower than what is typically used in the same scenario. He stated, that methodology of doubling up on a lower dosage for the initial treatment followed by spot treatments in that treated area for anything that wasn't affected the first time around is a good idea to help limit impact.

Mr. Lind stated that, ideally you would want the level of the pond to be as low as possible, which was addressed in Mr. Lewis' report, but stated they really don't know what the pond level will be and wondered if there has been any thought given to the proposed change in the water control structure which will actually increase the level of the pond, which means there's more frag and standing water. He questioned if there was a way of timing this, without making it overly complicated for the homeowner, where the improvement of the water control structure takes place after the initial phragmites treatment. Mr. Lewis stated that would be preferential for him as well but is unaware of the timeframe of that project.

Mr. Garfinkle stated the applicant is going to have to come back in front of the Conservation Board in order to obtain permits for that portion of the project.

Mr. Lewis stated he does not believe they are looking at increasing the height of the water or the depth of the pond, however is unaware of the full plan for the project. Mr. Galezo stated, if they wind up lowering the pond, then maybe the work should coincide.

Mr. Lewis stated he believes there are a lot of options and ways they can not make the projects dependent on each other but respond to the timeliness of the other project. He stated, when he visited the site last year the water level was lower and there was no outflow. This was around August/September, which is roughly the time they would be there and is generally a dryer period.

Mr. Lewis stated his primary concern would be to not have water flowing out of the pond while doing the treatment. Mr. Lind stated he believes that these 2 project elements need to be coordinated.

Mr. Garfinkle reported that the project site is located near a known Timber Rattlesnake location that comes up. He suggested, by staging and sequencing the project as Mr. Lind is suggesting, they may be outside that window that would require them to seek any sort of guidance from the DEC. Mr. Garfinkle stated, for that stage of the project, if the board were to bind the applicant by those dates that the DEC sets to do that work, that may satisfy the requirement and not slow the project down.

Mr. Lind stated that pondweed had been mentioned and that Mr. Lewis had mentioned limiting any fertilizers near the pond to allow the vegetation to recover and questioned if Mr. Lewis had a sense of the width of that. He added, there is a lot of very interesting, native wildflowers and shrubs that might thrive where the phragmites is now. Mr. Lind stated he was curious as to what this will look like when the treatment is done and asked if there is a mitigation/restoration plan or if the idea is to let the area regrow naturally.

Mr. Lewis stated there is no written restoration plan. He added, there is someone who does landscaping on the property and Mr. Lewis' understanding is that they will be doing some seeding and then planting as soon as possible. Mr. Lewis' recommendation would generally be to do some seeding and wait to do the planting for a year or so, once the level of regrowth is observed. As far as the width of the water buffer areas, Mr. Lewis stated he would think something 10-15 feet, minimum, would be ideal.

Mr. Garfinkle suggested, if the other consultants who are involved in the other stages of the project, the water structure improvements, could come back before the board, that would be a good way to make sure everyone is on the same page with some of the stipulations involved with performing some of the other activities in the permit.

Mr. Garfinkle reported that the permit in front of the board is for the phragmites treatment, this management plan, essentially, and then the sculpture base and the utility line and questioned if the board felt ready to vote on that. He added, when they have Jason prepare the plans for the outflow, they can stipulate timing on the utility line being put in. Mr. Lind stated he is not too concerned about the utility line but more so with the level of the pond. Mr. Garfinkle clarified he was referring to the snake impact.

Ms. Martin stated that timing seems to be a large factor in terms of the pond and a windless day and questioned if Mr. Garfinkle would be present during the herbicide application. Mr. Garfinkle stated that he has worked with Mr. Lewis in the past and trusts his judgement. Mr. Lewis explained that the area is not large so it can be done fairly quickly and that timing is a huge part of his job, taking in many different factors, especially weather.

Mr. Lewis explained they have the ability to control the droplet size by manipulating pressure and the volume output. He stated they are very cognizant of the potential drift and have the ability to adapt.

Mr. Garfinkle questioned if the board was comfortable issuing a conditional approval stipulating construction timing on the utility line.

Mr. Galler expressed that he feels this should be split into 2 separate permits, the phragmites management and the utility line. He stated he is completely fine with the invasive species management but the board has not been provided much information or plans for the other work. Many other board members were in agreement.

Mr. Garfinkle stated this is all one application and after speaking with Jason and Justin today at the site visit, he believes the project may have grown a bit in terms of the control structure. He stated that the utility line appears to be pretty simple; it's an 18-inch trench that could be scaled down even shallower. The concrete pad is a pre-cast pad that is being put in place. Mr. Garfinkle stated, in the permit materials there was a small drawing and descriptions of where silt fencing would be placed. He added that he does not believe the impact is that great.

Mr. Lind stated, the big deal is the replacement of the pipe and the water control structure and should not be covered under this permit. He continued, the slab and the utility trench are really minor things. Ms. Martin stated all the items were listed in one application right now and questioned how the board should go about this. Mr. Garfinkle stated he could issue a conditional permit and the applicant would just need to amend the materials to exclude those activities. Mr. Lind suggested, as Mr. Galler had previously, the board approve a conditional permit now and amend the application so the other 3 actions come back to the board for a separate permit. The board members agreed.

Mr. Kingsley moved to issue a conditional permit with the stipulations discussed and Mr. Galler seconded the motion. The vote was as follows:

Mark Galezo	-	Aye
Robert Repetto	-	Abstain
MJ Martin	-	Aye
Andrew Galler	-	Aye
Jan Baker	-	Aye
Lew Kingsley	-	Aye
Eric Lind	-	Aye

New Business:

Dana & Kevin Reymond, 28 & 30 Hudson River Lane, Garrison

TM# 89.7-1-7 & 8

Michael Liguori, attorney from Hogan & Rossi, was in attendance representing the applicants Dana & Kevin Reymond, who were also present. Ted Kozlowski, environmental professional, and John Kalin, professional engineer, were also present on the applicants' behalf. Mr. Liguori stated they have submitted a wetland application including a short form EAF, a memorandum detailing the project, a set of proposed plans with a site plan detailing the demolition activity, construction activity and an erosion and sediment control plan.

