

## Regulatory Flexibility Analysis

### Effect on Small Business

The economy of the Lake George region is characterized by the many small businesses which are either directly in the tourism business or dependent upon it. There are no exact figures on the number of businesses, but based on membership in local commerce organizations, an estimated range for the total number of small businesses located within the Lake George Park is 650-800. Lake George has over 100 "attractions" and 25 full-service marinas on the water. The Lake George Chamber of Commerce has 440 business members. Only those small businesses which conduct land disturbance activities within 35 feet of a DEC regulated stream are subject to the requirements of the Commission's stream corridor regulations. These businesses include resorts, motels, restaurants, marinas, gift shops, and recreational activities. An important premise of the program is that the attractive qualities of Lake George generate much of the tourism demand in the region and that the protection of the Lake helps to sustain the economy and the individual small businesses.

There are three counties and twelve municipalities all or partially within the Lake George Park. Municipalities that select to adopt and administer the Commission's stream corridor regulations would incur expenses relating to program administration. Municipalities that administer their own stormwater program are the Village of Lake George, and the towns of Lake George, Bolton, and Queensbury. The additional workload and associated cost of the proposed regulatory changes are not anticipated to be significant compared with the current stormwater management oversight by these municipalities.

The permit requirements of the rule will apply to any entity undertaking land development projects in designated stream corridors, including small businesses. The small businesses expected to undertake land development projects in designated stream corridors include existing businesses located on property near streams that wish to expand business facilities or add amenities. The Lake George region is dominated by tourism, second homes and water-based recreation. Accordingly, the affected small businesses include accommodations and lodging resorts, marinas, restaurants, and amusements.

Small businesses that will undertake land development in designated stream corridors also include entities whose primary business activity is land development. This involves the purchase, improvement and re-sale of land and structures. These projects will include residential subdivision, townhouse, condominium, commercial and resort development.

There is no direct way to ascertain the number of businesses in total within the Lake George Park that have property within a designated stream corridor and thus may be potentially affected by the regulations. The area of private property located within stream corridors has been calculated to be 0.8% of the Lake George watershed area. If one were to assume arbitrarily that the businesses facilities, project sites and stream corridors are each evenly distributed across the geographic area of the Park, then the number of potentially affected business and the number of potentially affected projects would be 0.8% of the total number of businesses and projects, respectively.

Several municipalities around the Lake George Park currently administer land development jurisdiction within 35 feet of DEC designated streams (Village of Lake George, Town of Lake George, Town of Queensbury, Town of Bolton). These towns also constitute the significant majority of land development and business activity within the Lake George Park. As these municipalities already regulate this activity, the overall new impact of these regulations is reduced by a similar ratio. Given these considerations, impacts upon small businesses from the implementation of this stream corridor regulation is not anticipated to have a significant impact upon local business.

### Effect on Local Government

The Lake George Park contains portions of twelve municipalities and three counties. These local governments will be subject to the permit requirements and standards along with other entities when undertaking projects within the Lake George Park involving development, land clearing or land disturbance in designated stream corridors. Projects outside the Lake George Park boundaries and projects on land within the boundaries that drain away from Lake George will not be affected by the rule. The Lake George Park is defined by a metes and bounds description contained statute at 43-0301.1. A map of the Park is viewable at the Lake George Park Commission (LGPC) website at <https://lgpc.ny.gov/>

These government entities are currently required to obtain permits or approvals for disturbances to the bed or banks of regulated streams (channel) pursuant to 15-0501 of the Environmental Conservation Law and regulations promulgated pursuant thereto at 6 NYCRR 608. These project approvals may be embodied in the form of a general permit for regular highway, bridge and culvert maintenance and replacement. The LGPC expects to receive a delegation from New York State Department of Environmental Conservation (DEC) for administration of 15-0501 within the Lake George Park. It is expected that the general permit authorizations will continue under DEC administration but will incorporate the specific standards for stream crossings within the Lake George Park. Individual permits for projects involving stream bed and bank disturbances outside the scope of the general permits will be administered by the DEC. Accordingly, the net effect is that additional standards for stream channel disturbances will be implemented through existing permit mechanisms. Also, new permit requirements and standards for work outside the channel but within the 35' designated stream corridor will apply.

