

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 3

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Alexander B. Grannis
Commissioner

March 26, 2010

John Piazza, Chairman
Town of Mamakating Planning Board
2948 Route 209
Wurtsboro, New York 12790

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

Dear Chairman Piazza and Planning Board Members:

The New York State Department of Environmental Conservation (DEC or Department) has reviewed the Draft Environmental Impact Statement (DEIS) for the proposed Seven Peaks at Mountain Road (Seven Peaks) project. The development project is to be located on 653.41 acres atop the Shawangunk Mountains, approximately 4000 feet east of the Bashakill Wildlife Management Area. According to the circulated documents, the project involves the construction of 49 luxury homes on 561.77 acres of the site with 63.8 acre and 27.83 acre portions being reserved for potential development of a resort hotel and 13 single-family residences, respectively. The 49 luxury homes are to be served by individual sanitary disposal systems and individual wells.

The Department submits these comments on the DEIS addressing among other issues, natural resource considerations such as, natural wildlife corridors, species/communities of special concern and potential wildfire issues. The Department asks that the Planning Board address these issues as it prepares the Final EIS:

DEC Approvals Required

Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001) – Compliance with the SPDES General Permit is required for any project that disturbs greater than one acre of land area. Coverage under GP-0-08-001 may be obtained by the preparation of a Stormwater Pollution Prevention Plan (SWPPP) and the filing of a Notice of Intent form with the Department pursuant to the permit requirements.

6 NYCRR Part 653 Variance – A variance must be granted by NYSDEC in order to waive the project sponsor's responsibility to construct a community sewage system for a subdivision that will ultimately consist of 50 lots or more, pursuant to 6 NYCRR Part 653. Written application must be made to NYSDEC to grant said variance.

SPDES Permit for Discharge of Sanitary Wastewater – A permit is required for the proposed discharge of treated sanitary wastewater from the resort hotel.

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

Natural Wildlife Corridors (Habitat Connectivity/Landscape View)

The lead agency resolution agreement between the Planning Board and the Department required that the Draft EIS evaluate “on-site alternatives for house and lot layout that is informed by impacts on wildlife and ecological corridors and communities such as Chestnut Oak both on and off the project site.” See Section 4(f), Letter of Langdon Chapman to William Janeway, Regional Director, December 23, 2008, appearing in Appendix A of the Draft EIS.

Since a discussion of how Seven Peaks will fit within the landscape both on and off the project site is lacking, it is difficult to determine how these potential impacts were used to inform the development of the project alternatives presented in the DEIS. The Draft EIS fails to discuss the proposed project in context of the Shawangunk Ridge as a whole. Development within this area has the potential to fragment and disrupt an important natural corridor that spans the length of the Shawangunk Ridge. Natural corridors provide essential connections to larger patches of habitat allowing species of both flora and fauna dependent on these larger patches (i.e. black bears, coyotes and natural communities) to maintain healthy populations. Ideally, habitat corridors should encompass broad swaths of habitat including those that are known to be used by wildlife. As shown by the Terrestrial Environmental Specialist’s Flora/Fauna Analysis (Appendix K), the site is being used by bears, and coyotes and includes portions of the ridge’s chestnut oak forest and fire dependent communities.

In addition, according to researchers’ presentations in the U.S Fish and Wildlife’s National Conservation Training Center sponsored “Safeguarding Wildlife From Climate Change Conference Series CSP3902, preserving habitat connectivity is an important strategy to ensure that species biodiversity has the ability to adapt to climate change by allowing plant and animal species to shift ranges. The natural features of the Shawangunk Ridge (i.e. north/south orientation, relative elevation) will likely make the Ridge one of the most important corridors in the Region, if not the state, providing species the ability to move into more hospitable habitats.

This series can be accessed on the web at:

http://training.fws.gov/CSP/Resources/climate_change_webinars/safeguarding_wildlife_cc_archives.html.

