

**AGENDA
EMC MEETING**

March 8, 2012 ■ LOCATION: 395 Pine Tree Road ■ 4:00 p.m.

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|-------|--|------|
| I. | Privilege of the Floor | 4:00 |
| II. | Changes to the Agenda & Approval of Minutes | 4:10 |
| III. | Committee Reports:
Environmental Review (recent correspondence attached to agenda),
Energy, Executive, Unique Natural Areas Update | 4:15 |
| IV. | Announcements | 4:25 |
| V. | Strategic Retreat: Next Steps – <i>Brian Eden</i> | 4:30 |
| VI. | Working Towards Paperless Goals – <i>Executive Committee</i> | 4:50 |
| VII. | City of Ithaca Priorities Concerning the Environment
<i>Svante Myrick, Mayor of Ithaca</i> | 5:00 |
| VIII. | Adjournment | 5:30 |

Upcoming Meeting Dates: April 12, May 10

Reminder to Members:

If you are unable to attend, please contact:
Steve Nicholson, Chair (scnfish@gmail.com) or
Kathy Wilsea, Secretary (274-5560 or kwilsea@tompkins-co.org).

1 Draft 2/10/2012
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8 **DRAFT – Minutes of the EMC General Meeting**
9 **February 9, 2012**

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11 **Voting Members Present (13):** Spring Buck, Kenny Christianson, Brian Eden, Kate Engler, Martha Ferger, Bill
12 Halton, Katie Kelly, Jim McGarry, Steve Nicholson, Kristine Shaw, Gary Stewart, Lucia Tyler, Ed Wilson

13 **Voting Member Excused (1):** Roger Yonkin

14 **Voting Member Absent (1):** Dan Lamb

15 **Non-Voting Member Present (1):** Peter Harriott

16 **Guests Present:** Poney Carpenter, Emily Hamilton, Eric Nicholson

17 **Staff Present:** Scott Doyle

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19 **Call to Order** – The meeting was called to order by Chair Steve Nicholson at 4:05 p.m.
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21 **Privilege of the Floor** – There were no visitors who wished to speak under Privilege of the Floor.
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23 **Changes to the Agenda and Approval of Minutes** – Amendments were proposed for the draft minutes and accepted
24 as friendly. The minutes of January 12, 2012 were then accepted by consensus. Final minutes are available on the
25 EMC webpage: www.tompkins-co.org/emc.
26

27 **EMC Strategic Planning Retreat** – The Retreat was conducted in these phases:

- 28 • Introduction and Purpose
- 29 • Brain-dump and priority setting exercise
- 30 • Favorite flavor choices
- 31 • Planning and tool-builder exercise
- 32 • Group report out

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34 **Member Items** –
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36 **Adjournment** – The meeting was adjourned at 6:00 p.m.
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38 Respectfully submitted,
39 Scott Doyle, EMC Coordinator, Tompkins County Planning Department
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41 Approved by Council on __, 2012

Environmental Review Committee documents for committee report at 3/8 EMC meeting:

	Pages
Cayuga Inlet Dredging	2-16
Lansing area variance	17-21
Cornell Sailing Center	22-23
Peruville Road mining	24-25

Kathy Wilsea - Environmental Review Committee Comments on Ithaca Dredging EIS

From: Scott Doyle
To: r7dep@gw.dec.state.ny.us
Date: 1/13/2012 9:08 AM
Subject: Environmental Review Committee Comments on Ithaca Dredging EIS
CC: James McGarry; Lisa Nicholas; Sarah Adams; Wilsea, Kathy; dsk11@corn...
Attachments: ERC dredging cover letter_UPDATE.pdf; ERC_dredging comments final.pdf; Whitlow Ithaca Dredging Project Comments.pdf; Fall 2011 Restoration Ecology Report.pdf

Mr. Dlugolenski:

Please note the updated cover letter which clarifies last Friday's submitted comments on the Ithaca Dredging EIS are on behalf of the Tompkins County Environmental Management Council's Environmental Review Committee.

Scott D. Doyle, AICP
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TOMPKINS COUNTY
ENVIRONMENTAL MANAGEMENT COUNCIL

121 East Court Street Ithaca, New York 14850
Telephone (607) 274-5560 Fax (607) 274-5578
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January 13, 2012

New York State Department of Environmental Conservation
Region 7 Sub-Office
Att: Mr. Joseph M. Dlugolenski
1285 Fisher Avenue
Cortland, N.Y. 13045-1090

Re: Comments on the Ithaca Dredging Project Draft Environmental Impact Statement, November 2011

Dear Mr. Dluogolenksi,

Following up on our submission of comments on the Ithaca Dredging EIS submitted on January 6, 2012, we wish it reflected that those comments come on behalf of Environmental Review Committee (ERC) of the Tompkins County Environmental Management Council. We appreciate your review of our comments.

Sincerely yours,

Dooley S. Kiefer, ERC Member

Brian Eden, ERC Member

cc: Lisa Nicholas, City of Ithaca Planning Dept.

Introduction

The Tompkins County Environmental Management Council has long had an interest in conserving and restoring the natural resource features associated with the Cayuga Inlet. We were represented on the Dredging Project Advisory Committee. City of Ithaca Planning Department staff have made presentations at our meetings. We participated in the scoping hearing for the DEIS. The EMC has supported an alternative conceptual proposal that has been rejected from consideration. We assert that the City of Ithaca, as Project Sponsor, has failed to comply with the letter and spirit of the State Environmental Quality Review (SEQR) Act. Their unwillingness to evaluate our proposal was the result of consultations with the New York State Department of Environmental Conservation (NYSDEC) and a legal memorandum provided by the New York State Department of State (NYS DOS). We maintain that our proposal more fully addresses the issues of flood prevention, restoration of Lake-edge wetlands and wildlife habitat, and reduction in greenhouse gas emissions than the proposal under review here. We encourage you to consider and act constructively on the following comments.