Mr. Liguori reported that some members of the board had conducted a site visit earlier that day. Currently the properties consist of 2 single family residences. The Reymond's proposal is to tear down both existing structures, as well as the existing garages, and replace them with a single-family residence consisting of 2 structures connected by a deck as well as 2 garages. Mr. Liguori continued, the proposal also includes the upgrading of the septic system; right now, there are 2 systems which will be merged into one, upgraded, new system. He stated an application has been made, for that new system, to the Putnam County Health Department and explained that they are in receipt of a letter from Joe Paravati of the Health Department indicating that the only predicate to granting an approval is the merger of the 2 parcels, 28 & 30 Hudson River Lane.

Regarding the merger of the 2 parcels, Mr. Liguori explained, the proposal is to merge these 2 parcels of land into one singular parcel. He continued, they attempting to try to comply with the zoning code in the sense that Hudson River Lane consists of a number of very small properties located together in a zone that has 5-acre zoning. He stated, none of the properties located on the lane could ever achieve a 5-acre zoning. Mr. Liguori stated, the purpose of the merger was an attempt by Kevin & Dana to try and achieve some sort of compliance with the code in connection with their proposal and assists in reducing the density of the properties.

Mr. Liguori explained that their proposal for construction maintains the setbacks to the north and to the south. He stated they are essentially trying to construct using the same footprint as well as be cognizant of the impacts that are associated with the construction.

Mr. Liguori continued, there is an aspect of the project that calls for a seawall repair on the northern parcel, 28 Hudson River Lane. It is a cinderblock wall that is deteriorating. He reported that their consultant indicated that that is probably the most significant aspect of the project, taking care of that repair. Mr. Liguori stated this repair would have a beneficial impact on the river.

Mr. Galler questioned the idea that this is a single-family residence being built in 2 pieces. Mr. Liguori stated it is and that the 2 structures are connected by a deck constructed to the appropriate distances so it remains pervious.

Chairman Galezo stated that while on the site visit he thought it was mentioned that the 2 garages were to remain. Ms. Reymond explained that the existing garages are to be demolished and the total square footage of the old garages will be redistributed into 2 new garages.

Chairman Galezo stated that the applicants reported that they were told by the Zoning Board to go to Conservation first and come back to the Zoning Board once they have received approval from the Conservation Board. Mr. Liguori explained that they had met with the Zoning Board in April and again at the May meeting. He stated that they had applied for a number of variances and have since discovered that 2 of the variances requested are no longer required and have removed the request for one additional variance. He stated they are now down to 2 variances. Mr. Liguori explained that on 28, the existing structure is approximately 5 ½ feet from the property to the north and they wish to maintain that setback, which requires a variance. To the south on

30, they are approximately 19 ½ feet from the property line and again wish to maintain that setback, which requires a variance.

Mr. Liguori reported they had gone before the Zoning Board in April where the application was determined to be complete and a public hearing was scheduled for the May meeting. They attended the public hearing in May at which the board claimed the application was in fact not complete and referred them to the Conservation Board.

Chairman Galezo explained that the Conservation Board could give tentative approval but can not issue a permit until they are provided a final set of plans to issue a permit on.

Mr. Liguori questioned if there was anything on the plans that the Conservation Board requires that are currently not there. Mr. Garfinkle stated his biggest critique would be along the lines of having more detail regarding where things are at with anything that the Hudson River touches, in terms of the shoreline. He stated the retaining wall aspect of the project isn't greatly discussed in the plans provided. Those protection measures, beyond the silt fencing, would not necessarily apply to the work being done on that retaining wall. Mr. Garfinkle requested the applicants also keep the Conservation Board apprised of all correspondence from the DEC and Army Corps of Engineers regarding the project.

Mr. Garfinkle questioned what the applicants' impression of the Zoning Board was regarding whether they felt the ZB might require a structural change to the plans. Mr. Liguori stated, his argument to the ZB was that it doesn't make sense to make an application to the Conservation Board unless they're sure what the parameters of the Zoning are. He stated that the response of the Zoning Board was that they have had previous applications for Hudson River Lane, most recently a pool, and have sent those to Conservation first as well. Chairman Galezo stated, in that particular case with the pool, those plans were finished. Mr. Garfinkle and Chairman Galezo stated they are 2 very different projects. Mr. Liguori explained that his argument to the Zoning Board was that it is no less protective of the environment to complete the Zoning Board and then go to the Conservation Board who will evaluate all of the environmental impacts of the project.

Chairman Galezo stated that, right now, the 2 separate existing septic systems are close to the river. Currently existing there are 2 separate single-family homes. The Chairman explained, his primary concern is the septic, which is going to improve drastically with this proposal. He continued, the new home is being raised up so flood plain issues are being addressed. Chairman Galezo stated this proposal is moving in the right direction. Mr. Galler stated he was in agreement and suggested that the Conservation Board send a memo to the ZBA stating that the CB would permit this, pending complete plans.

Mr. Baker suggested they inform the Zoning Board that, on every issue that is of concern to the Conservation Board, the applicants proposal is a huge step in the right direction and is a dramatic upgrade in terms of environmental protection. He continued, although the board is unable to vote on the project this evening, when the time does come, he believes that the board would be in favor of the project because of the dramatic improvements. Mr. Baker reiterated the fact that the board must be supplied with complete plans before being able to take a vote.

Ms. Reymond reported that she and her husband had met with Greg Wunner, Building Inspector, Robert Dee, Chairman of the ZBA and Ron Gainer, Town Engineer, back on December 7, 2017 and showed them the plans for the project, which have not changed. She explained that everything is in schematics as they will not have a full set of construction documents until they receive their approvals, which she states the Building Inspector agreed to. Ms. Reymond continued, what is set is the massing envelope and where the house will connect to the earth; that is not going to change. She explained that Chairman Dee did not say anything about sending them to the Conservation Board first.

Chairman Galezo stated the Conservation Board would write a letter to the Zoning Board stating they have no objection to the plan as it's currently drawn but need to see the final plan and will consider issuing a permit at that time.

