



**LAKE • GEORGE  
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February 24, 2010

Ms. Colleen Parker  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977

**Re: Town of Bolton – Finkle Brook Dredging  
APA Project No. P2009-243**

Dear Ms. Parker:

The Lake George Waterkeeper Program has numerous concerns about the proposed dredging project for Finkle Brook by the Town of Bolton. It is our position that a project of this magnitude should be subject to greater public scrutiny. Dredging projects are becoming commonplace and nearly monthly activities around Lake George. There are many issues that are not being adequately evaluated. It is our opinion this activity demonstrates little respect for the ecology and Class AA-Special classification of Lake George and its waters. It is a shortsighted approach and a short-term solution to the problem of sedimentation that fails to provide a long-term solution. Rather, dredging is being viewed as a management tool, to be undertaken at regular intervals.

The Lake George Waterkeeper would like to offer the initial comments regarding the application and information submitted with the understanding more detailed comments will follow during public comment periods:

**THE ENVIRONMENTAL REVIEW PROCESS HAS NOT BEEN ADEQUATELY ADDRESSED**

The Lake George Deltas Sediment Management/Shoreline Restoration Project was initiated by the Lake George Association in January 2000 with a submission of an Environmental Impact Statement to the Lake George Park Commission. The process included a Positive Declaration, scoping session, *Draft Generic Environmental Impact Statement (DGEIS)*, public hearings and a *Final Generic Environmental Impact Statement (FGEIS)*. The Lake George Park Commission adopted a *Findings Statement for Final Generic Environmental Impact Statement (Findings)* on May 25, 2004.

In the *Findings* "Description of Action" (page 3), it was stated:

"The conceptual plans do not select a preferred method among the two methods studied, leaving that choice to Phase 2 of the Project, to be decided on a case-by-case basis for each delta."



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Later in the *Findings* “General Project Description – 2. Current Proposed Action” (page 9), it states:

“If any of the individual delta remedial actions is designed in a way that varies significantly from the proposed action described in the DGIS and the conceptual delta management plans, then the individual delta remedial project will be the subject of additional evaluation of potential significant adverse impacts, so as to ensure conformance with the requirements of SEQR.”

In the *GEIS* “Proposed Action – 3.2 Conceptual Delta Management Plans” (page 16), it states:

“Mechanical sediment removal consists of ‘excavation’ of sediments directly from the lake bottom using clamshells, hydraulic excavators or similar soils excavation equipment mounted on a barge. For this project, the sediments will be discharged by the excavation equipment into rolloff boxes positioned on barges staged adjacent to the sediment excavation equipment, within the controlled delta work area. The containerized sediments will be drained of any incidental water directly within the controlled work area and then transferred onshore for transport to the upland reuse area.”

The current proposal for project activities is to construct “work pads” in the lake consisting of lake bed material to place the excavation equipment upon, in effect building a road out into Lake George. Please note that the use of “work pads” constructed of lake bed material varies significantly from the initial concept discussed in the DGEIS of placing excavation equipment on barges from disturbance of the lake bed, ecological impacts and contamination impacts.

The current proposal for project activities is to excavate sediment material from the deltas and dump the material back into the lake at a point closer to shore, requiring additional disturbance. Please note that the concept of re-excavating dredged sediments varies significantly from the initial concept discuss in the DGEIS of placing excavated sediments in rolloff boxes positioned on barges.

There was no discussion of these proposed changes in the Project Actions as required in the *Finkle Brook Delta Removal: Summary of State Environmental Quality Review, Environmental Impact Statement July 2009* prepared by the Warren County Soil & Water Conservation District. These significant changes require a detailed environmental analysis and revision of the SEQR process.

### **THE APPLICANT PROPOSED ACTIVITIES THAT ARE IN CLEAR VIOLATION OF THE CLEAN WATER ACT**

The applicant proposes in-lake dewatering of excavated sediments, creating “in lake stockpiles of excavated material” to be removed by another excavator closer to the shore. Basically, the application proposes to utilize the Class AA-Special waters of Lake George for dewatering and the treatment of waste or pollutants, i.e. sediments.

This appears in violation of the Federal Clean Waters Act 40 CFR 131.10, which prohibits the designation of the Waters of the United States as treatment systems: “In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.” This is important because Section 805 of the APA Act states that the APA must ensure that projects conform “with other governmental controls.”

### **THE STATE OF NEW YORK HAS FAILED TO DEVELOP A TOTAL MAXIMUM DAILY LOADS (TMDL) PLAN FOR THE IMPAIRED WATERS OF LAKE GEORGE**

The New York State Department of Environmental Conservation has failed to seriously undertake the development of a TMDL Plan for the impaired waters of Lake George and its tributaries. A draft was prepared for public comment in September 2005 for Finkle Brook, for which the Lake George Waterkeeper provided technical comments. There has been no further action on this proposal or any other TMDL Plan for the Lake George waters. On top of ignoring Federal regulations, the NYSDEC has failed to take the initiative to reduce the sources of the

delta-creating sedimentation through the implementation of restrictive conditions and requirements on the various dredging permits that are being issued through the Region 5 office.

This is also important because Section 805 of the APA Act states that the APA must ensure that projects conform “with other governmental controls.”

