

## Memorandum

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**To:** Town of Washington Planning Board  
**From:** AKRF, Inc. (A. Werner, AICP; A. Moore)  
**Date:** October 31, 2024  
**Re:** **Clear Subdivision (515 Woodstock Road)**  
**cc:** Timothy Clear and Johna Lee Clear (Applicant / Property owner)  
Douglas E Larson – Larson Architecture Works PLLC (Applicant's Architect)  
Jennifer Van Tuyl – Cuddy + Feder LLP (Applicant's Attorney)  
Joseph P. Eriole (Town Attorney)  
Jonathan Ialongo (Town Building Inspector)

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AKRF, Inc. has reviewed the following newly submitted documents and plans for the above referenced application:

- Cover letter to Town of Washington Planning Board, Chairperson Susan Meaney, and Members of the Planning Board from Kenneth Casamento, CPESC (LRC Group), dated 10/22/24;
- Post-hearing letter to Town of Washington Planning Board, Chairperson Susan Meaney, and Members of the Planning Board from Jennifer L. Van Tuyl, (Cuddy+Feder LLP), dated 10/22/24;
- Response to drainage comments letter from Kenneth Casamento, CPESC (LRC Group), dated 10/22/24;
- Soil test results letter from Kenneth Casamento, CPESC (LRC Group), dated 10/22/24;
- Phase 1 Bog Turtle Habitat Assessment prepared by Edgewood Environmental Consulting, LLC, dated October 18, 2024;
- Constraints Map for proposed subdivision, updated 10/22/24.

### PROJECT DESCRIPTION

The Applicant requests approval for a non-reatly conventional subdivision of a 90.87-acre parcel into five new lots. The property is located at 515 Woodstock Road (tax parcel 6766-00-021055) in the RL-5 zoning district and Agricultural District 21 (APO Overlay). The subject property is bisected east-west by Woodstock Road, a Town-designated scenic road, resulting in a northern portion and southern portion. Each portion contains a pond and scattered wetland areas on either side of Woodstock Road. Total existing structures include two single-family homes (a farmhouse on the northern portion and a ranch-style house on the southern portion), a cottage, several agricultural accessory structures (barns/shed), and multiple driveways. The Applicant proposes to divide the property into five new lots, with Lots 1-3 on the northern portion and Lots 4-5 on the southern portion, as follows: Lot 1 (~23.4 acres), Lot 2 (~10.1 acres), Lot 3 (~5.4 acres), Lot 4(~23.5 acres), and Lot 5 (~28.4 acres). Lot 3 would contain the existing farmhouse, cottage, and accessory structures; Lot 4 would contain the ranch house; and the other three lots would be vacant and intended for as-of-right future single-family construction in accordance with RL-5 district requirements. For the three new vacant lots, the Applicant has illustrated proposed development/disturbance envelopes on the preliminary subdivision plat. The project also proposes to remove the kitchen of the existing cottage (Lot 3). No other exterior construction is proposed on Lots 3 and 4, which at this time both contain primary

residences. Lots 3 and 4 would be accessed by existing driveways off Woodstock Road; Lots 1 and 5 would also be accessed from Woodstock Road; and Lot 2 would be accessed from Stanford Road.

## COMMENTS

Comments from the previous AKRF memoranda are shown in *italics*, new and follow-up comments are shown in **bold**.

## BACKGROUND

1. *8/2/24: An application for a 5-lot conventional subdivision of this property was previously presented to the Planning Board in December 2023 and subsequently withdrawn in March of 2024. The instant application is a new application. The new application provides a standard preliminary subdivision plat, a Constraints Map proposed as an attachment to the preliminary subdivision plat that identifies sensitive environmental areas/buffers and proposed development/disturbance envelopes on three of the lots (where new homes can be built), and a land inventory / environmental analysis of the entire property to be subdivided in compliance with the Subdivision Code requirements. Whereas the previously submitted plat, due to the placement of the proposed lot lines relative to existing structures, would have required three variances for reduced setbacks, the new (instant) application would not create new nonconformities and would not require any variances.*

*8/30/24: No further comment.*

## APPLICATION COMPLETENESS / CODE COMPLIANCE

2. *8/2/24: As the average proposed parcel size (18.17 acres) is less than five times the 5-acre minimum lot size in the zoning district ( $5 \times 5 = 25$ ), the application cannot be defined as a "minor" subdivision per the Town Code (definition provided below). The Applicant is seeking approval of the subdivision as a "conventional" subdivision under the Code (definition provided below).*

### SUBDIVISION, MINOR:

*A subdivision which requires no new road construction, and which creates three (3) or fewer new parcels, or six (6) or fewer new parcels if the average parcel size is at least five (5) times the minimum lot size in the zoning district. The number of new parcels shall be calculated based upon lots that were in existence on January 1, 1989 and all subdivisions since that date shall be treated as cumulative for purposes of determining the number of new parcels created.*

