

**PLANNING BOARD
TOWN OF PHILIPSTOWN, NEW YORK**

Hudson Highlands Reserve Conservation Subdivision
Statement of Environmental Findings

RESOLUTION NO. _____ DATE: _____
INTRODUCED BY: _____
SECONDED BY: _____

WHEREAS, the Planning Board of the Town of Philipstown is serving as Lead Agency for the State Environmental Quality Review Act ("SEQRA") review of the proposed Hudson Highlands Reserve Conservation Subdivision project; and

WHEREAS, the Planning Board issued a Positive Declaration requiring the preparation of a Draft Environmental Impact Statement ("DEIS") on June 6, 2018; and

WHEREAS, the Planning Board determined to conduct a scoping process pursuant to 6 NYCRR 617.8 and conducted a public hearing on the draft scope on June 21, 2018, and a written comment period was held open until June 28, 2018; and

WHEREAS, the Planning Board adopted a Final Scoping document on July 19, 2018; and

WHEREAS, after review of the preliminary DEIS, which was revised twice between December, 2018 and May, 2019, the Planning Board determined the revised document was adequate and complete with respect to the adopted Final Scoping document on May 16, 2019; and

WHEREAS, on or about May 29, 2019, the DEIS Notice of Completion was published in the Environmental Notice Bulletin (ENB); and

WHEREAS, the Planning Board held a public hearing on the DEIS on June 20, 2019; and

WHEREAS, the public comment period on the DEIS was held open and extended until July 8, 2019; and

WHEREAS, the Applicant submitted a draft Final Environmental Impact Statement ("FEIS") to the Planning Board on or about July 15, 2021, which responded to all substantive comments on the DEIS, and also memorialized changes made to the subdivision layout by the Applicant (including removal of the Equestrian Center component); and

WHEREAS, the Planning Board directed its consultants to review the draft FEIS and to advise the Planning Board on the sufficiency of the document; and

WHEREAS, on September 15, 2021, AKRF, Inc. (Town Planning Consultant) and Ronald J. Gainer, PE, PLLC (Town Engineer) transmitted to the Planning Board and the Applicant the first memorandum identifying necessary revisions to the draft FEIS to ensure its adequacy and accuracy; and

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WHEREAS, the Planning Board held a regularly scheduled meeting which was duly noticed and open to the public, on September 16, 2021, to discuss the submitted document and to identify deficiencies in the submitted document with their consultants; and

WHEREAS, on October 5, 2021, AKRF, Inc. transmitted to the Planning Board and the Applicant a 2nd memorandum identifying necessary revisions to Appendices A and B of the draft FEIS (public hearing transcript and summary of written comments) to ensure its adequacy and accuracy; and

WHEREAS, on or about November 9, 2021, the Applicant submitted a revised draft of the FEIS containing revisions; and

WHEREAS, the Planning Board held a regularly scheduled meeting which was duly noticed and open to the public, on November 18, 2021, to discuss the submitted document and to identify deficiencies in the submitted document with their consultants; and

WHEREAS, between November 18, 2021 and November 23, 2021, AKRF, Inc. and Ronald J. Gainer, PE, PLLC transmitted to the Planning Board and the Applicant the 3rd and 4th memoranda identifying necessary revisions to the draft FEIS to ensure its adequacy and accuracy; and

WHEREAS, on or about December 2, 2021, the Applicant submitted a revised draft of the FEIS containing revisions; and

WHEREAS, on December 16, 2021, AKRF, Inc. and Ronald J. Gainer, PE, PLLC transmitted to the Planning Board and the Applicant a 5th memorandum identifying necessary revisions to the draft FEIS to ensure its adequacy and accuracy, and recommended accepting the FEIS as complete subject to editorial revisions identified in the memorandum; and

WHEREAS, the Planning Board held a regularly scheduled meeting which was duly noticed and open to the public, on December 16, 2022, to discuss the submitted document, identify deficiencies in the submitted document with their consultants, and provide comments on the proposed layout of the subdivision; and

WHEREAS, on or about March 3, 2022, the Applicant submitted a revised draft of the FEIS containing requested revisions as well as additional changes made to the subdivision layout in response to comments from the Planning Board (including removal of one lot and reconfiguration of the lots around the northern end of Ulmar Pond); and

WHEREAS, on March 11, 2022, AKRF, Inc. and Ronald J. Gainer, PE, PLLC transmitted to the Planning Board and the Applicant the final editorial revisions to the draft FEIS to ensure its adequacy and accuracy, and recommended accepting the FEIS as complete subject to editorial revisions identified; and

WHEREAS, the Planning Board held a regularly scheduled meeting which was duly noticed and open to the public, on April 21, 2022, to discuss the March 11, 2022 editorial revisions to the draft FEIS and the Applicant's changes to the subdivision layout; and

WHEREAS, the Planning Board, as Lead Agency, has reviewed the applicable standards of 6 NYCRR 617.9(b)(8) to evaluate the adequacy of the FEIS, and determined the FEIS to be complete, subject to integration of the recommended revisions, on April 21, 2022, and in the Planning Board's opinion, adequate for filing, circulation and publication; and

SEQRA Findings Statement

WHEREAS, subsequently, the FEIS was filed and distributed in accordance with 6NYCRR 617.12(b), a Notice of Completion distributed, and a notice published in the Environmental Notice Bulletin; and

WHEREAS, the Notice of Completion was published in the Environmental Notice Bulletin on May 4, 2022; and

WHEREAS, the complete FEIS was posted on the Town’s website on May 5, 2022; and

WHEREAS, the FEIS was filed with the Town, distributed by the Town to all involved and interested agencies, and made available for public review on May 5, 2022; and

WHEREAS, during the course of the SEQR review process the Planning Board has reviewed and considered the DEIS, the FEIS, the plans and materials submitted by the Applicant, reports and studies of its consultants, public comments and correspondence and comments from involved and interested agencies, all of which constitutes the record on which this Findings Statement is based; and

WHEREAS, the Planning Board has considered all comments during the EIS process, including comments made by involved and interested agencies and members of the public, as well as all comments submitted during the FEIS waiting period; and

WHEREAS, the minimum ten day waiting period between the filing of the FEIS and the issuance of a Findings Statement ended on May 15, 2022; and

NOW, THEREFORE BE IT RESOLVED that the Planning Board, as Lead Agency, determines that the requirements of SEQRA have been met, as evidenced by the recitals above; and

BE IT FURTHER RESOLVED, that having thoroughly reviewed and considered the DEIS, the FEIS, and entire record of this SEQRA proceeding, the Planning Board makes the following findings and determinations pursuant to SEQRA and 6 NYCRR § 617.11:

LOCATION AND DESCRIPTION OF PROPOSED PROJECT

The Proposed Project is located on the North Highlands section of the Town of Philipstown in Putnam County, New York, generally proposed to the east of Route 9 between Horton Road to the south and East Mountain Road North to the north. The overall Project Site comprises the six tax parcels controlled by the Project Sponsor, Horton Road LLC, totaling 210± acres, and identified as Parcels 1-6, as follows:

| Parcel | Tax ID | Address | Acreage | Existing Zoning |
|--------|--------------|--|---------|-----------------|
| 1 | 17.-1-76.112 | East Mountain Road South, Philipstown, NY | 86.87± | RR/M |
| 2 | 17.-1-77.2 | East Mountain Road South, Philipstown, NY | 27.70± | RR |
| 3 | 17.-1-39 | 36 East Mountain Road North, Philipstown, NY | 20.19± | RR |
| 4 | 17.-1-76.21 | 145 Horton Road, Philipstown, NY | 20.82± | RR |
| 5 | 17.-1-76.111 | East Mountain Road South, Philipstown, NY | 50.03± | RR |
| 6 | 17.-1-48 | 3590 Route 9, Philipstown, NY | 4.50± | HC |

Sources: Horton Road LLC, Putnam County eParcel (accessed April 2022)

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The following zoning districts are mapped on the Project Site: RR-Rural Residential, M-Industrial/Manufacturing, HC-Highway Commercial, OSO-Open Space Conservation, CCA-Clove Creek Aquifer Overlay, Regional Aquifer, SPO-Scenic Protection Overlay (partial). The majority of the Project Site is zoned RR (Rural Residential). An approximately 11.1 acre portion of Parcel 1 fronting Route 9 is zoned M (Industrial/Manufacturing). The entirety of Parcel 6, also fronting Route 9, is zoned HC (Highway Commercial).

