

CITY PLANNING COMMISSION

June 1, 1999/Calendar No. 1

C 990237 PSX

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**IN THE MATTER OF** an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services pursuant to Section 197-c of the New York City Charter, for site selection of city-owned property located in Van Cortlandt Park (Mosholu Golf Course), west of Jerome and Bainbridge avenues (Block 5900, part of Lot 1), Borough of the Bronx, for use as a water treatment facility.

\*Section 197(d) (b) (2) eligible

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This application (C 990237 PSX) was filed on December 1, 1998, by the Department of Environmental Protection (DEP) and the Department of Citywide Administrative Services (DCAS) for site selection of property located in Van Cortlandt Park (Block 5900, part of Lot 1), Borough of the Bronx, for use as an underground water treatment facility.

**BACKGROUND**

The Department of Environmental Protection is proposing to use property located in the southeast portion of Van Cortlandt Park (Block 5900, part of Lot 1) in order to construct a water treatment facility for the city's Croton water system.

The Croton watershed is a series of interconnected reservoirs and lakes in northern Westchester and Putnam counties. The Croton water system generally supplies approximately 10% of the city's water and serves lower-lying areas of the Bronx and Manhattan. At certain times of the year, the system supplements the supply from the Delaware and Catskill water systems and during drought provides up to 30% of the city's water. The treatment plant is necessary in order for the city to comply with the Federal Water Treatment Rule

(SWTR) promulgated in 1989 pursuant to the federal Safe Water Drinking Act, as well as the standards set forth in the New York State Sanitary Code.

In 1992, the city entered into a stipulation agreement with the New York State Department of Health (DOH) to filter the Croton system water. Subsequently, in 1993, the federal Environmental Protection Agency (EPA) issued a determination pursuant to the SWTR requiring the city to filter the Croton water supply. In 1997, DOH and EPA commenced litigation seeking to compel the city to construct a filtration plant for the Croton system according to a specified schedule. The parties entered into a consent decree in 1998 that is now in force and establishes dates by which the city must, among other things, select a site, commence construction and complete construction of the filtration plant.

After evaluating eight alternative sites, four in the Bronx and four in Westchester County, DEP chose the subject site for the facility. The site occupies approximately 23.3 acres in the southeast portion of Van Cortlandt Park, just west of the intersection of Jerome and Bainbridge avenues in the northern part of the Bronx. It is currently occupied by the city-owned Mosholu Golf Course's driving range, club house and parking area. The site slopes gently down from west to east with an approximate 30 foot difference in elevation between the westerly and easterly edges of the site. The Major Deegan Expressway cuts through the park to the west of the site and the park's Shandler Recreation Area is to the north of the site.

The Woodlawn terminus of the elevated IRT #4 line is located just east of the site at the intersection of Jerome and Bainbridge avenues. The block east of the site is zoned M1-2 except for the northern frontage of E. 213th Street which is zoned R7-1/C1-3. The east side of Jerome Avenue between Bainbridge Avenue and E. 213th Street is mainly developed with auto related uses including parking lots and repair shops. A mental health center is located towards the southern end of the block and a 5 story apartment building is located at the northeast corner of Jerome Avenue and E. 213th Street. The east side of Jerome Avenue between E. 213th Street and Gun Hill Road is zoned R7-1/C2-3 and is developed with a mix of commercial and auto related uses and branches of Montefiore Medical Center. The area east of Jerome Avenue and south of E. 213th Street is zoned R7-1 and is primarily developed with six story apartment buildings. Woodlawn Cemetery is located east of the Jerome/Bainbridge intersection.

A play area for young children is located in the southeast corner of Van Cortlandt Park, about 500 feet south of the site. Gun Hill Road, the southern boundary of the park, is primarily developed with six-story apartment buildings which are approximately 950 feet from the site. The Montefiore Medical Center's main complex is located south of Gun Hill Road and east of Jerome Avenue.

The subject site would be developed with a 290 million gallon per day water treatment plant, a raw water pumping station, a 20 million gallon treated water reservoir, a finished water pumping

station and connecting conduits to the New Croton Aqueduct and the water distribution system. Construction of the facility is expected to take approximately five years. During construction it will be necessary to temporarily close the Moshulu Golf Course since part of the course will be needed for construction staging areas and parking for construction workers. During construction, DEP will utilize the existing access road to the golf course located just north of the Jerome/Bainbridge avenues intersection. DEP anticipates that construction vehicles will access the site via the E. 233rd Street exit of the Major Deegan Expressway and travel south along Jerome Avenue, a wide street, to the site.

The completed facility would be below the finished grade. Because of the sloping nature of the site, bermed and landscaped embankments would rise to a maximum of about 35 feet above the existing grade at the eastern (Jerome Avenue) end of the site. The western part of the facility would be approximately three feet above the existing grade.

When completed, access to the plant would be from the golf course entrance roadway which would be widened. A below grade entrance would provide access to the facility for employees, trucks and parking. The Parks Department would occupy a small portion of the subsurface facility for administrative and storage purposes related to the park. The project would also include reconstructing the driving range over the facility, constructing an improved golf course including a new clubhouse and parking lot and golf cart paths to the first tee and ninth green of the golf course, all of

which would be removed during construction of the facility.

When in operation, untreated water from the Croton system would be conveyed to the treatment plant from the New Croton Aqueduct, located west of the site in Van Cortlandt Park via a new underground conduit. After the raw water is treated, it would enter the treated water reservoir (TWR) which will provide storage volume sufficient to meet the diurnal drinking water demands for the Croton service areas. Chlorine and fluoride would be added as the treated water enters the TWR. The site would also include a finished water pumping station (FWPS) to pump a portion of the treated water to tunnel shafts connected to the high-level distribution system, while a portion of the treated flow would be connected to the low level water distribution system connection points at the Jerome Park Reservoir.

