

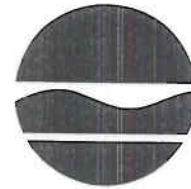
New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

November 19, 2007

Frank Lavardera
Clough, Harbour Associates
Winners Circle
Albany, New York

Re: DEC #4-0101/171
Notice of Incomplete Application -
Additional Comments
Albany Rapp Road Landfill Expansion
6NYCRR360 Solid Waste
Fourth Supplemental DEIS
Albany©, Albany County

Dear Mr. Lavardera:

As part of the Department's ongoing completeness review of this application/Fourth Supplemental DEIS for the landfill the following are comments by staff on habitat, Pine Bush Preserve, state lands, habitat restoration, and wetlands issues. Given the size and complexity of the DEIS/application and issues under consideration we are working as expeditiously as possible and will be sending additional comments in other subject areas and/or as we receive responses to prior comment letters.

I. Pine Bush, State Lands, Habitat

1. Department property maps show that there is an easement held by DEC across City lands within the area of the landfill expansion. This easement was established during the last expansion in order to provide a connection between the Ice Age parcel and Albany Pine Bush Preserve lands to the west. The current DEIS does not discuss the presence of this easement except to show an area labeled: "pedestrian easement". Needed is a discussion of this easement including any NYS approvals, land grant or swap needed to utilize any portion of this easement and the plans to clearly label NYS as the easement holder as well as assessment of the impact on public users of the easement.
2. The mitigation plan suggests that mitigation work will occur on undedicated DEC lands to the east of the landfill, specifically the Ice Age parcel. Further, a portion of the proposed mitigation work includes 2.4 acres of Forested Wetland Restoration. This parcel has already been the site of wetland creation work that was done in consideration of impacts to federal wetlands located on the State Campus parcel involved in this land swap. Therefore any proposal to modify or alter the wetland mitigation area established would have to also be coordinated with the US Army Corps of Engineers.

3. Figure 2-6 lays out the proposed phasing plan for the Habitat Restoration work. The area currently occupied by the trailer park is proposed for restoration in Year 2-3 (see p. 2-28). However, 11 remaining residences are found at the site. It is understood that most of these tenants are able to remain until ~ 2015, while one resident has a life estate. This situation needs to be factored into the restoration timetable and addressed in the DEIS.

Additionally, on p. 2-26, the DEIS states that the phasing (and pretty much the whole timetable) will be dictated by the availability of sand. Based on the consultant's presentation at City Hall, sand represents a significant cost factor for the restoration. It is not clear what the City will do to acquire the sands it needs, in the quantities it needs, in order to complete the habitat restoration as proposed within the time frame specified.

4. The proposed eastern expansion will insert a very high and steep feature into the current and future preserve that is completely unnatural in appearance. In the Wetland Avoidance Scenario (Fig. 5-1) the avoidance measures employed greatly soften that impact. A similar approach is needed in the preferred eastern expansion alternative discussion and a design which would lessen or naturalize the appearance of this feature.

5. The habitat restoration plan identifies that it will restore the two original stream courses feeding Rensselaer Lake. However, the restoration measures proposed for the northern stream stop at the property line of a private parcel fronting on Rapp Rd. (See Fig. 2-5 & p. 2-25). The DEIS should discuss this discontinuity in substantial detail, and present options for addressing it.

6. The Habitat Restoration Plan is very general at present, both in content and in regard to its timetable for implementation. Sufficient detail is needed as to the timeframe, specific locations and how restoration will occur so that the Department can ascertain as part of its permit decision the likelihood for success and determine if modifications would be needed.

7. The DEIS needs to include a discussion of the current status of the P-4 mitigation measures. For example, p. 3-56 contains the statement that fish may be present in the mitigation pond, but no fish survey was conducted. The permit for P-4 required that fish be eliminated from the pond. The DEIS needs to address whether that work was completed properly and successfully, as well as what the current status is. The same requirement applies to all other required mitigation measures associated with P-4.

8. P. 3-46 contains the statement that "all habitats in the expansion area are overgrown and degraded environments". This statement is very misleading as while they do not represent the best and most pristine examples of these habitats, they are fully and ecologically functional. The forested red maple swamp is a fully functional wetland habitat, despite its location in the shadow of the landfill, and despite being continually negatively impacted with windblown trash. The existing wooded north slope of the landfill currently provides a naturally wooded buffer that has habitat value and cannot be quickly replaced if destroyed.

9. Page 3-55 contains the statement that spadefoot toad was "located east of the mobile home park in a

vernal pool in moderate to high quality woodland. However, the Vegetative Communities Map (Figure 3.3-1) does not indicate either the presence of a vernal pool or a vernal pond in this location. This page also states that surveys located spotted turtle. More detailed information as to the occurrence of both of these species should be provided directly to DEC Wildlife staff.

