

A. Land Use and Community Character, Zoning and Public Policy

1. Additional Technical Studies

No significant additional analyses related to land use and community character have been prepared as part of the FEIS. The conclusions of the DEIS in regards to compatibility with land uses within the study area remain appropriate. Similarly, the discussion of the project's compatibility with the Town's Master Plan and other policy documents remains valid.

The FEIS has been augmented with a matrix analysis that compares the Knolls of Dover Design Guidelines with several existing design documents (the Dutchess County Building Form Guidelines, Dutchess County Hamlet Design Guidelines, Dutchess County Rural Development Guidelines, the Greenway Compact Program and the Town of Dover Sign Guidelines). The matrix is included in FEIS Appendix 4 and examines the following categories:

- A. Town Center Guidelines;*
- B. Development Standards;*
- C. Street Alignments;*
- D. Commercial and Mixed-Use Streetscapes;*
- E. General Architecture Guidelines;*
- F. Other Miscellaneous Guidelines.*

As illustrated in the matrix, overall, the Knolls of Dover Design Guidelines provides comprehensive standards for future development on the former HVPC site. In most cases, the Knolls of Dover Design Guidelines provide much stronger and more in depth language regarding design features, while also providing specific design features not present in any of the policy documents reviewed (e.g., garages, grading, commercial entries and storefronts, outside seating and tables, and design of blocks). Of the policy documents reviewed, the Town of Dover Sign Guidelines is the one case where the language provided is more comprehensive than the Knolls of Dover Design Guidelines; however, the Project will be subject to all of the Town's codes and regulations, and will comply with the Town's Sign Guidelines.

The matrix review did identify a few individual design features that could be more fully described in the Knolls of Dover Design Guidelines in order to be consistent with the other documents, including porches, native plants and open space preservation, cluster development and screening of new construction. The draft Knolls of Dover Design Guidelines document presented in FEIS Appendix 3 has been augmented to include discussion of these features.

2. Plan Change and Impacts Summary

As detailed in Section I, comments received on the Master Development Plan included in the DEIS raised a number of issues that have been addressed with the proposed modifications presented in this FEIS (the "Modified Master Development Plan" or "modified FEIS plan"). These changes have served to reduce the extent of development in some of the outlying areas (such as around the reservoir, in the southwest corner of the site, in the northern portions of the site south of Pleasant Ridge Road, and the area behind the existing golf course pond) and increase density in the Town Center. These changes generally serve to further advance the project's consistency with Town planning policies. They do not result in significant changes in

land uses, general development character, or relationships to neighboring parcels that would alter the conclusions of the land use and policy discussions.

The public comments centered primarily on concerns with the proposed zoning text amendments that would be required in order to make the proposed plan feasible. A number of modifications to the proposed zoning changes have been made in responses to these comments. The revised MC Overlay Zoning language is included in FEIS Appendix 5. The modifications include an adjustment of the maximum density to more closely reflect the proposed development program, a vesting provision that would maintain zoning and master development plan approvals for a period of 15 years, and modification of the 10% flexibility provision for site plan amendments. The 10% flexibility provision as proposed by the Applicant was never intended to allow for an increase in the total number of dwelling units above the maximum (e.g., 1,376) anticipated to be approved by the Town Board in a Master Development Plan. The 10% provision provides flexibility necessary to market the project over time. It would not permit an increase in the total number of units approved by the Town Board, but would allow different mixes of housing product type, subject to review by the Town, within the context and thresholds established in the zoning. The maximum residential density permitted under the proposed zoning remains significantly less than permitted under the existing MC Overlay district.

Other comments related to the extent of the project's advancement of traditional neighborhood design and transit oriented development principles. The conceptual plan follows traditional neighborhood design principles, concentrating most of the proposed development close to the Town Center, providing for a mix of uses and housing types, creating interconnected hamlets with traditional street grid patterns, and preserving sensitive environmental resources. In addition, previously outlying areas such as the Meadow Pond, Knolls and Reservoir hamlet have been substantially modified. Most of the housing units removed from these areas have been relocated to the Town Center and vicinity. In total, the modified plan presented in this FEIS shows that 69 percent of the proposed dwelling units are within a 10-minute walking distance from the Metro North station.

3. Comments and Responses

Comment A.1

AKRF feels that the conclusions of the DEIS and the proposed project is compatible with land use within the study area, and even represents an enhancement of conditions within the area as the project would revitalize the derelict site, are appropriate. AKRF also feels that the DEIS appropriately describes the compatibility of the proposed project with the Town Master Plan and other policy documents.

