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March 14, 2009

Lake George Park Commission
75 Fort George Road
P.O. Box 749
Lake George, New York 12845



Re: Proposed Stream Corridor Protection Regulations

Dear Commissioners:

We are Legal Counsel to the Town of Lake George and this letter is submitted on behalf of the Lake George Town Board in opposition to the proposed Stream Corridor Protection Regulations. More specifically, these comments are in reference to the Draft Generic Environmental Impact Statement (DGEIS) accepted by the Commission as part of the State Environmental Quality Review Act (SEQRA) process. I appeared at your Public Hearing and made verbal comments regarding the DGEIS on behalf of the Town Board. This letter includes some of the same comments, although not identical to my verbal presentation at the Public Hearing. We request that all of our comments, verbal and written, be carefully considered and addressed.

For all of the reasons stated below, the Lake George Town Board submits that there are serious problems with the DGEIS and the conclusions it reaches and the EIS itself is woefully legally deficient. We have identified at least the following issues:

1. "Scoping". In relating the procedural history of this SEQRA review process, neither the EIS itself nor the Executive Director's introductory remarks at the Public Hearing gave any indication that any "Scoping" process was conducted. While EIS Scoping is not mandatory, we suggest that failure to conduct Scoping was a substantial error on the part of the Commission. As you may be aware (or as your Legal Counsel can certainly tell you), "Scoping" or attempting to define the parameters and points of discussion of an EIS prior to its completion is strongly encouraged in the SEQRA Regulations. If Scoping is conducted, the SEQRA Regulations provide for mandatory public input opportunity and, in this instance, we urge that the Commission erred in not facilitating this additional level of public participation. Many of the issues



and concerns of the Town and others might have been addressed if a Scoping process had occurred.

2. Wrong "Action". The purpose of an EIS is to analyze the potential environmental impacts of the "Action". Therefore, it is obviously important that the "Action" be properly and accurately defined, so that whatever potential environmental impacts exist are properly identified and adequately discussed. In this case, while the EIS nominally (and properly) identifies the proposed "Action" as Commission adoption of Stream Corridor Protection Regulations, the EIS itself seems to instead focus on potential impacts of "land development". In this respect, the EIS seems both internally inconsistent and inconsistent with the requirements of the SEQRA Regulations as, again, the EIS should be discussing and analyzing potential environmental impacts of adoption of the Regulation themselves, not "land development" which the Regulations are supposedly intended to address. Many of the questions and concerns raised by the Town and others might have been addressed had the focus of the EIS been on the proper SEQRA "Action".

3. Analysis of Alternatives. It is often stated that the most important component of a SEQRA EIS is the analysis of alternatives to the proposed Action and alternatives analysis is clearly and explicitly required by the SEQRA Regulations. The DGEIS is grossly deficient in its lack of meaningful analysis of alternatives to the proposed Action. To the limited extent that the EIS pretends to analyze alternatives, all that is discussed is varying the width of the Stream Protection Corridor "buffer areas". However, while the Commission may argue that this constitutes analysis of alternatives, such discussion at best analyzes alternative versions of only one specific proposed management strategy. Meaningful alternatives analysis should have included discussion of actual alternative strategies to address the perceived problem, not just slight variations of the sole, exclusive strategy proposed by the Commission. Therefore, the supposed "Alternatives Analysis" in the GEIS is barely any alternatives analysis at all and fails to comply with the requirements of SEQRA Review.

4. "No Action" Alternative. Similarly, the SEQRA Regulations clearly and explicitly require discussion and analysis of the "No Action" Alternative; in this instance, the alternative in which no Stream Corridor Protection Regulations are adopted at all. The EIS barely pays lip service to the "No Action" Alternative and, in fact, is perhaps the only EIS which we have ever reviewed that does not contain a specific "No Action" Alternative Section. Only by analyzing the "No Action" Alternative can a SEQRA Lead Agency properly justify the need to pursue whatever Action is proposed. This is especially applicable in this instance and, again, the EIS simply fails to comply with the SEQRA requirements in this respect as well.

