



Coalition for the Responsible Growth of Dover

February 11, 2009

Town Supervisor Ryan Courtien
Town Councilwoman Catherine Frame
Town Councilman Christopher Galyada
Town Councilman Richard Hawthorne
Town Councilwoman Kathryn Palmer House

Re: Dover Knolls/DEIS

To The Town of Dover Town Board:

The Coalition for the Responsible Growth of Dover (CRGD) is an interested party in the review process for the above-referenced project (the Proposed Project). We write to respectfully request that the Town Board not accept the Applicant's Draft Environmental Impact Statement (DEIS) as complete.

CRGD recognizes that the formal public comment period for the DEIS will not begin until the Town Board determines the DEIS to be substantively complete and thereafter schedules a public hearing to receive comments. We also note that the Town Board made the DEIS available to the public on the Town's website not long after it was filed by the Applicant on Christmas Eve, having rightly concluded that given the complexity and size of the Proposed Project, the public should begin the process of familiarizing itself with the contents of the DEIS at the earliest juncture-- even though, as we recognize, the DEIS is currently undergoing revision as a result of the Town Board's own completeness review as lead agency.

With the above in mind, CRGD and its experts have identified several critical areas in which the DEIS is facially incomplete and otherwise lacks sufficient information to give interested members of the public an opportunity to adequately understand and analyze the potential impacts of the Proposed Project¹ as identified in the Dover Knolls Final Scoping Document dated June 25, 2008 (the Final Scoping Document):

A. Key Areas of DEIS Incompleteness

¹ In setting out the required elements of the DEIS, the Final Scoping Document provides that "the DEIS is intended to convey general and technical information regarding the potential environmental impacts of the Proposed Project to the Town of Dover Town Board (as Lead Agency), as well as several other agencies involved in the review of the Proposed Project. The DEIS is also intended to convey the same information to the interested public. The Preparer of the Draft Environmental Impact Statement is directed to keep this audience of the DEIS in mind as it prepares the document. Enough detail shall be provided in each subject area to ensure that most of the readers of the document will understand, and be able to make decisions based upon the information provided." (Page 3 of the Final Scoping Document).



1. Water Quality and Capacity (Chapter III (O))

(Found in Infrastructure & Energy, see Final Scoping Document pg 21, Chapter III(O)3b). Although the DEIS discusses the proposed water-supply sources in detail, no specific support documentation for the ground-water supply source is included in the submitted DEIS. The 72 hour pump test data required in the Final Scoping Document has not been submitted as part of the DEIS Well Testing Protocol. (See the DEIS Section III.O-7, b(2)) The Applicant states in the DEIS that “the purpose of the Knolls of Dover pumping test program is to comply with DCDOH regulations for development of community supply wells as well as meeting the DEIS scoping requirement to determine if sufficient ground water is available to meet the water supply demands of the proposed project.”.....” Upon completion of the pump test program, a report will be prepared and made a part of the EIS.” (emphasis added)

NO well documentation or aquifer study has been supplied to show that there will be enough water for the Proposed Project. This is critical water supply information which was listed in the Final Scoping Document as an element of the DEIS and its absence cannot be excused. Delaying submission of the pump test data until the final EIS will come far too late in the SEQRA process. Substantial concerns have been raised by members of the public repeatedly at public meetings for several years regarding the issue of ground water quality and quantity. This is of particular importance because there is only one source of drinking water in the valley bottom. Degradation and/or overtaxing of the aquifer will have a negative environmental impact under SEQRA.

2. Visual Resources

The Applicant only generally represented the visual impact the Proposed Project will have, largely with respect to the proposed “Reservoir Hamlet”. This hamlet is proposed to be located at the top of a knoll, which will be part of the 28 acres to be cleared on the upper slope of the east side of the property (see discussion of Natural Resources, below). Inexplicably, the visual analysis does not base any of its computer analysis on the siting of houses at this location. In order to be complete, the DEIS should be required to provide a full visual analysis to assess the impact of siting units in that location. In addition, the DEIS should show realistic simulations of units sited there (not ‘bird’s eye view, but based on what will actually be seen by the public from Route 22 and other locations after the Proposed Project is completed).