The facility would be in continuous operation with employees working in three shifts from 7 am to 3 pm, 3 pm to 11 pm and 11pm to 7 am. The peak shift would be the 7 am to 3 pm weekday shift with 34 employees working during that period. Up to four employees would work at the facility during each of the other weekday and weekend shifts.

#### **ENVIRONMENTAL REVIEW**

This application (C 990237 PSX) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City

Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 98DEP027X. The lead agency is the Department of Environmental Protection.

A positive declaration was issued on December 1, 1997 and distributed, published and filed, and DEP, acting as the lead agency prepared a Draft Environmental Impact Statement (DEIS).

DEP prepared a DEIS and issued a Notice of Completion on December 17, 1998. Pursuant to the SEQRA regulations and the CEQR procedures, a joint public hearing was held on the DEIS on April 7, 1999, in conjunction with the public hearing on the related Uniform Land Use Review Procedure (ULURP) item (C 990237 PSX). The Final Environmental Impact Statement (FEIS) was completed, and a Notice of Completion of the FEIS was issued on May 20, 1999. The Notice of Completion for the FEIS identified the following significant impacts and proposed the following mitigation measures:

#### **Historic Resources**

Removal of the existing Mosholu Golf Course Clubhouse, although not a landmarked structure, is considered a potential significant loss. In order to mitigate this impact, a black and white photographic record of the exterior elevations would be made and copies repositied with the Municipal Archives. This recordation would be undertaken to the specific standards of the Historic American Engineering Record. These standards stipulate the types of views to be shot, large format film, acid free film, archivally stable developing chemicals, and acid free storage sleeves.

## **Natural Resources**

### ***Vegetation and Trees***

A refined, surveyed tree count has been conducted in consultation with the NYCDPR since the Draft EIS was issued. The necessary clearing and grading for the proposed WTP facilities would result in the direct loss of 268 trees.

In addition, trees adjacent to the proposed limit of construction line or close to the proposed infiltration trench (part of the stormwater/groundwater management plan described below) could be adversely affected by compaction of soils over their roots, changes in surface or groundwater drainage patterns, or accidental damage, if special care is not taken to protect them. There are 101 trees that would fall into this category. Even though the NYCDEP plans to protect these trees by placing Jersey barriers at least twenty feet from their canopies and by other means described below, for the purpose of this EIS analysis, the trees are considered potentially lost.

Finally, a group of 16 trees, mostly white pines (*Pinus alba*), would be threatened by the proposed temporary widening of the Major Deegan off-ramp at 233<sup>rd</sup> Street proposed a temporary traffic improvement measure.

Trees of this nature and associated vegetation in a preserved park environment are rare in New York City, therefore their loss would represent a potential significant adverse impact.

In order to mitigate this impact and the potential adverse impact to the five acre forested wetland area discussed below, a comprehensive reforestation/monitoring program has been developed in conjunction with the NYCDPR valued at \$13.4 million along with a stormwater/groundwater management plan valued at \$3 million (The stormwater/groundwater plan is outlined below in the wetlands discussion.). The NYCDPR reforestation/monitoring program would consist of the planting of trees to replace the trees that would be lost during the construction of the proposed water treatment plant, to preserve the forested wetlands area discussed below, and to restore and preserve other natural resources of Van Cortlandt Park. The reforestation/monitoring program would start prior to construction and extend for at least three years after the proposed WTP operations commence, this represents a ten-year effort.

## **Wetlands**

There would be a potential change in the stormwater and groundwater hydrology of the site area which could adversely affect the five acre forested wetland north of the site entrance roadway in the Shandler recreation area. The change to this forested wetland would represent a potential significant adverse impact.

To mitigate this impact, a number of actions would be taken. First, during excavation, any fractures that leak water into the excavation would be sealed with grout under pressure. This would seal rock fractures and reduce the potential for water to flow from the wetland to the excavation site. Second, a stormwater /groundwater management plan would be implemented to maintain the existing hydrology, to the extent possible.

The stormwater/groundwater management plan calls for the construction of infiltration structures adjacent to the site access road and to the south of the forested wetland. Water would be collected along the west and northwestern side of the proposed WTP building at an elevation of 180 feet, along the top of the bedrock. This is the flow which currently drains toward the wetland. This flow would be supplemented with Croton raw water to maintain a base flow equal to the volume which would migrate through bedrock toward the bottom of the foundation. This water would be passed to a series of infiltration galleries (horizontal underground diffusion devices) north and northwest of the renovated clubhouse. Overflow from the galleries would be channeled to an infiltration trench adjacent to the site access road. This infiltration trench would also receive storm flows from the parking area after it passes through an oil/water separator. Excess storm flow would pass through a weir to the combined sewer on Jerome Avenue. These devices would replenish groundwater and produce a mound of water which would prevent flows from leaving the forested wetland area to travel toward the proposed WTP facilities. Once built and calibrated, these stormwater/groundwater control devices would require no pumping, active control devices, or extensive maintenance.

During construction of the WTP, water collected in the excavated areas would be pumped to the combined sewer on Jerome Avenue. The infiltration galleries and trench would be constructed and connected to the city water supply system and calibrated to preserve the local hydrologic conditions as described above while

construction dewatering operations are taking place.

Initial operation of this system would be monitored by NYCDEP in conjunction with NYCDPR. Additional numerical modeling would be utilized to adjust the rate of flow, if necessary. Once the flow to the infiltration device is shown to be maintaining the existing hydrology, no additional adjustments or maintenance would be required except for periodic cleanout of the infiltration trench.

The efforts described above would minimize impacts to the forested wetland area by providing a base flow that would allow the existing groundwater characteristics to be maintained at the existing average standing water elevation during dry weather. It would also provide storm flow that would replicate stormwater events thereby providing wet weather and seasonal variability.

