

Michael W. Klemens, LLC
47 Florida Hill Road
Ridgefield, CT 06877

October 19, 2006

Ms. Donna Hearn, Chair
Town of Dover
Planning Board
126 East Duncan Hill Road
Dover Plains, NY 12522

Dear Ms. Hearn:

At your request I have reviewed the packet of materials submitted to the Town of Dover by Zarin and Steinmetz dated October 4, 2006. The submission includes two applications prepared by Evans Associates Environmental Consulting, Inc. One application is, as described by the Applicant "remedial work on gravel fire roads"; the second application as described by the Applicant "for future well drilling operations".

These two applications are to remediate environmental damage that occurred as a result of activities conducted on the site apparently without Town permits/oversight and without consultation. These violations were noted by the Town. As part of a collaborative effort to rectify the situation I was requested to attend a site visit on August 1st 2006 accompanied both town officials and representatives of the Dover Knolls Development Company. Dover Knolls' planning and environmental consultants were not present at that site visit. During that site visit we identified extensive areas of linear impact to regulated areas on the site. Clearing and filling has been conducted in areas that are regulated by the NY DEC and the Town of Dover, as well as areas mapped as environmentally constrained and sensitive by the Dover Knolls Development Company. I will defer to the Town's enforcement officer and to DEC as to the actual amount of regulated area that has been cleared, confining my comments to the impacts of both the clearing, road improvements, and proposed remediation activities on the Federally-listed (threatened) and NY State listed (endangered) bog turtle (*Clemmys muhlenbergii*).

I would be remiss in not reminding the Board that it was my understanding that following the August 1st site visit there was to be an interactive and collaborative process to remedy those violations. Specifically it was my understanding at the conclusion of that site visit, and in subsequent communications, that a follow-up site visit would occur giving me an opportunity to discuss my concerns directly with the Applicant's environmental consultant(s) and that a remediation plan would be designed that would address the issues raised during this subsequent field conference. The applications before you do not accomplish these goals and should be considered incomplete (and therefore inadequate) to address the issues outlined during the site inspection as follows.

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Several wetlands on the site have been identified (through the Phase 1 habitat assessment process contained in the USFWS Bog Turtle Recovery Plan) as bog turtle habitat. The Applicant has accepted those designations and has mapped them accordingly with a 300-foot review and protection zone corresponding with Zone 2 (see Recovery Plan, page A-2 through A-3). Although development associated activities may be permitted in Zone 2, it is through a process by which the Applicant demonstrates to the USFWS and the NY DEC that such activities do not compromise the integrity of the habitat and/or result in the taking of individual turtles. Construction of (including enlargement and improvement) of roads as has been conducted on the Dover Knolls site within the 300-foot zone is potentially a major impact that could result in the taking of a Federally-listed species and damage to their habitat, both by loss of habitat but also by fragmenting portions of habitat from one another. The road enlargement at Dover Knolls on the west side of DP-22 within the 300-foot zone (Zone 2) included some expansion of road width and the filling of bog turtle habitat with coarse crushed stone to elevate the roadbed. During the site visit I cautioned the Town and the Applicant that restoration of the site may increase potential impacts to this Federally-listed species unless it was done with specific sensitivity to the species. I also expressed concern that the size and arrangement of the crushed stone could impede turtle movements or even trap turtles resulting in a taking. I also advised the Town and the Applicant that consultation with the USFWS would be appropriate at this juncture. I also raised the question that there may be an ACOE nexus, as general permit provisions may not apply in areas where wetlands are being filled or impacted that contain a Federally-listed species.

As represented by the Application before you, none of these cautions or considerations concerning the bog turtle were incorporated by reference or addressed in the Application. Is it possible that my concerns discussed at the August 1st site meeting were not conveyed by the Dover Knolls representatives present (Attorney Zarin and Ms. Schibanoff) to their environmental consultant (Ms. Evans)? I raise this question as having worked with Ms. Evans in various capacities for more than a decade, in my experience it is not her professional manner to dismiss and/or ignore issues/concerns brought to her attention without an explanation. At this juncture, it is my advice to the Town that the Planning Board:

1. Request directly assistance (via consultation) with the USFWS. It would be unwise for the Planning Board to render any decision on the proposed remediation without ensuring that the actions of the Town are in accordance with Federal (and State) law.
2. Request that Ms. Evans address on her client's behalf the issues that I have outlined above.
3. Defer action of the Applications pending satisfactory resolution of requests 1 and 2.

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4. Consider the violations identified by the Town's enforcement officer outstanding and unresolved until at which time you have sufficient information to render an environmentally prudent decision.

Sincerely,

Michael W. Klemens, PhD