As required by the Final Scoping Document, the DEIS also omits:

- descriptions of lighting and sign designs from a distance.
- lighting plan/photo-simulation of night views (when lights are on in the buildings) during leafless season.
- assessment of visual impacts of housing planned for steep slopes
- Route 22 To Hillside Cross Section, 123108 does not provide visual analysis of stacked townhouses on hillside- the most extreme of the building on steep slopes.
- perspective drawings of the hillside townhouses from Route 22

3. Geology

Steep Slopes: The Final Scoping Document (*Geology, Topography, Chapter III.C.3.b.*) requires the Applicant to describe the topography of the site and include a topographic map based on 2-foot contour survey map, including low areas along Route 22, the Swamp River and higher elevations to the east and west. The Applicant is further required to provide a topographic map with information about the following slope categories: 0-15 percent, 15-25 percent, and greater than 25 percent.

As to potential impacts, the Final Scoping Document requires the Applicant to describe the techniques proposed to minimize soil erosion and slope failure and to identify the extent of construction impacts on various steep slopes, particularly steep slopes in excess of 15% and 25%.

The DEIS is not complete on this topic. No map has been prepared which shows the conceptual plan with a topographical overlay. There is thus no way to either identify or assess topographic changes from the Proposed Project grading because there is no engineering review for the 'conceptual plan.' The Applicant summarily concludes that "17% of the site's steep slopes in excess of 15% would be disturbed" but does not provide adequate information to determine what specific slopes on the site are at issue. The absence of the required plans makes any assessment of the statement impossible. The Applicant further states, that "every attempt will be made to cut to fill in small lifts" but then does not define for the lay reader what is meant by "small lifts." The Applicant summarily observes that "protection of steep slopes and slope stabilization will be required both during and post construction to prevent erosion and transport of sediment laden water offsite." However, the Applicant does not provide detail as to what measures it will take to protect the steep slopes. Post-construction protection measures in particular are of utmost concern since it is unclear what involvement the Applicant will have post-build out. Simple conclusory statements do not meet the Final Scoping Document's requirement to describe mitigation and control techniques.

4. Infrastructure/Waste Water and Water Facilities Operation – The Final Scoping Document requires the Applicant to evaluate any potential impacts associated with wastewater treatment plant improvements and operation. The DEIS provides no detail regarding the short and long term operating costs of the water and wastewater facilities. The extent of repairs and upgrades to the existing infrastructure (as recommended and outlined in the two water facilities reports attached in the Appendices to the DEIS) will have profound impacts on the long term support costs, none of which have been adequately addressed in the DEIS.

5. Economic Impacts – The Final Scoping Document (page 13, section E. 6.b) specifically requires that the DEIS review the impact of school enrollment increases and the need for additional school facilities, personnel, equipment, and the anticipated cost of these items. The DEIS does not address the need for additional facilities due to increased enrollment. As the projected increase in school enrollment is likely to push the existing school facilities over current capacity, this appears to be a significant omission in the DEIS. Specifically:

- The DEIS states that the Proposed Project will generate approximately 534 public school children (or 628 public school children using ULI multipliers; or 724 public school children in the “worst case scenario” where there are no age-restricted units).
- The DEIS also states (page III. F-12) that the schools have a current capacity for an additional 500 more students and a capacity in 2011-2012 for 600 more students.
- Thus there is an obvious difference of 34 children in the Proposed Project (and a difference of up to 224 children in the worst case scenario) between projected enrollment and school district capacity.
- The DEIS acknowledges that “the school district would likely need to add or alter the existing school bus routes to accommodate the proposed development.”
- But then under Section c. “Mitigation Measures” on the same page, the DEIS states that the school district “is projected to have sufficient capacity to meet the needs of the public school children that would be generated from the proposed development.”
- Thus it appears that the DEIS clearly ignores its own evidence as presented in the immediately preceding paragraphs, and the DEIS makes no attempt to discuss mitigation measures, or the costs of those measures, required for over-capacity schools.
- The DEIS should also confirm that figures for school capacity, as provided in the District’s November 29, 2006 letter to AKRF, are still accurate.
- The DEIS does not provide detail for the expected fiscal impacts of Phase II. The DEIS should detail the expected net fiscal impacts for Phase I and Phase II in addition to its discussion of the impacts of the project at full build out.
- The DEIS should detail the typical net fiscal impact for one unit of each type, e.g. one 3-br single family detached unit generates a net fiscal impact of \$__x__, one 4-br single family detached unit generates a net fiscal impact of \$__x__, and so on. This detail would be reasonably easy for the Applicant to provide and would allow the Town, as lead agency, to assess the impacts of any deviation from the proposed unit mix and phasing plans.