(Graham Trelstad, AKRF, Memorandum to the Town Board, 7/30/09, Pg. 3)

Response A.1

Comment Noted.

Comment A.2

Exhibit III.A-1 portrays "Existing Land Use within 2 Miles of the Site." This map is based on outdated land use data. The map shows extensive areas designated as Soil

Extraction/Storage/Manufacturing. Most of those areas are currently in agricultural and recreational uses. The map therefore conveys the false impression that the Pleasant Ridge Road area is a disturbed, industrial area. We recommend that Exhibit III.A-1 be augmented with a plan that more correctly depicts the current uses in the area.

(Christopher Wood, Chair, Oblong Land Conservancy, Letter, 6/30/09, Pg. 6)

Response A.2

Comment noted. However, the land uses depicted in Exhibit III.A-1 to the north and west of the Project Site on Pleasant Ridge Road are accurate according to the records of both the Town Assessor and Dutchess County's Parcel Access system. In addition there are 37 photographs presented as Exhibit III.B-1 to B-5 in the DEIS, which clearly show the development patterns surrounding the subject site.

Comment A.3

I find inconsistency with the statement that the project represents traditional neighborhood design principals considering the location of the three sprawled out neighborhoods in the areas on the east, northwest and southwest portions of the plan.

The design of these neighborhoods is inconsistent with the goal of the Town's master plan on land use, which states that the objective is to create a pattern of land use that reinforces the Dover Plains and Wingdale Hamlet Centers, preserves the Town's natural resources and enhances the overall rural character, while promoting appropriate areas for the development of economic opportunities.

The three sprawled out subdivisions located on the edges of the approximately 1,000 acre site are not in the one-half mile walkable radius of a well planned traditional neighborhood designed community.

(Jill Way, Public Hearing Transcript, 6/3/09, Pg. 205-206)

Response A.3

The Knolls of Dover plan was developed with input from the present and former Town Boards at a series of community meetings. The Dutchess County Department of Planning and Development also provided significant input. The plan does, in fact, follow traditional neighborhood design principles and concentrates most of the proposed development close to the Town Center and Metro North railroad station. It was designed by Torti Gallas, a nationally recognized new urbanist firm, which was the type of firm called for by the prior Town Board in its original scoping of the DEIS.

In addition, the outlying areas have been revised in the modified FEIS plan, which is presented in this FEIS, including the Meadow Pond and Knolls hamlets to the west of the Swamp River and the substantial modification of the Reservoir hamlet to the east of the river. Most of the housing units removed from these areas have been relocated to the Town Center and vicinity, as recommended by the Dutchess County Department of Planning and Development.

Comment A.4

The Department has no objections to including the Dykeman property in the overall MC Overlay District.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 1)

Response A.4

Comment noted.

Comment A.5

In reference to 146-16.C(2) of the proposed zoning amendment, the statement that “Project-specific guidelines shall consider and refer to the Hamlet Design and Building Form Guidelines produced by the Dutchess County Department of Planning and Development to the extent applicable” should also include a reference to consideration of Greenway Connections and the Greenway Guides.

The Applicant should prepare a matrix comparing the proposed Design Guidelines in the Master Development Plan with the adopted Town Design Guidelines.

(Noela Hooper, Senior Planner, Dutchess County Dept. of Planning & Development, Letter, 6/10/09, Pg. 1-2; Graham Trelstad, AKRF, Memorandum to the Town Board, 7/30/09, Pg. 2)

Response A.5

Comment noted. Please refer to the Design Guidelines Matrix in the FEIS Appendix. This matrix compares the Design Guidelines with all applicable guidelines and shows that the Dover Knolls Design Guidelines are consistent and much more detailed than the other documents.

