

Lake George Park Commission Stream Corridor Protection Project
Preliminary Response to Comments
February 13, 2009

The Commission has taken note of positions in response to release of a Draft Environmental Impact Statement and draft stream corridor protection regulations. Many of the early comments relate to the potential effect of the rules on private property values, in that, the standards would protect buffer areas along streams as private land is developed. There has also been concern expressed as to whether the need for additional regulations has been shown as well as opinions that local land use programs already provide adequate protection for the Lake. There have been process objections, including that the Commission has not adequately consulted local government or the public.

The regulations have been three years in the drafting and public discussion phase.

The Commission began a public process of consultation on stream corridor regulations in 2005. A questionnaire was mailed to every local elected official, planning board member and zoning board member as part of an assessment of needs and opportunities. (see Chazen Company 2005)

During 2006 and 2007, the Commission's planning consultant held a series of four public workshops. More than 60 individuals and organizations participated. Although a consensus could not be reached, a great deal of information was assembled, issues defined and interest groups identified. (see Saratoga Associates issues assessment 2007)

The Commission held a public hearing on preliminary draft regulations in November 2007. By this point in time, 110 individuals and organizations were receiving regular updates on the progress of the regulations, including elected officials.

In 2008, the Commission retained the Center for Watershed Protection (CWP), a nationally recognized authority on water quality issues to evaluate the needs and benefits through an Environmental Impact Statement. CWP began by holding two public "listening sessions" in May and June of 2008. One hundred eight people attended these sessions. (see Draft Generic Environmental Impact Statement by CWP)

The stream corridor protection project was the topic of the lead story in the Commission's June 2008 newsletter mailed to more than 10,000 people.

The Commission has invited, spoken and written to the chief executive officers of each municipality about the advancing project on several occasions.

The Commission has written to every person who owns property potentially affected by the regulations to explain the current proposal and invite their comments. This has led to a number of dialogues between the Commission and potentially affected property owners about the specific effect on their individual situations.

The Commission is presently inviting public comments and discussion of a Draft Environmental Impact Statement and draft regulations. Public comments will be summarized, assessed and answered before any final decisions are made.

There will be at least one additional public comment period and hearing before any rules are finalized.

Protecting Lake George protects property values and the marine and tourist economies.

The Commission has reasoned that the value of private land is primarily a function of demand. Proximity to Lake George, an immensely valuable property amenity, helps drive a robust demand for property along and near the Lake. The effect of the Lake on property values can be examined by comparing the assessed value of land near the Lake with land of similar topography and location that is not along the Lake.

The Town of Bolton has several miles of Lake frontage and more than a billion dollars (\$1,078,964,805)¹ in assessed value of property. The land without improvements is assessed at \$669,694,549 or \$16,798 per acre. Warrensburg a neighboring town with no frontage on the Lake, similar in size and terrain and with good access to I87 has a land value assessment one fifth that of Bolton (\$128,538,800) or \$3,238 per acre. Thurman a town equal distance from I87 as Bolton but 30% larger has a total land value assessment less than one tenth of its Lake front neighbor.

The high value of property in Lake front communities converts to relatively modest property tax rates. (tax paid = rate x assessed value). Tax rates that are the envy of most communities and sales tax revenue from tourism are spin-off amenities that the Lake provides to Lake front communities and property owners. Property values are also affected by other community amenities such as highly rated public schools. Lake George schools are an example of a district that benefits from the high value of assessed property because of the Lake's influence.

There is good evidence that diminished water quality of lakes reduces the value of nearby land. Poor development practices and ineffective oversight potentially impact thousands of homes and businesses along the lake, tens of thousands who rely on the Lake for drinking water and untold numbers who recreate, visit and enjoy the Lake's splendor.

Lake users rate water quality as the most important feature affecting their enjoyment of the Lake (Assessment of Water-based Recreation 2006) Accordingly, protecting the amenity value of Lake George can be seen as essential to protecting current property values as well as the splendid rate of growth in value that this proximate property has enjoyed.

¹ Warren County Real Property 2008 data.

The regulations have provisions to minimize the effect on private property.

