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March 20, 2011

Via E-Mail/Hard Copy to Follow

Mr. Marc Migliore
New York State Department of Environmental Conservation
Region 5 Warrensburg Sub-Office
232 Golf Course Rd.
Warrensburg, NY 12885

**Re: NYSDEC Lead Agency Request
Finkle Brook, Indian Brook & Hague Brook Dredging Proposals
Bolton and Hague (T), Warren County**

Dear Mr. Migliore:

The Lake George Waterkeeper (Waterkeeper) is in receipt of your February 18, 2011 correspondence to Involved Agencies and Interested Parties stating the New York State Department of Environmental Conservation's (DEC) desire to seek Lead Agency status regarding the above referenced. In effect, you are seeking the concurrence from "involved agencies and interested parties" established through the initial FGEIS effort to agree changing lead agency from the Lake George Park Commission (LGPC) to the DEC. The Waterkeeper fails to see any merit to changing the lead agency for this supplementation, but defers to the DEC and the LGPC on this determination. The Waterkeeper accepts either governmental entity as the lead agency. If DEC becomes the lead agency, the Waterkeeper must insist that the LGPC continue its direct involvement in this process as an "involved agency" or "interested agency" [see 6NYCRR617.2(t)] where appropriate.

With regard to the rest of your February 18th correspondence, the Waterkeeper offers the following comments:

1. It is respectfully submitted that all anticipated dredging activities covered by this FGEIS effort, whether programmatic or site specific, are Type 1 actions pursuant to SEQR, contrary to the statement in your 2/18/11 correspondence that "each proposed project is considered on Unlisted action." This is supported by the fact that a number of delta areas to be dredged will involve the physical alteration of 10 acres or more [see 6NYCRR617.4(b)(6)(i); a Type 1 criteria] and all of the areas are within the Lake George Park and exceed 25% of this threshold of 10 acres [see 6NYCRR617.4 (b)(10); also Type 1 criteria]. As such, all of these proposed activities carry with them "a presumption that it is likely to have a significant adverse impact on the environment" [see



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6NYCRR617.4(a)(1)]. Finally, “the water of Lake George, all land underlying these waters and adjacent lands and wetlands are designated as a Critical Environmental Area pursuant to SEQR.” [see Draft GEIS “Executive Summary” at page X, “General Environmental Setting” – “Lake George”]

2. Your language in the third paragraph of your letter is confusing. It is difficult to determine if the DEC is considering a supplement to the Phase 1 draft and final GEIS in its totality, i.e., “all three actions proposed” and “all delta removal projects yet to be proposed” OR just the three actions being proposed (Hague, Finkle & Indian Brook). The Waterkeeper would object to any supplement that did not fully address the Phase 1 component of the overall project, namely: “preparation of [*the*] DGEIS and concurrent preparation of conceptual delta management plans for the seven tributary brook deltas that have presently been identified by the LGA for remediation.” [see DGEIS, “Executive Summary” at p. V. “Project Summary”]
3. The Waterkeeper sees no reason for the DEC to go through the “significance determination” process. SEQR allows an applicant or lead agency to go directly to preparation of a draft EIS. The proposed change in dredging methodology to “mechanical excavating from access pads” is clearly a change in circumstances related to a project which was not evaluated in the original GEIS, in addition to there now being newly discovered information both on additional alternatives and availability, or lack thereof, of funding for individual projects. [see 6NYCRR617.9(a)(7)(i)(b) and (c)] The lead agency should proceed directly to scoping as the first step to preparing the supplemental draft GEIS.
4. With regard to scoping, this component of the SEQR process is critical. The lead agency must assure that all viable means of dredging are identified and comparatively analyzed including the no action alternative (and the duration and consequence of a no action alternative, if that outcome has a legitimate potential).
5. Finally, there needs to be resolution of the largely inconsistent positions of the three State agencies identified to you in my October 23, 2010 letter specifically addressing the Finkle Brooke Dredging Project, i.e.:
 - APA Permit 2009-243,
 - LGPC Resolution 2010-62, and
 - Your DEC letter of 10/21/10 to Supervisor Conover.

Paramount in addressing these inconsistencies are:

(a) an APA permit that appears to have been issued without the benefit of a full and complete evaluation of alternative dredging methodologies with associated comparative benefits, adverse impacts and costs,

(b) the LGPC stating: (i) the method being proposed for the removal of sediments at the Finkle Brook delta does not conform in several material respects with the methodologies selected as optimum in the GEIS and upon which findings were made, and (ii) the Commission has received information that recent dredging projects have resulted in unintended impacts including off site migration of sediments, and

(c) your 10/21/10 letter that concludes that there are “significant inconsistencies that exist between the actual proposed [*Finkle Brook*] delta remedial measures and the DGEIS, the FGEIS and ... the findings statement.”

Thank you for the opportunity to comment. The Lake George Waterkeeper looks forward to continuing to work with the New York State Department of Environmental Conservation to defend the natural resources of Lake George and its watershed.

Sincerely,

A handwritten signature in black ink that reads "Chris Navitsky". The signature is written in a cursive, flowing style.

Christopher Navitsky, P.E.
Lake George Waterkeeper

cc: Betsy Lowe – NYSDEC - Region 5 Director
Michael McMurray – NYSDEC – Region 5 Permit Administrator
Lawrence H. Weintraub, Esq. – NYSDEC Office of General Counsel
Scott Abrahamson, Esq. – NYSDEC Region 5 Legal Affairs
Terry Martino, Executive Director – Adirondack Park Agency
John Banta, Esq.– Adirondack Park Agency
Bruce Young, Chairman – Lake George Park Commission
Michael White, Executive Director – Lake George Park Commission
Dave Wick – Warren County Soil & Water Conservation District
Walt Lender – Lake George Association
Tom Ulasewicz, Esq.