Comment A.6

In reference to 146-16.C(2)(c) of the proposed zoning amendment, although in general the ten percent threshold for flexibility enumerated in this section is reasonable, item (C) indicates that an additional 137 residential units could be substituted for non-residential development without supplemental review. Our concern is not directed at the addition of housing density within the center, which we encourage. We are concerned, however, that these 137 additional units or a proportion of them could be located beyond the central mixed use district in the outlying “hamlet” areas. An overall increase in density of up to 10 percent should be subject to a hearing and revised site plan approval, especially if the additional housing units were proposed for areas such as the Dykeman Farm parcel.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 2)

Response A.6

The flexibility proposed in the proposed amendment to the MC Overlay District was never intended to allow an increase in the total number of dwelling units above the maximum (e.g., 1,376) anticipated to be approved by the Town Board in a Master Development Plan. The 10% was designed to allow flexibility in unit types and overall design, thereby enabling the development to respond to market conditions over time. The proposed zoning language has been revised to clarify this issue. (See Appendix for revised zoning)

An analysis of the effects of a hypothetical 10% change in the program is presented below for three hypothetical cases, each premised on the assumption that the Town Board approved a Master Development Plan, which allows for 1,376 units. In the first hypothetical case, as shown in Exhibit II.A-1, the Applicant would have determined that the market for single family homes has been strong and that the market for townhomes, duplex units and conversions has been weak, and therefore has proposed a variation from the Master Development Plan, affecting the portion of the site including and generally to the east of the two I buildings planned for adaptive reuse.

In order to receive site plan approval by the Town Board, the Applicant would have to submit an analysis showing that traffic, school children, impervious surfaces, water consumption or sewerage effluent, wetland, steep slope and environmentally sensitive land disturbance would not be increased by more than 10%.

The hypothetical plan reduces the density in the area from 123 units of various types, as shown in the DEIS, to 64 single family homes. This hypothetical plan does affect any sensitive areas and results in fewer school age children, less traffic and lower gpd of water consumption, as shown on Table II.A-1. Since these factors, and all others in this hypothetical case, are all less than the 10% threshold, the Town Board would approve this site plan amendment without a supplemental review or SEQRA hearing, as per the proposed zoning.

If approved, this plan would reduce the development yield from 1,376 to 1,317 units. It is possible that a future amendment could request a recapture of the 59 units removed from this area, subject to the 10% analysis, but combined with the previous 10% analysis for the hypothetical plan.

A second hypothetical case, shown in Exhibit II.A-2, involves the Wheeler Neighborhood located in the western most portions of Wheeler Road to the east of Hoags Corners Road. In this hypothetical, the Applicant would have determined that the single family market is not strong, but townhomes are selling well. As indicated in Table II.A-2, the increase of 44 townhouse units results in fewer school age children, but more than a 10% increase in traffic and water consumption from the Master Development Plan. As a result this site plan amendment would not pass the 10% flexibility threshold in the proposed MC Overlay zoning. Moreover, the increase in unit count would exceed the maximum number of approved units (1,376) and could not be considered by the Town Board on site plan review under this scenario, unless this hypothetical case were combined with a reduction of 44 units somewhere else on the site, with the combined effect meeting the 10% threshold requirement.

As a third hypothetical case, the two previously described hypotheticals could be combined. The total of 169 units would be replaced with 154 units in this hypothetical. It would go from 84 to 75 school age children; from 169 to 154 PM trips; and from 64,000 gpd to 54,000 gpd of water consumption. Hence, if combined, and assuming that all other thresholds were met, the Town Board would be able to approve this variation from the Master Development Plan without an additional SEQRA review or a public hearing.

**Table II.A-1
Flexibility Scenarios**

Hypothetical 1										
Existing										
20 Converted townhomes in 1 building										
68 stacked towns (2 br)										
35 towns (3 and 4 br)										
Schoolchildren				Trip Generation (Weekday PM Peak Hour of Adjacent Traffic)			Flows			
Type	#	Multiplier	Schoolchildren	#	ITE Rate	Total	Type	#	gpd	
2br	68	0.17	11.56	123	0.78	95.94	2br	68	300	20,400
3br	37	0.52	19.24				3br	37	400	14,800
4br	18	0.86	15.48				4br	18	475	8,550
			46.28							43,750
Proposed										
64 single-family units										
Schoolchildren				Trip Generation (Weekday PM Peak Hour of Adjacent Traffic)			Flows			
Type	#	Multiplier	Schoolchildren	#	ITE Rate	Total	Type	#	gpd	
3br	55	0.64	35.2	64	1.01	64.64	3br	37	400	14,800
4br	9	1	9				4br	18	475	8,550
			44.2							23,350

