

## MEMORANDUM

To: Hudson Planning Board and Conservation Commission

From: Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC &  
John T. Smolak, Esq., Smolak & Vaughan, LLP

Re: Revised Hudson Logistics Center, Application for Amended Conditional Use Permit

Date: 12 September 2022

On behalf of the Applicant, Hillwood Enterprises, L.P. (the “Applicant” or “Hillwood”), the following sets forth the Applicant’s demonstrated compliance with the Conditional Use Permit criteria contained within §334-36(C) and §334-37 of Article IX of the Town of Hudson’s Zoning Ordinance (the “Wetland Conservation District Ordinance” or the “Wetland Ordinance”) in support of its request to amend the Wetlands Conditional Use Permit approved by the Planning Board on April 21, 2021 (CU#02-20)<sup>1</sup> for wetland and wetland buffer impacts associated with the Hudson Logistics Center project as originally approved (the “Approved Project”). This letter provides a brief overview of the Approved Project, describes the proposed amended project which collectively constitutes a reduction of the scope of the Approved Project to accommodate a single primary building warehouse distribution facility (the “Amended Project”), and provides an analysis of the impacts as they relate to the Wetland Conservation Overlay District, to include the applicable 50-ft buffer (the “Buffer”) (collectively, the “District”). A corresponding request for amendment of the Site Plan Decision (SP#04-20) providing a broader description of the proposed amendments and analysis of the relevant Site Plan Approval criteria has been submitted under separate cover.

Throughout this narrative the Applicant will refer to the revised Overall Site Plan, revised Wetland Impact Plan, and revised Wetland Mitigation – Restoration Plan, 11” x 17” copies of which have been provided herewith. The Applicant will also frequently refer to Lucas Environmental LLC’s Wildlife Habitat Evaluation 2022 Update (the “Wildlife Study Update”)<sup>2</sup> and Gove Environmental Services, Inc.’s Wetland & Natural Resources Report for Revised Hudson Logistics Center Project (the “Wetland Report Update”).<sup>3</sup>

### Summary of Approved Project

The Approved Project involved the redevelopment of the approximately 375-acre Green

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<sup>1</sup> All of Hillwood’s previous filings to the Conservation Commission and Planning Board pursuant to its approved Conditional Use Permit for the Approved Project, to expressly include all of Hillwood’s written responses to questions posed by Planning Board members, Conservation Commission members or third-party experts, are incorporated in their entirety herein by reference.

<sup>2</sup> See Wildlife Habitat Evaluation 2022 Update, Hudson Logistics Center, dated 9 September 2022, prepared for Hillwood Enterprises, L.P. by Lucas Environmental LLC filed contemporaneously herewith.

<sup>3</sup> See Wetland & Natural Resources Report for Revised Hudson Logistics Center Project, 43 Steele Road, Hudson, NH, dated 9 September 2022, prepared for Hillwood Enterprises, L.P. by Gove Environmental Services, Inc. filed contemporaneously herewith.

Meadow Golf Club property (the “Property”) into a warehouse and distribution facility consisting of three buildings with a combined building footprint of 2,866,149 square feet (SF), two new access driveways extending to the site from Lowell Road, associated stormwater management, and related site improvements. The Approved Project involved impacts within the District totaling 233,869 SF (55,525 SF wetland and 178,344 SF Buffer), 82% of which (54,940 SF wetland and 138,453 SF Buffer) related to the driveways extending to the upland areas on the Property from Lowell Road and were, as such, directly related to access. The remainder of the approved impacts were necessary for grading along internal access driveways. The Approved Project also involved impacts to two manmade ponds (golf course water features) totaling 42,096 SF. No conditional use permit was required for these impacts to “manmade facilities” pursuant to Section 334-35(C) of the Wetland Ordinance. These impacts were, however, addressed in the New Hampshire Department of Environmental Services (“NHDES”) review and subsequent approval issued May 5, 2021 (NHDES 2020-00956) (the “State Wetland Permit”).

