

SECTION II

COMMENTS AND RESPONSES TO THE DGEIS

A. ALBANY PINE BUSH PRESERVE COMMISSION

The following comments are taken from a letter dated April 26, 1996 from Willie Janeway of the Albany Pine Bush Preserve Commission. A copy of the letter is provided in Appendix 1.

1. Comment:

Before being accepted by the Colonie Planning Board, the FGEIS should, with regards to any proposed development located South of Central Avenue in what remains of the reasonably contiguous Pine Bush, include mitigative measures commensurate with potential impacts. Suggested mitigative measures that should be added to the GEIS for projects located in the Commission's defined "Pine Bush Protection Area" (see the attached Implementation Guidelines, Map #8, page 22) should include the following:

- 1) **Early Applicant Contact with the Commission.** At the earliest possible time, recommend to applicants that it is advisable that they contact the Commission for conceptual discussions. A detailed project review procedure is included in the attached Implementation Guidelines.*
- 2) **Detailed Site Inventories and future SEQRA actions for projects in the Pine Bush, and Cumulative Impacts.** Require the inventory of any proposed development site for existing or restorable pine barrens vegetation and species, potential linkage between protected lands, buffer areas or other significant environmental resources. Require preparation*

of a site map showing the same, and a "hard look" (per SEORA) at potential cumulative project impacts on these resources. The inventory must be completed by a qualified individual during the appropriate time of year (for example, during late May and late July for Karner blue butterflies).

- 3) **45% Green Space.** *Increase the green space requirement from 35% to at least 45% for commercial, industrial and residential zoning, and design and lay out the green space to maximize protection of resources found to be present in the above detailed site inventory, in balance with other project considerations.*
- 4) **Native Landscaping.** *To better integrate the natural and urban landscape and to reduce the abundance of nonnative invasive species, native pine barrens plants should be required for landscaping developed areas, except for foundation plantings. The Commission can provide a list of recommended species.*
- 5) **Mitigation.** *Require mitigation when a project causes the irreversible loss of endangered species habitat, to include lands containing existing or restorable pitch pine-scrub oak, linkages between protected lands, buffer areas or other significant environmental resources. If this mitigation takes the form of fees, the fees would be charged for each acre lost to development and would be set by the Town of Colonie to be equivalent to the average purchase price of lands acquired as part of the Pine Bush Preserve. By way of example, the City of Albany has established a mitigation fee that is currently at \$15,500 per acre. The funds would be placed in an account maintained or designated by the Town for the sole purpose of acquisition and protection of the Albany Pine Bush.*
- 6) **Conservation Zoning.** *Rezone Pine Bush lands recommended for "full protection" in the Pine Bush Commission's 1996 FEIS to "Land Conservation Districts" to emphasize the need to protect the viability of the Albany Pine Bush. Such zoning should require a 50% set aside for conservation purposes. To support acquisition of these lands, the GEIS should suggest realistic means to provide Town funds to complement resources from the New York State Environmental Protection Fund, the Albany Pine Bush Preserve Commission, The Nature Conservancy and other potential sources to fund the protection of these lands in cooperation with willing sellers.*

Response:

The mitigative measures identified in the Albany Pine Bush Preserve Commission's comments are generally considered by the Town to be appropriate. Many of these mitigation measures have been identified in the DGEIS (Section II.D, p.II-30). The Town recognizes that an increase in the minimum open space requirement for areas within the Pine Bush Protection Area, possibly by creation of a conservation overlay district, would be beneficial to this area. The Town also recognizes that a mitigation cost for the loss of Pine Bush lands may be appropriate and that such mitigation costs are being used in other municipalities.

2. Comment:

Most of the study area included in the DGEIS was once part of the more than 25,000 acre inland pine barrens ecosystem that makes up the Albany Pine Bush (Rittner, 1976, Dineen, 1975 and Dineen, 1982). The DGEIS states that "The Albany Pine Bush, located in the southern portion of the Study Area, is part of a sand plain extending between the cities of Albany and Schenectady... Figures II-C-1 shows that wind blown sand and lake sand (indicated as QS) compose the majority of the Study Area." (Page II-15, italics added.) The phrase in italics, should be deleted or modified to read "restricted by pre-existing development activities to the southern portion of the study area."

Response:

Comment noted and incorporated herein.

3. Comment:

As way of background on the Pine Bush, on page II-22 the DGEIS references several EISs prepared in the mid-1980's "for developments in the area" and says "one of the studies indicated that approximately 2,000 acres of fire-manageable Pine Bush must be protected in order to preserve the ecosystem" (Albany Pine Bush Preserve Commission, 1993).

This appears to be a serious misrepresentation of the degree of acceptance that the extensive 117 page "Givnish report" has received. In fact, numerous EISs were rejected in the Courts, and a GEIS prepared by the City of Albany was rejected, essentially because they didn't include a hard look at the impact of development on the need to protect an area sufficient to ensure the protection of the Karner blue butterfly and the Albany Pine Bush.

Response:

The significance of the Albany Pine Bush is recognized in the DGEIS through the extensive discussions on the preserve ecology, the establishment of the Albany Pine Bush Preserve and the Preserve Commission, as well as subsequent documents prepared by the Commission (Management Plan and Protection and Project Review Implementation Guidelines), presented in DGEIS Section II.D, pp. 22-32. The Town of Colonie recognizes the significance of the Preserve through its participation in the Albany Pine Bush Preserve Commission. As such, the Town recognizes the *Protection and Project Review Implementation Guidelines* as a valuable tool in the effort to preserve the Pine Bush ecosystem. The significance of habitat, such as pitch pine-scrub oak barrens, Karner blue butterfly habitat and wetlands, as well as the significance of potential impact to these habitats, are identified in the DGEIS (Section II.D, pp.II-29 thru II-32). The concerns of the Albany Pine Bush Commission with regard to significant impact to the Preserve, Full Protection Areas, Partial Protection Areas, open space, and Karner blue butterfly habitat are shared by the Town of Colonie.

4. Comment:

The Implementation Guidelines, and attached Findings Statement, were unanimously approved March 28, 1996, with the support of the Town of Colonie, Town of Guilderland, City of Albany, NYSDEC, NYSORPHP, The Nature Conservancy and three citizens appointed by the Governor, after extensive public review and comment. As a member of the Albany Pine Bush Preserve Commission, the Town of Colonie played an integral role in the preparation and adoption of the Implementation Guidelines. The Commission recommends that the Town of Colonie again reiterate its support for the Implementation Guidelines recommendations, and incorporate that information into the GEIS before it is adopted. The GEIS should recognize and incorporate this comprehensive structure for this discrete geographic area. If the Town of Colonie is proposing to do something less, as the DGEIS does, the FGEIS should contain a thorough explanation of the basis for this deviation. This should include the identification of the names and qualifications of the individuals responsible for this explanation, since as currently drafted there does not appear to be any reflection of technical Pine Barrens or Endangered Species expertise, as is incorporated in the Commission's Implementation Guidelines.

Response:

The Town of Colonie recognizes the significance of the Preserve through its participation in the Albany Pine Bush Preserve Commission. As such, the Town recognizes the *Protection and Project Review Implementation Guidelines* as a valuable tool in the effort to preserve the Pine Bush ecosystem. The significance

of habitat, such as pitch pine-scrub oak barrens, Karner blue butterfly habitat and wetlands, as well as the significance of potential impact to these habitats, are identified in the DGEIS (Section II.D, pp.II-29 thru II-32). The concerns of the Albany Pine Bush Commission with regard to significant impact to the Preserve, Full Protection Areas, Partial Protection Areas, open space, and Karner blue butterfly habitat are shared by the Town of Colonie.

5. Comment:

The Albany Pine Bush Preserve Commission provided the Town of Colonie and Clough, Harbour & Associates LLP copies of the Findings Statement and Implementation Guidelines. These Guidelines provide detailed protection recommendations designed to create a Preserve that will meet the minimum requirements necessary to ensure the protection of the Albany Pine Bush. In addition, they detail recommended project review guidelines. Colonie's GEIS should explicitly recognize that additional lands within the Town of Colonie are needed for protection to provide a preserve of the minimum size and correct configuration to ensure the long-term survival of the Pine Bush ecosystem, and the future of the unique and endangered species and communities in the Albany Pine Bush. We hereby incorporate and attach the Implementation Guidelines as part of these comments.

Response:

The need to protect additional lands within the Town of Colonie as part of the Albany Pine Bush Preserve is recognized through incorporation of the "Vision for the Albany Pine Bush Preserve" (Figure II-D-2) and the mitigation measures provided in DGEIS Section II.D (p.II-30), including the statement on page II-30: *Assist Albany Pine Bush Commission in their effort to preserve the remaining pieces of the existing and restorable pitch pine-scrub oak barrens to achieve a viable Pine Bush ecosystem.*

6. Comment:

For projects in the "Pine Bush Protection Area," early and effective communication between project applicants, the Town, and the Pine Bush Commission is critical to finding an appropriate balance between various environmental, social and economic considerations. The attached Implementation Guidelines recommend a detailed project review procedure to help the applicants and Colonie address potential issues regarding the Pine Bush. The Commission recommends that at the earliest possible time, applicants be encouraged to contact the Commission for conceptual discussions. In an

advisory capacity, the Commission can then work with the applicant to identify the most appropriate alternatives.

