



March 12, 2009

Mr. Michael White
Executive Director
NYS Lake George Park Commission
PO Box 749
Lake George, NY 12845

RE: Public comments on draft stream corridor regulations

Dear Sirs,

The FUND for Lake George supports the promulgation of draft stream corridor control rules and regulations by the Lake George Park Commission (LGPC). Over half of the water in the lake arrives through streams, which makes stream health and ecological integrity vital to the health of Lake George. Stream regulations were envisioned by the framers of the new laws reforming the Lake George Park Commission in the Environmental Conservation Law as necessary pillars of the regulatory protective infrastructure for Lake George. This infrastructure includes stormwater, septic, and shoreline and upland tree cutting. The FUND sees the new draft stream corridor regulations as vital pieces of a protective infrastructure for Lake George.

General Comments

The draft regulations are a positive first step, but need to be strengthened in several areas. Please find our specific comments below.

Section I. Intent

No comments.

Section II. Definitions

The FUND recommends revisions to this section:

- The LGPC regulations are for “permanent” and “intermittent” streams, yet there are no definitions for these streams. The LGPC should define both types of streams. Because the LGPC has chosen not to regulate ephemeral streams, these too should be defined. It’s important that the public be informed as to what kind of stream is on their property and how this stream is subject to LGPC regulations.
- It appears that the only place where the LGPC’s recommended 100-foot wide stream buffer is written is in the definition for “designated stream corridor.” The FUND believes that designated stream corridors should be made wider to 150 feet in order to increase the effectiveness of the buffer for nutrient uptake and control, protect against flashflooding,

control against sedimentation, provide wildlife corridors, protect stream ecological habitat, and protect downstream water quality.

- The regulations also ascribe rules to “footpaths” and “hiking” trails and “biking” trails. These too should be defined. Widths for each should be in the definitions.
- The definition for “outer zone” should include the width of this zone to match that of the “riparian zone,” which includes width in the definition. The widths of both zones should be stated as well in Section VII.
- The timber harvesting definition needs to be expanded.

Section III. Prohibitions

The prohibition list should be expanded to state that no grassclippings, yard wastes, stumps, etc., should be dumped into streams.

Section IV. Exemptions

The regulations should state a date certain for when these regulations will take effect.

Section V. Provisions Relating to Timber Harvesting

The FUND recommends revisions to this section:

- Timber harvests within the inner riparian corridor should be prohibited. The only exceptions should be for removal of hazard trees for safety of people and property. It’s important to the integrity of this regulatory package that the riparian zone be a no-cut zone.
- Harvests of the outer zone should be allowed with a permit to follow state BMPs or to execute a professional forest management plan, 480a/Fischer Act plan, FSC or SFI plan.
- The regulation governing the removal of 30% of the basal area should be changed to apply to the outer zone only (forest management should be prohibited in the riparian zone). Only 30% of the basal area should be removed in a 10-year period within the outer zone of the stream buffer area, unless otherwise directed in a professional forest management plan, 480a/Fischer Act plan, FSC or SFI plan.
- The definition for a “tree” should be changed to trees with 3 inches DBH. This conforms with legal case history (McDonald, Balsom Lake) where the courts defined a tree when three inches DBH.

Section VI. Project Classifications

The FUND agrees that there should be “major” and “minor” project classifications for all stream corridor management permits. The LGPC should organize and publish rules for these permits, ensuring that minor permits are of the general permit type and have a streamlined process.

Section VII. Standards for the Protection of Designated Stream Corridors

This section should state what the overall buffer width is. The FUND recommends that the buffer width be expanded from 100 to 150 feet in order to increase the effectiveness of the buffer for

nutrient uptake and control, protect against flashflooding, control against sedimentation, provide wildlife corridors, protect stream ecological habitat, and protect downstream water quality. The FUND recommends the following changes to Section 1 “Riparian Zone” draft regulations:

- The riparian zone should be 50 feet in width. The width of the riparian zone should be stated in the regulations in this section.
- Footpaths should be “impervious footpaths” and these should be defined in Section II.

