



County of Erie

MARK C. POLONCARZ

COMPTROLLER

July 31, 2006

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Erie County Comptroller's Review of Department of Parks, Recreation and Forestry – Forest Management Plan and Timber Harvesting

Dear Honorable Members:

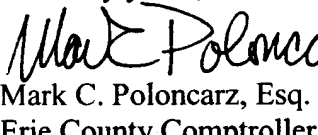
Please find enclosed a review prepared by my office entitled "A Review of Erie County's Forest Management Plan and its Implementation" (the "Review.")

This office began this intensive Review in March 2006. Our findings and recommendations are enclosed within the Review. Please note that "Appendix A" in the document is the Department of Parks, Recreation and Forestry's official response.

As you consider the County Administration's request (Comm. 14E-11, pending in the Energy and Environment Committee) to further implement the Forest Management Plan, we respectfully urge you to evaluate our findings and recommendations prior to the approval of any such requests.

If your Honorable Body has any questions, Deputy Comptroller-Audit Michael R. Szukala is available to answer questions regarding our Review and our findings.

Sincerely yours,


Mark C. Poloncarz, Esq.
Erie County Comptroller

MCP/sa
Encl.

cc: Hon. Joel A. Giambra, County Executive
Angelo Sedita, Commissioner of Parks, Recreation and Forestry
Brian Grassia, County Forester
Laurence K. Rubin, Esq., County Attorney
Vallie Ferraraccio, Director of Purchase
James Hartman, Director of Budget, Management and Finance
Erie County Fiscal Stability Authority

A Review of Erie County's Forest Management Plan and its Implementation
July 31, 2006
Office of Erie County Comptroller Mark C. Poloncarz

Executive Summary

In March 2003, the Erie County Executive presented to the public an Erie County ("County") Parks Master Plan ("Master Plan"), a five-year \$15 million proposal to rehabilitate the County's parks and forest lands using proceeds from the County's tobacco securitization. In December 2003, the County Executive and the County's Department of Parks, Recreation and Forestry ("Parks Department") released the County's Forest Management Plan ("Forest Plan"). The Forest Plan had a stated intention of "creating sustainable forests in Erie County for the 21st Century."¹

Among the highlights of the Forest Plan included new objectives for utilizing the more than 3,100 acres of County forests in Boston, Concord, Holland and Sardinia. Those objectives were: "creating educational and economic opportunities for taxpayers, community groups, and educators; utilizing the Woodlands Environmental Educational Center and certain Lots for scientific experiments in ecology and forestry; putting forest products to good use in County parks, departments, and for public projects; reducing taxes through profits from sales of lumber products; providing for water resources protection, wildlife habitat enhancement and fire protection; and encouraging/enhancing recreational use."² The Forest Plan recommended selective harvesting and active forest management – logging – in all County forest lands. The Forest Plan recommended the County harvest more than 50 percent of the 120 fields in the County's 13 forest lots (together the "Forest Lots" and each lot individually a "Forest Lot").

Following creation of the Erie County Fiscal Stability Authority ("ECFSA"), the County was required to prepare and submit a Four Year Financial Plan ("Four Year Plan") to ECFSA for its review. Included in the Four Year Plan is initiative number 4 entitled "institute active forest management program." The Four Year Plan recommended that the County initiate an active timber harvesting program to develop additional revenue for the County, an initiative which this office supports. That program and initiative began in late 2005 with the award of a contract to a logging company to begin harvesting and selling timber from County Forest Lots.

Our office's review of the Forest Plan and the harvesting and auction/sale of timber from County Forest Lots has resulted in the following major findings and observations:

- The Parks Department and County Division of Purchase failed to widely disseminate, via postal mail, electronic mail, the Internet, and/or publications, a fall 2005 request for proposals ("RFP") announcing the timber harvesting project in order to maximize responses.

- That failure led to a lack of responses to the RFP (only one response).

¹ Erie County Forest Management Plan, cover page.

² Erie County Forest Management Plan, p. 6.

- The RFP was deficient in certain respects in failing to adequately define the scope of work to be conducted and in failing to define revenue expectations for the County and vendor.
- The RFP and legal notice announcing the project contradicted each other in defining the Forest Lots to be harvested.
- The winning vendor's response to the RFP was vague and incomplete.
- We question the role of the cooperating consulting forester and his relationship with the winning vendor.
- The RFP and the contract signed between the vendor and the County are inconsistent: the RFP specifies harvesting in only County Forest Lots 3 and 7 whereas the contract includes language allowing the vendor to harvest timber in other lots in the future with no mention of a new RFP process.
- A February 2006 legal notice in the Buffalo News announcing the auction/sale of harvested timber did not conform to the contract with the vendor.
- A February 2006 legal notice announcing the auction/sale of harvested timber does not appear to have been published in the County's two official newspapers and on the County's web site, as was required by the vendor's contract.
- The County Forester attempted, despite directions to the contrary, to conduct an auction/sale of timber from Forest Lot 3 without publishing legal notices advertising the sales. This action was only halted after the intervention of the Office of Comptroller and the County's Department of Law.
- We believe the vendor and County have did not sufficiently publicize and solicit potential buyers for harvested timber.
- The County Forester has not attended every timber auction to monitor the viewing and bidding process, resulting in concerns over prices and payments to the County.
- Notwithstanding the above concerns, harvested timber has generally resulted in higher than average prices for the County, when compared to timber sale data maintained by the State of New York.
- The vendor has not remitted any payments nor held any auction/sales since mid-May 2006. As of the date of this Report, total payments constitute only 27% of that budgeted for in the County's 2006 Adopted Budget. If no more harvesting takes place in 2006, there will be a significant revenue shortfall for the Parks Department and County in 2006.

- The vendor has failed to follow the terms of its contract in providing documentation concerning timber sales.
- We question the role an environmental education group, Earth Spirit Educational Services, Inc. ("Earth Spirit"), played in the development of the Forest Plan, and its use and occupancy of County facilities at Forest Lot Two. The contract entered into by Earth Spirit and the County in 2001 (the "ES Contract") does not conform to the 2000 Legislature resolution authorizing the County to partner with Earth Spirit.
- Neither the 2000 Legislative Resolution nor the ES Contract permits a member of Earth Spirit's staff to live in a rehabilitated caretaker's cottage at Forest Lot Two, but an employee was doing so. This was finally addressed through the execution of an addendum to the ES Contract in October 2005 (the "ES Addendum").

Background

Erie County Parks Master Plan

On December 13, 2001, the Erie County Legislature ("Legislature") approved a request from the County Executive (Communication 20E-10) to execute consulting contracts with Parsons Transportation Group and Wendel-Duchscherer to conduct a regional parks study and develop a comprehensive plan for Erie County's parks system. Between spring 2002 and spring 2003, the consultants worked with the County's Parks Department and the County's Department of Environment and Planning on that initiative. This work was completed at a cost of nearly \$400,000 and presented to the County Executive in March 2003.

In March 2003 the Erie County Executive released the County's Master Plan, a five-year \$15 million proposal to rehabilitate the County's parks and forest lands using proceeds from the County's tobacco securitization. Included within the Master Plan was funding for the Parks Department's Bureau of Forestry to develop a new master plan for the County's forest lands. On May 22, 2003, the Legislature approved (Communication 9E-66) the first phase of the Master Plan, a \$3,000,000 proposal for capital spending in 2003. On July 10, 2003, the Legislature approved (Intro. 14-7) a resolution submitted by three legislators with the support of the County Executive to appropriate an additional \$30,000 to the Erie County Soil and Water Conservation District "for use in the development of the Forest Management Plan."

Erie County Forest Management Plan

In December 2003, the County Executive and Parks Department released the Forest Plan. The Forest Plan, with a stated intention of "creating sustainable forests in Erie County for the 21st Century," was developed by the Parks Department in partnership with Erie County Soil and Water Conservation District, Earth Spirit, the New York State Department of Environmental Conservation, the United States Department of Agriculture's Natural Resources Conservation

Service, and the State University of New York at Buffalo's Environmental Studies Program. It was the first large-scale, in-depth review of the County's forests since 1965.

Among the highlights of the Forest Plan included new objectives for utilizing the more than 3,100 acres of County forests in Boston, Concord, Holland and Sardinia. Those objectives were: "creating educational and economic opportunities for taxpayers, community groups, and educators; utilizing the Woodlands Environmental Educational Center and certain Lots for scientific experiments in ecology and forestry; putting forest products to good use in County parks, departments, and for public projects; reducing taxes through profits from sales of lumber products; providing for water resources protection, wildlife habitat enhancement and fire protection; and encouraging/enhancing recreational use."³

The Forest Plan was developed in part by Earth Spirit, a non-profit organization that conducted the majority of the field survey work of the forests under contract by Erie County Soil and Water Conservation District and the Bureau of Forestry. The Forest Plan recommended selective harvesting and active forest management – logging – in all County forest lands. The Forest Plan recommended the County harvest more than 50 percent of the 120 fields in the County's Forest Lots. In some cases, the stated intention was to remove trees to enable new tree growth. While the Forest Plan was unable to quantify potential revenues from the sale of timber, the Parks Department envisioned harvesting timber to develop revenue for the benefit of the Bureau of Forestry.

On February 19, 2004, with the Parks Department and Forest Plan recommending the "selective harvesting of timber on a scheduled basis to produce moderate income over a long period of time," the Legislature unanimously approved the Forest Plan, as well as a request by the Parks Department to hire three new Parks Maintenance Workers I (not in the Adopted 2004 County Budget) to work in the Bureau of Forestry (Communication 4E-4). Under the request, the positions, at a cost of \$98,500, would be paid for using revenues from the sale of forest products.

2004 and 2005

During 2004 County Parks Department crews, including staff in the Bureau of Forestry, worked on the Parks Master Plan. There was little discussion or publicity of the Forest Plan, aside from a few letters to the editor of the local newspaper and an occasional article or column in the Buffalo News. No revenue was generated in 2004 by the sale of forest products to support the salaries of the three new Forestry staffers. In early 2005, as a direct result of the County's 2005 budget crisis, the Bureau of Forestry lost all staff, aside from the County Forester. As a result, no revenue was generated from the sale of forest products in 2005.

The Four Year Financial Plan and 2006 Budget

While the County has engaged in timber harvesting and production at its saw mill, it has traditionally produced such wood for the County's use and not for commercial use or sale. In fact, in the County's 2000, 2001, 2002, 2003 and 2004 budgets, the County neither budgeted nor

³ Erie County Forest Management Plan, p. 6.

received any revenue for the sale of forest products. In 2005, the adjusted adopted budget included \$225,000 in revenue in the Parks Department from the sale of forest products. However, as noted, no revenue was generated in 2005.

The County's Four Year Plan includes initiative number 4 entitled "institute active forest management program." The Four Year Plan recommended that the County initiate an active timber harvesting program to develop additional revenue for the County. The consultants recommended that the County retain an *independent* forestry consultant for tree selection (emphasis added), contract development, site inspections, general management planning, accounting services and restoration activities. That forestry consultant would help manage the forest management program and guide the County in its retention of a contracted forester for the harvesting.⁴

The Four Year Plan projected net revenue (as well as discounted fiscal impact) to the County of \$120,000 for 2006, \$239,000 for 2007, \$244,000 for 2008 and \$250,000 for 2009. The Four Year Plan noted that based on comments by the County Forester, that the County could potentially receive twice as much revenue in the first few years as projected. In fact, in the County's adopted 2006 budget, \$490,600 was budgeted in revenue from the sale of forest products, or more than four times as much revenue as projected in the Four Year Plan for 2006.

Request for Proposals for Timber Harvesting

On September 10, 2005 (prior to the approval of the Four Year Plan), the Parks Department announced a request for proposals ("RFP") in the Buffalo News. Responses were due September 23, 2005.

Aside from this one-day advertisement in the Buffalo News, the Parks Department and the Division of Purchase ("Purchase") did not advertise the RFP in any other manner. The RFP was neither disseminated to any national or regional trade publications nor disseminated via the Internet. No other publicity was generated or pursued by the County to announce this RFP and generate interest or responses by potential bidders. (The County Forester has since stated that "future advertising in these [the Timber News and the DEC web site] venues should be considered.")⁵

The announcement stated that the County was:

Seeking proposals from qualified professional firms to establish a forestry management program with the primary objective of removing felled trees, thinning and harvesting standing forests on 13 County owned lots comprised of 375 acres in the towns of Boston, Sardinia, Concord and Holland. Respondents will be required to conduct advertising and auction sale of forest products.

⁴ County of New York Four-Year Financial Plan: FY2006-FY2009, p. V-227.

⁵ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

The two-page RFP announced that the County's intention was for "375 acres to be managed by cleaning felled trees for firewood production and harvesting forests for board feet production. This process will encompass two lots only located in Sardinia and Holland" (Lots 3 and 7). Among requirements for respondents were a demonstration of industry experience and similar projects involving forest management; the required use of a horse team to haul timber; and working under a cooperating consulting forester. In addition, respondents were informed they would work with the forester to "select, cut and transport trees to required areas... and then conduct advertising and auction sale of forest products. Monthly reports will be given to the County of Erie on production." Further, all proposals were required to contain details of the estimated man work days necessary, estimated board feet harvested per day, and estimated net percentage of revenue to the County from the sale of the products.

According to the Division of Purchase's ("Purchase") formal bid control file, Purchase acting at the behest of the Parks Department, disseminated the RFP via postal mail to three parties: Hillview Logging, Inc. of Holland, New York ("Hillview"); Peter Collin of Portageville, New York; and "Frederick Safford & Jim Ellis, Forestry Consultant, LLC; 595 South Street, East Aurora, New York" (which is Mr. Safford's address). Aside from the entities to which the RFP was mailed, no other entities responded or requested a copy of the RFP.