Therefore, for the above reasons, the discussion of the Ridge in terms of its value as a natural resources and wildlife corridor needs to be addressed within the FEIS. The DEIS states that 84% of the site will be preserved as open space (pg 3.12-1); however, the arrangement of this open space does not appear to fully take into account connectivity of habitat. The value of maintaining suitable natural resource and wildlife corridors and connections within this area warrants a more thorough evaluation in terms of ensuring maximum species use and consideration of alternatives.

Vegetation and Wildlife (Species/Communities of Special Concern)

Potential significant impacts to chestnut oak forest (COF), a community considered as having high ecological and conservation value, were identified in the scoping documents to be evaluated. Threats to this community of special concern include changes in land use (i.e. clearing for development), forest

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

fragmentation (i.e. roads) and the introduction of invasive species. All these identified threats would be potentially enabled by the preferred alternative.

The DEIS makes the point (page 3.4-12) that the extent of this community mapped on site is considerably less than indicated by NYNHP. This is consistent with NYNHP statement that “the current trend of this community is probably stable for occurrences on public land, or declining slightly elsewhere due to moderate threats related to development pressure”. The decrease in chestnut oak forest (COF) on site is mainly due to timber harvesting that had occurred in the past on the eastern slope (page 3.4-12).

However, TES’s mapping of cover types reveals connection between community fragments located on the western slope that previously were not known to exist. As currently proposed, any development on the western slope could potentially fragment this contiguous COF community. Activities that fragment the forest, such as road building and other development, will also provide avenues for invasive species introduction where previously none existed. Suppression of the natural fire regime is also identified as a threat to the COF. Therefore, the placement of houses within the COF corridor could eliminate prescribed burns as a viable option to resource management and will put property at risk during unattended fire outbreaks. There seems to be a disconnect between fire suppression as a threat to the ecosystem and fire suppression as an activity to be performed to protect property.

Impacts of the Seven Peaks on Chestnut Oak Forest Habitat: A forest inventory of the property concluded that approximately 115 acres (17%) of the site is comprised of the chestnut oak covertype. The Preferred Plan calls for a permanent conversion of 11.87% of the chestnut oak forest located on the property to a non-forest use. The conversion would **not** entirely be contained to the fringes of the habitat as recommended by the NYS Natural Heritage Program Conservation Guidelines. It is the Department’s concern that conversions within the interior of this unique habitat would lead to increased habitat fragmentation and a higher risk of property damage or loss of life associated with the high occurrence of fire within this cover type. An alternative plan that would confine conversion activities to the fringes of the chestnut oak forest is recommended.

Impacts of Seven Peaks on the Barrens Buckmoth: The barrens buckmoth, a species of special concern, was also observed to occur in the western portion of the site (lot 29) within an area described as successional scrub-shrub. The threats to this species are similar to the threats of the COF community in which it is also associated (i.e. habitat loss and fragmentation). Fire suppression will also impact this species as it prefers relatively open habitat. Consideration should be given to the elimination of Lot 29 in order to protect the habitat of this species. A modification of the location of this lot to avoid development within this habitat area would also substantially reduce the threat of property loss due to wildfire as well as habitat fragmentation.

Impacts of Seven Peaks on amphibian wildlife: It appears that some roads are located in close proximity to wetlands and identified salamander egg masses with limited buffers. While amphibians are known to cross roads, the proximity of these roads to wetlands will increase the probability of amphibian mortality while migrating between wetlands. Protective mitigation measures should be considered for application to these areas.

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

Wildfire

The Firewise program is designed to educate property owners how to build and maintain their homes to withstand a wildfire. Construction standards, maintenance, and landscaping plans are taken into account to attempt to reduce the ignitability of a structure. This program has proven to be very successful in fire adapted ecosystems across the United States.

