

January 15, 2007

Tom Lyons,
Director Environmental Management Bureau
NYS OPRHP
Agency Building 1, 17th Floor
Empire State Plaza
Albany, NY 12238

Re: Comments on Draft Generic Environmental Impact Study (DGEIS) for Niagara River
Greenway

Dear Mr. Lyons:

The Niagara Heritage Partnership (NHP) has expressed its strong concerns about the formulation of the Niagara Greenway Commission (NGC), the makeup of which appears to have improperly influenced the results of the DGEIS for the Niagara Greenway, specifically regarding our request that one version of the “conceptual” greenway plan incorporate the concept of the total removal of all four lanes of the Robert Moses gorge parkway between Niagara Falls and Lewiston, NY, and the restoration of natural landscapes according to the vision of Frederick Law Olmsted. This was not provided.

What the document did provide was a defacto endorsement of the so-called pilot project involving those parkway lanes initiated by the NYS Office of State Parks, Recreation, and Historic Preservation (OSPRHP) whose decision it was during relicensing discussions with the NYS Power Authority (NYPA) to make the pilot conditions permanent. NHP noted at the time that this was a bad faith action, especially considering the sizable citizen and organizational support for total parkway removal.

When Wendel Duchscherer (WD), the firm hired by the NGC to create a greenway plan, announced that it would not be dealing with the parkway issue, NHP responded that “not dealing with it” not making a plan for removal, was in fact accepting the plan for retention and was, therefore, evading their responsibility to conceive of a genuine greenway plan. The DGEIS repeatedly refers to their plan as conceptual. The WD acceptance of the current parkway configuration is not, in fact, conceptual at all, but a clear decision to maintain and design around an existing condition that is in opposition to a genuine greenway. Is the concept of a naturally restored gorge rim without parkway lanes too difficult to grasp?

NHP requests for information about who, and with what authority, had instructed or encouraged WD to ignore repeated proposals for a gorge greenway design free of parkway lanes were made verbally at Citizen Advisory Committee meetings and to the NGC in writing, but were also ignored.

The Robert Moses Parkway Pilot Project Report was issued by OSPRHP and NYS DOT on 12 December, 2003, presenting the conclusion that two closed parkway lanes should serve as a hiking, bicycling, etc. (“multi-use”) trail while the other two lanes would remain for vehicle use.

NHP strongly objected to this decision and the rationale used to justify it, which was often illogical and biased to fit the decision. On 12 February 2004 NHP published a critique of the report (Niagara Heritage Partnership Response to the Robert Moses Parkway Pilot Project Evaluation Report), circulated forty-two copies to agencies and others who'd received the OSPRHP document, posted it on our website (www.niagaraheritage.org), and publicly and repeatedly mentioned it in letters-to-the-editor, meetings, e-mails, and so on. The critique elicited no response from any state agency or any elected or appointed public official or leader.

An example of the Pilot Project Evaluation Report's biased rationale is as follows:

In fact, the need for continuous automobile route along the brink of the gorge from Niagara Reservation to Lewiston, that would also ensure a protective border along the gorge while providing convenient public access can be found in the 1926 Olmsted Brothers Plan submitted to the Board of Commissioners at the Niagara Reservation by Frederick Law Olmsted, Jr.

The NHP critique was:

The report cites the "need" for an automobile route along the gorge rim from Niagara Falls to Lewiston, NY, "in fact" because of the 1926 plan for such a road submitted to Niagara Reservation Commissioners by Frederick Law Olmsted, Jr. Does any reasonable person think that Olmsted Jr. submitted this plan on his own, without being so directed by the Commissioners? This is a disingenuous, but transparent attempt to justify a 21st Century highway by evoking the name of Olmsted. There's little doubt that Jr. wasn't the visionary his father was—and even he couldn't have foreseen the over 235 million vehicles on America's roads today. In 1926 there were 17 million vehicles in the entire nation.