### **THE APPLICANT HAS PUBLICLY RESOLVED TO OPPOSE STREAM CORRIDOR PROTECTION MEASURES**

The Lake George Park Commission has recently proposed stream corridor management regulations for designated streams within the Lake George watershed. Stream corridor buffers are one of the most effective measures for the removal of sediment and the protection of water quality. However, the Town of Bolton has unanimously opposed the regulations that would be most effective measure to eliminate the very problem they are proposing to remove. Perhaps any issuance of a permit should have the condition that the Town of Bolton should be required to publically support proposed stream corridor protection measures.

### **LIMITED EFFORT TO MANAGE UPSTREAM/UPLAND SEDIMENTATION SOURCES THROUGH STORMWATER MANAGEMENT CONTROLS**

We note that in the recent permit for a dredging project in Orcutt Bay the APA included permit conditions for the creation of upland stormwater management devices, such as a fully vegetated shoreline buffer and limitations on fertilizers and pesticides. The APA should request information on the sources of sediment in the Finkle Brook delta and inquire as to measures being taken to prevent further sedimentation. We note the lack of shoreline buffers around the area to be dredged and the need for effective stream corridor buffers along Finkle Brook. We also note that there is high loading of sediment and pollution to Finkle Brook from various Town of Bolton and Warren County roads.

Research by the Lake George Waterkeeper has found that instream sediment control basins are ineffective for managing sediment and may even exacerbate the problems by removing greater amounts of natural bedload due to the changes in a stream’s hydrology. We anticipate completion of this study soon. This question is important because Section 805 of the APA Act states that the APA must evaluate “natural sedimentation and siltation” involved in a project. The amount of the Finkle Brook delta that is natural material should be evaluated. Further, Section 805 directs the APA to evaluate “existing drainage and runoff patterns,” which should lead the APA to focus on measures to control, or lack of controls, for upland/upstream areas that contribute stormwater to Finkle Brook.

### **APPLICATION MATERIAL SUBMITTED IS INACCURATE**

Application submission material includes “Meeting Summary and Outcomes” of a July 7, 2009 meeting attended by interested parties in the Finkle and Hague Brook Delta Management projects. This summary incorrectly states that there was “general agreement that mechanical sediment removal was the most efficient and cost effective method of sediment excavation for these two deltas.” The Lake George Waterkeeper attended this meeting. The discussion was minimal, no cost comparisons were provided on the possible methods and there was reference of the potential impacts of the various methods. In fact, concerns were raised about re-suspended nutrients from dredging activities raised by the Lake George Waterkeeper were supported by Dr. Boylen of the RPI Darrin Fresh Water Institute, but this was not mentioned in the meeting summary. This is also important because Section 805 of the APA Act states that the APA must evaluate eutrophication impacts from a project. It seems that the issue of the re-suspension of nutrients is an impact that should be fully evaluated.

### **INVASIVE SPECIES CONTROL**

One issue that has been consistently lacking in any of the reviews of dredging applications is the colonization of dredged areas by Eurasian watermilfoil (EWM) and other invasive species. This was the result after a dredging project in Dunham’s Bay several years ago. EWM is the dominant plant in Lake George. Recent dredging permits for Foster Brook and Orcut Bay by the

APA failed to include any conditions to prevent colonization of dredged areas by EWM. Neither DEC or OGS ever attempt to deal with this issue.

### **COSTS**

In Section 805 of the APA Act "Development Considerations" the APA is charged with assessing the impacts of a project on a local government. The APA should assess who is paying for the project, whether funds exist for this project, and whether decisions were made based on costs or based on protecting the lake?

### **RECOMMENDATIONS**

I realize there has not been a formal public comment period for the above referenced application. However, it is our opinion there are significant deficiencies in the current application that need to be addressed before this can be considered as complete and be made available for the public to development comments.

The Lake George Waterkeeper recommends the application be deemed incomplete and require the following: 1) the applicant must follow SEQR and the findings of the Environmental Impact Statement and provide an analysis of the proposed activities for sediment removal that vary significantly from the mechanical methods outlined in the FGEIS; 2) determine if the activities are compliant with the Clean Water Act, particularly how the revised activities propose to use Lake George for dewatering purposes and waste removal; 3) have NYSDEC determine a schedule to properly develop and implement TMDL Plan for the Lake George watershed to eliminate the need for dredging projects; 4) focus on upland and upstream stormwater management practices; and 5) require the Town of Bolton to formally resolve support for stream corridor protection measures.

Additionally, a scoping meeting should be held by reviewing agencies with interested parties to discuss the concerns which need to be adequately addressed for such a potentially damaging project to occur – constructing roads into Lake George, placing construction equipment in the waters of Lake George and utilizing the waters of Lake George for waste removal.

The Lake George Waterkeeper Program looks forward to working with the Adirondack Park Agency to defend the natural resources of Lake George and its watershed. Thank you for your consideration.

Sincerely,



Christopher Navitsky, P.E.  
Lake George Waterkeeper

cc: Terry Martino, Executive Director - Adirondack Park Agency  
John Banta, General Counsel – Adirondack Park Agency  
Curt Stiles – Adirondack Park Agency  
Kevin Bruce – United States Army Corps of Engineers  
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Marc Migliore – New York State Department of Environmental Conservation  
Michael White, Executive Director – Lake George Park Commission  
Jon Connel – United States Army Corps of Engineers  
Jim Tierney – New York State Department of Environmental Conservation  
Ron Conover – Town of Bolton Supervisor