It is important to understand the factors that affect wildfire behavior before designing a development. Fuels, weather, and topography are the three main environmental factors. While we can't change the seasonal weather patterns, we can study both fuel types and loading, and terrain features when deciding where building lots should be located. Fuels are simply the vegetation present in any area. Some fuels burn with a greater intensity than others (mountain laurel, pitch pine, scrub oak and chestnut oak leaves, blueberry, sweet fern). The amount of fuel and the continuity of that fuel also play a role in the intensity of a fire in any given area. Topography plays a large role in fire behavior. Fire burns faster, and with more intensity uphill as opposed to downhill. Saddles, gullies, drainages, and ridge tops all cause exaggerated fire behavior as well.

In April of 2009, a wildfire started on the west side of the Shawangunk Ridge in the Town of Mamakating quickly spread out of control. The fire's origin was below the railroad bed at the very base of the ridge, and within 4 hours it had crested the top of the ridge, threatening over a dozen residences on Shawanga Lodge Road. Fire behavior was observed as intense, and firefighters were not able to safely fight the fire from above. Fortunately, the location of the structures on Shawanga Lodge Rd is what prevented multiple structural ignitions. These homes were built 300-600 feet off the crest of the ridge, allowing the fire to burn unchecked to the top of the ridge, and then turn into a backing fire, severely reducing the intensity of the fire. Firefighters were then able to contain the fire in the backyards of these homes.

It is important to study the overall design plan when developing in the wildland/urban interface. A framework of lot placement, road design, ingress and egress options, and identifying areas of high fuel loading and areas of hazard fuels will serve to reduce structure ignition potential within the development. Developing a Community Wildfire Protection Plan (CWPP) is a sound way to address these issues. A CWPP needs three elements addressed in order to qualify for federal funding.

- Collaboration- the plan must be created collaboratively with town fire officials, development planners, community organizations, state DEC officials, and Federal land managers if there are federal lands involved.
- Reducing structural ignition- incorporating Firewise standards is an excellent way to address the ignitability of structures.
- Fuels mitigation- Identifying hazardous fuel types and loads and suggesting ways to reduce these fuel loads on a landscape or development wide scale. Prescribed burning programs and mechanical stand treatments are two examples of this.

Taking all of this into consideration, there are some recommendations that should be considered for this proposed development to reduce the occurrence of extreme fire behavior existing in close proximity to homes:

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

- Reduce or remove the proposed lots in the north and west quadrants of the development (i.e. Lot # 29, 38-42). This is where the Chestnut oak, pitch pine, and mountain laurel occur in the highest loads, and with the greatest continuity. These areas are also at the crest of the ridge, and will be exposed to high intensity fires coming from the northwest. By keeping the “big flames” at least 300 feet from structures, the potential for ignition will be reduced.
- Consider moving lots that are close to the ridge top and the northwest slope of the property. Fire behavior in this saddle and on this slope will be more intense, and more unpredictable.
- If clustering lots on the southeast side of the property, consider keeping a distance of 300’ between homes. Homes become wildland fuel when they ignite, and have the ability to ignite surrounding homes.
- Homes constructed mid slope on the southeast slope of the development should consider terrain features when planning for landscaping and construction standards. The “zone concept” put forth in Firewise needs to be exaggerated when steep slopes are present. Mid slope is the most dangerous area to fight wildfire, and homes here would be most at risk of being unprotected during a large urban interface fire incident, due to firefighter safety concerns
- Consider creating a Community Wildfire Protection Plan. A well thought out CWPP will open up potential federal funds to offset the costs of performing the mitigation measures set forth in the plan.

The DEIS states that the following will be required, “Two exits from the Community should be in place at all times in order to facilitate evacuation from the Community in the event of an emergency” (pg 3.11-3). However, all alternatives have only one route, John Muir Drive, that allows for entry and exit into the proposed development via county road 85. A second exit should be incorporated into project alternatives and potential impacts evaluated in the FEIS in order to meet this important Firewise principle.

The Eastern Slope is less prone to wildfire since its fuel load has been greatly reduced by the previous logging of the chestnut oak forest that was previous mapped to occur there by NYSNHP.