The Proposed Project involves the Project Sponsor's proposal to construct a conservation subdivision (pursuant to Town Code §175-20) on the Project Site, containing 24 new residential lots (approximately 1 acre each), a commercial lot fronting Route 9, and a common lot to be owned by a Homeowners Association (HOA).

Appendices I and J to the DEIS contain drafts of the Bylaws and the General Rules and Regulations of the HOA. Every homeowner will be required to join the HOA and the HOA will enforce the Bylaws and General Rules and Regulations of the HOA, such as limits on the use of pesticides and fertilizers, as allowed by the terms and provisions of the HOA. The final version of the HOA agreement documents, including the provisions for enforcement of limitations and prohibitions on homeowners' activities, will be submitted by the Project Sponsor for review and approval as part of the Town's subsequent site plan and conservation subdivision review process.

New construction of homes will occur on 22 of the 24 proposed residential lots, because two of them (proposed Lots 1 and 20) contain existing structures already found on the Project Site. One of these structures, referred to in the DEIS and FEIS as the former "Frisenda House" will comprise Lot 1 and will also retain its existing sewage disposal field. Another structure, referred to as the former "Ulmar House" (currently used as a residence) will comprise Lot 20. A third structure, a 19th century barn on the proposed common lot, is proposed to be adaptively reused to serve as a community clubhouse for the subdivision's HOA.

Approximately 78 percent of the Project Site (163 acres out of 210 acres) would be preserved as permanent open space through a Conservation Easement, which includes Ulmar Pond, Clove Creek, all delineated wetlands and watercourses, as well as their adjacent upland areas. Of the approximately 47.1 acres not contained within the Conservation Easement, approximately 31.9 acres would constitute the 24 proposed residential lots and the existing commercial parcel along Route 9. The remaining approximately 15.2 acres includes the common area to be controlled by the HOA including proposed rights-of-way, stormwater management features and the primary and reserve common subsurface sewage treatment system (SSTS).

Primary access to the Proposed Project would be from a new non-gated access road that would be constructed from Route 9. Access into the Project Site is currently provided by ~~unpaved historic dirt roads/drives~~ accessible from both East Mountain Road North and Horton Road. One of these drives is a historic dirt road that runs the length of the Project Site from Horton Road to East Mountain Road North. Most of this historic road will fall within the Conservation Easement area, but a portion of it would be utilized as a driveway for homes on the east side of Ulmar Pond. The Project Sponsor sees the inclusion of the historic road within the conserved area as a benefit to the future management of the easement by the easement holder. An additional unpaved drive accessible from Horton Road was installed by a former property owner (Lyons). A portion of the historic road from East Mountain Road North had also been improved for use as a driveway to access the former Frisenda House. The Project Sponsor proposes to retain the Lyons and Frisenda ~~these existing~~ access points for emergency purposes only, and as illustrated on the subdivision layout presented in the FEIS, the emergency access roads would

Commented [AW1]: The description of Site's existing dirt roads in this paragraph has been revised to clarify emergency access plans and the fact that most of the historic dirt road through the site will be in the Conservation Easement area. (Kim Connor comment 5/19/22)

connect to the proposed Highlands Trail and Reserve Road. Locked gates, equipped with Knox Boxes, would be installed at these access points from East Mountain Road North and Horton Road. ~~Much of the historic road would become part of the proposed Conservation Easement. The Project Sponsor sees the inclusion of the historic road within the conserved area as a benefit to the future management of the easement by the easement holder.~~

A copy of the proposed Conservation Easement was provided in Appendix K of the DEIS. The area of the Project Site originally determined to be the required area subject to a Conservation Easement, as required by the Town Code and provided in the Conservation Analysis Findings (DEIS Appendix B), was 154.1 acres. As noted above, the Project Sponsor proposes 163 acres for the Conservation Easement. Pursuant to the Town Code, the Conservation Easement must be granted to the Town (with the approval of the Town Board), or to a qualified not-for profit conservation organization or other governmental body acceptable to the Planning Board. ~~Construction of the Proposed Project will not move forward without designation of an easement holder by the Project Sponsor. The Planning Board will have the ability to require that the designation of an easement holder be either a prerequisite to, or condition of, a future site plan/subdivision approval.~~ At this time, the Project Sponsor has not designated the easement holder, but has prepared an agreement setting forth the rules and regulations associated with the Conservation Easement. Regardless of whom the easement holder is, the Conservation Easement Agreement grants a third-party enforcement right to the Town of Philipstown. As such, the Town and the easement holder would both have the ability to enforce the provisions of the Conservation Easement Agreement.

Commented [AW2]: Added language to describe what happens if holder for CE is not found (Neal Zuckerman comment 5/19/22).

According to the Project Sponsor, the protected land to be part of the Conservation Easement would provide the following functions:

- Protect important habitat and wildlife corridors;
- Provide a block of undisturbed contiguous forest that would support the functions of the nearby unfragmented forest within Fahnestock State Park;
- Preserve and protect Ulmar Pond, as well as a 140-foot buffer proposed around the pond;
- Preserve and protect Clove Creek, all delineated wetlands and the bifurcated stream system on the Project Site (including buffers proposed in excess of regulatory requirements);
- Preserve the area occupied by the historic stonewall-lined road as a cultural and recreational resource; and
- Through the HOA, homeowners would be prohibited from utilizing the neighboring preserved open space for any purposes other than passive recreation.

According to the Project Sponsor, all areas subject to the Conservation Easement would be preserved in a natural state. No alterations, including boundary markers, are being contemplated. The one exception is where homes are proposed in proximity to Ulmar Pond. In this area, the Conservation Easement would be contained within a 140-foot buffer around the pond, and defining the boundary between the lot lines of residential properties and the 140-foot buffer ~~is~~ critical to the protection of the pond. Therefore, the residential property lines in this area would be demarcated by a low stone boundary marker using indigenous fieldstone, similar to “farmer’s walls” already found elsewhere on the Project Site.

Commented [AW3]: Replaced “are” with “is” per comment from Kim Connor 5/19/22

In order to facilitate the Proposed Project, the Project Sponsor seeks approval from the Philipstown Town Board to change the zoning designation of approximately 11.1 acres of Parcel 1 along Route 9 from M to RR. No zoning change is proposed for the commercial (HC-zoned)

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Parcel 6, since this parcel would remain commercial and would not be part of the HOA that would manage the proposed subdivision. However, Parcel 6 has been included on the subdivision plat to provide for a proposed lot line adjustment that would make the proposed entry road part of the common property within the subdivision. If the requested zoning change for the 11.1 acres of Parcel 1 along Route 9 from zone M to zone RR is not granted by the Town Board, the Proposed Project's residential lot count (as specified in the FEIS Plan) will decrease by two lots, from 24 to 22 (two permitted lots were derived from the acreage currently within zone M). The Town Board must also approve alternative road standards and the formation of a Sewage Works Corporation and sewer district. The Proposed Project would also require ~~an Aquifer Overlay special permit, along with~~ site plan approval and conservation subdivision approval from the Philipstown Planning Board.

Commented [AW4]: Added language on what would happen if the zoning change is not granted by the Town Board (Neal Zuckerman comment 5/19/22)

Commented [AW5]: Revised to remove reference to Aquifer Overlay special permit – no longer needed as Equestrian Center has been removed from the plan – this was holdover from list of actions included in DEIS plan (Kim Conner comment 5/19/22)

In addition to the above-referenced Town approvals, the Proposed Project will require multiple permits from county and state agencies. The Putnam County Department of Health has authority to grant permits for the water and sewer systems, and due to the Proposed Project's location on a state highway, it must be reviewed by the Putnam County Planning Board under a General Municipal Law Section 239-m Referral. The Proposed Project will also require a Highway Work Permit from the New York State Department of Transportation (NYSDOT) and a State Pollution Discharge Elimination System (SPDES) permit and a potential stream disturbance permit from the NYSDEC.

In response to public comments on the DEIS, the Project Sponsor reduced the scale of the Proposed Project for the FEIS. The most significant change made was the elimination of a proposed 11-acre Equestrian Center originally planned to board a maximum of 40 horses on the Project Site. The removal of the Equestrian Center resulted in a reduction in impervious surfaces associated with this use (building and associated parking area), a reduction in length for the three main internal roads proposed (Highlands Trail, Forest Court and Ulmar Pond Drive), and also allowed for the relocation of some of the proposed residential lots. In addition, in response to several comments from Planning Board on the FEIS, the Project Sponsor eliminated three homes directly to the west and south of Ulmar Pond. This reduction has also allowed for the design of Ulmar Pond Drive to be reconfigured from a cul-de-sac to a short drive with a turnaround serving just two homes.