6. Natural Resources

The DEIS provides that “as stated above, the Proposed Project was designed to primarily utilize disturbed portions of the site or lower value habitats and generally follows the conservation recommendations in the natural resources technical reports that were prepared under the direction of Michael W. Klemens, LLC”. While the DEIS acknowledges the Klemens et. al. studies, it fails to specifically incorporate key recommendations of those studies. One critical example is the failure to adhere to more than the 100 foot DEC wetland setback. Dr. Klemens recommended greater buffers in many of these areas. In addition, the DEIS fails to identify a significant impact – the clearing associated with establishing the Reservoir Hamlet. According to the DEIS, 28 acres of forest will be impacted. This means 28 acres of forest will be removed. But, the impacts caused by fragmenting the forest extend beyond the area of the clearing and potentially affect the entire forest. For this reason, the actual area of impact is much larger than the 28 acres state, and the acres figure should be increased to reflect the actual impact.

7. Wetlands

The impact analysis in the DEIS addresses local impacts to isolated wetlands. It gives a detailed analysis of the micro-impacts to each wetland complex but fails to assess the macro-impact to the entire Great Swamp/Swamp River ecosystem. The type of micro-analysis deployed in the proposed DEIS may be sufficient for a typical development, but should not be regarded as complete in connection with the Proposed Project: a) because of the tremendous significance and uniqueness of the Great Swamp, the number of rare species present in the Swamp, etc; b) because of the complexity and size of the Proposed Project, and c) because the development is an open space/cluster development which arguably is protecting open space, it is nonetheless still important to properly assess whether the right areas of open space will be protected. A complete analysis of the impacts should take into account the affect of the Proposed Project on the Great Swamp – and answer questions like whether requiring larger buffer areas would have less impact on the Swamp as a whole. The DEIS fails to include a macro-level analysis that is critical in order to understand how much the Proposed Project will contribute to degrading the Swamp.

B. Recommended Town Action

It is very important that the DEIS include all of the information that was identified in the Final Scoping Document. The Final Scoping Document established the Town Board's decision, as lead agency, as to what the DEIS must contain, including studies and supporting data. Where the Final Scoping Document is clear as to the required contents of the DEIS, a decision to declare the DEIS complete without that information is a clear violation of both the letter and spirit of SEQRA. An offer to include the missing information in the Final Environmental Impact Statement (FEIS) is an impermissible suggestion which deprives the public of the opportunity for meaningful comment and otherwise prevents the lead agency from meeting its obligations under SEQRA.

The customary and established process of review is that once a preliminary draft of the DEIS is submitted to the lead agency, it determines if it is adequate and complete for public review. One of the primary tools for determining completeness is comparing the DEIS to the Final Scoping Document. 6 NYCRR Sec. 617.9(a)(2). Once the DEIS is accepted as

adequate and complete it is released for public comment, consisting of a period for written comments and a public hearing. Then the FEIS is prepared which must include the comments on the DEIS, the responses thereto and any changes to the DEIS necessitated by the comments.

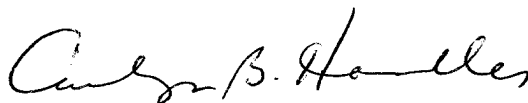
Thereafter, the lead agency is charged with declaring the FEIS adequate and complete and then must wait at least 10 days until it can adopt its Statement of Findings which is the formal determination that the requirements of SEQRA have been met, and that among the alternatives studied, the project avoids, minimizes or mitigates the adverse environmental impacts to the maximum extent practicable, consistent with social, economic and other essential considerations. 6 NYCRR Sec. 617.11(d).

It is illegal for the lead agency to accept as adequate a DEIS which is missing substantive information that was identified in the Final Scoping Document. And it is wrong to attempt to rectify that error by including the missing information in the FEIS. To do so is to deprive the public of a meaningful opportunity to comment on the information and precludes as a matter of law, the lead agency's ability to take the "hard look" at the potential impact of a project. The Court of Appeals ruled that "the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS". Webster Associates v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431,433 (1983). When that information is omitted, the only recourse is the preparation of a supplement EIS (SEIS) which requires publication of a new draft SEIS (SDEIS) and the requisite public comment thereon, which results in a Final EIS that includes the comments and responses on the DEIS and the SDEIS.

Additional time to undertake studies required by the Final Scoping Document is not a justification for accepting a facially inadequate DEIS. The Applicant has known since the preparation of the Final Scoping Document in June 2008, what the requirements for the DEIS would be and should have planned accordingly. Difficulty in obtaining information or waiting for the right weather conditions, such as to conduct a wetland delineation or a water study are to be expected and are part of the planning of a project of any significant size.

For these reasons, CRGD respectfully requests that the Town Board determine the DEIS to be incomplete.

Sincerely yours,



Carolyn B. Handler, President
Coalition for the Responsible Growth of Dover