Alternatives

All alternatives presented in the DEIS, with the exception of the “DEC Requested” Alternative, are based on calculating density using methods allowed for in the Town of Mamakating zoning ordinance. These methods all differed in configuration and provide the option to increase lot numbers compared to the project sponsor’s preferred alternative. The Department appreciates the sponsor’s efforts to minimize the density of development on this property and recognizes the environmental benefits with such density reduction and of the further benefits of limiting individual lot disturbance to no more than one acre.

We do note that the original conservation alternative resembles the soil survey alternative in that they both cluster similar lot numbers in the central and eastern portions of the site. The DEIS states (pg 5.0-12) that “*this alternative would result in the permanent protection of a large amount of open space and thus it is similar to the Project Sponsor’s preferred alternative in that regard*”. The Department believes that the protection of open space is not similar given that this Conservation alternative does not fragment COF

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

habitat and maintains a much larger continuous species corridor as compared to the sponsor's preferred alternative. This is one of the reasons that led the Department to request that another alternative, more in keeping with the density of the sponsor's preferred plan, be evaluated in the DEIS.

DEC Requested Alternative

The alternative that was first submitted to the Department within the Teresa M. Bakner letter dated January 8, 2010 appears within the DEIS as the "DEC Requested Conservation Alternative." This title implies that DEC endorses and developed this alternative on its own, and/or requested its addition after the scoping process was completed. This is not the case and such an alternative is required. The FEIS should clarify the origin of this alternative and reference the Department's December 8, 2009 letter found in Volume IV, Appendix B of the DEIS. With the addition of this new alternative, the DEIS now comes closer to corresponding to Section 5.a.2.d of the Final Scope approved by the Town of Mamakating Town Planning Board on March 24, 2009 that states: "*Conservation alternative that takes into account fewer, smaller and/or rearranged lots and/or trail locations as necessary to address and evaluated the continuity of natural corridors to avoid or minimize negative impacts to existing ecological and environmental resources, as well as the potential concerns related to wildfire activity*". The Department asks that the title "DEC Requested Conservation Alternative" be changed to remove "DEC Requested" to reflect that this is a "Reduced Density "Conservation Alternative" to differentiate it from the other Conservation Alternative.

The Department also requests an explanation of why there does not appear to be consideration of an alternative that examines fewer and smaller lots for this component of the proposal. Failure to include any consideration of alternatives other than a maximum large lot build out and/or 49 large lot home sites, in addition to the hotel/resort and additional home sites, risks making it difficult to be able to conclude based on the record to date that a hard look has been taken at potential impacts and that all reasonable efforts have been taken to avoid, minimize and mitigate potential negative environmental impacts to the maximum extent practical. Possible changes to the preferred plan are offered for consideration below.

The DEIS examines various issues when comparing the "DEC" alternative to the sponsor's preferred plan and indicates that the "DEC" alternative will result in greater environmental impacts and less economic benefit. However, the Department does not agree with this conclusion. These alternatives are not that different with respect to some of the issues of concern and, therefore, some impacts associated with the "DEC" alternative may also be true for the sponsor's preferred alternative. These impacts need to be further identified, explained and analyzed.

- Views: DEIS claims that the relocations of houses will hurt market value due to lack of views. However, on closer inspection only seven houses have been relocated when compared to the project sponsor's preferred alternative (PSPA). Three of these (33, 37, and 34) are in close proximity to lots that are said to have marketable views within the sponsor's preferred plan.
- Soils: DEIS claims that relocated lots contain soils that are unsuitable for on lot septic systems. If this argument holds true, then it stands to reason that it may also hold true for lots within the PSPA that are in close proximity to relocated lots. All relocated houses and septic systems seem to be outside wetland areas and therefore outside the jurisdiction of the USACOE.
- Stream/Wetland Crossings: The DEIS claims several additional crossings. It appears that the

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

PSPA and the “DEC” alternative both have six (6) crossings. The main loop road, Olmstead Way, has been shifted to the east and contains the same amount of crossings (2) as the sponsor’s preferred plan. The “DEC” alternative does contain a new crossing required to access lots 39 and 40 via cul-de-sac. However, since lot 29 of the sponsor’s preferred plan and its associated driveway has been eliminated, the amount of crossings overall remain the same.