Every plan and study thereafter followed Jr.'s lead, even beyond the reality of the Robert Moses Parkway, to the 1992 Niagara Waterfront Plan prepared by Sasaki Associates, a plan the OPRHP cites as influencing their "direction." Yet each planner or designer not only relied on the accumulated shelf of previous design plans, but was paid and directed by government agencies whose starting point was the continued existence of a gorge rim road. It is extremely unlikely that a planner would be paid hundred of thousands and given the option to envision a gorge rim free of highway.

Thus Sasaki and Associates, innovative abilities restricted, brought their cookie-cutter waterfront notions to the Niagara Frontier. Unaware of the environmental, historical, and cultural significance of Devil's hole, and of the old growth forest at DeVeaux, for examples, they continued to ink in some variation of the highway that continues to degrade these unique features of our landscape. And the OPRHP, from its Albany offices, uses this plan and others to legitimize, to validate, their decision.

The complete NHP response accompanies this commentary (with an updated list of organizations in support of parkway removal.)

In spite of the heavily flawed OSPRHP Pilot Evaluation, WD has accepted it as foundational with regard to the gorge parkway, tailoring its "conceptual" multiuse trail to the continued

existence of parkway lanes and admitting no other possibility. Why this direction was taken is, of course, open to conjecture, but we note that the OSPRHP has a prominent voting presence on the NGC, as well as final approval on the completed greenway plan. NHP additionally notes that Greenway Commissioner Richard Soluri, also the Village Mayor of Lewiston, NY, has expressed an active years-long opposition to parkway removal, most recently demonstrated by his co-chairing a “Parkway Preservation” committee, and by his “entry” as Mayor in the DGEIS in support of keeping the parkway. (Appendix E, page2). That his personal beliefs and actions are in substantial conflict with what his responsibilities should be as a Niagara Greenway Commissioner is so widely and strikingly evident that twenty-two citizen stakeholders from across Niagara County have signed a letter that requests a determination involving violations of Public Officers Law from the New York State Ethics Commission. A copy of this letter is included with these comments. Furthermore, the Lewiston-based Advanced Design Group, also part of the WD greenway planning team, belongs to two organizations that support gorge parkway retention, the Lower River Region Chamber of Commerce, and the Parkway Preservation Committee, though their name may have been deleted from the latter’s website membership list after NHP commented publicly on this conflict of interest. (page enclosed)

The “Impediments and Opportunities for The Future Use and Disposition of the Robert Moses Parkway, Niagara Power Project” (FERC No. 2216-066) (Sep. 2004, URS Corp.), repeats, perpetuates, and to some extent certifies the faulty reasoning of the Pilot Evaluation (pages 2-5, 2-6, 3-58, 59, 60, 4-5, 4-6).

It also documents, however, that the Federal Power Commission granted the original NYPA license on the condition that the parkway be constructed (3-1); that 5.8 miles of the parkway is within current project boundaries (3-63); and that URS Corp. was aware of the NHP response to the Pilot Evaluation. This calls into question both the NGC refusal to consider the option of gorge parkway removal and the actions of WD when they ignore the content of the NHP response to the Pilot. WD lists the Pilot Evaluation, but not the NHP response in their bibliography (Appendix H, 1-4).

NHP contends that the OSPRHP reconfiguration of the gorge parkway via the pilot, their subsequent decision to make the alterations permanent during the current relicensing process, and the acceptance of those changes by WD as immutable should move the DGEIS away from the generic into studies of the environmental impacts which NYPA has avoided. The Niagara Greenway process is a continuation of the NYPA relicensing, with the OSPRHP and the NGC acting as proxies for NYPA. The rapidly approaching deadline for a NYPA relicensing agreement might be a source of anxiety for some, but it should not be a rationale for hurry-up “in principal” agreements that almost guarantee that environmental studies for which NYPA should be responsible will never be done.

