

Town of Hyde Park  
**ZONING BOARD OF APPEALS**  
4383 Albany Post Road  
Hyde Park, NY 12538  
845-229-5111 ext. 2

**RESOLUTION ADOPTING A DETERMINATION OF SIGNIFICANCE  
Negative Declaration**

**THE LOCUSTS ON HUDSON LLC**  
135 Old Post Road

**Date: May 12, 2021**

**Motion:** \_\_\_\_\_

**Resolution #:** \_\_\_\_\_

**Second:** \_\_\_\_\_

WHEREAS, the applicant, The Locusts on Hudson LLC, has submitted an application for an area variance to permit the recontouring and stabilization of land along the North Staatsburg Creek as part of its efforts to restore the area and establish a pond on a residential estate property located, in part, at 135 Old Post Road (the "Project"), identified as tax parcel no. 6167-01-117843, in the Waterfront District (the "Property"); and

WHEREAS, the proposal is depicted on a plan entitled "ZBA Plan – Locusts on Hudson," Sheet ZBA-1, prepared by the LRC Group, dated May 27, 2020 (the "Site Plan"); and

WHEREAS, the Town of Hyde Park Zoning Law regulates activity within stream corridors, which comprise the bed of a stream and the land within 100 feet of the mean high water level on either side of the stream, as they contain valuable environmental resources and the Town wishes to leave open areas for the wildlife that use these corridors; and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-4.3(G)(2) to permit regrading and recontouring within the 100-foot stream corridor on the Property, with the Project to be located 0 feet from the stream (the "Requested Variance"); and

WHEREAS, the Project involves the disturbance of more than 2.5 acres on Property contiguous to a Register-Listed historic site, Locusts-on-Hudson; and

WHEREAS, pursuant to 6 NYCRR 617.4(c)(9), activities that involve the disturbance of more than 2.5 acres, occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places are Type I actions under the State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, there are no other involved agencies for the Project under SEQRA;  
and

WHEREAS, the ZBA referred the application materials to the Dutchess County Department of Planning and Development for its review pursuant to section 239-m of the General Municipal Law, which responded on May 10, 2021 that the Project is a matter of local concern with comments; and

WHEREAS, a duly noticed public hearing was held on July 22, 2020, during a remote meeting held by the Zoning Board of Appeals in accordance with New York State Governor Cuomo’s Executive Order 202.1 and subsequent extensions thereof, during which all those who wished to speak were heard; and

WHEREAS, the Zoning Board of Appeals closed the public hearing at its July 22, 2020 meeting but kept the record open for the submission of written comments for a period of ten (10) days thereafter; and

WHEREAS, the Zoning Board of Appeals then reopened the public hearing for the Project, and a duly noticed public hearing was held on April 28, 2021, during a remote meeting held by the Zoning Board of Appeals in accordance with New York State Governor Cuomo’s Executive Order 202.1 and subsequent extensions thereof, during which all those who wished to speak were heard; and

WHEREAS, the Zoning Board of Appeals closed the reopened public hearing at its April 28, 2021 meeting but kept the record open for the submission of written comments for a period of seven (7) days thereafter; and

WHEREAS, the ZBA has reviewed Part 1 of the EAF and draft Parts 2 and 3 of the EAF, and all available information concerning the potential impacts of the Project and finds that it has sufficient information on which to base a determination of significance; and

WHEREAS, the ZBA has considered the criteria contained in 6 NYCRR 617.7 and thoroughly analyzed all identified relevant areas of environmental concern.

NOW THEREFORE BE IT RESOLVED, that for the reasons set forth in the EAF and supplemental materials, the ZBA hereby adopts a negative declaration, attached hereto and incorporated herein, finding that the Project as proposed will not result in any significant adverse environmental impacts and that a Draft Environmental Impact Statement will not be prepared.

BE IT FURTHER RESOLVED, that the ZBA hereby directs its secretary to send notice of the Determination of Significance to the Environmental Notice Bulletin for publication and to make all other required filings.

Adopted:

Herbert Sweet      \_\_\_  
James Agrawal      \_\_\_  
Paul Donnelly       \_\_\_  
David McNary       \_\_\_  
Richard Perkins     \_\_\_

**NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT  
NEGATIVE DECLARATION**

**Project Name:** Locusts-on-Hudson Land Recontouring

**SEQRA Status:** Type I

**Location:** 135 Old Post Road, Staatsburg, NY 12580 lots 6167-01-117843 and 6167-01-168935 (the "Site")

**Description of Action:**

The applicant, The Locusts on Hudson LLC, has submitted an application for an area variance to permit the recontouring and stabilization of land along the North Staatsburg Creek as part of its efforts to restore the area and establish a pond on a residential estate property located, in part, at 135 Old Post Road (the "Project"), identified as tax parcel no. 6167-01-117843, in the Waterfront District (the "Property").