Response:

The Town of Colonie agrees with this recommendation and incorporated it into DGEIS Section II.D (p.II-30).

7. Comment:

Although the DGEIS includes a brief four page description of the Pine Bush (pages II-22 to II-26), the discussion fails to recognize the relationships among the various community types and the need for thorough site inventories before a lead agency can conclusively determine whether or not a rare species or habitat is present on the site.

Contrary to the DGEIS (page II-24 and II-26), the inland pine barrens ecosystem that makes up the Albany Pine Bush provides habitat for species protected by federal legislation and legal precedent (Save the Pine Bush v. City of Albany, 70 N.Y.2d 193, 518, N.Y.S.2d 943, 948 (1987)), ECL Article 46, and the State and Federal Endangered Species Acts which, as indicated in the recent US Supreme Court Sweet Home v. Babbitt case, protect both endangered species and their habitat. Additionally, maintenance of some community types (i.e., wetlands and ravines) that provide important species habitat depends on the protection of the surrounding area to maintain natural ecological processes (i.e., fire and hydrologic regimes).

Response:

An evaluation of site ecology is recommended in DGEIS Section II.D (pp. 30, 32) for areas in or adjacent to the Pine Bush, as well as for potential project sites in the Study Area in general. The court decisions provided in the comment are recognized as additional support for the protection of the Pine Bush and endangered species habitat, a goal shared by the Town of Colonie.

8. Comment:

With respect to this discrete geographic area, the DGEIS fails to consider the cumulative impact of the proposed expansion of municipal services and resulting development on the species and communities that depend on landscape level processes for their survival. Per this discussion, the detailed Vegetative Communities information (figure No. II-D-1) is generally accurate, but should be modified to include vegetation types on all sizeable, undeveloped areas.

Currently the map appears to ignore disturbed vegetation communities such as the agricultural fields, large moved lawns (i.e., the Town Golf Course). Although disturbed, these areas still provide useful ecological resources such as dispersal corridors for wildlife buffer minimizing disturbance to hydrologic regimes, etc...

Development of these areas will potentially significantly impact their current ability to function as part of the ecological landscape. Therefore, to fail to include both disturbed and natural communities severely limits the ability of the DGEIS to plan for and assess the impacts of development in the study area. The revised figure (attached), prepared by Stephanie Gebauer and Charles Laing, is more consistent with the information we have available. To ignore this information and the conclusions in the preparation of this GEIS would frustrate the purpose of SEQRA.

Response:

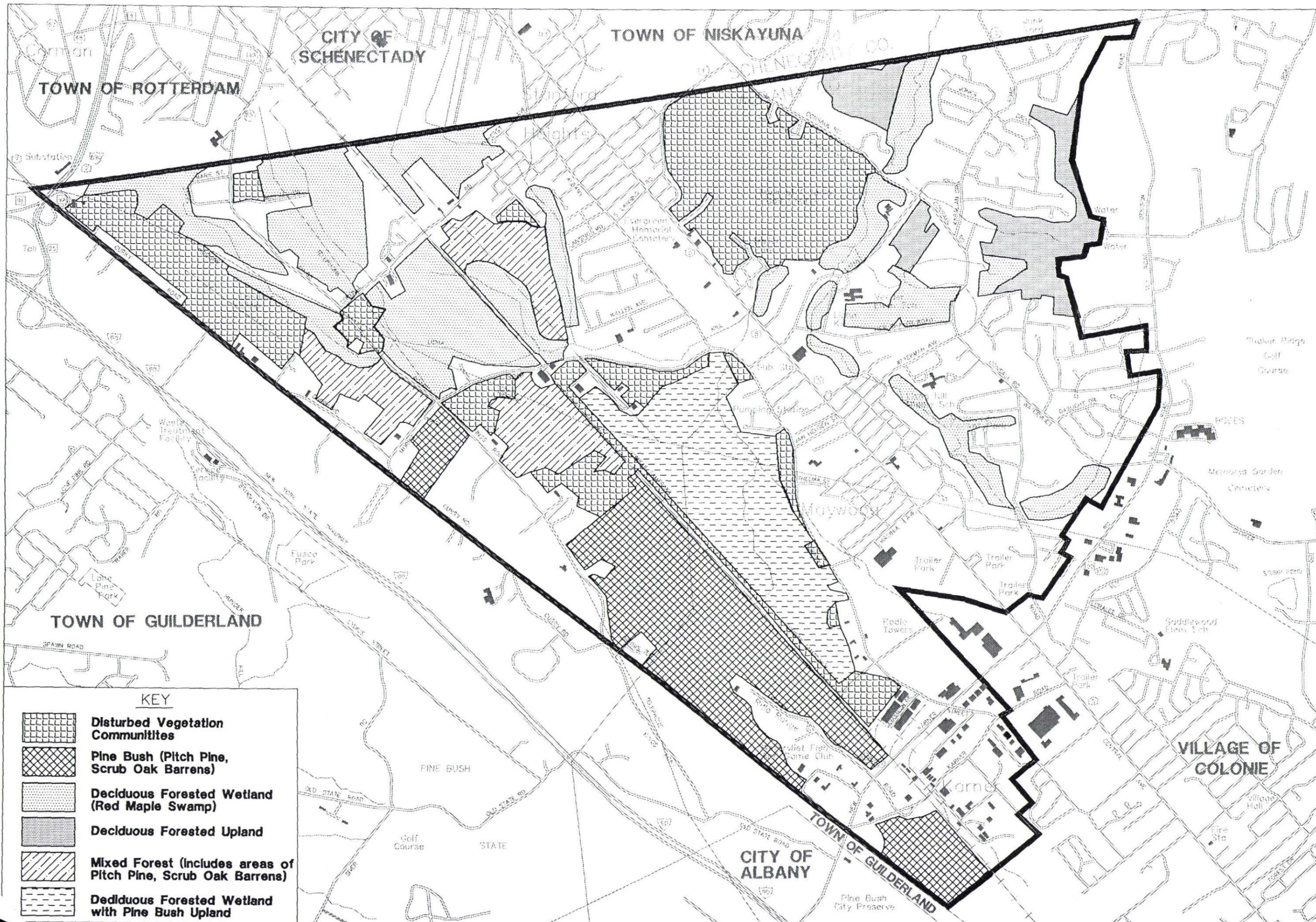
The additional areas of disturbed vegetation communities have been included on the Vegetative Communities map and provided following this page. The DGEIS did not ignore the presence of these lands. They were incorporated into the total area of undeveloped land within the Study Area. Undeveloped land also included properties of three acres or greater in size, on which a home currently exists. Therefore, the total area of impact by potential development under the Projected Growth Development Scenario, as identified in DGEIS Section II.D (p.II-29), includes most of the areas identified in the comment.

9. Comment:

Unless the DGEIS adequately assesses cumulative impacts and proposes full mitigation of these impacts, all future development or subdivision proposals will require a supplement to the GEIS (6NYCRR 617.9 (a)(7)) in advance of the approval of the project. Such a supplemental process would in essence require a whole new SEQRA process, including scoping sessions, public hearings, public comment period, etc... The Supplemental GEIS would need to be prepared for any project or projects in the Pine Bush south of Route 5 (in the "Pine Bush Protection Area") that might have or contribute towards significant cumulative environmental impacts with regards to the Pine Bush. The DGEIS would take the required hard look at impacts on the Pine Bush, and suggest means to avoid, minimize and/or mitigate those impacts to appropriately balance environmental considerations.

The Commission's suggests that now is the legally appropriate and most cost effective time to take this hard look, study alternative options, and select the appropriate actions and corresponding mitigation. Such action now could be

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KEY

	Disturbed Vegetation Communities
	Pine Bush (Pitch Pine, Scrub Oak Barrens)
	Deciduous Forested Wetland (Red Maple Swamp)
	Deciduous Forested Upland
	Mixed Forest (includes areas of Pitch Pine, Scrub Oak Barrens)
	Deciduous Forested Wetland with Pine Bush Upland



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VEGETATIVE COMMUNITIES
LISHA KILL - KINGS ROAD AREA
GENERIC ENVIRONMENTAL IMPACT STATEMENT

FIGURE NO. II-D-1 (REVISED) SCALE: 1" = 2000'

relatively simple (adopt the Commission's study and conclusion) and avoid greater delays, costs and legal problems in the future.