The Lead Agency, DEC Region 7, has failed to comply, either procedurally or substantively with SEQR notice requirements.

A notice of public hearing was not published 14 days in advance of the December 12, 2011, hearing date in a newspaper of general circulation (NYCRR, sec.617.12(c)(2)). (It may still have not been published.)

A notice of Draft Environmental Impact Statement (DEIS) completion was not published in a newspaper of general circulation providing the public with a minimum of 30 calendar days from the date of publication to submit comments to the lead agency (NYCRR, sec.617.12(a)(iii) and (a)(iv)).

The original comment period (until December 16, 2011) did not extend 10 calendar days following the public hearing. The lead sponsor's schedule provided for 4 days (NYCRR, sec.617(a)(iii) and (a)(iv)).

Most interested parties were apparently provided by the City of Ithaca (the Project Sponsor) actual (but not official) notice on November 30, 2011, only 12 days prior to the public hearing. [see Attachment A] At the public hearing it was announced that the comment period was being extended until January 6, 2012. If one were not in attendance at the public hearing one might not have been aware of this extension

Of utmost concern, however, is the lack of substantive compliance with the underlying philosophy of the SEQR process. "An important aspect of SEQR is its public participation component." SEQR provides "opportunities to allow the public, other agencies to provide input... into the review process, resulting in a review with a broader perspective." (SEQR Handbook, 3rd Edition, 2010) Although the notice of completion was filed in the Environmental Notice Bulletin on November 16, 2011, actual (though unofficial) notice was provided to interested parties two weeks later on November 30th. This reduced by 50% the time to prepare public testimony. Additionally the comment period was scheduled for the busy preholiday period. Interested municipal staff and citizen advisory committees had little time to undertake a formal review process and then provide comments to elected boards and their memberships for approval before

submittal to the NYSDEC. The SEQR process is intended to assess the degree of interest by the public, municipalities, and involved organizations. Due to the accelerated review process several Cayuga Lake interest organizations are unlikely to comment on this DEIS. We believe that the DEIS had been in preparation since April 2011; it would have been an expression of good faith to at least alert the interested parties as this DEIS neared completion instead of its stealth appearance. The inadequacies of notice, the provision for bare-minimum response times, and the scheduling of public response during the holidays all are indicative of little interest in complying with the letter and spirit of SEQR.

The capacity of the Sediment Management Facility exceeds that required by the scope of the project.

“Environmental Impact Statements must be clearly and concisely written in plain language that can be read and understood by the public.” (NYCRR, sec.617.9(b)(2))

“All Draft Environmental Impact Statements must include a concise description of the proposed action.” (NYCRR, sec.617.9(b)(5)(i))

“The City of Ithaca ... plans to develop and maintain a Sediment Management Facility (SMF)... In addition, the City plans to remove up to 25,000 cubic yards ... of sediment from the lower reaches of Cascadilla Creek and transport that material to the SMF for dewatering This Draft Environmental Impact Statement reviews the potential environmental impacts that could result from the actions and evaluates their short-term and long-term environmental significance.” (DEIS 1.1, Project Description)

“The scope of this project does not include maintenance dredging for navigational access or flood control purposes to be undertaken by the NYS Canal Corporation (Canals), NYS Department of Environmental Conservation (DEC) or the United States Army Corps of Engineers (ACOE).” (Full Environmental Assessment Form, Ithaca Dredging Project, p.1)

From the inception of this project, and reiterated at the scoping hearing, we have been directed to restrict our comments to the project as proposed. The project description in the DEIS fulfills the SEQR standards of clear and concise. We shall restrict our comments in this document to the above project description. Therefore we assert that the proposed 80,000 cu. yd. capacity of the SMF exceeds the capacity required for the City’s proposed dredging of 25,000 cu. yd. The projected capacity of the proposed SMF requires excess land surface disturbance and greater greenhouse gas emissions than that of an appropriately sized facility.

The City’s proposed dredging of the lower section of Cascadilla Creek makes no sense absent parallel navigational dredging of Cayuga Inlet for which the New York State Canal Corporation (NYSCC) is responsible.

There are currently no specific plans for the dredging of the navigation channel by the NYS Canal Corporation nor of the Flood Control Works by the NYSDEC. Importantly, this DEIS does not contain a plan for disposal or use of the dried sediments. During the question-and-answer period prior to the public hearing on the DEIS on December 12,

2011, it was stated that no plan for the dredging of the navigation channel was yet available.

A dredging project is not complete without including the ultimate placement and/or use(s) of the dewatered sediments.

The extensive discussion in the DEIS of the dredging for navigational use and flood control protection of other portions of the Cayuga Inlet violates the segmentation prohibition of SEQR.

Segmentation is defined as the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities meeting individual determination of significance (NYCRR, sec. 617.2(ag)).

In addition the NYS Canal Corporation's five-year water quality certification permit expires on January 31, 2012. That permit was issued in 2007 and contains no conditions with respect to the existence of the highly invasive aquatic plant, *Hydrilla verticillata*, which was discovered in the Cayuga Inlet in August 2011. It would appear improbable that a renewed permit would allow dredging in this location until the extent of the infestation has been identified and substantially eradicated. This is the first evidence of the establishment of a *Hydrilla* population in the Finger Lakes and Great Lakes system. It is incredibly important that this infestation be brought under control. We can think of nothing more threatening to the goal of isolating this invasive aquatic plant than the proposed dredging project

The SEQR Handbook states that reviewing the "whole action" is an important principle of SEQR. The dredging of Cascadilla Creek, the Cayuga Inlet, and the Flood Control Works share, more or less, the same purposes of flood protection and navigational access. These projects are part of a common plan that meets the basic tests for segmentation. If the various phases are reviewed as one project the total impacts may be regarded as far more environmentally significant. For example, whether there are 2,500 or 80,000 truck load trips to move the dried sediments matters; the latter would have substantially more significant greenhouse gas emission impacts

We understand that the NYSDEC and the USACOE are in negotiation to determine the volume of sediments required for removal from the Flood Control Works. No projected budget figures have been made available to ascertain if there is funding to remove that yet-to-be-ascertained projected volume.