The Approved Project included substantial natural resource mitigation to compensate for the loss of wetlands and enhance existing valuable resources associated with the Property, as discussed in greater detail below. This included formal preservation totaling approximately 120 acres of land, or nearly a third of the Property, via a conservation easement to be held by the Town of Hudson. The preservation area encompassed 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 and its associated wetlands. In addition to providing permanent protection of these sensitive areas, the Approved Project also included comprehensive restoration of approximately 40 acres existing golf course turf, much of which lies within the Buffer in close proximity to wetlands, so to enhance the function and values of those areas.

### **Summary of Amended Project**

- **Reduced Project Scope**

As a result of a change to the tenant of the Approved Project, Hillwood is proposing a modified project with a reduced scope and reduced impacts to the District. The approved use as a warehouse and distribution center will remain the same but the Amended Project consists of a single primary building with a footprint of 1,393,822 SF as opposed to the Approved Project which contemplated 2,614,984 SF. Put another way, the Amended Project contemplates approximately 47% less building footprint on the Property than the Approved project. Further, the principles of avoidance and minimization that guided the design of the Approved Project have also been applied to the Amended Project to ensure even less impacts will occur.

The single building and related site improvements have been situated to the western area of the Property to utilize the large upland area of the existing golf course and avoid impacts to the most valuable resource areas. Significantly more open space is preserved to the south of the development and to the west along the Merrimack River than proposed in the Approved Project. Specifically, the Amended Project increases open space across the Property to a total of approximately 213.79 acres (approximately 57% of the Property) which is an increase of

approximately 25% when compared to the Approved Project's open space of 171.4 acres. Further, like the Approved Project, the Amended Project avoids all development within the 250-foot protected shoreland along the Merrimack River and any impact to Limit Brook or its associated wetlands which collectively constitute the most valuable wetlands associated with the Property. Unavoidable impacts associated with access and minor Buffer impacts necessary for development of the site have been minimized to the greatest extent practicable as described in the following sections.

- **Reduced Wetland and Buffer Impacts**

The Amended Project scope allows overall impacts within the District to be reduced by approximately 13%, from 233,869 SF (55,525 SF wetland and 178,344 SF buffer) to 203,061 (50,332 wetland 152,729 Buffer). Over 95% of the combined wetland and Buffer impacts (193,962 SF) proposed by the Amended Project are directly related to providing access to the Property from Lowell Road (the "Access Impacts").<sup>4</sup> Impacts for lot development have been limited to 9,099 SF of primarily temporary impacts required for grading at three areas, none of which involve impervious surface (the "Lot Development Impacts").<sup>5</sup> The Lot Development Impacts are necessary to install outfalls at specific grades close to the wetland in order to ensure proper function. All three impact areas will be restored and seeded with appropriate seed mix following construction. By contrast, 17% of the total impacts contemplated by the Approved Project were Lot Development Impacts.

Additional protection of wetland function and value has been achieved by avoiding impacts to the manmade ponds which were created as water features for the golf course and are not included in the District.<sup>6</sup> The Property contains four such ponds, two of which were to be impacted under the Approved Project. These impacts are not required or proposed pursuant to the Amended Project. By retaining these two ponds, which are jurisdictional under State and Federal rules, nearly one acre (42,095 SF) of wetland impact is avoided. With respect to the District, the function and value associated with these areas, while minimal, will be retained and continue to develop as they naturalize.<sup>7</sup>

- **Access**

Access for the Amended Project will remain substantially similar to that which was permitted in the Approved Project with the exception of the traffic circle, which was previously necessary to provide an appropriate connection between the main access driveway and the internal driveways of the Approved Project which serviced three (3) separate buildings. By contrast, the Amended Project proposes a more simple intersection in lieu of the traffic circle

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<sup>4</sup> See Wetland Impact Plan, Impact Areas A, B, C, D, E, F, G, H, 1 and 2.

<sup>5</sup> See Wetland Impact Plan, Impact Areas 3, 4 and 5.

<sup>6</sup> See Zoning Ordinance, § 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).

<sup>7</sup> See Wildlife Study Update and Wetland Report Update.

which results in a 17,444 SF decrease (7,462 SF wetland and 9,982 SF Buffer) in impacts at this location alone.