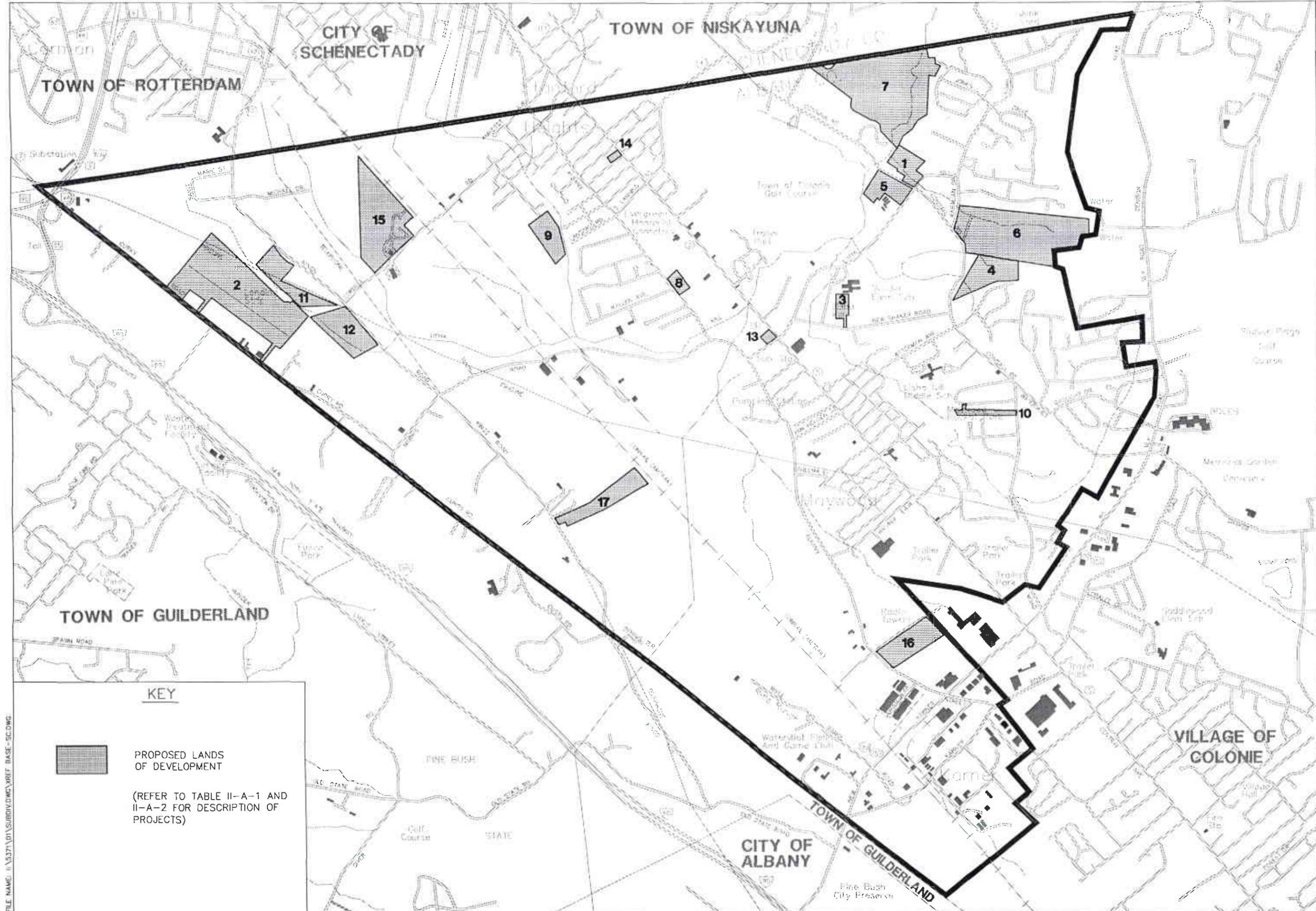
Response:

Section II.D of the DGEIS strongly reflects the goals, objectives, and recommendations of the Albany Pine Bush Preserve Commission's Protection and Project Review Implementation Guidelines. The DGEIS defines the boundaries of the Pine Bush Preserve along with the Full and Partial Protection Areas through reproduction of the "Vision for the Albany Pine Bush Preserve." The information provided herein is intended to clarify the Town's support for the recommendations in the Implementation Guidelines.

Figures II-A-1 and II-A-2 of this FGEIS show areas of proposed and potential future development. As indicated in DGEIS Section II.B (p.II-8), developable land excludes those areas that are in public domain or owned by the Nature Conservancy. Furthermore, based on the current regulatory framework, State and federal wetlands were also excluded. The remaining land may or may not be suitable for development based on environmental conditions. This will require site specific analysis when and if development is proposed. The purpose of including the Vision for the Albany Pine Bush Preserve is to indicate those areas which are questionable relative to potential development and will require ecological analysis and mitigation to prevent significant impact to the Albany Pine Bush ecosystem.

Projects proposed in the Study Area are illustrated on FGEIS Figure II-A-1 and identified in FGEIS Tables II-A-1 and II-A-2. Potential developable land is illustrated on FGEIS Figure II-A-2.

Comparison of FGEIS Figures II-A-1 and II-A-2 with DGEIS Figure II-D-2 reveals a large portion of the developable area located immediately north and west of the Pine Bush Preserve and along Apollo Drive is recommended for full protection. Based on the conclusions and recommendations of the Albany Pine Bush Preserve Commission's Management Plan and Implementation Guidelines, little or no development should occur in these areas since the Commission has determined that they contain existing and/or restorable pitch pine-scrub oak barrens, significant wetland, and Karner blue butterfly habitat. As indicated in the Implementation Guidelines, the land located south of Kings Road and east of Morris Road and the land to the north, bounded by Kings Road, Morris Road and the rail road contains existing and restorable pitch pine-scrub oak barrens. The land north of the rail road, east of Morris Road and south of Albany Street has been determined by the Commission to be an important wetland and buffer area. Land in the Apollo Drive area is recognized as Karner blue butterfly habitat.



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KEY

 PROPOSED LANDS OF DEVELOPMENT

(REFER TO TABLE II-A-1 AND II-A-2 FOR DESCRIPTION OF PROJECTS)



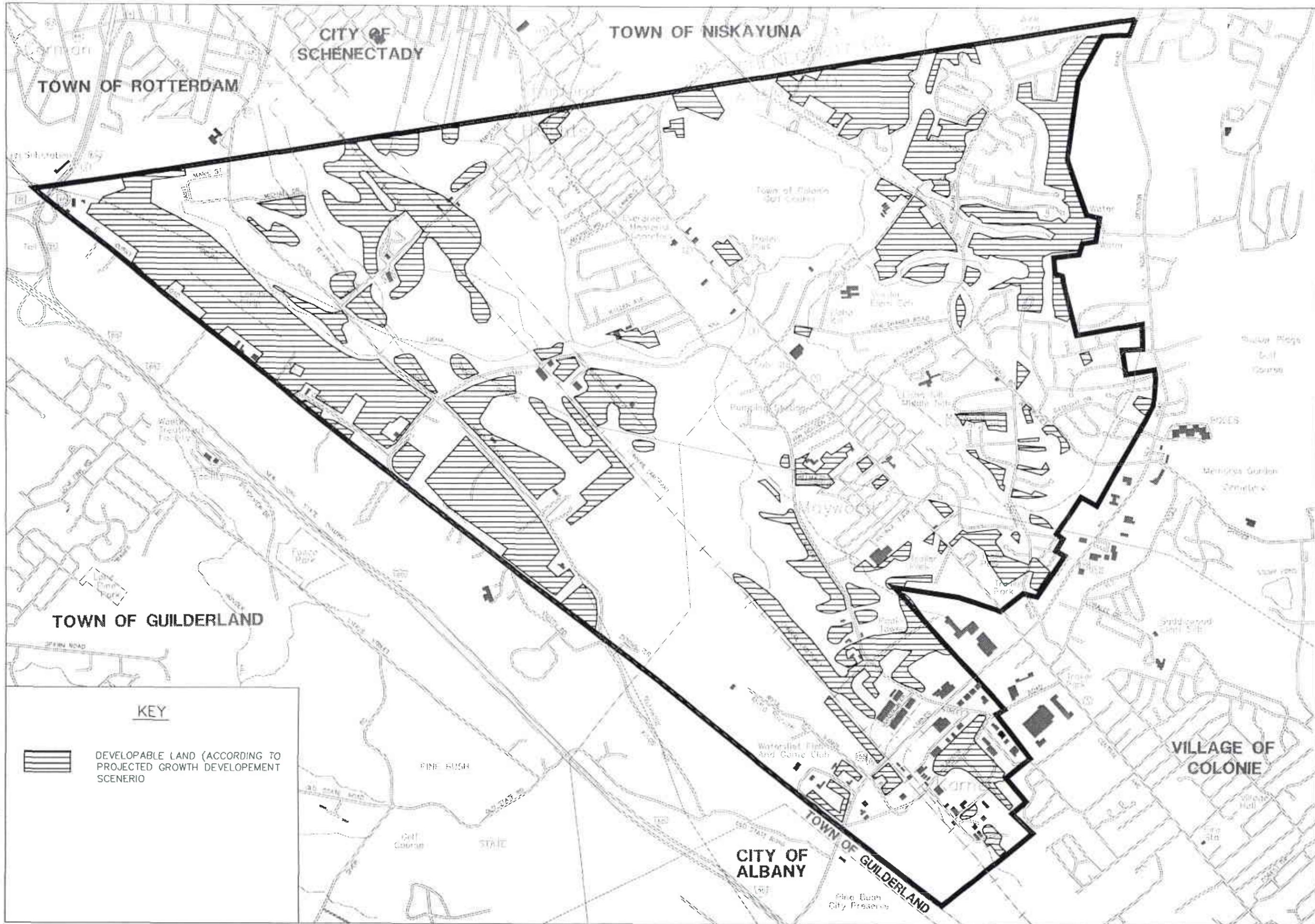
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PROPOSED DEVELOPMENT

**LISHA KILL - KINGS ROAD AREA
 GENERIC ENVIRONMENTAL IMPACT STATEMENT**

FIGURE NO. II-A-1 SCALE: 1" = 2000'