The attempt within this DEIS (pp. 21–22) to justify segmentation by characterizing it as allowable because the complete multi-phase project is descriptively summarized in the future tense flies in the face of common sense. Especially without knowing the ultimate use of the dredged spoils, how can one evaluate alternatives fairly?

All phases of this project were highly speculative as of the release date of this DEIS. If the City of Ithaca, as Project Sponsor, intends to engage in a larger project than that described, the issuance of the DEIS is premature. This DEIS is clearly an example of prohibited segmentation.

Environmental Setting

Prior to the advance of European immigrants into this region, the “flats” of the City of Ithaca were primarily occupied by marshes. With steep bedrock walls to the east and west and lateral and terminal moraines to the south, there was substantial surface water flow into these marshes whose elevation were only slightly above that of Cayuga Lake.

In 1825 the New York State Legislature appropriated funds to drain the marshes for flood prevention and public health improvement. Cayuga Lake became an increasingly important transportation hub connecting the Susquehanna River and the Great Lakes. In 1834 the Erie Canal Commission dredged a 5' deep channel through the sandbar in the delta at the mouth of the Cayuga Inlet and up the Inlet to its intersection with Cascadilla Creek. This enabled the steamship Enterprise to move its docking facility from Port Renwick to Green's Landing. Commercial storage facilities were established adjacent to the Inlet for the transshipment of materials by barge throughout New York State.

Periodic dredging since then has resulted in the deposition of the extracted materials adjacent to the Inlet filling most of the headwaters marshes. With continued dredging the Inlet became more channelized, and much of the riparian floodplain was elevated to the 500-year flood level. With the construction of the Flood Control Works, this process was repeated for several miles up the Inlet channel.

An impartial observer could conclude that each additional dredging served to do away with the many natural wetlands upstream of the Inlet's entrance to Cayuga Lake, increasing the flow of water that then carried increasing sediment loads into the southern shelf of the lake. This area of the Lake has been listed as impaired under Clean Water Act sec. 303(d) for more than a decade. The dredging project, if thoughtfully designed, has the capability to improve water quality in this basin. What measures would the NYSDEC support to correct this impairment?

An alternative proposal for the beneficial use of the dried sediments.

The beneficial use of the dried sediments in the vicinity of their extraction presents several constructive options for their utilization. Not only does it reduce the energy cost and greenhouse gas emissions, it provides the opportunity to reestablish freshwater wetlands that were filled during previous dredging projects. The 25,000 cu.yd. of material dredged from the Cascadilla Creek could be fully utilized near the lake's edge from the Hog Hole to the Inlet to supplement the natural resource features of the Allan H. Treman State Marine Park. Routing a portion of the Cayuga Inlet flow through the northeastern segment of the park would sustain a constructed wetland and restore some of the lost natural ecosystem functions; a desirable outcome would be removal of some suspended sediment prior to its deposition into the impaired southern basin of Cayuga Lake.

Our proposal is within the range of reasonable alternatives. It possesses the potential to reduce, eliminate, or avoid adverse impacts of the proposed action while meeting the goals and objectives of the action. We request that a comparative impact analysis be conducted prior to the issuance of a Final Environmental Impact Assessment.

This alternative proposal is superior to that selected. It will provide a larger public benefit. In addition to enhancing the natural ecosystem functioning of this area of the Inlet, this alternative would provide opportunities for public education trails and enhanced bird watching. This proposal reflects an ecosystem-based management best practice.

The necessity to alienate parkland has been cited by the lead sponsor as an obstacle to a parkland enhancement project.

The DEIS asserts that “once lands are in public use as parks, a formal process (known as alienation) must be completed to change the use.” There is a “need to alienate parkland for a change in use even if the change in use is temporary.”

The alienation process is intended to make it difficult for government agencies to convert a parkland use to one that is not for a compelling public need. Parkland is held in trust for the benefit of the People of the State of New York. However, activities that support the goals and objectives of the park are permitted; for example, creation of increased parking, construction of restaurants, and new playing fields are permitted

The primary activities at the Allan H Treman State Marine Park are boat launchings and docking facilities. Opportunities for picnicking and bird watching are also available. Maps of the facility indicate that the area proposed for a temporary sedimentation management facility and constructed wetland are not designated currently for use. This project would be separated by some distance from most of the park’s activities and would not interfere with the major functions of the park.

The proposed project would provide a substantial public benefit and would shift this area of the park to a higher use. The Office of Parks, Recreation, and Historic Preservation (OPRHP) has offered a 5-acre parcel at the Marine Park for use in this project. This indicates that they regard this activity as consistent with the Park’s long-term plans. If construction of a restaurant on park property does not require alienation neither should the multiple benefits offered by this proposal.

The City of Ithaca, as Project Sponsor, was prohibited by the NYSDEC and the NYSDOS from taking a “hard look” at alternative proposals.

Despite our numerous statements at public forums and our submission to the City of Ithaca on July 13, 2011 of our Proposal to Utilize Dredged Sediments from the Cayuga Inlet to Create Natural Resource Benefits at the Lake-edge, alternative proposals have received no attention. The language from the Site Reconnaissance Report (Ecologic, June 2010) was substantially imported to the DEIS document. The reason cited for the City’s lack of willingness to consider our recommendations was a Draft Memorandum on Dredged Material Disposal Options provided to the City on June 18, 2009 by the NYS Department of State. We believe that the opinions stated in this document are neither well- reasoned nor a comprehensive expression of the current state of the law.