Councilman Leonard stated the Conservation Board also needs to acknowledge that these properties are in a flood zone and that the homeowners are doing what is necessary for construction there. Ms. Reymond reported the house is a modernist house and has a flat roof which could also be used in ways that other traditional houses cannot in terms of equipment. Mr. Liguori noted that one of the things that is important about the design is that they have been able to achieve, even with the raise in elevation, a reduction in the height from what is currently there now. He stated this is important in looking at the aesthetic impacts.

Chairman Galezo questioned where the propane tank would be located. John Kalin used the visual to explain that the residence requires that the tank sit on a specific side of the house and will be ballasted down. The exact location has not yet been determined but it will be close to where the existing tank currently resides. Chairman Galezo questioned if it the tank and propane are heavier than water. Mr. Kalin explained the tank will be ballasted for up to 10 feet under water and will not go anywhere. Chairman Galezo questioned if there was an emergency shut-off valve or something if the tank were to break free. Mr. Kalin stated all propane tanks have blow off valves that shut them right off if there is a sudden loss of pressure. Regarding the septic tanks, with that regard, when they go under water, the tank and the pump chamber are water tight. The fields themselves can be inundated.

Mr. Liguori asked the board if he would be authorized to communicate with Mr. Garfinkle between now and going to the Zoning Board to ensure that the message gets back to the ZBA and the board approved his request.

Mr. Repetto questioned what the benefit was of redoing the retaining wall. Mr. Ted Kozlowski explained that the applicants intend to go to the DEC and the Army Corps of Engineers for a permit because they will be within the high-water mark of the Hudson River. What will happen is, it will then filter down to the other agencies within the DEC. Mr. Kozlowski stated he has spoken with Heather Gierloff at the Hudson River National Preserve up at Norrie Point and explained that she has actually been on this site, years ago. Mr. Kozlowski reported, the only thing holding that wall up right now is a Norway Maple tree; the root system is so intertwined in there that it is holding back the bank. He stated, it is not going to be a gabion wall, rather a solid concrete wall with a foundation. Mr. Kozlowski stated he does not know if the tree can be saved

but its better to repair the wall than to save that tree. Mr. Kingsley stated the tree is showing a fair amount of stress right now, it should be full leaf.

Mr. Garfinkle requested, in order to be prepared when they return, that the board be privy to any and all correspondence or discussion with the DEC and Army Corps of Engineers so they understand where things stand. He added, the details of the plan and construction sequencing really need to be laid out in order for the Conservation Board to vote on and issue a permit for the project.

Other Discussion:

Hudson Highland Reserve, Route 9 & Horton Road.

Several members stated they wished to discuss the draft scoping document for the Hudson Highlands Reserve project. Mr. Garfinkle stated his opinion that the headings in the document that the applicant came up with somewhat touch on the spirit of the things that the Conservation Board initially laid forth but there are some that could be more direct and to the point. He stated his impression was that this document will guide the table of contents for the Draft Environmental Impact Statement.

Mr. Galler suggested, the biggest thing that is missing is what their methodology is on almost everything.

Mr. Garfinkle stated there was a lot to digest in terms of the forest fragmentation issue and is unsure that has been addressed to the standard which the Conservation Board has suggested.

Mr. Lind suggested the goal is to avoid a re-delivery of information that has already been compiled.

Mr. Galler stated, for example, number 5, existing conditions and anticipated impacts, there needs to be proven methodology and not a resubmission of what they have.

Mr. Lind stated, the key to this, from his point of view, is the fact that they have to evaluate alternatives. Mr. Galler agreed and stated, the alternatives need to be shown in a fair balanced manner. He continued, there are ways that one could show alternatives that are less acceptable rather than trying to be within the spirit of SEQRA and developing alternatives that might also be beneficial.

Mr. Garfinkle asked how the board felt about the alternatives that were presented and asked if there were any others the board would like to see evaluated. Mr. Galler stated the one that's missing is a plan with just single-family houses or open space overlay.

Mr. Galler stated he is tremendously bothered by "A" in the alternatives section of the scoping document and finds it somewhat provocative and almost disrespectful to the Planning Board. He added, it is somewhat of a known fact in this country that residential housing is a detriment to tax revenue.

Chairman Galezo stated he wished to see a conventional subdivision alternative without an equestrian center. Mr. Galler suggested requesting to see any alternatives without an equestrian center, conventional or conservation. Mr. Galler stated the plan, currently, is a high density, commercial, livestock operation. The town does not have anything in terms of commercial livestock but it does require 40,000 square feet per large livestock animal. Mr. Kingsley stated, at this point, it does not meet the standards of a conservation subdivision.

Mr. Repetto questioned if there were any horse farm, facility or organization existing around here that has that kind of density in terms of horses. Mr. Garfinkle stated, the only thing he has ever seen was in Dutchess County; north of Dover there is a facility that rescues horses but has never looked at the specifics of their site plan or anything like that. He stated they have an enumerable number of horses on a small lot. Mr. Garfinkle stated that is the only thing he has ever seen that could be similar to this but added that facility does not have an indoor structure. Mr. Galler noted the board is unaware of what their town code is. Mr. Garfinkle stated he believes that Glynwood has about 6 horses in their entire facility and at the new Cold Spring Farm maybe 7 horses. Ms. Martin reported that Topfield has a greater volume of horses but it has more space.

Mr. Garfinkle stated he would put something together and send it out to the other board members for review.

Twin Bridges Road, Violation

TM# 82.-1-69

Mr. Garfinkle reported that it had been brought to the attention of him, and the Building Inspectors, that there was work being done on Twin Bridges Road, on Annsville Creek where someone replaced some culverts over a DEC and Town related trout stream. He stated that the Building Inspector stopped the project a few weeks ago but they finished the project afterwards regardless of the stop work order. Mr. Garfinkle reported he has been in touch with the DEC and the ECO's have gone out there and will be issuing a notice of violation but will not be asking for any administrative penalty in terms of fines. He added, the town also issued a notice of violation on that property. He stated they will have to come in front of the board at next month's meeting with plans.