Hypothetical 2										
Existing										
46 sfh										
Schoolchildren				Trip Generation (Weekday PM Peak Hour of Adjacent Traffic)			Flows			
Type	#	Multiplier	Schoolchildren	#	ITE Rate	Total	Type	#	gpd	
3br	23	0.64	14.72	46	1.01	46.46	3br	23	400	9,200
4br	23	1	23				4br	23	475	10,925
			37.72							20,125
Proposed										
90 townhomes										
Schoolchildren				Trip Generation (Weekday PM Peak Hour of Adjacent Traffic)			Flows			
Type	#	Multiplier	Schoolchildren	#	ITE Rate	Total	Type	#	gpd	
2br	60	0.17	10.2	90	0.78	70.2	2br	60	300	18,000
3br	15	0.52	7.8				3br	15	400	6,000
4br	15	0.86	12.9				4br	15	475	7,125
			30.9							31,125
(plus the removal of 44 units somewhere else on plan)										

Although the overall unit count could not be increased through this 10% flexibility provision, it is conceivable that the cumulative affects of multiple site plan amendments could exceed the levels of impact studied in the DEIS and FEIS. In order to assess this possibility, the Applicant has revisited the traffic, school age children and water consumption from the overall program in the DEIS and FEIS for the 1,376 units.

*Table II.A-2
Selected DEIS and FEIS Impacts*

	<u>DEIS</u>	<u>FEIS</u>	<u>Change</u>
School Age Children	534 Students	448 Students	-16.1%
PM Peak Hour Traffic	1,293 trips	1,280 trips	-1.0%
Water Consumption (gpd)	514,360 gpd	390,987 gpd	-24.0%

As indicated, the studies in the DEIS had already accounted for cumulative project-wide impacts greater than 10% for school children and water consumption. A sensitivity analysis was undertaken at the intersection of NYS Route 22/55 and Wheeler Road assuming a 10% increase in residential traffic through this location. The resulting capacity analysis for the Year 2020 Build and Year 2020 Build with Other Development Traffic is attached in the Appendix. The results of this analysis indicate that there is no change in Level of Service when compared to the Build Conditions evaluated in the DEIS. Therefore, the improvements proposed by the Applicant can accommodate this additional traffic. At other locations the additional traffic will be addressed during future monitoring programs.

Comment A.7

Another major problem with the proposed zoning amendments is the proposal in paragraph C to exclude any further site plan review from SEQRA or a public hearing if the increases in project impacts do not exceed various 10 percent thresholds. This presents numerous problems.

First, this section uses inconsistent terms. On the one hand, the applicant is proposing to remove the term “conceptual site plan” throughout section 145-16. On the other hand, in this paragraph only, the term is reinstated and says if the site plan is consistent with the conceptual site plan it largely avoids further review. Thus the question arises as to what is the conceptual site plan against which a future site plan is measured? Presumably it is the Master Development Plan, which at various instances in the DEIS and other documents is referred to as a “conceptual site plan”. That question must be resolved.

Second, the concept of permitting 10 percent increases in size and impacts of the project, either on an individual or a cumulative basis, to avoid further review has no basis in law or public policy. SEQRA mandates a review of changes to a project to determine at that time, which the available information, if the changes to the project may have a significant impact. It is impossible, at this time, to determine that such per se increases will not have a significant impact. That is made more obvious in this instance as the DEIS is completely silent on assessing the potential impacts of the 10 percent increases in the described activities. The DEIS does not consider the impacts of such increases on wetlands, water supply, traffic or any other relevant

area. Having failed to even conceptually address the potential impacts of such increases, the Town Board cannot make a blanket determination that the threshold for future impacts is a 10 percent increase.

Third, it is also wrong to provide, as the amendment proposes, that if an application for site plan approval is submitted that purports to be within the parameters of the conceptual plan plus 10 percent that the Town Board must approve the plan within 30 days of submission. It is notable that the word “submission” is used rather than a complete application, thus precluding the Town Board from even determining if all of the information has been provided. Moreover, it effectively avoids any opportunity for a public hearing and comment. Given the very conceptual nature of the current application and the lack of specificity, the applicant is doing its utmost to avoid any further meaningful public review.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 3-4)

Response A.7

The 10% provision provides flexibility necessary to market the project over time. It would not permit an increase in the total number of units approved by the Town Board (e.g., 1,376) but would allow different mixes of housing product type, subject to review by the Town, within the context and certain thresholds established in the zoning. The proposed zoning has been revised to clarify concerns regarding the 10% flexibility provision. See the Appendix of this FEIS for the proposed revisions to the MC Overlay zoning. See also response A.6.

