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January 18, 2021

Elvis Dhima, P.E.  
Town Engineer  
Town of Hudson  
12 School Street  
Hudson, NH 03051

Re: Hudson Logistics Center - Conditional Use Permit  
Application Supplemental Filing

Dear Elvis:

Enclosed please find the following regarding the above project,  
along with requisite copies, which supplements our previous  
filings with the Conservation Commission:

- 1. Revised Conditional Use Permit Narrative;
- 2. Final Wetland Impact Plan;
- 3. Cul-de-sac configuration sketches;
- 4. Memo from Gove Environmental Services.

If you have any questions do not hesitate to contact me.

Very truly yours,  
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay  
JLP/sac  
Enclosures

cc: Hillwood Enterprises, LP (e-mail only)  
Langan (e-mail only)  
Gove Environmental Services, Inc. (e-mail only)  
John T. Smolak, Esq.

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CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

18 January 2021

**Via Email and U.S. Mail**

Town of Hudson Conservation Commission  
Attn: William Collins, Chairman  
12 School Street  
Hudson, NH 03051

RE: Hudson Logistics Center - Conditional Use Permit Application  
Supplemental Filing

Dear Chairman Collins and Commission Members:

This letter constitutes Hillwood Enterprises, L.P.'s ("Hillwood") final updated Conditional Use Permit analysis narrative in support of its proposed redevelopment of the Greenmeadow Golf Club into the Hudson Logistics Center (the "Project" or the "HLC"). As we note below, the Planning Board and Conservation Commission review process over the last several months has led to several adjustments to the plans which have further reduced proposed impacts to resources protected under the Town's Wetland Conservation Overlay District (the "District"). This filing also specifically incorporates all documents previously filed by Hillwood or its agents, to specifically include all reports and filings by Langan Engineering and Environmental Services ("Langan") on behalf of Hillwood, Gove Environmental Services, Inc. ("Gove") on behalf of Hillwood, and all filings by Lucas Environmental, LLC ("Lucas") on behalf of Hillwood.

Throughout the analysis below we refer to: 1) the updated Overall Site Plan previously filed with the Commission on 30 December 2020 (the "Site Plan"); 2) the Wetland Impact Plan<sup>1</sup>; and 3) the proposed Mitigation and Restoration Plan (the "Mitigation Plan") filed with the Commission on 30 December 2020.

**Executive Summary**

The Project, as designed and adjusted through the Planning Board and Conservation Commission review, avoids and minimizes impacts to the District and to wetland functions and values to the greatest extent possible, and it preserves the highest value wetlands and wildlife habitat on the Property. There are no alternate layouts that would further reduce impacts or better

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<sup>1</sup> See Enclosure 1.

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preserve high-value wetlands and wildlife habitats in light of the Project purpose. All of the District impacts are Access Impacts necessitated by the characteristics of the Property and, as designed, the Project avoids more significant impacts to more valuable wetlands associated with Limit Brook, the Merrimack River or their respective buffers. Additionally, significant restoration and compensatory mitigation is proposed by Hillwood that will offset Project impacts and advance the purpose of the Wetland Conservation Overlay District Ordinance.

## **Analysis**

### **1) Project Description and Foundational Avoidance and Minimization Efforts**

As we have discussed with the Commission, the Project purpose is to utilize the large contiguous area of uplands on the central and western portions of the site to accommodate the HLC, which will consist of approximately 2.6 million square feet (“SF”) of fulfillment center use spread across Buildings A, B and C, along with associated site improvements to include paved areas, stormwater management and screening. All three proposed buildings constitute core components of the HLC proposal which, collectively, make the project feasible. Though previously proposed as a consolidation and subdivision, Hillwood is now proposing a consolidation and condominium concept for the Project. Specifically, Hillwood proposes to consolidate a portion of Tax Map 234, Lot 34 with Tax Map 234, Lot 5 and Tax Map 239, Lot 1, which will collectively constitute approximately 375 acres (the “Property”). Lot frontage for the Property will be provided by Lowell Road.

Given the Project purpose and the size of the site, two access points are proposed to include Green Meadow Drive, which was formerly proposed as a public road but which is now proposed to be private, and a second access on the northern part of the Property from Walmart Blvd (the “Northern Access Road”). These access ways have been located to align with two existing signalized intersections on Lowell Road and to utilize existing easements created specifically for this purpose on adjacent properties. Avoidance and minimization of impacts in these areas has been carried out to the maximum extent practicable as described in the following sections.

The HLC will fill a critical need in the greater New England market for logistics centers, which need has been further exacerbated by COVID 19. The underlying Property is uniquely suited for accommodating this use. As evidenced in the following detailed description of the Project’s design parameters, there is very little flexibility for further modification to the design, which already avoids and minimizes wetland impacts to the greatest extent practicable.

All of the buildings and associated site improvements have been designed to minimize footprint to the greatest extent possible while still fulfilling the Project purpose. Buildings A and B, which are dedicated to Amazon’s use, constitute specific types of fulfillment centers which will address needs of the market in the greater New England area and they reflect the specific design parameters required by the nature of the facilities combined with applicable industry standards. These facilities are designed to fit their individual uses down to the very smallest of details.

Building C has been designed to promote flexibility and safety and meet the bare minimum industry standards for cross-dock facilities to address the growing market demand.

**a) Buildings A and B**

Buildings A and B are fulfillment centers that are proposed to be dedicated for Amazon's use. Fulfillment centers are facilities which are part of the e-commerce supply chain. Building A, which will be located on the northern side of the Property, will be a non-sortable fulfillment center which is designed to store large items that cannot be sorted into a box with other items.<sup>2</sup> When an order is placed for one of the items stored in Building A, employees will pick, pack and ship the same to other Amazon facilities further down the supply chain. Eventually, that item reaches the end-user, usually via a "last mile" facility. No inventory in Building A will be shipped directly to the customer.

Building B is also a fulfillment center which is designed to accommodate the storage of extra-large products, i.e., items like furniture or appliances, which are purchased by a household unit but very infrequently when compared to other retail consumer goods purchases.<sup>3</sup> Like the operation at Building A, when an order is placed for one of the extra-large items stored in Building B, employees will collect the product by mechanical means, such as a forklift, and place the product into a box truck for regional delivery to customers or delivery to other Amazon facilities further down the supply chain.

Both of these facilities have been specifically requested by Amazon to address the market demand of the greater New England area.

Buildings A and B are uniquely designed by Amazon to accommodate its specific fulfillment center use down to the smallest of details from an efficiency and safety perspective. Amazon has designed these facilities based on years of operational experience and each element of these facilities is specifically integrated and are interdependent. These buildings are prototypes which have been or are being developed by Amazon for these specific fulfillment center uses and are being built across the country in a substantially similar manner.<sup>4</sup> In this context, +/- 1,000,000 SF buildings are the industry standard for these types of Amazon fulfillment centers.

The specific designs for each of these facilities is the result of painstaking and comprehensive engineering and logistical analysis processes utilized to produce building templates that maximize efficiencies of scale, accommodate the many multi-layer inter-related systems, processes and technology/equipment which are integral to their operation, and that promote the safety of employees and vendors alike. All details including the size and orientation of the buildings themselves and their interior configurations vis-à-vis racking (storage) areas, office use, and protected staff areas, their proposed vehicle and trailer parking configurations, the number of

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<sup>2</sup> Building A is referred to as a "TNS."

<sup>3</sup> Building B is referred to as an "XLFC."

<sup>4</sup> By way of example, Amazon is currently developing approximately 18-20 TNS buildings across the country and 5 XLFCs.

loading docks, and the proposed traffic patterns servicing the facilities, are designed to suit the specific needs and nature of the individual facilities. As a result, even minor changes to those designs and configurations could compromise the overall design and operation of the facility in light of the overlapping nature and interdependency of facility operations.

Given these design constraints, there is tolerance down to an incredibly small scale regarding the construction parameters and very little room, if any, for deviation from, or significant modification to, the design for Buildings A and B.

However, the same engineering and design efforts which produced the prototypes proposed as Buildings A and B in the HLC, also minimize to the extent possible the footprint of these buildings and associated site improvements in the name of efficiency and safety, principles that Hillwood applied to the design for Building C. The result is a global design for the site that both accomplishes the Project purpose with the smallest footprint and most minimal impact to wetlands possible, and aligns itself with the letter and spirit of the State and local wetland regulations. The proposed developed area ratio is far less than a typical logistics center, which is the result of a direct effort to minimize and avoid impacts to the regulated areas.

For example, while the physical dimensions of Building A cannot be modified, every effort has been made to minimize the footprint of its corresponding pavement and site improvements. Specifically, Building A only proposes 1,008 car parking stalls. This parking stall proposal is considerably less than the number of parking spaces required under the Town of Hudson's Site Plan Review Regulations for industrial uses.<sup>5</sup> In fact, 1,798 parking spaces are required for Building A under the Town's regulations, an excess of 790 spaces (44%) above what Hillwood has proposed. Additionally, Hillwood is seeking a waiver from the Hudson Planning Board to utilize 9' x 18' parking stall dimensions across the whole site instead of the 10' x 20' dimensions required by the Town's Site Plan Review Regulations, which will further reduce impervious surface and project footprint.

Building B, which is approximately the same size as Building A, proposes only 380 parking stalls where 1,670 stalls are required by the Town of Hudson and similarly proposes reduced-size stalls. Building B can accommodate this reduced parking footprint by virtue of its nature as a fulfillment center, which, as discussed above, will house extra-large items which have a reduced shipping frequency. The nature of Building B requires less employees and less truck trips than Building A, which is why it has been designed in a manner to limit, to the greatest extent practicable, its footprint.

#### **b) Building C**

Building C is designed as a cross-dock building. This type of building is the most commonly desired (and in highest demand) for distribution facilities as they afford significant flexibility for multi-tenant or larger industrial tenant operations. Cross-dock buildings provide

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<sup>5</sup> See Hudson Site Plan Review Regulations, §275-8(C)(2)(g).

loading/staging areas adjacent to the dock doors and warehouse/racking areas in the interior of the building. Cross-dock buildings should not be confused with terminal buildings. Each building type has dock positions on either side of the building but terminal buildings are often located very close to major air, water, and land ports for the temporary housing of incoming goods until they are picked up by ground handlers and taken to regional distribution centers further inland. Terminal buildings do not provide warehouse/racking areas and are typically only 100 to 120 feet in depth.