The location and design of the two access driveways for the Approved Project will otherwise be utilized for the Amended Project unchanged. More specifically, the main access (“Green Meadow Drive”) is located centrally at the existing driveway for Mercury Systems located at 267 Lowell Road, which property is further identified Town Tax Map 234, Lot 35 (“Mercury Systems”), and a second access at the northern end of the site via Wal-mart Boulevard, which property is located at 7 Wal-Mart Blvd and is further identified as Town Tax Map 228, Lot 4 (the “Northern Access Road”). These driveways will make use of existing easements established at these at these locations earlier in the site’s history, specifically to provide access to the Property from Lowell Road and address concerns regarding traffic, intersection safety, and conflict with abutting residential property to the south.

All aspects of the driveway design intended to minimize wetland impacts and mitigate wildlife impacts, many of which were incorporated through Conservation Commission review, will be retained in the design, as summarized below and as depicted in the supplemental plans and expert studies filed herewith and with the Applicant’s Amended Site Plan Review Application.

- **Mitigation**

The natural resource related mitigation included in the Approved Project will be retained within the Amended Project and approximately 50 acres of additional area to the south of the Property will be preserved as natural buffer open space.

More specifically, as was the case with the Approved Project, Hillwood proposes to formally preserve, via a conservation easement conveyed to the Town of Hudson, approximately 90 acres located east of the project and 30 acres along the Merrimack River.<sup>8</sup> These preservation areas encompass the entire 250-foot protected shoreland of the River and the course of Limit Brook and its associated wetland complex, which collectively constitute the most valuable resources areas on the Property.

Further, approximately 40 acres of existing golf course turf within these preservation areas will be restored through an extensive restoration landscaping plan which was carefully coordinated with the Conservation Commission, during review of the Approved Project.<sup>9</sup> The restoration landscaping will utilize native seed mixes, shrubs, and tree species appropriate for the specific location. Closer to Limit Brook and other wetlands where the Buffer is currently maintained turf, plantings were chosen with a goal of reestablishing an effective Buffer. This includes a seed mix suitable for moist locations and thicket forming shrub species typical of wetland borders. Upland areas will receive an upland meadow seed mix and a variety of native trees and shrubs distributed in a naturalistic manner. Along the western edge of the development

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<sup>8</sup> See Wetland Mitigation – Restoration Plan.

<sup>9</sup> See id.; See also Hillwood’s Landscaping Plans.

in the protected shoreland of the Merrimack River, tree species have been selected and specifically located to provide screening from the River.

Finally, 50 acres of natural buffer open space will be preserved along the southern area of the Property which will provide additional buffer from the residential neighborhood to the south.<sup>10</sup>

## **Analysis**

### **1) Proposed District Impacts**

Permitted conditional uses within the District include access impacts<sup>11</sup> and lot development impacts.<sup>12</sup> In this case, a Conditional Use Permit for Access and Lot Development Impacts is sought for a total of 203,061 square feet (50,332 wetland 152,729 Buffer) of impact across 13 discrete impact areas within the District,<sup>13</sup> as defined by the Zoning Ordinance.<sup>14</sup> The proposed impacts, depicted on the Wetland Impact Plan, are overwhelmingly associated with the construction of Green Meadow Drive and the Northern Access Road, both of which are required to provide access to the Property's uplands.

More specifically, the Access Impacts caused by Green Meadow Drive and the Northern Access Road include 193,962 SF (47,719 wetland 146,243 Buffer) of impact, over 95% of the total impact proposed by the Amended Project.<sup>15</sup> The Amended Project contemplates only 9,099 SF (approximately 1/5 of an acre) of primarily temporary Lot Development Impacts to the Buffer which are necessary to install outfalls for three stormwater detention and treatment features at specific grades in close proximity to the wetlands.<sup>16</sup> These impacts do not involve impervious surface area except for approximately 200 SF of rip rap that is required for stabilization of the discharge point at each of the three locations. Following construction, these areas will be seeded using appropriate native seed mix and allowed to naturalize. Further, impact areas 4 and 5 currently consist of managed golf course turf. As a result, the net result of the Lot Development Impacts in these areas will be enhanced Buffer function via the provision of a naturally vegetated Buffer where one does not currently exist.<sup>17</sup>

The individual conditional use permit criteria of Section 334-36(C)(2) of the Zoning Ordinance, applying to the Access Impacts, and Section 334-36(C)(4), applying to the Lot Development Impacts are analyzed below.