The project presented in the DEIS (a 25-lot conservation subdivision with equestrian center) is herein referred to as the "DEIS Plan." The modified plan presented for the FEIS (a 24-lot conservation subdivision without an equestrian center) is herein referred to as the "FEIS Plan" (aka the Proposed Project).

As summarized above, the Proposed Project evolved throughout the SEQRA review process. In addition to the analysis of the DEIS Plan and a No Action Alternative, the DEIS included an analysis of the following four development alternatives:

- Conventional Subdivision with Equestrian Center
- Equestrian Center with no Residential Subdivision
- Alternative Cluster Layout with Equestrian Center
- Alternative Conservation Subdivision with smaller Equestrian Center

The Lead Agency has determined that the DEIS Plan and the four alternatives presented in the DEIS (all of which included an equestrian center) would not satisfactorily achieve the Town's development goals for the Project Site, or would result in various adverse environmental impacts. Therefore, this Findings Statement pertains to the FEIS Plan (aka the Proposed Project).

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The table below summarizes the changes made to the Proposed Project between the DEIS and the FEIS.

| Project Component | DEIS Plan | FEIS Plan | Net Change |
|--|---|--------------------------------|--|
| Residential Lots | 25 | 24 ¹ | -1 ¹ |
| Proposed New Homes | 24 | 22 | -2 ² |
| Proposed Community Building (HOA, former Barn) | 1 | No change | No change |
| Equestrian Center | 11 acres (originally proposed as part of Conservation Easement area) | Removed From Plan | Reductions to overall limits of disturbance, excavation, impervious surfaces, and water/sewer demand (see below) |
| Proposed New Homes Around Ulmar Pond | 7 | 4 | -3 |
| Conservation Easement Area | 170.8 | 163 | -7.8 ³ |
| Total Project Site Disturbance | 45.7 acres (22% of total Site) | 38.1 acres (18% of total Site) | -7.6 acres |
| Total Impervious Surfaces | 11.1 acres | 7.7 acres | -3.4 acres |
| Total Excavation (gross cut/fill) | 28,792 CY spoil | 10,487 CY spoil | -18,305 CY spoil |
| Anticipated Water Demand | 24,000 GPD | 17,700 GPD | -6,300 GPD |
| Floodplain, Wetland and Watercourse Disturbance | NoneNone for wetlands/watercourses; Floodplain Development Permit for entrance road | NoneNo change | No change |
| Primary Site Access | Route 9 | Route 9 | No change |
| Notes: CY = cubic yards GPD = gallons per day ¹ If the requested zoning change for the 11.1 acres of Parcel 1 along Route 9 from zone M to zone RR is not granted by the Town Board, the Proposed Project's residential lot count (as specified in the FEIS Plan) will decrease by two lots, from 24 to 22 (two permitted lots were derived from the acreage currently within zone M). ² The former Frisenda residence (Lot 1) was planned to be used as a maintenance facility in the DEIS Plan. It is now proposed to be one of the 24 homes in the subdivision. This, along with the reduction of the unit count from 25 to 24 homes, resulted in the reduction of newly constructed homes from 24 to 22, with 2 homes being pre-existing (the existing Ulmar House on proposed lot 20 had always been included as part of the total unit count). Accordingly, the early 19th century barn, which will be adaptively reused to serve as the community center, will now be the only non-residential building in the subdivision (not including the commercial lot). ³ The DEIS plan identified 170.8 acres to be included in the Conservation Area, which included 11 acres within the area identified for the formerly planned Equestrian Center (in accordance with recreational uses allowable within Conservation Areas). The Conservation Area originally included areas where some of the permanent stormwater management practices were to be located, along with the primary subsurface sanitary disposal field and the early 19th century barn structure. Being considered instead as features of the "developed" landscape, these areas were removed from the proposed Conservation Easement Area as part of the FEIS Plan. | | | |
| Sources: Horton Road LLC | | | |

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Commented [AW6]: Revised since "None" doesn't seem consistent for floodplains compared to what is on page 14 (permit for entrance road)

Commented [AW7]: Footnote added to match language added on page 5, as requested by Neal Zuckerman (what happens if zoning change is not granted).

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Commented [AW8]: Sentence revised for clarity per Kim Conner comment 5/19/22

As noted in the FEIS, following approval of plans and all other requested permits through the Town, the Project Sponsor envisions that construction of the Proposed Project would be phased as summarized in the bulleted list below, in the following manner. However, this conceptual phasing is subject to refinement as the project proceeds through the site plan review process. Each phase would involve all necessary grading, installation of necessary erosion/sediment

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controls, stormwater management, utility infrastructure, etc. (refer to FEIS Figure 5 and related text for additional detail).

- Phase 1: Construction of the proposed entrance road from the rear of the existing commercial building and construction of a portion of Highlands Trail.
- Phase 2: Extension of Highlands Trail to Forest Court.
- Phase 3: Extension of Highlands Trail from Forest Court to its terminus just past Reserve Road; installation of septic tanks and pump station for the common SSTS.
- Phase 4: Installation of a diversion swale on the hillside, construction of Reserve Road and installation of the fields for the common SSTS.
- Phase 5: Construction of Highlands Trail to its connection with Route 9.
- Phase 6: Construction of Forest Court.
- Phase 7: Construction of Ulmar Pond Drive.
- Phase 8: Construction of the fill pad for the reserve SSTS.

The construction of new roadways and infrastructure will include grading of driveways to a point 50 feet into the individual lots, and will also include installation of the common landscaping proposed within each phase. Construction of each phase may not necessarily be completed before moving to the next. However, no more than 5 acres will be disturbed at any one time.

Construction of new homes cannot proceed until the community SSTS is in service. It is currently envisioned that one model home will be constructed during Phase 2, prior to the construction of the common SSTS. The plumbing for this home will not be in service until it is connected to the completed common SSTS. The Project Sponsor anticipates. According to the Project Sponsor, that all 22 new homes will have be approximately 2,500-3,000 square feet of total floor area, a maximum height of three stories (or 30 feet) in height, and will be constructed to LEED for Homes Platinum standards. As noted above, Appendices I and J to the DEIS contain drafts of the Bylaws and the General Rules and Regulations of the HOA. Included within these regulations, among several other topics, is the Project Sponsor's requirement that that site plans for all construction be approved by the HOA's Architectural Review Board. Building permits through the Town's Building Department will also be required for all new homes. In accordance with the Philipstown Zoning Code, the development of any lot containing a dwelling with a proposed footprint greater than 3,000 square feet would be subject to Site Plan review by the Planning Board. While the conceptual plans studied during the SEQRA process incorporated suggested house/driveway locations, the Planning Board is ultimately responsible for establishing specific "yard" requirements that will be applicable to the development of the individual lots during the Planning Board's Site Plan and conservation subdivision review stage.

Commented [AW9]: Revised to reflect Project Sponsor's expectations for the new homes (Kim Conner comment 5/19/22)

Commented [AW10]: Revised to clarify that HOA is not above the Town Building Dept. permit process, and that site plan review through the PB for footprints over 3,000 sf is required by code (Kim Conner comment 5/19/22)

Throughout the SEQRA process, the Project Sponsor has made various commitments related to the Proposed Project's final design and operation. These commitments, to be enforced through the Town, the HOA, and/or other reviewing agencies, include but are not limited to the following:

- Installation of a southbound left-turn lane into the Proposed Project from Route 9 (subject to NYSDOT approval);
- All new homes will be individually sprinklered;

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- Referral to the North Highlands Engine Company No. 1 will occur during site plan and subdivision review;
- No horses or horseback riding will be permitted within the Proposed Project's conserved lands;
- Limiting the amount of lawn area on each residential lot to no more than 2,000 square feet;
- ~~The use of pervious designs for driveways and parking pads will be encouraged; All driveways and parking pads will be designed to be pervious;~~
- A prohibition on the construction of exterior swimming pools on individual residential lots; and
- All proposed homes will be for single-family use only (no short-term rentals will be allowed).

Commented [AW11]: Revised upon review of draft bylaws contained in the DEIS

EVALUATION OF POTENTIAL IMPACTS AND MITIGATION

The following discussions on potential impacts and mitigation follows the organization of topical headings (and subheadings) covered in the DEIS and FEIS. As noted above, following issuance of a Positive Declaration, the Planning Board, as lead agency, adopted a Final Scoping document on July 19, 2018, which set forth the following four areas of potential environmental impacts to be analyzed:

- Water Resources;
- Vegetation and Wildlife;
- Zoning and Land Use; and
- Community Character.