Two parties, Hillview and Peter Collin, conducted a site visit of the forest lands on September 16, 2005. Only Hillview, in conjunction with Frederick Safford, submitted a response. Of the three firms that received a copy of the RFP, two, "Frederick Safford & Jim Ellis, Forestry Consultant, LLC" and Hillview Logging, share a corporate officer (Jim Ellis is President of Hillview Logging). As such, in reality, the RFP was only disseminated to two entities.

Hillview Logging, Inc.'s Response

Hillview Logging, Inc. is a New York business corporation whose principal is James R. Ellis. In its response dated September 20, 2005 (which was not signed by Mr. Ellis), Hillview provided very limited information detailing its and Mr. Ellis' experience. Hillview also provided a list of 16 individuals as references.

Hillview's response provided greater details concerning Frederick Safford and his background in forest management and timber harvesting. However, like Ellis, Safford's information was limited and Safford did not provide any references for verification as required in the RFP.

On the basis of these areas and the lack of content and details, we have concerns regarding Hillview's response to the RFP.

The RFP required respondents to estimate the man work days and estimated board feet per day produced. Hillview stated that it would use four men working over 120 days, for a total man work days of 480. Hillview also stated that it could harvest 5,000 board feet per day. The company estimated the net percentage of revenue to inure to the County would be 70%. Hillview's response stated that the type of wood being harvested would also drive their

commission and revenues to the County. The company stated that white ash and soft maple trees would cause a 50% payment to the County; black cherry and hard maple trees would cause a 70% payment to the County.

On October 12, 2005, at the request of the County administration, the Legislature (Communication 25E-11), authorized the Commissioner of the Parks Department to negotiate a contract with Hillview, to “manage Erie County forests for a period of one year with the option to renew for five additional one year terms with compensation to Hillview Logging Inc. ranging from 30% to 50% of sales of forest products.”

Contract with Hillview Logging

On December 8-9, 2005, the County executed an agreement with Hillview to harvest and sell timber from County Forest Lots 3 and 7 “initially” (the “Hillview Contract”). The Hillview Contract is for the period December 1, 2005 to December 1, 2006, with the ability to renew for five additional one-year terms. During the contract term, Hillview is required to submit any oral or written reports as required by the County.

Under the terms of the Hillview Contract, Hillview is required to utilize horse teams to transport timber to the auction/sale site. If, however, the distance is greater than one-quarter mile, the contractor is allowed, with the consent of the County Forester, to utilize motor vehicles. The contract states that Hillview shall “strive to reach a goal of producing 420,000 board feet of lumber per year... not to include softwoods.” The contract does not preclude the harvesting of softwoods. As per an accepted practice in timber management, no “manual” reseeding occurs. The natural process of trees seeding adjacent areas is expected to take place.

Exhibit A of the Hillview Contract states that the contractor shall conduct periodic auction sales of the timber at designated areas with the consent of the cooperating consulting forester and County Forester. Such sales shall:

be marketed by the Contractor to area lumber purchasers from Contractor’s mailing list and shall be communicated to such potential purchasers by Contractor by U.S. Mail, fax or telephone. The County, though it’s Division of Purchase, shall, at Contractor’s expense, advertise the annual schedule of auction sales, once in each of the two official County newspapers, the Buffalo News and the County website, utilizing information provided by the Contractor and confirmed by the County Forester.

Furthermore, the contract provides:

auction sales shall be scheduled on Mondays. Bid quotes shall be communicated to Contractor by purchasers either by sealed written bids or by fax no later than 3:00 p.m. on the Wednesday of the same week following the *sale* [emphasis added – see comment below]. Contractor shall provide bid quotes to the County

Division of Purchase by fax... by 4:00 p.m. on said Wednesday. The concurrence of the County Division of Purchase and the Contractor as to the highest responsible bid shall be confirmed by fax between the County and Contractor as soon thereafter as possible. [Note: we believe that there is an error in the contract concerning the word "sale" in regard to the transmittal of bids; we believe the correct word should be "viewing." This discrepancy needs to be addressed.]

The Hillview Contract states that the contractor shall be compensated on a commission basis from the sale of forest products and shall remit to the County, within seven business days of receipt of payment from the end purchasers, the balance of the proceeds of each auction sale of forest products after deducting from the gross proceeds their commission. Included with each payment to the County shall be an itemized accounting of the amount of forest product (in board feet), for each species of tree sold and the amount of gross revenues received by Hillview for each.

The rate schedule as stated in the Hillview Contract is as follows:

Species of Tree	Percentage Commission to Hillview
Softwoods	70%
White Ash	50%
Hickory	50%
Maple/soft	50%
Red Oak	50%
Bass Wood	50%
Black Cherry	30%
Maple/hard	30%

Advertising of Auction/Sale of Timber

On Saturday, February 11, 2006, the Parks Department announced the auction/sale of forest products through a legal notice in the Buffalo News. The announcement, which ran for only one day, stated the County was seeking bid submissions for the harvest of Forest Lot 7 in which roadside logs of hard maple and cherry trees would be sold. Viewings were available between February 13-16, 2006 and bid submissions were due to the Division of Purchase by 12:00 p.m. on Friday, February 17, 2006. Despite the contract provision that "Purchase shall at the Contractor's expense, advertise the annual schedule of auction sales, once in each of the two County official newspapers (the Front Page and Amherst Bee), the Buffalo News and the County Website," we can find no evidence that the announcement was placed in the Front Page and Amherst Bee, nor placed on the County's web site. This requires clarification from the Parks Department and Purchase.

It appears that the terms of this announcement do not correspond to the contract with Hillview. The Hillview Contract specified that "auction sales shall be scheduled on Mondays. Bid quotes shall be communicated to the Contractor by purchasers either by sealed written bids or by fax no later than 3:00 p.m. on the Wednesday of the same week following the sale [again, we note that we believe this should say "viewing," not "sale"]. Contractor shall provide bid quotes to the County Division of Purchase by fax by 4:00 p.m. on said Wednesday." The legal notice announcing the auction/sale of forest products at Forest Lot 7 specified that bid responses were due to the Division of Purchase, and not Hillview. We also note that the contract specified a Wednesday deadline for submission of bids when the legal notice gave a Friday deadline.

On March 20, 2006, this office contacted the Division of Purchase regarding the auction/sale process and sought clarification on the sales. Based on conversations between our staff and Purchase staff, we became aware of two major issues: (1) that the County Forester had asked Purchase in advance of the February legal notice being published if Hillview could harvest and sell timber from other Forest Lots (other than Lot 7) without advertising their harvesting and sale; and (2) that the County Forester had inquired of Purchase whether or not Hillview could conduct an auction/sale of timber in Forest Lot 3 on March 27, 2006 without placing an announcement in the Buffalo News, as is required in the Hillview Contract. The Division of Purchase informed the County Forester that neither sale was permitted without advertising. However, despite such directions to the County Forester, this office learned that the auction sale was proceeding, regardless of the direction given to the County Forester by the Division of Purchase (which direction was correct).

On March 23, 2006, this office contacted the Erie County Department of Law ("Law Department"), to express our concerns regarding the imminent auction/sale of timber at Forest Lot 3 without public notice. At our request, and with their concurrence, the Law Department contacted the Parks Department and County Forester and halted the auction/sale. To ensure full disclosure of the auction/sale, on April 1, 2006, the Parks Department published a legal notice in the Buffalo News announcing that auction/sales of forest products (maple, cherry and ash trees, and other hard and softwoods) from the Forest Lots specified in the fall 2005 RFP (i.e. Lots 3 and 7 only) would be held on Mondays starting April 10, 2006 and ending December 18, 2006. As per the Hillview Contract, the legal notice was placed once in the Buffalo News, as well as once in the Amherst Bee, one of the official County newspapers. However, there is no evidence that a legal notice was placed in the Front Page and on the County web site, as was required by the Hillview Contract.

In adhering to the contract's requirements, the legal notice also stated that bid submissions were due on the Wednesday following the viewing by 3:00 p.m. However, in a change from the contract, but properly in our view, the legal notice stated that such submissions were due to the Division of Purchase, and not Hillview.

Sale of Timber and Proceeds to the County

The Hillview Contract provides that the contractor shall be compensated on a commission basis from the sale of forest products and shall remit to the County, within seven business days of receipt of payment from the end purchasers, the balance of the proceeds of each

auction sale of forest products after deducting from the gross proceeds their commission. The below table lists the payments received from Hillview and the associated commissions.

Payment Date	Erie County Share	Hillview Share	Total
3/31/06	\$36,042.23	\$15,446.67	\$51,488.90
4/3/06	\$36,084.15	\$15,464.63	\$51,548.78
4/24/06	\$53,838.40	\$27,249.60	\$81,088.00
5/9/06	\$6,696.55	\$2,869.94	\$9,566.49
5/16/06	\$628.97	\$1,467.58	\$2,096.55
TOTALS	\$133,290.30	\$62,498.42	\$195,788.72
% OF TOTAL	68.1%	31.9%	100.00%

A review of the prices received for the timber, in comparison to prices published statewide by the DEC indicates the auctioned timber sold for higher than average prices. Comparisons of published prices for Western New York timber agree with figures from the DEC. It does appear the log sales have generated a better than average return for the County. In the March 31, 2006 sale, 80 of the 462 logs were sold at a below average market price. These logs were all rated as lower grade lumber. In contrast, 41 logs were sold at double or more of the average market price at the time of sale. The remaining 341 logs were sold at more than the average price, but less than double market price. While our office is unable to determine the reason why such sales resulted in above-average returns for the County, our office commends all parties involved in said sales for obtaining such returns.

Findings of Fact Regarding the RFP Process and Hillview Logging, Inc. Contract

Request for Proposals Requirements

We are concerned with the RFP's lack of specificity on revenue projections and proposed contractor requirements, as well as the lack of detail on the advertising and auction sale of harvested timber. The RFP gave no guidelines for the revenue division between the vendor and County, and allowed the vendor to essentially set the rate in its response. The number of hours in a man work day was not defined. In addition, there was no detail whatsoever regulating the advertising and auction/sale process.

Furthermore, the Buffalo News advertisement and the RFP contradicted each other: the advertisement stated that the County sought a vendor for "removing felled trees, thinning and harvesting standing forests on 13 County owned lots comprised of 375 acres in the towns of Boston, Sardinia, Concord and Holland" while the RFP said that "this process will encompass two lots only located in Sardinia and Holland." This is a significant discrepancy that could have impacted the amount of respondents to the RFP.

Based on the limited number of entities to which the RFP was disseminated, no apparent active effort to maximize the visibility of the RFP to attract as many potential respondents as possible, as well as the very short lead time for respondents (13 days), we are concerned about this RFP process. According to the Buffalo News, "well-known" local loggers were never

contacted about the RFP (or the auction/sale of the harvested timbers).⁶ Because Hillview was the sole respondent to the RFP, our concerns are magnified. ***Based on the above, our office concludes that when other Forest Lots are ready for logging, the County should issue a new request for proposals and aggressively advertise the project to maximize respondents, which in turn will maximize potential revenue to the County.***

Hillview Logging, Inc. Contract

We question why certain language was used in the Hillview Contract, which contradicts the RFP. Specifically, the RFP stated that the winning vendor would only harvest and sell timber harvested from Forest Lots 3 and 7, but the Hillview Contract states the vendor will harvest and sell timber from those lots *initially*. This leads to the conclusion that the County and Hillview intend to engage in additional harvesting at other Forest Lots. If that is the County's intention, we believe that a new RFP must be issued for additional Forest Lots.

Additionally, on May 11, 2006, the County Forester conducted a tour of the harvested Forest Lots with the Chair of the Erie County Legislature's Energy and Environment Committee, the Deputy Comptroller-Audit, and the local forestry chair of the Sierra Club. At that tour, the County Forester promised to work with local environmental groups and other parties to make the harvesting process and the next phase of the Forest Plan for additional Forest Lots more open and transparent. ***Based on the above, we request that the County Forester and Parks Department respond as to whether it is the intention of the parties to engage Hillview for all future logging efforts on County Forest Lots, or if they intend to issue a new request for proposal for future logging on all other Forest Lots.***

Furthermore, the Hillview Contract requires Hillview to include with each payment, an itemized accounting of the amount of forest product (in board feet), for each species of tree sold and the amount of gross revenues received by Hillview for each. Our review of the documentation provided by Hillview to the County Forester reveals that the terms of the contract are not being followed in one respect. Hillview has not provided an itemized accounting of the amounts of forest products (in board feet) for each species of tree sold – a problem that the County Forester at one point himself acknowledged in a memorandum to Hillview.⁷ ***As such, we request that the County Forester and Parks Department confirm that for all future sale(s) conducted by Hillview all Hillview Contract terms be met during the remittance of payment.***

Method of Conducting the Auction/Sales of Timber

Regarding the auction/sales, this office is concerned that the County and contractor have not engaged in enough publicity or advertising to generate significant attendance and bidding on harvested timber. As previously mentioned, according to the Buffalo News, "well-known" local loggers were never contacted about the auction/sale of the harvested timber.⁸ The County

⁶ Bonfatti, John. "Logging Effort Criticized: Erie County Forester Defends Program on Several Fronts." The Buffalo News, April 10, 2006.

⁷ April 28, 2006 Memorandum from Brian Grassia to Jim Ellis.