However, even with these measures in place, the hydrologic regime will change to some extent leading to natural resource changes. It is likely soils near the infiltration trench may become over-saturated leading to the loss of trees unable to adjust to this condition. The number of threatened trees would be approximately thirty-six. (This estimate is included in the total number of 101 threatened trees discussed above under vegetation and trees.) In addition, the understory of the forested wetland would likely change in character because of the changes in hydrology. The understory changes are not expected to be significant. Overall, the potential loss of trees and changes to the forested wetland understory are not expected to be significant if the stormwater/groundwater management plan is properly functioning and the area is monitored and actively managed. The continuous monitoring (see Stormwater/Groundwater Management Plan, Volume E) and management of the forested wetland would be undertaken by the NYCDPR as part of the reforestation/monitoring program described above.

In summary, the combination of constructing the stormwater/groundwater control devices and the implementation of the NYCDPR reforestation/monitoring program is expected to mitigate any potential significant adverse impacts to natural resources. However, should the monitoring and reforestation programs prove less successful than predicted in this EIS, the NYCDEP would work with the NYCDPR to adjust the mitigation program and would be responsible for replacing any unforeseen natural resource losses.

## UNIFORM LAND USE REVIEW

This application (C 990237 PSX) was certified as complete by the Department of City Planning on December 21, 1998 and was duly referred to community boards 7, 8 and 12, the Borough Board and the Borough President of the Bronx, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

### Community Board Public Hearing

Bronx Community Board 7 held a public hearing on this application on February 2, 1999 and on that date, by a vote of 15 to 0, with 0 abstentions, adopted a resolution recommending disapproval of this application.

Bronx Community Board 8 held a public hearing on this application on February 8, 1999 and on February 9, 1999, by a vote of 25 to 0, with 0 abstentions, adopted a resolution recommending disapproval of this application with the following comments:

1. its need, its merit, its location and the factual record preceding and supporting site selection and the draft environmental impact statement are unsupported by the record;
2. the plan, as proposed, adversely affects the character of the neighborhood; and
3. the applicant has refused to provide relevant information requested by the board, including material respecting parkland alienation.

Bronx Community Board 12 held a public hearing on January 28, 1999 and on that date, by a vote of 19 to 0, with 1 abstention, adopted a resolution recommending disapproval of this application.

### **Borough Board Recommendation**

This application was considered by the Bronx Borough Board which issued a recommendation on March 25, 1999 disapproving the application with the following comments:

the Bronx Borough Board, after careful consideration of the issues and facts, strongly recommends the disapproval of DEP's application.....and requests that New York City, in close cooperation with the State and upstate communities, refocus its energies and resources to implement a strong regional watershed protection plan and work toward securing Filtration Avoidance Determination for the Croton water supply system, similar to what was achieved for the Catskill-Delaware watershed; and

the Bronx Borough Board commits to work on local, state and federal levels to remove legislative and regulatory impediments to the implementation of the Optimal Non-Filtration Plan and securing Filtration Avoidance Determination for the Croton water supply system.

### **Borough President Recommendation**

This application (C 990237 PSX) was considered by the Borough President of the Bronx, who issued a recommendation disapproving the application on March 29, 1999. The Borough President's recommendation cited his preference that the plant not be built and that DEP apply to the federal government for a Filtration Avoidance Determination. The recommendation also objected to the site itself saying that there would be major impacts on the park and the surrounding community both during and after construction.

### **City Planning Commission Public Hearing**

On March 17, 1999 (Calendar No. 1) the City Planning Commission scheduled April 7, 1999 for a public hearing on this application (C 990237 PSX). The hearing was duly held on April 7,

1999 (Calendar No. 3). There were 48 speakers, 12 in favor and 36 in opposition.

Speakers in favor included representatives of DEP, DPR, the Law Department and construction and trade unions.

The First Deputy Commissioner of DEP spoke in favor of the project and explained why it needed to be built. She stated that the Croton system water was needed by the city, that the city was required by the consent decree to build the facility and that there was no provision in the consent decree that provides for filtration avoidance. Other representatives of DEP described various aspects of the project including the search for sites that included locations in the Bronx and Westchester. It was pointed out that locating the treatment plant in Westchester would add between \$200 and \$300 million to the cost of the facility and would not obviate the need for locating the related facilities in the Bronx. In addition, DEP discussed what measures would be taken during construction of the facility, how the facility would be designed and operated and what improvements would be made to the park as part of the plant's construction. They noted DEP's continued willingness to test methods other than filtration that, if proven feasible, might allow DEP to pursue discussions with federal and state agencies on filtration avoidance. A representative of the Law Department summarized the provisions of the consent decree and noted that the city was mandated to complete the various stages of the project within specified time periods. The director of planning for DPR indicated his agency's support of DEP's selection

of Van Cortlandt Park for the facility and stated that the site was the least disruptive of park use. He also noted that an improved golf facility would be developed as part of the facility's construction. DPR's borough commissioner stated that the golf driving range and clubhouse needed to be upgraded. Four speakers representing construction and trade unions spoke in favor of the project citing the jobs that construction of the project would provide.

Speakers in opposition included the Borough President of the Bronx, the Councilmember from the 11th district, the State Assemblymember from the 81st district, a representative of the Congressman from the 17th district, the chairperson of Bronx Community Board 12, a representative of Montefiore Hospital, representatives of community and neighborhood organizations and area residents.

The Borough President of the Bronx reiterated the comments made in his recommendation on the application and stressed his desire for a non-filtration alternative to construction of the treatment plant. He also believed that construction of the facility would have significant impacts on the surrounding community. The other elected officials also urged the city to pursue a non-filtration alternative. They stated their opposition to building in Van Cortlandt Park, designated parkland, without legislative approval and objected to the impacts the project would have on the park itself and the surrounding community both during and after construction.

The representative of Montefiore Hospital expressed concern that the large number of construction vehicles would clog local streets and make it difficult for emergency vehicles to reach the hospital. The area residents and those representing neighborhood organizations expressed concerns about construction of the facility in Van Cortlandt Park, the disruption to the golf course and driving range and the proximity of the facility to a children's playground in the park. They also felt that the city should pursue non-filtration alternatives, that construction of the facility would result in diminished efforts to protect the Croton watershed and that DEP should locate it in Westchester County communities that did not object to the facility.