WATER RESOURCES

Stormwater

The Proposed Project would convert approximately 38.1 acres of naturally vegetated surfaces to developed surfaces, of which approximately 7.7 acres would be impervious, and approximately 30.4 acres would be comprised of either lawn and landscaping on residential lots, stormwater practices or common septic areas. ~~According to the While the drafts of the Bylaws and the General Rules and Regulations of the HOA included in the DEIS encourage the use of pervious designs for driveways and parking pads, the stormwater analyses contained in the DEIS and FEIS assumed that all new structures, driveways, and parking pads would be impervious. DEIS and FEIS, all driveways and parking pads will be designed to be impervious.~~ The impervious surfaces would no longer allow stormwater infiltration, and if left without mitigations described below, would therefore result in an increase in the rate of stormwater runoff.

The changes to the surface of the Project Site that would result from the construction of the Proposed Project, if left uncontrolled, could cause significant erosion and sedimentation. Erosion could occur in several areas of the Site if stormwater were to flow off of the manmade improvements in an uncontrolled manner. Sedimentation, if uncontrolled, could foul Ulmar Pond, Clove Creek and its associated wetlands. As described further below, through the incorporation of measures required by the Town and other permitting agencies, which would be included as part of the Proposed Project's final design and memorialized as conditions of future

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site plan/subdivision approval, these potential impacts would be mitigated to the maximum extent practicable.

As the Proposed Project would result in disturbance of more than five acres of land, it requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must be prepared in accordance with Chapter 147A of the Philipstown Town Code and the requirements of the latest New York State Department of Environmental Conservation's (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges (GP-0-20-001).

A Preliminary SWPPP includes an anticipated construction sequence that was prepared by the Project Sponsor for the DEIS Plan and updated for the FEIS Plan. The final SWPPP will be prepared as part of the site plan/subdivision approval process by the Planning Board (and reviewed by the Town Engineer), when the planned construction has been fully designed. The final SWPPP will address treatment of the water quality volume, infiltration of the required runoff reduction volume and attenuation of any peak volume flow rates for the 1-, 10- and 100-year storm events. The final SWPPP analyzes the pre- and post-construction conditions of the Project Site at critical design points based on where the stormwater leaves the Site. The majority of the Project Site currently discharges stormwater toward Ulmar Pond, which ultimately discharges to Clove Creek. The remainder of the Project Site discharges directly toward Clove Creek.

The final SWPPP will compensate for the loss of natural stormwater treatment, resulting in no net increase in the peak rate of stormwater exiting the Proposed Project when compared to existing conditions. Post-construction stormwater practices will be designed and implemented to achieve these goals, and these include the use of cisterns, the development of bioretention areas, rain gardens and dry detention ponds. The final SWPPP will also include the development of an Erosion and Sediment Control Plan that will be implemented prior to any land disturbance.

As required, the proposed stormwater management measures do not have to provide storage for the entire volume of runoff generated, but will be designed to reduce the rate of stormwater runoff offsite to be equal to or below pre-development levels. The stormwater will continue to discharge to the same areas as it does currently, but will first enter permanent post-construction stormwater management elements designed according to the NYSDEC Stormwater Design Manual to provide water quality treatment for the required water quality volume, recharge the required runoff reduction volume, and attenuate any increase in peak flow for the 10- and 100-year storm events.

A final SWPPP must be approved by the Town as part of subdivision and site plan approval, and before site preparation can commence. The final SWPPP will include stormwater pollution prevention techniques before, during and after construction is complete, such as:

- Limiting disturbance to a maximum of 5 acres at any one time;
- Temporarily and permanently stabilizing disturbed areas as soon as possible after particular tasks have been accomplished;
- Revegetation with appropriate plant materials;
- Use of erosion control fencing and hay bales;
- Use of temporary and permanent sediment traps;
- Use of turf reinforcement mats and other bio-technical measures;

Commented [AW12]: Revised to clarify Town Engineer's role in SWPPP review for site plan/subdivision (on behalf of the PB) (Kim Conner comment 5/19/22)

Commented [AW13]: Glenn Watson proposed to remove "1-year" but Ron Gainer advised to keep it in (Kim Conner comment 5/19/22)

- Installation of rain gardens where appropriate;
- Installation of level spreaders to avoid concentration of stormwater runoff;
- Installation of check dams in gutters and swales to slow stormwater flows allowing the water to drop eroded material;
- Infiltrating stormwater; and
- Regularly and professionally inspecting the site for adherence to the SWPPP.

The final Town-approved SWPPP would be effective for the life of the Proposed Project. The methods outlined in the “NYS Standards and Specifications for Erosion and Sediment Control” provide guidance and methods that are to be employed in the plan. As presented in the DEIS, the Project Sponsor believes that soil tests performed at the Project Site both for the Proposed Project and the Lyons Soil Mine plan previously proposed on the Project Site provide sufficient depth of soil to expect that infiltration of stormwater would be viable.

The Town will require construction activities to be regularly inspected, not only by the Project Sponsor’s engineer, but also by an inspector employed by the Town. The HOA will be responsible for the maintenance of all permanent stormwater management elements found in common areas, as well as those proposed on individual lots (rain gardens, etc.) The implementation of the required SWPPP along with the Town and HOA’s oversight would mitigate the potential for significant adverse impacts associated with construction on the Project Site to the maximum extent practicable. These measures would adequately prevent significant erosion on the slopes upstream of receiving waters, both during and following construction, as well as preventing significant downstream siltation from occurring as a result of the Proposed Project.

Ulmar Pond

Ulmar Pond is an approximately 5.7-acre impounded waterbody found on the Project Site, controlled by a dam at its southern boundary. Ulmar Pond outlets via a small spillway through the dam to NYSDEC Wetland #WP-17, which lies on both sides of Horton Road. The pond and the wetland drain offsite to Clove Creek via a tributary that passes under Horton Road.

As described above, the Project Site contains three existing structures that would be incorporated into the Proposed Project (two are existing homes on proposed Lots 1 and 20). The existing structure to be located on proposed Lot 20 is currently used as a residence, and it is located on the east side of Ulmar Pond, approximately 250 feet from the edge of the pond. The third structure is an historic early 19th century barn on the proposed common lot, which is proposed to be adaptively reused as a community center. As depicted in Figure 12 of the FEIS, as the layout of the Proposed Project evolved since 2014, in response to comments by the Planning Board and the public, the number of proposed new structures around Ulmar Pond (i.e. not including the existing residence to remain) has been reduced from eleven to four. The DEIS Plan from 2019 included six new homes around the edge of Ulmar Pond (reduced to four with the FEIS Plan). The eleven original structures around the pond depicted in the 2014 scheme (shown in FEIS Figure 12) included elements of the formerly proposed Equestrian Center. The four new structures proposed in the vicinity of Ulmar Pond as part of the FEIS Plan are exclusively single-family homes, and all four would be located around the northern third of the pond. No new development or other site disturbance is proposed around the southern two-thirds of the pond, which includes the inflow from a braided watercourse/wetland system and the outflow to Clove Creek. The removal of homes from the southern extent of Ulmar Pond has increased the amount

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of natural connection between the preserved areas on the eastern portion of the Project Site with the preserved areas on the western portion around Clove Creek.

As depicted on the FEIS Plan and described throughout this Findings Statement, a 140-foot buffer is proposed between the edge of Ulmar Pond and the rear property lines of the lots proposed adjacent to the pond. This 140-foot buffer will be part of the Conservation Easement and will be maintained undisturbed, with no land clearing or tree cutting permitted within it. It should be noted however, that the closest proposed home to Ulmar Pond is approximately 171 feet from its edge. The proposed separation distance for lot lines (140 feet) and the closest home (171 feet) is beyond the, which is approximately 71 feet beyond the regulated 100-foot buffer required by the Town Code. All other proposed development would be ~~over more than~~ 200 feet away from any open water. All homes proposed near the north end of Ulmar Pond would be at an elevation between 30 and 50 feet above the pond. Property lines for all proposed lots near the north end of the pond are shown at 140 feet from the pond's edge (also in excess of the 100 foot buffer required by the Town Code). The Project Sponsor's proposed 140-foot buffer around Ulmar Pond will be part of the Conservation Easement and will be maintained undisturbed. This will include a restriction on cutting of trees and land clearing within the entirety of the 140 foot buffer proposed for the individual lots surrounding the pond.

