

The Croton Plan for Westchester The Comprehensive Croton Watershed Water Quality Protection Plan

Response to Comments on the Draft Plan of June 2007

May 2008

I. INTRODUCTION

The draft *Croton Plan for Westchester: The Comprehensive Croton Watershed Water Quality Protection Plan* (the Plan) was released in June 2007. A public review process was conducted through October 2007. As part of the review process, the Northern Westchester Watershed Committee (NWWC) with the assistance of the Westchester County Department of Planning held two public meetings to present the Plan and to elicit comments. Throughout the review period, the public and stakeholders were encouraged to provide written comments on the Plan. The NWWC appreciates the many comments that it received during the public review period and used these comments as the basis for finalizing the Plan.

The 2007 draft plan evolved from a working draft Croton Plan that was distributed in June 2005 to all ten participating municipalities, the New York City Department of Environmental Protection (DEP) and the Westchester County departments of Health, Environmental Facilities and Parks, Recreation and Conservation. The 2007 draft plan reflected the results of this extensive review and discussion process.

The concept of preparing a plan for the Croton Watershed originated among northern Westchester towns after the City of New York proposed in 1993 to implement new regulations that would impact land use in the watersheds of its upstate reservoirs. The local governments were supportive of efforts to protect public drinking water supplies but found that there was a lack of knowledge about the potential impact that the new regulations would have on the economic viability and character of their communities and on individual homeowners. The towns, with the support of Westchester County, argued that the City of New York should provide funding for a planning program to identify potential impacts.

The position of the northern Westchester towns led to inclusion of a provision for a Croton planning process in the New York City Watershed Memorandum of Agreement (MOA) of January 1997. The MOA was the product of historic cooperation among New York State, New York City, the United States Environmental Protection Agency (EPA), county governments, local governments and environmental organizations. The MOA sets forth policies, regulations and watershed protection programs that include land acquisition and partnership initiatives intended to protect the quality of water in the vast reservoir watersheds while accommodating environmentally sensitive economic growth.

The Croton Plan for Westchester is the product of a detailed and comprehensive inter-municipal water quality planning effort. Ten Croton Watershed municipalities worked with Westchester County and New York City DEP to assess the unique conditions in the Croton Watershed, identify

water quality impacts and develop a strategy to reduce those impacts and prevent further water quality degradation while enhancing community character.

II. OVERVIEW OF COMMENTS

In addition to the comments made at the two public meetings, the NWWC received five comment letters. The comments tended to be grouped in five broad categories: setting, development and redevelopment potential, education, nonpoint source and stormwater discharges and plan implementation and funding.

In addition, several comments addressed subjects and watershed protection issues that are beyond the scope and purpose of the Croton Plan. The Plan was not intended to be a platform for detailing mandated actions or to be a means to establish regional regulations. The purpose of the planning effort was to identify means to ensure that the northern Westchester County communities will remain economically and socially viable within a critically important watershed for public drinking water supply. After the Plan is finalized, each municipality in the Croton watershed in Westchester County will take up for consideration the recommendations and strategies set forth in the Plan. The Plan does not, and cannot, limit the home rule authority of each municipality in the areas of land use and zoning decisions.

An appendix of the final Plan includes a summary of the public meetings and the full text of all written comments submitted to the NWWC.

III. DISCUSSION OF COMMENTS

A. SETTING

Facts and figures: Many comments were made on specific tables, facts and figures presented in the draft Plan, including possible errors, omitted items and need for clarifications. The final Plan makes appropriate corrections, clarifications and specificity. For example, the typographical errors found on the data charts for Mount Kisco on the draft Plan's page 84 were corrected to show accurate acreage, parcel count and average residential lot size. Such corrections do not impact other outcomes or conclusions of the Plan. New call-out boxes were included to provide further clarity and specificity, such as the inclusion of a call-out box about the relationship of some dishwasher detergent and phosphorus.