As opposed to their single-load counterparts, cross-dock facilities are better-situated to meet the existing market demand for logistics buildings, better situated to maximize flexibility, promote safety, attract the best possible tenants, and are better situated to provide long-term financial stability and tax base for the municipalities in which they are located. Further, Building C is designed to meet only the bare minimum dimensional standards for a cross-dock facility so to avoid and minimize its impacts to the greatest extent practicable while still filling a critical market need and meeting the Project purpose.

Cross-dock logistics facilities are in critical demand. That demand has considerably depleted the inventory of these types of facilities in the greater New England area, particularly in the age of COVID-19 which caused widespread shortages of everyday household commodities and food supplies and which underscored the need for enhanced logistics models as a back-up to traditional brick and mortar retail options. Costar data suggests that as of the fourth quarter of 2020, the approximately 74 million SF of warehouse type industrial inventory in the Boston Consolidated Metropolitan Statistical Area is just 5.4 percent vacant, which is a near 20-year low. This figure compares with an 8.8 percent average vacancy rate over the preceding 10 years.

Cross-dock facilities are designed to maximize flexibility and efficiency in the rapidly growing e-commerce industry by implementing the latest logistics science trends to include: 1) clear heights of 40+ feet, 2) more efficient loading dock configurations and column spacing/bay depths which results in more dense and efficient pallet rack position design, and 3) efficient separation of inbound and outbound shipping traffic which promotes the highest possible operational safety for employees and vendors inside and outside the building. Because Building C's design maximizes efficiency and promotes the highest degree of flexibility, it will appeal to the largest cross-section of top-tier potential tenants, will stay leased longer, and, if ever vacant, will stay vacant for a shorter period of time. As proposed, Building C's design will provide the highest degree of certainty and stability for the Town and Hillwood alike.

In light of the demand for cross-dock logistics buildings, a significantly larger building than what is proposed for Building C would be more optimal. However, acknowledging the nature of the site and the value of the Limit Brook wetlands to the east, rather than propose a building which would cause considerably more wetland impacts, Hillwood is proposing a facility which meets only the bare minimum dimensional standards for cross-dock facilities. As a result, Building

C avoids and minimizes its impacts to the greatest extent practicable while meeting a critical market need.<sup>6</sup>

The table below depicts the relevant industry standards for cross-dock facilities like Building C as well as Building C's corresponding design criteria.

Standard	Provided	Notes
Minimum width of 400' to enable enough internal space to service trailers on both sides of the building and storage between the loading areas	400' provided	Width is the critical variable on this due to the arrangement of wetlands. Building length does not affect wetland impact. Building C's width reflects the minimum to support the dual-load use.
Minimum of 205' wide shared loading bay/truck court	200'	Less than the minimum width for shared loading/truck court is proposed and proposal includes shared parking which allows 5' reduction.
Minimum Turning Radii on site of 40'	60'	Varies depending on truck size. Greater turning radius is necessary in certain locations for safety considering shared truck and employee vehicle use of circulation areas.
Minimum drive width of 40'	40'	Building C proposes only the minimum drive width with the exception of the wetland crossing areas, which further reduces the drive width to 36' to further minimize wetland impacts.

As depicted above, with regard to the industry design criteria which is most critical in the context of wetlands impacts on this site, Building C proposes the minimum width to accommodate the cross-dock use. Further, Building C proposes the industry minimum standards, or less, for all of the design criteria aside for the minimum turning radii on site, and the deviation in that context is related exclusively to safety considerations in light of the shared nature of the accessways by trucks and employee vehicles.

Further, like Buildings A and B, Building C proposes significantly less parking stalls, and smaller parking stalls, than what is required under the Town's Site Plan Review Regulations. Specifically, where 870 10' x 20' parking stalls are required by the Town, only 418 9' x 18' parking stalls, less than half of what is required, are proposed by Hillwood.

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<sup>6</sup> *NAIOP Rule of Thumb for Distribution/Warehouse Facility Design*, Second edition, NAIOP – Commercial Real Estate Dev. Group, content by HPA, Inc.

## 2) Proposed District Impacts and Scope of Conditional Use Permit Relief

Permitted conditional uses within the District include the “construction of streets, roads, and other access ways, including driveways, footpaths, bridges and utilities if essential to the productive use of land beyond the [District] . . .” (the “Access Impacts”)<sup>7</sup> and “other uses” where said use will not significantly interfere with wetland functions and values, water quality, or wildlife habitat or, in the alternative, where such uses will impact wetlands functions and values but, in the opinion of the Planning Board, are not contrary to the public interest and will result in significant public benefit provided compensatory mitigation is provided and the applicant has demonstrated avoidance and minimization to the fullest extent practical” (the “Lot Development Impacts”).<sup>8</sup> In addition to the criteria contained within § 334-36(C), the general Conditional Use Permit criteria are outlined in § 334-37 and will be addressed below.

In this case, all of Hillwood’s proposed impacts are Access Impacts because they all pertain to the “construction of streets, roads, and other accessways, including driveways . . .”<sup>9</sup> As a result, a Conditional Use Permit for Access Impacts is sought for a total of 233,869 SF (55,525 SF wetland and 178,344 SF Buffer) caused by 14 discrete impact areas within the District<sup>10</sup>, as defined by the Zoning Ordinance.<sup>11</sup>

Over 72 percent of total impacts (45,574 SF wetland and 122,218 SF Buffer) are caused by Green Meadow Drive and the corresponding cul-de-sac.<sup>12</sup> Nearly 11 percent of the total impacts (9,366 SF wetland and 16,235 SF Buffer) are caused by the Northern Access Road.<sup>13</sup> The remaining impacts, constituting approximately 17 percent of the total impacts, are impacts caused by the primary driveway serving Building A (333 SF wetland and 6,767 SF Buffer),<sup>14</sup> the primary driveway serving Building C (252 SF wetland and 11,836 SF Buffer)<sup>15</sup> and the relocation<sup>16</sup> of a portion of Steele Road (0 SF wetland and 21,288 SF Buffer)<sup>17</sup>.

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<sup>7</sup> Zoning Ordinance, § 334-36(C)(2).

<sup>8</sup> Zoning Ordinance, § 334-36(C)(4). In an abundance of caution, and to account for the possibility that the Conservation Commission or Planning Board does not interpret Impacts 2, 3, 5, 7 and 8, which were previously identified as Lot Development Impacts on the Wetland Impact Plan, as Access Impacts, Hillwood will also analyze those impacts pursuant to the criteria contained in § 334-36(C)(4). These impacts represent only 585 SF of wetland impact and 39,891 SF of buffer impact, which collectively constitute only 17.3% of the total proposed impacts.

<sup>9</sup> Zoning Ordinance, § 334-36(C)(2); Wetland Impact Plan.

<sup>10</sup> See Wetland Impact Plan, Impact Areas A – H, 1, 2, 3, 5, 7, 8.

<sup>11</sup> Zoning Ordinance, §334-35(A) defines the boundaries of the District as inclusive of all surface waters, wetlands of any size, and a 50-foot buffer around wetlands and surface waters (hereinafter the “Buffer”).

<sup>12</sup> See Wetland Impact Plan, Impacts A – H.

<sup>13</sup> See Wetland Impact Plan, Impact 1.

<sup>14</sup> See Wetland Impact Plan, Impact 2.

<sup>15</sup> See Wetland Impact Plan, Impacts 3, 8.

<sup>16</sup> Due to a question regarding the potentially public nature of a portion of Steele Road on the Property, Hillwood proposes to relocate the same in a manner which will facilitate access to the Merrimack River and will utilize the process outlined in RSA 231:8 *et seq* to do so.

<sup>17</sup> See Wetland Impact Plan, Impacts 5, 7.



While the District does not include “manmade facilities”,<sup>18</sup> the Wetland Impact Plan also depicts three manmade ponds (golf course water features) totaling 42,096 SF which will be impacted by the Project. No conditional use permit is required for these impacts from the Planning Board pursuant to Section 334-35(C) of the Zoning Ordinance. These impacts will be addressed, however, pursuant New Hampshire Department of Environmental Services (“NHDES”) review and permitting process.

Notably, through its collaboration with the Town and Conservation Commission, Hillwood has significantly reduced the proposed District impacts. Specifically, Hillwood has reduced total wetland impact within the District by over 20% (a 13,924 SF reduction) from 69,449 SF to 55,525 SF. Similarly, Hillwood has reduced proposed Buffer impacts by approximately 21% (a 47,369 SF reduction) from 225,713 SF of proposed Buffer impact to 178,344 SF of impact. The plan modifications at the root of these reductions, discussed below, have maximized the avoidance and minimization of impacts caused by the Project.

### **3) Use-Specific Conditional Use Permit Criteria: Access Impacts (Section 334-36(C)(2))**

As all of the impacts proposed by Hillwood are Access Impacts, below we address the individual Conditional Use Permit criteria of Section 334-36(C)(2) of the Zoning Ordinance

Pursuant to Section 334-36(C)(2) of the Zoning Ordinance, streets, roads, and other access ways are permitted as conditional uses if: 1) the access way is essential to the productive use of the land beyond the District; 2) the access ways are located and constructed in such a way as to minimize the potential for detrimental impact to the District; 3) the access ways are planned, designed, and constructed in a manner consistent with applicable State and local standards; and 4) there are no viable alternatives available.

The proposed Access Impacts can be categorized into two groups to include: 1) impacts caused by Green Meadow Drive and the Northern Access Road, which collectively provide access to the HLC from Lowell Road, and 2) the remaining Access Impacts which are caused by the driveways serving Buildings A and C and the relocation of Steele Road.

As detailed below, Green Meadow Drive and the Northern Access Road have been designed to avoid District impacts wherever possible, and where unavoidable, to minimize said impacts. The remaining Access Impacts to the western edge of the District are fundamentally necessitated by the size of the proposed buildings. As indicated above, however, and as a foundational assertion, the size of the buildings, and the impervious area of their corresponding site improvements, cannot be further reduced without eliminating the Project purpose. Specifically, Buildings A and B have been designed in a manner consistent with the TNS and XLFC prototypes that are being built and operated by Amazon across the country in addition to

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<sup>18</sup> See § 334-35(C) (“The Wetland Conservation Overlay District shall not include those wetlands which have developed as a result of the construction of storm water treatment and/or detention facilities, agricultural use, waste treatment, or other water dependent structures or uses, *and manmade facilities*”) (emphasis added).

industry standards. Building C is the minimal width required to accommodate a cross-dock facility like the one proposed and is considerably smaller than what the market is currently demanding. Every effort has already been taken to minimize the parking requirement and the size of parking stalls for HLC buildings to reduce, to the greatest extent possible, additional impervious footprint and District impacts. Further, simply pushing Buildings A and C to the west to avoid Impact Areas 2, 3, 5, 7 and 8 would result in unacceptable impacts to the Merrimack River and corresponding Protected Shoreland, and there are no more minor adjustments which could further minimize impacts, due to the extensive slope grading needed to create a level building pad.