Through the required SWPPP previously described, stormwater runoff from developed surfaces will be directed to stormwater management and treatment facilities prior to entering Ulmar Pond. The Project Sponsor has further noted that through the modifications made to the subdivision layout between the DEIS and FEIS, any runoff from surfaces around the four homes now proposed near the north end of Ulmar Pond will be impeded by, and have to filter through, a stone wall that will be built at the rear property line of these lots, and then flow through the 140-foot preserved buffer (to be part of the Conservation Easement) which contains well-established natural vegetation, all of which would provide additional filtration and treatment. As described in the FEIS, Ulmar Pond will be monitored while construction is in progress nearby to ensure that erosion and sedimentation controls are effective. During site plan and subdivision review, the Planning Board will define the specific protocol to be followed for this monitoring program (responsible party, required timeframes, etc.) and make such protocol a condition of any approval.

Through establishment of the HOA, the Project Sponsor has committed to these additional measures to address potential impacts to Ulmar Pond:

- Imposing Covenants and Restrictions on all lots that will ~~restrict-prohibit~~ the use of chemical fertilizers, pesticides, and herbicides;
- Restricting the amount of development that can occur on a lot, including guidelines such as:
 - Total lawn area shall be no more than 2,000 square feet per residential lot;
 - No more than one driveway can be approved on any individual residential lot;
 - Patios shall extend no farther than 20 feet from the side of a house;
 - Decks shall not be more than 1/8 the square footage of the house; and

Commented [AW14]: Paragraph revised/reorganized to explain that while a 140 ft. buffer is proposed between the pond and property lines, the closest home would be 171 feet away from the pond (Neal Zuckerman comment 5/19/22). Remaining references in the document to 140 ft. buffer left unchanged.

Commented [AW15]: Added in response to comment from Neal Zuckerman 5/19/22. Also added below to discussion of Clove Creek monitoring.

Commented [AW16]: Revised for consistency with other sections

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- A prohibition on the construction of exterior swimming pools on individual residential lots;

- Constructing the above-referenced boundary marker (stone wall) along the 140-foot pond buffer line to restrict the extent of lawns on the residential lots near the pond;
- Prohibiting the cutting of trees and land clearing within the 140-foot pond buffer;
- Prohibiting dumping of grass clippings and landscape debris within the 140-foot pond buffer; and
- Charging the HOA with the responsibility of inspecting and enforcing the restrictions within the buffer area.

The Proposed Project includes a central sewerage system and a common SSTS. All of the lots around the pond will be required to connect to this system, which is proposed approximately 350 feet from the eastern edge of the pond. As a result, these lots would not be introducing effluent into the ground immediately surrounding sited homes or the pond.

Currently, Ulmar pond is not actively managed, and according to information presented in the DEIS, is experiencing excessive nutrients, algal blooms, and imbalanced biological communities (phytoplankton, zooplankton, fish and aquatic plants). The Project Sponsor has committed to implementing measures, developed in consultation with a lake management firm to be retained by the HOA, to restore and maintain the health of the pond. The Project Sponsor has committed to have the HOA, through the assistance of the retained lake management firm, prepare and implement a pond management plan to ensure permanent care for the pond once the Proposed Project is constructed. In addition, the retained lake management firm will be responsible for baseline sampling of the pond prior to construction, and continuous monitoring of Ulmar Pond while construction is in progress nearby to ensure that the planned erosion and sedimentation controls are effective. The HOA, which every homeowner would be required to join, will also enforce limits on the use of pesticides and fertilizers via a homeowner's agreement. Through the above-referenced design modifications that have occurred over the course of the Planning Board's review of the Proposed Project, the use of a lake management firm to maintain the health of the pond during construction and operation, and other measures to be enforced through the HOA, potential impacts to Ulmar Pond, including any adverse increase in nutrient loading, would be mitigated to the maximum extent practicable.

On-Site/Off-Site Wetlands and Clove Creek

As depicted in Figure 19 of the DEIS, an interconnected network of field-delineated wetlands and watercourses is located on the Project Site. All on-site delineated wetlands, described below, would be preserved as part of the Conservation Easement.

A large hillside wetland and bifurcated watercourse system is located on the southeast portion of the Project Site. This system flows west and crosses beneath an access road adjacent to Horton Road through a series of small culverts, and ultimately drains into Ulmar Pond. Ulmar Pond outlets via a small spillway through the dam to NYSDEC Wetland #WP-17, which lies on both sides of Horton Road. The pond and the wetland drain offsite to Clove Creek via a tributary that passes beneath Horton Road. Clove Creek consists of a large perennial stream with adjacent riparian wetlands (including NYSDEC Wetland #WP-19). Clove Creek crosses the far western edge of the subject property before exiting under Route 9. A small manmade depression, which was created by the initial construction for an access road from Route 9 is located on the Project

Commented [AW17]: Expanded to provided specific examples (from DEIS/FEIS record and HOA bylaws) of sponsor's commitments through the HOA (Kim Conner comment 5/19/22)

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Site just east of where Clove Creek passes under Route 9. This depression supports a pocket of wetland vegetation, but has no connection to Clove Creek or other wetlands.

The Proposed Project would not involve any direct disturbance to on-site or adjacent wetlands, therefore no significant adverse impacts to wetlands are anticipated.

In earlier iterations of the Proposed Project, the proposed entrance road would have been located within 100 feet of Clove Creek where it passes under Route 9, although there would have been no direct impact due to the presence of a small ridge intervening between Clove Creek and the originally proposed entrance road location. Regardless, the Project Sponsor subsequently purchased the neighboring commercial property to the north for the purpose of moving the entrance road outside of the 100-foot regulated buffer adjacent to Clove Creek.

Due to the distance between Clove Creek and the Proposed Project's limits of disturbance, no direct impacts to Clove Creek would result from the Proposed Project. Similar to Ulmar Pond, the potential for indirect impacts to Clove Creek from stormwater runoff would be mitigated to the maximum extent practicable through the Project Sponsor's implementation of a Town-approved SWPPP and erosion/sediment control plans. In addition, the Project Sponsor has committed to monitor Clove Creek while construction is in progress nearby to ensure that the planned erosion and sedimentation controls are effective. [During site plan and subdivision review, the Planning Board will define the specific protocol to be followed for this monitoring program \(responsible party, required timeframes, etc.\) and make such protocol a condition of any approval.](#)

Floodplains

The locations of the 100-year and 500-year floodplains are shown relative to the DEIS Plan on Figure 22 of the DEIS, and these locations relative to the FEIS Plan are unchanged. A small portion of the overall Project Site is located in a designated 100-year floodplain. This area is associated with and immediately adjacent to Clove Creek at the western edge of the Project Site. However, with the exception of about 140 square feet of the proposed entry road, the Proposed Project would be located at a higher elevation and distant from the floodplain. Figure 22 of the DEIS also shows that during a 500-year storm, the swale along the edge of Route 9 in front of the access road would be subject to flooding. However, construction within the 500-year floodplain is not regulated.

The Proposed Project's entrance road must transverse the 100-year floodplain. Therefore, in accordance with Town Code Section 90, a [Floodplain Development Permit floodplain permit](#) will be sought for the development of the entrance road for the Proposed Project. [Construction of the Proposed Project \(as currently designed\) will not move forward without issuance of the Floodplain Development Permit, which is issued by the Town's Building Department following any approval for a site plan and/or subdivision that involves the 100-year floodplain.](#) The affected portion of the 100-year floodplain is limited to a small portion of a roadside swale located in the Route 9 right-of-way, outside of the Project Site boundary. As this is the only acceptable access point to the site, avoidance of the disturbance is not possible. Depending on the final design of the entrance road, this swale may be converted to a culvert, in which case, the storage capacity of the floodplain would remain unchanged, or it may be filled, in which case the disturbance would be mitigated with grading adjacent to the entrance road to regain the storage capacity. Either design would provide comparable floodplain capacity that would satisfy the requirements of the Floodplain Development Permit as described in Town Code Chapter 90, and no significant adverse impacts to the floodplain are anticipated.

Commented [AW18]: Added in response to comment from Neal Zuckerman 5/19/22. Also added above to discussion of Ulmar Pond monitoring.