1. The public trust doctrine asserts that the underwater lands, navigable waters and aquatic resources are held in trust for the benefit of all of the People of the State of New York. To place fill in these areas would require an easement or land grant from the Commissioner of the Office of General Services (OGS). A grant or easement could only

be issued to an adjacent upland landowner and can be used only for a “water dependent” purpose. A dewatering site is not a water dependent use. (Draft Memorandum, p.2)

What has been proposed here is the creation of a freshwater wetland. The dewatering facility would temporarily support the construction process. The U.S. Army Corps of Engineers regulations on water dependency are intended to prevent a net loss of wetlands to dredge and fill activities and to preserve the waterfront. In New York State water-dependent uses have been defined as uses that can only be conducted on, in, over, or adjacent to the water; each involves, as an integral part of the use, direct access to and use of the water (see Long Island South Shore Estuary Reserve, Comprehensive Management Plan). Many water- dependent uses are for explicitly commercial purposes such as the creation of docking facilities and terminals. Water-enhanced uses are permitted if they increase the public's enjoyment of the waterfront. The creation of wetlands for wildlife refuges, bird sanctuaries, nesting areas, or other wildlife habitats are expressly permitted. With the inclusion of public education features such as trails it will further support this proposal as a beneficial use and facilitate the public's enjoyment of the waterfront. We believe that this would provide the significant public purpose required to support the issuance of a grant from the OGS

2. Environmental Conservation Law section 15 -0505 requires a permit to fill navigable waters and adjacent marshes and wetlands. The NYSDEC “is required to ascertain the probable effect of the proposed project on the use of such waters for navigation, the public health, safety, and welfare and on the natural resources of the state” (ECL section 15 – 0505(3)). Recently the NYSDEC provided a permit to Cornell University to construct intake pipes in the more sensitive benthic zone of the Lake for its Lake Source Cooling project. Our proposed project may marginally impact the less sensitive littoral zone, which for several months of the year is deprived of lake water due to the Fall/Winter reductions in the elevation of the Lake for flood prevention. Would not the NYSDEC issue such a permit for a project that would advance the environmental functions and services provided in this area of the Lake edge?

3. The Draft Memorandum on p.3 states that a proposal for wetlands construction on state-owned underwater lands using dredge material is problematic and likely infeasible. This negative assessment of the opportunities for the beneficial use of dredged materials permeates the memorandum. In contrast, the USACOE encourages the beneficial use of dredge materials in support of environmental enhancement objectives. The first option set forth in the Federal Dredged Material Management Program (DMMP) is the use of such materials for habitat restoration and development; build and restore wildlife habitat especially wetlands or other water-based habitat. (Identifying, Planning, and Financing Beneficial Use Projects Using Dredged Material, Beneficiary Use Planning Manual, October 2007, section 2.1 (EPA 842 – B – 07 – 001)).

The NYSDEC/NYS DOS have focused exclusively on the challenges to, rather than the opportunities for, the successful construction/restoration of freshwater wetlands. Despite the considerable community support for this alternative that has been expressed during the development of this project, these agencies have opposed this option from its inception. For example, agencies outside of our community intend to substitute their

opinions for what is in the community's best interest. In supporting its objections to a Lake-edge project, the NYSDOS stated that "Cayuga Lake is arguably the area's most valuable natural resource, tourism attraction, and source of recreational activity. It is in the interest of the City to preserve its Lake resources as much as possible." (Draft Memorandum, p.2). We would assert that our proposal is completely consistent with that objective.

There is not an inherent relationship between dredging depth and flood prevention.

Discharge of the watershed flow to the Lake is dependent on a variety of circumstances. When the Lake elevation is the same as the inflow at the mouth of Cayuga Inlet, discharge is substantially reduced (if not nonexistent). Much of the homeowner flooding in the Fall Creek area of the City is attributable to the height of the water table (that fluctuates with Lake levels). Previous dredging projects have filled the adjacent wetlands and lower-lying areas, effectively channelizing the stream from the Fish Ladder to the mouth of the Inlet. Reconnecting the stream to its traditional floodplain would increase the channel's capacity to address major precipitation or snow-melting events more than increasing the channel depth.

Decades ago the upstream portion of the Inlet was modified to enable "ponding" of heavy runoff in the former flood plain. Such ponding should have worked in conjunction with ACoE's more recent Flood Control Works. But the upstream area has been changed by the City's allowed development and paving in the former flood plain. Dredging cannot undo these changes.

Relevance of climate-change adaptation

The ClimAid: Integrated Assessment for Effective Climate Change Adaptation Strategies in New York State (November 2011) report finds that we are already experiencing impacts as a result of climate change and impacts are projected to increase with further warming. The goal of that report is to provide New York State decision-makers with current information on our vulnerability as well as "to facilitate the development of adaptation strategies informed by both local experience and scientific knowledge." Projected higher average annual precipitation and increased frequency of heavy precipitation events will potentially result in major flooding and the delivery of increased sediment and pollutants to the Lake. Utilization of the dried sediments in the vicinity of the Inlet rather than deposition of it at an upland location is an opportunity to enhance flood prevention by reconnecting the stream to its former floodplain.

In performance of its responsibilities the NYSDEC must take into account adaptation to the expected effects of climate change. The staff is required to integrate climate change considerations where they may be relevant into all decision-making, planning, natural resource management, and permitting. (NYSDEC Commissioner's Policy 49: Climate Change and DEC Action, October 22, 2010) The NYSDEC is charged with encouraging resilience of human and natural communities to climate change as well as conserving and restoring habitats and the hydrological functions that facilitate ecosystem resilience. This project presents the NYSDEC with an opportunity to demonstrate that these policies are credible.

The Project Sponsor's proposal would produce excessive greenhouse gas emissions relative to the alternative proposal.