⁸ Bonfatti, John. "Logging Effort Criticized: Erie County Forester Defends Program on Several Fronts." The Buffalo News, April 10, 2006.

Forester states that "I have been advised by Hillview Logging that mailers are used as well as phone calls and e-mails. We have had discussions on this very subject and I have asked Hillview to continue to make progress and improvements to the way we promote our products."⁹

Based on documentation provided to this office by the County Forester, while multiple bidders (six) have attended at least one auction sale, we remain concerned that Hillview and the Parks Department (County Forester) have not done enough to maximize attention to and publicize the auction/sales. ***While we note that prior sales under the Hillview Contract have generated above-average prices for the forest products sold, we question whether higher prices could have been obtained if more parties had been notified of the proceedings.***

The County Forester's lack of specific knowledge concerning potential buyers and his reliance on the contractor for this information/confirmation is troubling. The County Forester has conceded that he has not attended every auction to monitor the results and ensure that the County is receiving the full price and revenue. He states that he is relying on the contractor to behave responsibly and honestly.¹⁰ That lack of monitoring is extremely disturbing. ***We encourage the Parks Department, County Forester, and Hillview to do more to engender more attendees and bidders, and in so doing, inuring additional revenue to the County (which, of course, will bring additional revenue for Hillview). We also strongly recommend that the County Forester or a qualified County employee attend every auction and sale to monitor the proceedings.***

Additionally, the Hillview Contract states that Hillview will hold a timber viewing every Monday, with bids on the harvested logs delivered to Hillview the following Wednesday by 3:00 p.m. Hillview is required to then provide copies of the bid quotes to Purchase by fax by 4:00 p.m. on that day. We note for the record that Hillview is holding viewings on various Mondays, but not every Monday, with the company stating that there are not enough logs on some Mondays to warrant a viewing or auction/sale.

Furthermore, we have concerns regarding Hillview's role in receiving bid responses for the auction/sale in advance of the Division of Purchase. ***We believe that the Division of Purchase should receive all bids prior to any other party as an appropriate control mechanism, and then provide those responses to Hillview.***

Finally, when logs are sold, payment is made to Hillview by the auction winner. Hillview then remits to the County a portion of the sale via check. Hillview has seven days from the sale date to make the payment. We note for the record that of the five auction/sales our office reviewed, two individual payments were each received two days early, one payment was on-time, one payment was one day late and one payment was two days late. Thus, in general, the terms of the Hillview Contract are being observed in regards to timely payment to the County.

⁹ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

¹⁰ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

Potential Budget Shortfall for 2006

As previously noted, while the Four-Year Plan projects \$120,000 to be raised in 2006 from the sale of timber, the final 2006 Adopted Erie County Budget projects \$490,600 in revenue from the sale of forest products. The RFP response from Hillview estimates \$830,000 in potential sales for 2006 (and it is uncertain if that response was for just Forest Lots 3 and 7 or all Forest Lots). If the estimate is correct, the County should receive \$500,000 in income based upon current commission percentages, or a little more than the budgeted amount.

At the same time, any shortfall in the sale of forest products in 2006 would have negative consequences on the Parks Department and the General Fund. As of June 27, 2006, the County received \$133,290 from the sale of forest products, with the last payment being made on May 16, 2006, leaving a \$357,310 gap in the Parks Department budget. The last payment to the County was small, \$628.97 (apparently for softwoods), with Hillview earning \$1,467.58. The reduction in number as well as dollar value of sales suggests that Hillview may have already completed harvesting Forest Lots 3 and 7, leaving a potential revenue gap in the Parks Department's 2006 budget. *As such, we request clarification from the Parks Department and County Forester as to whether more sales of timber products are contemplated from Lots 3 and 7 this year, and if so, the projected revenues to be generated to the County from said sales.*

Findings of Fact Regarding Roads and Fire-Lanes (Breaks)

Environmental groups and individuals have expressed concerns regarding fire lanes in the Forest Lots. These concerns have included larger questions surrounding their opposition to any timber harvesting and clearing of timber or trees for fire lanes, as well as specific concerns or allegations regarding the use of federal disaster funds for the development of fire lanes. While this office does not question the right of the County to harvest its forests (indeed this office supports appropriate long-term forest management that creates revenue for the County), as part of our comprehensive review of the County's Forest Management Policies we examined the specific issue of construction of roads and fire-lanes in County forests.

Forest Plan Provisions for Fire Lanes

In August 2002, the County Forester stated to the Buffalo News that he was convinced that all 13 County forest lots needed to have fire lanes cut through them to help mitigate against forest fires. His stated reason was that a forest management plan must "protect the urban interface."¹¹ Based on the Forest Plan, which notes that the 13 lots are adjacent to approximately 140 private properties, and "good fire management is crucial in the protection of this urban interface (neighbors)," we understand the County Forester to mean that fire lanes are necessary to protect neighboring properties. However, as the County Forester acknowledged, with the development of fire lanes in forest lots, comes further human intrusion, particularly by all-terrain vehicles and snowmobiles, which have caused further problems and damage to the forests and trails.

¹¹ Levy, Michael. "County Official Strives to Open Access to All." The Buffalo News, August 4, 2002.

The Forest Plan includes a section concerning wildfire management and maintenance. That section summarized the then-current state of fire lanes on the 13 forest lots by noting that there were upwards of 50 miles of fire lanes. The Forest Plan noted that while forest fires in this region are rare, the County must be prepared, and must “develop a Fire Management Plan and groom and widen current fire lanes for multi-use activities.” The Forest Plan also stated that Earth Sprit, which wrote the report, has “trained, certified wildland fire fighters (and) we can develop a plan” that will help protect “the assets of Erie County’s forest, neighbor’s lives and property.”¹²

Recent Events

Earlier this year, our office received reports that Federal Emergency Management Agency (“FEMA”) disaster funds received by the County may have been utilized inappropriately to build fire lanes. For example, in late February 2006, the local forestry chair from the Sierra Club, who has been actively monitoring the Forest Plan, published an opinion article in the Buffalo News contending that the County inappropriately utilized \$50,000 of FEMA funds to build a gravel road in Forest Lot 7 and he suggested that the road had been constructed to facilitate the harvesting.¹³

Contrary to such opinion, our review determined that the entity is a fire lane, and has been in place for more than 50 years. The fire lane was partially washed out after a storm in spring 2004 and was re-graded and a culvert was replaced in mid-May 2005. The County conducted this work using funding obtained from FEMA and the U.S. Department of Housing and Urban Development (“HUD”). ***According to the County Forester, and as confirmed by our research, no County funds were used in the reconstruction of the road or culvert.***

The County received FEMA disaster funds through a federal declaration under FEMA disaster number 1534. FEMA package 85 is an amalgamation of work on roads through the Parks Department that suffered storm damage covered under FEMA disaster number 1534. The actual cost to rehabilitate the road/fire lane was \$42,654.97, of which FEMA was responsible for \$5,300.20. HUD Community Development Block Grant (“CDBG”) funds were used to pay the remaining amounts of \$25,800.00 for equipment rental and \$11,554.77 for raw materials, including gravel and asphalt. The total FEMA package 85, which covered more than just this one road, is \$136,974.30.

CDBG funds may be used for “parks and recreation” and “flood and drainage facilities”. CDBG funds are generally required to be expended in areas with/for “low and moderate income persons and/or the prevention of slums and blight.” The location of such a project or the area served must contain “a majority of low and moderate income persons”. Presumed to be low and moderate income persons are “seniors, the handicapped, domestic violence victims and the homeless.” The “wealth codes” for the areas surrounding Forest Lot 7 as per the 2006 Hanes Directory range between 43 and 49, below the New York State median of 55.9. While the income levels of the few residents adjacent to Forest Lot 7 may have technically allowed the County to use CDBG funds for the fire lane rehabilitation, we question the use of CDBG funds

¹² Erie County Forest Management Plan, pp. 210-211.

¹³ Beahan, Larry. “Scalping the Erie County Forest.” The Buffalo News, February 27, 2006.

for such a purpose (though we do note that because such funds were used, no County funds were used for the project).

We also take note that in 2000, the Bureau of Forestry applied for, and received \$20,472 from FEMA for declared disaster 1335 for flood damage to fire lanes and roads. Thus there is precedent for this use of such federal funds.

Although described as a “park road” in a FEMA document, County maps from the 1940s describe these lanes as “fire breaks” and as “fire lanes”. The fire lanes/fire breaks were originally installed sometime before 1940. An environmental group has suggested that the fire lanes/breaks be abandoned. The rationale behind this statement is the lanes are no longer needed. Although Erie County has yet to suffer a major forest fire, the lanes do provide a means to stop one should a fire occur. *We believe that the County should continue to maintain these lanes, if for liability reasons alone, given neighboring private properties. A key question, however, is the extent to which the lanes should be maintained. For instance, should the County simply prune back overhanging tree limbs and clear brush back from the fire lanes, or should the lanes be widened and improved with gravel, asphalt, etc.? In our opinion, at a minimum, and in the interest of fire safety, the routine pruning of trees across fire lanes should be pursued.*

Findings of Fact Regarding Role of Frederick Safford, Consulting Forester

Frederick Safford Forestry Consultant, LLC, a domestic limited liability company, whose principal is Frederick Safford, is a cooperating consulting forester based in East Aurora. As stated by the DEC, which maintains a database of consulting foresters, “a consulting forester works in the private sector providing services on a fee or contingency basis, not employed by a forest industry with no direct economic interest in a timber procurement or purchasing entity.”

The Four Year Plan consultants recommended that the County retain an *independent* (emphasis added) forestry consultant for tree selection, contract development, site inspections, general management planning, accounting services and restoration activities. That forestry consultant would help manage the forest management program and guide the County in its retention of a contracted forester for the harvesting.

Safford was one of the three entities to which the RFP was originally disseminated; the RFP sent to Mr. Safford was sent to him and Jim Ellis, President of Hillview Logging, Inc., jointly. It is our belief that Mr. Safford is acting as a subcontractor for Hillview and thus paid by Hillview, which was confirmed by the County Forester. While we are not aware of the exact nature, amount or terms of the payments by Hillview to Mr. Safford, we are concerned that Mr. Safford is not “independent.” The DEC definition of a consulting forester states the forester is “not employed by a forest industry with no direct economic interest in a timber procurement or purchasing entity.”¹⁴ Mr. Safford is, in fact, employed by or under contract to a member of the forest industry – Hillview Logging – and not the County. That is a concern. When asked about this issue, the County Forester stated “we will take a second look at this to see if it is better for us

¹⁴ See <http://www.dec.state.ny.us/website/dlf/privland/privassist/cooplist.html>

to reduce the Hillview % and hire the consulting forester ourselves.”¹⁵ *We concur and recommend that the Parks Department and County Forester confirm the exact relationship between Mr. Safford (or his entity) and Hillview and state whether the County should obtain an independent consultant, and if so, how that consultant would be paid.*

Findings of Fact Regarding the Role of Earth Spirit Educational Services, Inc.

On July 13, 2000, the Legislature approved a request of the County Executive (Communication 16E-15) for the County to enter into a partnership with Earth Spirit, a non-profit environmental organization headed by Sanford Geffner, coordinator of the State University of New York at Buffalo’s Environmental Studies Program. Under the partnership, which the university would also join, the two non-County entities would conduct environmental education programs on a County forest lot in Sardinia. Under the resolution, any revenues collected by Earth Spirit in administering the educational programs were to be given to the County “and placed in a separate revenue account which is authorized for appropriation to be used solely for improvements, development and maintenance of the Genesee Road camp site.” Note that no fees are collected by Earth Spirit for tours of County facilities or woodlands, but fees are collected for programs generated by Earth Spirit.

In August 2000, the County Executive announced that Earth Spirit would convert an unused former 4-H Camp in the County’s Forest Lot Two in Sardinia into an environmental education center. The 4-H Camp had been in use between 1965 and 1990, but was not in use after 1990. The property includes a caretaker’s residence and office, dining hall and kitchen, nurse’s cottage, barn, and shelters. Mr. Geffner specifically stated that the facility would be an environmental education center, and not a camp.¹⁶

According to the Forest Plan, starting in fall 2000, Earth Spirit began a general site inventory and clean-up at Lot Two, developed a “resource analysis and management plan” for the site, and assisted the Parks Department in administering seasonal maple sugaring programs for local schools and the public at the County’s Sugar Shanty and Dining Hall on Lot One in Sardinia (note: the Parks Department’s saw mill is also on Lot One). In addition, Earth Spirit conducted educational programs on forest lots, including a high school “envirothon” ecology competition. Use of the County’s Sugar Shanty ended in 2004 when Earth Spirit established its own sugaring facility at the Woodlands.

In spring 2001, the three partners announced the creation of the Woodlands Education Center in the former 4-H Camp on Forest Lot Two (adjacent to Lot One). According to Mr. Geffner, the expansion of the relationship and further development of the Woodlands center concept was initiated by then-Parks Commissioner Lawrence Jasinski, who approached Earth Spirit.¹⁷ On April 19, 2001, the County signed the ES Contract, which was a five-year renewable contract with Earth Spirit and the university. Acknowledging the Legislature’s authorization for

¹⁵ June 27, 2006 Electronic Mail from Brian Grassia to Michael Szukala.

¹⁶ Vogel, Charity. “Environmental Center a Three-Way Effort.” The Buffalo News, August 1, 2000.

