



December 13, 2019

Ms. Jacqueline Coons (*via electronic mail only*)  
Town of Guilderland  
Chief Building and Zoning Inspector  
Guilderland Town Hall – 2<sup>nd</sup> floor  
5209 Western Avenue  
P.O. Box 339  
Guilderland, NY 12084

RE: Regal Cinemas Variance Application

Dear Ms. Coons,

I offer this letter on behalf of the Albany Pine Bush Preserve Commission (APBPC) Technical Committee in response to a request for comment regarding the above referenced project by the Albany County Planning Board. The APBPC appreciates the opportunity to work with the Town of Guilderland and the applicant to balance appropriately located development with the successful conservation of the Albany Pine Bush (APB). The APBPC Technical Committee reviewed the project materials at its December 10, 2019 meeting. The comments below are a result of that meeting and the materials provided. Please forward to Zoning Board of Appeals Chairperson, Remert.

The APB supports the world's best remaining example of an inland pitch pine-scrub oak barrens, 78 wildlife Species of Greatest Conservation Need (SGCN), including the federal and state endangered Karner blue butterfly (Kbb) and state threatened frosted elfin butterfly (FE), the largest inland sand dune system in eastern North America and has been designated a National Natural Landmark, a National Heritage Area Site, a NYS Bird Conservation Area and a National Audubon Society Important Bird Area. Coordinating the review of development proposals within the Albany Pine Bush Preserve (APBP) Study Area is therefore an essential part of achieving the vision for the APBP consistent with Environmental Conservation Law (ECL) Article 46, the 2017 Management Plan Update for the APBP (APBPC 2017; <http://www.albanypinebush.org/commission/management-plan>), and the Town of Guilderland Comprehensive Plan.

The Technical Committee indicated several concerns and recommendations regarding the potential short and long-term adverse environmental impacts associated with the Regal Cinema proposal to raise the building height:

Protection: The proposal is located within the APB Study Area, described in the 2017 Management Plan Update for the APBP and, is immediately adjacent to the Karner Blue Butterfly Preserve (*see map below*). This site is an area owned by Pyramid and National Grid, but permanently protected and managed by the New York State Department of Environmental Conservation (NYSDEC) pursuant to NYSDEC Permit #4-0130-00007/0002, issued December 10, 1996, associated with an earlier expansion of the cinema complex at Crossgates Mall. This protected area includes the Butterfly Hill and Powerline Right-of-Way and supports several rare, threatened and endangered species including the Kbb, FE, eastern hognose snake, eastern worm snake, mottled dusky wing skipper and several birds listed as Species of Greatest Conservation Need by the NYSDEC. The proposal therefore has the potential for negative impacts on these species and on the APBPC's ability to create and maintain a viable Pine Bush Preserve as described in the 2017 Management Plan Update for the APBP.

Threatened and Endangered Species: It is our understanding that the Karner Blue Butterfly Preserve was created to mitigate impacts of the cinema complex at Crossgates Mall, and specifically the resulting larger shadow the cinema complex would produce on the previously protected Butterfly Hill. Based on the applicant's shade assessment, this project would result in a larger shadow and may therefore effectuate a loss of available habitat and/or habitat quality. The site also supports a population of the NYS-threatened FE butterfly which is currently the subject of an ongoing status assessment by the US Fish and Wildlife Service (USFWS) for potential federal listing as a threatened or endangered species. Both the Kbb and FE are protected by NYS ECL Article 11 and 6NYCRR Part 182. As such a NYSDEC Part 182 jurisdictional determination should be requested from NYSDEC to determine if additional permits may be needed for this project, related to threatened and endangered species.

State Environmental Quality Review Act (SEQR): The Technical Committee noted that the proposal was classified by the applicant as a SEQR Type II Action and therefore did not submit an Environmental Assessment Form. However, since it is evident from the applicant's shade analysis that the project would result in a larger shadow on the adjacent protected lands and endangered species habitat, we recommend the Town classify the action as an SEQR Unlisted action, and request a coordinated review of the proposal with both the NYSDEC and the NY Field Office of the USFWS.

The Technical Committee identified a number of potential impacts associated with the proposed action, including but are not necessarily limited to,

- Direct, indirect and cumulative impacts on wildlife species listed as threatened and endangered with extinction, including the Kbb and FE butterflies. Consultation with NYSDEC and the USFWS is requisite to determining the extent to which the site is occupied by listed species and if permits are required.

In particular, we note that this is one of several projects in this area with potential impacts on the creation and management of a viable Albany Pine Bush Preserve and protected wildlife species through increased impacts associated with traffic and storm water management. Current applications with the town of Guilderland include, but are not necessarily limited to the Rapp Road Residential Development,

Costco and the CDTA Transit Center. Therefore, an assessment of cumulative environmental impacts of these proposals may be appropriate.

- Direct, indirect and cumulative impacts on multiple NYS listed SGCN wildlife, including rare birds, reptiles and important pollinators (butterflies, moths, and bees).
- Adverse impacts on the ability to manage adjacent protected lands pursuant to NYSDEC Permit #4-0130-00007/0002, issued December 10, 1996 and the 2017 Management Plan Update for the APBP (APBPC 2017). In particular, if approved, the project may set a precedent that results in additional similar height structures in this area. Such a result has the potential to hinder fire management activities on the adjacent protected lands and nearby APBP lands as a result of increased limitations on smoke management resulting from prescribed fires.

Mitigation: Since the proposal will result in additional impacts on adjacent protected lands, and potential impacts on protected wildlife species, efforts to avoid, minimize and mitigate those impacts should be evaluated as part of a coordinated SEQRA review.

Interested and Involved Agencies: Since federal and state endangered and threatened species and storm water management permits (or permit modifications) are likely required for this project, it is recommended that the USFWS and NYSDEC be included as involved agencies and the City of Albany, Albany County and the APBPC as interested agencies in SEQRA-related coordinated review of the project.

In conclusion, the proposed Regal Cinemas remodeling proposal has the potential to result in adverse effects on the environment and the APBPC's ability to create and manage a viable preserve, as described in ECL Article 46 and the 2017 Management Plan Update for the APBP, and the long term potential viability of the multiple rare and endangered species. As such, these additional impacts and commensurate mitigation measures should be evaluated as an Unlisted Action under SEQRA.

The APBPC appreciates the Town of Guilderland's long-standing support for creating and managing a viable preserve and for its efforts to balance conservation and economic development throughout the Town. We look forward to continuing that tradition with this proposal. Thank you for your consideration of these comments and recommendations. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Sincerely,



Neil A. Gifford  
Conservation Director  
Albany Pine Bush Preserve Commission

Enclosures: Southeastern Pine Bush Map (below)

cc: APBPC Technical Committee  
Mr. Keith Goertz, APBPC Chair – NYSDEC Region 4 Director  
Mr. Christopher A. Hawver, APBPC Executive Director  
Ms. Robyn Niver, Endangered Species Biologist, USFWS – NYS Field Office  
Ms. Kathy O'Brien, Endangered Species Biologist, NYSDEC  
Mr. Michael Clark, Regional Wildlife Supervisor, NYSDEC-Region 4

Citations:

APBPC. 2017. Management Plan Update for the Albany Pine Bush Preserve. Albany, NY. ([www.albanypinebush.org](http://www.albanypinebush.org))



# Southeastern Pine Bush