### SUBDIVISION, CONVENTIONAL:

*A subdivision that is not a cluster subdivision or an open space subdivision as defined in Section 60.*

*8/30/24: No further comment.*

3. *8/2/24: As the proposed conventional subdivision warrants the Planning Board's consideration of the "cluster preference" criteria found under Subdivision Code Section 61.2, the application must include the land inventory information listed in Subdivision Code Section 42(p), as well as the report described in Subdivision Code Section 61.2(a). The Applicant's submitted land inventory information, relating to the natural features on and within 500 feet of the property, is summarized as follows:*

- (1) *Wetlands. Per the Wetland Delineation Report, the property does not contain any state- or federally regulated wetlands; however, there are multiple Town-regulated wetlands onsite. The Applicant has illustrated proposed "development/disturbance envelopes" outside of wetland buffers (and other sensitive areas) that would restrict future placement of homes thereby avoiding impacts to the wetlands. The development/disturbance envelopes, once finalized, can be incorporated into the set of drawings constituting the final subdivision plat.*
- (2) *Streams and other watercourses. Per the Wetland Delineation, no streams, drainage channels or other waterways exist onsite.*
- (3) *100-year floodplain. Per the FEMA map, the property is not within the floodplain.*

- (4) *Slopes in excess of 20%. According to the Applicant's land inventory report, approximately 3.6% of the property contains steep slopes 20%-25%, and 3.9% of the property contains steep slopes greater than 25%. While the development/disturbance envelopes shown on the Constraints Map contain small areas of steep slopes, the Applicant has indicated that these areas can be avoided or properly managed with conventional construction practices related to erosion/sediment control and slope stabilization.*
- (5) *Agricultural soils. According to the Applicant's land inventory report, the majority of the onsite agricultural soils are located within areas that have been identified as wetlands and not in constructable areas. As shown on the Constraints Map, the development/disturbance envelope proposed on the south side of Woodstock Road is close to Stanford Road where accessory structures are found, and avoids the property's existing agricultural fields and associated wet areas.*
- (6) *Soils with 3 feet or less depth to bedrock. The Applicant intends to complete soil testing as required for well and septic system permitting. These results can be shared with the Planning Board.*
- (7) *Forested areas. According to the Applicant's land inventory report, the forest condition on the subject site is in the 80-90 percentile, similar to the surrounding properties. According to the Habitat and Biodiversity Report, the property consists of hardwood mixed with evergreen forested areas.*
- (8) *Tree lines and hedge rows. Tree lines and hedge rows exist in some of the proposed development/disturbance envelopes as shown on the Constraints Map.*
- (9) *Open fields and meadows. According to the Applicant's land inventory report, meadows, grasslands or brushlands account for approximately 15.01 acres of the subject property.*
- (10) *Trees greater than 8 inches DBH. Several species of trees greater than 8 inches in DBH exist on the property. Tree species greater than 8 inches in DBH have been surveyed and identified within the proposed development/disturbance envelopes shown on the Constraints Map. (See Comment 12 regarding tree clearing restrictions that can be required by the Town).*
- (11) *Scenic vistas from public roads and any designated scenic roads. Woodstock Road is a Town-designated scenic road. Specific information on "scenic vistas" on Woodstock Road was not provided, though the Applicant maintains that by restricting development/disturbance to the zoning-compliant envelopes depicted on the Constraints Map, the two potential new homes on Lots 1 and 5, respectively, can be screened by undisturbed vegetation along the road frontage. As noted above, the open fields on the south side of Woodstock Road are outside of these envelopes. The Planning Board can request additional information if desired.*
- (12) *Designated Critical Environmental Areas. The property is not listed as a CEA.*
- (13) *Aquifers. No aquifers are present on the property.*
- (14) *Environmental Preservation Districts. The property is not within a designated Environmental Preservation District.*

*8/30/24: In response to subsection (11), the Applicant has submitted the "Viewsheds and Buildable Land" map from the 2023 Comprehensive Plan update (Hospitality Amendment), which identifies buildable land within the viewsheds of designated scenic roadways. The Applicant notes that this map was also submitted to the CAC. The map confirms AKRF's statement that the viewshed on Woodstock Road is of the main field to the south of Woodstock Road, and that this main field is outside the proposed building envelopes for Lots 1 and 5.*

*9/27/24: No further comment.*

4. *8/2/24: In addition to the land inventory information, the Applicant has submitted a report of the property's characteristics/conditions as depicted on the Town's Natural Resource Inventory (NRI) maps.*