¹⁷ State University of New York at Buffalo. “Abandoned Camp in the Woods to Become Field Campus for UB’s Environmental Studies Program.” Press Release, September 24, 2004.

the County Executive to enter into such a contract, among the contract's provisions was the following:

Any funds or fees charged by Earth Spirit for providing and administering said programs shall be placed into an Earth Spirit account to be distributed and used as follows: 20% of the total amount collected from school-based programs shall be held by Earth Spirit in a special property maintenance account to be used by Earth Spirit and the County for maintenance, upkeep, improvements, repairs and general use on the property; the remaining 80% shall be used by Earth Spirit for costs associated with the administration and implementation of the programs at the property, including personnel costs, administrative costs, and miscellaneous costs.

This contract language does not conform to the resolution duly adopted by the Legislature on July 13, 2000 which stated that any revenues collected by Earth Spirit in administering the educational programs were to be given to the County "and placed in a separate revenue account which is authorized for appropriation to be used solely for improvements, development and maintenance of the Genesee Road camp site." This discrepancy requires clarification.

In March 2002, Mr. Jasinski and Mr. Geffner were quoted in the Buffalo News as supporting a proposal to transform the Woodlands Education Center into a residential nature study center – one in which up to 120 persons could reside for long weekends or a week to study under instructors. The same article stated that County forestry crews were working to help rehabilitate the caretaker's cabin to enable a full-time, live-in Earth Spirit caretaker to reside on-site.¹⁸ In fact, the Forest Plan states that between fall 2001 and summer 2003, a "caretaker/naturalist" moved into the "newly renovated caretaker's residence." The Forest Plan also states that "the Woodlands Environmental Education Center should be fully functional as a year-round residential facility by the fall of 2004... and will, as a result, be the only Residential Center in Western New York..."¹⁹ This is of concern because the July 2000 legislative resolution says nothing concerning residential use for campers, nor a live-in caretaker. The April 2001 contract also says nothing concerning these matters. Further, in August 2000, Mr. Geffner had stated that the facility would not be a camp, but an education center. These discrepancies require clarification.

Between 2000 and 2004, using County Parks Department workers, inmate labor, and Earth Spirit volunteers, a variety of rehabilitation projects were undertaken at the Woodlands site, including the refurbishment of the caretaker's cabin and demolition of structures. In 2004, the County appropriated \$200,000 of tobacco funds through the Parks Master Plan to conduct capital work at the Woodlands site, including reconstruction of the dining hall, classroom facility, intern cabin and other buildings. The County's SAP system cannot account for or

¹⁸ Levy, Michael. "Nature Study Center Planned for Sardinia Forest." The Buffalo News, March 31, 2002.

¹⁹ Erie County Forest Management Plan, p. 45.

confirm this appropriation. However, according to the County Forester, about half of those funds have been spent for kitchen equipment, bathroom fixtures and roofing.

In October 2005, the County, Earth Spirit and the university amended the ES Contract pertaining to the Woodlands Environmental Education Center. Among the changes was a provision to ensure County maintenance of the property pertaining to snowplowing and lawn mowing and the continued availability of the property for educational uses even if County parks were closed. Both provisions were developed as a result of the County's 2005 budget crisis and the possibility that County parks services and facilities could be closed. The amendment included one major change to the original contract allowing for one person, selected by Earth Spirit and the university, to reside on the premises to serve as a caretaker. The fact that the parties sought to amend the original contract to address caretaker residence, albeit four years later, seems to be an acknowledgement that the parties recognized a violation of the original contract. That said, the amendment still says nothing concerning residential campers. If Earth Spirit or the university is hosting anyone who is residing overnight at the Woodlands facility, that provision for overnight accommodation should be in the contract with the County.

We have other questions, including the question of which party is paying for utilities at the property: the County or Earth Spirit? In addition, what capital improvements are ongoing at the site, particularly to the buildings and equipment/infrastructure in the buildings (i.e., kitchen, restrooms, etc.), who is conducting the work, and who is paying for those costs? We also note about allegations that Earth Spirit is charging individuals a fee to visit or utilize Forest Lots One and/or Two, including the Sugar Shanty. The County Forester has stated that the Sugar Shanty has not been in operation for two seasons, but that Earth Spirit engages in a sugaring operation at the Woodlands. He has stated that to his knowledge, no fees are levied to tour the facilities.

As previously noted, Earth Spirit had a significant role in conducting the field work and in writing the Forest Plan. While their involvement in that project and Plan is not in and of itself a conflict, the fact that they stand to benefit from the Forest Plan in a myriad of ways, including exclusive use of County forests and the facilities at Lots One and Two while receiving revenue for their use, causes us to raise the issue of a possible conflict.

Summary and Conclusions

It must be noted that County management – the Legislature and/or the County Executive – have approved of the contracts, agreements and plans. This report is provided to the Legislature and the County Administration and Parks Department to help provide guidance for the next phases of the forest management process, including the harvesting of other Forest Lots and the auction/sale of additional County forest products.

Our review of the Forest Plan and the harvesting and auction/sale of timber from County Forest Lots has generated a number of findings and concerns, as well as a set of recommendations. We present the findings and concerns and our recommendations for action below.

Findings and Concerns

Our first set of findings and concerns include the RFP process for the harvesting of timber and the vendor selected by the County to administer the program:

- The Parks Department and County Division of Purchase failed to widely disseminate, via postal mail, electronic mail, the Internet, and/or publications, the fall 2005 RFP announcing the timber harvesting project in order to maximize responses.
- That failure led to a lack of responses to the RFP (only one response).
- The RFP was deficient in certain respects in failing to adequately define the scope of work to be conducted and in failing to define revenue expectations for the County and vendor.
- The RFP and legal notice announcing the project contradicted each other in defining the Forest Lots to be harvested.
- The winning vendor's response to the RFP was vague and incomplete.
- We question the role of the cooperating consulting forester and his relationship with the winning vendor.
- The RFP and the contract signed between the vendor and the County are inconsistent: the RFP specifies harvesting in only County Forest Lots 3 and 7 whereas the contract includes language allowing the vendor to harvest timber in other lots in the future with no mention of a new RFP process.

Our findings and concerns also extend to the RFP process for and the actual auction/sale of the harvested timber:

- A February 2006 legal notice in the Buffalo News announcing the auction/sale of harvested timber did not conform to the contract with the vendor.
- A February 2006 legal notice announcing the auction/sale of harvested timber does not appear to have been published in the County's two official newspapers and on the County's Website, as was required by the vendor's contract.
- The County Forester attempted, despite directions to the contrary, to conduct an auction/sale of timber from Forest Lot 3 without publishing legal notices advertising the sales. This action was only halted after the intervention of the Office of Comptroller and the County's Department of Law.
- We believe the vendor and County have did not sufficiently publicize and solicit potential buyers for harvested timber.
- The County Forester has not attended every timber auction to monitor the viewing and bidding process, resulting in concerns over prices and payments to the County.
- The vendor has failed to follow the terms of its contract in providing documentation concerning timber sales.
- The vendor has not remitted any payments nor held any auction/sales since mid-May 2006. As of the date of this Report, total payments constitute only 27% of that budgeted for in the County's 2006 Adopted Budget. If no more harvesting

takes place in 2006, there will be a significant revenue shortfall for the Parks Department and County in 2006.

We do, however, need, and wish to highlight one positive outcome for the County in this timber harvesting and auction/sale process:

- Notwithstanding the above concerns, harvested timber has generally resulted in higher than average prices for the County, when compared to timber sale data maintained by the State of New York.

We have concerns regarding the role of Earth Spirit in the development of the Forest Plan, as well as their continuing role in occupying County facilities at Forest Lots One and Two:

- We question the role Earth Spirit played in the development of the Forest Plan, and its use and occupancy of County facilities at Forest Lot Two. The ES Contract does not conform to the 2000 Legislature resolution authorizing the County to partner with Earth Spirit.
- Neither the 2000 Legislative Resolution nor the ES Contract permits a member of Earth Spirit's staff to live in a rehabilitated caretaker's cottage at Forest Lot Two, but an employee was doing so. This was finally addressed through the execution of the ES Addendum.

Recommendations

We encourage the Legislature and the County Administration to review these findings and concerns, to respond to this office and the Legislature concerning our questions and the discrepancies, and to act on our recommendations.

We request that the County Forester and Parks Department respond as to whether it is the intention of the parties to engage Hillview for all future logging efforts on County Forest Lots, or if they intend to issue a new request for proposal for future logging on all other Forest Lots.

Our office concludes that when other Forest Lots are ready for logging, the County should issue a new request for proposals for timber harvesting and aggressively advertise the project to maximize respondents, which in turn will maximize potential revenue to the County.

Through new legal announcements for future auction/sales, we encourage the Parks Department, County Forester, and vendor to do more to engender more attendees and bidders at the auction/sales, and in so doing, inuring additional revenue to the County. We also strongly recommend that the County Forester or a qualified County employee attend every auction and sale to monitor the proceedings.

We believe that the Division of Purchase should receive all bids prior to any other party as an appropriate control mechanism, and then provide those responses to the timber vendor.

Due to the current projected gap between budgeted revenue and actual revenue, we recommend that the Department of Parks, in conjunction with the Division of Budget, Management and Finance and the County Executive's Director of Management Initiatives examine the revenue stream from the auction/sales to-date and report to the Legislature concerning actual and projected revenue from the auction/sales in 2006.

We recommend that due to the discrepancies in the legislative resolution authorizing and the contracts between the County and Earth Spirit the Law Department review and if necessary, revise the contract between the County and Earth Spirit concerning residential camping.

Discussion with Department of Parks, Recreation and Forestry

On July 11, 2006, this office provided the Commissioner of Parks, Recreation and Forestry and the County Forester with copies of this report, and requested that they review the document and comment in writing by July 17, 2006. The Commissioner requested, and we granted an extension to July 21, 2006 to enable his response, as well as a review by the Department of Law. On July 20, 2006, the Commissioner requested and received an additional extension to July 24, 2006.

County Forester Brian Grassia submitted the Parks Department's formal written response to this Review on July 24, 2006, a copy of which is attached hereto, unedited, as Appendix A.

For your information, we note that the Parks Department has numbered paragraphs in its response to the draft Review we provided them. For your ease we have provided the draft as marked by the County Forester.

Erie County Comptroller's Office

Appendix A
Response of Erie County Department of Parks, Recreation and Forestry

COMPTROLLER'S
RECEIVED

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FROM ERIE COUNTY FORESTRY

TO: Michael Szukala, Deputy Comptroller - Audit

FROM: Brian Grassia, County Forester 36.

DATE: July 24, 2006

CC: Angelo Sedita, Commissioner of Parks, Recreation, & Forestry
Greg Dudek, Assistant County Attorney

SUBJECT: FMP / Timber Harvest Review

The following is a formal response to the Confidential Draft received on July 11, 2006 from your office on the Forest Management Plan Implementation Review.

The County Forester responsibilities do not cover matters that relate to many of the questions regarding the RFP process. Specifics on rules governing the RFP and other legal requirements should be directed to the Purchasing and Law Departments.

The 21-page review contained a great deal of information and showed much research and time, however it displayed a lack of understanding for forestry products, sales and how the forestry business generally functions. Parts of the document are speculative, and fast and loose with biased interpretations. It wrongly conveys motivations and has conjecture throughout the review. The most important aspect of the report **(the county had higher yields on its sales)** is downplayed.

Finally, it should be acknowledged that the County Forester with the support of the Commissioner of Parks supplied the Comptroller's Office with numerous e-mail responses and documentation requests in order to assist their office in its efforts to properly review the Erie County Forest Management Program. Thank you for the opportunity to assist your office with this response.

PLEASE REVIEW THE FOLLOWING

1.5 – While it is correct criticism that multiple publication venues were not employed from the RFP, which may have resulted in few responses, we did come to find that the result would have been the same due to the fact that there are few horse loggers in the business in this region.

1.6 – (see 1.5)

2.1 – It is correct that the RFP seemed to be deficient in certain respects, however it did define the scope of work and the Bd. Ft. or revenue expectations.

2.2 – The RFP was clear in defining the lots to be managed, Lots # 3 & 7.

2.4 – We originally set up the Cooperating Consulting Forester to be employed by Hill view, however we now believe that this expert should work on behalf of the county and be directed by the county. We will make that change going forward.

2.5 - The contract specified Lots # 3 & 7 because of the SEQR NEG-DEC was complete on these lots with the intension we would continue to move forward and open up other lots.

2.8 – This is a totally incorrect statement. A legal notice was published advertising sales. Assumptions were made that the original add was sufficient.

In this case, I receive my directions from Parks Commissioner Sedita and the Dept. of Law. The County Forester received no such direction at the time. The auction was halted immediately upon receiving a verbal directive from the Dept. of Law.

2.9 – The issue of lack of buyers needs to be understood in its full context. Certain lumber is in demand and purchased by certain sawmills. The opposite is also true where by certain lumber is not in demand, which automatically reduces our viewing participants.

2.10 – It is impractical for the forester or anyone else from the county to be on site at all times of the viewing (in most cases very rural and isolated locations). It is also completely unnecessary and perhaps the suggestion shows a lack of understanding of the process.

2.11 – It is suspect that the good news of the county benefiting from higher yields on our sales is somehow mixed in with all the failures. It is proof that this program was designed properly and with care, which resulted in the taxpayers benefiting financially.

3.1 – The vender has been slow to provide documentation, we are making efforts to rectify this important aspect of our program. This aspect will improve greatly when implementing the change in the Consulting Forester as contracted by the county.

3.2 – The Earth Spirit question will be addressed later in this response.

3.3 – There has been a caretaker in the camp residence for quite some time. This became necessary when considerable investment was taking place at the camp and there was vandalism occurring.