- Proximity near Town’s 75’ Wetland Buffers: The DEC agrees more of the buffer will be infringed upon as the new configuration of the loop road will parallel more of the Wetland A complex. However, the actual crossings appear to be no “wider” than those currently depicted in the sponsor’s preferred plan. These differences should be compared to the potential values of maintaining the western side of the property as continuous open space. The sponsor’s preferred plan also does not fully eliminate disturbance within the 75’ buffer.
- Figure 5-4: This conceptual plan depicts the locations of archaeologically sensitive areas and proposed stormwater basins. No other alternative conceptual plans contain these elements. Therefore, comparison is difficult. The “DEC” alternative has Olmstead Way cutting through and impacting a site identified by the NYS OPRHP to be eligible for inclusion into the National Register (i.e. Farmstead Site). However the DEIS has not offered any basis for why there are no other possible alternatives to avoid this resource.
- Market Value: The DEIS indicates that lot privacy is a factor. As an alternative consideration, the project sponsor could find that eliminating or relocating a few lots might actually increase the marketable value of the remaining proposed luxury homes (i.e. ensuring individual lots about as much open space, thereby preserving privacy). Many of the lots in the “DEC Requested” alternative appear to be similar in proximity to neighboring lots when compared to the sponsor’s preferred plan.

Development Considerations:

The Department has considered several environmental factors in its review of development on this property. The DEIS has provided information on the relevant environmental concerns to be considered. This document presents a basis for why the sponsor’s plan is preferred as the most appropriate design. Economic benefits of this plan are emphasized to support this determination and are certainly understandable in today’s economy. However, there are other development designs that are also capable of achieving the sponsor’s objectives and providing a reasonable economic benefit also. Throughout the Department’s comments on the DEIS as noted in this letter, we have found that in many instances environmental differences between the sponsor’s preferred plan and the “DEC Requested Conservation Alternative” are not substantial.

However, DEC continues to believe that a reduced density alternative that provides for continuous open space on the west side of the property is important and necessary when consideration is given for the setting of this property within the Shawangunk Ridge. The benefits of maintaining biodiversity and the fire dependant ecological communities and the protection of any developed properties from wild fires must be ensured. To achieve these benefits, we recommend the following changes to the sponsor’s preferred plan: 1) elimination/relocation of Lots 29,39,40, 41 and 42 and 2) establishment of a binding document to ensure that the 1 acre lot disturbance as shown at the locations in the DEIS for each lot is adhered to (location especially critical for Lots 31,32,33,34 and 38). In addition, if the Resort Hotel remains a part of this development proposal, then its location must be further evaluated in

Re: Seven Peaks at Mountain Road - DEIS Comments
DEC ID No. 3-4840-00270/00001
Town of Mamakating, Sullivan County

the context of maintaining a continuous open space along the western side of the property. One alternative to consider is the Resort Hotel footprint being moved further east, with Lots 43, 44 and 45 also being moved accordingly. In addition, we note that the DEIS has very little information regarding the 27.83 acres that have been reserved for future lots. The issue of the Resort Hotel and the 27.83 acre property reserved for future development must be fully discussed and considered when alternatives are considered for the development of a final preferred plan for the overall development of the property. Such additions are necessary for Involved agencies to be able to make the required Findings Statement at the conclusion of the SEQR Review.

The Department notes that its prior correspondence on the Seven Peaks project is included as part of the DEIS record and that comments made regarding the content of the DEIS are to be addressed.

The Department thanks the Planning Board for the opportunity to comment on the Seven Peaks DEIS and staff is available to answer any questions the Board may have regarding these comments.

Sincerely,



Alexander F, Ciesluk, Jr.
Region Permit Administrator

cc: Town of Mamakating Town Board
S. Lamm, Mountain Road Preserve, LLC
T. Bakner, Whiteman, Osterman & Hanna
W. Janeway, DEC Regional Director