For examples: what will be the impact of continual gorge parkway existence be with regard to sheet-water run off for another half-century? What impact will continued salt and herbicide application on and adjacent to the parkway have on the botanical uniqueness and diversity of the gorge and near parklands? (14 populations of 9 species, including the state-threatened green gentian, Whirlpool State Park, NY National Heritage Program.) The impacts on water quality? What impact will the continued release of vehicle carbon emissions (231,768.75 tons annually,

OSPRHP figures, Pilot Evaluation) have on the nearby fragile gorge ecology? If answers to these and similar questions are not provided now, when will they be?

Section 6 of the DGEIS, suggests there's no need to answer such questions because "Implementation of the Greenway Plan is anticipated to have significant beneficial impacts on terrestrial and aquatic resources... etc., etc., etc." When the implementation, however, involves keeping the gorge parkway, the facts suggest otherwise.

Another area where the WD document does the community a disservice by adhering to the conceptual, or maintaining that it is doing so, involves homeland security, which is linked to the acceptance of the OSPRHP decision to retain the parkway and, therefore, vehicular traffic across the face of the generating plant in the lower gorge. While we appreciate the advisability of making a plan for a plan, especially for the huge ongoing task of creating a Niagara River Greenway, there are some instances where exemptions to the conceptual should be granted. This is one of them, where it is clear that reducing the risk to homeland security can be achieved by a simple preventative action.

Ecology and Environment, Inc., part of the WD greenway design team, is undoubtedly also aware of this since they provided an extensive "Strategic Security Plan" to Niagara County in July 2005. Even in that plan, however, they skirt the issue by offering the following under "Action Items": "coordinate with the NYS Power Authority to develop plans to prevent and mitigate against potential intentional events at power facilities within the County. A joint response plan should be developed incorporating all response agencies." This is on a list of close to 100 "Action Items" under "Unconstrained Plan Elements, Target Capabilities Category, Critical Infrastructure Protection and Risk Management."

While there are possibilities for state and/or federal money to assist in realizing some of the "Action Items," none is available to reduce "potential intentional events" at the gorge power plant. Over five years have passed since the Twin Towers "intentional event," and essentially we now have a plan to make a plan, when an action to reduce threat is obvious, for almost no cost: eliminate vehicular traffic on the parkway over the front of the generating plant. NHP has previously commented on this issue and those remarks accompany this letter.

Ecology and Environment appears to have made its contribution to the WD greenway document when it acknowledges this threat to homeland security in a circumspect, detached way as the DGEIS speculates about how to accommodate the passage of the multi-use trail across the generating plant together with traffic lanes: "Security concerns at the Power Authority structure may be an issue." (Section 4: Action Plan, page 64) At the risk of belaboring the point, this is inadequate.

NHP has restricted its remarks on the DEGIS, but this should not be interpreted to suggest that additional lengthy commentary, both of praise and constructive criticism is unnecessary.

Briefly, for example, the Niagara River Greenway Vision Statement is unimaginative, generic, and poorly written, a cobbled-together sentence blending delusions of grandeur with the mundane. We deserve better. Is it required that this statement be no longer than one sentence?

Winston Churchill could have done it one sentence, or Thoreau, or Frederick Law Olmsted, or Rachel Carson, or even Jack Kerouac. But since these writers are unavailable for personal reasons, we suggest that the present framers of the Niagara River Greenway Vision Statement allow themselves some leeway, say up to three sentences. This might help. On the other hand, especially praiseworthy is the river-focused boundaries that the document presents. Unfortunately, there are those in our region who stand up in public, unembarrassed and unashamed, though they should be both, to insist that up is down, day is night, and narrow is wide, thus threatening the integrity of the entire plan.

We regret that the flaws in the WD document as discussed in this letter prevent our endorsement of the DEGIS.

Sincerely,

Bob Baxter,
Niagara Heritage Partnership
Conservation Chair