The alternative proposal will require substantially fewer truck trips to move the dried sediment from the Sedimentation Management Facility to an upland disposal site. The one-way distance for such transport is estimated at 1 mile. No disposal or ultimate-use site has been identified in the DEIS. We believe locating a site or sites within 1 mile of the SMF is problematic. Utilizing dried sediments in the vicinity of their extraction will reduce greenhouse gas emissions. Also those greenhouse gas emissions produced by the required booster pump to move the dredged material to the distant SMF would be eliminated.

In the Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement, greenhouse gas emissions must be discussed in the EIS in detail. (DEC Program Policy, July 15, 2009). In this DEIS this element received one paragraph in the narrative (p. 61). Both the City of Ithaca and the County of Tompkins have detailed plans for the reduction of greenhouse gases. Consultation with relevant staff at these agencies may be useful in conforming this project with the goals of their greenhouse gas reduction plans. Table 4.2 (Existing Air-Quality Data) must be expanded to include the most relevant of the six main greenhouse gases. Also were carbon dioxide emissions calculated with the use of gas or diesel fuel? The latter, which is denser, produces 15% greater emissions. Mitigation measures to reduce greenhouse gas emissions are not discussed. (DEIS 4.5.3).

The discussion of greenhouse gas emissions is wholly inadequate. The NYSDEC must require the lead sponsor to fulfill the requirements of this policy. Department staff is required to make greenhouse gas reductions a fundamental goal. (NYSEC Commissioners Policy 49: Climate Change and DEC Action, October 22, 2010).

The environmental benefits provided by our alternative proposal are substantially greater than those of the proposed project without necessarily increasing its cost.

The alternative proposal restores lost natural resource elements in the vicinity of the Inlet as well as creating a far smaller carbon footprint. The proposed beneficial use of the dried sediments as a supplement to a more comprehensive plan for the lower Cayuga Inlet watershed is superior to the undisclosed/unknown plans for upland disposal.

The NYSDEC, as the Lead Agency, has compromised its role as an independent reviewer of the DEIS by its intervention to deny the City the opportunity to pursue an alternative proposal.

The NYSDEC's unambiguous regulatory opposition to the creation of freshwater wetlands prevents it from objectively reviewing whether the DEIS complies with SEQR requirements. In most circumstances this direct involvement in the preparation of the DEIS would be ethically inappropriate and require recusal. We request that the DEIS be reviewed at the NYSDEC's main office in Albany rather than by those Region 7 staff who have been engaged with the preparation of this DEIS. This project is of vital interest to the community and must be reviewed transparently with decisions made on the basis of merit.

Miscellaneous DEIS comments

- 1) Page 22, section 1.5, lists seven “Interested Agencies” involved in receiving the required notifications and consultations—including the Town of Ithaca. The lands upstream adjacent to the Flood Control Works and near the Fish Ladder are in the Town of Ithaca and are presumably of interest to the ACoE, too. Those interests are left out of the discussion text.
- 2) Page 29: The ACoE jurisdictional site map appears to extend the Corps jurisdiction into the lake; what does that mean for NYSCC’s jurisdiction?
- 3) Page 32: The overall project site map makes clear that any sediment escaping with dewatering water will return to the very same stream that requires dredging. Please include an analysis of how much sediment this is likely to be and how that squares with a prohibition on any in-water placement.

Addendum

The Tompkins County EMC has been actively seeking advice from those with expertise in fields related to this project. This Fall we collaborated with the Restoration Ecology course at Cornell University to do fieldwork in support of our vision of utilizing the dredged sediments to restore natural resource benefits in the vicinity of the Cayuga Inlet. We attach here comments on the DEIS from Associate Professor Thomas Whitlow PhD and a paper prepared by the students in the Restoration Ecology class. We hope that you will find this document useful for your review of the DEIS.

ATTACHMENT A

From: Kathy Wilsea [mailto:kwilsea@tompkins-co.org]

Sent: Thursday, December 01, 2011 8:39 AM

To: Barry Goodrich; Roxy Johnston; Steve Penningroth; Brian B Eden; Carol I. Chock; Dan Karig; Dooley S Kiefer; Gary Stewart; Jose Luis Lozano; Karen L Edelstein; Linda P. Wagenet; Peter Harriott; Spring C Buck; Sharon K Anderson; Gregg McConnell; Sarah Adams; John Mawdsley; bill.garthwaite [REDACTED]; Katie Kelly; Helen Slottje; James McGarry; Marjory Rinaldo-Lee; Steve Nicholson; tyler; Craig Schutt; Kenny Christianson; Kristine Shaw; Mary Shelley; lamb; Patrick Barry; ferger; Cindy Schulte; Frank Proto; Liz Cameron; Scott Doyle; John Andersson; rmannin4 [REDACTED]; Todd Miller; Elaine Quaroni; Tom Vawter; Eric Banford; darbykiley [REDACTED]; yonkin; Lynn Leopold; Ed Bugliosi; Lisa Wright-Mathews
Cc: Ed Marx; Joan Jurkowich

Subject: Fwd: Public review for Ithaca Dredging DEIS

Kathy Wilsea, Secretary

Tompkins County Planning Dept.

121 E. Court St., Ithaca NY 14850

607-274-5560

>>> "Lisa Nicholas" <lnichola@cityofithaca.org> 11/30/2011 3:00 PM >>>

Kathy,

Could you please forward this message to the EMC & the WRC.

Thank you!

Lisa Nicholas, Senior Planner

108 East Green Street

Ithaca, NY 14850

lnichola@cityofithaca.org

Phone: 607-274-6557

Fax: 607-274-6558

>>> Lisa Nicholas 11/30/2011 2:57 PM >>>

You should soon be receiving official notification from the DEC that the Draft Environmental Impact Statement (DEIS) for the Ithaca Dredging Project has been accepted.

The document is available for review online at <http://www.ecologicllc.com/ithacadredging.html> . Hard copies are available in the Planning Department on the third floor of City Hall (607) 274-6550 and at the DEC Region 7 Office, 1275 Fisher Avenue in Cortland (607)753-3095 .