Mr. Garfinkle stated this may be an opportunity to drastically improve the situation there in terms of connectivity. He continued, what they did was replace a failing culvert with 2 smaller culverts side by side, but there is a very significant elevation change between the outflow and the stream beds on the outflow side of the structure so now anything that could potentially spawn upstream from there can't.

Mr. Garfinkle stated it may be possible to require them to install some type of open bottom culvert configuration there. From the discussions he has had with the DEC, they would be comfortable bringing it back to what was there, which was a 24-inch pipe, at an appropriate grade; this is the least the DEC would accept but would look to the town to put more of a stringent stipulation but their main concern is getting it repaired correctly. Mr. Garfinkle stated he has not yet figured out construction timing with that but they will be restricted to a period of

time outside of the window when trout would be spawning in that stream, which would be later in the fall.

Ms. Martin stated, this work was done during trout spawning season, were stopped, blatantly ignored the Building Inspector and finished the work, but were not fined by DEC or the town. Mr. Lind clarified, the work was not done in trout spawning season but it is a stream disturbance one way or another, in a DEC regulated waterway. Ms. Martin questioned why they were not fined by the town or DEC. Mr. Garfinkle stated he believes there is a history with the property; its a weird situation because the property owner owns the parcel and that road but there are 3 homes that have an easement on that road to access their lots. Mr. Garfinkle stated there was a lot of back and forth between them and is unaware if there is a homeowner's association or how road maintenance is handled. Mr. Garfinkle explained it is his understanding that one of those homeowners took it upon themselves to do the work but they don't own the road. He continued, they felt like there was an issue with the current culvert where it was making the road not passable, which was probably not the case. Mr. Garfinkle stated he still does not have all the details and is unsure if that is even true.

Mr. Repetto stated he believes a fine is appropriate since they did not stop when asked to by the Building Inspector. Chairman Galezo stated, a blatant disregard for a stop work order should be fined. Mr. Garfinkle stated he has had this discussion with the Building Inspector adding if the town were to fine them, they would have to go before the town board and then the town board would have to pass a resolution to seek monetary compensation from them. Mr. Garfinkle stated, his goal and the goal of the DEC is to fix the issue, not necessarily seek out a financial settlement.

Mr. Garfinkle reported that since they were sent the notice of violation the homeowner has been extremely compliant. He stated they are to submit an application with plans and attend the next meeting in July.

Mr. Garfinkle suggested the process, in terms of stormwater violations and remedies, needs to be looked at as it is not a clear-cut process; there should be a laid-out mechanism stating the exact process if a notice is issued.

Minutes:

The minutes of April 10, 2018 were reviewed. Ms. Martin moved to approve the minutes as presented and Mr. Baker seconded the motion. All were in favor.

The minutes of May 8, 2018 were reviewed. Mr. Galler moved to approve the minutes as presented and Mr. Baker seconded the motion. Ms. Martin & Mr. Lind abstained as they were not present at the May meeting. All other members were in favor.

Mr. Kingsley moved to adjourn the meeting and Ms. Martin seconded the motion. All were in favor and the meeting adjourned at 9:02 pm.

Date Approved: _____

Respectfully submitted by,

Tara K. Percacciolo

June 27, 2018

F&J Ribeiros Construction



37 South Washington Street ✖ Tarrytown, New York ✖ 10591
Phone 914-524-0171 ✖ ribeirosconstruction@gmail.com

**Town of Phillipstown
238 Main Street
Cold Spring, New York 10516**

Town of Philipstown/Building Department,

In 2008/09, I filed for a permit with the building department in which I submitted a check for Escrow with the Town of Philipstown for building permit for 65 Stueben Road in Philipstown, NY.

I am requesting that escrow balance to be returned/refunded.

Any questions or concerns, please do not hesitate to reach me at 914-844-6229 or email ribeirosconstruction@gmail.com

Thank you,

Handwritten signature of Filipe Ribeiro in cursive script.

TOWN OF PHILIPSTOWN
PUTNAM COUNTY, NEW YORK

238 Main Street
Cold Spring, NY, 10516
(845) 366-6202

APPLICATION FOR WETLANDS PERMIT

Note to Applicant:

Submit the completed application to the appropriate permitting authority. The application for Wetlands Permit should be submitted simultaneously with any related application (e.g., subdivision approval, site plan approval, Special Use Permit, etc.), being made to the permitting authority.

(Office Use Only)

Application # _____	Permitting Authority _____
Received by: _____	_____ Z.B.A.
Date _____	_____ Planning Board
Fee _____	_____ Wetlands Inspector

Pursuant to Chapter 83 of the Code of the Town of Philipstown, entitled "Freshwater Wetlands and Watercourse Law of the Town of Philipstown" (Wetlands Law), the undersigned hereby applies for a Wetlands Permit to conduct a regulated activity in a controlled area.

1. Owner: Name: Robert J. Hilpert and Beth P. Hilpert

Address: 2 Peacock Way, Garrison New York 10524

Telephone: 914-217-2774

2. Agent: Name: Robert J. Hilpert

(Applicant must be owner of the land. The Application may be managed an authorized agent of such person.)

3/ Name of Agent _____

If Corporation, give names of officers: _____

Mailing Address: _____

Telephone: _____

3. Location of Proposed Activity: Intersection of NY Rt. 9 and Twin Bridges (Private) Road, about 50' off Rt.9 onto Twin Bridges Road, Garrison, NY

Tax Map No.: 82.-1-69

Acreage of Controlled Area Affected: < .10 Ac out of about 46 acres

4. Type of Activity: (See list of regulated activities)

Repair a section of or replace the entire culvert pipe running under Twin Bridges Road

5. Other permit(s) required and agency or agencies responsible for granting such permits such as but not limited to P.C.B.O.H, N.Y.D.E.C, Army Core of Engineers, EPA, DOT, Building Dept. Planning Board, and Z.B.A.