*8/30/24: No further comment.*

5. *8/2/24: Per Subdivision Code Section 61.2(a), the Applicant must include a brief report that describes how the proposed subdivision achieves the purposes listed in Subsection 60.2, and why a cluster plan would not better achieve these purposes. Per Subdivision Code Section 60.2, the purposes of an open space (cluster) subdivision are:*

- a. Better protection of natural and scenic resources identified in the Master Plan and Zoning Law than would be provided by a conventional subdivision plan;*
- b. Compatibility with surrounding land uses and the overall character of the area;*
- c. Provision of adequate buffers for adjoining properties;*
- d. Contribution to Town-wide open space planning by creating a system of permanently preserved open spaces, both within large parcels of land and among such parcels throughout the town, providing linkages between existing open space areas; and*
- e. Preservation of land suitable for agriculture, particularly where the open space subdivision borders active agricultural land or land suitable for agriculture.*

*8/30/24: No further comment.*

6. *8/2/24: The Applicant has submitted a report titled "Open Space Report" that responds to the above requirement. The report is divided into three parts. Part I lists the key components of the submission.*

*The written assertions provided by the Applicant in Parts II and III are summarized as follows for the board's consideration:*

- a. Part II – Changes that a Cluster Subdivision would Impose.*

*The key elements of a cluster subdivision are: lots that are smaller than the minimum under the Code; lots are grouped together in a specific area to minimize environmental impacts; land that would otherwise be part of the individual lots (had the lots been zoning compliant) is merged and maintained as open space, often by a conservation easement or deed restriction.*

*Applied to the subject property, a cluster subdivision would result in a higher-density area with lots dissimilar to other lots in the neighborhood. Whereas cluster lots would be disproportionately smaller with homes close together, the proposed lots are similarly sized to the neighboring lots, and the proposed building envelopes are separated from each other and neighboring homes. Further, because the property is in the APO overlay, the open space area would have to be devoted to agricultural uses – which may be inappropriate to the site, as less than 20% of the land is agricultural soils and much of that is wetlands.*

- b. Part III – The Proposed Plan Preserves Open Space and is More Compatible with the Neighborhood than a Cluster Plan.*

*The proposed plan is congruent with the existing neighborhood in Stanford and Woodstock Roads, and a cluster plan is not. There are no cluster subdivisions in the neighborhood; all have been laid out as conventional subdivisions.*

*In addition to providing more compatible lot sizes, the proposed plan includes building envelopes for development that would be zoning compliant, outside of sensitive areas, separated from each other, and protective of scenic vistas. The lot sizes are not cookie-cutter one-acre lots, but instead, have been designed to appeal to residents interested in maintaining country life. The smallest lot (Lot 3 – 5.349 acres), the site of the existing farmhouse, has been designed to appeal to an owner interested in rehabilitating the home and buildings without managing a large property. Each of the proposed building envelopes*

*consider the property's existing natural features and would be screened from each other and the road.*

*With a cluster plan, the homes would be more likely to be visible from Woodstock Road, a Town-designated scenic road. The smaller lots would have a lower property value than neighboring larger lots.*

*Although future lot owners would be restricted to a small area upon which to locate their homes, those areas are private and surrounded by substantial land. Each owner would be able to have pride of ownership in their entire acreage, just as their neighbors do. Purchasers sometimes don't take interest in maintaining "open space" that is owned collectively or by a third party.*

*The proposed plat and Constraints Map show how effective the proposed subdivision is in providing setbacks and visual buffers. It is doubtful that a cluster subdivision would be able to function as effectively, since any attempt to do so would likely involve creating a new internal road. (The Planning Board may request clarification on how a cluster subdivision would necessitate a new internal road.)*

*As the subject property is not surrounded by existing open space preserves, it could not become a linkage between preserved spaces.*

*The property contains only 20% of Agricultural Soils, about half of which is wetlands. In addition, the property does not adjoin substantial tracts of Agricultural Soils. Accordingly, a cluster subdivision would not more effectively preserve land suitable for agriculture.*

*The Town's zoning law recognizes that "sensitive design" is also a valid technique to preserve open spaces and community character. The proposed conventional subdivision has used building envelopes as a creative way to conserve natural features, open space, and community character.*

*8/30/24: Comment noted by Applicant. AKRF has no further comment.*

7. *8/2/24: Based on the Applicant's assertions, as summarized above, the Planning Board should determine whether to require a cluster subdivision or to proceed with the review of the application as a conventional subdivision with conditions/restrictions on developable area, as the Applicant has presented. As noted above, for the three new vacant lots, the Applicant has illustrated proposed development/disturbance envelopes that the Planning Board can review, modify, and enforce through resolution as well as restrictions documented on the preliminary and final plat should the Planning Board determine that a conventional subdivision of the property achieves the land and resource conservation goals of the Town while also meeting all applicable requirements of the Subdivision Code.*