The FUND recommends the following changes to Section 2 “Outer Zone” draft regulations:

- The outer zone should be 50 feet in width. The width of the outer zone should be stated in the regulations in this section.
- The FUND seeks clarification of “water quality treatment practices.” Does this mean stormwater treatment facilities or onsite wastewater treatment systems?
- Biking and hiking paths should have a maximum width placed on each.
- A tree should be recognized at 3 inches DBH. This conforms with state legal precedent in cases involving the Forest Preserve where the courts gave standing and recognition for all “trees” at 3 inches DBH. (See comments in Section V.)
- Timber harvests in the outer zone should only be undertaken if part of a forest management plan. (See comments in Section V.)

The FUND recommends the following changes to Section 3 “Standards for the expansion of existing development” draft regulations:

- The LGPC should define “related facilities” so that landowners know what these are.
- 25% expansion of existing facilities should be the most allowable. There should not be a 25% increase allowed every ten (10) years as is currently written.
- Subsections i and ii should be changed to state “50 feet.”

Section VIII. Standards for Stream Crossings and Stream Bed Disturbances

The FUND recommends revisions to this section:

- The FUND suggests that the first draft regulation in this section be changed to “Stream crossings, channelization, or piping is allowed only for utility crossings, logging roads, public roads, (including subdivision roads to be accepted), approved private roads and driveways to access private real property when no other feasible method is achievable for project goal.”
- The FUND suggests that the fourth draft regulation in this section be changed to: “The number of road and driveway crossings shall be limited to one per subdivision per stream.”
- The FUND suggests that the thirteenth draft regulation in this section be changed to: “Disturbances for roads shall be limited to a maximum width of thirty (30) feet and driveways should be 18 feet.”

Section IX. Plan Requirements

No comments.

Section X. Administration

The FUND recommends revisions to this section:

- The FUND suggests that the fourth draft regulation in this section be changed to: “The Commission shall prepare and amend as necessary a map of all permanent and intermittent streams subject to this Article and publish this map by the date this Article is finalized (or within a specific time frame after the regulations are finalized). The Commission shall aid in identifying the streams subject to this Article. The Commission shall provide notice of affected property owners of any amendments to the map.”
- The FUND suggests that the fifth draft regulation in this section be changed to prohibit the delegation of the administration of this Article to local governments. The Commission should maintain the administration of these regulations. The FUND and the Waterkeeper monitor the administration of local development regulatory programs by the local governments in the watershed and find that these programs are poorly administered. The stormwater regulations that the LGPC delegated to the towns are not adequately administered or enforced. Regulation 5 of this section should be rewritten. A decision by the LGPC to delegate the administration to the towns will doom these regulations to failure. The effectiveness of the stormwater regulations have been undermined by delegation to the Towns of Lake George and Bolton. It’s critical that the LGPC maintain the authority and administration of these rules.
- Draft rule 7 in this section should be moved to a new section VII of this Article for “Restoration.”
- This section needs a regulation that requires that the stream buffer corridor is clearly marked on all properties where development is being undertaken.

New Section XI. Restoration

The FUND believes that a new section for Restoration should be added. This section should outline incentives for landowners, such as those stated in regulation 7 in Section X. This section states “The Lake George Park Commission Management Grant Program is hereby established as a mechanism for the Commission to provide funds from the Lake George Park Commission Trust Fund to local governments, conservation districts and citizen committees to plan and undertake stream corridor restoration.” The FUND encourages the LGPC to expand this section to undertake planning actions with willing landowners who have impaired or damaged stream corridors on their property. This planning action could include recommendations on stream corridor reclamation and restoration by voluntary means. The purpose here is to work with willing landowners to improve the ecological health and function of stream corridors where a 100-foot or larger natural buffer is unattainable.