POTENTIAL DEVELOPABLE LAND
LISHA KILL - KINGS ROAD AREA
GENERIC ENVIRONMENTAL IMPACT STATEMENT



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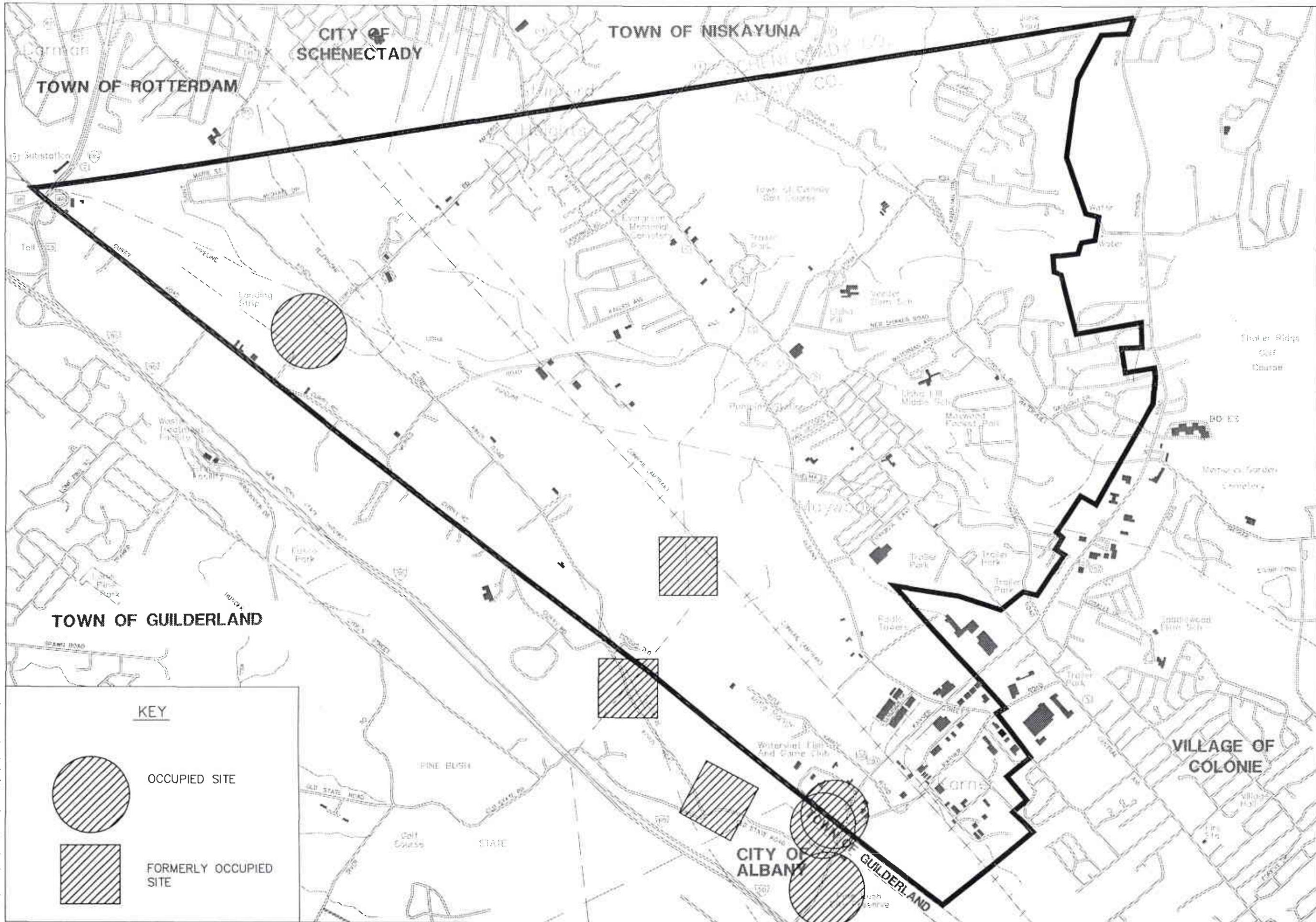
FIGURE NO. II-A-2 SCALE: 1" = 2000'

**FGEIS Table II-A-1
 Proposed Residential Development
 Lisha Kill - Kings Road Area GEIS Study Area**

Location ID	Project	Location	Units	Status¹
1	Lishakill Gardens	172 Lisha Kill Road	15 Townhouses	Received Final Approval
2	Meadow Landing	2772-2792 Curry Road	117 Single Family Homes	No Status
3	Bradt Subdivision	75 New Shaker Road	6 Single Family Homes	Concept Acceptance
4	Cottonwood Estates	267 Consaul Road	23 Single Family Homes	No Status
5	Heritage Manor	330 Consaul & Lisha Kill Road	16 Single Family Homes	Concept Acceptance
6	South Wind Subdivision	301 Consaul Road	101 Single Family Homes	No Status
7	Oakridge Estates	Pearse Road	74 Single Family Homes	Concept Acceptance
8	Walter Subdivision	Albany Street	5 Single Family Homes	Final Approval
9	Rose Gardens	Bonner Avenue	35 Single Family Homes	Final Approval
10	Consaul Park	164 & 166 Consaul Road	6 Single Family Homes	Concept Acceptance
Total Units				466

Additional developable land to the west of Morris Road is designated as Partial Protection Area and is more suitable for development, providing development is sensitive to preservation of open space and Karner blue butterfly corridors and Pine Bush buffers, as recommended by the Commission. An area of Karner blue butterfly habitat is known to exist within the area of developable land near the landing strip (FGEIS Figure II-A-3).

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**OCCUPIED AND FORMERLY OCCUPIED
KARNER BLUE BUTTERFLY SITES**

**LISHA KILL - KINGS ROAD AREA
GENERIC ENVIRONMENTAL IMPACT STATEMENT**



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FIGURE NO. II-A-3 SCALE: 1" = 2000'

**FGEIS Table II-A-2
 Proposed Commercial/Industrial Development
 Lisha Kill - Kings Road Area GEIS Study Area**

Location ID	Project	Location	Square Footage Proposed	Status
11	United Tree Service	1017 Kings Road	3,600	Final Approval
12	Blay Martial Arts Studio	1053 Kings Road	3,060	Final Approval
13	Retail Building	2060 Central Avenue	4,800	Concept Acceptance
14	Retail Shopping Center	2220 Central Avenue	9,180	Concept Acceptance
15	Portland Concrete Cement Plant (expansion)	145/140 Cordell Road	New cement silo	Recently constructed
16	Wholesale Business	4253 Albany Street	265,625	Concept Acceptance
17	New Hope Gospel Fellowship	1224 Kings Road	12,500	Concept Acceptance
Total				369,432

Note - Planning Board Final Site Development Approval for non-residential development is valid for two years from the date of issuance and may be extended from one additional year upon request of the applicant

The Town recognizes and supports the recommendations of the Implementation Guidelines, the Endangered Species Act, and recent court decisions, as identified in Comment A. Portions of properties that support endangered species, specifically Karner blue butterflies, would be afforded protection under these rulings. It may be further determined that other areas adjacent to the habitat are necessary for the survival of the habitat and would also be afforded protection. However, the amount of land protected by the Endangered Species Act would have to be determined through site specific analysis.

Based on this rationale and the fact that the land in question is under private ownership, it was determined by the Town that the land be included as potentially developable for the purposes of identifying future potential impacts on the community and on the physical environment. However, the Town recognizes that it is unlikely that significant development will occur in areas

designated for Full Protection and the Town will strive to achieve the goals, objectives and recommendations of the Albany Pine Bush Preserve Commission's Management Plan and Implementation Guidelines.

In recognition of private land ownership and the potential for development of those lands, site specific and cumulative impacts to the Pine Bush will occur if no mitigation is employed. If all developable land occurring within Full Protection Areas are fully developed, approximately 300 acres of Full Protection Area would be lost. Potentially, if this scenario is realized, it could represent a significant impact to the survival of pitch pine-scrub oak barrens community and Karner blue butterfly habitat. The cumulative impact would be severe and would significantly hinder the goal of achieving 2,000 fire manageable acres of pitch pine-scrub oak barrens.

In addition to directly impacting existing and restorable pitch pine-scrub oak barrens, the location of some development in the Full Protection Areas could hinder fire management. Without this practice, other climax plant and tree species will overtake the Pine Bush and eliminate this community. The fragmentation of habitat would also eliminate linkage between butterfly colonies, which is recognized to be critical to their survival.

Givnish et al (1988) indicates that the Karner blue butterfly needs at least 1,000 acres of habitat to ensure long-term persistence due to the ephemeral nature of wild lupine populations under natural conditions. The minimum of 1,000 acres would permit greater fire frequency, which is necessary to provide an adequate number of early successional patches within the Pine Bush that are conducive to wild lupine. Based on current knowledge of dispersal of the butterfly, Givnish et al (1988) suggests that dispersal can only occur through pitch pine-scrub oak barrens, along right-of-ways, and along sand roads. Therefore, the potential cumulative impact of development in Full Protection Areas could significantly reduce the chance of survival of the Karner blue butterfly metapopulation. Development of lands to the west of Morris Road and south of Kings Road could significantly impact the Karner blue butterfly habitat in that area if mitigation is not considered.