Comment A.8

We ask the Town Board deny the developer’s request that items a) through g) – variances of up to 10 percent on serious impacts such as the number of school children, impervious surfaces, effluent and housing – “shall not require supplemental review under SEQRA and shall be granted without a hearing.” This is overreaching. We have heard in the Public Comment session that the project as proposed does not support the number of housing units based on groundwater sources alone.

Allowing the developer to add 130 homes outside of SEQRA and Town or Planning Board approval is unconscionable. 130 homes is more than the number in the second largest subdivision in the Town of Dover and the Town would have no control over location or mix. We find it astonishing the developer would put forth this outrageous notion, much less propose it. Accepting it could result in an environmental disaster for the Duell Hollow CEA and the Town, and illustrates as plain as day that the developer’s interests are not necessarily aligned with the Town’s. It is up to the current Town Board to make it clear that it represents the current and future residents of Dover by throwing out this overreaching request.

The Coalition’s experts that discussed the fiscal and water supply impacts related to the project as proposed. An additional 10 percent in impacts would create even greater impacts.

(Constance I. DuHamel, Deuell Hollow Conservation Association, Letter, 6/30/09, Pg. 2; Constance I. DuHamel, Deuell Hollow Conservation Association, Public Hearing Transcript, 6/3/09, Pg. 162-163; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 207-210)

Response A.8

Please refer to Response A-6 which clarifies the intent of the 10% flexibility proposal and that it would not allow additional units above the maximum permitted by the Town (e.g., 1,376), but would allow flexibility in unit types so that the development could respond to market conditions over time.

Comment A.9

The proposed zoning amendment would permit a ratio of 1.6 dwelling units per acre, which would allow as many as 1,499 units onsite. We suggest limiting the proposed ratio to 1.47 for the proposed units or a maximum of 1.5 dwelling units per gross acre of land.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 2)

Response A.9

The revised zoning language utilizes 1.5 units per acre. In addition the Town Board will set the maximum number of units permitted in the development (e.g., 1,376). See Appendix for proposed zoning text.

Comment A.10

The proposed amendment also removes the density restrictions that currently exist in Paragraph C which limits density increases to 50 percent of what would otherwise be permitted under the zoning law or a 100 percent bonus in the SR district. It replaces that language with a new paragraph D, entitled "Limitations on Development" which includes a blanket provision permitting 1.6 dwelling units per gross acre of land. That is a very insidious change which dramatically increases not only the permitted density of the project, but is contrary to the established principle in land use planning generally and specifically in the Dover zoning law that density bonuses are only allowed as a function of net developable land, not on a gross basis.

The proposed language would dramatically increase the proposed density. Under existing zoning the maximum density in the RU district would be 1.5 dwelling units per acre as compared to the 1.6 units proposed by the applicant. In the SR district, the applicant proposes a reduction from the 2 units per acre that could be permitted. However, in both cases, as well as for the other districts, the calculations are on the basis of gross acreage, not net. Therefore, it is impossible to determine if density is actually increasing or decreasing.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 1-2; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 211-212)

Response A.10

Contrary to the above, the maximum residential density that would be permitted under the proposed zoning is less than permitted under the existing MC overlay district. The existing zoning, however, permits far more commercial development than would be permitted under the proposed zoning, with as much as 1.3 million square feet allowed. This is totally unrealistic given the Applicant's market studies and the comments from both the Town's consultant (AKRF) and the planning consultant for the Coalition (PPS).

With regard to the use of gross or net density, the Town Board understands that calculation is not relevant to the amount of development being considered, since the Town Board has been reviewing a revised Master Development Plan with a specific number of units (1,376). This represents approximately 1.5 units per gross acre. If a deduction were made for wetlands and steep slopes in calculating gross, the net density in the proposed zoning would then be increased so that the total number of units permitted on the site would not be affected.

Comment A.11

The proposed zoning amendment includes a provision that sets a minimum of 200,000 square feet of non-residential development, appropriately located within the mixed use hamlet center. It is unclear, however, whether that total square footage of non-residential development includes all community or civic facilities, in which case the actual commercial component could be far less. The Town should agree to a firm minimum square footage of commercial development to ensure a truly mixed-use project.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 2; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 212)

Response A.11

The current plan has approximately 238,500 square feet of office, retail and restaurant use. Community facility space totals an additional 77,000 square feet. The DEIS included additional commercial (total 245,500) from proposed buildings in the floodplain.