In addition to these considerations, the Project meets the specific criteria within Section 334-36(C)(2) of the Zoning Ordinance, as indicated below:

**a) The Access Impacts are essential to the productive use of land beyond the District.**

The District impacts proposed are essential to the productive use of land beyond the district.

First, the provision of two separate access ways onto the Property is critically important from a planning and emergency response standpoint. With two access ways, the Project's anticipated traffic is distributed across two intersections instead of one, the traffic flow within the HLC is far more efficient and accommodating for truck and vehicle traffic alike, and in the event one access way becomes blocked or unpassable, HLC employees, vendors, and Town emergency response personnel alike will still be able to access and egress the site.

Acknowledging these access requirements, the vast majority of the entire eastern portion of the Property is burdened by wetlands and nearly the entire central and western portions of the Property are contiguous uplands perfectly suited for the HLC.<sup>19</sup> There is no way to access the upland area without going through the eastern portion of the Property via Green Meadow Drive and the Northern Access Road, both of which utilize easements over adjacent properties.

The impacts caused by the driveways serving Buildings A and C<sup>20</sup> are also essential. The Building A driveway serves as the primary access to Building A and facilitates a direct connection between the Northern Access Road and the cul-de-sac, which provides access to the rest of the site. This connection is critical from an emergency response perspective. The Building C driveway provides exclusive access to Building C from the cul-de-sac and is therefore self-evidently essential.

The relocation of Steele Road to the south is required and will provide critical access to the Merrimack River to the Town for the Town's Fire Department for fire suppression, and potentially other public purposes yet to be confirmed.

These impacts are essential because they cannot be avoided and, as described in greater detail below, Hillwood has minimized these impacts to the greatest extent possible.

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<sup>19</sup> See Site Plan.

<sup>20</sup> See Wetland Impact Plan, Impacts, 2, 3, 8.

**b) The Access Impacts are located and constructed in such a way as to minimize the potential for detrimental impact.**

As discussed below, Hillwood's design for the Project avoids impacts to Priority Resource Areas like Limit Brook and other high-value wetlands entirely, while proposing unavoidable impacts to lower value wetland, all to provide access to the Property's uplands.

**i. Green Meadow Drive and the Northern Access Road**

As depicted on the Site Plan, Green Meadow Drive utilizes only a short portion of the existing Mercury Systems driveway over an easement to limit interference with the private driveway and parking areas for Mercury Systems. Green Meadow Drive then follows the existing developed Mercury Systems site as closely as possible while maintaining road width and configuration for safe line-of-site and turning radius. Impacts in this location are thereby minimized by locating impacts at the wetland edge along existing development, which avoids potentially greater impact to wetland function and values through segmentation. Steeper grading has also been incorporated along this section of the roadway. Green Meadow Drive then utilizes uplands and is aligned to cross the narrowest point of the main wetland (Impact Area F), thus avoiding a much more substantial impact that would be incurred by crossing the main wetland just to the north.

Regarding Impact Area F on Green Meadow Drive, and although that wetland area is not a stream, Hillwood has amended its original proposal for this crossing area to maximize connectivity. Specifically, rather than a 24-inch culvert that was originally proposed, Hillwood now proposes as 22-foot wide by 3-foot high open bottom precast structure which meets the openness guidelines for wildlife passage, even though they do not technically apply. This approach will facilitate maximum wildlife movement between wetlands to the north and the ponds associated with Limit Brook to the south, as confirmed by Curtis R. Young, PWS, CWS in his Wildlife Habitat Evaluation (the "Wildlife Report").<sup>21</sup> The use of wing walls at either end of the structure has also allowed the width of the crossing to be further reduced.

The Northern Access Road utilizes an existing easement along Sam's Club driveway to gain access to the Property at the northeast corner. The road utilizes uplands and a straight alignment to the narrowest portion of the wetland where a single crossing is proposed (Impact Area 1). This crossing will utilize 11-foot high retaining walls for the length of the proposed impact to avoid additional impacts due to slope grading. Like the crossing on Green Meadow Drive, a very large 12-foot wide by 5.5-foot high open bottom precast structure is also proposed for the crossing to minimize any potential impacts to stream and wetland connectivity.<sup>22</sup>

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<sup>21</sup> See Wildlife Report, Section 5 and 5.1.

<sup>22</sup> See Wildlife Report, Section 5 and 5.1.

Additionally, Hillwood has committed to using sloped curbing along appropriate stretches of Green Meadow Drive which will better-facilitate wildlife crossings.

The design approach employed with regard to Green Meadow Drive and the Northern Access road ensures they will be located in a manner, and constructed, to minimize to the greatest extent possible, impacts to wetlands and related resources in the District.

## **ii. Remaining Access Impacts**

The remainder of the Access Impacts are unavoidable because they facilitate access to Buildings A and C for employees and vendors alike, facilitate access to all three buildings by emergency responders, facilitate the connection between the Northern Access Road and Green Meadow Drive, and facilitate the required relocation of a portion of Steele Road, which will facilitate Town access to the Merrimack River. These impacts pertain to the western edge of the District and are primarily impacts to the Buffer, as only 585 SF of wetland impact is proposed.<sup>23</sup>

Like the impacts related to Green Meadow Drive and the Northern Access Road, these remaining Access Impacts have been avoided to the greatest extent possible and Hillwood is proposing significant offsetting mitigation. Ultimately, no significant impacts to wildlife or wildlife habitat, including unique or rare wildlife habitat types, are proposed by the Project and Hillwood's proposed restoration of existing golf course areas will fully mitigate the impacts that are caused.<sup>24</sup>

### **c) The Access Impacts are planned and designed, and will be constructed, in manner consistent with applicable state and local standards.**

Green Meadow Drive, the Northern Access Road, and the remaining Access Impacts will comply in all respects with the Town's Site Plan Review Regulations and all other applicable regulations. Further, the Project is subject to and will comply with its anticipated State Dredge & Fill Wetlands Permit and Alteration of Terrain Permit, as well as any other applicable State or federal requirements.

### **d) There are no viable alternatives.**

#### **i. Site Alternatives**

First, from a site perspective, there are no viable alternatives. In New England, considering property values, construction costs and disperse population centers, there are precious few sites that can reasonably accommodate a fulfillment center use in an economically practical way, despite the increasing market demand for same. The Property is unique in its ability to meet the critical requirements for a development like the HLC.

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<sup>23</sup> See Wetland Impact Plan, Impacts 2, 3.

<sup>24</sup> See Wildlife Report, Section 5.0, pg. 12, Section 8.0, pg. 21.

More specifically, the Property has been zoned to accommodate the proposed use for decades and was very recently, in 2018, the subject of a Zoning Ordinance amendment adopted by the Town Meeting to permit building heights up to 50-feet on the Property, where the building height was previously limited to 38 feet, all to accommodate industrial uses such as that proposed by the HLC and attract quality economic development opportunities to Hudson. Additionally, the Property is in very close proximity to major roads and highways and, as a result, traffic impact to the local community has been minimized. Finally, a significant potential workforce exists nearby which Hillwood anticipates will support the HLC. Considering the unique scale and nature of the Project, its related requirements, and the Property itself, there are no other viable sites reasonably available which could be used to achieve the project's purpose with less impact to wetlands or wetland function and value.

## **ii. Access Impacts Alternatives**

Regarding the Access Impacts proposed, as described above, Green Meadow Drive and the Northern Access Road are essential to access the site and have been designed to avoid impacts to the greatest extent possible, and where impacts are unavoidable, to minimize and mitigate those impacts to the greatest extent possible. The only current access to the site via Steele Road is not a viable alternative to provide primary access for the HLC for a variety of reasons including traffic consideration at its intersection with Lowell Road, its route through a residential neighborhood, the nature of the traffic that will enter the site including truck traffic, and the fact that Steele Road crosses Limit Brook and a Priority Resource Area. There simply are no viable alternatives to these primary access ways.

The same is true with regard to the remaining Access Impacts which are essential to the operation of the site as described above.

## **iii. Cul-de-Sac Alternatives**

There are also no viable cul-de-sac alternatives. The proposed configuration was chosen as it provides the most efficient and safe way for both trucks and cars to navigate the 4-way intersection while fulfilling the Project purpose. Impacts at this location have been further minimized beyond Hillwood's first proposal, by shifting the cul-de-sac north and by reducing its size.

Flexibility to alter the design of the cul-de-sac further is constrained by a number of factors. As discussed in greater detail above, the size of the buildings and their associated paved areas have been carefully designed to the specifications of Amazon and industry standards (Buildings A and B) and to accepted minimum industry standards for a cross-dock facility (Building C). Further changes to the buildings or their supporting parking and loading docks is not feasible as it would not achieve the Project purpose and would compromise the fulfillment center use. The buildings have already been carefully placed on the site to avoid impacts to valuable wetland resource areas both east and west of the development area as well as to provide adequate buffer and screening to

the residential properties to the south. Further, significantly less parking than what is required by the Town's Land Use Regulations for industrial uses is proposed and Hillwood is proposing use of 9' x 18' parking stalls instead of the required 10' x 20' stalls as an additional measure to reduce impervious surfaces. Altering the location of the buildings any more would result in greater impacts to wetlands and wetland function and values elsewhere on the Property.

Alternatives for the location and configuration of the cul-de-sac are therefore limited. The enclosed plans provide an analysis of several alternative configurations, including a four-way intersection with a stop in all directions, shifting the cul-de-sac west, and shifting the cul-de-sac north.<sup>25</sup> These plans depict the effect of the proposed impact that are occasioned by each option and the design issues that each would introduce. The context of the cul-de-sac within the development is a critical aspect of the analysis. This intersection will connect all three of the primary internal circulation roads to the Green Meadow Drive, which is the Project's main access. The intersection will also be utilized by both large trucks and employee vehicles alike, making considerations such as traffic flow, turning radius, driveway approach angles and separation, and line-of-site particularly important for safe and efficient operation. Because the connector roads must meet at an intersection by definition, the location of the cul-de-sac does not necessarily reduce wetland impact associated with roadway alignment, particularly at the southern branch of the intersection. The feasibility of each option analyzed is discussed below.