Mitigation guidelines have been established to prevent significant impact to the Albany Pine Bush and Karner blue butterfly habitat. These guidelines were identified in DGEIS Section II.D (p.II-30) for projects in Full and Partial Protection Areas and include:

- encouraging the land owner in Full Protection Areas to sell the property for inclusion in the Preserve,
- early consultation with the Albany Pine Bush Planning Commission to address site constraints and design considerations,

- evaluation of site design alternatives that will preserve significant areas and avoid fragmentation of habitat,
- recognition of fire management areas to provide sufficient buffers,
- requiring ecological studies to clearly define potential impact to the Pine Bush and Karner blue butterfly habitat and mitigation to avoid/minimize impact, and
- potential establishment of transfer of development rights.

The Town recognizes the use of mitigation costs for impact to the Pine Bush as a potential means of assisting in the purchase of Pine Bush land. The Town is also considering the establishment of a Conservation District overlay for Preserve lands and Full Protection Areas.

10. **Comment:**

The Commission recommends that the DGEIS call for the adoption of a Town policy and zoning overlay for the Implementation Guideline's "Pine Bush Protection Area" that requires a 45% (compared to the usual 35%) green space for lands zoned commercial, industrial and residential. Some thought should be given to the design and location of this green space, to minimize potential negative environmental impacts.

Response:

The Town recognizes that an increase in the minimum open space requirement for areas within the Pine Bush Protection Area would be beneficial to this area. The DGEIS recognizes that site layout should be carefully considered, especially in the Pine Bush Protection Area. Mitigation measures are discussed in DGEIS Section II.D (p.II-30).

11. **Comment:**

The Town of Colonie has been a advocate for the use of native species for landscaping developed area. By landscaping with native species, developed areas can provide ecological refuges, enhance or provide dispersal corridors and reduce invasive species problems on Preserve lands by reducing the frequency of exotic and/or weedy species in the surrounding area. The Commission recommends that the Town of Colonie encourage the use of native species by requiring they be used to landscape future project sites located within the "Albany Pine Bush Project Review Area" (except for foundation plantings). The Commission can provide a list of recommended pine barrens species.

Response:

DGEIS Section II.D (p.II-30) promotes the development of a planting list of native species. The Town of Colonie welcomes any assistance the Albany Pine Bush Preserve Commission is willing to provide in this regard.

12. Comment:

The DGEIS indicates proposed improvements to utilities, water, sewer, and transportation facilities will facilitate future development. The DGEIS goes on to recognize that future growth and development within the study will adversely impact the plants, animals and natural communities of the Albany Pine Bush. The DGEIS offers proposals and suggests substantial beneficial mitigation in consideration of the impacts of the projected development scenario on traffic, parks, and other elements, but fails to suggest substantial beneficial (or salutary) mitigation of impact of growth on the Pine Bush. How can the Town recognize that growth will occur, propose water and sewer service along Kings Road and Albany Street, through the sensitive Pine Bush, facilitating further development and destruction of the Pine Bush, and then to assume that the Pine Bush will not be impacted by the resulting growth? This approach could be questioned under SEQR.

As one example, several of the traffic improvements recommended as part of the DGEIS (i.e., New Karner Road, Albany Street, Cordell Road to Lisha Kill Road connector and potential Cordell Road Extension) will directly effect the Pine Bush by further fragmenting the area, destroying ecological resources and eliminating the possibility of completing a Preserve that protects a viable Pine Bush ecosystem (see scientific reports cited in the Implementation Guidelines regarding fragmentation, attached 1995 letter from Dr. Givnish and relevant court decisions). There is no meaningful discussion of these impacts on the Pine Bush, or suggestions of a means to avoid, minimize or mitigate these impacts. (See more detailed comments under additional comments.)

Response:

With regard to general development, the provision of utilities and road improvements are the result of the determination of the projected growth within the Study Area over the next 20 years. The Town is by no means promoting these improvements in an effort to increase development. Such improvements would occur as a result of development proposals within the Study Area. Therefore, the impacts of growth (i.e., vegetation lost due to development) have been accounted for in the estimate of total development. Mitigation measures provided in DGEIS Section II.D (p.II-30 thru II-32) recognize the significance

of the Albany Pine Bush and the goals and objectives of the Albany Pine Bush Preserve Commission.

The Cordell Road-Lisha Kill Road connector, discussed in DGEIS Section II.H (p.II-74), was provided as an alternative to extensive improvements to existing roads and intersections and to address the existing problem of truck traffic through residential areas. Potential environmental impacts relative to State and federal wetlands located north of the Conrail tracks were identified (p.II-77). Considerable environmental review and siting work would be necessary before any such connector road is constructed.

While potential impacts associated with the fragmentation of an area designated by the Albany Pine Bush Preserve Commission as a Full Protection Area (DGEIS Figure II-D-2) were not specifically mentioned, it is recognized that construction of a new road could further fragment wildlife habitat in the area, and impede the dispersal and migration of wildlife. Furthermore, it should be noted that construction of the Cordell Road - Lisha Kill Connector Road combined with the construction of the potential Cordell Road extension could result in a cumulative impact on the Albany Pine Bush because it would fragment habitat within Partial and Full Protection Areas. These improvements should then be carried out in compliance with the recommended mitigation guidelines as outlined by the Commission and identified on Page II-30 of the DGEIS. Short of these measures, construction of these roads may require the Town to acquire additional lands for inclusion in the Preserve to adequately mitigate potential impacts.

The Town of Colonie agrees with the concerns regarding protection of the Pine Bush and the goals and objectives of the Albany Pine Bush Preserve Commission. It is agreed that the construction of the Cordell Road-Lisha Kill Connector Road and Cordell Road Extension may result in significant adverse impact to the Pine Bush and should be reviewed carefully pursuant to the recommendations of the Implementation Guidelines. Currently, the location of the road connector is purely conceptual. It is the Town's intent to comply with the recommendations of the Implementation Guidelines, however, it is also the Town's obligation to weigh the potential impacts to the Pine Bush against the project benefits and the health, safety and welfare of the community, as well as an evaluation of feasible alternatives.

13. Comment:

The Chapter on "Unavoidable Adverse Environmental Impacts" (VI-1 and VI-2) fails to take the required hard look at potential impacts. The DGEIS describes that "large tracts of vacant open space, brush and forested land would be altered as a result of projected future development. Parcels undergoing development will result in an unavoidable increase in land use intensity" (VI-1).

The DGEIS goes on to recognize that "future development in the Study Area would require the removal of existing vegetation which in turn may displace wildlife... It is anticipated that common animal species would be disrupted as a result of future development... Mortality rates may increase..." (Page VI-1).

Response:

DGEIS Section VI (pp. VI-1,2) clearly indicates that there will be an unavoidable loss of vegetation/habitat, among other resources, as a result of new development. The level of analysis is sufficient for a land use study. Mitigation/guidelines for evaluating site specific projects are provided in DGEIS Section II. The amount of potentially developable land, as determined in the DGEIS (Section II.B), excluded lands that are currently preserved as open space and wetlands that are State and federally regulated. The remaining lands have varying degrees of development potential. This is recognized in the DGEIS through mitigation/development guidelines, particularly for the Full and Partial Protection Areas associated with the Albany Pine Bush.

The Town also recognizes, however, that with the exception of Town-owned and other publicly owned properties, the majority of land is privately owned. Proposals for development may occur in environmentally sensitive areas and development may occur in these areas, however there are measures (DGEIS Section II) that can be taken to prevent or mitigate potential significant environmental impacts. Furthermore, the projected development under the Projected Growth Development Scenario is approximately half of the total potential developable area within the Study Area.

Development of previously undeveloped lands will impact the existing site conditions. This is an unavoidable impact of development, wherever it occurs. The significance of this impact on a site level will have to be evaluated as proposals are brought forth. If the projects cannot meet the mitigation/guidelines provided in the DGEIS, further SEQR action may be required, depending on the significance of the impact(s).

14. Comment:

Finally, the section on "Topography, Geology and Soils" details at great length the "Soils with severe limitations for development" (Figure No. II-C-3) and "Potential Construction Constraints" (Table II-C-1, from the SCS, 1992). State regulated wetlands are mapped (II-D-3) as are potential federally regulated wetlands (II-D-4). Although the DGEIS recognized that "a standard condition of nearly all State and Federal wetland permits is that wetland losses must be mitigated with a comparable amount of created wetland" (page II-8), the DGEIS goes on to say that this does not preclude, the disturbance and destruction of

these wetland and related Pine Bush resources. The GEIS fails to take a hard look at the impacts associated with developing on soils with "severe limitations for development."

Response:

The DGEIS (Section II.C) provides a thorough analysis of soil limitations, potential impacts and mitigation, as appropriate for a community level planning analysis. The DGEIS provides a graphic illustration of potential federal and State regulated wetlands and the *Vision for the Albany Pine Bush Preserve*. This information was provided to guide the development community to avoid significant impacts to wetlands and the Pine Bush and to avoid conflicts in land use. Mitigation/guidelines are provided in DGEIS Section II.D (pp.II-30-32) to guide the Town in their review of future projects and to inform the development community of the level of review, coordination, analysis and mitigation that will be necessary for a given location. However, regardless of the planning efforts undertaken by the Town and the Albany Pine Bush Preserve Commission, applications for site plan review, rezoning, special permit, etc., that include impact to wetlands and Pine Bush resources may be brought forth to the Town. Potential impacts to wetland and Pine Bush resources should be significantly limited through implementation of mitigation/guidelines provided in the DGEIS, the Implementation Guidelines, federal and State regulations, and recent court cases.