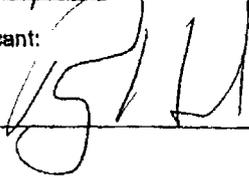
DEC consent has been obtained; no permit required

- b. Each copy of this application shall be accompanied by:
- a. A detailed description of the proposed activity and a comparison of the activity to the criteria for approval specified in §93-8 of the Wetlands Law. (See below)
 - b. A completed short form environmental assessment form (*included in the application folder*)
 - c. A map prepared by a licensed surveyor landscape architect or engineer showing:
 - 1. The controlled area(s) wetland buffer zone 100 feet from the edge of any wetlands, lakes, ponds or streams on the site;
 - 2. Any wetland or watercourses therein and the location thereof;
 - 3. The location, extent, and nature of the proposed activity.
 - D. A list of the names of claimants of water rights in the wetland or watercourse of whom the applicant has record notice and the names and addresses of all owners of record of properties abutting and directly across from the proposed activity as shown on the latest tax record.

(Note: Any map, plat or plan showing the above information that is required to be submitted for any other permit or approval in connection with the regulated activity, and that is acceptable to the Permitting Authority, may be used.)

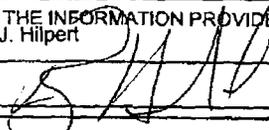
Date: 6/28/18

Signature of Applicant:



Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Robert J. Hilpert	2. PROJECT NAME Twin Bridges Culvert Repair
3. PROJECT LOCATION: Municipality <u>Town of Philipstown</u> County <u>Putnam</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Intersection of NY Route 9 and Twin Bridges Road, about 50' off of Route 9 on Twin Bridges Road	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration <input type="checkbox"/> Repair or replace damaged culvert pipe/new project	
6. DESCRIBE PROJECT BRIEFLY: Culvert pipe under Twin Bridges Road has been compromised approximately 10-15' from its northern opening to the stream. We will dig down within the road to it and repair the pipe in place or, if repair not feasible, replace damaged pipe with similar pipe.	
7. AMOUNT OF LAND AFFECTED: Initially <u>< .10</u> acres Ultimately <u>N/A</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input checked="" type="checkbox"/> Other Describe: Open fields on either side of road; agricultural district. Road continues east/west for its length to residential driveways to the west, serving 3 residences; Graymoor Monastery is to the east directly across Route 9.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: 1. DEC said permit not necessary for emergency repair and consented to it 2. Necessary wetland permit to which this form is attached	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Consent from DEC to the repair Consent from DEC, but no permit required.	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Robert J. Hilpert</u> Date: <u>6/20/18</u> Signature: 	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment



PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.47 If yes, coordinate the review process and use the FULL EAF.
 Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
 Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) Irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from responsible officer)



Town of Philipstown, NY

Friday, June 29, 2018

Chapter 93. Freshwater Wetlands and Watercourses

§ 93-6. Excluded activities.

The following activities are excluded from regulation under this chapter.

- A. The depositing or removal of the natural products of freshwater wetlands by recreational or commercial fishing, shellfishing, hunting or trapping.
- B. Public health activities, orders and regulations of the Putnam County Department of Health or New York State Department of Health, provided that copies of all such orders or regulations affecting wetlands are filed with the Department of Environmental Conservation in advance and are for emergencies only.
[Amended 9-25-2013 by L.L. No. 3-2013]
- C. Any activity for which, prior to the effective date of this chapter, the Planning Board has otherwise granted approval of a preliminary plat, conditional or otherwise, or the Building Inspector has granted a building permit, or, in the case of any activity not requiring action by the Planning Board or the Building Inspector, any otherwise necessary permit has been granted by the Town official or agency responsible for review of the activity.
- D. Any routine road, highway, street or driveway maintenance, if the activity will not cause pollution or erosion of a watercourse or a controlled wetland, or interfere with natural drainage.
[Amended 11-1-2001 by L.L. No. 4-2001]
- E. Normal grounds maintenance, gardening, selective trimming, pruning or bracing of vegetation, removal of dead or diseased vegetation, and decorative landscaping and planting, incidental removal of vegetation, addition of vegetation, but not including the use of fertilizers and pesticides within a controlled area.
[Amended 11-1-2001 by L.L. No. 4-2001]
- F. Ordinary maintenance and repair of existing structures, facilities or trails, including but not limited to those set forth in § 93-5C and H, where the work does not entail the use of machinery within a controlled wetland or a watercourse.
[Amended 11-1-2001 by L.L. No. 4-2001]
- G. Mosquito control projects approved in writing by the New York State Department of Environmental Conservation.
- H. The operation, maintenance and repair of dams, retaining walls, docks and water control structures that were in existence on the effective date of this chapter.
- I. Emergency work which is immediately necessary to protect health and safety or prevent damage to property, provided that the Natural Resources Review Officer is given written notice within 48 hours after commencement of such work and within 48 hours after completion of the work, and provided that such work is limited to alleviation of the emergency condition.^[1]
[Amended 9-25-2013 by L.L. No. 3-2013]

First Addendum to Wetland Permit
Application of Robert J. Hilpert and Beth P. Hilpert
Property located at 82.-B1-lot 69

The intended work for which this permit is sought is for the repair or replacement of a 24" diameter culvert pipe that is running in a north-south direction, containing the flow of a stream to the north of the pipe, from lands of applicant running under Twin Bridges Road, to other lands of applicant, in a southerly direction under the road to other lands of applicant as identified above. Applicant also owns the private road as well as lands (3 large fields) abutting both sides of the private road.

A number of years ago (maybe 8-10), a large machine being used by one of the owners of one of the lots that this private road services, inadvertently caved in a hole in the road, which he covered with a steel plate. I did not become aware of this until much later and when I asked him about it, he said it was just a small hole, he had filled it in but "to be safe" he put the plate over it and there should be "no further issue".

There was no further issue until about two years ago, when that steel plate – probably from a snowplow – found its way down the bank of the stream and partially into it. Sometime later I noticed water accumulating in our northern field and investigated the area (although I live on the property, my home is about ¼ mile away and I do not regularly go north to pass that area) and first noticed that the plate was not on the road but partially blocking the stream. I thought that may have been causing the flooding, so I had people come and remove it. The stream flowed freely again after that.