There were no other speakers and the hearing was closed.

### **Consideration**

The City Planning Commission believes that the application (C 990237 PSX) submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services for site selection of property located in Van Cortlandt Park (Block 5900, part of Lot 1), Borough of the Bronx, for use as a water treatment facility is appropriate.

The Croton water system generally supplies approximately 10% of the city's water and up to 30% during drought periods and has provided high-quality water for many years. Although Croton water currently meets all existing health-based water quality regulations, it frequently violates the aesthetic standard for color. Water quality problems in color, odor and taste have, at

times, required that the system be removed from service, typically during the summer and fall. The system's water does not comply with the newer standards of the state Sanitary Code and the federal Surface Water Treatment Rule and the city has been sued by the federal and state governments for failing to comply with those standards. Consequently, the city entered into a consent decree with the federal and state governments, agreeing to a timetable to complete a treatment plant for filtration of Croton water by March 1, 2007. Failure to meet the milestones established in the consent decree could make the city liable for fines that could be as much as \$27,000 per day.

DEP evaluated eight alternative sites for this facility, four in Westchester County and four in the Bronx and chose the subject site in Van Cortlandt Park. The subject site was chosen because it is city-owned, could be constructed substantially below existing grade, has the least potential for significant construction impacts and would have no significant impacts when in operation. In addition, the site allows for operational and security efficiencies, not found at other sites.

The Commission recognizes that the primary reason given by those opposing this application was that the city has failed to pursue non-filtration alternatives to the construction of a treatment plant. The Commission also recognizes, however, that the city and DEP are currently required under a federal consent decree to complete construction of a filtration plant. DEP and the Law Department have stated that despite efforts by DEP, there has been

no indication from the federal government that it is prepared to change its position that filtration is required or to allow testing of other methods that would avoid filtration. This issue is uniquely within DEP's purview and it is the Commission's role to evaluate the subject site selection application.

The site is located in the southeast corner of the 1146-acre Van Cortlandt Park. Construction of the facility will require use of about 23.3 acres and the completed facility will be below finished grade and will occupy about 11 acres.

The site is currently occupied by the driving range and club house for the Mosholu Golf Course, just west of the intersection of Jerome and Bainbridge avenues. This portion of the park slopes towards the east and there is an approximate 30 foot difference in elevation between the western and eastern edges of the site. A playground for young children is located about 500 feet south of what would be the southern edge of the completed facility. As the site is located within a park, the regulations of the Zoning Resolution are not applicable.

The Woodlawn terminus of the elevated IRT #4 line is located just east of the site and Jerome Avenue as far south as Gun Hill Road is a commercial street that is predominantly developed with auto related uses including parking lots and repair shops. The block just east of the site is zoned M1-2 except for the northern frontage of E. 213th Street which is zoned R7-1/C1-3. A five-story residential building is located at the north-east corner of Jerome Avenue and E. 213th Street. Woodlawn Cemetery is located east of

the intersection of Jerome and Bainbridge avenues.

Construction of the facility will take about five years and will require temporarily closing the Mosholu Golf Course and driving range. DEP expects that trucks coming to the site will utilize the E. 233rd Street exit of the Major Deegan Expressway, proceed south along Jerome Avenue past the Woodlawn Cemetery and enter the site at the existing vehicular entrance to the golf course and would follow the reverse route when leaving the site, thereby avoiding any residential streets. The current golf course entrance would be widened and a right turn lane would be provided just north of the entrance to facilitate truck turning to and from Jerome Avenue. In addition, a traffic control person would be stationed there during peak traffic periods to enforce the ban on project-generated truck traffic from using Jerome and Bainbridge avenues south of the site.

Currently, vehicles exiting from the north-bound Major Deegan at E. 233rd Street can use a dedicated lane to directly enter south-bound Jerome Avenue. The usefulness of that lane is limited by its proximity to the Jerome Avenue/E. 233rd Street intersection and vehicles waiting for the traffic light at that intersection back up behind the turning lane. Consequently, DEP plans to temporarily widen the exit, providing a longer dedicated lane for turns onto Jerome Avenue during construction. If acceptable to the Parks Department, DOT and the community, DEP could make this widening permanent with a future application for a change to the city map and obtaining the necessary state legislation. DEP would

also add a left-turn lane and adjust the signal timing at the Jerome Avenue/E. 233rd Street intersection to improve the current situation of cars backing up along west-bound E. 233rd Street while waiting to make a left turn on to south-bound Jerome Avenue.

DEP considered the possibility of providing direct access to the site from the Major Deegan Expressway. This was determined to be infeasible because of the cost of construction and the impact on the park, including the Shandler Recreation Area which is north of the site.

Excavation for the facility will require blasting. To protect the surrounding area from noise during construction, DEP will construct a berm and acoustic fencing around the site and construction would be approximately 30 feet below grade. Precautions would be taken to limit the amount of dust and debris that could be dispersed during construction. DEP would also monitor vibrations to protect the nearby elevated train structure and surrounding structures. Construction of conduits connecting the facility to the existing Croton aqueduct would be done by tunnelling and would not involve above-ground work in the park.

A fence to secure the construction site would encircle the site and would be outside of any berm or acoustic barrier. During construction, the existing playground in the south-east corner of the park would be approximately 300 feet from the construction fence and berm and when completed, the playground would be over 500 feet from the facility. During construction, the Moshulu driving range and golf course would be temporarily closed. The Parks

Department is considering using those parts of the golf course not needed for construction or staging areas for non-golf recreation uses during this period.