10. P. 3-57 - Eastern hognose snake & worm snake are both species which are secretive and difficult to detect. Based on the soils and habitat in the overall project area, it is reasonable to expect that both these species do occur in the project area even though they were not found in this survey. Accordingly, the DEIS should include a discussion on potential impacts on these species of not only the landfill expansion, but also the broad habitat restoration plan.

11. Referring to the Restoration Area the statement appears on p. 3-59 that “no lupine plants have been observed throughout this area”. The DEIS should discuss the documented presence of wild lupine on City land in the vicinity of the mitigation pond. Further, Frosted Elfin, listed as Threatened in NYS, have been documented at this site. This needs to be discussed in the DEIS along with an analysis of potential impacts to this species associated with the project.

12. P. 3-73 Visual impacts - the DEIS needs to present discussion and mapping of specific viewpoint impacts from major vantage points in the Preserve. In particular, the views from Blueberry Hill and the Overlook Dune east of the Discovery Center need to be included in this analysis.

13. P. 5-7 - The discussion of Alternatives contains the statement that “the relocated stream would be constructed through high quality forested wetland habitat with a significant number of vernal pools located to the east of the expansion area”. A discussion of the impacts associated with this relocation was not found and needs to be addressed in the DEIS.

14. P. 5-8 - The Habitat Protection Scenario would substantially reduce impacts associated with relocating the stream, avoid 0.55 acres of wetland fill, and only reduce the operational life from 6.6 years to 6.5 years. The DEIS needs to discuss why this alternative would not be ranked higher than the preferred Eastern Expansion alternative.

15. The DEIS states on p. 5-27 that without the proposed expansion “a fixed revenue stream would not be guaranteed to the City of Albany”. As part of the evaluation of alternatives in the DEIS, The City needs to discuss alternative revenue sources that could replace the landfill revenue and/or reduce the footprint of the expansion area and/or assure that Albany would find a future need to consider any additional expansion proposals to be fully mooted.

16. P. 5-27, contains the statement that absent the expansion “the Albany Pine Bush Preserve Commission will not receive revenue that it would have anticipated to otherwise receive”. On page 2-5 the figure of \$250,000/year is discussed. Is this the amount of revenue the Commission would receive under this expansion proposal?

17. The DEIS needs to adequately address the issue of direct impacts on adjoining state land. The state lands

to the east of the current landfill are already heavily impacted by windblown trash. Additionally, landfill operations have resulted in silt and sedimentation impacts to a vernal pond on state land near the city property line. Clearly, such impacts will continue and increase if there is active grading and landfilling operations immediately adjacent to state land. From the plans submitted, it is apparent that the current expansion plan would involve grading right up to the edge of DEC administered state land to the east. It appears likely the City will also need to go beyond the property line in order to construct the slope and any necessary drainage features. Therefore, an alternative with a buffer between the proposed landfill expansion and state land which avoids and minimizes the impacts discussed above has to be included in the DEIS. In this regard the discussion in the Wetland Avoidance Scenario can be expanded to incorporate these considerations or another alternative should be developed. Part 360 requires a 100' setback of solid waste deposition from a property line as well as from surface waters. It appears the landfill liner is some 90' from the property line and would overlay the existing stream and wetlands. It needs to be clarified in the DEIS whether the final design meets the 6NYCRR360-2.13 100' property line setback and if a Part 360 variance will be sought from the 100' surface water setback.

18. Related to #17, above, the DEIS needs to discuss the visual and wildlife impacts of windblown garbage on the Albany Pine Bush and preparation of a "garbage drift" map which shows the likely new deposition areas and depositional density contours (similar to Figure 3.9-2 for noise) for such debris if the Eastern Expansion is approved. A performance-based plan identifying specific measures for controlling and regularly removing such debris is needed in the DEIS.

19. The DEIS needs to discuss whether any state land is proposed to be used for any purpose, including but not limited to: stormwater, landfill side slope construction and maintenance, drainage and collection systems as well as what permissions will be needed and sought (easement, temporary use permit, etc...). The DEIS needs to present an alternative that does not require the use of any state land.

20. The area proposed for expansion is identified in the Albany Pine Bush Management Plan as a Full Protection Area. While this Mgt Plan has no specific regulatory authority, local municipalities have given these recommendations great weight while considering projects for approval. Although the proposed Restoration Plan proposes to enhance existing dedicated lands, it does not provide for compensating for the long-term loss of habitat benefits currently provided by the expansion area itself, or for the altered and reduced benefits that are achievable on this area in the future once the landfill is closed. The DEIS needs to discuss these impacts and include an alternative that would replace this lost area and its habitat benefits.

21. The DEIS needs to address as part of habitat restoration the future decommissioning of the massive wall in order to mitigate the impacts of this substantial habitat and wildlife barrier between the landfill and the Fox Run trailer park.

22. The DEIS discusses the limitations on future expansion past this current proposal. This discussion needs to be clarified if the City of Albany is making a commitment that it will seek no further landfill expansion in the Albany Pine Bush as well as provide any enforceable guarantees necessary to ensure this outcome.