A public hearing to receive comments on the DEIS will be held on Monday December 12th at 5:30 pm in the Council Chambers, on the third floor of City Hall. The DEC will accept written comments until December 16, 2011.

The contact at DEC is Joe Dlugolenski r7dep@gw.dec.state.ny.us

Lisa Nicholas, Senior Planner

108 East Green Street

Ithaca, NY 14850

lnichola@cityofithaca.org

Phone: 607-274-6557

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Comments on the Draft Environmental Impact Statement Ithaca Dredging Project

Submitted by Thomas H. Whitlow, PhD
Associate Professor

and

Students of Restoration Ecology HORT 4400
Cornell University
Fall 2011

December 27, 2011

Wetlands of the Cayuga Inlet

The wetlands that historically occupied the lacustrine delta deposited by the Cayuga Inlet have for all practical purposes been eliminated by the historical development of the City of Ithaca. One has only to view the expanse of Queen Catherine Marsh at the south end of Seneca Lake while traveling Rte. 414 as it descends into Watkins Glen to appreciate the magnitude of the loss development has exacted from Cayuga Lake. Channelizing the Inlet in the early 1960s further disconnected the Inlet from its riparian corridor. Together, these legacy factors have undoubtedly contributed to the deterioration of the southern end of Cayuga Lake and its subsequent designation as an impaired water body.

It appears that the charge to the contractor EcoLogic was unfortunately narrow because the DEIS gives no serious consideration to using dredged material to construct a wetland complex adjacent to the mouth of the Inlet and Stewart Park. The proposed dredging project presents an opportunity to re-establish wetlands at the south end of Cayuga Lake, thereby providing a nesting habitat for shorebirds, cover for fingerling fish that is scarce at the south end of Lake. The shallow shelf off of Stewart Park, while not without value, is a poor excuse for the wetland habitat that historically occurred there. With proper design, a constructed wetland would also enhance the natural *ecosystem functions* of denitrification and removal of suspended fines prior to entering the lake proper, thereby reducing the loading to the Lake. With the inclusion of marsh walkways and an observation tower, the wetland would also increase the recreational value of the Lake (an *ecosystem service*). We submit that a constructed wetland built with dredge material from the Inlet would become a tourist destination, a resource for public education and would enhance the experience of recreational boaters. Poplar Island in the Chesapeake Bay is a prominent example of a habitat restoration project using dredge material that has become a tourist attraction with substantial educational value (<http://www.nab.usace.army.mil/Projects/PoplarIsland/>). Not insignificantly, the project has generated good will and positive publicity for the ACOE and the State of Maryland. Wouldn't it be nice if the NY DEC, which is currently under fire for its

handling of hydraulic fracturing to extract natural gas in the Southern Tier, could play a key role in the rejuvenation of the Cayuga Marsh?

There are many current examples of beneficial use of dredge material that have been sanctioned by consortia of state and federal agencies (see the 2009 report commissioned by The Great Lakes Commission (<http://www.glc.org/dredging/pdf/Final-report-Beneficial-use-of-dredged-material-and-collaboration.pdf>) and the Cleveland Harbor project (<http://www.lrb.usace.army.mil/missions/cleveland/b-report.htm>) for relevant case studies. Several of these are in New York, so interpreting NY DOS position against expanding parkland or creating islands in should not be interpreted as a blanket prohibition of restoring wetlands in Cayuga Lake. If constructive collaborations among regulatory agencies can be orchestrated in Buffalo, Cleveland and Baltimore, certainly the City of Ithaca and NYDEC can summon the will, creativity and vision to accomplish something similar in Cayuga Lake.

How would we finance a restoration project in conjunction with Inlet dredging? Section 204 of The Water Resources Development Act of 1992 (WRDA; Public Law 102-580) authorizes the use of public funds for beneficial use of dredge material for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands. The ACOE is authorized to provide **up to \$5,000,000** with no cost share requirement if it deems that the project serves to conserve and develop water and related resources. The ACOE could also lend its vast experience to ensure that a constructed wetland would be successful. We are also fortunate to have in our backyard the Upper Susquehanna Coalition (<http://www.u-s-c.org/html/index.htm>), a network of Soil and Water Conservation Districts that has local experience in creating and restoring wetlands. WE are confident that USC would assist in developing a proposal for Section 204 funding of the Inlet Project. Given the dire financial limitations faced by New York State and the City of Ithaca, it seems logical that we should pursue innovative alternatives to expensive, un-fundable upland disposal of material dredged from the Cayuga Inlet. This would certainly be a spoiled opportunity and not a beneficial re-use.

Management of *Hydrilla verticillata*

The belated discovery of the invasive aquatic plant *Hydrilla verticillata* in August 2011, complicates the dredging operation. Fragmentation of the stems and perturbation of the substrate is likely to create many mobile propagules that could be spread in the waters of the Inlet and the southern end of Cayuga Lake. Controlling hydrilla is sufficiently complicated that it warrants an independent report, so the treatment of hydrilla is understandably superficial in the DEIS. We would add to the DEIS the explicit recommendation that silt curtains be used to confine fugitive sediments around active dredging sites to reduce the potential for spreading hydrilla.

Once the dredge material has been sufficiently de-watered to allow it be transported to upland sites for re-use, as appears to be the currently preferred option, the risk of spreading hydrilla has not been eliminated. There are reports in the literature that hydrilla propagules can survive prolonged periods of drying. To test this, we performed a small experiment to see if hydrilla stem fragments could survive a 2-week period while buried in Inlet sediment that was allowed to air dry in flats on a greenhouse bench. At the end of this period, the sediment was easy to handle and arguably of a consistency that could be loaded into dump trucks and transported to upland sites where it could be re-used for purposes not yet specified. Stem fragments were recovered and placed in quart Mason jars filled with tap water and left in a heated greenhouse. While there was substantial mortality, some buried stem fragments did survive, as evidenced by re-growth from the original stems.