Upon completion, the facility would be entirely below finished grade. Because of the sloping nature of the site, bermed and landscaped embankments would rise to a maximum of about 35 feet above the existing grade at the eastern (Jerome Avenue) end of the site. The future design and landscaping of this berm is crucial in minimizing its impact on the abutting neighborhood. The Commission urges DEP to work with the community on the final design of the berm to insure that it is integrated with the design of the park and to provide an attractive buffer with the surrounding community. The western part of the facility would be about 3 feet above existing grade.

Access to the plant would be from an improved golf course entrance roadway. The entrance to the facility would be below grade and would provide all access to the facility for DEP employees, trucks and parking. In addition, the Parks Department would occupy a small portion of the subsurface facility for administrative and storage purposes related to the park. The project would also include reconstructing the driving range over the facility, reconstructing and improving the entire existing golf course, including a new clubhouse and parking lot and golf cart paths to the first tee and ninth green of the golf course.

The facility would be in continuous operation with employees working in three shifts from 7 am to 3 pm, 3 pm to 11 pm and 11 pm

to 7 am. The peak shift would be the 7 am to 3 pm weekday shift with 34 employees working during that period. Up to four employees would work at the facility during each of the other weekday shifts and weekend shifts.

The facility includes raw water and finished water pump stations and a 20 million gallon treated water reservoir. The treated water reservoir, which is required by federal regulations to be covered, is needed to handle the diurnal fluctuations in the city's water usage. Location of all facilities at this site optimizes operational efficiency, reduces over-all cost and allows for better security.

The Commission notes that there is precedent for construction of underground city facilities in parks, including the valve chamber for the third water tunnel, also in Van Cortlandt Park, and the combined sewer overflow facility which is currently under construction in Flushing Meadows-Corona Park and which was approved by the Commission and the City Council in 1993 (C 930508 PSQ). As proposed for this site, those sites have been or will be returned to parks use upon construction completion.

The Commission further notes that in a letter dated April 30, 1999, the Commissioner of DEP expressed DEP's commitment to watershed protection of all three of the city's watersheds including the Croton system and that the commitment would not be relaxed with construction of a treatment plant for the Croton system.

The Croton water treatment plant is a project with a

significant city financial commitment. When planning a project of this magnitude, the city should continue to explore all feasible options and alternatives. Therefore, while design of the plant is proceeding, DEP is also seeking state permits and other permissions necessary to pursue studies or pilot projects to determine if there are feasible alternate methods for protecting the Croton water supply. The Commission endorses this approach by DEP while recognizing that filtration is currently mandated and that feasible alternatives have not been demonstrated at this time. The Commission believes that the subject site is appropriate, consistent with the current legal mandate and that DEP has taken all necessary measures to insure minimal impact on the park and the surrounding community both during and after construction when the park will be restored for recreational purposes.

**RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on May 20, 1999, with respect to this application (CEQR No. 98DEP027X), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulations, have been met and that, consistent with social, economic and other essential considerations:

1. From among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse

environmental impacts to the maximum extent practicable; and

2. The adverse environmental impacts revealed in the environmental impact statement will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval those mitigative measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Section 197-c of the New York City Charter, that based on the environmental determination and consideration described in this report, application (C 990237 PSX) submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services , for site selection of city-owned property located in Van Cortlandt Park (Mosholu Golf Course), west of Jerome and Bainbridge avenues (Block 5900, part of Lot 1), Borough of the Bronx, for use as a water treatment facility, is approved.

The above resolution, duly adopted by the City Planning Commission on June 1, 1999 (Calendar No. 1), is filed with the Office of the Speaker, City Council, and the Borough President of the Bronx, in accordance with the requirements of Section 197-d of the New York City Charter.

JOSEPH B. ROSE, Chairman  
ALBERT ABNEY, ANGELA M. BATTAGLIA, AMANDA M. BURDEN, A.I.C.P.,  
IRWIN CANTOR, P.E., KATHY HIRATA CHIN, Esq., ALEXANDER GARVIN,  
ANTHONY I. GIACOBBE, Esq., BRENDA LEVIN,  
EDWARD T. ROGOWSKY, Commissioners.

JACOB B. WARD, Esq., Commissioner, voted "NO".

Community/Borough Board  
Recommendation

CITY PLANNING COMMISSION  
22 Reade Street, New York, NY 10007  
FAX # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.

2. Send a copy of the completed form with any attachments to the applicant's representative as indicated on the Notice of Certification, one copy to the Borough President, and one copy to the Borough Board, when applicable.

APPLICATION # C 990237 PSX

DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services pursuant to Section 197-c of the New York City Charter, for site selection of city-owned property located in Van Cortlandt Park (Mosholu Golf Course) located west of Jerome and Bainbridge avenues (Block 5900, part of Lot 1), for use as a water treatment facility.

COMMUNITY BOARD NO. 7  
BOROUGH Bronx

BOROUGH BOARD Bronx

DATE OF PUBLIC HEARING FEBRUARY 2, 1999  
WAS QUORUM PRESENT?  YES  NO

LOCATION MOSH. HONTI. COHH. CTR.

(A public hearing shall require a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.)

VOTE ADOPTING RECOMMENDATION TAKEN  
DATE 2/2/99

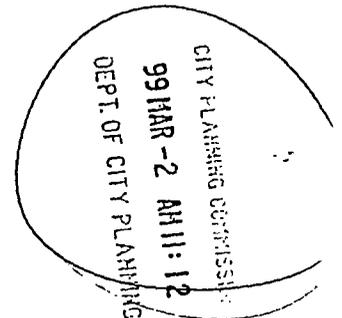
LOCATION MOSH. HONTI. COHH. CTR.