Comment A.12

In addition to “traditional neighborhood design concepts” mentioned in the proposed zoning amendment, development in the MC District should also follow transit-oriented development concepts to the maximum extent practical.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 2)

Response A.12

Comment Noted. The modified plan presented in this FEIS shows that 69 percent of the proposed dwelling units are within a 10 minute walking distance from the Metro North Station.

Comment A.13

In relation to Section F of the proposed zoning amendment, we generally consider the steep slope threshold to be 20 percent, rather than 25 percent; federal wetlands and floodplains should be included in the list of open space of conservation follow.

(Noela Hooper, Senior Planner, Dutchess County Department of Planning & Development, Letter, 6/10/09, Pg. 2)

Response A.13

Comment noted; the proposed zoning for site plan amendments has been modified to also address wetlands and steep slopes in excess of 15%. The modified FEIS plan has been amended to remove all development from the floodplain as recently defined by FEMA. The modified Proposed Action will have some impacts on steep slopes and wetlands; however, these impacts are mitigated to maximum extent practicable. See Response Sections II.C, II.D and II.E.

Comment A.14

The proposed zoning changes should be replaced with the proposed zoning amendment recommended by the Planning Board at its July 6, 2009 Planning Board meeting. In particular, subdivision approval should remain with the Planning Board to remain consistent with traditional New York State planning and zoning approvals processes. Furthermore, the FEIS should provide rationale given for placing subdivision approval with the Town Board.

(Town of Dover Planning Board, Letter, 7/20/09, Pg. 6)

Response A.14

The Planning Board's request has been noted. The proposed zoning amendment reflects a determination that since the redevelopment of the Harlem Valley Psychiatric Center site involves major policy determinations and that all decisions relating to the approval and implementation of this development should be made by local elected officials, with technical advice from the Planning Board. Subdivision approval is one of the significant planning decisions that the amendments would place with the Town's elected officials.

Comment A.15

As an initial matter, it must be noted that the text of Section 145-16 included in the DEIS and the Master Development Plan as the existing text to be amended, is wrong. The applicant has included the phrase "and rezone lands substantially contiguous to the MC District" as part of paragraph C (2) of the existing law. As the Applicant and the Town Board are well aware, that language was added by the Town Board by Local Law 1 of 2008 and subsequently removed by Local Law 2 of 2008 in response to litigation commenced by the Coalition. That language must be removed and corrected.

This is not a minor matter. The applicant states repeatedly in the DEIS that it always contemplated that the Dykeman parcel would be included in its plans for HVPC and states that its inclusion will not have a material impact or change the character of the area. CRGD challenges those statements as will be more fully discussed below. However, as an initial matter, while the applicant may have long desired the inclusion of Dykeman in its Master Plan, there was never any legal agreement or assumption by the Town that it would be included. Since its adoption in 1999, and during the preceding analysis of how to redevelop the HVPC property as a planned development area, the Town only looked at the boundaries of the HVPC and the zoning map for the MC Overlay District was limited to those boundaries. IF HVPC seeks to expand the Overlay District and increase the density on the Dykeman Parcel, then it must clearly consider the impacts of that action and demonstrate not only that it will not result in significant adverse impacts, but that it is consistent with the Dover Comprehensive Plan.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 1-2)

Response A.15

Comment noted. The DEIS clearly studies the effects of rezoning the Dykeman property from SR to the MC Overlay District. In terms of units, under present SR zoning, 60 single family homes could be built on that property. By incorporating it into the MC Overlay, permitted density would be doubled. The modified FEIS plan presented herein illustrates 116 homes on that parcel.

Comment A.16

Chapter IIIA of the DEIS purports to provide an analysis that there is a net decrease in the permitted density under the amended law as contrasted with the existing law. However, this is impossible to verify and difficult to believe. While the DEIS includes some tables showing what respective development densities would be, there are no raw figures setting forth how the deductions for unbuildable areas were derived. Thus, we are forced to accept the claim of a net benefit to the Town on face value without any means to verify. It is also hard to believe that the applicant would go out of its way to amend the code and change the density formula, just to make it more restrictive. Under the existing law the densities are maximum figures, not minimum and of course there is nothing precluding the applicant from proposing a project density that is less than the maximum. This blatant attempt to manipulate the law shows intent to increase permissible density, not reduce it.

The lack of veracity in the analysis is highlighted by the almost complete absence of any comparison layouts showing the densities with a conventional subdivision or providing the detailed analysis of the netting out of developable land. With one exception, the DEIS is completely silent on that basic information which would otherwise be required for a Flexible or Conservation Density Subdivision under the Dover zoning law. And the one exception proves our skepticism rather than demonstrates the applicant's good faith.