Municipal ordinances: Comments were made that the Plan should provide specific land use control solutions through model ordinances. This subject was discussed at length during the preparation of the Plan.

As indicated in Chapter 2 of the Plan, the municipalities vary greatly in size, population, average parcel size and density of development. Each community in the watershed is unique in character and the contrasts among the towns can be dramatic. Mount Kisco, the smallest and most densely developed municipality, has 3,230 residents per square mile and has the highest percentage of

commercial land use (14%). North Salem is the least densely developed town with 222 residents per square mile and less than 1% of its land use classified as commercial. The land use patterns have been shaped by the interplay of geography, infrastructure and economics over 250 years. Even land development patterns from Colonial times continue to shape the individual character of each town. Extensive local regulations have been developed within this context.

It was determined by the NWWC that the development and inclusion of model ordinances would not be useful to the municipalities and that it was not practical to create “one-size-fits-all” model ordinances due to the significant variations in characteristics between municipalities. The Plan does indicate, however, that many of the goals of the Plan can be achieved through the adoption of local ordinances and land use control.

Other entities: Through the comment process, it was brought to the attention of the NWWC that the draft Plan does not sufficiently address the fact that some land holders, such as school districts, fire districts and public utilities, are exempt from municipal land controls. The NWWC agrees that these land holders may be responsible for impacts on water quality. So as to provide a comprehensive context of land use decision-makers in the Croton Watershed, the final Plan has been revised to acknowledge the fact that entities exist in the watershed that operate beyond the jurisdiction of local municipalities and that efforts should be made to help them bring considerations of water quality impacts into their land use actions.

B. DEVELOPMENT AND REDEVELOPMENT POTENTIAL

Comments were made on the draft Plan’s discussion of development potential within the Westchester County section of the Croton Watershed. These comments faulted the draft Plan for not calling for a building moratorium or for placement of strict limits on future growth.

The Plan estimated that the maximum development potential for new single-family homes through build-out under current zoning minimum lot area regulations is 8,612 new homes. The Plan describes this number as “an overstatement of development potential” because several factors that would determine if a potential development lot is “buildable” or could meet numerous town-specific special zoning requirements (such as minimum area likely to be buildable or minimum circle or square dimensional requirement) could not be calculated at the scale of a watershed-wide analysis. Even with this caveat, the development potential number of new homes is noted to be significantly less than the number of new homes built within the watershed communities during each of the three 20-year periods between 1940 and 2000 (13,971, 18,867 and 14,577). Further, since 2000, the number of annual building permits for new homes in the watershed has continued to decline. These observations indicate that the watershed area may be approaching near build out conditions today for single-family homes. The Plan therefore calls for increased attention to be paid to redevelopment and renovation activity on developed residential lots as this activity may not be subject to the extensive environmental regulations placed on the establishment and development of new lots.

From a legal perspective, municipalities require a sound basis to establish minimum lot sizes beyond two acres. Most watershed municipalities through their comprehensive plans have identified that basis and have acted to place large minimum lot area requirements across wide areas of the watershed. In fact, the draft Plan (in Chapter 2.0) presents data that 75% of all land in residential zoning districts in the Croton watershed is subject to a minimum lot size requirement of two or more acres and that 50% of residentially zoned land has a minimum lot size requirement of over two acres. The Plan would not represent sound planning if it called on watershed municipalities to further increase minimum lot sizes outside of the context of local comprehensive plans.

However, the Plan does point out that in certain communities, the potential build out scenario could produce a significant change in a town's character and also could result in significant potential collective environmental and water quality impacts. These municipalities are anticipated to use the Plan's findings as part of their update of a local comprehensive plan which would then provide the basis for new zoning and other regulatory revisions, which could include an increase of required minimum lot area, mandatory clustering and additional environmental constraint regulations.