5.2 – After initial forest management activities, we have concluded that the county should reduce the Hill view percentage and make the adjustment to hire the independent forestry consultant. (See 2.4 & 3.1)

5.3 – Provided that Phase II of the forest management plan is approved and implemented, we are confident that the budget projections will be met for 2006 and beyond.

8.3 – The rate schedule was negotiated based on practical forestry principles and values. Black Cherry and Hard Maple are logs that have great value and are in demand. Ash trees are deceased and in serious decline on all the lots and are not in such demand. The DEC has advised the county to remove these Ash trees. These trees yield significantly less dollars and are more difficult to find buyers. The softwoods become even less valuable and even more difficult to find buyers.

9.2 – The County Forester did make inquiries to the Division of Purchase on the sale. We were under the assumption that the original add was sufficient, however subsequently discovered that flaws were present in the add. At no time did the Purchasing Dept. staff instruct the County Forester to suspend the sale. Conversations were taking place between the Purchase and Law Departments. The notification to suspend the auction/sale came from the Law Dept. and the suspension was honored at their directive. A new advertisement was published and the sales continued. The County Forester had no intention to conduct the sale without permission from the Law Dept. and this highly speculative interpretation made by a biased third party is conjecture and has been inaccurately portrayed.

10.2 – Once again, this review of higher yields proves that this program was designed properly and has benefited the taxpayers of Erie County in spite of inaccurate news accounts to the contrary.

10.4 – There is no contradiction as the 13 lots are accurate of county owned forests. The 375 acres advertised was the total acreage for Lots # 3 & 7 where the program would begin. It should be considered that the lack of respondents could relate to the high profile negative publicity, which was expected by most forestry professionals.

11.1 – This question has further implications. Is the Comptroller's Office advocating a strategic shift in the logging plan using Horse Teams? The alternative to Horse Logging would be to allow large earth-moving forestry equipment to remove trees thus creating much more environmental damage as well as the removal of many more trees. The County Forester has been informed by Hill View that they may not re-bid should this process re-open.

11.3 – The County Forester would like nothing better than to have outside support for our forestry policies, however the County Forester does not work for the Sierra Club, He works for the Taxpayers of Erie County. Parks Commissioner Sedita has engineered a proper venue for the Sierra Club to air its viewpoint and contribute to the remaining forestry lots management program. That venue is to work with Erie County Soil & Water Conservation District in the Phase II planning.

12.2 – It has been acknowledged that we need to do more in increasing the amount of bids in our sales. However it again shows a lack of understanding by the Deputy Comptroller for typical logging auctions. When you have high-grade Maple and Cherry we will attract more and better bids & buyers which explains why the county has higher yields thus far. When selling Ash and Softwoods, these trees are not in demand and in many cases are undesirable. This is why we have fewer bidders on those products; sawmills will not travel far distances to bid on Ash and Softwoods.

12.3 – (See 12.2)

12.6 – It is rightfully acknowledged that Hill View in general is complying with on time payments to the county.

13.2 – There will be more sales generated from management of trees at lots # 3 & 7. It is unclear whether the 2006 projections will be met based on management of those two lots only. However if other lots open up by early fall 2006, then the projections will certainly be met.

13.3 – Acknowledgement for the county's right and responsibility to manage its forest properties.

13.4 – Clarification on the Fire Lane question. These Fire Lanes have not been developed by us but by the Forest planner's generations ago. All throughout the United States and indeed the world, Fire Lanes are managed and maintained to assist with proper forest management principles. Yes, with management there does come intrusion and trespass.

13.5 & 14.1 – Clarification, The trained Certified Wildfire Firefighters are part of the county's old Forestry Crew. Earth Spirit was mistakenly given this Certification.

14.3 – It is rightfully acknowledged by the Comptroller's Office that Fire Lanes or Fire Breaks are proper terminology.

15. 2 – It is wisely and responsibly acknowledged by the Comptroller’s Office that management of these Fire Lanes is in the best interest of the County.

16.1 – 18.3 – The Earth Spirit group will answer the specifics on the entire Finding of Facts once the review becomes public. Earth Spirit has been a willing and cooperative partner in the operation of the Woodlands Environmental Educational Center. The Center is the Educational aspect of the FMP recommendations. The facility buildings and camp was in deplorable conditions in 2000. Infrastructure decay occurred over several years dating back to around 1990 when the 4-H Camp closed its doors. Since Earth Spirits take over of the Center, tremendous community educational opportunities have been conducted at this facility, which has had a total rehab and transformation.

19.1 & 19.2 - (See above)

20.1 – It is acknowledged that Higher yields from sales have resulted from our program.

20.2 – 21.2 – (See above)

A Review of Erie County's Forest Management Plan and its Implementation
July 2006
Office of Erie County Comptroller Mark C. Polencarz

Executive Summary

In March 2003, the Erie County Executive presented to the public an Erie County ("County") Parks Master Plan ("Master Plan"), a five-year \$15 million proposal to rehabilitate the County's parks and forest lands using proceeds from the County's tobacco securitization. In December 2003, the County Executive and the County's Department of Parks, Recreation and Forestry ("Parks Department") released the County's Forest Management Plan ("Forest Plan"). The Forest Plan had a stated intention of "creating sustainable forests in Erie County for the 21st Century."¹

1.1

Among the highlights of the Forest Plan included new objectives for utilizing the more than 3,100 acres of County forests in Boston, Concord, Holland and Sardinia. These objectives were: "creating educational and economic opportunities for taxpayers, community groups, and educators; utilizing the Woodlands Environmental Educational Center and certain Lots for scientific experiments in ecology and forestry; putting forest products to good use in County parks, departments, and for public projects; reducing taxes through profits from sales of lumber products; providing for water resources protection, wildlife habitat enhancement and fire protection; and encouraging/enhancing recreational use."² The Forest Plan recommended selective harvesting and active forest management - logging - in all County forest lands. The Forest Plan recommended the County harvest more than 50 percent of the 120 fields in the County's 13 forest lots (together the "Forest Lots" and each lot individually a "Forest Lot").

1.2

Following creation of the Erie County Fiscal Stability Authority ("ECFSA"), the County was required to prepare and submit a Four Year Financial Plan ("Four Year Plan") to ECFSA for its review. Included in the Four Year Plan is initiative number 4 entitled "institute active forest management program." The Four Year Plan recommended that the County initiate an active timber harvesting program to develop additional revenue for the County, an initiative which this office supports. That program and initiative began in late 2005 with the award of a contract to a logging company to begin harvesting and selling timber from County Forest Lots.

1.3

Our office's review of the Forest Plan and the harvesting and auction/sale of timber from County Forest Lots has resulted in the following major findings and observations:

1.4

- The Parks Department and County Division of Purchase failed to widely disseminate, via postal mail, electronic mail, the Internet, and/or publications, a fall 2005 request for proposals ("RFP") announcing the timber harvesting project in order to maximize responses.
- That failure led to a lack of responses to the RFP (only one response).

1.5

1.6

¹ Erie County Forest Management Plan, cover page.

² Erie County Forest Management Plan, p. 6.

- The RFP was deficient in certain respects in failing to adequately define the scope of work to be conducted and in failing to define revenue expectations for the County and vendor. 2.1
- The RFP and legal notice announcing the project contradicted each other in defining the Forest Lots to be harvested. 2.2
- The winning vendor's response to the RFP was vague and incomplete. 2.3
- We question the role of the cooperating consulting forester and his relationship with the winning vendor. 2.4
- The RFP and the contract signed between the vendor and the County are inconsistent: the RFP specifies harvesting in only County Forest Lots 3 and 7 whereas the contract includes language allowing the vendor to harvest timber in other lots in the future with no mention of a new RFP process. 2.5
- A February 2006 legal notice in the Buffalo News announcing the auction/sale of harvested timber did not conform to the contract with the vendor. 2.6
- A February 2006 legal notice announcing the auction/sale of harvested timber does not appear to have been published in the County's two official newspapers and on the County's web site, as was required by the vendor's contract. 2.7
- The County Forester attempted, despite directions to the contrary, to conduct an auction/sale of timber from Forest Lot 3 without publishing legal notices advertising the sales. This action was only halted after the intervention of the Office of Comptroller and the County's Department of Law. 2.8
- We believe the vendor and County have did not sufficiently publicize and solicit potential buyers for harvested timber. 2.9
- The County Forester has not attended every timber auction to monitor the viewing and bidding process, resulting in concerns over prices and payments to the County. 2.10
- Notwithstanding the above concerns, harvested timber has generally resulted in higher than average prices for the County, when compared to timber sale data maintained by the State of New York. 2.11
- The vendor has not remitted any payments nor held any auction/sales since mid-May 2006. As of the date of this Report, total payments constitute only 27% of that budgeted for in the County's 2006 Adopted Budget. If no more harvesting takes place in 2006, there will be a significant revenue shortfall for the Parks Department and County in 2006. 2.12

- The vendor has failed to follow the terms of its contract in providing documentation concerning timber sales. 3.1
- We question the role an environmental education group, Earth Spirit Educational Services, Inc. ("Earth Spirit"), played in the development of the Forest Plan, and its use and occupancy of County facilities at Forest Lot Two. The contract entered into by Earth Spirit and the County in 2001 (the "ES Contract") does not conform to the 2000 Legislature resolution authorizing the County to partner with Earth Spirit. 3.2
- Neither the 2000 Legislative Resolution nor the ES Contract permits a member of Earth Spirit's staff to live in a rehabilitated caretaker's cottage at Forest Lot Two, but an employee was doing so. This was finally addressed through the execution of an addendum to the ES Contract in October 2005 (the "ES Addendum"). 3.3

Background

Erie County Parks Master Plan

On December 13, 2001, the Erie County Legislature ("Legislature") approved a request from the County Executive (Communication 20E-10) to execute consulting contracts with Parsons Transportation Group and Wendel-Duchscherer to conduct a regional parks study and develop a comprehensive plan for Erie County's parks system. Between spring 2002 and spring 2003, the consultants worked with the County's Parks Department and the County's Department of Environment and Planning on that initiative. This work was completed at a cost of nearly \$400,000 and presented to the County Executive in March 2003. 3.4

In March 2003 the Erie County Executive released the County's Master Plan, a five-year \$15 million proposal to rehabilitate the County's parks and forest lands using proceeds from the County's tobacco securitization. Included within the Master Plan was funding for the Parks Department's Bureau of Forestry to develop a new master plan for the County's forest lands. On May 22, 2003, the Legislature approved (Communication 9E-66) the first phase of the Master Plan, a \$1,000,000 proposal for capital spending in 2003. On July 10, 2003, the Legislature approved (Intro. 14-7) a resolution submitted by three legislators with the support of the County Executive to appropriate an additional \$30,000 to the Erie County Soil and Water Conservation District "for use in the development of the Forest Management Plan." 3.5

Erie County Forest Management Plan

In December 2003, the County Executive and Parks Department released the Forest Plan. The Forest Plan, with a stated intention of "creating sustainable forests in Erie County for the 21st Century," was developed by the Parks Department in partnership with Erie County Soil and Water Conservation District, Earth Spirit, the New York State Department of Environmental Conservation, the United States Department of Agriculture's Natural Resources Conservation 3.6

Service, and the State University of New York at Buffalo's Environmental Studies Program. It was the first large-scale, in-depth review of the County's forests since 1965.

4.1

Among the highlights of the Forest Plan included new objectives for utilizing the more than 3,100 acres of County forests in Boston, Concord, Holland and Sardinià. Those objectives were: "creating educational and economic opportunities for taxpayers, community groups, and educators; utilizing the Woodlands Environmental Educational Center and certain Lots for scientific experiments in ecology and forestry; putting forest products to good use in County parks, departments, and for public projects; reducing taxes through profits from sales of lumber products; providing for water resources protection, wildlife habitat enhancement and fire protection; and encouraging/enhancing recreational use."³

4.2

The Forest Plan was developed in part by Earth Spirit, a non-profit organization that conducted the majority of the field survey work of the forests under contract by Erie County Soil and Water Conservation District and the Bureau of Forestry. The Forest Plan recommended selective harvesting and active forest management – logging – in all County forest lands. The Forest Plan recommended the County harvest more than 50 percent of the 120 fields in the County's Forest Lots. In some cases, the stated intention was to remove trees to enable new tree growth. While the Forest Plan was unable to quantify potential revenues from the sale of timber, the Parks Department envisioned harvesting timber to develop revenue for the benefit of the Bureau of Forestry.

4.3

On February 19, 2004, with the Parks Department and Forest Plan recommending the "selective harvesting of timber on a scheduled basis to produce moderate income over a long period of time," the Legislature unanimously approved the Forest Plan, as well as a request by the Parks Department to hire three new Parks Maintenance Workers I (not in the Adopted 2004 County Budget) to work in the Bureau of Forestry (Communication 4E-4). Under the request, the positions, at a cost of \$98,500, would be paid for using revenues from the sale of forest products.

4.4

2004 and 2005

During 2004, County Parks Department crews, including staff in the Bureau of Forestry, worked on the Parks Master Plan. There was little discussion or publicity of the Forest Plan, aside from a few letters to the editor of the local newspaper and an occasional article or column in the Buffalo News. No revenue was generated in 2004 by the sale of forest products to support the salaries of the three new Forestry staffers. In early 2005, as a direct result of the County's 2005 budget crisis, the Bureau of Forestry lost all staff, aside from the County Forester. As a result, no revenue was generated from the sale of forest products in 2005.