We also found a solitary tuber in the 10 + gallons of bulk sediment we collected and sieved. We placed this tuber on the green house bench and allowed it to air dry for 2 weeks, after which it resembled a small scaly potato. We then placed this tuber in a water-filled Mason jar to see if it survived the desiccation treatment. The tuber produced a vigorous green shoot within a week of being placed in the water.

Based on these findings from this preliminary experiment, we believe that uncontrolled, unconfined upland placement of dewatered dredge material invites widely dispersing hydrilla throughout the landscape via runoff into the ubiquitous roadside ditches and small ponds throughout the Cayuga Basin. Upland disposal sites would need careful monitoring for several years to ensure that no propagules remain. If the assumption is that dredge material would be sold to private individuals for as yet unspecified uses, sales should carry the caveat that the material be monitored for a minimum of 2 years if it is to be used as surface fill or amendment. We believe that it would be more effective to monitor sediment for hydrilla control through a process of solarization in confined cells as part of constructed wetland along the southern shore of Cayuga Lake. More details can be found in the full report of our study and references found therein.



TOMPKINS COUNTY
ENVIRONMENTAL MANAGEMENT COUNCIL

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To: Gregg Travis, Chairperson, Zoning Board of Appeals, Town of Lansing
Edward C. Marx, Commissioner of Planning, Tompkins County

From: Tompkins County Environmental Review Committee

Date: February 13, 2012

Re: Application for an Area Variance of H. Floyd Davis

The Tompkins County Environmental Review Committee has reviewed the application for variance and believes that the variance should not be granted. The steep slopes of the eastern shore of Cayuga Lake are a unique and fragile environment. This area is listed in the County's listing of Unique Natural Areas deserving of consideration and protection. It is home to both locally and globally rare plant species. It is a very steep environment, with loose talus and quite susceptible to erosion if not well vegetated. The County's own documentation for this site states "The main threats to this site are from house building and subdivision development." In addition to erosion this proposal raises concerns including drainage, fragmentation, detrimental visual impacts, degradation of the sensitive unique natural area affected, and more.

Local Law Number 2 of 2008, Subdivision Rules and Regulations of the Town of Lansing (hereafter referred to as the Zoning Ordinance) sets forth in Article 9 Section 900 the conditions, all of which must be satisfied, for the granting of a waiver or variance. None of the conditions cited in Section 900 have been satisfied. We examine each in turn immediately below.

"(1) granting the waiver would be keeping with the intent and spirit of this Local Law, and is in the best interests of the community;"

The community will receive no substantial benefit from this. Granting this waiver seems to be particularly in the interests of the Applicant.

"(2) there is no adverse effect upon the character, appearance, or welfare of any neighborhood or the environment;"

Among the effects of allowing additional fragmentation of the land on the bluffs above the steep slopes is degradation of the character, appearance, and welfare of the unique natural environment found on these slopes.

We have attached two photographs showing the stark difference between the steep slope in a natural state, and the same slope when it is cleared to provide an unrestricted view for a home site. In the first picture, note the mature trees which shade and hold this slope. In the second picture, note the stumpage and whip growth resulting from the clearing of the slope. These two environments are nothing alike.

“(3) there are special circumstances involved in the particular case;”

Indeed there are special circumstances involved in this case—the Lakes Cliffs Unique Natural Area. However, this special circumstance argues against the granting of a variance.

“(4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed;”

The applicant’s request for a variance seems to be based on two things: construction cost overruns on his development, and his inability to sell the lots because of the recession and a neighbor planting some trees.

While cost overruns can be problematic and vexing, they are the responsibility of the developer. They do not represent a basis for release from local law.

It has been over three years since the applicant’s lots were available for sale. During that time, many lots and homes have sold in Tompkins County, the recession notwithstanding. They may not have sold at a pace or a price that the sellers might have hoped for, but that is not at issue here. A free market economy entails risk. These risks seem not to have been well planned for, nor responded to, by the applicant. The hardship that the applicant asserts in his letter is, at least in large measure, self-imposed, and not the responsibility of the Town, nor is it a basis for a variance.

“(5) the waiver is the minimum necessary degree of variation from the requirements of this Local Law;”

Article 4 Section 400 requires lots to have a minimum of 150’ road frontage. The applicant’s lot appears to have 163’. With two flagpoles of 30’ each removed from this, the applicant’s lot will only have 103’ of road frontage remaining.

Article 6 Section 606 of the Zoning Ordinance limits flag lot driveways to 500 feet. These flag lot drives will be over 1000’.

Article 7 Section 702 of the Zoning Ordinance indicates quite explicitly that private access drives “are used to provide access only to one or two lot(s)” This drive will provide access to three lots.

This waiver will result in the following considerable list of variations from the requirements of the local law that we do not feel can be characterized as minimal.

- More than doubling the length of the private access drive beyond that permitted by the ordinance.
- Allowing three lots instead of only one or two to share a private access road.
- Having three lots with a total road frontage of 163’.

It does not appear to us that any variation from the requirements of the Zoning Ordinance is necessary in this case.

In Summary:

Unique Natural Areas in Tompkins County were identified, in part, to make municipalities and developers aware of the value of a parcel under consideration for development. Hopefully this awareness would result in greater protection for those valuable natural resources.

The Zoning Ordinance was extensively discussed and voted upon by an elected Board. The rules and regulations contained therein were an attempt, as expressed in Article 7 of the Zoning Ordinance, to “ensure sound, consistent, efficient and safe long range development,” and “to promote...beneficial land development patterns.” Environmental issues and concerns are mentioned numerous times throughout the ordinance. We believe that it can be persuasively argued that a variance here would be a violation of the Board's intent.

The developer's remedies are to lobby for a zoning law change or to construct a road to town standards and deed it to the Town. Alternatively, he could price his currently-for-sale lots at a level that the market will bear. Permitting this development now could possibly leverage future, more intense development on this parcel, and on other parcels, at the edge of the Lake Cliffs.