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<sup>10</sup> See Wetland Mitigation – Restoration Plan.

<sup>11</sup> Zoning Ordinance, §334-36(C)(2)

<sup>12</sup> Zoning Ordinance, §334-36(C)(4).

<sup>13</sup> See Wetland Impact Plan, Impact Areas A – H, and 1-5.

<sup>14</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>15</sup> See Wetland Impact Plan, Impact Areas A—H, 1, and 2

<sup>16</sup> See Wetland Impact Plan, Impact Areas 3, 4, and 5.

<sup>17</sup> See Wetland Report Update.

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

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

- **The Access Impacts proposed within the District are essential to the productive use of land beyond the district.**

Wetlands extend along the entire eastern portion of the Property and effectively separate more than 200 acres of contiguous upland on the Property from Lowell Road which has been specifically identified by the Town as a good candidate for the very type of development the Applicant is proposing. The only current access to the site via Steele Road is not a viable alternative to provide primary access for the project for a variety of reasons. Considering wetland impacts alone, Steele Road crosses Limit Brook three times prior to reaching the main upland area of the Property. Significant impacts would be required to this perennial stream and its associated wetland in order to suitably improve Steele Road to serve as an access for the Amended Project. Other significant concerns affect the viability of Steele Road including the traffic flow and safety at its difficult intersection with Lowell Road, and its route through and in proximity to residential neighborhoods. New access must therefore be established for development of this Property and will necessarily involve wetland impacts due to significant extent and location of wetland in the eastern part of the Property.<sup>18</sup>

Given the size of the developable upland on the Property, which suits a project such as the Hudson Logistics Center, 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, Hudson Logistic Center employees, vendors, and Town emergency response personnel alike will still be able to access and egress to/from the site.

The impacts associated with the two access driveways are therefore essential to the productive use of the land beyond the District because without the Access Impacts, no productive use of the significant uplands on the dry western portion of the Property could occur, as there is no other viable way to access this extensive area with less impact.

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<sup>18</sup> See Wetland Impact Plan. See also Wildlife Study Update and Wetland Report Update.

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

Both access roads have been designed to avoid and minimize impacts within the District to the maximum extent practicable. First, both driveways have been aligned to cross wetlands at their narrowest points. As depicted on the Site Plan, Green Meadow Drive utilizes only a short portion of the existing Mercury Systems driveway over an existing 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 to limit the extent of impact necessary for the road. 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.

Although the crossing at Impact Area F is not a stream, Hillwood has nonetheless proposed a 22.75-foot wide by 4.3-foot high open bottom structure which meets openness guidelines for wildlife passage through stream crossings, even though these guidelines do not technically apply.<sup>19</sup> This approach will facilitate maximum wildlife movement between wetlands to the north and the ponds associated with Limit Brook to the south.<sup>20</sup> The use of wing walls at either end of the structure has also allowed the width of the crossing, and therefore impacts, to be further reduced. Additionally, Hillwood has committed to using sloped curbing along appropriate stretches of Green Meadow Drive which will better-facilitate wildlife crossings.

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 7.5-foot high open bottom structure is also proposed for the crossing to minimize any potential impacts to stream and wetland connectivity.<sup>21</sup>

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

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<sup>19</sup> See Wildlife Study Update and Wetland Report Update.

<sup>20</sup> Id.

<sup>21</sup> Id.

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

Green Meadow Drive and the Northern Access Road will comply in all respects with the Town's Site Plan Review Regulations and all other applicable regulations. Further, the access driveways for the Amended Project are subject to and will comply with the anticipated State Dredge & Fill Wetlands Permit and Alteration of Terrain Permits. As the Town is aware, Hillwood was previously granted all required State permits to develop the Approved Project which proposed the same accessways, only with greater impacts. In light of the nature of the Amended Project, the two access driveways collectively propose less impact to the wetlands and Buffer than was previously approved by the Town and the State.