RECOMMENDATION

APPROVE  APPROVE WITH MODIFICATIONS/CONDITIONS  
 DISAPPROVE  DISAPPROVE WITH MODIFICATIONS/CONDITIONS

EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

*Unanimously denied - see attached*



VOTING :

IN FAVOR 0 AGAINST 15  
TOTAL MEMBERS APPOINTED TO BOARD 26

ABSTAINING 0

DATE March 1, 1999

Nora Ferry  
COMMUNITY/BOROUGH BOARD OFFICER  
Chairperson  
TITLE

MAR-01-1999 10:18

# Community/Borough Board Recommendation

CITY PLANNING COMMISSION  
22 Rouse Street, New York, NY 10007  
FAX # (212) 720-3356

### INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send a copy of the completed form with any attachments to the applicant's representative as indicated on the Notice of Certification, one copy to the Borough President, and one copy to the Borough Board, when applicable.

APPLICATION # C 990237 PSX

### DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services pursuant to Section 197-c of the New York City Charter, for site selection of city-owned property located in Van Cortlandt Park (Moshol Golf Course) located west of Jerome and Bainbridge avenues (Block 5900, part of Lot 1), for use as a water treatment facility.

COMMUNITY BOARD NO. 8  
BOROUGH BRONX

BOROUGH BOARD BRONX

DATE OF PUBLIC HEARING 2/8/99  
WAS QUORUM PRESENT?  YES  NO

LOCATION Visitation Church  
(A public hearing shall require a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.)

VOTE ADOPTING RECOMMENDATION TAKEN  
DATE 2/9/99

LOCATION Manhattanville Nursing Home

### RECOMMENDATION

APPROVE  APPROVE WITH MODIFICATIONS/CONDITIONS  
 DISAPPROVE  DISAPPROVE WITH MODIFICATIONS/CONDITIONS

### EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

COMMUNITY BOARD NO. 8, BRONX COUNTY, DISAPPROVES CITY PLANNING COMMISSION APPLICATION #C990237 PSX BECAUSE (1) ITS NEED, ITS MERIT, ITS LOCATION AND THE FACTUAL RECORD PRECEDING AND SUPPORTING SITE SELECTION AND THE DRAFT ENVIRONMENTAL IMPACT STATEMENT ARE UNSUPPORTED BY THE RECORD, (2) THE PLAN, AS PROPOSED, ADVERSELY AFFECTS THE CHARACTER OF THE NEIGHBORHOOD AND (3) THE APPLICANT HAS REFUSED TO PROVIDE RELEVANT INFORMATION REQUESTED BY THE BOARD, INCLUDING MATERIAL RESPECTING PARKLAND ALIENATION.

25-0-0 IN FAVOR OF DISAPPROVING THIS APPLICATION

VOTING :  
IN FAVOR 25 AGAINST 0  
TOTAL MEMBERS APPOINTED TO BOARD 46

ABSTAINING 0

Lorraine J. Hochstetler  
COMMUNITY/BOROUGH BOARD OFFICER

CHAIRMAN

TITLE

DATE March 1, 1999

11/93

Community/Borough Board Recommendation

CITY PLANNING COMMISSION
22 Rensselaer Street, New York, NY 10007
FAX # (212) 720-3356

INSTRUCTIONS

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APPLICATION # C 990237 PSX

DOCKET DESCRIPTION

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COMMUNITY BOARD NO. 12
BOROUGH Bronx

BOROUGH BOARD BRONX

DATE OF PUBLIC HEARING Thursday, Jan. 28, 1999 LOCATION 4101 White Plains Rd.

WAS QUORUM PRESENT? X YES NO

A public hearing shall require a quorum of 50% of the appointed members of the board, but in no event fewer than seven such members.

VOTE ADOPTING RECOMMENDATION TAKEN

DATE Thursday, Jan. 28, 1999

LOCATION 4101 White Plains Road

RECOMMENDATION

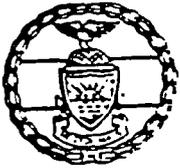
- APPROVE APPROVE WITH MODIFICATIONS/CONDITIONS
DISAPPROVE DISAPPROVE WITH MODIFICATIONS/CONDITIONS

EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

VOTING:
IN FAVOR 2 AGAINST 19 ABSTAINING 1
TOTAL MEMBERS APPOINTED TO BOARD 35

March 1, 1999
DATE

John Richard Gorman
COMMUNITY/BOROUGH BOARD OFFICER
Chairman
TITLE



FERNANDO FERRER  
BOROUGH PRESIDENT

OFFICE OF THE BRONX BOROUGH PRESIDENT  
The Bronx County Building  
851 Grand Concourse  
Bronx, New York 10451  
590-3500



**RESOLUTION BY THE BRONX BOROUGH BOARD ON  
THE PROPOSED CROTON WATER TREATMENT PLANT AT  
THE MOSHOLU GOLF COURSE IN VAN CORTLANDT PARK**

**ULURP NO. C990237 PSX  
CEQR NO. 98DEP027X**

**Whereas**, the New York City Department of Environmental Protection (DEP), pursuant to the Croton Consent Decree, has filed a Uniform Land Use Review Procedure (ULURP) application for selection of the Mosholu Golf Course in Van Cortlandt Park for the construction of the proposed Croton Water Treatment Plant;

**Whereas**, the proposal to construct of the Water Treatment Plant is one of the most significant public policy issues facing New York City and the region with long term and serious consequences from the public health, environmental and fiscal points of view;

**Whereas**, the Croton Water Treatment Plant may not have to be constructed in the first place, if watershed protection is made a regional priority and sufficient resources are devoted to protect and upgrade the watershed including an aggressive land acquisition program in critical areas around the reservoirs and tributaries;

**Whereas**, the protection of public health and of the Croton watershed, is a regional water quality, open space and environmental concern requiring a comprehensive and coordinated approach and cooperation among affected counties and localities;

**Whereas**, as the Croton water supply currently meets all primary water quality standards and with the implementation serious and aggressive watershed protection programs and the DEP's "Optimal Non-Filtration Plan," the Croton water supply is expected to meet all existing and projected water quality standards into the future;

**Whereas**, the implementation of the Optimal Non-Filtration Plan is not only environmentally responsible, but also fiscally prudent, as it is expected to cost a fraction of building and operating the Croton Water Treatment Plant;