Commented [AW19]: Language added to describe Floodplain Development Permit process, addressing comment by Neal Zuckerman 5/19/22

Groundwater Resources

As noted in the FEIS, the average daily water demand for the Proposed Project would be approximately 17,700 GPD including a 15 percent safety factor (6,300 GPD less than the DEIS Plan that included the Equestrian Center). The 17,700 GPD total includes the demand from the two existing houses and the commercial building on Route 9 (approximately 2,200 GPD). Therefore, the net increase in demand attributable to the 22 new homes would be approximately 15,500 GPD. Each lot containing a new home would have its own well. As documented in the DEIS, the annual groundwater recharge within the boundaries of the Project Site is estimated at 65,568,911 gallons per year, or about 179,641 GPD. The DEIS Plan's water demand represented approximately 10.3 percent of the Project Site's daily groundwater recharge rate, which through the FEIS Plan has been reduced to approximately 9.8 percent.

Through the modifications to the Proposed Project between the DEIS and FEIS, the anticipated water demand has been reduced to the maximum extent practicable. As part of the required review process with the Putnam County Department of Health, it is possible that some proposed wells would require a drawdown test to assure that the new wells required for the subdivision would not impact the existing capacity of other nearby wells. Through this regulatory mechanism that exists for all new residential construction in the Town, no significant adverse groundwater impacts are anticipated due to groundwater extraction.

Some residential activities, such as lawn maintenance and pest control, have the potential to introduce contaminants that could impact groundwater quality. Pesticide and herbicide use will be strictly regulated by the HOA. [According to the draft of the Bylaws and General Rules and Regulations of the HOA contained in the DEIS, the use of pesticides and herbicides will be prohibited unless the holder of the Conservation Easement otherwise expressly consents prior to use, and unless such use is legal and in accordance with all applicable laws, rules, and regulations, and the manufacturer's directions.](#)

Commented [AW20]: Language added per comment by Neal Zuckerman 5/19/22

Wastewater from all homes in the Proposed Project will be treated through the proposed common SSTS, eliminating the potential for contamination from a poorly maintained system on an individual lot. The common SSTS will also be maintained by the HOA. The primary SSTS is located approximately 350 feet to the east of Ulmar Pond and more than 1,400 feet from Clove Creek. The proposed SSTS reserve area is located approximately 380 feet from Clove Creek. The proposed reserve area is of adequate size to build another distribution system. However, the Project Sponsor does not propose to build another distribution area at this time, and due to the reduction of the scope of the Proposed Project between the DEIS and FEIS, it is possible that the reserve area may never be utilized. The proposed common SSTS system will be designed in accordance with New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, dated March 5, 2014. The design and engineer's report would be subject to review and approval by both the Putnam County Health Department and NYSDEC. These standards are in place to assure that the SSTS would not impact ground or surface waters, and no significant adverse impacts are anticipated with regard to groundwater contamination.

VEGETATION AND WILDLIFE

Vegetation

As documented in the DEIS, the Project Site is characterized by an upland deciduous forest. Most of the forest is comprised of second stage growth. The forest is comprised of several dominant tree species that include oaks, maples, hickory, and tulip poplar. The most common

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understory shrubs include several species of native and invasive shrubs including Japanese barberry (*Berberis thunbergii*), a non-native invasive species that was found growing at lower elevations in dense patches in forest openings. Christmas fern (*Polystichum acrostichoides*) was abundant in the understory where it grew in large communities on rich soils primarily on the shaded slopes. In areas where soils were disturbed, such as along the road and paths, invasive plants are found, and the most common invasive species noted in these areas was Japanese stiltgrass (*Microstigium vimineum*).

In general, a significant number of exotic species, mostly originating from parts of Asia and Europe, were found throughout the more disturbed and historically occupied portions of the Project Site. This includes the most recently disturbed/cleared portion of the Project Site surrounding the eastern access road cut into the property from Horton Road, in the vicinity of the existing residential structures in the southern portion of the Site, and near Ulmar Pond in the southwest corner. Portions of the Project Site further removed from these areas, especially in the highest elevations, contain native plant communities generally absent of exotic species. Of the dozens of exotic species observed on the property, 14 are considered “invasive” by the State of New York and/or the United States Department of Agriculture (USDA) Forest Service. A complete vegetation list for the property was provided in Table 4 of the DEIS. The 14 invasive species are indicated within the list. A map of the tree communities is shown on DEIS Figure 26.

Preparation of the DEIS and FEIS included a search of the New York Natural Heritage Program Rare Plant Status Lists and the New York Nature Explorer database that lists plants and their status on Federal, State, County and Local levels. Plants that were identified on the Project Site were not listed in the New York State Rare Plant Status Lists or in the US Fish & Wildlife Service “Endangered & Threatened Wildlife & Plants” publication.

The Proposed Project has been modified between the DEIS and FEIS and as currently designed would convert approximately 38.1 acres, a decrease of 7.6 acres from the DEIS Plan, of naturally vegetated surfaces to developed surfaces, of which approximately 7.7 acres would be impervious, and approximately 30.4 acres would be lawn and landscaping. The Proposed Project has been designed to concentrate development within the areas of the Project Site that have been previously disturbed and documented through the Conservation Analysis Findings to be occupied by exotic, invasive species. The Proposed Project avoids those areas that are least disturbed and occupied by a community of native plant species, such as is found in the higher elevations to the east.

The permanent loss of approximately 38.1 acres of forest habitat due to the Proposed Project is considered an unavoidable impact. However, in accordance with the Town Code’s requirements for conservation subdivisions, the Project Sponsor is committed to preserving 163 acres of the Project Site through a Conservation Easement. The 163 acres exceeds the area of the Project Site originally determined to be the required area subject to a Conservation Easement, as provided in the approved Conservation Analysis Findings. In addition to the Conservation Easement, the HOA would impose rules and guidelines on the privately-owned residential lots within the subdivision. These rules would serve to regulate the development and maintenance of the residential lots that are not within the boundaries of the proposed Conservation Easement area. Ownership of the residential lots requires membership in the HOA, which, in turn, requires adherence to the rules and regulations promulgated by the Project Sponsor and enforced by the HOA. Among the rules found in the Project Sponsor’s General Rules and Regulations of the HOA (DEIS Appendix J), specifically the section titled “Residential Design and Maintenance Rules and Regulations,” is the prohibition of clear cutting on lots and the requirement that tree

removal be selective. Specifically, tree removal is generally limited to those that are dead and those trees that present a “danger to people or residential lots” and, regardless of the reason, trees “may not be disturbed or removed without prior specific approval for each tree.” In addition, the HOA rules require that only native plant species would be permitted for landscaping throughout the Proposed Project, including stormwater management areas.

Based on the Conservation Analysis Findings, the Proposed Project, which has gone through several iterations since 2014, would occupy the western, unconstrained “forest fringe” area of the Project Site, characterized by its proximity to roadways (Route 9, East Mountain Road North and Horton Road), occupied structures, and previously disturbed areas now compromised by exotic invasive species. The eastern extent of the Project Site, where the Conservation Easement is proposed, although adjacent to East Mountain Road South, is closer to the unfragmented forest contained within Fahnestock State Park. By permanently preserving more buffer for this unfragmented forest through the Conservation Easement, the Proposed Project minimizes forest fragmentation to the maximum extent practicable.

Wildlife

The Project Sponsor’s studies and inventories of the Project Site for the presence of threatened and endangered species, which included a study for the presence of vernal pools, were presented in the DEIS. While no threatened or endangered species were observed during fieldwork, the red-shouldered hawk (*Buteo jamaicensis*) and Eastern box turtle (*Terrapene carolina*), two New York State species of Special Concern, were documented as utilizing the Project Site. It was also noted that suitable habitat is present for two endangered bat species, the Indiana bat (*Myotis sodalis*) and the northern long-eared bat (*Myotis septentrionalis*). Lastly, due to the presence of two historically documented timber rattlesnake (*Crotalus horridus*) dens on the west side of Route 9 approximately 1.5 miles northwest of the Project Site, the Project Sponsor undertook Phase I and Phase 2 habitat assessment/presence-absence surveys for this species.

A vernal pool investigation was conducted by the Project Sponsor during the month of April, 2019. During the field survey of the entire Project Site, no vernal pools were observed. While not considered vernal pools, and though not observed during site investigations, suitable breeding habitat for vernal pool species may be provided within areas of the Project Site’s braided stream/wetland system, the NYSDEC wetlands identified on- and off-site, and fringe areas of Ulmar Pond. None of these areas would be disturbed.