### 2. Compliance Requirements

There are no reporting or record keeping requirements affecting local government or small businesses. Construction projects that direct development to areas of the project site outside the stream corridor can thereby avoid jurisdiction. This will not always be possible so the rules establish permit requirements and standards.

The rule would require permits for development projects affecting designated stream corridors. Project sponsors including small businesses may incur additional costs for technical or engineering services for consultation with agency staff, the preparation of project plans and interaction with agency staff during the review process. The cost of compliance is consistent for all types of entities so that costs to comply with the

permit requirements and standards will be the same for small businesses as for other entities undertaking projects.

Project location is an important variable. Project sponsors can avoid permit jurisdiction and any additional costs by avoiding disturbances in designated stream corridors. Location is the most significant variable for the majority of development projects since stream corridors represent about 0.8% of the private land within the Lake George Park. It is expected that a lesser percentage of all development projects will require a permit under the proposed rule, as they can often avoid land development activities within 35 feet of designated streams.

Design flexibility is another important variable. Flexibility is most related to the total area of the project sponsors property. The owner of a 2 acre single family home lot that is able to locate the home and driveway yards away from the stream corridor will face little if any compliance costs. In laying out upland subdivisions where the permitted density of single family homes may require eight to ten acres per principal building, it is reasonable to expect that developers will have some flexibility to avoid land disturbances in designated stream corridors.

The regulations define a designated stream corridor as an area within 35 feet of the high water mark on each side of a stream. The objective of the standards is to retain an undisturbed natural buffer, ideally of native forest, in the corridor. Cutting vegetation and trees in the corridor of up to 30% of the trees (defined as having a diameter of 1 inch or greater) would be approvable with a permit. This cutting is not inconsistent with the objectives of the buffer and moderates the effect of the standards on private property. Cutting 30% of the trees in the corridor would be concentrated in certain areas to remove trees in a manner compatible with many of the customary open space uses of home sites and business premises (to protect buildings, open for sunlight, access to the stream, etc). New structures and hardscaping in the corridor would be limited to 100 square feet for impervious surfaces and 400 square feet for porous hardscape surfaces (pervious pavers, etc). Property owners could receive permits for clearing associated with a stream crossing, a road, utility, or trail crossing that is necessary.

### 3. Professional Services

Project sponsors including small businesses may require survey, design, and legal services in order to comply with the requirements. These services will not be required in each case. Surveys and engineering plans are not required. Rather, the rule establishes that an accurate project plan be submitted together with a simple form permit application. Permit applications for minor projects typically can be prepared by applicants with the assistance of the LGPC staff.

At a certain size and complexity, project sponsors related to stormwater management project applications necessarily turn to design professionals. Due to the relative simplicity of the 35 foot stream corridor provisions, the use of design professionals for typical stream corridor disturbances will be much less likely. There may be expenses for additional design work that involves structures within the stream channel. The cost of these services is highly variable as a function of the size of the project. In most cases, new development involving placement of structures in a stream corridor will require a permit under the

Commission's stormwater regulations, and that design work should accommodate the needs for the stream corridor disturbances. The proposed standards for structures/crossings closely mirror existing practices required by DEC, and as such designers and applicants will not recognize an appreciable difference in complexity or cost associated with stream structures/crossings within the basin.

The regulations set standards and have provisions for the LGPC to grant a variance to any specific requirements. Legal representation in variance applications is not required.

#### 4. Compliance Costs

There are no initial or annual costs to achieve and maintain compliance. There are no variations in the cost of compliance for different small businesses. The maintenance of existing facilities, business or otherwise, is exempt from the regulations.

#### 5. Economic and Technological Feasibility

The rule does not impose compliance requirements that involve technology. Stream buffers are passive systems comprised of an area of vegetative that is retained along streams when land is developed. It will be feasible for small businesses and local governments to comply. The regulations contain provisions to grant relief from the standards in individual cases where the strict application of the requirements would impose a hardship.