**Whereas**, advancing a filtration avoidance strategy requires a refocusing of energies and resources toward the protection of the watershed which would not only protect the water supply at its source, but also preserve the region's dwindling open space resources for future generations;

**Whereas**, the construction of the Water Treatment Plant would send a clear message that watershed protection is no longer a priority and accelerate the degradation of the Croton watershed and the quality of New York City's drinking water at its source;

**Whereas**, the proposed Croton Water Treatment Plant is expected to cost \$754 million, or more, which would be directly funded by the rate payers, every household and business in New York City;

**Whereas**, the Mosholu Golf Course is a unique open space and recreational resource inappropriate for siting the proposed Water Treatment Plant;

**Whereas**, the construction of the proposed Water Treatment Plant, expected to last more than half a decade, would have unmitigable impacts on the quality of the environment and seriously disrupt the lives of those who live, work and do business in communities around the Mosholu Golf Course;

**Whereas**, the construction of the Water Treatment Plant would destroy the unique character of the Van Cortlandt Park and the fragile ecology of its woods and forests;

**Whereas**, the affected Community Boards No.7, 8, and 12 have voted overwhelmingly to disapprove the ULURP application for siting the Water Treatment Plant at the Mosholu Golf Course;

**Therefore, be it resolved** that the Bronx Borough Board, after careful consideration of the issues and facts, strongly recommends the disapproval of the DEP's application for siting the Croton Water Treatment Plant at the Mosholu Golf Course in Van Cortlandt Park, and requests that the New York City, in close cooperation with the State and upstate communities, refocus its energies and resources to implement a strong regional watershed protection plan and work toward securing Filtration Avoidance Determination for the Croton water supply system, similar to what was achieved for the Catskill-Delaware watershed;

**Be it further resolved** that the Bronx Borough Board commits to work on local, State and Federal levels to remove legislative and regulatory impediments to the implementation of the Optimal Non-Filtration Plan and securing Filtration Avoidance Determination for the Croton water supply system.

  
FERNANDO FERRER

3/25/1999  
DATE

**BOROUGH PRESIDENT  
RECOMMENDATION**

**CITY PLANNING COMMISSION**  
22 Reade Street, New York, NY 10007  
FAX # (212) 720-3356

**INSTRUCTIONS**

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification

**APPLICATION #**

C990237 PSX (THE CROTON WATER TREATMENT PLANT)

**DOCKET DESCRIPTION**

SEE ATTACHMENT "A"

**COMMUNITY BOARD NO.**

**BOROUGH** Bronx

**RECOMMENDATION**

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE

**EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)**

SEE ATTACHMENT "A"

  
BOROUGH PRESIDENT

3-29-99  
DATE



FERNANDO FERRER  
BOROUGH PRESIDENT

OFFICE OF THE BRONX BOROUGH PRESIDENT  
The Bronx County Building  
851 Grand Concourse  
Bronx, New York 10451  
590-3500



## ATTACHMENT A

### BRONX BOROUGH PRESIDENT FERNANDO FERRER'S REPORT AND RECOMMENDATION ON THE UNIFORM LAND USE REVIEW PROCEDURE APPLICATION AND THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED CROTON WATER TREATMENT PLANT AT THE MOSHOLU GOLF COURSE SITE IN VAN CORTLANDT PARK, THE BRONX

ULURP APPLICATION NO. C990237 PSX  
CEQR NO. 98DEPO27X

#### DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by the Department of Environmental Protection and the Department of Citywide Administrative Services pursuant to Section 197-c of the New York City Charter, for site selection of city-owned property located in Van Cortlandt Park (Mosholu Golf Course) located west of Jerome and Bainbridge avenues (Block 5900, Part of Lot 1), for use as a water treatment facility.

#### BACKGROUND

New York City's water supply is a truly regional system. The City's drinking water is supplied by the Catskill and Delaware (Cat-Del) system located to the west and the Croton system to the east of the Hudson River. Croton is the city's oldest and smallest water supply system dating back to the late 1800s. With a watershed area of 357-square miles, the Croton system supplies 10% of the City's water during normal operation and up to 30% in times of drought. The remaining demand is primarily supplied by the Cat-Del system. Under the terms of the Water Supply Act of 1905, the City supplies

numerous upstate communities, including Westchester and Putnam counties where the Croton watershed is primarily located.

The water supply from the Cat-Del system has received a Filtration Avoidance Determination from the Federal Environmental Protection Agency (EPA) which is valid until 2002. Pursuant to the 1997 Watershed Memorandum of Agreement, the City is required to implement a stringent watershed management program which includes, among other measures, land acquisition in the watershed area, especially in the reservoir and tributary buffer zones. However, only \$17.5 million has been earmarked for land acquisition in the Croton watershed.

The New York City Department of Environmental Protection (DEP) has had a longstanding position that the Croton water supply must be filtered. The agency has been planning to construct a filtration facility for more than a decade. In fact, three years ago, the DEP was intent on building a 450 million gallons per day (mgd) facility, much larger than currently proposed, at the Jerome Park Reservoir. The agency would have pushed ahead with its plans, had it not been for the vigorous and organized community opposition which not only challenged the flawed facility siting decision, but also called into question the need to filter the Croton water supply in the first place.

Subsequently, in response to a groundswelling of community opposition and public pressure, the DEP agreed to engage in a new site selection process which involved an analysis of four sites in Westchester County and four sites in The Bronx. This process resulted in the selection, by the DEP, of the Mosholu Golf Course in Van Cortlandt Park as the "preferred site."

The DEP further agreed to conduct studies to establish the need for Croton water and investigate alternatives to filtration. Both studies have been completed. The first has concluded that the Croton system is, in fact, needed as an essential part of the City's water supply system. The second has concluded that, with the implementation of the "Optimal Filtration Avoidance Plan," the Croton water supply could meet current and projected water quality goals and standards.