It is estimated that the total area of private land within a 100 feet of either side of designated streams is 8% of the total private land area of the Lake basin. There are an estimated 2309 (21%) properties in the Lake's basin that have some area within the proposed 100 foot corridor. Of these, 1,622 are occupied by a home or business. Of the 687 vacant properties along streams, 497 are greater than an acre in size. An undeterminable number of the vacant parcels are approved home sites.

The regulations would not affect the maintenance of existing homes and businesses including landscaped features. Also, the rules have flexible and achievable standards for expansion of existing facilities such as additions, decks, garages, and etc, up to 25% of the existing impervious area. First time construction on parcels approved for home sites also would be subject to the lesser and more flexible limits. For example, the standards for existing development, expansions, approved home sites, etc establish a stream setback of 35 feet for building and development. This stream setback is less restrictive than the current setback for development in the two most developed towns.

Much of the vacant and undivided land in the Lake basin is in the steep forested upland and is zoned for low building density. Such low density will allow significant buffers to be incorporated into new subdivisions and in most cases will not result in a reduction in density currently allowed.

There is flexibility built into the rules even for relatively small parcels along streams. For example, clearing of up to 30% of the large trees in the outer 50 foot zone would be permitted so this could accommodate open space uses of a parcel and still maintain a good buffer in the overall.

Even so, it is anticipated that there will be cases where the effect of the rules on an individual parcel will be unduly burdensome. There are provisions to grant a variance in any individual case where the rules cause a disproportionate effect on a land owner.

There is strong scientific evidence that supports the need even in consideration of existing codes.

The Center for Watershed Protection was retained to evaluate the needs and benefits and alternatives for stream corridor protection. The CWP reviewed more than 40 relevant studies and virtually all of the available data for Lake George and assembled their results into a summary report. In recommending the buffer designs, CWP considered the current land use programs and identified additional water quality benefits that buffers would provide. According to CWP, the buffer widths recommended are necessary to effectively filter contaminants, protect stream ecology and prevent the loss of functional habitat for fish and other species.

The Government Law Center at Albany Law School performed an assessment of existing protections for the Lake George Watershed Conference (2004). The report identified the lack of stream corridor protection and effective controls on hydro-modifications as deficiencies in efforts to protect the Lake's water quality.

Stream corridor regulations are a top priority of the Plan for Lake George 2000, adopted by a coalition of local government, state agencies and lake protective organizations.

The Plan for Lake George (2000) was approved by over 40 local governments, state agencies and lake protective organizations comprising the Lake George Watershed Conference. The Plan adopts stream corridor protection as a primary objective in efforts to preserve the Lake.

A streams inventory and map is available and may be amended after notice to affected owners.

The rules would use the Commission's current definition of stream ... any permanent or intermittent watercourse. A draft map of the streams to be the subject of the regulations has been prepared, made part of the DGEIS and will be an important resource going forward. Use of this definition of stream has the primary benefit of making the regulations consistent with the Commission's other regulations especially stormwater management.

The regulations give the Commission the ability to add additional streams to the map after notice to affected owners.

The potential for streams to be identified later and added has caused concern that the rules ultimately would extend jurisdiction to many more ephemeral streams, stormwater channels, and minor drainage courses. This is not the intent at all.

The Commission's draft map is based on the New York State water body classification map and inventory. A state classification of AA is given to any stream on the State's map as well as any unmapped stream that flows year-round and is tributary either directly to the Lake or to another Lake tributary. Such "year-round" streams may not have visible flows during very dry spells.

State wetland regulations also allow wetlands identified after mapping to be protected. The stream protection and wetland programs use this flexibility effectively. Several local codes establish setbacks from streams, lakes, wetlands etc but do not map them. This approach also has been demonstrated effective without undue problems.

The draft map contains virtually all of the perennial streams and many of the intermittent streams. The Commission will perform additional field investigations during the 2009 field season that may identify additional intermittent streams that should be mapped.

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If so, affected owners will be notified and the streams added before the rules are finalized.

Since the mapping is well progressed, it is not expected that the number of affected streams or affected properties will increase significantly. The Commission's future decisions to add or delete streams, by law, must have a rational basis, afford public participation, and be based on sound practices.