


From: Jennifer Holme holmemarkatos@gmail.com 
Subject: Re: Grace Farms -- US Army Corps Unauthorized Activity Investigation
Date: January 20, 2019 at 2:57 PM
To: stecomm@optimum.net, Angela Jameson angelajameson2003@yahoo.com



Dear Chairman Stepanek & Secretary Jameson,

As more than a month has elapsed, we wanted to touch base and understand where the Commission stands in its review and decision making process regarding the Grace Farms' wetlands permit.

In this regard, please see the attached 2017 report from Harbor Watch which shows a degradation in water quality of the Five Mile River at the Michigan Road observation site from when the river's water quality was last tested in 2015.

As you are aware, Grace Farms opened to the public in October 2015, and its property abuts Norwalk Water Company lands on Michigan Road.

We continue to look forward to the Commission's response.

Regards, Jennifer Holme & David Markatos



Harbor Watch
River R...017.pdf

On Dec 16, 2018, at 9:31 AM, Jennifer Holme <holmemarkatos@gmail.com> wrote:

Dear Commissioners,

After nearly two decades of restoration, in October 2017, our home, the "Abijah Comstock House," located at 1328 Smith Ridge Road in New Canaan, was listed on the National Register of Historic Places. The "Abijah Comstock House" is recognized by the National Parks Service for having historic significance based on multiple criteria, including as a local example of an 18th century farmstead with emancipated slaves. Through the operation of National Historic Preservation Act 1966 (NHPA) and National Environment Protection Act 1969 (NEPA), we have explicit federal consultation rights on any regulated activity impacting our property.

As a National Register property, NHPA and NEPA work in concert to ensure that there are no adverse effects to our property from any regulated activities, such as environmental/wetlands permits. In other words, does the proposed regulated activity alter, directly or indirectly, any of the characteristics of a historic property that form the basis for inclusion on the National Register in a manner that would diminish the property's integrity.

As you are aware, there is on-going environmental litigation in Connecticut's land use court concerning the Grace Farms development. And with more than 150,000 documented visitors to Grace Farms each year having access to a trail network within the wetlands corridor, we have grown increasingly concerned about the past and current impacts from this commercial

development to our pond, and the wetlands within our backyard.

After a July 2012 Five Mile River Watershed Based Plan commissioned by the Connecticut SWRPA (copy attached) was brought to our attention that documents that the pond/stream network and associated wetlands running through our backyard constitute the headwaters of The Five Mile River, a navigable waterway and water of the United States, this past February we reached out to the U.S. Army Corp of Engineers to determine:

- 1) if this wetlands corridor in fact constitutes Federal wetlands subject to Army Corps oversight
- 2) whether a request for jurisdictional determination had been made by Grace Farms Foundation prior to commencing the development in 2013, and if the proper permitting process/reviews/approvals had been followed with/obtained from the Army Corps.
- 3) whether there were any impacts to the wetlands from the extensive cut & fill activities that took place during the development phase of Grace Farms.

After a 10-month investigation, on December 6, 2018 the Army Corps issued a report (copy attached) confirming that:

- 1) the wetlands corridor running behind our home is federal wetlands and subject to Army Corps' purview
- 2) no formal or informal request for jurisdictional determination was ever made by Grace Farms Foundation with respect to its development activities at Grace Farms
- 3) an unpermitted illegal catch basin was created in the federal wetlands causing disturbance to an approximately 150 square foot section of the wetlands
- 4) an after the fact permit (copy attached) is required to address the impacts to the federal wetlands from this catch basin
- 5) We have federal rights under NHPA and NEPA

With a commercial development project as large as Grace Farms -- 15,100 cubic yards of cut and 78,400 cubic yards of fill -- and with an extensive roster of experts retained to manage this commercial development, we cannot comprehend how a material requirement such as an Army Corps. jurisdictional determination was inadvertently missed.

In a September 2012 report (copy attached), Michael S. Klein of Environmental Planning Services, Grace Farms Foundation's long-standing wetlands expert, states explicitly that: "[s]tate and federal wetlands on Lots 77 and 76 were delineated on April 2 and 17, 2012 ... The state and federal wetland boundaries are identical throughout the study area." [emphasis added] The 2012 Wetlands Delineation Report demonstrates that Grace Farms Foundation was fully aware of the existence of federal wetlands at Grace Farms. Why wasn't this material fact brought to this Commission's attention by the applicant during the 2012/2013 proceedings? Did Grace Farms Foundation have concerns that Army Corps involvement in the project may have required material changes to their design plan, by potentially moving the River Building complex farther away from the federal wetlands, or by requiring substantive changes to the project's storm water management plan/systems?

As stewards of New Canaan's wetlands, this Commission is responsible for ensuring that applicants follow the proper wetlands processes and procedures. The record from the 2012/2013 Grace Farms public hearings is devoid of any discussion regarding the delineated federal

wetlands and related permitting requirements. How is this possible, given Ms. Holland's active participation the July 2012 SWRPA Five Mile River Watershed Based Plan and Mr. Klein's September 2012 Wetlands Delineation Report? In Ms. Holland's case, she was specifically identified as a named contributor to the SWRPA Plan. Ms. Holland failed on multiple levels to provide the appropriate expertise or guidance on this file to the Commission. Her active involvement with the SWRPA Plan clearly demonstrates that she had knowledge that the headwaters of the File Mile River run through Grace Farms. Ms. Holland had an obligation to both this Commission and the Federal government to ensure that the jurisdictional authorities were appropriately consultant by the applicant. This smacks of professional incompetence or recklessness on the part of Ms. Holland. Considering that Grace Farms is the largest/highest profile development in New Canaan over the past quarter century, we find this Commission's lack of oversight of its staff to be disappointing.

We request that this Commission take the following immediate actions regarding Grace Farms:

- 1) require a permanent independent monitor to manage and review the illegal catch basin located in the federal wetlands. This monitor should report directly to the Commission and be required to perform twice annual surveys guaranteeing that there are no further adverse impacts.
- 2) perform a complete independent review of Ms. Holland's work on the Grace Farms development file. If warranted following that review, recommend that Ms. Holland be subject to appropriate disciplinary procedures by the Town of New Canaan.
- 3) re-open the Grace Farms wetlands permit and impose additional conditions of approval. Specifically, no activities in the federal wetlands at Grace Farms should be permitted. All existing walking trails should be abandoned, and a permanent fence line be established in the uplands to prevent access by visitors to these wetlands. As referenced above, more than 150,000 people visit Grace Farms annually and have access to the wetlands corridor. Ms. Holland is incorrect in stating that this Commission does not have purview of this activity. This Commission has complete oversight over any activity in wetlands. Even if only a small percentage of these visitors walk the trails, the cumulative impact of these people in the federal wetlands is material, and cannot be disregarded.

We are available to discuss this matter further at the Commission's convenience, and we look forward to your response.

Kind regards,

Jennifer Holme and David Markatos

<NAE-2018-00393-MFR-INVESTIGATION (18 12-4).pdf>
<NAE-2018-00393-SV_PERMIT (18 12-6).pdf>
<SWRPA-FIVE MILE RIVER-WATERSHED PLAN.pdf>
<EPS-WETLANDS DELINEATION REPORT.pdf>