The DEIS repeatedly claims that development of the Dykeman parcel as part of the MC Overlay will not increase the permissible density. It is claimed that under the existing law, after netting out undevelopable land, that 63 lots could be developed on the 83 acre parcel. However, Exhibit V-2, which purports to show a conventional layout on the Dykeman parcel, only provides for 60 lots. While it is not clear if even that layout properly netted out wetlands, floodplains, and steep slopes, it demonstrates that even in that instance, the applicant is overstating the development potential of the Dykeman parcel

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 2-3)

Response A.16

With regard to the Dykeman parcel, the calculation does show the potential for 63 units, however, the subdivision layout in the DEIS shows 60 lots. The current MC Overlay formula, with its bonus for a comprehensive plan, would allow 126 lots on the site, regardless of the layout. Note that the current plan has 116 units on the Dykeman parcel.

The density in the existing MC Overlay District is based on a formula that is described in the DEIS on pages V-3 to V-8. The density for each underlying zoning district without the development of a Comprehensive Plan (or Master Development Plan) would result in a potential development of 933 units in the SR, HM, HR and RU Districts, plus 63 additional units on the Dykeman parcel which is also zoned SR. A total of 892,000 s.f. of commercial development is calculated for the CO parcel. With an overall Master Development Plan for the site, a series of bonus densities are applied, increasing the maximum density to 1,524 units (including Dykeman) and over 1.3 million square feet of commercial development.

However, the existing MC Overlay regulations include formulas that limit the type and amount of residential and commercial development. For example, not more than 50% of the total square footage of development may be non-age restricted residential and not more than 30% of the total building area may be in residences with three or more bedrooms. In 2005, the Town Board formally accepted for review a plan for the Knolls of Dover site with 1,338 dwelling units (889 of which were age-restricted) and 600,000 square feet of commercial development, based on a review of the MC zoning formulas.

Both the MC zoning and the 2005 plan were developed without the benefit of a market study that the prior Town Board subsequently required in the June 2006 Scoping Document, and which documented the demand for age restricted and non-age restricted housing and commercial development. The results of that market study, including the need for a balanced housing program as part of a transit oriented development and a more realistic amount of commercial development, became the basis for the proposed amendment to the MC Overlay District regulations as presented in the DEIS and revised in the FEIS. Additionally, the revisions to the MC Overlay eliminate the formulas and utilized more traditional density and FAR standards.

Comment A.17

A final comment on the proposed amendment to the zoning law concerns paragraph F, where again the applicant is proposing to seriously dilute the purpose of the law. Rather than the original language that identified open space “resources designated for protection”, the proposed amended law only recognizes their “conservation value”, a weaker term that does not afford any solid protection. The harm is compounded by limiting the wetlands so designated from all wetlands, including federally and locally designated, to only those mapped by NYSDEC. And finally, rather than protecting all steep slopes, which have been recognized by the Town as those over 15 percent, the amended law only recognize a value in those over 25 percent and even those are not clearly protected. Again the DEIS is completely silent on evaluating the impacts of these changes in language. This is particularly evident in the DEIS’ discussion of impact to the wetlands and steep slopes where the change in protection is not considered.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 4; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 212)

Response A.17

Comment noted. The proposed language recognizes that there may be some impacts to the environmental features, which would be considered by the Town Board as part of its review of

the project. Moreover, the DEIS and FEIS assess all environmental impacts related to the proposed Master Development Plan.

Comment A.18

Does the proposed zoning address steep slopes?

(Constance I. DuHamel, Deuell Hollow Conservation Association, Public Hearing Transcript, 5/30/09, Pg. 107-108)

Response A.18

Steep slopes are cited paragraph F of the proposed zoning as an environmental feature that needs to be considered in the development of a plan for the property.

Comment A.19

The zoning text amendments remove the buffer requirements intended to protect residential uses according to the MC district. Can the plan not incorporate buffers on an approximately 1,000 acre site?

(Jill Way, Public Hearing Transcript, 6/3/09, Pg. 206-207)

Response A.19

The proposed plan provides sufficient buffer areas for various uses. Single family homes adjacent to the site are not, however, buffered from other proposed single family homes. This would be contrary to traditional design principles.