4.5

The Four Year Financial Plan and 2006 Budget

While the County has engaged in timber harvesting and production at its saw mill, it has traditionally produced such wood for the County's use and not for commercial use or sale. In fact, in the County's 2000, 2001, 2002, 2003 and 2004 budgets, the County neither budgeted nor

4.6

³ Erie County Forest Management Plan. p. 6.

received any revenue for the sale of forest products. In 2005, the adjusted adopted budget included \$225,000 in revenue in the Parks Department from the sale of forest products. However, as noted, no revenue was generated in 2005.

5.1

The County's Four Year Plan includes initiative number 4 entitled "institute active forest management program." The Four Year Plan recommended that the County initiate an active timber harvesting program to develop additional revenue for the County. The consultants recommended that the County retain an *independent* forestry consultant for tree selection (emphasis added), contract development, site inspections, general management planning, accounting services and restoration activities. That forestry consultant would help manage the forest management program and guide the County in its retention of a contracted forester for the harvesting.⁴

5.2

The Four Year Plan projected net revenue (as well as discounted fiscal impact) to the County of \$120,000 for 2006, \$239,000 for 2007, \$244,000 for 2008 and \$250,000 for 2009. The Four Year Plan noted that based on comments by the County Forester, that the County could potentially receive twice as much revenue in the first few years as projected. In fact, in the County's adopted 2006 budget, \$490,600 was budgeted in revenue from the sale of forest products, or more than four times as much revenue as projected in the Four Year Plan for 2006.

5.3

Request for Proposals for Timber Harvesting

On September 10, 2005 (prior to the approval of the Four Year Plan), the Parks Department announced a request for proposals ("RFP") in the Buffalo News. Responses were due September 23, 2005.

5.4

Aside from this one-day advertisement in the Buffalo News, the Parks Department and the Division of Purchase ("Purchase") did not advertise the RFP in any other manner. The RFP was neither disseminated to any national or regional trade publications nor disseminated via the Internet. No other publicity was generated or pursued by the County to announce this RFP and generate interest or responses by potential bidders. (The County Forester has since stated that "future advertising in these [the Buffalo News and the DEC web site] venues should be considered.")⁵

5.5

The announcement stated that the County was:

Seeking proposals from qualified professional firms to establish a forestry management program with the primary objective of removing felled trees, thinning and harvesting standing forests on 13 County owned lots comprised of 375 acres in the towns of Boston, Sardinia, Concord and Holland. Respondents will be required to conduct advertising and auction sale of forest products.

5.6

⁴ County of New York Four-Year Financial Plan: FY2006-FY2009. p. V-227.

⁵ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

The two-page RFP announced that the County's intention was for "375 acres to be managed by cleaning felled trees for firewood production and harvesting forests for board feet production. This process will encompass two lots only located in Sardinia and Holland" (Lots 3 and 7). Among requirements for respondents were a demonstration of industry experience and similar projects involving forest management; the required use of a horse team to haul timber; and working under a cooperating consulting forester. In addition, respondents were informed they would work with the forester to "select, cut and transport trees to required areas... and then conduct advertising and auction sale of forest products. Monthly reports will be given to the County of Erie on production." Further, all proposals were required to contain details of the estimated man work days necessary, estimated board feet harvested per day, and estimated net percentage of revenue to the County from the sale of the products. 6.1

According to the Division of Purchase's ("Purchase") formal bid control file, Purchase acting at the behest of the Parks Department, disseminated the RFP via postal mail to three parties: Hillview Logging, Inc. of Holland, New York ("Hillview"); Peter Collin of Portageville, New York; and "Frederick Safford & Jim Ellis, Forestry Consultant, LLC; 595 South Street, East Aurora, New York" (which is Mr. Safford's address). Aside from the entities to which the RFP was mailed, no other entities responded or requested a copy of the RFP. 6.2

Two parties, Hillview and Peter Collin, conducted a site visit of the forest lands on September 16, 2005. Only Hillview, in conjunction with Frederick Safford, submitted a response. Of the three firms that received a copy of the RFP, two, "Frederick Safford & Jim Ellis, Forestry Consultant, LLC" and Hillview Logging, share a corporate office. Mr. Ellis is President of Hillview Logging). As such, in reality, the RFP was only disseminated to two entities. 6.3

Hillview Logging, Inc.'s Response

Hillview Logging, Inc. is a New York business corporation whose principal is James R. Ellis. In its response dated September 20, 2005 (which was not signed by Mr. Ellis), Hillview provided very limited information detailing its and Mr. Ellis' experience. Hillview also provided a list of 16 individuals as references. 6.4

Hillview's response provided greater details concerning Frederick Safford and his background in forest management and timber harvesting. However, like Ellis, Safford's information was limited and Safford did not provide any references for verification as required in the RFP. 6.5

On the basis of these areas and the lack of content and details, we have concerns regarding Hillview's response to the RFP. 6.6

The RFP required respondents to estimate the man work days and estimated board feet per day produced. Hillview stated that it would use four men working over 120 days, for a total man work days of 480. Hillview also stated that it could harvest 5,000 board feet per day. The company estimated the net percentage of revenue to inure to the County would be 70%. Hillview's response stated that the type of wood being harvested would also drive their 6.7

commission and revenues to the County. The company stated that white ash and soft maple trees would cause a 50% payment to the County; black cherry and hard maple trees would cause a 70% payment to the County.

7.1

On October 12, 2005, at the request of the County administration, the Legislature (Communication 25E-11), authorized the Commissioner of the Parks Department to negotiate a contract with Hillview, to "manage Erie County forests for a period of one year with the option to renew for five additional one year terms with compensation to Hillview Logging Inc. ranging from 30% to 50% of sales of forest products."

7.2

Contract with Hillview Logging

On December 8-9, 2005, the County executed an agreement with Hillview to harvest and sell timber from County Forest Lots 3 and 7 "initially" (the "Hillview Contract"). The Hillview Contract is for the period December 1, 2005 to December 1, 2006, with the ability to renew for five additional one-year terms. During the contract term, Hillview is required to submit any oral or written reports as required by the County.

7.3

Under the terms of the Hillview Contract, Hillview is required to utilize horse teams to transport timber to the auction/sale site. If, however, the distance is greater than one-quarter mile, the contractor is allowed, with the consent of the County Forester, to utilize motor vehicles. The contract states that Hillview shall "strive to reach a goal of producing 420,000 board feet of lumber per year... not to include softwoods." The contract does not preclude the harvesting of softwoods. As per an accepted practice in timber management, no "manual" reseeding occurs. The natural process of trees seeding adjacent areas is expected to take place.

7.4

Exhibit A of the Hillview Contract states that the contractor shall conduct periodic auction sales of the timber at designated areas with the consent of the cooperating consulting forester and County Forester. Such sales shall:

7.5

be marketed by the Contractor to area lumber purchasers from Contractor's mailing list and shall be communicated to such potential purchasers by Contractor by U.S. Mail, fax or telephone. The County, through its Division of Purchase, shall, at Contractor's expense, advertise the annual schedule of auction sales, once in each of the two official County newspapers, the Buffalo News and the County website, utilizing information provided by the Contractor and confirmed by the County Forester.

7.6

Furthermore, the contract provides:

auction sales shall be scheduled on Mondays. Bid quotes shall be communicated to Contractor by purchasers either by sealed written bids or by fax no later than 3:00 p.m. on the Wednesday of the same week following the *sale* [emphasis added – see comment below]. Contractor shall provide bid quotes to the County

7.8

Division of Purchase by fax... by 4:00 p.m. on said Wednesday. The concurrence of the County Division of Purchase and the Contractor as to the highest responsible bid shall be confirmed by fax between the County and Contractor as soon thereafter as possible. [Note: we believe that there is an error in the contract concerning the word "sale" in regard to the transmittal of bids; we believe the correct word should be "viewing." This discrepancy needs to be addressed.]

8.1

The Hillview Contract states that the contractor shall be compensated on a commission basis from the sale of forest products and shall remit to the County, within seven business days of receipt of payment from the end purchasers, the balance of the proceeds of each auction sale of forest products after deducting from the gross proceeds their commission. Included with each payment to the County shall be an itemized accounting of the amount of forest product (in board feet), for each species of tree sold and the amount of gross revenues received by Hillview for each.

8.2

The rate schedule as stated in the Hillview Contract is as follows:

Species of Tree	Percentage Commission to Hillview
Softwoods	70%
White Ash	50%
Hickory	50%
Maple/soft	50%
Red Oak	50%
Bass Wood	50%
Black Cherry	30%
Maple/hard	30%

8.3

Advertising of Auction/Sale of Timber

On Saturday, February 11, 2006, the Parks Department announced the auction/sale of forest products through a legal notice in the Buffalo News. The announcement, which ran for only one day, stated the County was seeking bid submissions for the harvest of Forest Lot 7 in which roadside logs of hard maple and cherry trees would be sold. Viewings were available between February 13-16, 2006 and bid submissions were due to the Division of Purchase by 12:00 p.m. on Friday, February 17, 2006. Despite the contract provision that "Purchase shall at the Contractor's expense, advertise the annual schedule of auction sales, once in each of the two County official newspapers (the Front Page and Amherst Bee), the Buffalo News and the County Website, we can find no evidence that the announcement was placed in the Front Page and Amherst Bee, nor placed on the County's web site. This requires clarification from the Parks Department and Purchase.

8.4

It appears that the terms of this announcement do not correspond to the contract with Hillview. The Hillview Contract specified that "auction sales shall be scheduled on Mondays. Bid quotes shall be communicated to the Contractor by purchasers either by sealed written bids or by fax no later than 3:00 p.m. on the Wednesday of the same week following the sale [again, we note that we believe this should say "viewing," not "sale"]. Contractor shall provide bid quotes to the County Division of Purchase by fax by 4:00 p.m. on said Wednesday." The legal notice announcing the auction/sale of forest products at Forest Lot 7 specified that bid responses were due to the Division of Purchase, and not Hillview. We also note that the contract specified a Wednesday deadline for submission of bids when the legal notice gave a Friday deadline.

9.1

On March 20, 2006, this office contacted the Division of Purchase regarding the auction/sale process and sought clarification on the sales. Based on conversations between our staff and Purchase staff, we became aware of two major issues: (1) that the County Forester had asked Purchase in advance of the February legal notice being published if Hillview could harvest and sell timber from other Forest Lots (other than Lot 7) without advertising their harvesting and sale; and (2) that the County Forester had inquired of Purchase whether or not Hillview could conduct an auction/sale of timber in Forest Lot 3 on March 27, 2006 without placing an announcement in the Buffalo News, as is required in the Hillview Contract. The Division of Purchase informed the County Forester that neither sale was permitted without advertising. However, despite such directions to the County Forester, this office learned that the auction sale was proceeding, regardless of the direction given to the County Forester by the Division of Purchase (which direction was correct).

9.2

On March 23, 2006, this office contacted the Erie County Department of Law ("Law Department"), to express our concerns regarding the auction/sale of timber at Forest Lot 3 without public notice. At our request, and with their concurrence, the Law Department contacted the Parks Department and County Forester and halted the auction/sale. To ensure full disclosure of the auction/sale, on April 10, 2006, the Parks Department published a legal notice in the Buffalo News announcing that auction/sales of forest products (maple, cherry and ash trees, and other hard and softwoods) from the Forest Lots specified in the fall 2005 RFP (i.e. Lots 3 and 7 only) would be held on Mondays starting April 10, 2006 and ending December 18, 2006. As per the Hillview Contract, the legal notice was placed once in the Buffalo News, as well as once in the Amherst Bee, one of the official County newspapers. However, there is no evidence that a legal notice was placed in the Front Page and on the County web site, as was required by the Hillview Contract.

9.3

In adhering to the contract's requirements, the legal notice also stated that bid submissions were due on the Wednesday following the viewing by 3:00 p.m. However, in a change from the contract, but properly in our view, the legal notice stated that such submissions were due to the Division of Purchase, and not Hillview.

9.4

Sale of Timber and Proceeds to the County

The Hillview Contract provides that the contractor shall be compensated on a commission basis from the sale of forest products and shall remit to the County, within seven business days of receipt of payment from the end purchasers, the balance of the proceeds of each

9.5

auction sale of forest products after deducting from the gross proceeds their commission. The below table lists the payments received from Hillview and the associated commissions.

Payment Date	Erie County Share	Hillview Share	Total
3/31/06	\$36,042.23	\$15,446.67	\$51,488.90
4/3/06	\$36,084.15	\$15,464.63	\$51,548.78
4/24/06	\$53,838.40	\$27,249.60	\$81,088.00
5/9/06	\$6,696.55	\$2,869.94	\$9,566.49
5/16/06	\$628.97	\$1,467.58	\$2,096.55
TOTALS	\$133,290.30	\$62,498.42	\$195,788.72
% OF TOTAL	68.1%	31.9%	100.00%

10.1

A review of the prices received for the timber, in comparison to prices published statewide by the DEC indicates the auctioned timber sold for higher than average prices. Comparisons of published prices for Western New York timber agree with figures from the DEC. It does appear the log sales have generated a better than average return for the County. In the March 31, 2006 sale, 80 of the 462 logs were sold at a below average market price. These logs were all rated as lower grade lumber. In contrast, 41 logs were sold at double or more of the average market price at the time of sale. The remaining 341 logs were sold at more than the average price, but less than double market price. While our office is unable to determine the reason why such sales resulted in above-average returns for the County, our office commends all parties involved in said sales for obtaining such returns.

10.2

Findings of Fact Regarding the RFP Process and Hillview Logging, Inc. Contract

Request for Proposals Requirements

We are concerned with the RFP's lack of specificity on revenue projections and proposed contractor requirements, as well as the lack of detail on the advertising and auction sale of harvested timber. The RFP gave no guidelines for the revenue division between the vendor and County, and allowed the vendor to essentially set the rate in its response. The number of hours in a man work day was not defined. In addition, there was no detail whatsoever regulating the advertising and auction/sale process.