#### Four Way Stop Intersection Alternative<sup>26</sup>

A four-way intersection with stop in every direction is far less efficient and safe than the roundabout configuration proposed. Furthermore, this configuration does not reduce State jurisdictional wetland impact and only reduces buffer impact by approximately 150 SF. The intersection also creates more impervious area that would have to be treated, placing additional demands on the stormwater design. For all these reasons, a four-way stop intersection is not a practicable option because, among other things, it does not further reduce, avoid or minimize the proposed impacts.

#### Cul-De-Sac Shifted West Alternative<sup>27</sup>

Shifting the cul-de-sac west could theoretically avoid approximately 900 SF of direct wetland impact but creates several design and safety deficiencies that are unworkable. The efficiency and safety of the roundabout would be affected by shorter approach angles, lengths and tighter turning radii. This is of particular concern due to the shared use of the road by trucks and employee vehicles. Shifting the cul-de-sac west also severely impacts several stormwater management features. For these reasons, while shifting the cul-de-sac west avoids some direct wetland impact, it compromises safety and prohibits the Project purpose and is therefore, not practicable.

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<sup>25</sup> See enclosed cul-de-sac configuration sketches.

<sup>26</sup> Id.

<sup>27</sup> Id.

#### Cul-De-Sac Shifted North Alternative<sup>28</sup>

Shifting the cul-de-sac north would increase wetland impacts, primarily due to the main wetland crossing being pushed into a wider portion of the wetland. The efficiency and safety of the resulting intersection is also severally affected by approach angles and several very tight turning radii. Stormwater management and parking would also be impacted. For these reasons, a northern shift is not a feasible option because it does not further reduce, avoid or minimize the proposed impacts.

#### Cul-De-Sac Shift South Alternative<sup>29</sup>

Shifting the cul-de-sac to the south cannot both further avoid and minimize wetland impact and provide legitimate and safe access to serve the Project purpose. As described above, Green Meadow Drive utilizes an existing easement to access the uplands on the Property. As designed, on the far eastern portion of the Property, Green Meadow Drive crosses the wetlands at their narrowest area (Impact Areas B and C). Green Meadow Drive then bends to the south slightly before heading northwest through additional wetlands at Impact Areas F and G, again, specifically designed to occur at the narrowest points of the wetlands. While redesigning Green Meadow Drive to curve south from the southern side of Impact Areas F and G may help avoid what is currently depicted as Impact Area H, the area of the proposed cul-de-sac, it would create similar wetland impacts to the south, and would also create turning radii that are too tight and impractical approach lines from a safety perspective. This approach would not be adequate for the Project purpose. There simply is not a practical way to cross the wetlands on the eastern portion of the Property at their narrowest points and simultaneously relocate the cul-de-sac to the south in a manner that further avoids and minimizes wetland impact and provides access that can serve the Project purpose.

#### Proposed Cul-De-Sac Design<sup>30</sup>

The proposed cul-de-sac layout is the best design to facilitate the access to the site in a manner that avoids and minimizes wetland impacts to the maximum extent practicable. The design facilitates long, straight approach drives, adequate separation of approaches, large distance between drive connections and the cul-de-sac, large turning radii, functional stormwater management and appropriate parking. Considering the Project purpose, significant changes to the size of the development is not possible. Alternative configurations that utilize existing space can only achieve minimal, if any, reduction in impact but also create unacceptable traffic flow problems and/or compromise the Project purpose, and are therefore not feasible options. Unavoidable wetland impacts have been minimized to the greatest extent practicable considering cost, logistics and the overall project purpose.

Under the circumstances of this case, Hillwood meets the specific conditional use permit criteria of Section 334-36(C)(2) of the Zoning Ordinance applying to the Access Impacts, and a Conditional Use Permit should be approved.

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> See Site Plan.

**4) Use-Specific Conditional Use Permit Criteria: Lot Development Impacts (Section 334-36(C)(4))**

In an abundance of caution, Hillwood undertakes the analysis under Section 334-36(C)(4) in the event that either the Conservation Commission or Planning Board interprets Impacts 2, 3, 5, 7 and 8 as Lot Development Impacts.<sup>31</sup>

Pursuant to Section 334-36(C)(4), Lot Development Impacts are permitted as conditional uses where the applicant can demonstrate that: 1) the use will not significantly interfere with wetland functions and values, water quality, or wildlife habitat pursuant to the statement of purpose of the Zoning Ordinance, or 2) in the alternative, the use will impact wetlands functions and values; but, in the opinion of the Planning Board, such uses are not contrary to the public interest and will result in significant public benefit provided:

Compensatory mitigation is provided such that those District functions and values to be impacted will be off-set in whole. Such mitigation may be located on or off site. As a guide to the type and extent of compensatory mitigation considered, reference shall be made to the New England District Compensatory Mitigation Guidance, US Army Corps of Engineers, New England District, Regulatory Division, 7-22010 as amended; and

Hillwood has demonstrated avoidance and minimization to the fullest extent practical.<sup>32</sup>

In this case, if interpreted as Lot Development Impacts, Impacts 2, 3, 5, 7 and 8 collectively constitute approximately 17 percent of the total impacts proposed and, as designed, meet both standards under Section 334-36(C)(4) as indicated below.

- a) The Lot Development Impacts will not significantly interfere with wetland functions and values, water quality, or wildlife habitat pursuant to the statement of purpose of the Zoning Ordinance.**

First, Impacts 2, 3, 5, 7 and 8 will not significantly interfere with wetland functions and values, water quality or wildlife habitat.

To start, these impacts relate primarily to critical roadways within the HLC and the relocation of a portion of Steele Road, as described above. Further, the Lot Development Impacts are located on the very western edge of the District, as it transitions to approximately 200 acres of uplands, in close proximity to land which has been utilized for a golf course for several decades.

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<sup>31</sup> See Wetland Impact Plan.

<sup>32</sup> Zoning Ordinance, § 334-36(C)(4).



Only 1.5 percent of the Lot Development Impacts (585 SF)<sup>33</sup> pertain to wetlands. The remaining 98.5 percent (39,891 SF) are grading impacts to the Buffer.<sup>34</sup>

The proposed Lot Development Impacts will not significantly interfere with the wetland functions and values of the wetlands involved. At Impact Area 2, grading will impact the tip of a narrow finger of wetland and associated forested buffer extending from the main body of the wetland. The functions and values associated with this wetland are overwhelmingly supported in the main body of the wetland and its wooded buffer which will otherwise remain intact in this area. Furthermore, the area of proposed grading impact will be restored using native seed, shrub, and tree species and will be allowed to naturalize. This area will develop to support the same functions and the disturbed areas. The majority of the remaining proposed impacts are associated with grading in areas of maintained golf course turf, only 252 SF of which is wetland (Impact Areas 3, 5, 7 & 8). These grading impacts will also be restored using native seed, shrub and tree species and allowed to naturalize. This will actually enhance wetland function and value by providing a naturally vegetated buffer where one currently does not exist. The relatively smaller proposed impact to naturally vegetated buffer at Impact Area 7 will have negligible effect on wetland functions and values. These areas consist of early successional growth that will be quickly replicated by the proposed restoration and support the same functions. The restoration and naturalization of other areas of currently degraded wetland buffer outside of the proposed impact areas along the eastern side of the development will result in an overall improvement in wetland function and value.

The Lot Development Impacts will not interfere with water quality either. The proposed stormwater management system will capture and treat all runoff from the development, including the very small portion of actual driveway proposed within the District. The stormwater management system will therefore be the primary protection against water quality degradation. The remaining impacts along the eastern side of the development are essentially temporary as they are associated with grading which will be naturally revegetated following construction. These restored buffer areas will have nearly identical function with respect to water quality. Together with the restoration and naturalization of wetland buffer outside of the proposed impact areas, water quality functions supported by the Buffer and wetlands should be will be greatly enhanced overall.

Finally, the Lot Development Impacts will not significantly interfere with wildlife, or wildlife habitat, which conclusion is consistent with the findings of the Wildlife Report:

[Lucas] has analyzed critical aspects to the overall design of the Project to assess whether there are impacts to wildlife habitat within the District as required by the criteria established by the Wetlands Ordinance. As demonstrated above, there will be no significant impacts to important wildlife habitat. Further, concerns related to habitat connectivity, sound, lighting and specific wildlife species have been

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<sup>33</sup> See Wetland Impact Plan, Impacts 2, 3.

<sup>34</sup> See Wetland Impact Plan, Impacts 2, 3, 5, 7 and 8.

addressed and fully mitigated. The portions of the District within the maintained golf course do not significantly contribute to wildlife habitat function within the Property currently.<sup>35</sup>

- b) In the alternative, should the Conservation Commission or Planning Board determine that the Lot Development Impacts will significantly impact wetlands functions and values, such impacts are not contrary to the public interest and will result in public benefit because Hillwood has proposed considerable compensatory mitigation and demonstrated avoidance and minimization to the fullest extent practical.**

While minor impacts on the wetland functions and values are proposed by virtue of the Lot Development Impacts, they are not contrary to the public interest, and the Project will result in significant public benefit in the form of significant compensatory mitigation. Further, Hillwood has demonstrated avoidance and minimization to the fullest extent practical.

- i. The Lot Development Impacts are not contrary to the public interest.**

First, Hillwood's proposed Lot Development Impacts are not contrary to public interest because they are consistent with the stated purpose of the Wetland Conservation Overlay District which is to "protect the health, safety and general welfare of the public by promoting the most appropriate use of land and by protecting wetland and surface water ecosystems and water quality in accordance with the goals and objectives of Hudson's Master Plan."<sup>36</sup> Here, despite a 375 acre site and 2.6 million square feet of proposed fulfillment center use, the Project only contemplates a little more than an acre (55,525 SF) of wetland impact, the vast majority of which is caused by access to the site. The impact to the District has been minimized to the greatest extent possible, as discussed above, which promotes the reasonable and appropriate use of the Property consistent with the Ordinance.

- ii. The Project will result in a public benefit because Hillwood has proposed considerable compensatory mitigation and demonstrated avoidance and minimization to the fullest extent practical.**

Hillwood proposes to convey a conservation easement to the Town of Hudson which will cover approximately 120 acres of land, nearly a third of the Property.<sup>37</sup> Included in this area is the entire 250-foot Protected Shoreland along the Merrimack River as well as the majority of the land east of the development, including Limit Brook, its associated wetlands, and upland buffers. Hillwood's proposed conservation easement will ensure permanent protection of these sensitive ecological areas. The proposed preservation area alone is more than 129 times the proposed Lot

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<sup>35</sup> See Wildlife Report, Section 8, pg. 21.

<sup>36</sup> See Zoning Ordinance, §334-33.

<sup>37</sup> See Mitigation Plan.