The red-shouldered hawk was observed soaring above forested lands east of the existing extension of Horton Road, an area designated as an area of High Conservation Value in the Conservation Analysis Findings. A nest site was not confirmed during the site survey, a likely indication that the hawk uses the Project Site for foraging, but is nesting offsite. The proposed Conservation Easement would permanently preserve foraging habitat on the Project Site, inclusive of the area where the red-shouldered hawk was observed.

The post-mortem carapace of an Eastern box turtle was discovered on an upland hillside adjacent to a watercourse that was surveyed during a wetland delineation, within the area proposed to be preserved under the Conservation Easement. Setting aside the areas noted under a Conservation Easement constitutes the permanent preservation of known box turtle habitat, and would serve to minimize potential impacts to box turtles to the maximum extent practicable.

Although not observed during fieldwork, the presence of suitable habitat for the Indiana bat and the northern long-eared bat has been acknowledged by the Project Sponsor and its consultants. The Project Sponsor has committed to abiding by restrictions on tree clearing during those times

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when the bats might choose to roost in trees. Tree clearing would be limited to the period starting on November 1 to March 31 in accordance with the tree clearing window for the northern long eared bat. This time period also falls within the tree clearing window for the Indiana bat, which runs from October 1 to March 31.

The Phase 1 and 2 timber rattlesnake surveys followed the standard NYSDEC protocol guidelines. This survey confirmed the absence of timber rattlesnakes on the Project Site.

Through the modified FEIS Plan, the Project Sponsor has addressed the potential for the Proposed Project to significantly impact wildlife habitat. The reduced lot count, elimination of the previously proposed Equestrian Center, and modified siting of lots in the vicinity of Ulmar Pond has resulted in a reduction in overall site disturbance by approximately 7.6 acres. Approximately 78 percent of the Project Site, previously determined (through the adopted Conservation Analysis Findings) deemed to have both medium and high conservation value, would be preserved through a Conservation Easement (compared to approximately 74 percent in the DEIS Plan). The design proposes to develop the area of the Project Site previously determined (through the adopted Conservation Analysis Findings) to have low conservation value, and therefore be the most appropriate for development due to past human activity and a prevalence of invasive species. The area south and southeast of Ulmar Pond would be left undisturbed, preserving the wildlife corridors between the pond and Clove Creek (along stream corridors to the south and west), and between the pond and the braided stream/wetland system and uplands found to the east. The FEIS Plan also preserves a minimum of 140 feet around the pond in its natural state as wildlife habitat, and involves no stream crossings and no disturbance of wetlands or regulated wetland buffers.

Through the modifications proposed in the FEIS Plan, along with the measures to be included as part of the Proposed Project and memorialized as conditions of future site plan/subdivision approval, such as regulations to be enforced through the HOA and adherence to the tree clearing restrictions for bats, the Proposed Project mitigates potential impacts to wildlife habitat to the maximum extent practicable.

LAND USE AND ZONING

The majority of the Project Site is in an undeveloped, forested state. A historic dirt road transects the property in a north-south orientation from Horton Road to East Mountain Road North. A group of three homes and outbuildings is clustered around the southern end of this road. Of these existing structures, only one, an adaptively reused early 19th century barn, is currently occupied. The two other residences date to the 1920s, and are vacant. Another modern home is located at the northern end of the historic road, just south of East Mountain Road North. A two-story commercial building is located on the 4.5-acre Parcel 6, but is not part of the Proposed Project and would remain commercial. No access into the Proposed Project would be provided from either Horton Road or East Mountain Road North, so no impact on neighboring residential land uses in these locations is anticipated. Primary access to the Proposed Project would be from Route 9, and this entrance road would be the only project-related improvement visible from Route 9. New homes would be situated on the plateau beyond the slope facing the highway, buffered from any uses fronting on Route 9.

The following zoning districts are mapped on the Project Site: RR-Rural Residential, M-Industrial/Manufacturing, HC-Highway Commercial, OSO-Open Space Conservation, CCA-Clove Creek Aquifer Overlay, Regional Aquifer, SPO-Scenic Protection Overlay (partial). The majority of the Project Site is zoned RR (Rural Residential). Approximately 11.1 acres of Parcel

Commented [AW21]: Paragraph revised to address comment from Dennis Gagnon 5/19/22. Clarification added that low, medium and high conservation values for the site were previously determined through the Conservation Analysis adopted in 2016

1 fronting Route 9 is zoned M (Industrial/Manufacturing). The entirety of Parcel 6, also fronting Route 9, is zoned HC (Highway Commercial).

To facilitate the Proposed Project, the Project Sponsor seeks approval from the Philipstown Town Board to change the zoning designation of the approximately 11.1 acres of Parcel 1 along Route 9 from M to RR. No zoning change is proposed for the commercial (HC-zoned) Parcel 6, since this parcel would remain commercial and would not be part of the HOA that would manage the proposed subdivision. The 11.1 acres subject to the proposed rezoning request has been categorized as having a high or medium conservation value, with 2.0 acres categorized as having a high conservation value and 9.1 acres categorized as having a medium conservation value. This land is adjacent to Clove Creek and fronts Route 9 and contains steep slopes and wetlands. Except for the access road into the Proposed Project from Route 9, the Project Sponsor proposes to permanently preserve this area as open space, to be protected through the Conservation Easement. [As noted earlier, if the requested zoning change for the 11.1 acres of Parcel 1 along Route 9 from M to RR is not granted by the Town Board, the Proposed Project's residential lot count \(as specified in the FEIS Plan\) will decrease by two lots, from 24 to 22 \(two permitted lots were derived from the acreage currently in the M zone\).](#)

Commented [AW22]: Added language on what would happen if the zoning change is not granted by the Town Board (Neal Zuckerman comment 5/19/22)

The purpose of the M district is to allow industrial and related uses that are not compatible with most commercial, office, or residential uses. These uses must be in isolated/well-buffered locations. Residential development is prohibited in the M district. The M zoning designation on Parcel 1 is reflective of a prior contemplated use of the parcel for soil mining. Because of its proximity to and frontage on Route 9, the 11.1 acres is neither isolated, nor well-buffered and abuts property zoned to allow residential development. If the Proposed Project were to not come to fruition following a rezoning, and this portion of the Project Site was not placed under a Conservation Easement, the maximum development that could occur in accordance with the RR zoning designation (which allows one residence per five acres) would be a maximum of two homes. Such a use would pose less potential adverse environmental impact than would any potential use allowed under the M zoning designation, such as the soil mining previously proposed.

The Proposed Project is the first conservation subdivision proposed in the Town of Philipstown. Such subdivisions were not a development option in Philipstown until 2011, when a new zoning law responding to the goals of the 2006 Philipstown Comprehensive Plan was adopted.

While the Philipstown Zoning Law encourages conservation subdivisions (Section 175-19B), it also requires that an applicant for approval of a conservation subdivision demonstrate that its land is suitable for such approval (Sections 175-19A(2) and 175-20A(1)). The demonstration must take the form of a Conservation Analysis, which identifies, inventories and evaluates the features that might contribute to the conservation value of the applicant's property. The Project Sponsor prepared and submitted a Conservation Analysis, which was reviewed by the Planning Board and its consultants. Following several rounds of review and comment, the Planning Board accepted the Conservation Analysis for the Project Site on July 21, 2016. At its November 17, 2016, meeting, the Planning Board adopted Findings that the Conservation Analysis demonstrates the Project Site "... contains sufficient conservation value requiring protection..." to justify its consideration of approval of a conservation subdivision. Figure 15 of the DEIS, taken from the Conservation Analysis Findings (DEIS Appendix B), illustrates where the various conservation values were assigned within the Project Site.

As discussed in the DEIS and FEIS, the Proposed Project (originally designed and subsequently modified) complies with the requirements contained within Sections 175-19 through 175-21 of

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the Philipstown Zoning Code, which govern conservation subdivisions. As modified for the FEIS, the Proposed Project preserves 163 acres of high-value forested habitat, steep slopes, historical/cultural features, wetlands, watercourses, and a pond, while concentrating development on the relatively more level and previously disturbed area of the Site.

Based on the above, the Proposed Project would not result in any significant adverse land use or zoning impacts requiring mitigation.