The problem seemed to be resolved until about nine months ago when a hole opened up on its own in the road in the same area. We filled the hole, retrieved that steel plate from the company that removed it for me and put it over the area. The accumulated water appeared to be more than

usual, even though I recalled the prior week having been one without rain, so I hired people to go into the stream (by hand) and investigate and/or remediate. They removed a large amount of debris from the pipe on the northern end but when they got about 10' in, they said they hit something solid and could not get past it. I hired the Fred A. Cook Company to put a pressure hose into the pipe to try to alleviate the blockage, but they were unsuccessful and told me that they believed the pipe was crushed in that area.

I then contacted the DEC to ask if they would consent to our digging down into that area and making a repair. I did not believe I needed a wetlands permit because §93-6 of the Town Law sets forth 2 exclusions which I believe applied to this work. §93-6H states that there is an exclusion as to a permit when “the operation, maintenance and repair of dams, retaining walls, docks and water control structures that were in existence on the effective date of this chapter” (emphasis added, Town Law §93-6H). As is clear from the town’s own records and the surveys attached hereto, this road and the culvert under it existed since at least 1987. The town adopted chapter 93 on May 2, 1991.

§93-6-I states that there is also an exclusion for “Emergency work which is immediately necessary to protect health and safety or to prevent damage to property . . . , and provided that such work is limited to alleviation of the emergency condition” (Town Law §93-6-I, emphasis added). As a hole had spontaneously opened in the road bed, safety was a motivating factor as well as the damage being done to our property from the flooding of our field to the North and we did not seek doing anything except to alleviate the condition. Over the last year a hole had opened up in the road bed which prompted me to seek repair and immediately contacted the DEC because I knew they could have some jurisdiction because of the stream and did not seek a permit from the town because I did not believe one was necessary.

I filed everything the DEC requested. I told them that since no water seemed to be passing through the pipe, I thought we could cut out the pipe in the crushed area and replace it in kind without disturbing the stream bed, and since it was an excavation not in the stream but in the road some 10' away from the stream, we would not disturb the banks of the stream or the streambed as the pipe was located above the bed. The DEC gave its consent to that repair and said no permit was required. I enclose copies of that conversation here. A copy of correspondence in that is attached.

Early this year, I discussed the repair with a company that does that kind of work and which has a relationship with one of the lot owners, and they said that at that time there was then too much water built up and it would be better to wait until it subsided in the spring. I agreed and waited for the water to subside.

Thereafter, that company came in – on or about Mother's Day this year, I believe – and began to excavate to make the repair when a stop work order was put on what they were doing. When they were told to stop, I believe they put in two smaller pipes to help make the water subside. That was never part of my plan but in truth those pipes have drained the field quite a bit and we can now repair the culvert pipe. A couple of days later, I first learned that they had come there, of what they did and of what happened. That began the contacts and discussions that led to the Notice of Violation and this application for a Wetlands Permit.

I initially contacted Craig Tompkins, the DEC officer, and he investigated and advised to contact Kelly McKean of the DEC. After her investigation she specifically advised that because of the "emergency nature" of the repair we could go ahead and fix the problem, that nothing further was needed but to be careful, etc.

I then contacted Mr. Garfinkle to make sure he was apprised but he said that notwithstanding the DEC directive, and the Town Code exclusions we claimed that his interpretation was different and we would need a Wetlands Permit application to be filed and that the remediation would have to be treated as a “new project, not a repair”. Although of a different mind as to that interpretation we nevertheless now make such application.

Twin Bridges Road is a private road and my wife and I own it, and we own also the lands on either side of it for its length. I took the initiative to make the repair because no one else ever did anything about it, the relationship among the former lot owners themselves as well as ours with some of those owners over the years, had become a bit dysfunctional. Now there are two new, and reasonable, owners and things are better. Aside from the obvious issue of safety for the road, my wife and I have worked hard to keep those fields as they are; protecting them from development with extensive conservation easements, cutting and mowing, removing dead trees, etc., but the recent flooding has hampered that been too much to do there. We do not want to see them remain flooded, so, we began the process on our own to fix the pipe.

The plan is to initially excavate the collapsed area, remove about 4-6 yards of fill to get down to the pipe and repair the culvert pipe by replacing the collapsed section of pipe where it is collapsed, probably a few yards in length. I believe that the collapsed area is about 10' or so from where the stream enters the pipe. If a new section of pipe can be added to replace the damaged section, we will do that and then fill in the excavated area with the same material that came out and was stockpiled to one side. The area of the road at the excavation site is very wide, enough that two cars could easily pass, and we could probably keep one side open while the work is being done. Regardless, there are only three lot owners who actively use the road and we will schedule the work to minimize inconvenience and allow continued access for emergency vehicles.

If the repair cannot be made as anticipated, we could excavate and install a new pipe to replace the old pipe, which was always more than adequate to handle the stream without any problems until the machine damaged it. We would excavate, stockpile and replace the entire pipe. It is my understanding that the work – either a repair or a replacement – could be accomplished within the parameters of an eight-hour day.

We thank you for your consideration and if anything further is needed, please advise.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. J. Hilpert'. The signature is written in a cursive style with a large 'R' and 'H'.

ROBERT J. HILPERT

Second Addendum to Wetland Permit
Application of Robert J. Hilpert and Beth P. Hilpert
Property located at 82.-B1-lot 69

The application requests “names and addresses of all owners of record of properties abutting and directly across from the opposed activity...”

North of the proposed of activity: lands of applicant

South of the proposed activity: lands of applicant

West of the proposed activity:

- a. 19 Twin Bridges Road – Michael Clemente
- b. 24 Twin Bridges Road – Salvatore Cristiano, Jr. and Rosemary Cristiano
- c. 20 Twin Bridges Road – Steven M. Connolly and Brittany M. Connolly

East of the proposed activity:

- a. 41 Old Highland Turnpike – Sisters of the Atonement
- b. 51 Old Highland Turnpike – Sisters of the Atonement
- c. 55 Old Highland Turnpike – James E. Thomashower and Penny Brickman
- d. 59 Old Highland Turnpike – Steven A. Leardi and Triacia A. Leardi

Third Addendum to Wetland Permit
Application of Robert J. Hilpert and Beth P. Hilpert
Property located at 82.-B1-lot 69

In regard to the criteria for approval outlined in §93-8 of the Town Law I advise as follows:

1. The repair will improve the wetland (the stream) by allowing it to flow naturally.
2. The natural channel of the stream through the culvert will be restored.
3. No pollutant will be introduced; only the same material in the form of culvert pipe will be used.
4. This repair will actually decrease both current and potential of flooding by allowing the stream to flow naturally once again.
5. There will be no introduction of any pollutant and by restoring the natural flow of the stream through the culvert, current erosion of the stream banks will be stopped.
6. As the stream is where it is, there is no alternative location for the culvert pipe repairs.
7. There are no other reasonable alternatives to minimize what is already a relatively minimal impact.
8. The repair will alleviate the flooding.