C. EDUCATION

Many comments agreed with statements in the draft Plan that education is a key to water quality protection. One comment was directed toward "Recommendation 30: Create Local Education Action Plans." It was suggested that a regional approach to education should be the preferred method to educational programming. In fact, the intent of this recommendation is to encourage communities to customize regional educational programs for their communities.

As mentioned previously, the Croton watershed communities vary greatly in regards to density, population and character. Mount Kisco, for example, has a high percentage of impervious surface coverage and a very low number of septic systems. North Salem has a low percentage of impervious surface coverage and a high dependence on subsurface sewage disposal systems. Obviously, the focus of water quality educational needs in each community will vary and the educational focus will have different emphasis.

The Stormwater Education and Outreach Program is one example of creating a regional framework that municipalities can draw from and customize programming for their community. Westchester County received a grant from the NYS Department of Environmental Conservation (DEC) to implement a regional Stormwater Education and Outreach program and the County will be working with local municipal partners to create educational materials such as public service announcements, print material and an interactive website. Each municipality will be able to select from the palette of educational materials to address the specific needs in their respective communities.

D. NONPOINT SOURCE AND STORMWATER DISCHARGES

Stormwater: Many comments addressed the issue of stormwater including impervious surfaces and highway best management practices. One of the seven strategies defined in the draft Plan to

protect water quality was to “effectively manage stormwater collection and treatment.” Fourteen recommendations were provided to provide solutions to manage stormwater.

The issue of stormwater is a high priority to the NWWC. Each municipal member of the NWWC is a regulated municipality under the Phase II Municipal Separate Storm Sewer (MS4) Stormwater Regulations. The NYS DEC has proposed heightened MS4 requirements for municipalities in the NYC watershed in addition to the current stormwater regulations. The NWWC has concluded that the most effective stormwater management program should have a regional or subwatershed basis and not on a municipal basis. A regional approach to stormwater management would provide an expeditious solution to the ongoing stormwater management issues facing the area and would also provide each municipality with the necessary tools for compliance with existing and proposed stormwater regulations.

During the review period of the draft Plan, the NWWC began to discuss the creation of a regional stormwater authority that would be responsible for implementation of the Phase II Stormwater Regulations and other aspects of stormwater management across the watershed. The recommendation of the NWWC states, “The roles and responsibilities could include any combination of the following: plan review and approval, enforcement, collection and maintenance of data, physical maintenance of system and infrastructure and education and outreach efforts. The creation of a regional agency will require a significant commitment from local municipalities and the passing of state enabling legislation. Issues such as scope of authority, staffing, and funding will need to be discussed in detail. It is anticipated that the investigation and potential development of a regional stormwater authority will take years to implement and will likely require the services of a professional consultant to guide the process.”

The NWWC has recommended the New York State Department of State, the Watershed Protection and Partnership Council and the New York State Attorney General’s Office agencies explore the creation of a regional approach to stormwater management and provide details regarding appropriate structures that would allow a regional approach to be implemented in the NYC watershed area. This could provide a solid solution to the ongoing stormwater management issues facing the region and provide each municipality with the necessary tools for compliance with the existing and proposed stormwater regulations.

Septic Management: Many comments regarding septic systems were made that covered a varied spectrum of septic issues including: new development utilizing septic systems, regulatory controls, inspection and maintenance of existing septic systems, solutions for focus areas and the pros and cons of on-site wastewater treatment versus sewerage. The range of comments reflects the fact that subsurface wastewater treatment systems (septic systems) are a major issue of concern in the watershed. The Plan notes that the majority of the estimated 40,000 septic systems in Westchester County are located in the Croton Watershed and the text identifies and addresses septic system issues in many ways. As just one example, 29 areas in the Croton Watershed are identified as "focus areas," areas of concentrated development where, due to density or geographic conditions, reliance on individual septic systems may be problematic over the long-term. The NWWC has

proposed spending \$50,000,000 of the WQIP EOH fund towards solving septic issues in several of these focus areas. Funding is a major issue to resolving the problems in the remaining focus areas.