15. Comment:

Destruction of or "rearranging" wetlands to achieve "no net loss" will adversely impact Pine Bush communities by altering hydrologic processes among Pine Bush communities. The DGEIS proposes no new action to protect or mitigate impacts to these water resources, while proposing development and infrastructure changes that will negatively impact water resources.

Response:

As discussed in DGEIS Section II.D (p. II-31), most of the wetland area within the Pine Bush is State regulated and designated Class I. Since Class I is the highest and best classification in the State system, projects occurring in these wetlands are expected to be reviewed thoroughly by the State. Wetland mitigation (creation) implied in the comment cannot be considered until it is proven that alternatives which will not result in wetland impact are not feasible. Furthermore, the State and federal governments are required to comply with federal endangered species legislation. Therefore, the level of review provided through State and federal regulations and supplemented by the mitigation/guidelines provided in the DGEIS and in the Implementation

Guidelines will result in the best opportunity to protect wetland and Pine Bush resources, short of acquisition.

With regard to development and infrastructure improvements. The DGEIS clearly indicates in Section I (p. I-2) that the purpose of the DGEIS is "to evaluate development related impacts, and ensure that growth proceeds in a manner sensitive to environmental and socioeconomic resources." The Town is by no means promoting development or infrastructure improvements. Future development and subsequent improvements will result primarily from private development proposals.

16. Comment:

Furthermore, the Commission is unable to understand why the DGEIS recommends mitigation in many area within the scope of the DGEIS, but that no mitigation program is analyzed or proposed for the Pine Bush area. If for example the DGEIS identifies as an alternative transportation improvement mitigation costs (Table II-H-6) of \$405 per residential dwelling unit, \$1.09/sq. ft. for commercial and .33/sq. ft. for industrial, (which in some cases could be tens of thousands of dollars in appropriate mitigation, per acre); why are there no alternatives including mitigation fees for Pine Bush development? This random application of mitigation appears to be arbitrary and capricious.

Response:

The Town recognizes that a mitigation cost for the loss of Pine Bush lands may be appropriate and that such mitigation costs are being used in other municipalities.

17. Comment:

Although the GEIS recognizes that impacts will occur, it fails to recognize, analyze or address in any way one or more significant environmental impacts associated with projects such as:

- 1. the destruction of existing or restorable Pine Bush habitat;*
- 2. impact to greater than 1 acre of wetlands (even if no net impact);*
- 3. impact to the potential contiguity between protected and potentially protected Pine Bush lands and populations of Pine Bush species;*
- 4. impacts to lands important as buffer to existing or potential Pine Bush Preserve Lands; and*
- 5. impact to significant environmental resources, including populations of the Karner blue butterfly.*

As a result, as mentioned under "future SEQRA actions" comments, if any of these five criteria apply to a future project, roadway or extension of water or sewer services, a DGEIS will be legally required.

Response:

Each of the items listed in the comment are addressed in DGEIS Section II-D (pp.II-29 thru II-32) either directly or through reference to the Implementation Guidelines. It is clearly indicated in the mitigation/development guidelines (pp.II-30 thru II-32) that proposed development in the Pine Bush should undergo thorough review to preserve Pine Bush habitat, including wetland delineation, habitat evaluation, and consultation with the Albany Pine Bush Commission. Mitigation/development guidelines for projects occurring within the Albany Pine Bush Review Area come directly from the Implementation Guidelines, as clearly referenced on p. II-30.

The Town recognizes that projects which are unable to comply with the mitigation/development guidelines provided in DGEIS Section II.D, may require further review under SEQR. However, it should be noted that non-compliance with the DGEIS mitigation/development guidelines does not automatically require the preparation of a site specific EIS. In fact, it is the legal obligation of the Town to categorize the project as Type I, Type II or Unlisted, establish Lead Agency, and determine the significance of the project (6 NYCRR 617.6).

18. Comment:

Additionally, no mitigation is suggested and no alternatives are presented that include a reasonable balance or mitigation with regards to the unique and endangered Albany Pine Bush. It is not sufficient to state "Certain impacts, such as those affecting wildlife, historic or archaeological resources or the visual environment, for example, can be difficult to mitigate. Effective mitigation to lessen this impact would likely be a challenging task for those involved in such projects" (page IV-1) and abandon any attempt to offer suggestions for any meaningful mitigation. This frustrates the intent of SEQRA.

Response:

The portion of DGEIS Section IV quoted in the comment is meant to suggest that any development will have some impact on the landscape, which includes ecology, visual resources, and cultural resources. This is unavoidable, as discussed in DGEIS Section VI. However, the significance of the impact can be controlled through mitigation measures. These measures are identified in Section II. of the DGEIS.

19. Comment:

In summary, the DGEIS appears to fail to satisfy core requirement of SEQRA by neglecting to take a "hard look" at this area's growth and the impact of that growth on completion of the Albany Pine Bush Preserve. This includes a hard look at potential impacts, and suggestions of how to avoid, minimize or mitigate expected impacts on existing and restorable elements of the Albany Pine Bush. This also includes, consistent with SEQRA, impacts on the potential of creating a viable Pine Bush Preserve. Because the Generic Environmental Impact Statement for an area of the Pine Bush doesn't propose full mitigation for the impacts of projected growth, it appears to be legally flawed.

Response:

Mitigation measures for potential development in the Albany Pine Bush Review Area, taken directly from the Implementation Guidelines, are provided in DGEIS Section II.D (p.II-30). It is specifically recommended that future development in this area coordinate with the Albany Pine Bush Commission and avoid significant impact to the Pine Bush, wetlands, and endangered species habitat. These recommendations are in full compliance with the intent of SEQRA. The mitigation recommendations provide general guidance for developers, such as design considerations and required site analysis. Specific mitigation will result from the specific impacts of each development proposal.

20. Comment:

In response to the Court's decision, the city adopted a variety of mitigative measures in a revised site plan review law and zoning overlay for the Pine Bush that requires a 45% (compared to the usual 35%) green space set aside. In addition, the developers in the City pay a fee set by the city (currently \$15,500 per acre) for every acre of existing or restorable Pine Bush destroyed. The fee is used to purchase offsetting acreage, resulting in "no-net-loss" and full mitigation of the projects impacts, when combined with other measures. As currently drafted, the Colonie's DGEIS is inconsistent with Albany's mitigation program.

Based on legal precedent, the Commission recommends that, while preparing the GEIS for this whole area, the Town of Colonie to take the opportunity to produce a legally sound and guiding document by:

- a) *taking the required hard look at impacts of development on the Pine Bush and the eventual size of the Pine Bush Preserve; and*

- b) *putting in place a means of protecting additional Pine Bush resources (for example, the recommendation for mitigation to pay for development of additional parks, and improvements to existing Parks needs should be extended to the Pine Bush Preserve. The Preserve provides an important passive recreational, education and open space opportunity to Colonie. As the town grows, so will the demand for use of the Preserve. To accommodate this, in a manner that doesn't compromise the ecological integrity of the Pine Bush, more lands need to be purchased and protected. The recommendation of mitigation per unit to support expansion of Parks should be doubled to include mitigation to go towards the acquisition of additional Pine Bush parcels, from willing sellers, and*
- c) *putting in place significant mitigation for projects that destroy existing or restorable Pine Barrens resources, and impact the Albany Pine Bush and management of the Albany Pine Bush Preserve.*

Response:

The Town recognizes that an increase in the minimum open space requirement for areas within the Pine Bush Protection Area would be beneficial to this area. The Town also recognizes that a mitigation cost for the loss of Pine Bush lands may be appropriate and that such mitigation costs are being used in other municipalities. However, the recommendation provided in the comment to double the mitigation cost associated with providing recreation facilities is not justifiable. The recreation mitigation costs were determined based on the recreation needs of the future residential population as estimated under the Projected Growth Development Scenario. Any increase in the mitigation cost would have to be justified based on established recreation standards for a given population.

Mitigation measures for the Albany Pine Bush Review Area are provided in DGEIS Section II.D.

21. Comment:

The Commission recommends that Colonie rezone Pine Bush lands recommended for "full protection" in the Pine Bush Commission's 1996 FEIS to "Land Conservation Districts" to emphasize the need to protect the viability of the Albany Pine Bush. An example of this being successful in the Pine Bush is the 1988 Village of Colonie GEIS which applied a "Conservation" zone to certain lands. In that case, the rezone served, in part, to mitigate the impact of the approval and cumulative negative environmental impact of commercial development in another location. Such zoning should require a 50% set aside for conservation purposes.

Response:

The Town recognizes that an increase in the minimum open space requirement for areas within the Pine Bush Protection Area would be beneficial to this area.

22. Comment:

In addition, the GEIS should suggest a realistic means to provide Town funds to complement resources from the New York State Environmental Protection Fund, the Albany Pine Bush Preserve Commission, The Nature Conservancy and other potential sources to fund the protection of these lands in cooperation with willing sellers.

Response:

Mitigation costs for development that results in the loss of Pine Bush lands may be appropriate and may be used to assist in the purchase of additional Pine Bush lands. The Town recognizes that such mitigation costs are being used in other municipalities.

23. Comment:

Conservation zoning can also alleviate potential adjacent land use conflicts regarding the Albany Pine Bush Preserve. On page II-13 it is stated that, with regards to Adjacent Land Use Conflicts, that "The area along Curry Road, northwest of the Pine Bush Preserve would have the greatest potential for conflicts. The Pine Bush Preserve precludes development and is compatible with adjacent land use." While it appears that the DGEIS considers the Preserve as not creating a conflict with adjacent land uses, it is not clear if the DGEIS recognizes that the referenced adjacent land use may not be compatible with the Pine Bush Preserve. Some adjacent land uses are not compatible with protection of the Pine Bush and fire management of the Pine Bush Preserve.