Development Impact or more than 6 times the preservation that would be required under the US Army Corps of Engineers Compensatory Mitigation Guidance at the relevant 20:1 ratio.<sup>38</sup>

In addition to Hillwood's proposed preservation, additional mitigation is also being provided through restoration of approximately 40 acres of the future conservation area, currently consisting primarily of managed golf course turf, using native seed, shrubs, and trees.<sup>39</sup> The proposed restoration focuses on revegetating riparian areas, wetland buffers, and other uplands surrounding the primary wetland systems on the site, some of which have been devoid of a natural buffer for upwards of 90 years, and will remove approximately 25,761 SF of impervious surfaces (golf cart paths) within the Protected Shoreland along the Merrimack River. Additional details of the restoration planting are provided on the landscaping plan sheets previously provided to the Town. The revised landscaping plans substantially improve upon the content and detail that was provided in the initial submission. The diversity of species has been broadened after close collaboration with the Town's Conservation Commission and more detail has been added on plant placement and intent within the three planting zones, namely the 250-foot Protected Shoreland, wetland buffer areas, and the remaining uplands.

Additionally, Hillwood will implement Best Management Practices to mitigate short-term noise impacts caused by construction and incorporate sound mitigation that complies with State and local requirements to address a slight increase in ambient sound once the Project is complete.<sup>40</sup> Further, lighting will be shielded where adjacent to the Shoreland Protection Zone and proposed conservation easement areas to minimize impact to wildlife and lighting will be adjusted at the proposed wetland crossing for Green Meadow Drive (Impact Area F) and the Northern Access Road (Impact Area 1) to encourage use of the large open bottom culvert structures.

All of these forms of mitigation are in addition to Hillwood's contribution to the State of New Hampshire's Aquatic Resources Mitigation Fund<sup>41</sup> (the "ARM Fund") pursuant to Hillwood's State Dredge & Fill Permit. Hillwood's ARM Fund contribution is oriented towards compensating for the total direct wetland and stream impacts associated with the Project.

Finally, Hillwood has demonstrated avoidance and minimization to the fullest extent practical as discussed throughout this narrative.

Under the circumstances of this case, Hillwood meets the specific conditional use permit criteria of Section 334-36(C)(4) of the Zoning Ordinance applying to the Lot Development Impacts.

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<sup>38</sup> Hillwood notes that the Project also meets the 20:1 ratio for total District Impacts.

<sup>39</sup> See Mitigation Plan.

<sup>40</sup> See Wildlife Report, Section 5.2, pg. 15.

<sup>41</sup> +/- \$610,694.

## 5) General Conditional Use Permit Criteria (§334-37(A))

In addition to satisfying the use specific criteria analyzed above, Hillwood's proposal satisfies the general Conditional Use Permit criteria contained in Section 334-37(A) of the Zoning Ordinance, as detailed below. As much of the analysis implicates the detailed avoidance and minimization measures employed by Hillwood, as well as Hillwood's mitigation efforts, all of which is discussed in great detail above, that analysis is incorporated herewith by reference.

### **a) Section 334-37(A)(1): The proposed activity minimizes degradation of land situated within the District and offsets potential adverse impacts to functions and values of wetlands, surface waters, and vernal pools.**

As discussed at length above, the Project has been designed to limit the extent of wetland impacts and the effect the proposed impacts have on wetland functions and values. The project completely avoids impacts to the most valuable wetlands with the greatest function and value.

Green Meadow Drive has been routed through uplands where possible and along the edge of forested wetland that is already directly adjacent to existing development at 267 Lowell Road. These edge impacts result in less impact to wetland functions and values which remain intact within the interior of the forested wetland which is left undivided and undisturbed. Where Green Meadow Drive and the Northern Access Road cross wetlands, the narrowest crossing points have been utilized. At those crossings, Hillwood is proposing large open bottom precast structures which meet openness guidelines for wildlife passage, as well as wing walls and retaining walls, as discussed above. These measures minimize impacts and facilitate wildlife movement and wetland connectivity.<sup>42</sup>

Impacts necessary for the cul-de-sac at the terminus of Green Meadow Drive cannot be further avoided, as discussed above, and have been minimized to the greatest extent possible via the use of retaining walls. The area of these proposed impacts is entirely maintained golf course turf with no identifiable wetland function or value. Impacts to wetland function and value have therefore been avoided with this configuration as have potential impacts to other more significant wetlands elsewhere in the District.

Though not within the District, the two shallow manmade ponds that will be impacted by the Project are isolated from other wetlands. These ponds' edges are routinely mowed, and they exhibit signs of heavy nitrification. These shallow isolated ponds support very limited wetland function and value largely related to the wildlife that utilize these discrete areas, primarily common amphibian, and reptile species. Wildlife inhabiting the ponds will be relocated to the other ponds on the property prior to impact through a draw-down and capture process. By locating the development in the main portion of the golf course, impacts to the most valuable and

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<sup>42</sup> See Wildlife Report, Section 5 and 5.1.

functionally important wetlands are avoided. These include the Limit Brook wetland complex, the Merrimack River and its buffer, and the bulk of the forested wetland on the eastern portion of the site. Buffer impacts for the development are primarily limited to areas of existing maintained lawn with very limited, if any, supportive function for adjacent wetland areas.

A single vernal pool was identified on the Property. It is located in the forested wetland just outside the golf course and will not be impacted by the Project. The forested buffer to this pool will also be left intact with impacts occurring only within the portion of the buffer which is currently maintained golf course turf and generally does not support vernal pool species habitat. The pond and surrounding maintained area immediately north of the pool will also be returned to a natural condition through restoration landscaping, improving habitat surrounding the pool.

Importantly, through collaboration with the Town and Conservation Commission, Hillwood's proposed impacts have been significantly reduced by over 20% to include a nearly 14,000 SF reduction in direct wetland impact, and a 47,369 SF reduction in Buffer impacts.

As the proposed activity has been thoughtfully designed to minimize degradation of land situated within the District by preserving high-value wetlands and buffers, thereby offsetting any adverse impacts to functions and values of wetlands, surface waters, and vernal pools in the District, Hillwood's proposal satisfies Section 334-37(A)(1) of the Zoning Ordinance.

**b) Section 334-37(A)(2): The proposed activity will have no significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water and/or wetland resources.**

The potential for impacts to occur downstream or offsite has been avoided by avoiding onsite impacts to areas with the most potential for offsite effects. There are no impacts to Limit Brook, its associated wetland, or its 100-year Floodplain. The impacts caused by Green Meadow Drive and the Northern Access Road have been avoided to the greatest extent possible, and where unavoidable, designed to facilitate wetland and wildlife connectivity.<sup>43</sup> Hillwood has also committed to sloped curbing along Green Meadow Drive where appropriate, to sound mitigation, and to shielding lighting where adjacent to the Shoreland Protection Zone and proposed conservation easement areas to minimize impact to wildlife. In light of this avoidance, minimization and mitigation, these improvements will have no potential for downstream impacts or effect on hydrological connectivity.

The remaining Access Impacts caused by the driveways for Buildings A and C and relocation of Steele Road are unavoidable, and primarily Buffer impacts. The majority of these areas are grading impacts which will be restored using native seed, shrub, and tree species as

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<sup>43</sup> See discussion above regarding use of open bottom structures, wing walls and retaining walls.

described above.<sup>44</sup> These impacts have no potential for downstream implications or effect on hydrological connectivity.

Finally, impacts to the 100-year Floodplain of the Merrimack River have also been avoided as has any impact to the bank of the river or the river itself. The Merrimack River by far has the most potential scientific, educational, aesthetic, recreational, economic, and other public use and value, which will be preserved by the Project. These values will be protected and advanced by avoiding all but minor grading at the outer edge of the 250-foot protected shoreland and by providing for restoration and naturalization of this area, which is currently predominantly maintained golf course turf.

All of Hillwood's avoidance and minimization efforts, which ensure there will be no "significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water and/or wetland resources,"<sup>45</sup> will be supported by Hillwood's proposal to convey 120 acres of land, including all of Limit Brook and its wetland complex and the 250 foot Shoreland Protection Zone adjacent to the Merrimack River, to the Town for conservation, as well as Hillwood's restoration initiative.<sup>46</sup>

Opposition to the Project have suggested that Hillwood proposes to significantly reduce surface water flows to existing wetlands and streams on off the Property which "may affect wetting cycles and flow regimes, especially in low-flow conditions."<sup>47</sup> This is an improper conclusion. Not only will Hillwood be complying with the Town's recently revised Stormwater Management Regulations, but the Town retained Fuss & O'Neill as the third-party independent peer review engineer to conduct an independent peer review of the storm water management plan and confirm compliance. The volume of groundwater being collected and diverted to the stormwater system is nominal as compared to the overall watershed contributing to the Limit Brook wetland system.

Specifically, Limit Brook and Unnamed Brook, from their point of leaving the Property, have an upstream contributing area of over 920 acres. The area being diverted from Watershed B, comprised of Limit Brook and Unnamed Brook, to Watershed A, is nominal compared to the overall watershed contributing to the Limit Brook and Unnamed Brook wetland system. This upstream area conveys stormwater runoff and groundwater to the brooks and adjacent wetlands. The percent reduction in stormwater runoff volumes identified in the report only reflects surface water runoff. Not reflected in the percent reduction in peak stormwater runoff volume, but

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<sup>44</sup> See Wildlife Report, Section 8, pg. 21 ("As demonstrated above, there will be no significant impacts to important wildlife habitat. Further concerns related to habitat connectivity, sound, lighting and specific wildlife species have been addressed and fully mitigated. The portions of the District within the maintained golf course do not significantly contribute to wildlife habitat function within the Property currently").

<sup>45</sup> See Zoning Ordinance, § 334-37(A)(2).

<sup>46</sup> See Mitigation Plan.

<sup>47</sup> See "Limited Technical Review" letter from GeoInsight, dated 13 November 2020.

accounted for in the design, is the significant amount of stormwater infiltrated directly into the soil in close proximity to the Limit Brook and Unnamed Brook resource areas. The stormwater runoff flow reductions cited in the comment do not reflect the entire flow of stormwater to the wetlands. The design provides stormwater flows directly to the wetlands and indirectly through subsurface recharge. This small change, so low in the watershed, is not projected to negatively effect the functions and values supported by the Limit Brook wetland system.

As the Project has been designed to have no negative environmental impact to abutting or downstream properties and/or hydrologically connected and/or wetland resources, a reasonable conclusion is that Hillwood's proposal satisfies Section 334-37(A)(2) of the Zoning Ordinance.