*8/30/24: Comment noted by Applicant. The Applicant's response also notes that the Planning Board meeting clarified that the designated rectangles are "building envelopes for building construction," which AKRF concurs with. The Planning Board may schedule a public hearing for its October meeting to determine whether to require a cluster subdivision or to proceed with review as a conventional subdivision, as requested by the Applicant. (If the Planning Board schedules and opens a public hearing specific to the cluster vs. conventional subdivision determination at its next meeting, the hearing must remain open until such time as the final CAC comments have been provided (see 8/30/24 Comment 19.)) A separate public hearing for the preliminary subdivision itself would also be needed at a later date.*

*9/27/24: The Planning Board may open the public hearing on the cluster-conventional subdivision question. The CAC has provided a comment letter dated 9/4/24, updated 9/18/24 (draft), on the adequacy of the application to fulfill the objectives of Section 60.2 of the Subdivision Regulations (regarding Open Space Subdivisions) and to protect the natural resources on and adjoining the property. (See Comment 19).*

**10/31/24: Pursuant to Section 137-27 B (3) of the Town Code (eCode online version), which contains the Town's subdivision regulations (formerly Section 60.2), the Planning Board held a public hearing on October 1, 2024 related to the cluster vs. conventional subdivision**

preference. The hearing was closed and the Planning Board reserved decision on the cluster vs. conventional subdivision preference to the November 5, 2024 meeting (137-27 B (4)). Code Section 137-27 B (4) requires that, in making its determination, the Planning Board shall consider, in addition to the materials provided by the Applicant, the CAC's comments and any public comments received during the public hearing.

As noted in the Applicant's cover letter, the CAC comments do not recommend that the Planning Board compel and cluster subdivision; rather, they encourage the Planning Board to seek maximum permanent protection of open space on the property. No commenters at the public hearing expressed support for a cluster subdivision or asserted any benefit of a cluster subdivision in attaining the purposes of section 137-26 B, as compared to the proposed conventional plan. Two commenters at the public hearing asserted objections to cluster subdivision, one as to impacts on Stanford Road, and the other as to general community character.

Comments were raised at the October 1st hearing regarding flooding and drainage concerns along Stanford Road, specifically that water from the west side of Stanford Road was flowing across the road and impacting one or more properties on the east side of the road. The Applicant's October 22, 2024 submission includes a response letter from the Applicant's engineer (LRC) documenting the topography and drainage infrastructure that exists in the area (with photographs). Based on the information provided, LRC concludes that the Clear property does not cause any water to flow in an easterly direction across Stanford Road.

The cover letter provided with the Applicant's October 22, 2024 submission offers six findings as to why the proposed conventional subdivision is preferable to a cluster subdivision, when considering the purpose of open space subdivisions found at Section 137-26 B as they relate to the site's location, size, compatibility with surrounding character, and environmental characteristics.

#### OTHER COMMENTS

8. *8/2/24: Each of the proposed new parcels would conform with the RL-5 lot requirements of minimum lot size (5 acres) and minimum frontage (300 feet). While several of the existing structures near Woodstock Road are preexisting nonconforming due to reduced front setbacks, the proposed subdivision would not increase the extent of the preexisting nonconformities and no new nonconformities would be created.*  
*8/30/24: No further comment.*
9. *8/2/24: The Constraints Map shows the property's environmentally sensitive features including wetlands and adjacent buffer areas, farmland soils, and steep slopes, as well as proposed development/disturbance envelopes for potential future construction of new homes and related infrastructure on Lots 1, 2, and 5. Once revised/finalized to address AKRF and Planning Board comments, the Constraints Map can be appended to the final plat for approval/filing.*  
*8/30/24: Per discussion at the 8/6/24 Planning Board meeting and as noted in the Applicant's response letter, the Dutchess County Clerk would not accept the Constraints Map as an appendix to the Final Subdivision Map. Instead, applicable restrictions and development parameters, such as "building envelopes for building construction," conceptual driveway locations, permissible tree-clearing dates, etc., will be added to the Final Subdivision Map for filing.*  
*9/27/24: No further comment. Any potential further construction restrictions, e.g., resulting from the Phase I Bog Turtle survey, would be added to the Final Subdivision Map.*
10. *8/2/24: The Constraints Map should be updated to show the entire permissible development/disturbance areas outside the environmentally sensitive areas and applicable wetland buffers, including the recommended additional 300-foot Bog Turtle conservation zone to selected wetlands (see Comment 11 below). The envelopes should be updated to show the entire buildable area, incorporating zoning restrictions and considering visual buffers described in the Open Space Report. The preliminary plat should include a note/restriction that no disturbance shall occur outside of the development/disturbance envelopes shown on the Constraints Map, and the Constraints Map*

should be included as an attachment to be recorded with the final plat. The Planning Board may also include this restriction as a condition of approval.