**Discussion of Part 2 of Full EAF, Potential Project Impacts**

The Zoning Board of Appeals has evaluated the Project's potential impacts as identified in Part 1 and Part 2 of the Full EAF and has determined that the Project will not result in any significant adverse environmental impacts, and that a Negative Declaration of Significance is warranted.

**1. Impact on Land.**

The Property consists of agricultural and residential uses. The Project will clean up and restore the portion of the Property depicted on the Project's Site Plan and establish a pond on a portion of the Property that has become unsightly and poorly drained. The Project will restore and improve the drainage conditions on the Property and create depressed areas for the collection and storage of stormwater runoff to prevent widespread pooling of water throughout meadow fields at or about the Property and prevent damage to the historic barn structures on the westerly side of the Property. Because the Applicant commenced work prior to applying for the requisite permit and area variance, the work has largely been completed and the site has been stabilized.

A Stormwater Pollution Prevention Plan (the "SWPPP") for the Project has previously been submitted to the Town Zoning Administrator and is incorporated herein by reference. The SWPPP was originally submitted on December 16, 2019 and was revised as of July 24<sup>th</sup>, 2020 in response to comments received from the Town's engineering firm. The SWPPP was prepared pursuant to the Environmental Protection Agency's and New York State Department of Environmental Conservation's ("DEC") Phase II Storm Water Regulations.

Erosion control measures have been and will be implemented to minimize the erosion of land. The erosion and sediment controls consist of temporary and permanent

stabilization measures and the implementation of Best Management Practices. Please see the SWPPP, Section 4.0 for further details on these measures.

There are no State regulated wetlands impacted by the Project. The Project includes a .04-acre disturbance to a Federal wetland. The disturbance consists of the placement of river stone to serve as rip rap to mitigate the potential for erosion. A pre-construction notification was prepared in accordance with the United States Army Corps of Engineers (USACE) Nationwide Permit general conditions and was provided to USACE on April 28, 2020. USACE responded after 45 days had passed, indicating that the work could proceed as proposed.

Based on the foregoing, the Project is not anticipated to have any significant adverse impacts on land.

## **2. Impact on Geological Features.**

There are no unique landforms on the Property that will be impacted by the Project. The DEC's EAF Mapper indicated there are no unique geologic features on the Property.

Accordingly, the Project is not anticipated to have any significant adverse impact on geological features.

## **3. Impact on Surface Water.**

As indicated above, a SWPPP was developed that includes adequate erosion and sediment controls to minimize the erosion of land and any corresponding impact to surface water resources. Please see the discussion above in Item 1.

Based on the foregoing, the Project will not create any significant adverse impacts to surface water resources.

## **4. Impact on Groundwater.**

The Project will not have any significant adverse impacts on groundwater. The Project does not include use of groundwater or the generation of waste. The Project will not create additional impervious surfaces, beyond the surface of the pond itself, which is offset by the detention created by the pond.

Based on the foregoing, the Project will not create any significant adverse impacts to groundwater.

## **5. Impact on Flooding.**

The Project will not have any significant adverse impacts on flooding. As indicated by DEC's EAF Mapper, the Property is not within a designated floodway, the 100- or 500-year floodplain. Moreover, the Project itself is intended to restore and improve the drainage conditions on the Property and to create depressed areas for the collection and storage of stormwater runoff to prevent widespread pooling of water.

Based on the foregoing, the Project will not create any significant adverse impacts to flooding.

## **6. Impact on Air Quality.**

The Project will not result in any significant adverse impacts on air quality. The Project does not include a State regulated air emission source or involve any activity that will have more than a de minimis impact on air quality.

Based on the foregoing, the Project will not create any significant adverse impacts to air quality.

## **7. Impact on Plants and Animals**

A Threatened and Endangered Species Habitat Suitability Assessment Report was prepared by Ecological Solutions, LLC. The Habitat Suitability Assessment was completed for several listed species including the Indiana bat (*Myotis sodalis*), Northern long-eared bat (*Myotis septentrionalis*), bald eagle (*Haliaeetus leucocephalus*), Blandings turtle (*Emys blandingii*), short-nose sturgeon (*Acipenser brevirostrum*), Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), and yellow breasted chat (*Icteria virens*).

With respect to the bat species, the assessment concluded the Project will not impact any trees or wooded areas and that no measures are required to avoid potential adverse effects.

With respect to bald eagles, the assessment indicated there is an assumed nest location west of the railroad (the Project is east of the railroad). The assumed nest location was buffered from Project activities and is not visible from the activities that occurred. No Project activity was within 660 feet of the nest. The assessment further concluded that the Project did not generate more than ambient noise levels on the site and no impacts to the nest or nesting activities were detected.