#### 6. Minimizing Adverse Impacts

The original stream corridor draft rule from 2009 was developed in a public planning process followed by preparation and public review of an Environmental Impact Statement. More than 30 stakeholder organizations including local governments and business organizations participated. The agency received and responded to more than 400 public comments. The regulations incorporated and assessed in the Final Generic Environmental Impact Statement included several important revisions in response to public comments received. However, the Commission did not implement the provisions under the first stream corridor regulatory effort. This new stream corridor regulatory initiative utilizes a lesser buffer width of 35 feet as opposed to the original 100 feet. This revised buffer width has been scientifically shown to have good nutrient and sediment removal efficiencies, while minimizing the impact upon private property rights. Other than that, the proposed regulations are substantially as they were in 2009.

During the course of the Commission's outreach efforts between 2005 and 2010, a frequent objection recorded was that the proposed rule text created uncertainty as to the specific streams that would be subject to protection. Many comments expressed concern with the definition of stream that included intermittent water courses with no corresponding definition of intermittent. Many suggested that this would lead to the application of the standards to an inordinate number of waterways. As a result, the Commission has now revised the rule text to define the streams to be protected as "AA Special perennial stream designated or mapped by the NYS DEC". The final proposed rule defines "designated stream corridor" as the area extending 35 feet on each side of the high water mark of a designated stream.

## 7. Small Business and Local Government Participation

Initial Outreach and Evaluation for the 2008-2010 stream corridor regulatory initiative:

In 2005, the LGPC retained the Chazen Companies, Inc., (Chazen) a planning and engineering firm, to conduct an outreach and opportunities study. All local elected representatives as well as local planning and zoning officials received a questionnaire about the needs and prospective benefits of a Tree Cutting and Stream Corridor Protection Program. Chazen also conducted interviews with various environmental groups. The Chazen report was released in August 2005 and included the following pertinent results.

“The results of the survey call for improved measures to address stream corridor protection.

1. Eighty- six percent (86.3%) of the respondents agreed that activities taking place in stream corridors are a matter of concern for the community.
2. Respondents are closely divided on whether local land use regulations adequately address stream corridor protection. Forty-four percent believe land use regulations adequately address the issue, while 35.6% expressed the controls as inadequate.
3. Two thirds (66%) of the respondents indicated that their local planning board regularly addressed stream corridor protection during the site plan/subdivision review process. However, 69.3% believe measures to manage stream corridors could be improved.”

Chazen also provided summary conclusions which advocated for a watershed planning approach to address the interwoven issues of water quality. The recommendations included the following pertinent findings:

“Our observation is that the watershed communities have a basic understanding that a problem exists, but lack clear definition of the issues, as well as the technical capacity to address the problems. Lacking a regional approach, a uniform solution has not been developed. In contrast, the three advocacy groups we interviewed have a clear understanding of the problems, have worked to improve their technical capacity, and have developed their own individual approaches to resolving these watershed issues. The effort of lake protective groups have not resulted in a uniform approach or shared solution adopted by the municipalities.

The common theme throughout the study was the need for a coordinated approach, the need to improve resources (i.e. staff, technical capacity) available to the local communities, and the importance of educating and involving all classes and categories of individuals and organizations (e.g. homebuilder, landowner, logger, excavator) that may have involvement in the land development process.”

The Chazen final report is incorporated by reference into the FGEIS and is viewable on the agency web site at <https://lgpc.ny.gov/>

### Public Planning and Participation Phase 2005- 2007

In November of 2005, the LGPC held a meeting in conjunction with the Lake George Watershed Conference (now the Lake George Watershed Coalition) to discuss the content of a work plan for preparation

of a Watershed Plan Governing Stream Corridor Protection and Tree Cutting. An invitation and explanation about the meeting was sent to the chief executive officer of each municipality. Attending conference members were invited to participate in the formulation of the key objectives of the plan

In accordance with the recommendations of Chazen in 2005 and the advice received from Watershed Conference members, the LGPC undertook a community planning process with the goal of developing a Watershed Protection Plan Governing Stream Corridor Protection and Tree Cutting. In 2006, the LGPC retained a professional planning, engineering and landscape architect firm (hereafter “the firm”) to conduct the planning process and prepare several integrated reports. The work plan for the project included the objective of fashioning regulations and programmatic approaches to fulfill the LGPC’s authority under the two topical areas. The firm was to assist in conducting a series of five facilitated planning workshops, performing a literature review, conducting a “build-out” analysis, preparing a visual assessment, preparing draft and final impact statements and developing a regulatory impact statement and related State Administrative Procedures Act (SAPA) documents. Outreach work to various interest groups began in the Fall of 2006.