Conservation zoning could also be used together with a transfer of development rights plan. This idea is mentioned but not fully explored or included in any of the alternatives. Such a planning mechanism has been developed in the Long Island Pine Barrens ecosystem and in other municipalities in the State. It potentially provides a planning tool that could assist with mitigation of impacts on the Pine Bush. There is even the potential that it could eventually be applied at an inter-municipal level. Because of this potential, it deserves more serious consideration as a part of an alternative.

Response:

The statement on page II-13 of the DGEIS refers to land use in adjacent municipalities. Lands adjacent to the Pine Bush Preserve within the Town of Guilderland are additional preserve lands and residential development. Conflicts associated with fire management are addressed in DGEIS Section II-D (p.II-30).

The Town recognizes transfer of development rights as potential method of preserving Pine Bush lands.

24. Comment:

Additional concerns regarding the Karner blue butterfly: As indicated in the comment from the NYSDEC Region 4 Wildlife Unit, the section on rare and endangered species has a number of inadequacies which should be rectified. The DGEIS does not address, for example, the work of the New York State Karner blue butterfly recovery team. Key to the success of this protection effort is the protection of populations of the butterfly in Colonie, and maintaining an ability for the protected populations to be linked to one another. To comply with SEQRA and the Endangered Species Act, the DGEIS should acknowledge and identify the occupied or formerly occupied Karner blue sites in and near the study area. Proposals should be made to ensure protection of these sites, and linkages between the sites and the Albany Pine Bush Preserve.

The GEIS does state that lands classified as Pine Bush Habitat by the NYSDEC Endangered Species Unit would be considered, as with State wetlands, as lands that will not be developed in the "Projected Development Scenario." But given the various utility and infrastructure improvements proposed, development will be proposed in these sensitive areas in the next twenty years. Therefore, the GEIS should look at potential impacts from that development and suggest alternatives and methods to minimize and mitigate potential impacts.

Response:

The DGEIS recognizes the significance of Karner blue butterfly habitat and its status as an endangered species (p.II-29). Furthermore, recommendations have been made to avoid destruction of this habitat through identification and site design measures (p.II-32).

In general, NYSDEC provides information on rare, threatened and endangered species with the understanding that it will not be shared with the general public. The location of these species was not specifically identified in the DGEIS because the NYSDEC requested that the information remain confidential. However, after discussion with the NYSDEC, it is possible to provide general

locations of habitat, which can be used to determine where more detailed habitat analysis and site design mitigation should be considered. These general areas are not provided to represent areas restricted from all development. FGEIS Figure II-A-3, illustrates the occupied and formerly occupied Karner blue butterfly sites within and adjacent to the Study Area.

As shown of Figure II-A-3, the majority of sites are located adjacent to the Study Area in the Town of Guilderland and the City of Albany. A formerly occupied site is located within the Pine Bush Preserve in the Study Area and, therefore, is protected from future development. The two occupied sites (existing habitat) are not currently within the Preserve, however. The site along New Karner Road is within an area designated in the implementation Guidelines as full Protection Area. The occupied site in the eastern portion of the Study Area is within the Partial Protection Area designation.

As indicated on page II-32 of the DGEIS, mitigation for development that may occur in the vicinity of Karner Blue Butterfly Habitat within the Study Area would site ecology evaluation and habitat identification, consultation with NYSDEC and the Albany Pine Bush Commission, and site design considerations that preserve habitat and prevent fragmentation of habitat, both on and adjacent to the site.

With regard to general development, the provision of utilities and road improvements are the result of the determination of the projected growth within the Study Area over the next 20 years. The Town is by no means promoting these improvements in an effort to increase development. Such improvements would occur as a result of development proposals within the Study Area. Therefore, the impacts of growth (i.e., vegetation lost due to development) have been accounted for in the estimate of total development. Mitigation measures provided in DGEIS Section II.D (p.II-30 thru II-32) recognize the significance of the Albany Pine Bush and the goals and objectives of the Albany Pine Bush Preserve Commission.

25. Comment:

More specific concerns regarding specific transportation improvements proposed as mitigation measures: As mentioned above, some of the transportation improvements proposed have the potential to have significant negative impacts on the Pine Bush. Specifically, as indicated in the comment letter from NYSDEC Region 4 Wildlife Unit:

New Karner Road: The widening of Route 155 would have potential negative impacts on Karner blue butterfly populations which exist immediately along the road. In addition, if this road is widened, it may

create a substantial barrier to butterfly movement between Preserve Lands on either side of the road.

Albany Street to Central Avenue Service Road: This proposal would impact state and potential federal wetlands, and lands that the Pine Bush Commission has recommended for protection as Pine Bush because their protection is critical.

Lisha Kill Road to Cordell Connector: As above, this proposal would again impact wetlands and the Pine Bush. As above, the impacts of such a road are substantial and contrary to the protection of wetlands and the Albany Pine Bush.

Cordell Road Extension: This extension would also impact wetlands, and create an additional barrier to linkage and movement of Karner blue butterflies between the Curry Road site and the Pine Bush Preserve.

Response:

The Projected Growth Development Scenario, as defined in the DGEIS, is an estimate of the amount and type of development that may occur in the Study Area over the next 20 years. This is equivalent to approximately one half of the total potential buildout in the Study Area based on the availability of developable land (DGEIS Section II.B, p.II-8). Potential impacts and mitigation were evaluated based on the potential growth. With this information, the Town is able to monitor growth and its cumulative impact.

With regard to roadway impacts, the GEIS provides sufficient information to monitor traffic impacts on a project by project basis. As traffic volume increases near the threshold for road widening and other significant mitigation, the Town can then evaluate the potential impact of the roadway mitigation on other environmental resources, such as significant ecological communities. The mitigation and guidelines established in DGEIS Section II.D will apply to roadway and other infrastructure work, including thorough consideration of the Albany Pine Bush Preserve Commission's Protection and Project Review Implementation Guidelines. Specific mitigation measures in accord with the mitigation guidelines provided in the DGEIS will be provided at a point in time when road improvements are being considered, prior to the need arising. The impacts provided in the comment are noted and will be carefully considered.

New Karner Road It should be noted that widening of New Karner Road was not proposed as a mitigation measure for the Lisha Kill - Kings Road DGEIS. Widening of the Road was proposed in the Capital District Transportation Committee's Transportation Improvement Program. It was included in the DGEIS because it is assumed that it will be completed in the next several years, and the analysis of future traffic patterns should recognize it.

In regards to the potential environmental impacts widening of the road could have on the Preserve, it is recognized that the project has the potential to adversely impact the Preserve, if completed in a manner inconsistent with the goals of the Commission. If the project required substantial widening of the road, resulting in a disruption of the linkage between the Preserve on either side of the road, this could affect the viability of the Preserve. The impact could be further compounded if the other road improvements, including the Lisha Kill-Cordell Road Connector Road and the Cordell Road Extension, are completed. Cumulatively, these road improvements could result in adverse impact to the Preserve if not designed and constructed in accordance with recommendations of the Commission.

The specific impact the road could have on the Preserve is anticipated to be evaluated in detail as part of the New Karner Road Environmental/Engineering Study, to be undertaken by CDTC, NYSDOT and the Commission. The purpose of the report will be to examine the relationship between the highway system in the Pine Bush and the ecosystem of the Pine Bush. The study is expected to explore, in general terms, feasible design alternatives that would address the traffic issues that exist in the Pine Bush while enhancing the integrity of the Preserve.

As far as potential alternatives to prevent adverse impact to the Pine Bush, it may be possible to complete the widening of New Karner without the addition of significant pavement. The existing width of the road may make it possible to add an additional travel lane by restriping the existing pavement. New pavement may then only be required in a few specific areas for turning lanes and other improvements. Consequently, if widening was completed in this manner, traffic concerns could be addressed without affecting the integrity of the Preserve.

Albany Street to Central Avenue Service Road - Development of this potential service road would not require the construction of a new but upgrade of an existing road. Therefore, it should not adversely impact wetland or be in contrast to the goals of the Commission. The road improvements would require only minimal if any selective clearing of vegetation adjacent to the existing road. It would not result in the additional fragmentation of habitat because construction would be limited to a previously disturbed area.

Cordell Road - Lisha Kill Connector - As discussed in the DGEIS, construction of this road could impact a substantial amount of wetland. A conservative estimate, based on the conceptual alignment of the road, is approximately 10 acres of wetland would be impacted by the construction of this road. The road would cross important wetland habitat within an area designated as Full Protection by the Commission. Design and construction of the road should proceed in a manner consistent with recommended mitigation measures set forth

by the Commission. If necessary, mitigation in the form of acquisition of land for inclusion in the Preserve should be pursued.

Potential Cordell Road Extension - It is recognized that the Cordell Road extension would cross wetland and potential Pine Bush Habitat if constructed. Similarly to the Cordell Road - Lisha Kill Connector, the road would fragment habitat and provide direct as well as cumulative impact on the Preserve if conducted in conjunction with other road improvements. Design and construction of the road should proceed in a manner consistent with recommended mitigation measures of the Commission. If necessary, mitigation in the form of acquisition of land for inclusion in the Preserve should be pursued.