**c) Section 334-37(A)(3): The proposed activity or use cannot practicably be located otherwise on the site to eliminate or reduce impact to the Wetland Conservation Overlay District.**

Hillwood's extensive avoidance and minimization efforts, explained in detail above, are incorporated herein. To summarize, two accessways into the Property are required for operation of the HLC, and to facilitate emergency response to the Property. Green Meadow Drive and the Northern Access Road have been designed to avoid wetlands to the greatest extent possible by remaining on the edge of the wetlands and crossing them at their narrowest point. The crossings themselves have been designed to facilitate maximum wildlife and wetland connectivity. These impacts cannot be avoided due to the extensive wetlands across the entire eastern portion of the Property and the fact that Steele Road is the only existing access. Steele Road cannot be used to access the HLC due primarily to concerns related to the residential uses to the south of Steele Road and the fact that Steele Road crosses a Priority Resource Area. Given the need to utilize the existing intersections on Lowell Road, the existing access easements, and the design requirements for trucks, the proposed access roads cannot be reconfigured or relocated to further reduce impacts.

Regarding the remaining Access Impacts caused by the driveways for Buildings A and C and the relocation of Steele Road, the footprint of the three buildings which constitute the HLC, as well as their corresponding parking lots and impervious surface areas have been reduced to the greatest extent possible. These buildings have been pushed as far north as they can be to minimize impacts to the residential neighborhood to the south and cannot be pushed east or west, as any such movement will implicate significant wetland impacts to high-value wetland complexes related to Limit Brook and the Merrimack River. As designed, the HLC will be located within the existing open area of the golf course which lies almost entirely outside the District. As described above, the cul-de-sac at the end of Green Meadow Drive has been located to minimize impacts to the District while facilitating the operation of the HLC and promoting safety of truck and vehicle traffic alike. This configuration limits impacts to low value areas of

wet maintained lawn, the tip of a finger like projection of forested wetland and buffer areas also consisting of existing maintained golf course lawn.

If the buildings and other site elements were reconfigured in an attempt to avoid the proposed impacts, impacts would be incurred elsewhere and to more valuable wetlands associated with Limit Brook, The Merrimack River, or their associated buffers. Alternate layouts cannot be used to further reduce impacts at this site.

As the proposed uses cannot practicably be located otherwise on the site to eliminate or reduce impact to the District, Hillwood's proposal satisfies §334-37(A)(3) of the Zoning Ordinance.

**d) Section 334-37(A)(4): The proposed activity incorporates the use of those Best Management Practices recommended by the New Hampshire Department of Environmental Services and/or other State agencies having jurisdiction.**

The proposed project was designed with the adjacent resources in mind with guidance from the *Best Management Practice Techniques for Avoidance and Minimization* manual prepared by USEPA, and NHDES. The project also includes comprehensive stormwater management for treatment and attenuation of runoff that has been designed in accordance with NH Alteration of Terrain program. A comprehensive construction phasing, erosion, and sedimentation control plan has been developed for the construction phase of the project to ensure maximum protection of the adjacent resource areas during construction. BMP's employed meet or exceed those specified in *New Hampshire Stormwater Manual Volume 3: Erosion and Sediment Controls during Construction*.

As the proposed project incorporates the use of those BMPs recommended by the State, as referenced above, Hillwood's proposal satisfies §334-37(A)(4) of the Zoning Ordinance.

**e) Section 334-37(A)(5): All applicable Federal and/or State permit(s) have been received for the proposed activity in accordance with New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act, as amended.**

A New Hampshire Dredge & Fill Application was submitted to NHDES and accepted as complete on 5/7/20 (File # 2020-00956) and additional information provided on 9/8/20 and 1/15/21. Several interagency pre-application meetings were held with NHDES, Army Corps of Engineers, and US Environmental Protection Agency to discuss the project and scope of impacts. Based on these meetings, and the fact that the proposed impact falls below the threshold where an Individual Permit would be required under Section 404 of the Clean Water Act, we expect the



project to be covered under the NH Programmatic General Permit. No separate application will therefore be required under the Clean Water Act.

**f) §334-37(A)(6): Where applicable, proof of application to all required State and/or Federal permits.**

A New Hampshire Dredge & Fill Application was submitted to NHDES and accepted as complete on 5/7/20 (File # 2020-00956). An Alteration of Terrain application was filed in June, 2020 (file #200630-092).

**6) Avoidance and Minimization**

Finally, we register a response, echoed in Brendan Quigley's (Gove Environmental) memo dated 18 January 2021, to Mr. Jacobs' comments in his letter to the Conservation Commission regarding the doctrine of avoidance and minimization which repeatedly suggests, among other things, that Hillwood is required to remove Building C from its proposal to comply with State regulations and, specifically, the definition of "practicable." Mr. Jacobs imputes this argument to his analysis regarding the Project's compliance to the Town's Zoning Ordinance. Mr. Jacobs' argument in this context relies on an interpretation of the applicable regulations which is inconsistent with their plain language, inconsistent with notions of regulatory interpretation in New Hampshire, and inconsistent with notions of basic fairness. Succinctly, Mr. Jacobs' interpretation of the doctrine of avoidance and minimization would require obviating the Project purpose which is simply improper.

At the root of Mr. Jacobs' assertions is a fundamental misinterpretation of the word "practicable" as it appears within the States' Administrative Code. The word "practicable" means "available and capable of being done after taking into consideration cost, existing technology, and logistics *in light of overall project purposes*" (emphasis added). Env-Wt 101.74. The clear intent of the regulation is to analyze options to avoid and mitigate wetland impacts "in light of" the overall project purpose. Put another way, avoidance and minimization of wetland impacts is "practicable" when, considering the overall project purpose, there are available measures which are capable of being done that would further avoid or minimize those impacts. Integral to the definition of "practicable" is the consideration of the project purpose as proposed.

Here, as discussed above, the Project purpose is the construction of the Hudson Logistics Center, to include Buildings A, B and C, on the significant contiguous uplands on the central and western part of the property. As a result, Mr. Jacobs' repeated suggestion that Hillwood has not complied with the avoidance and minimization requirements under the State rules is fundamentally inconsistent with those rules. Neither the State rules nor the Town's Zoning Ordinance require the obviation of the project purpose to accomplish avoidance and minimization. Indeed, such an interpretation would have considerable legal implications. Mr. Jacobs' conclusion that Hillwood must remove Building C to accommodate a relocation of the cul-de-sac in a manner which creates less impact to wetlands and buffer is therefore improper and is inconsistent with the plain and ordinary meaning of the State regulations and notions of regulatory construction in New

Hampshire. Had the NH DES intended the word “practicable” to require major modifications to a project’s purpose, it would have stated so. For example, if the State rules intended what Mr. Jacobs suggests, the word “practicable” would be defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics, regardless of overall project purpose.” Mr. Jacobs’ efforts to read into the State’s regulations meanings the NH DES did not elect to include, and to impute that meaning into the Town’s Zoning Ordinance, is improper. This interpretation is consistent with the New Hampshire Supreme Court’s interpretation of same.<sup>48</sup>

Hillwood has made every possible effort to avoid impacts to the wetlands and buffer, and where those impacts are unavoidable in light of the Project purpose, they are made to the lowest-value wetlands on the site and Hillwood has implemented the best available means to minimize those impacts. Moreover, Hillwood has gone to great lengths to propose a robust mitigation plan which includes the conveyance of 120 acres to the Town of Hudson, including the most valuable wetland resources on the Property, and a restoration plan incorporating nearly 40 acres.<sup>49</sup> All of this mitigation is in addition to Hillwood’s anticipated ARM Fund payment, which will exceed \$600,000. The clear conclusion from Hillwood’s proposal is that it is plainly consistent with the State and local regulations for avoidance and minimization.

## Conclusion

For the reasons described above, including the materials filed with the Commission and testimony provided at the Commission meetings, all as incorporated into the record, Hillwood requests the Commission to make its recommendations to the Planning Board confirming the

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<sup>48</sup> See Conservation Law Found. V. N.H. Wetlands Council, 150, N.H. 1 (2003) (The prior version of the State’s regulations required applicants to provide evidence demonstrating that the proposed project design avoid potential impacts “to the maximum extent *practicable*” and demonstrating that “unavoidable impacts have been minimized.” N.H. Admin. R., Env-Wt 302.03(a); see also N.H. Admin. R., Env-Wt 302.04(d) (“The department shall not grant a permit if . . . [t]here is a practicable alternative that would have a less adverse impact on the area and environments under the department’s jurisdiction”). In Conservation Law Foundation, the New Hampshire Department of Transportation (“DOT”) sought to replace a “T” intersection with a trumpet interchange that was designed to handle greater traffic volume. Id. at 2. The project purpose was a design to handle projected traffic volume in 2015. The trial court found that DOT hadn’t demonstrated “the need for the proposed project’s impact on wetlands, and that the proposed project is the one with the least adverse impact to wetlands” because DOT did not adequately address whether a roundabout was a “practicable alternative” to the proposed interchange. Id. at 3, 7. The Supreme Court reversed, finding that DOT had introduced sufficient evidence that a roundabout was not workable based on the “project’s demands,” i.e., the anticipated traffic flow in 2015. Id. at 8. In other words, the applicant was able to demonstrate that a proposed alternative was not “practicable” based on the project’s purpose or demands. Notably, the Court did not weigh the additional wetlands impacts against the additional traffic flow allowed by the proposed interchange. Rather, it found that the Applicant demonstrated the alternative was not practicable in light of the purpose of the project. Like the applicant in Conservation Law Foundation, Hillwood has proved that its proposed District impacts cannot be further avoided, that the impacts cannot be further minimized, and that alternatives to its Access Impacts, to include the cul-de-sac, are not practicable in light of the Project purpose.

<sup>49</sup> The proposed preservation area is more than what would be required under the US Army Corps of Engineers Compensatory Mitigation Guidance at the relevant 20:1 ratio.

Project complies with the standards for the issuance of a Conditional Use Permit pursuant to the Town's Wetland Conservation Overlay District.

Do not hesitate to contact me with any comments, questions or concerns. Thank you for your time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Justin L. Pasay". The signature is stylized with large, sweeping loops.

Justin L. Pasay, Esq.

A handwritten signature in blue ink, appearing to read "John T. Smolak". The signature is written in a cursive, flowing style.