Section XI. Emergency Actions

No substantive comment. This Section should be renumbered as Section XII so that a new “Section XI. Restoration” can be created.

Section XII. Continuation

The FUND suggests that a review be scheduled at five years instead of three. The FUND suggests that all LGPC rules should be reviewed every five years. The FUND also believes that

the Continuation Section should be renumbered as XIII and that a new “Section XI. Restoration” be created and “Emergency Actions” be renumbered as Section XII.

Formal Rules Adoption Process Concerns

Statutory Obligations

The FUND is very concerned about the process that the LGPC has undertaken to promulgate and approve new rules for stream corridor protection. The FUND notes that the LGPC is acting to fulfill a specific legislative requirement in its governing act. The FUND clearly believes that development of stream corridor regulations is long over due, perfectly legal, justified and necessary. The FUND also notes that the governing statute of the LGPC requires that it engage in consultation with state agencies, such as the Adirondack Park Agency and Department of Environmental Conservation, as well as the local governments within the Lake George Park area when developing and promulgating regulations. The FUND believes that the “consultation” with local governments should be formal between LGPC staff and the local government during a regularly scheduled meeting of the local government town board where associated planning board and zoning board of appeals and associated town employees are also invited. This will provide the LGPC with a strong opportunity to engage local communities as well as develop a record of the consultation through the recorded Minutes of the meeting. The FUND is disappointed in the “consultation” efforts made to date with local governments.

SEQRA

The FUND is concerned about the SEQRA process. On December 21, 2007 the FUND submitted a letter to the LGPC concerning its process for adoption of stream corridor rules. At that time, we urged the LGPC to start SEQRA with formation of necessary documents and procedures, starting with a “scoping session.” The FUND is unaware of any formal “scoping session” being advertised or held. If a formal scoping process was held, then please send us the necessary public notices and Minutes from the session.

The FUND is also concerned about the number of alternatives, including the “do nothing” alternative, investigated by the LGPC in its draft EIS and in the supporting materials for the preferred alternative. The FUND encourages the LGPC to issue a supplemental EIS with more fully examined and supported alternatives/preferred alternatives.

No Action Alternative

The water quality of Lake George has been deteriorating for the past three decades. See enclosed, the Lake Chemistry report for 2008 produced by the RPI Darrin Fresh Water Institute (DFWI) and the FUND for Lake George. This report shows that the level of salt pollution in Lake George has continued to rise, an area of severe oxygen depletion (a “dead zone”) establishes each summer in the south basin of Lake George, nutrient loading and water transparency are less in south basin than the north basin, among other alarming trends notes. If the LGPC continues to do nothing to protect stream corridors, then we can expect that salt levels will continue to increase, the dead zone will grow, and water quality south to north will continue to decline.

The FUND also supported a study of West Brook in partnership with the DFWI and the Lake George Watershed Conference. This study shows the levels of nutrients and pollutants entering the West Brook grow significantly in the developed areas of the stream corridor. An intact forested buffer would help to mitigate against such high levels of nutrient and pollutant loading.

The Stearns & Wheeler Companies produced a “Total Phosphorus Budget Analysis” (2001) for the Lake George Watershed calculated a 15 to 1 ratio of phosphorus loading from developed versus undeveloped lands. Stream buffer regulations will help to mitigate the high rate of nutrient loading from the undeveloped areas. It’s important to note that just 5% of the total Lake George watershed area is developed, yet this area produces more total phosphorus than the 95% of the watershed that remains in open space. If current trends continue, we will see more of the watershed developed. If 7%, or 8% or 10% of the watershed is developed, as will surely happen if present development rates and patterns continue, the rise in phosphorus loading will be significant. Stream buffers are a necessary and effective piece of the protective infrastructure to mitigate the impacts of development.

On behalf of the Board of Trustees of the FUND for Lake George, please let me express our gratitude for the opportunity to share our concerns on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Bauer". The signature is fluid and cursive, with a large initial "P" and "B".

Peter Bauer
Executive Director