Robert J. Hilpert
Beth P. Hilpert
2 Peacock Way
Garrison, New York 10524

November 14, 2017

Department of Environmental Conservation
21 South Putt Corners Road
New Paltz, New York 12561
Attn: John Petronella
Via Email: DEP.R3@dec.ny.gov

Dear Mr. Petronella:

On November 9, 2017 I spoke with Sara in "Permits" and she suggested I contact you in regard to an Emergency Authorization for a road repair.

My wife and I are the owners of an approximately 43 acre parcel in the Town of Phillipstown, County of Putnam, State of New York identified as 82. – 1 – 69. This parcel fronts along Route 9 in the southwestern section of Putnam. Bisecting our property is a private road known as Twin Bridge Road which serves as access to 4 lots (3 improved) situated about 500 feet from Route 9. There is a stream that runs under that road close (within about 30 feet) to Route 9 and that stream runs through a pipe of about 24 inches diameter.

Years ago one of the improved lot owners was doing something along the road and apparently some machine partially collapsed the pipe. I believe he, I know it was not us, put a steel plate over the collapsed area (that had created a hole down to the pipe). My efforts to get him to correct that were not successful. Notwithstanding, water continued to flow through the stream.

Last year I was removing dead trees from the field we own (about 15 acres and part of the 43 acres) to the north of the road along Route 9 and noticed that water flow had greatly diminished and that the steel plate had somehow meandered (about 20 feet) from the area of the hole to directly in front of the pipe in the stream. The hole was no longer obvious and had likely filled in over the years. I had someone come and remove the steel plate from the stream and take it away.

This summer when the field finally became dry, we began to try to clear debris from the pipe which now appeared completely blocked. In doing so the "hole" reappeared. I called the company that removed the plate for me and they still had it so I had them put it back over the hole as it had been originally.

However, this leaves the stream still blocked and I do not know where the water goes although I assume some of it floods into that north field, but the field is not noticeably more wet than usual. I am concerned that winter snow and snow plowing – the lot owners maintain the road – will move the plate, open the whole etc. Also, I am concerned about my field flooding.

It would be an understatement to say that the 3 (developed lot) owners have a dysfunctional relationship among themselves, as well as with me, and one is in contract to sell, so their cooperation in making the repair seems unlikely.

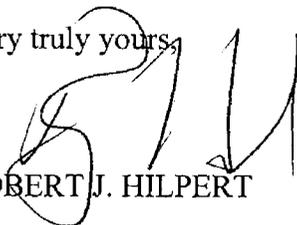
To protect my field I was willing to repair the pipe and in light of the danger the possibility of a hole opening up some action needs to be taken and I would be willing to do that. We own the stream, the land on either side as well as the road as far back as their lots (they have no ownership rights beyond their lots, only a right of way over the road to access them) so I clearly have the right, even if not the duty, to make the repair. In light of the hole I also think it would qualify as an emergency situation.

I had a contractor look at the area and he suggested that if the hole is just a puncture he could remove the soil over the damaged area, clean the debris by hand from the pipe, remove the punctured area and put a "patch" over the punctured area with corrugated aluminum. If that were not feasible he said he could excavate and pile up the dirt from over the whole pipe, take up the old pipe and drop another in its place without disturbing the walls of the pipe area and back fill with the same material he piled up that was on top. He said he would clear debris by hand and put hay bales around any disturbed area to minimize siltation. He estimated about 4 hours and the road would be closed during that period.

Please review and perhaps we could have a conversation on how best to proceed. My office number is (914)-271-2100 and my cell phone number is (914)-217-2774.

Thank you for your consideration.

Very truly yours,



ROBERT J. HILPERT

Robert J. Hilpert
Beth P. Hilpert
2 Peacock Way
Garrison, New York 10524

November 15, 2017

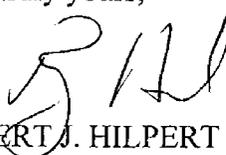
Department of Environmental Conservation
21 South Putt Corners Road
New Paltz, New York 12561
Attn: John Petronella
Via Email: DEP.R3@dec.ny.gov

Dear Mr. Petronella:

As follow up to our conversation yesterday, I attach a "Google Maps" print out of the portion of our property fronting Route 9 which shows the stream running under Twin Bridges Road. As per your suggestion, I have marked an "x" on the intersection of the stream and Twin Bridges Road to identify it as the area in which we intend to repair the pipe.

I thank you for your cooperation and quick response to my inquiry. I await a letter indicating that the work outlined in my letter of November 11, 2017 does not need a permit from the Department of Environmental Conservation.

Very truly yours,


ROBERT J. HILPERT

11/15/17
Hipert

Google Maps 19 Twin Bridges Rd



Google

Imagery ©2017 Google, Map data ©2017 Google 100 ft

Robert J. Hilpert

(F) my culvert file

From: Mckean, Kelly E (DEC) <kelly.mckean@dec.ny.gov>
Sent: Monday, December 4, 2017 10:19 AM
To: Robert J. Hilpert
Subject: DEC stream disturbance jurisdiction for road crossing

Mr. Hilpert,
I sent this on Friday but it bounced back. I had your email incorrect.

Please see below

From: Mckean, Kelly E (DEC)
Sent: Monday, December 04, 2017 9:48 AM
To: 'roberthilpert@hilpertlaw.com' <roberthilpert@hilpertlaw.com>
Subject: RE: DEC stream disturbance jurisdiction for road crossing

Mr. Hilpert-

I am following up with this email to summarize our phone conversation earlier today. The culvert crossing next to Route 9 on your private road in Garrison is a regulated trout spawning stream. Any work proposed that would disturb the bed or banks to that stream would require a permit.