10.3

Furthermore, the Buffalo News advertisement and the RFP contradicted each other: the advertisement stated that the County sought a vendor for "removing felled trees, thinning and harvesting standing forests on 13 County owned lots comprised of 375 acres in the towns of Boston, Sardinia, Concord and Holland" while the RFP said that "this process will encompass projects only located in Sardinia and Holland." This is a significant discrepancy that could have impacted the amount of respondents to the RFP.

10.4

Based on the limited number of entities to which the RFP was disseminated, no apparent active effort to maximize the visibility of the RFP to attract as many potential respondents as possible, as well as the very short lead time for respondents (13 days), we are concerned about this RFP process. According to the Buffalo News, "well-known" local loggers were never

10.5

contacted about the RFP (or the auction/sale of the harvested timbers).⁶ Because Hillview was the sole respondent to the RFP, our concerns are magnified. *Based on the above, our office concludes that when other Forest Lots are ready for logging, the County should issue a new request for proposals and aggressively advertise the project to maximize respondents, which in turn will maximize potential revenue to the County.*

11.1

Hillview Logging, Inc. Contract

We question why certain language was used in the Hillview Contract, which contradicts the RFP. Specifically, the RFP stated that the winning vendor would only harvest and sell timber harvested from Forest Lots 3 and 7, but the Hillview Contract states the vendor will harvest and sell timber from those lots *initially*. This leads to the conclusion that the County and Hillview intend to engage in additional harvesting at other Forest Lots. If that is the County's intention, we believe that a new RFP must be issued for additional Forest Lots.

11.2

Additionally, on May 11, 2006, the County Forester conducted a tour of the harvested Forest Lots with the Chair of the Erie County Legislature's Energy and Environment Committee, the Deputy Comptroller-Audit, and the local forestry chair of the Sierra Club. At that tour, the County Forester promised to work with local environmental groups and other parties to make the harvesting process and the next phase of the Forest Plan for additional Forest Lots more open and transparent. *Based on the above, we request that the County Forester and Parks Department respond as to whether it is the intention of the parties to engage Hillview for all future logging efforts on County Forest Lots, or if they intend to issue a new request for proposal for future logging on all other Forest Lots.*

11.3

Furthermore, the Hillview Contract requires Hillview to include with each payment, an itemized accounting of the amount of forest product (in board feet), for each species of tree sold and the amount of gross revenues received by Hillview for each. Our review of the documentation provided by Hillview to the County Forester reveals that the terms of the contract are not being followed in one respect. Hillview has not provided an itemized accounting of the amounts of forest products (in board feet) for each species of tree sold – a problem that the County Forester at one point himself acknowledged in a memorandum to Hillview.⁷ *As such, we request that the County Forester and Parks Department confirm that for all future sale(s) conducted by Hillview all Hillview Contract terms be met during the remittance of payment.*

11.4

Method of Conducting the Auction/Sales of Timber

Regarding the auction/sales, this office is concerned that the County and contractor have not engaged in enough publicity or advertising to generate significant attendance and bidding on harvested timber. As previously mentioned, according to the Buffalo News, "well-known" local loggers were never contacted about the auction/sale of the harvested timber.⁸ The County

11.5

⁶ Bonfatti, John. "Logging Effort Criticized: Erie County Forester Defends Program on Several Fronts." The Buffalo News, April 10, 2006.

⁷ April 28, 2006 Memorandum from Brian Grassia to Jim Ellis.

⁸ Bonfatti, John. "Logging Effort Criticized: Erie County Forester Defends Program on Several Fronts." The Buffalo News, April 10, 2006.

Forester states that "I have been advised by Hillview Logging that mailers are used as well as phone calls and e-mails. We have had discussions on this very subject and I have asked Hillview to continue to make progress and improvements to the way we promote our products."⁹

12.1

Based on documentation provided to this office by the County Forester, while multiple bidders (six) have attended at least one auction sale, we remain concerned that Hillview and the Parks Department (County Forester) have not done enough to maximize attention to and publicize the auction/sales. *While we note that prior sales under the Hillview Contract have generated above-average prices for the forest products sold, we question whether higher prices could have been obtained if more parties had been notified of the proceedings.*

12.2

The County Forester's lack of specific knowledge concerning potential buyers and his reliance on the contractor for this information/confirmation is troubling. The County Forester has conceded that he has not attended every auction to monitor the results and ensure that the County is receiving the full price and revenue. He states that he is relying on the contractor to behave responsibly and honestly.¹⁰ That lack of monitoring is extremely disturbing. *We encourage the Parks Department, County Forester, and Hillview to do more to engender more attendees and bidders, and in so doing, inuring additional revenue to the County (which, of course, will bring additional revenue for Hillview). We also strongly recommend that the County Forester or a qualified County employee attend every auction and sale to monitor the proceedings.*

12.3

Additionally, the Hillview Contract states that Hillview will hold a timber viewing every Monday, with bids on the harvested logs delivered to Hillview the following Wednesday by 3:00 p.m. Hillview is required to then provide copies of the bid quotes to Purchase of Tax by 4:00 p.m. on that day. We note for the record that Hillview is holding viewings on various Mondays, but not every Monday, with the company stating that there are not enough logs on some Mondays to warrant a viewing or auction/sale.

12.4

Furthermore, we have concerns regarding Hillview's role in receiving bid responses for the auction/sale in advance of the Division of Purchase. *We believe that the Division of Purchase should receive all bids prior to any other party as an appropriate control mechanism, and then provide those responses to Hillview.*

12.5

Finally, when logs are sold, payment is made to Hillview by the auction winner. Hillview then remits to the County a portion of the sale via check. Hillview has seven days from the sale date to make the payment. We note for the record that of the five auction/sales our office reviewed, two individual payments were each received two days early, one payment was on-time, one payment was one day late and one payment was two days late. Thus, in general, the terms of the Hillview Contract are being observed in regards to timely payment to the County.

12.6

Potential Budget Shortfall for 2006

⁹ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

¹⁰ May 23, 2006 Memorandum from Brian Grassia to Michael Szukala.

As previously noted, while the Four-Year Plan projects \$120,000 to be raised in 2006 from the sale of timber, the final 2006 Adopted Erie County Budget projects \$490,600 in revenue from the sale of forest products. The RFP response from Hillview estimates \$830,000 in potential sales for 2006 (and it is uncertain if that response was for just Forest Lots 3 and 7 or all Forest Lots). If the estimate is correct, the County should receive \$500,000 in income based upon current commission percentages, or a little more than the budgeted amount.

13.1

At the same time, any shortfall in the sale of forest products in 2006 would have negative consequences on the Parks Department and the General Fund. As of June 27, 2006, the County received \$133,290 from the sale of forest products, with the last payment being made on May 16, 2006, leaving a \$357,310 gap in the Parks Department budget. The last payment to the County was small, \$628.97 (apparently for softwoods), with Hillview earning \$1,467.58. The reduction in number as well as dollar value of sales suggests that Hillview may have already completed harvesting Forest Lots 3 and 7, leaving a potential revenue gap in the Parks Department's 2006 budget. *As such, we request clarification from the Parks Department and County Forester as to whether more sales of timber products are contemplated from Lots 3 and 7 this year, and if so, the projected revenues to be generated to the County from said sales.*

13.2

Findings of Fact Regarding Roads and Fire-Lanes (Breaks)

Environmental groups and individuals have expressed concerns regarding fire lanes in the Forest Lots. These concerns have included larger questions surrounding their opposition to timber harvesting and clearing of timber or trees for fire lanes, as well as specific concerns or allegations regarding the use of federal disaster funds for the development of fire lanes. While this office does not question the right of the County to harvest its forests (indeed this office supports appropriate long-term forest management that creates revenue for the County), as part of our comprehensive review of the County's Forest Management Policies we examined the specific issue of construction of roads and fire-lanes in County forests.

13.3

Forest Plan Provisions for Fire Lanes

In August 2002, the County Forester stated to the Buffalo News that he was convinced that all 13 County forest lots needed to have fire lanes cut through them to help mitigate against forest fires. His stated reason was that a forest management plan must "protect the urban interface."¹¹ Based on the Forest Plan, which notes that the 13 lots are adjacent to approximately 140 private properties, good fire management is crucial in the protection of this urban interface (neighbors). We understand the County Forester to mean that fire lanes are necessary to protect neighboring properties. However, as the County Forester acknowledged, with the development of fire lanes in forest lots, comes further human intrusion, particularly by all-terrain vehicles and snowmobiles, which have caused further problems and damage to the forests and trails.

13.4

The Forest Plan includes a section concerning wildfire management and maintenance. That section summarized the then-current state of fire lanes on the 13 forest lots by noting that there were upwards of 50 miles of fire lanes. The Forest Plan noted that while forest fires in this

13.5

¹¹ Levy, Michael. "County Official Strives to Open Access to All." The Buffalo News. August 4, 2002.

region are rare, the County must be prepared, and must "develop a Fire Management Plan and groom and widen current fire lanes for multi-use activities." The Forest Plan also stated that Earth Sprit, which wrote the report, has "trained, certified wildland fire fighters (and) we can develop a plan" that will help protect "the assets of Erie County's forest, neighbor's lives and property."¹²

14.1

Recent Events

Earlier this year, our office received reports that Federal Emergency Management Agency ("FEMA") disaster funds received by the County may have been utilized inappropriately to build fire lanes. For example, in late February 2006, the local forestry chair from the Sierra Club, who has been actively monitoring the Forest Plan, published an opinion article in the Buffalo News contending that the County inappropriately utilized \$50,000 of FEMA funds to build a gravel road in Forest Lot 7 and he suggested that the road had been constructed to facilitate the harvesting.¹³

14.2

Contrary to such opinion, our review determined that the entity is a fire lane, and has been in place for more than 50 years. The fire lane was partially washed out after a storm in spring 2004 and was re-graded and a culvert was replaced in mid-May 2005. The County conducted this work using funding obtained from FEMA and the U.S. Department of Housing and Urban Development ("HUD"). *According to the County Forester, and as confirmed by our research, no County funds were used in the reconstruction of the road or culvert.*

14.3

The County received FEMA disaster funds through a federal declaration under FEMA disaster number 1534. FEMA package 85 is an amalgamation of work on roads through the Parks Department that suffered storm damage covered under FEMA disaster number 1534. The actual cost to rehabilitate the road/fire lane was \$42,504.91, of which FEMA was responsible for \$5,300.20. HUD Community Development Block Grant ("CDBG") funds were used to pay the remaining amounts of \$25,800.00 for equipment rental and \$11,554.77 for raw materials, including gravel and asphalt. The total FEMA package 85, which covered more than just this one road, is \$136,974.30.

14.4

CDBG funds may be used for "parks and recreation" and "flood and drainage facilities". CDBG funds are generally required to be expended in areas with/for "low and moderate income persons and/or the prevention of slums and blight." The location of such a project or the area served must contain "a majority of low and moderate income persons". Presumed to be low and moderate income persons are "seniors, the handicapped, domestic violence victims and the homeless." The "wealth codes" for the areas surrounding Forest Lot 7 as per the 2006 Hanes Directory range between 43 and 49, below the New York State median of 55.9. While the income levels of the few residents adjacent to Forest Lot 7 may have technically allowed the County to use CDBG funds for the fire lane rehabilitation, we question the use of CDBG funds for such a purpose (though we do note that because such funds were used, no County funds were used for the project).

14.5

¹² Erie County Forest Management Plan, pp. 210-211.

¹³ Beahan, Larry. "Scalping the Erie County Forest." The Buffalo News, February 27, 2006.

We also take note that in 2000, the Bureau of Forestry applied for, and received \$20,472 from FEMA for declared disaster 1335 for flood damage to fire lanes and roads. Thus there is precedent for this use of such federal funds.

15.1

Although described as a "park road" in a FEMA document, County maps from the 1940s describe these lanes as "fire breaks" and as "fire lanes". The fire lanes/fire breaks were originally installed sometime before 1940. An environmental group has suggested that the fire lanes/breaks be abandoned. The rationale behind this statement is the lanes are no longer needed. Although Erie County has yet to suffer a major forest fire, the lanes do provide a means to stop one should a fire occur. *We believe that the County should continue to maintain these lanes, if for liability reasons alone, given neighboring private properties. A key question, however, is the extent to which the lanes should be maintained. For instance, should the County simply prune back overhanging tree limbs and clear brush back from the fire lanes, or should the lanes be widened and improved with gravel, asphalt, etc.? In our opinion, at a minimum, and in the interest of fire safety, the routine pruning of trees across fire lanes should be pursued.*

15.2

Findings of Fact Regarding Role of Frederick Safford, Consulting Forester

Frederick Safford Forestry Consultant, LLC, a domestic limited liability company, whose principal is Frederick Safford, is a cooperating consulting forester based in East Aurora. As stated by the DEC, which maintains a database of consulting foresters, "a consulting forester works in the private sector providing services on a fee or contingency basis, not employed by a forest industry with no direct economic interest in a timber procurement or purchasing entity."

15.3

The Four Year Plan consultants recommended that the County retain an *independent* (emphasis added) forestry consultant for tree selection, contract development, site inspections, general management planning, accounting services and restoration activities. That forestry consultant would help manage the forest management program and guide the County in its retention of a contracted forester for the harvesting.

