

January 12, 2021

Groton Conservation Commission

C/o Nik Gualco- Conservation Administrator

Town of Groton

Members of the Conservation Commission:

The Groton Conservation Trust is an abutter to the proposed “The Village at Shepley Hill” project, and the Trust also serves as an advocate for environmental protection throughout the Town of Groton and regionally. That advocacy resulted in the designation of the Petapawag Area of Critical Environmental Concern in 2002, in which this project lies. The impact of this project is substantial and would, as currently proposed, cause considerable harm within that ACEC. Accordingly, we are voicing our opposition to the project as currently designed.

An essential component of this project is the approval of three separate wetland crossings, each to be considered a “limited project” under the provisions of 310 CMR 10.53 (3)(e) and 310 CMR 10.55(4). The intent of these provisions is to permit wetland impacts essential to provide a landowner reasonable access to upland areas of their property if measures are put in place to minimize and mitigate those impacts. Their intent is not to allow as many wetland crossings as desired to support a landowner’s development plans.

The language in 310 CMR 10.53(3)(e) consistently refers to a single wetland crossing accessing a single part of the property – “a new roadway or driveway”, “the roadway or driveway”, “an upland area” – and even requires the use of the landowner’s adjacent property as an alternative if suitable. The regulations clearly anticipated that, in cases where the Conservation Commission uses its discretionary authority to accept a limited project, there would be only one such wetland crossing.

The Department of Environmental Protection has published [Wetlands Policy 88-2: Access Roadways](https://www.mass.gov/guides/wetlands-policy-88-2-access-roadways) as a guide to the interpretation of 310 CMR 10.53(3)(e). It explains that:

These provisions merely provide the discretion to permit these projects and the authority to impose conditions which, in addition to those set forth in the applicable portion of 310 CMR 10.53(3), the issuing authority determines are necessary to adequately protect the interests of the Wetlands Protection Act, M.G.L. c. 131, s.40. The issuing authority is not required to give approval to all projects filed under this provision, but should examine the facts and determine whether the project qualifies as a limited project.

The guidelines point out that Conservation Commissions must consider specific conditions that may make a limited project designation inappropriate:

If, however, it is particularly important to avoid alteration of this wetland in order to protect the interests of the Act, for example when the wetland: lies adjacent to or above a public water supply, particularly in an area that is the primary cone of influence to a well; is in an Area of Critical Environmental Concern; contains rare species habitat; is a Class A designated water body by the Division of Water Pollution Control; is an anadromous fish run; or has some other special environmental attribute, the issuing authority may appropriately deny the same proposal.

This policy recognizes that, despite the language in the regulations, multiple limited projects may be permitted on large parcels of land. But by their nature limited projects must be limited in number, and each wetland crossing is considered a separate limited project.

The applicant’s plans show that the parcel on which this project is proposed has two upland areas. Each is accessible from a public way by a single wetland crossing, and such crossings are shown on those plans. The Conservation Commission should consider the applicant’s proposal for these two crossings in light of the significant wetland impact of each. The Trust believes the serious impact of each crossing warrants the Commission’s denial of a limited project designation for each, but the Commission can appropriately consider them.

There is no basis for the Commission even considering the third crossing. It is not necessary to provide access to any other upland area. It exists solely to increase the development potential of the parcel. Nothing in 310 CMR 10 suggests that the Commission has the authority to designate such a crossing as a limited project. Such a designation would suggest that any development could have as many wetland crossings as the applicant desires and would set a very dangerous precedent for future projects. As this third wetland crossing clearly does not meet the criteria for a limited project, it must be prohibited since the provisions of 310 CMR 10.55(e) are not overridden:

Any proposed work shall not destroy or otherwise impair any portion of a Bordering Vegetated Wetland that is within an Area of Critical Environmental Concern designated by the Secretary of Energy and Environmental Affairs under M.G.L. c. 21A, § 2(7) and 301 CMR 12.00: Areas of Critical Environmental Concern.

The Trust has further and specific concerns about the applicant’s assessment of wetland impacts, the sufficiency of the proposed “Wetland Mitigation Plan”, and the project’s impacts on habitat and water quality. But those concerns are secondary to the applicant’s assumption that three limited project designations are approved. Those concerns should be reviewed in the context of a revised proposal from the applicant that does not include wetland crossings the Conservation Commission should not and – in the case of a third crossing – may not permit.

Sincerely,

Ted Lapres- President- Groton Conservation Trust

CC Town of Groton Planning Board-c/o Takashi Tada