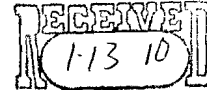

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January 13, 2010

Town of Newtown Conservation Commission
Inland Wetlands and Watercourse Agency
3 Primrose Street
Newtown, CT 06470

RE: *Application Review – Supplemental*
Housatonic Railroad Company, Inc., Shepaug Terminal
30 Hawleyville Road (Rt. 25), Newtown, Connecticut

JMM Job # 09-1193-NWT-4

Dear Commissioners:

JMM Wetland Consulting Services, LLC (JMM) soil and wetland scientists, have continued our review of an application to conduct regulated activities at the above-referenced property.

This letter is in response to Mr. Dwight Merriam of Robinson & Cole, LLP (dated January 7th, 2010). Please note that JMM will not respond herein to all comments/responds outlined in Mr. Merriam letter, but only those, which pertain to impacts to wetlands and watercourses.

1.0 RESPONSES

1. **Item #3 page 1:** Question: *Where were the excavations made to determine whether wetlands have been filled?* JMM is satisfied with the response that no additional regulated wetlands have been filled along the eastern side of the recently places fill (i.e. in the areas of wetland flags 48, 49, 59 and in the vicinity of 38, 39, and 40). It

appears that the only area that has not been discussed to date as it relates to the types of soils beyond the hay bales (i.e. west) are in the vicinity of wetland flag WL-30.

2. **Item #5 page 2:** Question: *Would you acknowledge that a violation took place as a result of filling in the upland review area (URA) without a permit?* As was outlined in our letter dated January 7th, 2010, the URA has been filled and/or altered from the recent activities, particularly, as it relates to Wetland Area 1. Figure 1a in the January 7th report shows the condition in the vicinity of Wetland Area 1 prior to any of the recent disturbance within the 100 foot Upland Review Area (URA). It is clear from this figure that activities have taken place within the URA, particularly to the south, through clearing of forest, and that an assessment of the Wetland Area 1 should have been conducted to assess the ecology, particularly in regards to breeding amphibians.

3. **Item #7 pages 2 & 3:** Question: *What is the impact of the increased elevation of the roadbed on the migration of amphibians if Wetland 1 is a vernal pool or functions as a vernal pool?* As stated here and in our January 7th, 2010 report, the applicant has repeatedly failed to admit on the record that substantial impact within the URA of Wetland 1 has recently taken place, particularly to the south. Where once forest existed, now there is unvegetated fill (see Figure 1a in the 1/7/10 report and site plans). The taking down of the forest and the placement of fill so close to the wetland has without a doubt changed its physical characteristics both in water quantity and in water quality, including its temperature regime, all physical impacts. Trees on the south side of vernal pools and other forested seasonally flooded amphibian habitats are the most effective in shading these pools in the spring and early summer. Higher temperatures and exposure to sunlight result in increased availability of nutrients and algal growth, which degrades the habitat for forest inhabiting amphibians. Moreover, it is widely understood that clearing of forest releases nutrients through decomposition of root systems and lack of uptake by woody vegetation. This fact coupled with increased sunlight and exposure contributes to the degradation of water quality. The issue that Mr. Merriam has formed “the applicant cannot be required to prove the negative” is actually the applicant’s own doing since they have not provided a proper amphibian habitat study, including baseline water quality data, at the proper time of the year. The burden of proof is theirs. This is the reason that the only reasonable and effective mitigation to amend physical impacts would be to return the area within 80 feet of Wetland Area 1 to forest as quickly as possible. This mitigation would apply

whether Wetland Area 1 is a productive vernal pool or not. Should it be a productive vernal pool 100 feet of reforestation would be more appropriate.

4. **Item #8 page 3:** Question: *What is the likelihood that the amphibians observed in the vernal pool had traveled east prior to the most recent filling placed?* Applicant answer: *If any amphibians use Wetland 1, they have accommodated to the existing conditions on the site, which will remain substantially unchanged with the activity, except that certain wetland functions will be enhanced and water quality improved with the settling basin, all to the benefit of the wetland ecosystem flora and fauna.* JMM is not completely in agreement with Soil Science and Environmental Services, Inc. (SSES) response that any amphibians that are using Wetland Area 1 have accommodated to the existing conditions. It is and continues to be JMM's opinion that it is critical to assess the ecology of Wetland Area 1, particularly for amphibians in the Spring of 2010. The recent clearing and fill activities with the URA of Wetland Area 1 has in all likelihood adversely impacted the amphibian population. The extent of these impacts cannot be assessed until a more extensive investigation of the wetland and surrounding landscape is conducted.
5. **Page 6:** Question: *Is Wetland 1 a vernal pool?* As was discussed above and in our January 7th report an assessment of Wetland Area 1, particularly for amphibians should be conducted in the Spring of 2010. It is JMM's opinion that a statement from the applicant that there is or will be no significant adverse effects to Wetland Area 1 is premature, and conclusionary.
6. **Feasible and prudent alternatives:** It is JMM's opinion that there are other feasible and prudent alternatives, which were discussed in our January 7th report, which would reduce environmental impact. The current discharge pipe location for the infiltration basin unnecessarily impacts existing trees and shrubs and comes too close to Wetland Area 1. JMM proposes an alternative location that would follow along an existing pathway (see Figure 1c in JMM's January 7th report). Also the restoration of an area within 80 feet of Wetland Area 1 should be implemented to off set any indirect physical impacts to the wetland. In his summary statement (page 9) Mr. Merriam makes some statements that are not at all supported by the record at this time. For instance he claims that "the quality of the water entering the existing wetland system *will be improved*" (emphasis added), "all the flows on the site will be of the *same quantity* and will flow in essentially the *same pattern* as they do now" (emphasis added), and "the water quality after the development of the

proposed project *will be significantly better* than it is as the site exists without these project improvements (emphasis added). May we point out that the applicant has not produced any quantitative analysis to prove improvement of water quality at the site and, specifically, of its wetlands and watercourses. Moreover, a significant portion of the pre-existing (i.e. before the recent fill and deforestation) watershed to Wetland Area 1 has been already been impacted or, according to the plans, will be diverted around Wetland 1 to the vicinity of Wetland Area 2. Again, no quantitative data exists in the record to assess these issues. Therefore, the applicant cannot prove that there will not be any long-term adverse physical impacts to Wetland Area 1. As stated above, the burden of proof is theirs; they need to prove their conclusions with data analysis.

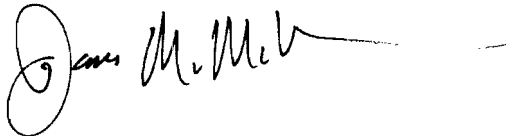
2.0 CONCLUSION

In conclusion, while the applicant has improved the plans with the recent revisions, there still remain significant issues that must be addressed to prove their alternative analysis. To reiterate, from our analysis of the existing data, plans, reports, and based on our field visits, it is our opinion that significant adverse impacts will occur, particularly to Wetland Area 1.

Please call us if you have any questions on the above or need further assistance.

Respectfully submitted,

JMM WETLAND CONSULTING SERVICES, LLC



James M. McManus, MS, CPSS

Certified Professional Soil Scientist (No. 15226)