15.4

Safford was one of the three entities to which the RFP was originally disseminated; the RFP sent to Mr. Safford was sent to him and Jim Ellis, President of Hillview Logging, Inc.. It is our belief that Mr. Safford is acting as a subcontractor for Hillview and thus paid by Hillview, which was confirmed by the County Forester. While we are not aware of the exact nature, amount or terms of the payments by Hillview to Mr. Safford, we are concerned that Mr. Safford is not "independent." The DEC definition of a consulting forester states the forester is "not employed by a forest industry with no direct economic interest in a timber procurement or purchasing entity."¹⁴ Mr. Safford is, in fact, employed by or under contract to a member of the forest industry - Hillview Logging - and not the County. That is a concern. When asked about this issue, the County Forester stated "we will take a second look at this to see if it is better for us to reduce the Hillview % and hire the consulting forester ourselves."¹⁵ *We concur and recommend that the Parks Department and County Forester confirm the exact relationship*

15.5

¹⁴ See <http://www.dec.state.ny.us/website/df/privland/privassist/cooplist.html>

¹⁵ June 27, 2006 Electronic Mail from Brian Grassia to Michael Szukala.

between Mr. Safford (or his entity) and Hillview and state whether the County should obtain an independent consultant, and if so, how that consultant would be paid.

Findings of Fact Regarding the Role of Earth Spirit Educational Services, Inc.

On July 13, 2000, the Legislature approved a request of the County Executive (Communication 16E-15) for the County to enter into a partnership with Earth Spirit, a non-profit environmental organization headed by Sanford Geffner, coordinator of the State University of New York at Buffalo's Environmental Studies Program. Under the partnership, which the university would also join, the two non-County entities would conduct environmental education programs on a County forest lot in Sardinia. Under the resolution, any revenues collected by Earth Spirit in administering the educational programs were to be given to the County "and placed in a separate revenue account which is authorized for appropriation to be used solely for improvements, development and maintenance of the Genesee Road camp site." Note that no fees are collected by Earth Spirit for tours of County facilities or woodlands, but fees are collected for programs generated by Earth Spirit. 16.1

In August 2000, the County Executive announced that Earth Spirit would convert an unused former 4-H Camp in the County's Forest Lot Two in Sardinia into an environmental education center. The 4-H Camp had been in use between 1965 and 1990, but was not in use after 1990. The property includes a caretaker's residence and office, dining hall and kitchen, nurse's cottage, barn, and shelters. Mr. Geffner specifically stated that the facility would be an environmental education center, and not a camp.¹⁶ 16.2

According to the Forest Plan, starting in fall 2000, Earth Spirit began a general site inventory and clean-up at Lot Two, developed a "resource analysis and management plan" for the site, and assisted the Parks Department in administering seasonal maple sugaring programs for local schools and the public at the County's Sugar Shanty and Dining Hall on Lot One in Sardinia (note: the Parks Department's saw mill is also on Lot One). In addition, Earth Spirit conducted educational programs on forest lots, including a high school "envirothon" ecology competition. One of the County's Sugar Shanty ended in 2004 when Earth Spirit established its own sugaring facility at the Woodlands. 16.3

In spring 2001, the three partners announced the creation of the Woodlands Education Center in the former 4-H Camp on Forest Lot Two (adjacent to Lot One). According to Mr. Geffner, the expansion of the relationship and further development of the Woodlands center concept was initiated by then-Parks Commissioner Lawrence Jasinski, who approached Earth Spirit.¹⁷ On April 19, 2001, the County signed the ES Contract, which was a five-year renewable contract with Earth Spirit and the university. Acknowledging the Legislature's authorization for the County Executive to enter into such a contract, among the contract's provisions was the following: 16.4

¹⁶ Vogel, Charity. "Environmental Center a Three-Way Effort." The Buffalo News. August 1, 2000.

¹⁷ State University of New York at Buffalo. "Abandoned Camp in the Woods to Become Field Campus for UB's Environmental Studies Program." Press Release. September 24, 2004.

Any funds or fees charged by Earth Spirit for providing and administering said programs shall be placed into an Earth Spirit account to be distributed and used as follows: 20% of the total amount collected from school-based programs shall be held by Earth Spirit in a special property maintenance account to be used by Earth Spirit and the County for maintenance, upkeep, improvements, repairs and general use on the property; the remaining 80% shall be used by Earth Spirit for costs associated with the administration and implementation of the programs at the property, including personnel costs, administrative costs, and miscellaneous costs.

17.1

This contract language does not conform to the resolution duly adopted by the Legislature on July 13, 2000 which stated that any revenues collected by Earth Spirit in administering the educational programs were to be given to the County "and placed in a separate revenue account which is authorized for appropriation to be used solely for improvements, development and maintenance of the Genesee Road camp site." This discrepancy requires clarification.

17.2

In March 2002, Mr. Jasinski and Mr. Geffner were quoted in the Buffalo News as supporting a proposal to transform the Woodlands Education Center into a residential nature study center – one in which up to 120 persons could reside for long weekends or a week to study under instructors. The same article stated that County forestry crews were working to help rehabilitate the caretaker's cabin to enable a full-time live-in Earth Spirit caretaker to reside on-site.¹⁸ In fact, the Forest Plan states that between fall 2001 and summer 2003, a "caretaker/naturalist" moved into the newly renovated caretaker's residence." The Forest Plan also states that "the Woodlands Environmental Education Center should be fully functional as a year-round residential facility by the fall of 2004... and will, as a result, be the only Residential Center in Western New York."¹⁹ This is of concern because the July 2000 legislative resolution says nothing concerning residential use for campers, nor a live-in caretaker. The April 2001 contract also says nothing concerning these matters. Further, in August 2000, Mr. Geffner had stated that the facility would not be a camp, but an education center. These discrepancies require clarification.

17.3

Between 2000 and 2004, using County Parks Department workers, inmate labor, and Earth Spirit volunteers, a variety of rehabilitation projects were undertaken at the Woodlands site, including the refurbishment of the caretaker's cabin and demolition of structures. In 2004, the County appropriated \$200,000 of tobacco funds through the Parks Master Plan to conduct capital work at the Woodlands site, including reconstruction of the dining hall, classroom facility, intern cabin and other buildings. The County's SAP system cannot account for or confirm this appropriation. However, according to the County Forester, about half of those funds have been spent for kitchen equipment, bathroom fixtures and roofing.

17.4

¹⁸ Levy, Michael. "Nature Study Center Planned for Sardinia Forest." The Buffalo News. March 31, 2002.
¹⁹ Erie County Forest Management Plan. p. 45.

In October 2005, the County, Earth Spirit and the university amended the ES Contract pertaining to the Woodlands Environmental Education Center. Among the changes was a provision to ensure County maintenance of the property pertaining to snowplowing and lawn mowing and the continued availability of the property for educational uses even if County parks were closed. Both provisions were developed as a result of the County's 2005 budget crisis and the possibility that County parks services and facilities could be closed. The amendment included one major change to the original contract allowing for one person, selected by Earth Spirit and the university, to reside on the premises to serve as a caretaker. The fact that the parties sought to amend the original contract to address caretaker residence, albeit four years later, seems to be an acknowledgement that the parties recognized a violation of the original contract. That said, the amendment still says nothing concerning residential campers. If Earth Spirit or the university is hosting anyone who is residing overnight at the Woodlands facility, that provision for overnight accommodation should be in the contract with the County. 18.1

We have other questions, including the question of which party is paying for utilities at the property: the County or Earth Spirit? In addition, what capital improvements are ongoing at the site, particularly to the buildings and equipment/infrastructure in the buildings (i.e., kitchen, restrooms, etc.), who is conducting the work, and who is paying for those costs? We also note about allegations that Earth Spirit is charging individuals a fee to visit or utilize Forest Lot One and/or Two, including the Sugar Shanty. The County Forester has stated that the Sugar Shanty has not been in operation for two seasons, but that Earth Spirit engages in a sugaring operation at the Woodlands. He has stated that to his knowledge, no fees are levied to tour the facilities. 18.2

As previously noted, Earth Spirit had a significant role in conducting the field work and in writing the Forest Plan. While their involvement in that project and Plan is not in and of itself a conflict, the fact that they stand to benefit from the Forest Plan in a myriad of ways, including exclusive use of County forests and the facilities at Lots One and Two while receiving revenue for their use, causes us to raise the issue of a possible conflict. 18.3

Summary and Conclusions

It must be noted that County management – the Legislature and/or the County Executive – have approved the contracts, agreements and plans. This report is provided to the Legislature and the County Administration and Parks Department to help provide guidance for the next phases of the forest management process, including the harvesting of other Forest Lots and the auction/sale of additional County forest products. 18.4

Our review of the Forest Plan and the harvesting and auction/sale of timber from County Forest Lots has generated a number of findings and concerns, as well as a set of recommendations. We present the findings and concerns and our recommendations for action below. 18.5

Findings and Concerns

Our first set of findings and concerns include the RFP process for the harvesting of timber and the vendor selected by the County to administer the program:

- The Parks Department and County Division of Purchase failed to widely disseminate, via postal mail, electronic mail, the Internet, and/or publications, the fall 2005 RFP announcing the timber harvesting project in order to maximize responses.
- That failure led to a lack of responses to the RFP (only one response).
- The RFP was deficient in certain respects in failing to adequately define the scope of work to be conducted and in failing to define revenue expectations for the County and vendor.
- The RFP and legal notice announcing the project contradicted each other in defining the Forest Lots to be harvested.
- The winning vendor's response to the RFP was vague and incomplete.
- We question the role of the cooperating consulting forester and his relationship with the winning vendor.
- The RFP and the contract signed between the vendor and the County are inconsistent: the RFP specifies harvesting in only County Forest Lots 2 and 3, whereas the contract includes language allowing the vendor to harvest timber in other lots in the future with no mention of a new RFP process.

19.1

Our findings and concerns also extend to the RFP process for and the actual auction/sale of the harvested timber:

- A February 2006 legal notice in the Eugene News announcing the auction/sale of harvested timber did not conform to the contract with the vendor.
- A February 2006 legal notice announcing the auction/sale of harvested timber does not appear to have been published in the County's two official newspapers and on the County's website, as was required by the vendor's contract.
- The County Forester attempted, despite directions to the contrary, to conduct an auction/sale of timber from Forest Lot 3 without publishing legal notices advertising the sales. This action was only halted after the intervention of the Office of Comptroller and the County's Department of Law.

We believe the vendor and County have did not sufficiently publicize and solicit potential buyers for harvested timber.

19.2

- The County Forester has not attended every timber auction to monitor the viewing and bidding process, resulting in concerns over prices and payments to the County.
- The vendor has failed to follow the terms of its contract in providing documentation concerning timber sales.
- The vendor has not remitted any payments nor held any auction/sales since mid-May 2006. As of the date of this Report, total payments constitute only 27% of that budgeted for in the County's 2006 Adopted Budget. If no more harvesting takes place in 2006, there will be a significant revenue shortfall for the Parks Department and County in 2006.

We do, however, need, and wish to highlight one positive outcome for the County in this timber harvesting and auction/sale process:

- Notwithstanding the above concerns, harvested timber has generally resulted in higher than average prices for the County, when compared to timber sale data maintained by the State of New York. 20.1

We have concerns regarding the role of Earth Spirit in the development of the Forest Plan, as well as their continuing role in occupying County facilities at Forest Lots One and Two: 20.2

- We question the role Earth Spirit played in the development of the Forest Plan, and its use and occupancy of County facilities at Forest Lot Two. The ES Contract does not conform to the 2000 Legislature resolution authorizing the County to partner with Earth Spirit. 20.3
- Neither the 2000 Legislative Resolution nor the ES Contract permits a member of Earth Spirit's staff to live in a rehabilitated caretaker's cottage at Forest Lot Two, but an employee was doing so. This was finally addressed through the execution of the ES Addendum. 20.4

Recommendations

We encourage the Legislature and the County Administration to review these findings and concerns, to respond to this office and the Legislature concerning our questions and discrepancies, and to act on our recommendations. 20.5

We request that the County Forester and Parks Department respond as to whether it is the intention of the parties to engage Hillview for all future logging efforts on County Forest Lots, or if they intend to issue a new request for proposal for future logging on all other Forest Lots. 20.6

Our office concludes that when other Forest Lots are ready for logging, the County should issue a new request for proposals for timber harvesting and aggressively advertise the project to maximize respondents, which in turn will maximize potential revenue to the County. 20.7

Through new legal announcements for future auction/sales, we encourage the Parks Department, County Forester, and vendor to do more to engender more attendees and bidders at the auction/sales, and in so doing, inuring additional revenue to the County. We also strongly recommend that the County Forester or a qualified County employee attend every auction and sale to monitor the proceedings. 20.8

We believe that the Division of Purchase should receive all bids prior to any other party as an appropriate control mechanism, and then provide those responses to the timber vendor. 20.9

Due to the current projected gap between budgeted revenue and actual revenue, we recommend that the Department of Parks, in conjunction with the Division of Budget, Management and Finance and the County Executive's Director of Management Initiatives 20.10

examine the revenue stream from the auction/sales to-date and report to the Legislature concerning actual and projected revenue from the auction/sales in 2006. 21.1

We recommend that due to the discrepancies in the legislative resolution authorizing the contracts between the County and Earth Spirit the Law Department review and if necessary, revise the contract between the County and Earth Spirit concerning residential zoning. 21.2

Discussion with Department of Parks, Recreation and Forestry

On July 11, 2006, this office provided the Commissioner of Parks, Recreation and Forestry and the County Forester with copies of this report and requested that they review the document and comment in writing by July 17, 2006. 21.3

Erie County Comptroller's Office

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