



Town of Philipstown Conservation Board
238 Main St., PO Box 155
Cold Spring, NY 10516

To: Neal Zuckerman, Town of Philipstown Planning Board Chairperson and Members of the Planning Board
From: Andy Galler, Acting Chairperson, Town of Philipstown Conservation Board
Date: January 18, 2022
Subject: Comments from the Philipstown Conservation Board Regarding Hudson Highlands Reserve (HHR) Final Environmental Impact Statement (FEIS)

Dear Chairperson Zuckerman and Members of the Planning Board,

The Conservation Board (CB) has reviewed the FEIS dated April 23, 2021, revised November 4, 2021. We still have significant concerns that not only has the applicant not significantly lessened environmental impacts to the extent that is practical, but also is evading the intent of the Philipstown Conservation Subdivision Regulations.

The CB has reflected on the question, *What is a conservation subdivision?* We came to the following conclusions.

- Conservation subdivisions (CS) are designed to allow the clustering of homes (higher density than provided in normal subdivisions) in a definitive effort to preserve the majority of the parcel as open space
- CS design is focused on preserving natural, cultural, and scenic resources not only on the parcel of the subdivision, but on a geographical scale
- The quality and configuration/location of the preserved land is critical; CSs should be designed to protect land that in a normal subdivision could be built upon, altered for roadways and utilities, and/or fragmented. Land that is already unbuildable because of physical or environmental constraints (ie, wetlands, steep slopes, etc) in theory should not be included in density calculations

In our opinion, modifications to the subdivision plan and the FEIS still do not reflect a conservation subdivision. The applicants appear to believe that they have made a major modification to the plan by removing the equestrian center. While this does address some issues such as internal traffic and animal waste disposal, it does not in any way improve habitat fragmentation and wetland connectivity.

New concerns include,

- **While the proposed equestrian center has been removed, 4 houses have been relocated to its place.** The CB's concerns with the equestrian center were not just limited to the actual operation of an industrial farm type enterprise, but equally so with the disruption to a major wildlife corridor on the site.
- **The applicants stated that 2 homes have been removed from the periphery of Ulmar Pond, but it appears in total numbers only one home site was removed, another was relocated to the east side of the pond.** In reviewing the 2019 submission, the CB felt that multiple homes surrounding Ulmar Pond would negatively impact the pond and associated wetland and stream complex.

Continuing concerns from the previous application that appear not to have been fully addressed or should be thoroughly reviewed by the CB:

- **The Proposed HHR looks and functions more like a conventional subdivision than it does a conservation subdivision.** The intention of Town Code, Zoning, and Overlay Districts is to allow developers to obtain a higher density of lots, if they are concentrated on a small part of a larger parcel within areas of minor conservation value, thereby protecting the biodiversity of the majority of the site. This applicant has placed the majority of the development in areas of moderate conservation value. In this situation, areas of moderate value are extremely important on both the micro- and macro- levels. As designed, the property would be fragmented into two unconnected areas with no viably functioning wildlife corridors.
- **A conventional subdivision is preferable to a flawed conservation subdivision.** Most of the land within the proposed conservation easement is unsuitable for development, given the steep terrain. Accordingly, the CB believes that a conventional subdivision, built in accordance with existing zoning and other regulations would be preferable to a flawed conservation subdivision. While there are things that the developer could do to address the concerns that have been expressed, its continued failure to do so suggests that Philipstown would be better served by a conventional subdivision.
- **Avoiding after-the-fact approval conditions has become a best practice for municipalities.** Ongoing (meaning after development is complete) conservation, water quality, septic, stormwater, and manure management mitigations are an enormous component of how the HHR is currently proposed/designed. The CB questions whether

it is realistic to believe that the subdivision can actually function as the applicant states that it will. Decision-makers such as the Town Board, the PB or CB should avoid the temptation to remedy incomplete or defective applications with post-approval conditions.

- **Homeowners Association (HOA) and general economics of the HHR are troubling.** The applicant has provided a sample template of an extensive HOA agreement, including bylaws, that is supposed to ensure that all the promises by the developer and the rules and safeguards for the subdivision and conservation easement are strictly followed. Unfortunately, this is not realistic; homeowners change, priorities evolve, and the costs of maintaining such a high level of maintenance may rapidly become untenable; what happens then? What happens if the applicant can only sell half the proposed lots? How will the environmental safeguards be effectively implemented? What if future members of the HOA disagree with the goals and objectives outlined in the DEIS? The HOA has a built-in conflict of interest, which need to be mitigated with clear restrictions from the Planning Board.
- **Wildlife habitat studies are deficient in both geographic and temporal scope.** No new studies have been undertaken in response to the parameters of the scoping document. Existing cited studies were conducted on only select portions of the property, for other earlier proposed projects that were very different in nature (ie, soil mining), for too short a duration, and/or during an inappropriate time window.
- **Habitat fragmentation effects have been underestimated and wildlife corridors are too narrow.** The state-of-the-science of habitat fragmentation has greatly advanced since the Lathrop paper was published more than two decades ago (cited by the applicant). The DEIS has not taken the “edge effect” phenomenon into account in the project’s design, which can have major effects on fragmentation and wildlife corridors. Edge effects arise from human activities such as ground and vegetation disturbances, traffic, noise, artificial lighting, chemical pollution, and companion animals. Generally, 300 meters (approximately 900 feet) is cited as the minimum interval where negative edge effects significantly impact the function of wildlife corridors. As proposed due to edge effects, the HHR has no viable wildlife corridors, and forest fragmentation would have many adverse effects on wildlife and the matrix forest. The applicant has seemingly ignored one of the major conclusions included in its own conservation analysis; Steve Coleman, a wetland scientist and ecologist, recommended in his 2014 analysis that the two important wildlife corridors be kept open.
- **Degradation of Ulmar Pond and its accompanying wetland complex.** The applicant cites the economic need to surround more than half the shoreline of the pond with eight houses, because these are “premium lots.” Placement of houses around the pond, even with a 140 foot buffer, will have a significant negative impact on the riparian

corridor. The CB also questions how these lots can be premium, when at best they will have only winter views of the pond, and homeowners will not have direct access to the pond from their own lots. The CB is concerned that the wetlands barrier will not be preserved because it will not be adequately enforced by the proposed volunteer-run, residents-only HOA.

- **Who will hold the conservation easement on this property?** As now proposed, a conservation easement on the HHR would be difficult to steward because of the complexity of maintenance, financial resources required, and the large number of homeowners. The Hudson Highlands Land Trust has recommended that the conservation easement holder must be nationally accredited by the Land Trust Accreditation Commission. The CB strongly endorses that recommendation.

In conclusion, the Conservation Board urges the Planning Board to consider the points laid out in this memorandum and not accept the FEIS at this point. We stand ready to provide additional review and analysis on the Hudson Highlands Reserve application – a precedent - setting application for conservation subdivisions in Philipstown. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a stylized flourish at the end.

Andy Galler
Acting Chairperson Philipstown Conservation Board

Jan Baker
Krystal Ford
Lew Kingsley
MJ Martin
Bob Repetto
Members of the Philipstown Conservation Board