8/30/24: Per discussion at the 8/6/24 Planning Board meeting, the Constraints Map does not need to be updated to show the entire permissible disturbance area, as the building envelopes, once finalized, will sufficiently illustrate and restrict future development. (See Comment 11 regarding the Bog Turtle restriction.)

9/27/24: No further comment.

11. 8/2/24: Per the Wetland Delineation and Habitat and Biodiversity Survey Report, potential Bog Turtle habitat was identified on Wetlands E, H, and J (see Table 1 and Figure 13 of the Wetland Delineation), although no turtles were observed during fieldwork. Per guidance issued by the US Fish & Wildlife Service (USFWS), wetlands/watercourses displaying habitat characteristics for Bog Turtles should have a 300-foot conservation zone from the edge of the wetland. AKRF recommends that this additional 300-foot conservation zone be added to the Constraints Map, around Wetlands E, H, and J, which will affect the development/disturbance envelopes proposed on Lots 1 and 2. This restriction can be included as a condition of approval and recorded as a note on the final subdivision plat and attached final Constraints Map.

8/30/24: The Applicant, per their wetland consultant Michael Fishman CWB, FTWS, states that the 300-foot buffer is not applicable, as there is insufficient evidence of a bog turtle habitat in any of the identified wetlands. The Applicant notes that the USFWS 300-foot buffer requirement is a suggestion applicable to activities that may affect "high-potential bog turtle habitats" and "potential travel corridors" and that the present conditions fail to support an inference of either. The Applicant further notes that NYSDEC places a 300-foot buffer on potential bog turtle habitats only when it is demonstrated to be occupied. In this case, per the Applicant's response, the nearest known population is more than 2 miles from the site, which is outside of the turtles' known range of approximately 1.6 miles, and that barriers, such as roads and extensive upland habitat, exist between that known population and the project site.

AKRF concurs that if bog turtles are not present, then a buffer would serve no purpose, and that the buffer is not a requirement for every wetland with potential bog turtle habitat. However, as stated in the Applicant's Habitat and Biodiversity Report (EEC, 7/16/24), the bog turtle assessment was preliminary in nature and that "[a]n in-depth Phase 1 bog turtle habitat inventory and Phase 2 presence/probable absence survey would provide additional information as to whether the Study Site could support that species, if any impacts were proposed to Wetlands E, H, J, or their immediate surroundings" (p.40).

Although the site is out of range of the known bog turtle population, per the Applicant's response, the site may support an unknown population. Therefore, a formal Phase 1 Habitat Survey is recommended and, if necessary, a Phase 2 Presence/Probable Absence Survey per USFWS guidance.

The Planning Board may require that the Applicant conduct a Phase 1 (and if necessary, Phase 2) survey to determine the presence or probable absence of bog turtles in Wetlands E, H, and J. If these surveys confirm the presence of a bog turtle population, the Planning Board can require the 300-foot conservation zones to the wetlands in question. Alternatively, the Planning Board may decline to require further assessment, in which case, the Town's standard wetland buffers would apply.

9/27/24: Per the LRC Group letter (dated 9/17/24), the Applicant has arranged for a Phase 1 Bog Turtle survey and will provide a copy once received. The purpose of the Phase I survey is to determine whether the onsite wetlands are a potential bog turtle habitat.

**10/31/24: The Applicant has submitted a Phase 1 Bog Turtle Habitat Assessment for identified Wetlands E, H, and J, prepared by Edgewood Environmental Consulting, LLC, dated October 18, 2024. The assessment was prepared pursuant to federal guidelines, specifically the methods outlined in *Guidelines for Bog Turtle Surveys for the Northern Population Range, Phase 1 and 2 Surveys* (USFWS, 2020). The report concluded that all neither of these three wetlands provides suitable potential habitat for bog turtles, for the following reasons:**

- All three wetlands had closed tree canopies, casting all of the wetlands into shade, except during late fall, winter and early spring, when turtles would ordinarily be in torpor.

- None of these wetlands had substantive connections to other wetlands onsite or offsite that would provide a connective wetland corridor allowing turtles to move on or off the site in dispersal across the landscape.
- Soils in Wetlands H and J were also not suitable for bog turtles, being too shallow for burrowing in Wetland H, and having no mucky texture in Wetland J.
- None of the wetlands has open, sedge meadow or fen habitats associated with or near them to provide necessary basking and nesting sites for bog turtles.
- Given that the nearest known bog turtle occurrence is about 4 km ( $\pm 2.5$  mi) away, it is unlikely that bog turtles from that population could reach any of the wetlands on the Clear property without having other significant habitats and wetland connective corridors in between.