After release of the draft Croton Plan, the Westchester County Board of Legislators established a Septic Subcommittee of the Committee on Environment and Energy to provide a forum to study and discuss septic issues on a regular basis, as well as to formulate policy recommendations. The subcommittee includes representation from the County Board of Legislators, the departments of Planning and Health, the NWWC, the environmental community and technical experts. The broad representation is intended to forge consensus of diverse interests during the policy formulation process. The NWWC supports this approach to implementation of the recommendations in the Plan, similar to the Work Group approach outlined in Chapter 7, as an effective means to tackle a complex problem. The NWWC also recognizes that the MS4 permit for May 1, 2008 – April 30, 2010, released by NYS DEC in spring 2008, includes a requirement for the establishment and implementation of a septic inspection program for communities in the East of Hudson watershed. As noted above, the NWWC is exploring the creation of a Regional Stormwater Entity to meet their MS4 requirements and septic inspection requirements could be included.

E. PLAN IMPLEMENTATION AND FUNDING

Funding is the key to implementation of the recommendations of the final Plan. The NWWC received multiple comments regarding the importance of funding to implement the plan and agrees that on-going financial commitments from New York State and the City of New York are necessary to ensure continued implementation.

Currently the only designated funding available for implementation of the Plan is the WQIP EOH fund, which currently is \$58,000,000. The NWWC has developed an allocation plan for the WQIP EOH fund but recognizes that it is insufficient to address all the recommendations in the Plan.

However, it is important to note that action has already been taken on several recommendations in the draft Plan. The NWWC, each municipality, Westchester County and NYC DEP have made progress in implementation of the strategies of the Plan, both individually and in coordination with other water quality programs including subwatershed planning and protection efforts, land acquisition programs, septic management, education and outreach efforts, wastewater treatment projects, stormwater management and the adoption or modification of regulatory controls as necessary.

The recently prepared Highway Deicing Task Force report is an excellent example of the NWWC moving forward to address recommendations in the draft Plan through the creation of Strategy Work Groups. As the result of a June 2006 meeting of County Executive Andrew Spano, the NWWC and RiverKeeper (a non-profit environmental advocacy group) to discuss the impacts of road salt on water quality, a Highway Deicing Task Force was created. The task force, comprised of local highway officials and representatives of NYS DOT, NYC DEP, the RiverKeeper, NYPIRG, Westchester County and local municipal officials, evaluated existing deicing practices in the watershed and proposed strategies to reduce the environmental impacts of highway deicing. The

task force issued a report that summarizes environmental impacts of road salt, describes alternative deicers and provides best management practices and strategies to decrease impacts from road salt.

Other comments called for the Plan to provide projected costs for implementation of the Plan that sets out 53 recommendations to be implemented over several years. It would not be productive to work out potential costs, as the Plan is essentially a comprehensive plan.

Comments Submitted on the Draft Croton Plan

Public Information Meeting Comments:

1. Katonah Public Library, September 24, 2007
 - a. Jeff Osterman
 - b. Peter Harckham
 - c. Larry Seegers
 - d. Bob Wheeler
 - e. Sheila Bernson
 - f. Dan Welsh
2. IBM Watson Research Center, October 4, 2007
 - a. George Nikitovich
 - b. John Schroeder
 - c. Carl Hoegler
 - d. Paul Moscovitz
 - e. Joanne Knight
 - f. Vishnu Patel

Letters:

- 1) Patricia Podolak, October 3, 2007
- 2) Croton Watershed Clean Water Coalition, Inc., October 22, 2007
- 3) Carl S. Hoegler, Ph.D., October 25, 2007
- 4) Riverkeeper, October 26, 2007
- 5) Advisory Committee on Open Space, Yorktown, October 26, 2007

Other:

Patricia Potack, Yorktown; 9/22/07 telephone call