

This memo concerns the federal review of the proposed conversion of parkland in connection with the new Yankee Stadium development. Because elements of the proposed project involve discrete discretionary actions by the National Park Service (NPS) and the Army Corps of Engineers (USACOE), the federal National Environmental Policy Act (NEPA) requires a federal review. When New York City (NYC) accepted a grant to improve a portion of Macomb's Dam Park from the federal Land and Water Conservation Fund (LWCF), they agreed to protect the park under Section 6(f) of the LWCF.

For purposes of approving the replacement of federal parklands under the Land and Water Conservation Fund, the National Park Service has decided to use the city's Environmental Review process to serve as the environmental assessment for NPS' evaluation of the environmental impacts of the proposed conversion. In this case NYC and New York State (NYS) representatives have offered the Final Environmental Impact Statement (FEIS) to qualify under NEPA. However, three federal issues were neglected in the City's FEIS: no Stormwater Plan (Stormwater Pollution Prevention Plan or SPPP), insufficient replacement lands under LWCF 6f, and inadequate Environmental Justice (EJ) procedures.

The city's FEIS is not complete for federal review because:

I. THERE IS NO STORMWATER MANAGEMENT PLAN

Comparing the FEIS to the City's Environmental Quality Review (CEQR) Technical Manual (Section 230, part 3L-6), it is clear that if ever there were a SPPP required in NYC it would be for a project footprint of over 20 acres, such as this one concerning the taking of parkland.¹

- It is not a matter of whether there is enough room in the sewer, as this EIS states²; it is not allowed under Phase II of Stormwater Regulations for the area east of the Deegan.
- The area west of the Deegan has no sewer system and discharges directly into the Harlem River – clearly a violation of the Clean Water Act (CWA), and perhaps Phase I of Stormwater Regs.

In the case of the alienation of parkland, this is a critical difference, as 20 acres of parkland are mostly pervious with little runoff draining into the sewer, whereas developed land is totally impervious, and contributing to the sewer.³ In the NYC built urban environment which has very little untouched areas, "re-development" should be considered "new" for stormwater management purposes. For these reasons and more, the FEIS by the NYC Parks Department is fatally flawed as there is no Stormwater Prevention Pollution Plan; the SPPP was not identified as a required permit in the scope, there is no State Pollutant Discharge Elimination System

¹ See Table A at end.

² "The volume of stormwater from the proposed project would not have been a significant adverse impact on the Harlem River or on the City's combined sewer system." FEIS, page 12-7

³ In the case of the Van Cortlandt Park Croton Filtration Plant Project, the NYC DEP presented a SPPP for the construction and post construction, including a SPDES Permit from the NYS DEC.

(SPDES) permit application, and there is no exemption from the NYC Department of Environmental Protection (DEP).⁴

The main goal of the Phase II Stormwater Regulations permit is to ensure that a stormwater pollution prevention plan has been **developed and is being implemented** before construction begins. This issue must be promptly addressed, before construction is completed and costly retrofits are required. In the case where an EIS is required, the SPPP should be part of the documentation. Phase II requirements address not only construction impacts on surface and groundwaters, they also address potential post-construction stormwater impacts via Stormwater Pollution Prevention Plans and best management practices. Based on a review of the FEIS and what is known about the waterfront, it appears that the lead agency has chosen a conventional stormwater system that will collect and discharge stormwater into the Harlem River without adequate treatment, and without minimizing quantity.

During and after rainfall events, runoff from approximately 20 acres⁵ of impervious surfaces will collect a variety of pollutants, including but not limited to heavy metals, oil and grease, chemicals, bacteria, pesticides, suspended solids, abnormal pH, nutrients, and floatable materials. Unless treated, these pollutants will have harmful impacts on the water quality of the Harlem River and neighboring waterbodies. The Harlem River already suffers from numerous impairments for which Total Maximum Daily Loads (TMDLs) are expected to be developed.

The Harlem River, an often neglected waterway, is poised for rehabilitation. The vision and effective advocacy of a number of non-for-profit organizations and receptive government officials has fostered an environment in which the value of public access to and use of the waterfront is better recognized and efforts are underway to reclaim the Harlem River. Unfortunately, the legacy of the 20th century industrialization of its shores remains, presenting many obstacles, along with 21st century pressures to develop the waterfront with a second generation of infrastructure, new commercial and residential development.

It is critical that new development on the waterfront be sensitive to efforts to reclaim the Harlem. Waterfront Development throughout the region is recognizing the value of riparian resources and embracing the economic and social value of incorporating public access and green development design into site plans. As part of this shift, low impact development technologies are being adopted throughout New York City and elsewhere which retain stormwater on-site for irrigation and natural filtration and treat excess stormwater prior to its release into regulated waters.