5. "Vested Rights". The EIS fails to properly analyze one of the most potentially significant impacts of all, namely, impacts on "vested rights". The proposed Regulations supposedly include certain "grandfathering" provisions pursuant to which either exemptions or variances are provided for already existing construction and/or facilities. However, the Regulations also include certain "prohibition" and remediation provisions which at least appear to indicate that existing structures and facilities may



not be allowed to remain. Such potentially severe regulatory impacts on existing facilities would likely infringe on the "vested rights" of property owners; the rights to continue and maintain facilities previously built in good-faith reliance on permits and approvals validly issued or construction which was not subject to any permit requirement to begin with. Either way, this potentially huge impact on vested rights is barely discussed in the EIS and, to the extent that such discussion occurs, it is both inconsistent and inconclusive.

6. Overlap with Stormwater Regulations. Another area that the EIS fails to adequately discuss and analyze is the obvious overlap of the proposed Stream Corridor Protection Regulations with the Commissions' existing Stormwater Regulations. The proposed Regulations appear to be at least somewhat if not largely duplicative of the existing Stormwater Regulations, yet the EIS appears to include but one short paragraph discussing this overlap. In order to seek to justify the proposed Action, the EIS should at least analyze this overlap in detail and seek to explain why the existing Stormwater Management Regulations should be augmented by the proposed Stream Corridor Protection Regulations.

7. "Broad Brush" Approach. As many other commenters have noted, the GEIS and proposed Regulations are vague, overbroad and too generic in a number of ways. The proposed uniform buffer width and generic labeling of "streams" absent scientific conclusions based on actual, empirical data is inappropriate and lacks any rational basis. The Town Board understands that, at least in some instances, a narrower, grassy buffer area may function in a more environmentally sound manner than a wider, undisturbed, forested buffer area. In addition, proposing the exact same buffer widths regardless and independent of variables including distance from Lake George, width of stream, depth of stream, gradient over which the stream flows, temporary or permanent nature of the "stream" and the like is clearly irrational. In at least these respects, the DEIS discussion and conclusions are arbitrary, capricious and lack any rational basis.

8. Consultation with Local Municipalities. Finally, in addition to the other legally required opportunities for public participation, the Commission has a statutory mandate to enact such Regulations only after consultation with local municipalities. The Town Board feels very strongly that this statutory mandate has not been properly fulfilled. We acknowledge that Commission Representatives may have made some limited efforts to meet informally with one or two Town Officials. However, we suggest that this minimal effort falls far short of actual, meaningful consultation with local municipalities. In order to meet its statutory mandate, the Commission should schedule actual meetings with the elected legislative bodies, that is the Town Boards and Lake George Village Board, of all affected municipalities. Only through this type of effort can meaningful consultation occur and the statutory requirement be fulfilled.

The Town Board understands that all or substantially all of the affected municipalities in the Lake George Basin have submitted Town Board Resolutions



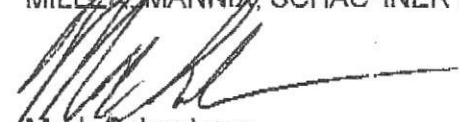
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opposed to the DGEIS and proposed Regulations and we believe that similar opposition has also been filed by the Warren County Board of Supervisors. Based on all of our comments above and all of the additional public input, the Town Board requests that the DGEIS be rejected and that the Commission abandon any further review or adoption of the proposed Regulations. If the Commission decides to move forward despite these requests, then the Commission should conduct meaningful consultation with the local municipalities, conduct a full SEQRA EIS Scoping Process including a "Scoping Session" and meaningful opportunity for public participation and the Commission should prepare a legally appropriate EIS with proper focus on the proposed Action and meaningful consideration of a wide range of alternatives including the "No Action" Alternative.

Thank you for your consideration of our comments.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC



Mark Schachner

MS/wp

cc: Lake George Town Board
Warren County Board of Supervisors
Bolton Town Board
Dresden Town Board
Fort Ann Town Board
Hague Town Board
Lake George Village Board
Putnam Town Board
Queensbury Town Board
Ticonderoga Town Board