Based on the findings of the report, the Town-regulated wetland buffers identified on the constraints map for proposed parcels 1, 2, and 4 (50 to 100 feet depending on the size of the wetland) would not need to be expanded and the proposed building envelopes on these parcels would not require any modification.

AKRF has provided the report to Tim Miller Associates (Steve Marino), the Town's wetland consultant, for review and comment.

12. 8/2/24: *The submitted reports also identified potential habitats for the Northern Long-eared Bat and Indiana Bat. Therefore, any tree-clearing for residential construction within the proposed development/disturbance envelopes should be limited to the winter hibernation season for these bats, which occurs between October 1 and March 31. This restriction can be included as a condition of approval and recorded as a note on the final subdivision plat and attached final Constraints Map.*

8/30/24: *Per the Applicant's response, the Applicant agrees to adding the above condition of approval and placing a note on the Final Subdivision Plat (filed with the County) and the final Constraints Map to be filed with the Town's Building Department.*

9/27/24: *No further comment.*

13. 8/2/24: *A layout plan / exhibit should be provided to the Planning Board to illustrate conceptual layout of a primary residence, septic/well, and driveway within the development/disturbance envelopes depicted on the Constraints Map for Lots 1, 2, and 5. The Planning Board can specify through resolution that substantial deviation from those conceptual locations would require review and approval from the Planning Board. This restriction can be included as a condition of approval.*

8/30/24: *The Planning Board, at the 8/6/24 meeting, determined that it is not necessary to submit a conceptual layout within the building envelopes. The Applicant, as presented at the Planning Board meeting and reiterated in their response letter, states that the proposed building envelopes are of sufficient size to contain a house and driveway and are outside of the minimum zoning setbacks.*

*At this time, the Applicant is requesting flexibility with respect to the placement of wells and septic systems outside of the proposed building envelopes, provided that identified constraints/resources are not impacted and all Dutchess County Health Department requirements are met.*

9/27/24: *No further comment.*

10/31/24: **As part of the Applicant's October 22, 2024 submission, the Applicant's engineer (LRC) provided a letter summarizing preliminary soil percolation testing completed in October 2024 on parcels 1, 2 and 5 (parcels where new homes could be built). According to LRC, all tests followed Dutchess County Health Department guidelines, and the location of the soils tests was determined utilizing existing site conditions and restrictions included in the design guidelines including but not limited to avoidance of steep slopes and beyond 100 feet of any wetland area. On each parcel, the soil was observed to be silty, sand and gravel with some cobbles. LRC concludes that there are several viable locations for the eventual design review, and eventual approval by the Health Department of either below ground or above ground (with fill pad) septic system designs.**



The review and approval for wells and septic systems will fall under County Health Department purview, and the October 2024 soil testing (and any additional information required by the County) will be part of that permitting process. However, the Planning Board has previously expressed interest in understanding whether the building envelopes depicted on the constraints map contain soils that can support the designs referenced above. The Applicant should elaborate on the locations of the soil testing in relation to the building envelopes depicted on the constraints map.

14. 8/2/24: Any future new construction or alteration (on all five new lots proposed) would be subject to the RL-5 district requirements and building permits issued by the Building Department. The Planning Board and/or Zoning Board of Appeals may be required to review individual development proposals (and complete a review under SEQRA) in the future if certain conditions are identified by the Town's Zoning Administrator based on the nature of the residential use (need for variances, special permits, etc.).

8/30/24: No further comment.

15. 8/2/24: Should the Planning Board approve a conventional subdivision of the property as proposed by the Applicant (with restrictions/conditions), it would not be subject to the ten-year prohibition on future subdivision of the new lots, since such prohibition is only specified in the Code for minor subdivisions.

8/30/24: While the proposed subdivision would not trigger prohibition of future re-subdivision under the Town Code, the Planning Board may, by resolution, prohibit re-subdivision of the subject property for a finite duration or in perpetuity.

9/27/24: No further comment. The Planning Board may stipulate a prohibition on re-subdivision in the resolution.

#### REFERRALS & APPROVALS

16. 8/2/24: The subject parcel is within a farm operation in an agricultural district (AD 21). This subdivision application is therefore subject to General Municipal Law (GML) 239-n, which requires referral to Dutchess County. Typically, the Dutchess County Department of Planning and Development has exercised the option to review subdivision applications that involve an application for a variance. The Applicant has identified that an application for a variance is not needed for the proposed subdivision. It should be noted that the previous subdivision application for the property, which identified variances (since withdrawn) was referred to the County under GML 239-n, and a "No Authority" response was returned to the Planning Board.