- **There are no viable alternatives.**

As described above, the only current access to the site via Steele Road is not a viable alternative both in terms of wetland impacts and other important considerations. With the Merrimack River to the west, elevated highway infrastructure to the north, and residential development to the south, access to the site from Lowell Road is the only alternative. Given the extent and arrangement of wetlands extending across the entire eastern portion of the Property, any potential roadways must cross wetlands at some point to gain access to Lowell Road. Proposed Green Meadow Drive and the Northern Access Road have been designed to avoid and minimize impacts to the greatest extent practicable while also addressing other constraints and concerns as addressed elsewhere in this analysis. There simply are no viable alternatives to these primary access ways for the Amended Project.

Hillwood's Amended Project therefore meets the specific conditional use permit criteria of Section 334-36(C)(2) of the Zoning Ordinance applying to the Access Impacts.

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

Pursuant to Section 334-36(C)(4) of the Wetland Ordinance, Lot Development Impacts are permitted as conditional uses where the applicant can demonstrate that: a) 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, b) 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



The Applicant has demonstrated avoidance and minimization to the fullest extent practical.

- **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.**

The proposed Lot Development Impacts will not significantly interfere with the wetland functions and values of the wetlands involved.<sup>22</sup> All proposed Lot Development Impacts for the Amended Project (Impact Areas 3, 4, & 5) are primarily temporary in nature and consist of grading within the Buffer and a small portion of wetland at Impact Area 4. A significant portion of the Buffer impacts consisting of 3,602 SF (39% of all Lot Development Impacts) occurs in areas that currently consist of managed golf course turf.<sup>23</sup> All Lot Development Impacts are necessary to install outfalls for three stormwater detention and treatment features which must be installed at specific grades to function properly. The location and scope of these three impact areas is therefore dictated by existing grades of the Property and the fact that the target grades for the outfalls, by definition, lie in close proximity to the wetlands. The impacts cannot therefore be moved out of the District. All three areas will be restored using appropriate native seed mix following completion of the construction work and will be allowed to naturalize. Where these proposed impacts occur within managed golf course turf, post construction restoration will ultimately enhance Buffer function beyond existing conditions by providing a naturally vegetated buffer where it does not currently exist.

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. The stormwater management system will therefore be the primary protection against water quality degradation. The proposed 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 as they do today. However, and importantly, together with the restoration and naturalization of wetland Buffer outside of the proposed Impact Areas, water quality functions supported by the Buffer and wetlands will be greatly enhanced overall as a result of the Amended Project.

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

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<sup>22</sup> See Wetland Report Update and Wildlife Study Update.

<sup>23</sup> See Wetland Impact Plan, Impact Areas 4, 5.

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>24</sup>

- **In the alternative, should the Conservation Commission or Planning Board determine that the Lot Development Impacts will significantly impact wetlands function and values, the proposed Lot Development Impacts are not contrary to the public interest, will result in significant public benefit, compensatory mitigation is provided such that those District functions and values to be impacted will be off set in whole, and the Applicant has demonstrated avoidance and minimization to the fullest extent practical.**

First as described above, the proposed Lot Development Impacts will not have a significant impact on wetland functions and values and will ultimately enhance Buffer function and value in these areas. On these bases of lone, the analysis pursuant to Section 334-36(C)(4)(a) and (b) of the Zoning Ordinance is not warranted. In an abundance of caution, however, the Lot Development Impacts are not contrary to the public interest, and the Project will result in public benefit in the form of significant compensatory mitigation. Further, Hillwood has demonstrated avoidance and minimization to the fullest extent practical.

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

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>25</sup> Here, despite a roughly 375-acre site and 1.4 million square feet of proposed building footprint development, only 9,099 SF of largely temporary grading impact is proposed for lot development. Further, as described above, that largely temporary impact will result in higher function and value for the Buffer areas impacted that are currently maintained golf course turf. Under the circumstances, facilitating reasonable development in a manner that is less impactful than the Approved Project while simultaneously protecting and preserving the highest value wetland resources on the Property forever, and otherwise maintaining a site with roughly 57% open space, is consistent with the purpose and intent of the Wetland Ordinance, and of the Zoning Ordinance in general. Hillwood's approach to the design of the Amended Project advances the public interest for these reasons.