26. **Comment:**

Correction to Figure II-B-2: This figure shows lands protected by public ownership and The Nature Conservancy. The attached map shows the correct configuration of these lands.

Response:

The comment is noted. The correction is provided on FGEIS Figure II-B-2.

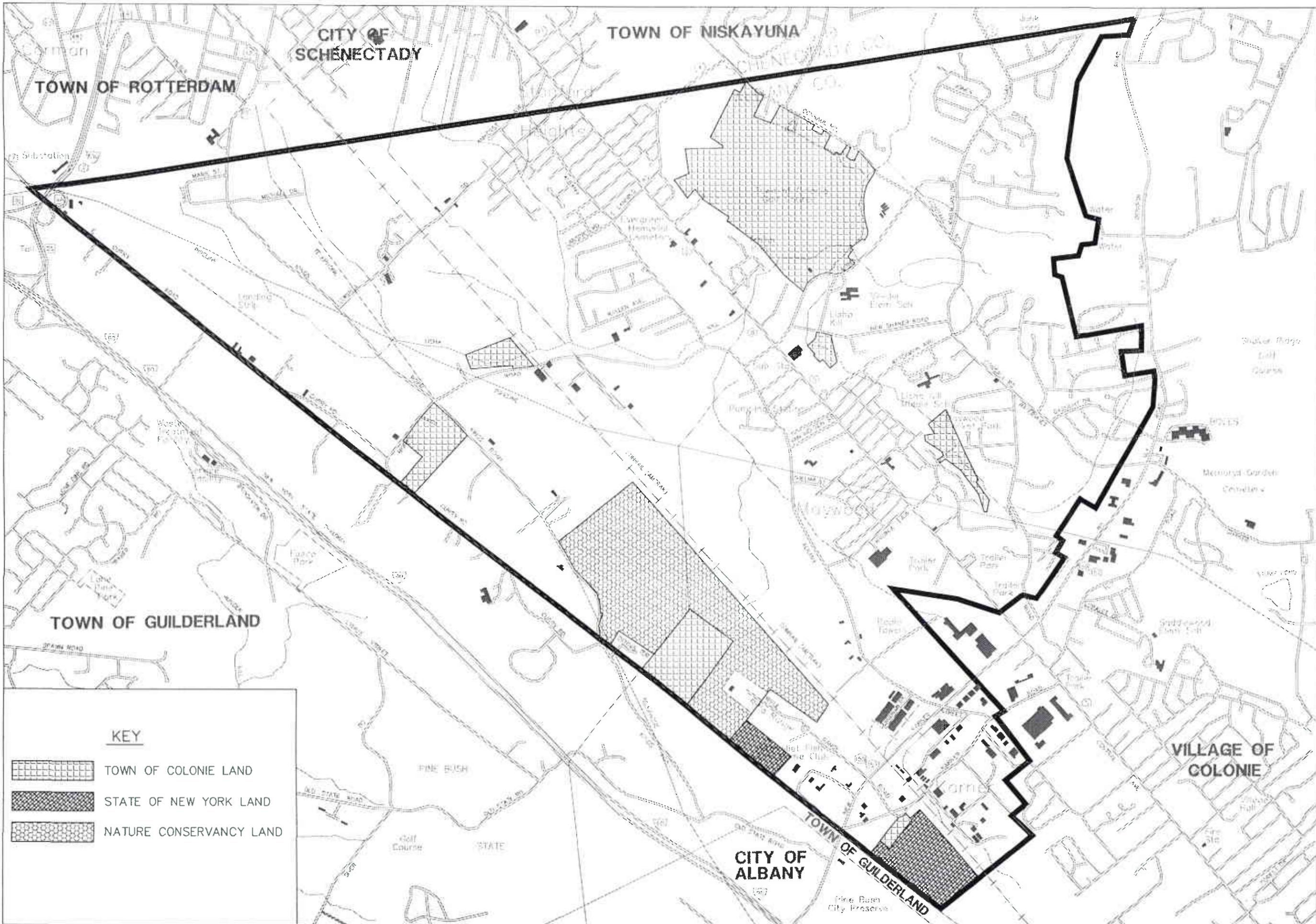
27. **Comment:**

Given the preparation of the recent most up to date Implementation Guidelines, the FGEIS should limit its reliance on the Albany Pine Bush Preserve Management Plan (Albany Pine Bush Preserve Commission, 1993; please note the proper citation).

Response:

Both the Management Plan and the Implementation Guidelines are cited in the DGEIS and were utilized in its preparation. Based on conversations with the Albany Pine Bush Preserve Commission, the Implementation Guidelines supplement the Management Plan and, therefore, the two documents are integrally related. The Albany Pine Bush Preserve Commission indicated that the recommendations of the Management Plan are valid. The Implementation Guidelines were utilized in the DGEIS to develop the mitigation guidelines for development.

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PUBLIC AND NATURE CONSERVANCY OWNED LANDS

**LISHA KILL - KINGS ROAD AREA
GENERIC ENVIRONMENTAL IMPACT STATEMENT**



CHA CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS
 111 WINNERS CIRCLE - ALBANY, NEW YORK 12205
 SCALE: 1" = 2000'

FIGURE NO. II-B-2 (REVISED)

28. Comment:

Alternatives identified fail to consider a combination of accelerated growth and the purchase and conservation of additional open space. The Alternatives identified include "CDRPC Growth Scenario" which was rejected because growth is expected to accelerate relative to previously years, a "No Growth Scenario," a "No Action Alternative," and the "Projected Growth Development Scenario." The description of the "preferred development scenario" on page III-7 is inadequate. When amended, it should reflect the record from the last twenty years when lands have periodically been protected for conservation and open space purposes.

The "Preferred Alternative" should be a combination of the projected growth, located out of sensitive Pine Bush lands, the acquisition and protection of "Full Protection Areas" as identified by the Commission, and partial protection of the lands identified by the Commission for "partial protection." This would provide for protection of lands critical to the Pine Bush Preserve meeting recognized minimum criteria. (Per Givnish and the Implementation Guidelines.)

Response:

The Projected Growth Development Scenario, as identified and evaluated in the DGEIS, strongly recognizes the Pine Bush lands and other open space identified and categorized by the Albany Pine Bush Preserve Commission, the goal of preserving a viable Pine Bush ecosystem, and most of the recommendations provided in the Implementation Guidelines. It is clearly recommended in DGEIS Section II.D (p.II-30) that the Town assist the Albany Pine Bush Preserve Commission in their efforts to preserve the Pine Bush and to encourage property owners/project sponsors to sell, donate, or set aside (conservation easements) Pine Bush lands and other lands considered by the Commission as crucial to the protection of the ecosystem.

29. Comment:

Consideration should be given to the benefits of the designation of a Critical Environmental Area: Considering the purposes of this designation option, available to the Town of Colonie, and the recommendation from the Albany Pine Bush Preserve Commission that at a minimum the Town give serious consideration to the benefits of such a designation, the GEIS should evaluate and make a recommendation regarding this option.

Response:

Based on 6 NYCRR 617.14(h), the Albany Pine Bush Preserve appears to meet the requirements to be designated a Critical Environmental Area (CEA). Although the Town of Colonie could consider such a designation in the future, the level of protection afforded the Preserve by the CEA designation may be less than that currently provided by acquisition, State and federal regulations, and mitigation guidelines provided in the DGEIS and the Implementation Guidelines.

The primary advantage of the CEA designation is to "...alert project sponsors of the agency's concern for the resources contained in the CEA" (The SEQR Handbook, NYSDEC 1992). The other benefit was to automatically elevate Unlisted actions to Type I actions, affording greater project review opportunity. However, the current SEQR regulations no longer include that provision, although a question was added to the Long Environmental Assessment Form that recognizes the importance of CEAs. Furthermore, Type II Actions never require environmental review under SEQR, regardless of the CEA designation.

Lands within the Full and Partial Protection Areas, not currently part of the Preserve, may benefit from the designation. However, the Town's recognition of the significance of the Albany Pine Bush in the DGEIS through mapping and provision of mitigation guidelines, which promote preservation and cooperation with the Albany Pine Bush Preserve Commission, should provide a greater level of protection than the CEA designation.

30. Comment:

New York State recognized the fragile qualities of the natural inland pine barrens community when it created and charged the Commission with the legal responsibility to protect the Pine Bush. The Town of Colonie is a member of the Pine Bush Commission. A significant amount of information has been collected and analyzed to provide a clear direction for the protection and management needs of the Pine Bush.

The Commission urges the Town of Colonie Planning Board to amend the DGEIS to include a hard look at impacts on the Albany Pine Bush, as is required by SEQRA and the courts. The Commission suggests that the DGEIS be modified to reflect the changes described above and amended to include appropriate mitigation measures for projects in the Commission's designated "Pine Bush Protection Area" including:

- 1) Early Applicant Contact with the Commission*
- 2) Detailed Site Inventories and future SEQRA actions for projects in the Pine Bush*

- 3) *45% Green Space*
- 4) *Native Landscaping*
- 5) *Mitigation*
- 6) *Conservation Zoning*

Response:

Page II-30 of the DGEIS clearly recommends the mitigation measures identified in the comment. Furthermore, the Town recognizes that an increase in the minimum open space requirement for areas within the Pine Bush Protection Area, possibly by creation of a conservation overlay district, would be beneficial to this area.