COMMUNITY CHARACTER

The Project Site is a primarily wooded property bordering Route 9. Land uses within 1/4-mile along the Route 9 corridor can be described as highway commercial, with uses including office, retail, restaurant, motel, automobile repair and related uses, and landscape material yards. A mobile home park is also located nearby along Route 9 north of the Project Site. Not including the Route 9 corridor, land uses within 1/4-mile of the Project Site are almost exclusively residential, and most of the residential properties range from approximately one to five acres. The typical height of existing homes surrounding the Project Site is approximately 2 to 2 ½ stories. According to the Project Sponsor, the Proposed Project's new homes would not exceed 30 feet in height (the maximum height permitted in the RR district is 40 feet).

The Philipstown Zoning Code recognized the importance of maintaining scenic views by creating a Scenic Protection Overlay (SPO) District on most of the roads in Philipstown. As stated in Section 175-15A of the Philipstown Zoning Code, the purpose of the SPO is to "regulate land uses within designated scenic corridors to protect the Town's scenic beauty and rural character." Section 175-15B defines the depth of the SPO as being within 250 feet of the right-of-way of any road in the district.

Among the roads within the SPO are portions of Horton Road, East Mountain Road North, and East Mountain Road South. The Project Site has frontage on each of these roads. However, the frontage found along East Mountain Road South is not within the SPO. A portion of Moshier Road (aka Old Albany Post Road) is also in the SPO, but the Project Site has no frontage on this road. With the exception of the pre-existing historic dirt road to be utilized for emergency access into the subdivision, no elements of the Proposed Project fall within 250 feet of East Mountain Road North. Similarly, there are no plans for any activity along Moshier Road. Therefore, there would be no significant adverse impacts within the SPO along East Mountain Road North or Moshier Road.

The Proposed Project includes activities planned within 250 feet of Horton Road, but these activities would not result in significant adverse impacts within the SPO found along Horton Road. According to the Project Sponsor, these activities include the removal of two structures and the removal of a driveway which would no longer be needed. Where the structures are to be removed, the land would be graded and replanted in a manner that would allow it to return to a natural state. No new homes are proposed within 250 feet of Horton Road.

The DEIS provided a visual impact analysis, including site cross sections and photographic simulations (under leaf-off/winter conditions) from Horton Road and East Mountain Road North (DEIS Figures 35G through 35L). This analysis concluded that due to several factors such as distance to new development, changes in elevation, and tree cover to remain, there would be no significant adverse visual impacts when viewed from these roadways. Since the FEIS Plan does not propose development any closer to these roads, these conclusions remain valid for the FEIS Plan.

Commented [AW23]: Original use of the word "removal" preferred over "closure" per comment from Dennis Gagnon 5/19/22. "Removal" was used in DEIS (pg. 121).

In accordance with the adopted Scoping Document, the DEIS included a visual impact analysis of the Proposed Project from Scofield Ridge, a mountain ridge west of the Project Site that runs northeast from Cold Spring Village to Fishkill. The existing conditions assessment in the DEIS found that ~~while a view to the edge of the Project Site closest to East Mountain Road South (an area proposed to be preserved) would be provided from Fahnestock State Park, no views from Fahnestock would be provided to the area of the Project Site proposed for development, no views to the proposed developed portions of the Project Site would be provided from Fahnestock State Park.~~ Trails on Scofield Ridge offer views to the east, including views of the Project Site. The potential impacts to the view from Scofield Ridge was discussed on page 135 of the DEIS, and depicted graphically in Figure 36 of the DEIS. In addition, a supplemental visual assessment from Scofield Ridge was conducted by the Project Sponsor for the FEIS Plan (see FEIS Appendix E). For both the DEIS and FEIS Plan, it was concluded that that only the entrance road from Route 9 would be visible from Scofield Ridge.

Commented [AW24]: Revised to provide clarity in addressing comment/question from Dennis Gagnon 5/19/22

The Project Sponsor's proposed design seeks to preserve as many trees as possible on the lots surrounding the proposed homes. Forested areas to remain on lots, as well as all forested areas to be preserved throughout the Project Site, contain trees with heights taller than 30 feet (the approximate maximum height of the proposed homes). The Equestrian Center was removed as an element of the Proposed Project between the DEIS and FEIS and is no longer a factor in regard to visual impacts. Construction of the proposed entrance road would result in the removal of trees from the Project Site's west-facing slope bordering Route 9, which would result in an unavoidable visual impact when viewed from both Route 9 and Scofield Ridge. It is anticipated that other than the entrance road, the Proposed Project would result in no adverse visual impacts.

In order to mitigate potential visual impacts when viewed from points to the west, including Scofield Ridge and Route 9, the Project Sponsor is proposing the following measures as part of project design:

- Selective tree cutting on residential lots to accommodate the placement of homes in a forested setting (no clear cutting would be permitted).
- Planting of new trees along the Route 9 access road to provide screening.
- Use of natural colors/earth tones for building materials including siding and roofing.

Through the modifications proposed in the FEIS Plan (including removal of the Equestrian Center), along with the measures described above to address visibility of the proposed entrance road, which would be included as part of the Proposed Project's design and memorialized as conditions of future site plan/subdivision approval, potential visual/community character impacts would be mitigated to the maximum extent practicable.

MODIFICATIONS TO THE PROPOSED PROJECT

As the Proposed Project moves forward through subdivision and site plan review, including amendments thereto, certain modifications may be made to the project design. If such plan modifications result in substantially similar amounts of square footage, construction activity staying substantially within the same limits of disturbance, and with substantially similar amounts of impervious surface area as set forth in the DEIS and FEIS, then no further environmental review under SEQRA would be required. If, however, the plans are modified in a manner that may increase the amount or extent of environmental impact beyond that analyzed in the DEIS and FEIS, then the Town may require additional environmental review.

CERTIFICATION TO APPROVE, FUND, OR UNDERTAKE

Having considered the draft and final Environmental Impact Statement and having considered the preceding written facts and conclusions relied on to meet the requirements of 6 NYCRR Part 617.11, the Planning Board of the Town of Philipstown, as Lead Agency, finds that:

- 1) The requirements of 6 NYCRR Part 617 have been met; and
- 2) Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the proposed Hudson Highlands Reserve Conservation Subdivision project as modified and set forth in the FEIS, is one that minimizes or avoids significant adverse environmental impacts to the maximum extent practicable; and
- 3) Consistent with social, economic and other essential considerations, to the maximum extent practicable, significant adverse environmental impacts identified in the environmental impact statement will be minimized to the maximum extent practicable or avoided by incorporating as conditions to the decision the mitigation measures identified as practicable in the environmental impact statement and this Findings Statement; and
- 4) This written findings statement contains the facts and conclusions used by the Planning Board to support its decision.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

UPON ROLL CALL VOTE:

- Kim Conner _____
Dennis Gagnon _____
Peter Lewis _____
Laura O'Connell _____
Neal Tomann _____
Heidi Wendel _____
Chair Neal Zuckerman _____

VOTE: carried / defeated by a vote of _____ in favor, _____ against; _____ abstained.

A COPY OF THIS NOTICE HAS BEEN SENT TO:

Lead Agency:

Planning Board, Town of Philipstown, 238 Main Street, Cold Spring, NY 10516

Involved Agencies:

Town of Philipstown Town Board, 238 Main Street, Cold Spring, NY 10516

SEQRA Findings Statement

Town of Philipstown Conservation Board, 238 Main Street, Cold Spring, NY 10516

Putnam County Department of Health, 4 Geneva Road, Brewster, NY 10509

Putnam County Department of Planning, Development, and Public Transportation, 2 Route 164, Carmel, NY 12563

New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, NY 12561-1696

New York State Department of Environmental Conservation (main office), 625 Broadway, Albany, New York 12233-1750

New York State Department of Transportation, Region 8, SEQR Unit, Traffic Engineering & Safety Division, 4 Burnett Boulevard, Poughkeepsie, NY 12603

New York State Department of Transportation (main office), 50 Wolf Road, Albany, NY 12232

Interested Agencies:

North Highlands Fire Department, 504 Fishkill Road, Cold Spring, NY 10516

Putnam County Sheriff's Department, 3 County Center, Carmel, NY 10512

Philipstown Volunteer Ambulance Corp., 14 Ceder Street, Cold Spring, NY 10516

Philipstown Highway Department, 238 Main Street, Cold Spring, NY 10516

Hudson Highlands Land Trust, 20 Nazareth Way, Garrison, NY 10524

Applicant/Project Sponsor:

Horton Road LLC
315 East 91st Street, 2nd Floor
New York, NY 10129
Attn: Ulises Liceaga
(212) 228-5617

DEIS Preparer:

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Environmental Notice Bulletin:

NYS Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-1750