With respect to the sturgeon, the assessment concluded that while localized increase in suspended sediment may cause fish to temporarily avoid the area where bottom disturbing activities are occurring, the affected area would be expected to be small. The assessment acknowledged that fish generally avoid unsuitable conditions such as increases in suspended sediment and noise and that similar nearby suitable habitats would be available for use by fish to avoid the area being disturbed. Moreover, the assessment indicated that best management practices have been implemented to prevent the loss of construction materials and debris into the river via the North Staatsburg Creek and that an upland SWPPP has been implemented.

With respect to the Blandings' turtle, the assessment observed that there is no core habitat on/or immediately adjacent to the Project and concluded that there are no impacts to this species since there is no potential habitat on the site or in the vicinity of the site.

Likewise, with respect to the yellow breasted chat, the assessment concluded there is no potential habitat for this species in the 8.2-acre work area. Moreover, because the

Project includes landscaping and beautification, there is not anticipated to be a loss of habitat if this species should be migrating through the Property.

Based on the forgoing, the Project will not have any significant adverse impacts on plants or animals.

#### **8. Impact on Agricultural Resources.**

As noted above, the Property currently has an agricultural use component. The Project will not impede the use of the Property for agricultural purposes.

Based on the foregoing, no significant adverse impacts to agricultural resources are anticipated from the Project

#### **9. Impact on Aesthetic Resources.**

Because the Project is an effort to recontour and beautify the Property, it is not anticipated to have a negative impact on aesthetic resources. Indeed, the effort will improve the aesthetics of the area.

Based on the foregoing, the Project will not result in any significant adverse impacts to aesthetic resources.

#### **10. Impact on Historic and Archaeological Resources.**

A Phase 1A Literature Search and Sensitivity Assessment and Phase 1B Archaeological Field Reconnaissance Survey have been undertaken by Hudson Valley Cultural Resource Consultants, Ltd. (Hudson Valley). The field survey identified the presence of a small Precontact site, in which a soil pile related to the Project is located. The Applicant's intent is to carefully remove the soil pile, avoiding impacts to the original grade. Hudson Valley's recommendation, provided to the New York State Historic Preservation Office (SHPO), is to implement an avoidance protocol that protects the precontact site.

By letter dated April 23, 2021, SHPO indicated it had reviewed the proposed avoidance plan for the Project and accordingly recommended that the Project will have no adverse effect on historic properties listed or eligible for listing on the National Register of Historic Places.

Based on the foregoing, the Project will not create any significant adverse impacts to cultural resources.

#### **11. Impact on Open Space and Recreation.**

The Project will not result in any loss of recreational opportunities or any reduction of an open space resource designated in a governmental open space plan. The Property is privately owned and is not used for public recreation.

Based on the foregoing, the Project will not have any significant adverse impact on open space and recreational resources.

**12. Impact on Critical Environmental Areas.**

The Project will not have any impacts on any critical environmental areas (CEAs) designated by NYSDEC because the Property does not contain any CEAs, nor are any CEAs located adjacent to the Property.

**13. Impact on Transportation.**

The nature of the Project is not one that will result in any increased use of the Property or generate of any increased traffic.

For the foregoing reasons, the Project will not have any significant adverse impacts on traffic or transportation.

**14. Impact on Energy.**

The Project will not require the use of energy following its completion. The only increased energy usage is the de minimis use associated with construction activities.

Accordingly, no significant adverse impact on energy will occur.

**15. Impact on Noise, Light, and Odor.**

No significant adverse noise or odor impacts are expected from the Project. During construction, any noise and odor impacts from construction equipment have been and will be temporary, of short duration and non-significant. After construction, during Project operations, no noise or odor impacts are anticipated. No exterior lighting is proposed.

Thus, the Project will not cause any significant adverse impacts involving noise, odor or light.

**16. Impact on Human Health.**

Given the nature of the Project, no significant impacts to human health are anticipated.

**17. Consistency with Community Plans.**

The land recontouring and beautification work will be in harmony with the surrounding land uses and the prevailing aesthetic character of the area. Subject to receipt of area variance relief and an Erosion and Sediment Control Permit from the Town, the Project is consistent with the Zoning Law of the Town of Hyde Park.

For the foregoing reasons, the Project will not have a significant adverse impact on community plans.

**18. Consistency with Community Character.**

As indicated above, the land recontouring and beautification work will be in harmony with the surrounding land uses and the prevailing aesthetic character of the area.

Accordingly, the Project will not have a significant adverse impact on the community character of the Town.

### **Conclusion**

The Zoning Board of Appeals has thoroughly evaluated all aspects of the Project and carefully reviewed all relevant materials. For the reasons set forth above, the Zoning Board of Appeals has determined that the Project will not have any significant adverse impacts on the environment. As a result, a Negative Declaration will be filed and distributed pursuant to SEQRA regulations, and a Draft Environmental Impact Statement need not be prepared.