In your letter to our department dated November 14, 2017 to John Petronella along with what we discussed in our phone conversation today, described work that is within the road surface and does not disturb the water or that would send any silt or sedimentation downstream.

If your work is conducted within the roadbed and does not impede water flow or disturb the stream so that silt or sediment travels downstream, a permit would not be required.

If you get to a point where you may disturb the water flow, bed or banks, or cause silt or sedimentation to go down stream please stop work and apply for a permit.

Thank you and if you have any questions please let me know.

Kelly

Kelly McKean

Biologist, Bureau of Habitat

Department of Environmental Conservation
21 S. Putt Corners Rd, New Paltz, NY 12561

(845) 256-3087 | kelly.mckean@dec.ny.gov

www.dec.ny.gov

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3
21 South Platt Corners Road, New Paltz, NY 12561-1620
P: (845) 256-3054 | F: (845) 255-4669
www.dec.ny.gov



Department of
Environmental
Conservation

December 22, 2017

Mr. Robert Hilpert
2 Peacock Way
Garrison, NY 10524

RE: Hilpert Property, Twin Bridges Road, Tax ID# 82.-1-69
Town of Philipstown, Putnam County
CH#: 7393

Dear Mr. Hilpert:

Based upon our review of your inquiry received by this office on November 14, 2017, regarding the repair to an existing pipe located beneath a private road which provides access to numerous residences, DEC offers the following comments:

PROTECTION OF WATERS

The following stream/pond/waterbody is located within or near the site indicated:

Name	Class	DEC Water Index Number	Status
<u>Annsville Creek</u>	<u>C(TS)</u>	<u>H-55-1</u>	<u>Protected</u>

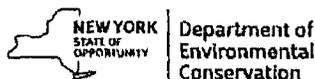
A Protection of Waters permit is required to physically disturb the bed or banks (up to 50 feet from stream) of any streams identified above as "protected."

A time restriction may be required for protection of cold water trout fisheries (waters classified under Article 15 of the Environmental Conservation Law (ECL) with a "T" or "TS" designation), beginning October 1 and ending April 30.

If a permit is not required, please note, however, the project sponsor is still responsible for ensuring that work shall not pollute any stream or waterbody. Care shall be taken to stabilize any disturbed areas promptly after construction, and all necessary precautions shall be taken to prevent contamination of the stream or waterbody by silt, sediment, fuels, solvents, lubricants, or any other pollutant associated with the project.

FRESHWATER WETLANDS

The project/site is not within a New York State protected Freshwater Wetland. An Army Corps of Engineers permit may be required pursuant to Section 404 of the Clean Water Act. If a Section 404 permit is required, you will also require a Water Quality Certification pursuant to Section 401 of the Clean Water Act. Issuance of these certifications in NYS has been delegated to the DEC. Please contact the Army Corps of Engineers in New York City, telephone 917-790-8411 for any permitting they might require.



STATE-LISTED SPECIES

DEC has reviewed the State's Natural Heritage records. We have determined that the site is located within or near record(s) of the following state-listed species:

<u>Name</u>	<u>Status</u>
Timber rattlesnake, <i>Crotalus horridus</i>	Threatened
Northern long-eared bat, <i>Myotis septentrionalis</i>	Threatened

A permit is required for the incidental taking of any species identified as "endangered" or "threatened," which can include the removal of habitat. To avoid impacts to timber rattlesnakes, the application of a time of year (TOY) restriction must be implemented, with all work taking place from November 1 to March 31 in any given year.

It does not appear that any tree removal will occur for this project. However, if tree removal must occur at any time, the DEC recommends a TOY restriction, with all tree removal, taking place between November 1 and March 31.

Please contact the Bureau of Wildlife at 845-256-3098 if this TOY restriction cannot be followed.

Please note that a project sponsor may not commence site preparation, including tree clearing, until the provisions of SEQR are complied with and all necessary permits are issued for the proposed project.

The absence of data does not necessarily mean that rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

OTHER

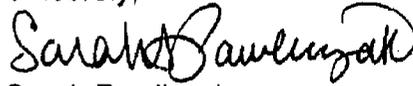
Please note that this letter only addresses the requirements for the following permits from the Department:

- Protection of Waters State-listed Species Freshwater Wetlands

Other permits from this Department or other agencies may be required for projects conducted on this property now or in the future. Also, regulations applicable to the location subject to this determination occasionally are revised and the project sponsor should, therefore, verify the need for permits if the project is delayed or postponed. This determination regarding the need for permits will remain effective for a maximum of one year unless you are otherwise notified. Applications may be downloaded from our website at www.dec.ny.gov under "Programs" then "Division of Environmental Permits."

Please contact this office if you have questions regarding the above information. Thank you.

Sincerely,



Sarah Pawliczak

Division of Environmental Permits
Region 3, Telephone No. 845-256-3050

cc: Kelly McKean, NYSDEC Bureau of Habitat
NYSDEC Bureau of Wildlife
Brendan Newell, USACE
Town of Philipstown Town Clerk

NOTE: Regarding erosion/sedimentation control requirements:

Stormwater discharges require a State Pollutant Discharge Elimination System (SPDES) Stormwater permit from this Department if they either:

- occur at industrial facilities and contain either toxic contaminants or priority pollutants OR
- result from construction projects involving the disturbance of 5000 square feet or more of land within the NYC Department of Environmental Protection East of Hudson Watershed or for proposed disturbance of 1 acre or more of land outside the NYC DEP Watershed

Your project may be covered by one of two Statewide General Permits or may require an individual permit. For information on stormwater and the general permits, see the DEC website at <http://www.dec.ny.gov/chemical/8468.html>.

For construction permits, if this site is within an MS4 area (Municipal Separate Storm Sewer System), the stormwater plan must be reviewed and accepted by the municipality and the MS-4 Acceptance Form must be submitted to the Department. If the site is not within an MS4 area and other DEC permits are required, please contact the regional Division of Environmental Permits.