⁴ “Stormwater would be discharged into the existing City system, except for parts of the Harlem River waterfront park on the water side of the regulators, which may discharge directly into the Harlem River.” FEIS, Chapter 12, page 12-7.

⁵ “The area of the proposed project is just over 45 acres.” FEIS, Chapter 12, page 12-4.

II. LEAD AGENCY CREATED A FLAWED 6(f) ANALYSIS

This FEIS limits the replacement property ONLY to the part that was improved with federal funds. Other states⁶ have the position that once a part of the park qualifies, it holds true for the entire park. That means all of Macomb's Dam Park should count as a federal park under LWCF, and all of its acreage needs to be substituted – even the part that historically has been used as parking lot, and perhaps even Yankee Stadium itself (if it is part of Macomb's Dam Park – I can not tell if this is so). Finally, the newly created replacement parkland must be designated as federal parkland under the LWCF. The new parkland has to be equal in market value, use and location. According to the EIS, the market value study is mentioned⁷ but not part of the FEIS and therefore not available to the public – clearly a flaw in the Environmental Review and Environmental Justice analyses.

The City has not created enough new parkland. According to the FEIS, the replacement area does not include the entire Macomb's Dam Park. Currently, Macomb's Dam Park is divided by streets into three parcels:

- 11.2 acres where the new stadium is planned (A from Figure 4-1)
 - 7.33 acres near the original Yankee Stadium – (B and C [parking] from Figure 4-1)
 - 2.88 acres north of Jerome Avenue – is completely parking (D from Figure 4-1)
- 21.41 acres Total for Macomb's Dam Park**

The proposal does not replace these 21.41 acres, but only 15.14 acres that is being used for the new stadium. The EIS is only interested in covering the 11.2 acres of the largest parcel; but that is not what other states do, and it is not fair to the park stakeholders. The part of Macomb's Dam Park that are being used for stadium parking (albeit without permission from the LWCF) are not counted. (C and D from Figure 4-1). Moreover, the parkland along the riverfront is replacing parkland from Mullaly as its use is similar and that use was not in Macomb's Dam Park – i.e., tennis courts.

New Garages on parkland that was alienated is:

Garage C	2.894 acres
Garage A	7.3278 acres

⁶ Notify Department of Interior (DOI - National Park Service) when a federal project ... **LAND AND WATER CONSERVATION FUND ACT OF 1964, AS AMENDED (Section 6f) ...** www.dot.ca.gov/ser/vol1/sec1/ch1fedlaw/chap1.htm

... depends on the specificity of the **Land & Water Conservation Fund** Grant. ... The position of the **National Park Service** on **lands** subject to **Section 6(f)** ... nepa.fhwa.dot.gov/renepa%5Crenepa.nsf/discussionDisplay?Open&id=A6FD7F35F657B25D85256CC60048D705&...

Land & Water Conservation Fund Act of 1965 (Public Law 88-578, 78 Stat 897). **Section 6(f)(3)** “No property acquired or developed with assistance under this ... www.dnr.wi.gov/org/caer/cfa/grants/LWCF/obligations.html

.. The **NPS Section** of the Division will provide a list of ... means an area of highly erodible **land** which cannot ... is established and protected to improve **water** quality ... www.enr.state.nc.us/DSWC/pages/sect4.html

⁷ FEIS, 4-13

III. NEPA, EO 12898, & EJ REVIEWS ARE INADEQUATE

The City is not complying with federal regulations, such as NEPA, Executive Order 12898 (Environmental Justice), and others previously mentioned violating the CWA. Accepting comments on the Section 6f by having them sent to the New York State Office of Parks Recreation and Historic Preservation (OPRHP), is self dealing and not appropriate. OPRHP commented on the project in the FEIS and was in all sense of the word, an interested party. If and when public hearings will be held or comments requested, it should be explained in the EIS, or it is invalid as it stands.

According to the most recent publication of the *New Yorkers for Parks*, the Bronx has the lowest, overall residents-per-acre-of parkland in the five boroughs. In other words, the best overall residents-per-acre-of-parkland ratio Citywide is 278; the Bronx is 191. This is because Teddy Roosevelt had the foresight to plan for the whole borough and City of New York. This kind foresight would *not* have left this neighborhood without an open vista to the Nature that makes the rest of the Borough a magnet for families and communities. Yet, statistics here tell the sad story⁸ of this environmental injustice decision.