John T. Smolak, Esq. (Smolak & Vaughan)

Enclosures (2)

cc: Hillwood Enterprises, LP (email only)  
Langan (email only)  
Gove Environmental Services, Inc. (email only)



**Date:** January 18, 2021

**To:** William Collins, Chairman  
Hudson Conservation Commission

**Cc:** Brian Kutz, Hillwood  
John Smolak, Smolak & Vaughan  
Justin Pasay, Donahue, Tucker & Ciandella  
Nathan Kirschner, Langan

**From:** Brendan Quigley, Gove Environmental Services. Inc.

**Re:** Hudson Logistics Center  
Responses to BCM Environmental Law/Marc Jacobs Comments

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On December 7, 2020 we submitted a response to a number of the comments raised in the November 11, 2020 letter prepared by wetland and soil scientist Marc Jacobs which was submitted under cover of a letter from BCM Environmental & Land Law. The information in this submittal was discussed at the December 14, 2020 Conservation Commission meeting. We are pleased to provide responses below to the remaining comments in that letter which are principally related to the justification for proposed wetland impacts and avoidance and minimization of those impacts as viewed within the framework of the State rules<sup>1</sup> and the Town of Hudson Zoning Ordinance.<sup>2</sup> We note, however, that answers to the vast majority of Mr. Jacobs' comments in this context have already been provided by Hillwood pursuant to its State Dredge & Fill permit filings. As a result, and to maximize efficiency, we are enclosing a copy our letter to Craig Rennie of the New Hampshire Department of Environmental Services Wetlands Bureau ("NH DES"), dated January 15, 2021 (the "GES Letter"). Our responses below will also reference Hillwood's revised Conditional Use Permit Narrative dated January 18, 2021, which is also attached (the "Conditional Use Permit Narrative").

Before turning to Mr. Jacobs' individual comments, however, we provide a foundational response to all of Mr. Jacobs' comments regarding the doctrine of avoidance and minimization which repeatedly suggest, among other things, that Hillwood is required to remove Building C from its proposal to comply with State regulations and, specifically, the definition of "practicable." This assertion relies on an interpretation of the applicable regulations which is inconsistent with their plain language, inconsistent with notions of regulatory interpretation in New Hampshire, and inconsistent with notions of basic fairness. Succinctly, Mr. Jacobs' interpretation of the doctrine of avoidance and minimization would require obviating the project purpose which is simply improper.

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<sup>1</sup> Env-Wt 313.03 & Env-Wt 311.07

<sup>2</sup> Zoning Ordinance, § 334-36(C)(2) and § 334-37.

The word “practicable” means “available and capable of being done after taking into consideration cost, existing technology, and logistics *in light of overall project purposes*” (emphasis added). Env-Wt 101.74. The emphasized language cannot be overstated. The clear intent of the regulation is to analyze options to avoid and mitigate wetland impacts “in light of” the overall project purpose. Put another way, avoidance and minimization of wetland impacts is “practicable” when, considering the overall project purpose, there are available measures which are capable of being done that would further avoid or minimize those impacts. Integral to the definition of “practicable” is the consideration of the project purpose as proposed.

Here, the project purpose is the construction of the Hudson Logistics Center, to include Buildings A, B and C, on the significant contiguous uplands on the central and western part of the property. As a result, Mr. Jacobs’ repeated suggestion that Hillwood has not complied with the avoidance and minimization requirements under the State rules is fundamentally inconsistent with those rules. Neither the State rules nor the Town’s Zoning Ordinance require the obviation of the project purpose to accomplish avoidance and minimization. Indeed, such an interpretation would have considerable legal implications. Mr. Jacobs’ conclusion that Hillwood must remove Building C to accommodate a relocation of the cul-de-sac in a manner which creates less impact to wetlands and buffer is therefore improper and is inconsistent with the plain and ordinary meaning of the State regulations and notions of regulatory construction in New Hampshire. Had the NH DES intended the word “practicable” to require major modifications to a project’s purpose, it would have stated so. For example, if the State rules intended what Mr. Jacobs suggests, the word “practicable” would be defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics, *regardless of overall project purpose.*” Mr. Jacobs’ efforts to read into the State’s regulations meanings the NH DES did not elect to include, is improper.

As the GES Letter and the Conditional Use Permit Narrative reveal, Hillwood has made every possible effort to avoid impacts to the wetlands and buffer, and where those impacts are unavoidable in light of the project purpose, they are made to the lowest-value wetlands on the site and Hillwood has implemented the best available means to minimize those impacts. Moreover, Hillwood has gone to great lengths to propose a robust mitigation plan which includes the conveyance of 120 acres to the Town of Hudson, including the most valuable wetland resources on the property, and a restoration plan incorporating nearly 40 acres.<sup>3</sup> All of this mitigation is in addition to Hillwood’s anticipated ARM Fund payment, which will exceed \$600,000. The clear conclusion from Hillwood’s proposal is that it is plainly consistent with the State and local regulations for avoidance and minimization.

**COMMENT:** *Avoidance and Minimization — Green Meadow Drive*

*The cul-de-sac proposed by the applicant is approximately 2,670 feet (0.51 miles) long. The cul-de-sac was originally proposed as a public way but is now proposed to be private. A private road has different design standards that result in a smaller footprint and lower wetland impacts than a public way. However, as you will see, this has no bearing on the*

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<sup>3</sup> The proposed preservation area is more than what would be required under the US Army Corps of Engineers Compensatory Mitigation Guidance at the relevant 20:1 ratio.



*discussion below because the design still does not avoid wetlands as required. (For this discussion the terms cul-de-ac, access road and traffic circle are used interchangeably.)*

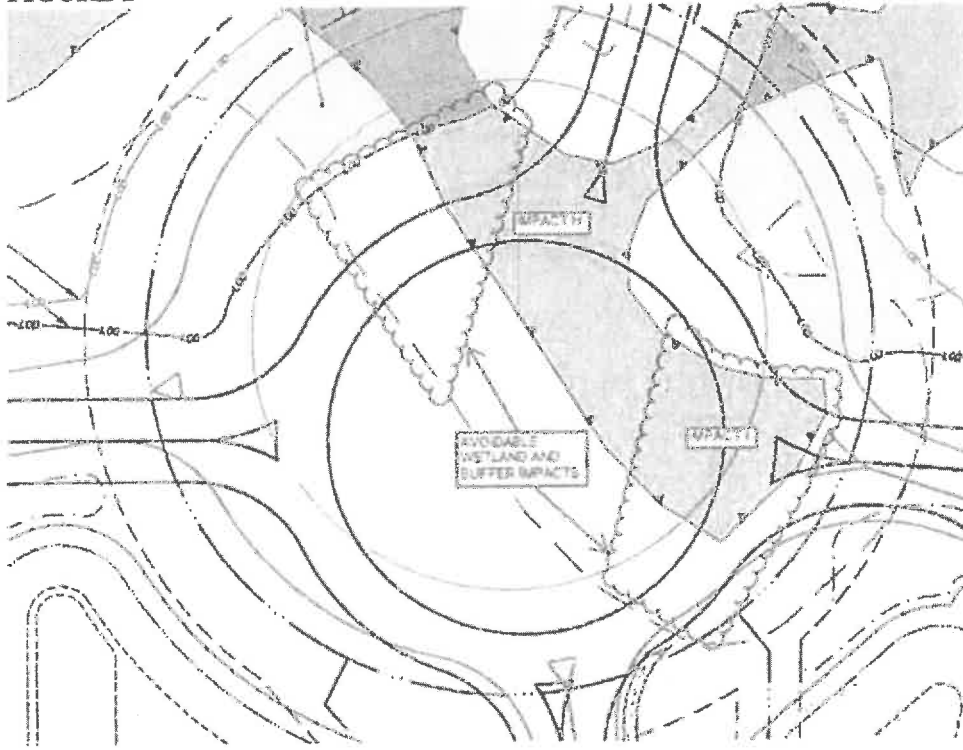
*The cul-de-sac is proposed to terminate with a traffic circle located within jurisdictional wetlands, resulting in two areas (H and I) of direct wetland impact totaling 12,330 square feet (SF), excluding buffer zone impacts. This represents more than 21 percent of the total requested impact. It is important to keep in mind that this property involves 399+ acres of land, only 39.9 acres, or approximately 10 percent of which, is wetland. For this reason, not only are the proposed direct wetland impacts associated with the traffic circle avoidable, most if not all of the local buffer zone impacts associated with wetland impacts attributable to the traffic circle are also easily avoidable.*

*NHDES rule Env-Wt 313.03(a) states that the department shall not approve any alteration of any jurisdictional area unless the applicant demonstrates that the potential impacts have been avoided to the maximum extent practicable.*

*NHDES rule Env-Wt 313.03(b)(1) states that for any major or minor project, the applicant shall demonstrate specifically that: there is no practicable alternative that would have less adverse impact on the area and environments under the department's jurisdiction. (According to the latest site plans the project is proposing 57,766 SF, or 1.3+ acres, of direct wetland impact. The surface area impact threshold which requires this project to be classified as major is 10,000 SF under state rules.)*

*As currently designed, the access road, Green Meadow Drive, or more specifically the traffic circle, does not avoid and minimize wetland impacts. Below is a discussion of why the current design cannot meet the definition of practicable and thus the avoidance and minimization standard cited above in Env-Wt 313.03. Refer to Figure 2 below. The red clouds identify wetland and buffer zone areas which could easily be avoided if the cul-de-sac were extended a distance that is sufficient to allow the traffic circle to be built outside of wetland jurisdiction. I estimate that distance to be approximately 150 feet. The area between the two red clouds will be impacted regardless of whether the access road is extended.*

FIGURE 2



*The common dictionary definition of practicable means feasible or possible. Practicable is not to be confused with practical. The common dictionary definition of practical means useful or matter-of-fact. In his letter to the conservation commission dated May 19, 2020, legal counsel for the applicant repeatedly refers to the word practical as the basis for evaluating the project and thus erroneously concludes that the project design is compliant with the avoidance and minimization standard.*

*Practicable, in this regulatory setting, does not refer to the common dictionary definition. The state regulations specifically reference the definition found in the Code of Federal Regulations (40 CFR 230.3(1), which means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes. I will discuss each one of these criteria below.*

**RESPONSE:** See GES Letter, Conditional Use Permit Narrative, cul-de-sac configuration sketches and above analysis.

Mr. Jacobs' conclusion that Hillwood's proposed direct wetland and buffer impacts caused by the traffic circle are avoidable ignores the implications of relocating the same which Hillwood has detailed at length in the GES Letter, Conditional Use Permit Narrative and cul-de-sac configuration sketches. The legal concept of avoidance and minimization does not require the obviation of the project purpose or ignoring related public safety concerns, which is what Mr.