Comment A.20

I am extremely concerned by the proposed zoning amendments. Before you is a proposal to change the rules in the middle of the game to exclude the Planning Board from any decision-making ability regarding this project. This project should be held to the existing laws. The New York State Attorney General has said that “the town board has no jurisdiction over any function assigned to the planning board by state statute after the town board has established a planning board.” Based on this opinion it is improper for the Town Board to approve subdivision plats. Further, under state statute and New York Town Law, the planning board approval is required before filing a plat with the County Clerk. The State clearly intends for a planning board to make these decisions. The Planning Board is experienced and has competent members trained to make such decisions. I encourage you to let the Planning Board make such decisions. The Planning Board should also retain erosion control sediment permit authority and subdivision approval authority.

(David Wylock, Public Hearing Transcript, 6/3/09, Pg. 100-104; Jill Way, Public Hearing Transcript, 6/3/09, Pg. 211)

Response A.20

New York State Town Law Section 276 establishes that the Town Board’s authority to delegate subdivision authority is entirely discretionary. See N.Y. Town Law Section 276(1) (establishing that “the town board may, by resolution authorize and empower the planning

board to approve preliminary and final plats of subdivisions” (emphasis added); see also Russell Oaks, Inc. v. Planning Board of Russell Gardens, 280 N.Y.S.2d 436 (2d Dept. 1967), aff’d 288 N.Y.S.2d 477 (1968) (holding that there was no “necessity or authority” for construing a Town Board’s discretionary authority to create Planning Boards as mandatory). The Town Board’s broad discretion in this regard is consistent with the overall grant of zoning authority specifically to “Town Boards” by the State in Section 261 of the Town Law.

Accordingly, the New York State Attorney General has clearly stated that elected town boards also have the authority to withdraw powers from planning boards, including subdivision review, and to exercise those powers themselves. 1981 N.Y. Op. Atty. Gen (Inf.) 216. In that Opinion, the Attorney General stated that “a village board of trustees by local law may withdraw site plan or [subdivision] plat approval powers from a planning board and assume these responsibilities itself... Having exercised its discretion to establish a planning board and confer powers upon it, a governing body may exercise its discretion to abolish the board or withdraw powers from it.” Id.

The proposed zoning amendments respect the Planning Board’s role in the review of a Master Development Plan by establishing an important advisory review role for it. Again, however, the amendments reflect the determination that ultimate decision making authority for this important project should rest with the community’s elected officials.

Comment A.21

The substantive changes to section 145-16 are themselves actions under SEQRA that must be considered. That none of the foregoing was addressed in the Scoping Document are of no relevance because these proposed changes were not included in the 2008 application materials. If the applicant is proposing these changes, it must fully evaluate the impacts of the changed language in comparison to the existing language and demonstrate that the changes will not have a significant impact on the environment.

(Jeffrey Baker, Young Sommer Ward Ritzenberg Baker & Moore LLC, Letter, 6/30/09, Pg. 4)

Response A.21

All of the substantive impacts relating to changes in the MC Overlay regulations have been addressed in the DEIS and this FEIS.

Comment A.22

Some of the proposed zoning text amendments seem less protective of the community. They appear to primarily benefit the developer and give a simple majority of the Town Board overly broad authority.

(Jill Way, Public Hearing Transcript, 6/3/09, Pg. 206)

Response A.22

The proposed text amendments are intended to enable the rational development of the former Harlem Valley Psychiatric Center, and require extreme sensitivity to environmental planning.

Comment A.23

The Town of Dover Master Plan was completed in 1993. A committee will be formed to reevaluate and review this master plan. How will the review of the master plan be implemented in the proposed development?

(John Casson, Public Hearing Transcript, 5/30/09, Pg. 115)

Response A.23

If the Town of Dover drafts a new town-wide comprehensive plan, the various studies undertaken as part of the Knolls of Dover DEIS and FEIS could be utilized as basic information in the plan formulation. Moreover, once approved, the Dover Knolls Master Development Plan could be incorporated directly into a new town plan.

Comment A.24

The Architectural Review Board developed façade and signage guidelines. How are the Dover Knolls Design Guidelines related to these? Who has enforcement of the Design Guidelines? Who created them?

(John Casson, Public Hearing Transcript, 5/30/09, Pg. 112, 114-115)

Response A.24

Please refer to the Design Guidelines Matrix, the Knolls of Dover Design Guidelines and Design Guidelines Addendum located in the FEIS Appendix. The guidelines were drafted by Torti Gallis, a nationally recognized new urbanism consultant retained by the applicant. The guidelines would be enforced by the Town Board.