In the New Yorkers for Parks District reports, the percentage of parkland⁹ in the two City Council Districts neighboring Yankee Stadium, added together, are substantially less than the citywide total of 14%. This means¹⁰ that each person in Council Districts 16 and 17 have a square of green space six feet wide and three to ten feet long, respectively. By of comparison, if the Yankees played the Red Sox within the square of the base-path, each player would have more than 400 square feet, or about ten times as much parkland as their community neighbors.¹¹ We all know they need space to play baseball. It just needs to be recognized that all of us need open green space to lead our lives as fully as we can.

The only urban land that is literally cool-space in summer is green-space, where shade over soil and plant life may be the only comfortable oasis on a summer evening. In winter, the only place the neighbors of the Yankees can literally see winter birds is right in the spare slivers and patches of surrounding parkland. And while the Yankees may not consider it in their planning process, unlike stadiums, and parking facilities, the parks do not contribute to the combined sewers that discharge pathogens into the Harlem River, one of the only waterways accessible to the local community.

Taking public parkland away in a densely populated, low income area, with little or no promise of recompense, constitutes environmental injustice. It does not matter that the benefit is for the fifty or sixty thousand fans per event attending Yankee Stadium; for that is no competition when

⁸ Acreage CD 17 (CD for the Stadium and Macombs, Joyce and Franz Sigel) 214.83.

Acreage CD 16 (just north of Yankee Stadium and the CD which Mully is in) 67.59

Acreage of parks surrounding Yankee Stadium: Mully 21.29, Joyce Kilmer 7.05, Macombs Dam 32.76, Franz Sigel 17.58, Jerome Hill 0.95, Arcilla PG 1.55, Summit Park 0.06

⁹ The percentage of parkland in the 16th and 17th Council Districts is 5% and 7%, respectively.

¹⁰ Moreover, in the 17th CD, the acres of parkland per 1000 residents are 1.43, and the number of kids per park is 1,298. In the adjacent 16th CD, the acres of parkland per 1000 residents are 0.42, and the number of kids per park is 1,815.

¹¹ Acreage for Yankee Stadium 22.74, and the Yankee parking lot 2.03.

measured against a million or so Bronxites that can not view the game on public television, or the hundreds of thousands of children who, each and every day find that they have no place to play, no trees to shelter, and no clean air to breathe. There is a reasonable alternative to steam-rolling over the interests of those most affected. Environmentalists believe in sustainability and the three R's – reduce, reuse and recycle. It's been done before, and should be done again, e.g. renovate the old stadium on that hallowed ground.

Table A: Parkland Converts to Impervious Surface Increasing Stormwater



Existing pervious parkland that will be used to construct a new stadium and parking facilities: (Additional acres alienated are impervious parking lots D – 2.3 acres, and Yankee Stadium and lot ~ 10 acres. They are not included in this pervious table calculation.)

From a point beginning at Jerome Avenue and East 164 th Street west to River Avenue, then south to East 162 nd Street – Mullaly Park <u>2.3 acres</u> (J from Figure 4-1)	2.3 acres
From a point beginning at Jerome Avenue and East 164 th Street west to River Avenue, then south to East 161 st Street – Macombs Dam Park <u>11.2 acres</u> (A from Figure 4-1)	11.2 acres
From a point at Jerome Avenue and East 161 st Street, south to the Major Deegan, then north on Ruppert Place – Macombs Dam Park <u>7.33 acres</u> (B and C from Figure 4-1)	7.33 acres

Total Change in Perviousness: 20.83 acres

DRAFT ANALYSIS -- THE NEW YANKEE STADIUM PROPOSAL

SUMMARY

In summary, by deferring to a flawed FEIS prepared by NYC Department of Parks and Recreation that neither adequately addresses stormwater runoff nor includes a SWPPP, the NPS has acted arbitrarily and capriciously and has failed to take the requisite hard look under NEPA at this critical water quality issue for the Harlem River. Additionally, by failing to adequately address obvious environmental justice issues including, but not limited to, returning much less parkland than is required, NPS has not acted in accordance with law (EO12898/NEPA and its implementing regulations) by undertaking the required analyses. This will result in a disproportionately high and adverse health and environmental effect on a predominately minority and low-income population and community.

These issues need to be addressed by the NPS through the use of interdisciplinary approaches and principles, compared against benchmarks demonstrating best management processes, and decisions to be made must be based on sound technical and scientific information. NPS also needs to involve the community and convene a peer review panel to resolve any conflicts.

A fundamental purpose of the NPS is to protect and restore, where feasible, natural and cultural resources under its stewardship through comprehensive environmental compliance and the use of ecologically protective resource management and planning strategies. This has not been done in this case and, if not rectified, will result in a substantial impairment of park resources for this community and a degradation of water quality for the Harlem River.

The end

Karen Argenti
646-529-1990
732-350-1183