Although no variances are proposed with this subdivision application, referral to the County under GML 239-m (rather than 239-n) can still occur at the Planning Board's discretion as it can be considered "other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law" (GML 239-m(3)(vi)). The County is required to respond within 30 days of receipt.

8/30/24: The County response, dated 8/22/24, declined comment citing "No Authority."

9/27/24: No further comment.

17. 8/2/24: Permission to file from the Dutchess County Health Department must be obtained prior to the Planning Board Chair's signing of the final plat.

8/30/24: Comment noted by the Applicant. No further comment.

18. 8/2/24: The Wetland Delineation, Constraints Map, and this initial memorandum from AKRF should be referred to the Town Wetland Consultant for review and comment.

8/30/24: The application and related materials were referred to the Town Wetland Consultant, Steve Marino, and a site visit was scheduled for 8/28/24. Comments are expected in time for the September 3rd meeting.

9/27/24: Steve Marino of Tim Miller Associates conducted a site visit and provided comments in a memorandum to the Planning Board dated 9/3/24. Per the memo, Mr. Marino concurs with the Applicant's wetlands assessment, noting that development within the building envelopes would not be expected to impact Town wetlands (and that no federally or state regulated activities are proposed).

The memo also recommends a Phase 1 Bog Turtle survey for Wetlands H and J; if suitable conditions for a potential habitat are found, the distance to the building envelopes should be evaluated and reflected in the final location/shape of the building envelopes. As noted above, the Applicant has stated that a Phase 1 survey will be conducted.

**10/31/24: See New Comment #11 above. AKRF has provided the submitted Phase 1 Bog Turtle Habitat Assessment report to Tim Miller Associates (Steve Marino), the Town's wetland consultant, for review and comment. Based on the findings of the report, the Town-regulated wetland buffers identified on the constraints map for proposed parcels 1, 2, and 4 (50 to 100 feet depending on the size of the wetland) would not need to be expanded, and the proposed building envelopes on these parcels would not require any modification.**

19. 8/2/24: The application, including the land inventory, should be referred to the Town's Conservation Advisory Commission (CAC) for comments. The CAC shall submit its comments to the Planning Board within 25 days of receipt.

8/30/24: The application was referred to the CAC 8/6/24, and the Applicant presented the application to the CAC at their 8/7/24 meeting. The CAC prepared a draft comment letter that recommends that 1) the building envelopes be revised to specify driveways, septic, and other possible land disturbances; and 2) the land outside of the building envelopes be permanently protected through conservation easements without exception. The CAC letter contends that any exception to the Town Code's preference for cluster subdivisions should require the use of conservation easements to permanently prohibit development and further subdivision outside of the building envelopes. Final CAC comments are expected after its meeting of 9/4/24.

AKRF notes that the Planning Board, separate from the CAC recommendation, is considering restricting development to the areas within the building envelopes, as condition of approval. Should this condition be included, it would similarly protect the areas outside of the envelopes without the additional encumbrances of a conservation easement.

9/27/24: The CAC has provided a final Comment Letter dated 9/4/24 with a draft update dated 9/18/24. The 9/4/24 letter, consistent with the previous draft, recommends that the building envelopes encompass all possible disturbances and that land outside of the envelopes are permanently protected. The 9/18/24 draft letter notes a large portion of the property north of Woodstock Rd is in a tertiary aquifer recharge area, highlighting the need to avoid development in ways that would disrupt or contaminate drinking water.

The Applicant's July submission included a "Natural Resources Inventory (NRI) Analysis Report" which included the Drinking Water Resources Map with the subject property identified (see NRI Analysis Report, page 12). A screenshot of the subject property's location in relation to the tertiary aquifer recharge area (light purple shading) is provided below. As shown, a small portion of the northwest corner of the property is mapped with this layer.



**10/31/24:** As noted in the previous comment, a portion of the northwest corner of the property is within the outer edge of the mapped tertiary aquifer recharge area (aka Zone 3), which is generally defined as areas around streams that will subsequently seep into the sand and gravel aquifer through infiltration. Future well and septic system permitting for parcel 1 (which is 23 acres in size) would be subject to Dutchess County Health Department requirements. The construction of one single-family home for residential use on a limited portion of proposed parcel 1 would not be expected to result in any impacts related to groundwater recharge, as this condition (i.e. single-family homes on large lots) is not uncommon within tertiary recharge areas throughout the Town.

#### SEQRA CLASSIFICATION

20. 8/2/24: This application is considered an Unlisted Action under the State Environmental Quality Review Act (SEQRA). Although not required for Unlisted Actions, the Applicant has submitted the Full Environmental Assessment Statement (FEAF), prepared in consultation with the EAF Mapper. The supplemental land inventory, habitat and wetland delineation reports provided by the Applicant should be considered as part of the Planning Board's SEQRA record and eventual determination of significance on the proposed subdivision.