Respectfully,

James McGarry, Chair
Environmental Review Committee
Tompkins County Environmental Management Council

Attachments: 2 photos







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To: Kevin R Bliss, NYSDEC Region 7, Cortland, NY
Herb Engman, Supervisor, Town of Ithaca
Roxy Johnston, Hydrilla Task Force
Frank Proto, Chair, Tompkins County Water Resources Council
Edward C. Marx, Commissioner of Planning and Community Sustainability, Tompkins
County
Patrick Crowley, Manager, Cornell Sailing Center

From: Tompkins County Environmental Review Committee

Date: Feb. 21, 2012

Re: Cornell Sailing Center Dredging Project

Cayuga Lake is a valuable natural resource in New York State. It is a major source of drinking water for the residents near the Lake as well as several municipal systems such as Bolton Point in Lansing. It is an important habitat for both cold and warm water fish. It provides habitat for a diverse variety of land birds and water fowl.

The waters of Cayuga Lake are classified as AA(T). However, the water quality in the southern basin of the Lake has been impacted by silt and nutrients and more than a decade ago was placed on the EPA's list of impaired water bodies (CWA sec. 303(d)). In 1996 the NYSDEC placed these 5000 acres on its Priority Waterbodies list as an impaired use for drinking water and fish propagation due to high turbidity. The goal of such designation is to restore and maintain the chemical, physical, and biological integrity of these waters.

The Clean Water Act (sec. 122.4(i)) states that no permit may be issued "to a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards". The dredging of the accumulated sediments will most certainly be a source of additional turbidity in the impaired portion of the Lake.

Having reviewed what little information is provided regarding the proposed dredging, this project does not qualify as a Type II action. In the NYSDEC's regulations Chapter 6, §617.5 Type II actions, section 34 describes actions taken or approved prior to effective SEQR dates as Type II "...except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts...". Without a specific environmental review of this action we have no way to know if it is possible to "...modify the action in such a way as to mitigate potentially adverse environmental impacts...". None of the extensive and specific provisions descriptive of Type II actions appears to address the scope of this proposed project.

Nothing in the SEQR regulations indicate that this project is exempted from receiving a more comprehensive environmental review. SEQR suggests that minor projects may be required to undergo a more abbreviated review process. However, this project does not meet the standards set forth in the regulations for treatment as a minor project; one that impacts 5000 sq. ft. or less (the request here is for the dredging of 10,000 sq. ft.).

Specific questions that we feel need SEQR reviewable answers are:

- Will there be an inspection for possible hydrilla contamination of the sediments? Some of the boats docked there may very well have transited through the infested Inlet area last year. It is an ideal location for the establishment of hydrilla (shallow water clear enough for photosynthesis).
- What equipment will be utilized?
- What sediment controls will be utilized?
- What is the time and duration of the project?
- Where will the material to be de-watered?
- What is the composition of the dredged materials and where will the sediment be transported?

Regardless of previous permit approvals, conditions in the natural environment do change. And a very recent change in our lake environment is the appearance of Hydrilla Verticillata. This invasive aquatic weed has the potential to cost us millions and to significantly alter our aquatic environments. From here it even threatens the Great Lakes and the St. Lawrence River.

Excavation of sediments in a valuable resource such as Cayuga Lake should trigger an environmental review. Permitting all lake side owners to dredge to improve access to their docks without environmental review would establish a very dangerous precedent. We request that no permit be issued until an environmental review process has been undertaken that will provide all interested parties with an opportunity to study the full record and to provide comments in conformance with the SEQR requirements. Thank you.

Respectfully,

James McGarry, Chair
Environmental Review Committee
Tompkins County Environmental Management Council

Brian Eden
Executive Committee
Tompkins County Environmental Management Council



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To: Teresa A. Phelps, NYSDEC, 1285 Fisher Ave., Cortland, NY 13045
Edward C. Marx, Commissioner of Planning and Sustainability, Tompkins County

From: Tompkins County Environmental Review Committee

Date February 29, 2012

Re Permit Application for the Peruville Road Sand and Gravel Mine

The Environmental Review Committee of the Tompkins County Environmental Management Council urges that the negative determination for this project filed on Dec. 21, 2011 be rescinded, and a positive determination rendered which will require a full environmental review. Indeed, we are perplexed that a negative determination was arrived at. There are numerous reasons to suspect a high potential for environmental damage due to this proposed mining.

The proposed mine location is adjacent to Tompkins County-designated Unique Natural Area 45. These UNAs have been designated by Tompkins County as being worthy of special consideration and protection for their uncommon environmental value. The mine location also immediately borders The Nature Conservancy's 308-acre von Engeln Preserve at Malloryville. This parcel was acquired by the Conservancy at great expense because of its unique environmental value.

In short, the proposed mine location is surrounded by unusual and sensitive wetlands, the characteristics of which are not often found. These wetlands contain pristine groundwater-sensitive hemlock hardwoods. These wetlands are home to globally and locally rare plant communities and species. These wetlands are immediately downslope from the gravel mine project.

The water regime in these wetlands is, in large part, dependent upon groundwater flows. The Applicant's own Mining Permit Application indicates that the water table in the area of the mine is approximately 5 feet down and that they will be mining to a depth of 40 feet. The Environmental Assessment Form with this application states that there are no water resources within or adjacent to the proposed mine. Yet it also claims that a two acre pond will be created and that the source for the pond's water will be groundwater.

Since many people and organizations have recognized the environmental value and sensitivity of these surrounding wetlands, caution should dictate that we engage in a careful review process. Please rescind the negative determination, filing instead a positive determination so that we can move ahead with a proper environmental review.

Respectfully,

James McGarry, Chair
Environmental Review Committee
Tompkins County Environmental Management Council