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<sup>24</sup> See Wildlife Study Update, pg. 21.

<sup>25</sup> See Zoning Ordinance, §334-33.

- **The Project will result in a public benefit because Hillwood has proposed considerable compensatory mitigation.**

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>26</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, which areas constitute the most value wetland resources on the Property. Extensive restoration of existing golf course in this conservation area will also be undertaken to restore wetland buffer and other sensitive ecological areas, many of which have been devoid of a natural buffer for upwards of 90 years. This will not only serve to advance inherent wetland function such as water quality and wildlife habitat but will also advance public benefits derived from a given wetland or ecosystem such as open space, aesthetics, and recreation. This will be particularly improved along the Merrimack River.

The proposed preservation area alone is more than 500 times the proposed Lot Development Impacts and 30 times the preservation that would be required under the US Army Corps of Engineers Compensatory Mitigation Guidance at the relevant 20:1 ratio.<sup>27</sup>

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>28</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.

Finally, all of these mitigation measures are in addition to the \$626,609.02 payment Hillwood has already made, pursuant to the Approved Plan and the approved State Wetland permit, into the Aquatic Resource Mitigation Fund which, as the Planning Board and Conservation Commission are aware, is designed to compensate the public for losses to aquatic resources and functions via the investment of financial resources to fund preservation, restoration and enhancement activities across the State.

- **The applicant has demonstrated avoidance and minimization to the fullest extent practical.**

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

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<sup>26</sup> See Wetland Mitigation – Restoration Plan

<sup>27</sup> Hillwood notes that the Project also meets the 20:1 ratio for total District Impacts.

<sup>28</sup> See Wildlife Study Update, pgs. 14, 15.

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.

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

In addition to satisfying the use specific criteria above, Hillwood's proposal satisfies the general Conditional Use Permit criteria contained in §334-37(A) of the Zoning Ordinance, as detailed below.

- **§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 Amended Project has been designed to limit the extent of wetland impacts and the effect the proposed impacts have on wetland functions and values even beyond what Hillwood proposed pursuant to the Approved Project. The Amended Project completely avoids impacts to the most valuable wetlands with the greatest function and value (Limit Brook, its associated wetlands and the Merrimack River) and minimizes the footprint and potential adverse effects of the unavoidable impacts, as described above and in the supporting materials filed herewith.

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 and within the undisturbed interior of the forested wetland at the eastern end of the Property. 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 exceed openness guidelines for wildlife passage, as well as wing walls and retaining walls, as discussed above and in supporting materials. These measures minimize impacts and facilitate wildlife movement and wetland connectivity.<sup>29</sup>

The Amended Project also avoids any impact to the four manmade ponds on the golf course. Although these four ponds are not part of the District, avoiding impacts to these areas and allowing them to naturalize will further offset potential adverse effects on wetland function and values.

A single vernal pool was identified on the Property, located in the forested wetland just outside the golf course. Neither the pool nor its forested buffer will be impacted by the Amended Project. All project related disturbance in proximity to the vernal pool is located outside the District within the adjacent golf course which does not support vernal pool species habitat. The pond and surrounding maintained area immediately north of the pool

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<sup>29</sup> See Wetland Report Update and Wildlife Study Update.

will be returned to a natural condition through restoration landscaping which will improve habitat surrounding the pool.

Further, the Amended Project proposes 30,808 SF less impacts within the District than the Approved Project, a reduction of 13%. This is in addition to a more than 20% reduction in impacts that was the result of close coordination with the Conservation Commission during review of the Approved Project.

As the Amended Project has been thoughtfully designed to built upon the design of the Approved Project and further 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.

- **§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.**

First, 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 same is true of the Merrimack River, its associated floodplain, and its entire 250-foot protected shoreland. The functions and values most relevant to off-site effects that are supported in these areas, such as flood attenuation, water quality, and aesthetics, will be preserved and advanced by the Amended Project through preservation and naturalization of these areas.

