



Town of Washington
Conservation Advisory Commission

Date: September 4, 2024

To: TOW Planning Board
Cc: Aaron Werner, AKRF
From: TOW Conservation Advisory Commission

Re: Clear Subdivision Application

The Town of Washington (TOW) Conservation Advisory Commission (CAC) is responding to your request for comment on the Clear subdivision application (the Application) made orally at the Planning Board meeting on August 6, 2024. Specifically, under Section 61.2(c) of the TOW Land Subdivision Regulations, the CAC is commenting on the adequacy of the Application to fulfill the objectives of Section 60.2 of such Regulations (regarding Open Space Subdivisions) and to protect the natural resources on and adjoining the property.

The Applicant has completed a significant amount of mapping and analysis of the natural resources on the parcel, and we commend the Applicant for undertaking this work. Based on information available at this time, the CAC is likely to have no objection to the proposed subdivision if 1) the “building envelopes” can be defined with somewhat more specificity to reflect driveways, septic, and all other possible land disturbances, and 2) the land outside the “building envelopes” is permanently protected against further subdivision and development through conservation easements that strictly prohibit, without waiver, permit or exception, all building outside finalized “building envelopes.”

We note that the TOW Land Subdivision regulations express a preference for cluster subdivisions when subdividing parcels with public value characteristics like those of the Clear parcel; in this context, cluster subdivision is a means of preserving natural resources through the use of conservation easements. Accordingly, we currently believe that any exception to the TOW zoning regulations’ preference for cluster subdivisions should similarly require the use of conservation easements to permanently prohibit development and further subdivision outside of the “building envelopes.” Conservation easements are referenced throughout New York State law and the TOW zoning and subdivision regulations as appropriate restrictions on property that is being subdivided. Examples of appropriate uses of conservation easements to permanently preserve land may be found at Sections 32.6(i), 32.6(j), 60.2, 60.3(a), 60.3(b), and 64.3 of the TOW Land Subdivision Regulations, and relevant references to New York State Law can be found in the definition of “conservation easement” appearing in Article VII of such Regulations. The TOW zoning

code contemplates that development prohibitions should be placed on property at the time of subdivision, as property owners do not have an automatic or inherent right to subdivide their property. It is therefore appropriate for the Planning Board to impose stringent restrictions on further development in exchange for approval of five attractive parcels.

This absolute prohibition on further development within the existing parcel is necessary to protect scenic views and the identified wetland and wildlife on the property. We note, in particular, that the Habitat and Biodiversity Survey report reflects a sample taken at a particular time of year (mid-spring) and “does not represent a complete or exhaustive list of all species that occur on the site year-round.” (See page 34 of the report.) Permanent protection is especially important given the extensive wetlands and likely presence of species not identified in the snapshot-in-time Biodiversity survey.

The Applicant has done a commendable job in mapping wetlands, scenic views and other natural resources, as expressed in the Constraints Map filed with the application. We recommend that the Planning Board leverage this work by placing permanent restrictions on development on the land. This approach would efficiently avoid re-doing the work at a future time.

We appreciate the opportunity to provide these comments, which are subject to revision if additional information becomes available.