On behalf of the LGPC, the firm developed a contact list. The contact list included chief elected officers (town supervisor/mayor), governing board members, planning and zoning board members and land use/zoning officials, environmental organizations, State agency representatives, chamber of commerce and similar business organizations, individual developers and others. During the final quarter of 2006, the firm began a series of one-on-one meetings with groups and also began a coordinated public outreach and flow of initial materials.

During 2006 and 2007, the firm, at the LGPC’s request, held five facilitated workshop meetings. More than 30 organizations were represented at one or more of the workshops including municipal planning and zoning staff, board members and chief elected officers of the lakefront municipalities, many of whom attended and participated. The outputs of the meetings were documented in a series of status reports by the firm.

On December 4, 2007, the LGPC invited all of the stakeholder representatives (including local elected officials) to attend a meeting of the LGPC to hear about and discuss a preliminary draft of the regulations.

#### Draft Generic Environmental Impact Statement (DGEIS) Phase

Beginning in 2008, the LGPC decided to retain a new consultant with special expertise to assess watershed issues and stream buffers. Early in 2008, the LGPC retained Center for Watershed Protection (CWP) to take up where the project left off, to prepare an environmental impact statement and draft regulations.

CWP held two public meetings in May and June 2008 to gather impressions from stakeholder organizations and the public about the issues. The invitees included a growing list of stakeholders including municipal planning and zoning staff, board members and chief elected officers of the lakefront municipalities, many of whom attended and participated. The DGEIS was the subject of internal LGPC review during the Fall of 2008 and was released on January 5, 2009. The LGPC formally accepted the DGEIS as complete on January 27, 2009 and set a period for public comment until March 15, 2009. The SEQRA hearing consisting of a morning/afternoon session and an evening session was held on February 24, 2009.

The LGPC received and responded to more than 400 comments on the DGEIS, the majority of which dealt with several topics of the regulations. The Commission accepted the Final Generic Environmental Impact Statement on May 26, 2009.

Outreach and evaluation for the 2020 stream corridor initiative:

The Commission began working to revise its stormwater regulations in early 2017, which included recommendations for stream buffers as a provision within that regulatory update. Following extensive research on buffer width efficiency balanced against private property rights issues, the Commission settled on a proposed 35 foot buffer width recommendation which had restrictions on development within that zone. The Commission then met with every municipality around Lake George Basin to discuss the proposed stormwater regulatory update including the stream buffer provisions. Every municipality around Lake George supports the Commission's proposed 35 foot buffer requirement.

Following this effort, the Commission also met with representatives from the region's forestry and logging communities, engineers and designers, Chambers of Commerce, lake-based non-profit organizations and other stakeholders. The Commission found broad support for these reasonable development and cutting restrictions within a 35 foot buffer to DEC AA Special streams within the Lake George Basin.

In 2020, it was determined that the most appropriate path forward to implement stream buffer restrictions was not through the stormwater regulatory update (ECL Article 43, Section 0112(1)), but through the stream corridor protection requirement of Article 43 (Section 0112(5)). This requires the Commission to undertake two separate regulatory initiatives, which is the current path forward.

There are no substantive changes to the Commission's original 2017 proposed 35 foot stream buffer provisions that were discussed with all stakeholders. As such, the Commission does not anticipate significant new opposition to this effort, as the standards are the same as the stakeholders commented on in 2017 and 2018.

The Commission will be conducting extensive outreach to local municipalities, small businesses and other stakeholders in 2020 regarding this stream corridor regulatory initiative. Public comments will be sought, received and replied to, and a final regulatory package submitted to Albany for approval in late 2020.