The unavoidable impacts at Green Meadow Drive and the Northern Access Road that are necessary for access, and which collectively constitute 95% of all proposed impacts, have been minimized to the greatest extent possible,<sup>30</sup> and where unavoidable, designed to facilitate wetland and wildlife connectivity.<sup>31</sup> Hillwood has also committed to sound mitigation and to shielding of lighting where adjacent to the Shoreland Protection Zone and proposed conservation easement areas to minimize impact to wildlife. These improvements will have no potential for downstream impacts or effect on hydrological connectivity.

The modest remaining impacts for Lot Development (9,099 SF), the majority of which is temporary in nature, is incurred by grading activity to install stormwater management outfalls and does not involve impervious surfaces within the District beyond minimal rip rap to stabilize the individual outfall discharge points. These impacts will also be restored following construction. Approximately 39% of this impact occurs within areas that are currently maintained golf course turf. As a result, the post-construction restoration and subsequent naturalization of these areas, along with extensive restoration of Buffer

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<sup>30</sup> See discussion above regarding Use-Specific Conditional Use Permit Criteria for access.

<sup>31</sup> See discussion above regarding use of open bottom structures and sloped curbing.

elsewhere on the site, will result in a net improvement within the Buffer for functions protective of downstream interests.

The Amended Project will comply with the Town's recently revised Stormwater Management Regulations, and State of New Hampshire Alteration of Terrain Regulations. These two sets of regulations will ensure that the stormwater management system provides fully modern protections for water quality, rate of runoff, and infiltration. The design also maintains existing drainage patterns as closely as possible to prevent downstream impacts associated with changes in same. These critical aspects of the Amended Project will also be subject to independent peer review retained by the Town of Hudson.

Considering the avoidance and minimization of impacts, the proposed mitigation, and the comprehensive stormwater management, the Amended Project has been designed to have no negative environmental impact to abutting or downstream properties and/or hydrologically connected and/or wetland resources. The Amended Project therefore satisfies Section 334-37(A)(2) of the Zoning Ordinance.

- **§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.**

The extensive avoidance and minimization efforts, explained in detail above, are incorporated herein. To summarize, the vast majority impacts (approximately 95% of all proposed impacts) are necessitated to provide access to the upland area on the western portion of the Property. Two accessways into the Property are required for operation of the Amended Project 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 with oversized open bottom structures. 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 as access for the Project due to concerns related to proximate residential uses, intersection suitability at Lowell Road, and the fact that Steele Road crosses Limit Brook three times and would involve significant impacts to this waterway and its associated wetlands. 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.

The remaining impacts within the District are associated with three areas of grading within the wetland Buffer, none of which propose impervious surface, and all of which will be restored following construction. These impacts are necessary to extend discharge pipes from three stormwater treatment basins to specific elevations which will allow the basins to function properly. The elevations at which these outfalls must be installed are by definition

in close proximity to the edge of the wetland so the impacts cannot be moved out of the District.

- **§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 Amended 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 the 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 Amended Project incorporates the use of those BMPs recommended by the State, as referenced above, a reasonable conclusion is that Hillwood's proposal satisfies §334-37(A)(4) of the Zoning Ordinance.

- **§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.**

An interagency pre-application meeting was held with NHDES, Army Corps of Engineers, US Environmental Protection Agency and members of Hillwood's development team to discuss the Amended Project and scope of impacts. New State Dredge and Fill Wetland and Alteration of Terrain applications for the substantially reduced impacts associated with the Amended Project will be submitted to NHDES in the immediate future. Based on the fact that the impacts of the Approved project fell below the threshold where an Individual Permit would be required under Section 404 of the Clean Water Act, and the fact that the Approved Project was authorized under the NH Programmatic General Permit, we do not expect that a separate application will be required under the Clean Water Act. To the extent that any applicable State or Federal permits are not obtained by Hillwood in advance of local Conditional Use Permit Approval, Hillwood is comfortable with a condition of approval requiring the filing of the same with the Town.

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

All state applications will be filed in the near term and file numbers will be provided.

## **Conclusion**

For the reasons described above, as well as those captured in all related supplemental filings and studies, Hillwood submits that the Amended Project satisfies all applicable criteria for a Conditional Use Permit for impacts within the Wetland Conservation Overlay District and request that the Commission confirm this with a favorable recommendation to the Planning Board.