The FEAF considers the potential historic value of the Applicant's existing farmhouse. Per the NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) database, Cultural Resource Information System (CRIS), an open consultation project is on file for the boundary of the existing property and referred to as "Clear subdivision." The farmhouse is listed in CRIS as "not eligible" for listing on the historic register. The Applicant should provide a status update on OPRHP's review of the subdivision.

8/30/24: Per the Applicant's response letter, a submission was made to OPRHP on July 29, 2024, and a response was received on 8/22/24 stating that "no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project."

9/27/24: No further comment.

21. 8/2/24: AKRF believes that the Planning Board has enough information to declare its intent to serve as Lead Agency for the subdivision's review under SEQRA. The Applicant has identified several agencies that may have interest in the application, although no approval and permitting authority is required from them at this stage (i.e. they would be considered SEQRA "interested agencies"), as follows:

- a. Town of Washington Town Board (jurisdiction over scenic roads)

8/30/24: No response received to date. As the date of the upcoming Planning Board meeting, 9/3/24, is fewer than 30 days from the date of referral, the Planning Board may not declare itself Lead Agency until the requisite 30 days has elapsed.

9/27/24: No response has been received, and the 30 days have elapsed. The Planning Board may declare itself Lead Agency.

- b. Town of Washington Highway Superintendent (jurisdiction: future driveway permits, authority re: scenic roads).

8/30/24: Response received 8/26/24 stating no objection to the Planning Board as Lead Agency. The Highway Department commented that any new proposed driveways that would be approved by the Planning Board should first be clearly marked and inspected by the Highway Department for drainage and sight distance.

9/27/24: No further comment.

- c. Dutchess County Health Department (jurisdiction: permission to file for non-realty subdivision, approval of future individual well and septic)

8/30/24: Response received 8/9/24 stating no objection to the Planning Board as Lead Agency. The County Health Department response notes that:

- As the proposed subdivision does not meet the definition of a Realty Subdivision, County approval for the arrangement of water supply and sewage disposal will not be required at the time of the subdivision itself.
- The County has an approval on file for the existing ranch house (508 Woodstock Road) (proposed Lot 4). "The subdivision of the section south of Woodstock Road shall be contingent upon the ability for the approved Primary and Reserve onsite wastewater treatment systems (OWTS) and well for the existing ranch house be located on the same parcel." The submitted Preliminary Plat Plan (7/15/24) shows septic and well within the boundaries of proposed Lot 4.
- County approval will be required for the arrangements for water supply and sewage disposal prior to the issuance of building permits.

9/27/24: No further comment.

- d. NYSDEC Region 3 (jurisdiction: potential review of wetland delineation under new state wetland regulations – no disturbance proposed)

8/30/24: No response received to date. As the date of the upcoming Planning Board meeting, 9/3/24, is fewer than 30 days from the date of referral, the Planning Board may not declare itself Lead Agency until the requisite 30 days has elapsed.

9/27/24: No response has been received, and the 30 days have elapsed. The Planning Board may declare itself Lead Agency.

If the notice of intent to serve as Lead Agency is circulated to the above interested parties, the SEQRA regulations require the Planning Board to allow 30 days for a response, at which point the Planning Board can formally declare itself Lead Agency provided none of the above object.

8/30/24: The Planning Board circulated notice of intent to serve as Lead Agency. However, as noted above, the Planning Board may not declare itself Lead Agency at its 9/3/24 meeting because the requisite 30 days has not elapsed.

9/27/24: As 30 days have passed since notice was circulated, the Planning Board may declare itself Lead Agency.

**10/31/24: At the 10/1/24 meeting, the Planning Board declared itself lead agency for the application's review under SEQRA. The Planning Board also opened and closed the public hearing specific to the cluster/conventional subdivision determination, reserving its decision for the 11/5/24 meeting. Should the Planning Board formally determine that the application can proceed as a conventional subdivision, the Board may proceed in the SEQRA process towards a Determination of Significance on the application. The Planning Board is required to make a Determination of Significance prior to holding the public hearing on the preliminary plat (§ 137-11.C). The Planning Board may also utilize a public hearing for the purpose of soliciting input regarding the project's potential environmental impacts under SEQRA.**

## RECOMMENDATIONS

At the November 5, 2024 Planning Board meeting, AKRF recommends that the Planning Board: 1) discuss the Applicant's latest submission and consultant comments; 2) formalize decision on the application proceeding as a cluster or conventional subdivision; 3) if decision is made to proceed as a conventional subdivision, discuss setting a public hearing for the purpose of soliciting comments on the project's potential environmental impacts under SEQRA.