II. Freshwater Wetland Issues

On 10/24/07, Karl Parker reviewed the wetlands on the proposed expansion area site as well as within the restoration and adjoining properties. The following represent his determinations and findings which need to be reflected in the DEIS and wetland delineation report:

- 1) The DEIS and wetland delineation report states that wetland AA is 23.66 acres in size. However, that figure only represents the amount of wetland within the boundary of the Jurisdictional Determination (JD). Figure 3.5-2, entitled Water Features, represents the full extent of this wetland on the east side of the trailer park and landfill. These wetlands were flagged north of the JD line. If this portion of the wetland boundary has been surveyed it should be depicted on a survey map submitted to the Department. It is estimated that the total wetland is in excess of 30 acres. Wetland AA clearly exceeds the threshold of 12.4 acres. Since it also contains ecological features that meet the definition of wetland as set forth in ECL Article 24, it is the Department's determination that Wetland AA qualifies for mapping and regulation under ECL Article 24.
- 2) Wetland AA, particularly that section east of the landfill, is heavily impacted by windblown plastic trash. A cleanup and maintenance plan needs to be developed and implemented.
- 3) Wetland EE, located just south of wetland AA and described as an isolated vernal pond, would be included as part of Wetland AA under any DEC mapping and regulation due to its location about 20 feet from Wetland AA. No direct impacts are proposed for Wetland EE.
- 4) Wetland DD, another small vernal pond on state land, is currently being impacted by silt and sediment running off from the landfill property. This wetland is too small and distant to be included as part of Wetland AA.
- 5) Wetland C is only about 30 feet from Wetland B, and separated only by a trail, which appears to be an area of fill upon what was once continuous wetland. These wetlands total 9.8 acres on the property; however, both of these wetlands continue north across the property line. The northern portion of Wetland B, extending approximately from Flag B1 to BB7 is forested red maple swamp. Regardless of size, these northern areas of forested wetland of Wetland B/Wetland C merit mapping as state regulated wetlands of Unusual Local Importance as providing wildlife habitat, recharge of groundwater supplies, recreation, and education and scientific research pursuant to ECL 24-0301 (1) and 24-0105(7).
- 6) Wetland VP is approximately 165 to 170 feet from Wetland B/Wetland C. The mapping regulations set a limit of 165' for two wetland areas to be considered part of that wetland complex. The consultant needs to provide an actual survey measurement of the distance between these areas. Wetland VP has been identified as a breeding site for spadefoot toads. Given this, and its location within the Albany Pine Bush, it merits mapping as a state wetland of Unusual Local Importance for providing habitat for a rare species and education and scientific research pursuant to ECL 24-0301 (1) and 24-0105(7).

7) While wetlands B/C and VP are already on protected lands and therefore not part of the landfill expansion site, they may be affected by the proposed Habitat Restoration Plan and, if so, will likely require permit approval for such proposed work.


8) The impact issues regarding wetlands outside of the direct impact area of the landfill are relatively minor which is a positive reflection of staff discussions with the AES consultants that the habitat restoration plan must be compatible with the existing benefits and functions of these wetlands. A more significant concern is the proposed use of state-owned lands to meet the city's wetland mitigation obligations under either federal or state jurisdiction. For example, the DEIS states that the city proposes to fill 5.6 acres of forested wetland. This means that the city should be considering and discussing the creation of 11.2 acres of new forested wetland on lands that are under the control of the city. On p. 2-26, the restoration plan proposes creating forested wetland on the Ice Age parcel (which is owned by DEC and is not dedicated to the APB Preserve). This specific proposal creates three issues of concern: a) public usage of these public lands requires that upland areas be present in appropriate location and amount, b) it is not clear that this area was ever historically wetland, thereby not really constituting restoration or that this area would benefit ecologically by adding wetlands instead of the successional field that is currently there and c) converting upland on state land into wetland to mitigate for loss of wetlands on city land would create a precedent for other landowners and project developers to seek similar arrangements to perform wetland mitigation on state land, thereby eliminating costs of property acquisition, ownership and liability while losing opportunities to enlarge protected open space and natural areas.

Approval of the use of state land for wetland mitigation is seen as problematic such that alternative non state land mitigation sites need to be considered in the DEIS. In looking at such alternative sites, wetland creation will have to be: a) ecologically sound, b) is beneficial to and appropriate for such sites, c) fully consistent with any applicable plans, goals, uses and restrictions and d) ultimately be approvable by regulatory authorities, including DEC. If Albany looks at sites on city owned land dedicated to the Albany Pine Bush Preserve, then in addition to these critical considerations the approval of the Albany Pine Bush Preserve Commission must also be obtained.

As stated above, Department staff are still completing our review of the DEIS/application and consideration of the issues raised and will be providing additional comments as expeditiously as possible.

If you have any questions please feel free to contact Karl Parker or myself.

Sincerely Yours,



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Regional Permit Administrator
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