Jacobs is suggesting. The impacts caused by Green Meadow Drive, including the cul-de-sac, and the Northern Access Road have been avoided to the greatest extent practicable in light of the project purpose which is inclusive of Buildings A, B and C and associated site improvements, and where impossible to avoid, have been minimized to the greatest extent practicable, and mitigated.

**COMMENT:** *Cost* The current road design and traffic circle location are being driven by the applicant's desire to maximize the building coverage and are not necessitated by the characteristics of the property. Therefore the impacts associated with the traffic circle are discretionary and not associated with access or a water-dependent structure as per Env-Wt 311.07(b)(1). The applicant has represented that they have tenant agreements for two of the proposed structures but do not have a tenant for the third. There are therefore several alternatives available to the applicant (eliminating a proposed building, reducing the size of the proposed buildings) which would allow a design that extends the cul-de-sac and traffic circle beyond wetland jurisdiction, allowing compliance with the avoidance and minimization standard. Extending the cul-de-sac beyond wetland jurisdiction is only an issue of cost in the sense that it is economic justification, the desire to maximize building coverage or profit, which is dictating the current location of the cul-de-sac and traffic circle. Economic justification for maximizing the project footprint or profit is not the cost that regulators had in mind when the definition of practicable was developed. Regulators were contemplating design and construction costs when the regulatory definition of practicable was developed. The design and construction cost associated with extending the cul-de-sac and traffic circle so that it terminates beyond wetland jurisdiction, and thus adheres to the avoidance and minimization rule, is *de minimus* in relation to the total project cost.

**RESPONSE:** See GES Letter, Conditional Use Permit Narrative, cul-de-sac configuration sketches, and above analysis.

Avoidance and minimization of impacts has not been limited by cost considerations. Considerable cost is associated with the primary avoidance and minimization measures included in the project such as the open bottom structures and retaining walls utilized to enhance wildlife crossings at the two access roads. There is also considerable cost associated with the proposed protection of 120 acres of the site where considerable buildable upland exists and the restoration of over 40 acres of this area with extensive plantings is planned. Regardless of cost, there are no alternatives that could be used to further avoid or minimize the proposed impact at the cul-de-sac that do not either result in unsuitable intersection geometry which significantly impacts safety or affect the viability of the project, considering the many design criteria explained previously. The concept of avoidance and minimization does not require the elimination of the project purpose, which is what Mr. Jacobs is suggesting. Specifically, Building C is a critical component of the project purpose. Building C has been designed to be as small as possible to avoid impacts and still fulfill its cross-docking purpose which is in significant demand in the greater New England area. The entire building, and the vast majority of the corresponding site improvements, fit completely within the property's uplands, and it is only the primary driveway to Building C, and the relocation of Steele Road, which causes buffer and wetland impacts. Neither the State rules nor the Town's Zoning Ordinance can be reasonably interpreted to require the exclusion of





Building C, particularly when such impacts are to low-value wetlands consisting of golf course lawn and a manmade pond and when said impacts are mitigated via Hillwood's ARM Fund payment, proposed conservation easement, and restoration initiative.

**COMMENT:** *Existing Technology.* Technology is not a factor that is dictating the road alignment and the location of the cul-de-sac and traffic circle. Extending the cul-de-sac beyond wetland jurisdiction does not involve any unusual or costly technology or technology that is unavailable to the applicant.

**RESPONSE:** See GES Letter, Conditional Use Permit Narrative, cul-de-sac configuration sketches and above analysis. This comment from Mr. Jacobs is incorrect. Simply extending the road as the comment suggests may not be limited by available technology but doing so while also maintaining a functional and safe intersection which also serves the project purpose, is. As described in the cul-de-sac analyses within the GES Letter and Conditional Use Permit Narrative, adjustment of this intersection is limited by traffic flow and related safety considerations and the alignment of the internal driveways to which it connects. This is a technological constraint in the sense that roadways and intersections must be designed in accordance with the technology that will allow them to be used in a safe manner, in this case, combined usage by slow moving trucks and employee vehicles. To further illustrate this concept, consider the numerous and familiar differences between intersections on small roads and intersections along highways. The existing technology of automobiles and trucks dictate the design constraints of the roadway.

The instances where available technology has been utilized to minimize impacts should also be recognized. The vary large pre-cast crossing structures and tall retaining walls utilized on Green Meadow Drive and the Northern Access Road are examples of technologies that have become much more widely available in recent decades. This is also true of the structural stormwater quality devices being incorporated into the design as well as stormwater management design in general.

Again, the doctrine of avoidance and minimization cannot be imposed on a manner that would obviate the project purpose, as Mr. Jacobs' suggests.

**COMMENT:** *Logistics.* Logistics involves the detailed coordination of a complex operation involving many people, facilities, or supplies. To be sure, the proposed Hudson Logistics Center will involve massive structures and many people as well as lots of vehicle traffic during and after construction. However, relocating the cul-de-sac so that it comports with the avoidance and minimization standard is a simple redesign, not a complex operation involving the coordination of large numbers of engineers, or other people or facilities.

**RESPONSE:** See GES Letter, Conditional Use Permit Narrative, cul-de-sac configuration sketches and above analysis. This comment presents a very narrow view of what constitutes a logistical constraint, limiting it to design and construction, but ignoring very real logistical implications in the context of the project purpose. Again, Mr. Jacobs suggests that State and local wetland regulations must be interpreted and applied in manner that obviates the project



purpose. This is improper. As described previously, the cul-de-sac is the central connection to the primary access for a facility that has been very specifically and meticulously designed to carry out a complex operation involving the coordination of large numbers of people, facilities, and supplies. This extends to the buildings themselves and to other elements of the site design. To simply state that that any one element of the design, in this case the cul-de-sac, can simply be moved is a distortion of what is involved.

**COMMENT:** *Overall Project Purpose* The project purpose, as described by the applicant, is to redevelop the Greenmeadow Golf Club, merging multiple lots and re-subdividing into three lots, each of which will support one of three proposed new distribution and logistics buildings. It is this redevelopment which necessitates the construction of the access road and cul-de-sac. There is little argument that if the property is redeveloped that an access road which requires some wetland impacts will be needed. The important point is that, even if the cul-de-sac is extended, thus relocating the traffic circle outside of wetlands jurisdiction, the overall project purpose of redeveloping the Greenmeadow Golf Club, subdividing the land and constructing new structures can still take place, and to a very substantial degree.

**RESPONSE:** See GES Letter, Conditional Use Permit Narrative, cul-de-sac configuration sketches, and above analysis. Mr. Jacobs' argument here is "the project purpose could be accomplished if the project purpose was different than it is." This analysis is fundamentally flawed, per the above, because neither the State regulations nor the Town's Zoning Ordinance can be reasonably interpreted as applying the doctrine of avoidance and minimization in a manner that obviates the project purpose. As stated at length above, and elsewhere, the Hudson Logistics Center has been designed in a manner to avoid impacts to the wetlands and buffer to the greatest extent possible, and where not possible, to minimize those impacts using the best-available technology and design, and to mitigate those impacts, which are primarily to low-value wetlands.

The project purpose in this case is to develop the Hudson Logistics Center, inclusive of Buildings A, B and C, on the contiguous uplands to the west of the property's significant wetlands primarily located to the east. It is not simply, as Mr. Jacobs suggests, to redevelop the property. In the context of the avoidance and minimization discussion this is critical to determining what is practicable. The inclusion of project purpose in the definition of practicable recognizes the fact that certain project types involve many more constraints than others and this must be taken into consideration when reviewing proposals. Given the project purpose defined above and the numerous avoidance and minimization measures employed by the project, we believe we have met the standard of avoiding and minimizing impact the greatest extent practicable.

**COMMENT:** *The applicant's representatives argue that the impacts associated with the cul-de-sac have been directed at low functioning wetlands. You will note that although the avoidance and minimization standard referenced above mentions practicable alternatives, it makes no mention of the functions and values of the wetlands proposed to be impacted. Therefore, the fact that the wetland impacts associated with the cul-de-sac may have been directed at low functioning wetlands does not release the applicant from complying with the avoidance and minimization standard.*



*Functions and values of wetlands proposed for impact plays a role in wetland permit decision making, but cannot be used to rationalize wetland impacts which are easily avoidable.*

**RESPONSE:** Hillwood does not now, nor has it ever, argued that the nature of its impacts vis-à-vis the cul-de-sac “release [Hillwood] from complying with the avoidance and minimization standard” as Mr. Jacobs suggests, and the record before the Town and the State plainly refutes this allegation. Rather, in light of the project purpose and Hillwood’s obligations under the regulations, the low-value nature of the wetlands impacted by the cul-de-sac are a relevant consideration because while wetland function and value cannot be used as the sole rationale for a proposed impact, the value of a wetland which is the subject of a proposed impact plays a significant role which is and should be considered by the State and the Town. Avoidance and minimization is not a single concept involving the elimination of impacts, it involves a broad range of measures to limit adverse effects. Avoiding impacts to higher value wetlands while directing unavoidable impacts to wetlands with low function and value is one of these minimization measures as defined at Env-Wt 103.39:

*... design techniques, construction techniques, and project timing adjustments, together or in any combination, that relocate or reduce unavoidable adverse impacts, taking into account the purpose of the proposed project, the functions and values of the impacted resources, and practicability.*

The rules require that applicants not only prepare a functions and values assessment but that it be used specifically to direct unavoidable impacts to wetlands with lower value

*Env-Wt 311.10*

*(c) After completing the functional assessment, the applicant shall:*

- (1) Use the results of the functional assessment to select the location of the proposed project having the least impact to wetlands functions;*
- (2) Design the proposed project to have the least impact to wetlands functions;*
- (3) Where impact to wetland functions is unavoidable, limit the project impacts to the least valuable functions on the site while avoiding and minimizing impacts to the highest and most valuable functions; and*
- (4) Include on-site minimization measures and construction management practices to protect aquatic resource functions.*

As detailed in the previous responses and elsewhere, as indicated, the project was located on the site and designed to avoid impacts to wetlands with the highest and most valuable functions such as Limit Brook, the Riparian area of Merrimack River, and other more intact blocks of wetland in the eastern portion of the property. Unavoidable Impacts were located in areas of the least valuable wetlands and minimized using a variety of design techniques.

The CUP criteria are less explicit on this concept but do also recognize that that wetland functions and values are integral to determining the scope of a proposed impact. This is reflected in CUP criteria §334-37(A)(1) and §334-37(A)(2), which specifically cite potential diminution of wetland function and values as a measure of the impact to the district. Impacts



to wetlands such as the those in the maintained turf areas of the golf course do not result in the same loss of wetland function and value as a similar, or even much smaller, impact to a more valuable wetland area.