In 1998, the City signed the Croton Consent Decree (Consent Decree) and settled a legal action brought against it by the EPA and the New York State Department of Health (SDOH). Under the terms of the Consent Decree, the City is mandated to filter the Croton water supply by building and operating a water treatment facility by the year 2007. The Consent Decree has its basis in a number of Federal legislative acts and State and Federal regulations which require filtration of surface drinking water sources, unless they received Filtration Avoidance Determination. The DEP, having on its own decided that filtration was needed for the Croton water supply, did not apply for filtration

avoidance in 1991, as was provided by Federal law, nor challenged an EPA determination that the Croton water supply had to be filtered. Hence, the EPA and the SDOH took legal action against the City which was eventually settled by the signing of the Consent Decree.

The EPA and the SDOH have taken the public position that New York City must build the Croton Water Treatment Plant in order to protect public health and comply with Federal and State drinking water regulations. However, a growing number of experts, citizen groups and environmental organizations active on the issue believe that filtration avoidance is a viable option and in fact a better alternative to filtration from fiscal, environmental and public health points of view. In fact, two recent studies, one of which was conducted by the DEP, strongly support this view.

Currently, the Croton water supply meets all primary water quality standards but fails to meet the secondary, non health related, standards for color, taste and odor at certain times of the year. As more stringent water quality standards go into effect in the future, Croton water, under current conditions, is not expected to meet primary standards for disinfection by-products.

As stated previously, the DEP has developed an Optimal Non-Filtration Plan which includes various programs to improve the quality of the Croton water supply. According to the DEP's own studies, the Optimal Non-Filtration Plan will likely meet current and future water quality standards. The specific programs include full-scale hypolimnetic aeration of the New Croton Reservoir; continuous addition of alum at the Muscoot Dam or downstream of the New Croton Reservoir; microscreening for larvae removal at the Jerome Park Reservoir; and construction of wetlands/extended retention ponds throughout the Croton watershed. While the DEP's modeling indicates that these programs, will be effective in improving water quality and meeting water quality standards, they must be pilot-tested to provide verifiable scientific documentation acceptable to the EPA and the SDOH. The DEP is currently moving ahead with the necessary work to conduct these pilot tests. **Given the milestones established by the Consent Decree, pilot-testing and scientific documentation are not likely to be completed prior to September 2001, when the filtration plant must commence construction.**

In addition, F. X. Browne Inc. and Environmental Research & Consulting, Inc., the independent consultant (the "Consultant") to the Croton Citizens Advisory Council's Filtration Avoidance Subcommittee, under a contract with the DEP, has prepared a report on the DEP's filtration avoidance strategy. The report generally agrees with the DEP's methodology and conclusions, but recommends certain improvements. The final report, which was issued in February 1999, hereto attached, concludes that the Optimal Non-

Filtration Plan, based on the modeling results, appears to be adequate to meet water quality standards into the future. **In fact, the Consultant, a nationally recognized expert in this field, believes that the DEP's work along with the Consultant's report should be sufficient to appeal to the EPA and the SDOH for consideration of the Non-Filtration Plan.**

The DEP has never formally applied to the EPA and the SDOH for consideration of the filtration avoidance alternative and has not indicated that it intends to do so. Instead, the agency is pushing ahead with plans to construct the filtration facility pursuant to the timetable established in the Consent Decree.

### **DESCRIPTION OF PROPOSED ACTION**

The proposed action involves siting of a 290 million gallons per day (mgd) Water Treatment Plant, Raw Water Pumping Station, Treated Water Reservoir, and Finished Water Pumping Station at the Mosholu Golf Course within Van Cortlandt Park in the Borough of The Bronx. According to the DEP, these facilities would be required to provide the needed services and functions of a Water Treatment Plant, which include: pumping of raw Croton water from the New Croton Aqueduct; treatment (filtration and disinfection); storage of treated water; and the distribution of finished water.

The proposed project site is located in the 66-acre Mosholu Golf Course in the southeastern part of Van Cortlandt Park, a 1,146-acre public park established in 1888. The Golf Course site is bounded by the Mosholu Parkway and Major Deegan Expressway to the west, the Shandler Recreation area to the north, Jerome Avenue and the elevated IRT No. 4 train tracks to the east and West Gun Hill Road to the South.

### **ENVIRONMENTAL REVIEW AND ULURP CERTIFICATION**

The project has received a Positive Declaration and the Draft Environmental Impact Statement (DEIS), issued in December 1998.

### **COMMUNITY BOARD(S) ACTION**

Community boards 7, 8 and 12 voted overwhelmingly to disapprove the application. The votes were as follows:

Community Board No. 7:	-0- approve, 15 disapprove, -0- abstention
Community Board No. 8:	-0- approve, 25 disapprove, -0- abstention
Community Board No. 12:	-0- approve, 19 disapprove, 1 abstention

## **BOROUGH PRESIDENT AND BOROUGH BOARD PUBLIC HEARING**

A public hearing was held by the Borough President and Borough Board on March 23, 1999. Approximately 96 people were in attendance. There were 15 speakers in opposition and 14 in favor. Statements calling for the disapproval of the project were read from Congressman Eliot Engel and Assemblyman Jeffrey Dinowitz. Councilwoman June Eisland and Adlofpho Carrion also spoke in strong opposition.

Those who spoke in opposition to the project included local residents and representatives of various civic organizations, including Friends of Van Cortlandt Park, Friends of Jerome Park, Mosholu Woodlawn South Community Coalition, Bedford Park Neighborhood Alliance, Croton Watershed Clean Water Coalition, Kingsbridge Height Neighborhood Improvement Association, The Parks Council, The Bronx Council for Environmental Quality.

Those who spoke in favor of the project were almost exclusively members or representatives of various trade unions. A representative of the General Contractors Association of New York also provided testimony in support of the proposed project.

The following is a summary of comments provided.

### **Comments in opposition:**

- Non-filtration is a viable and implementable alternative. Improving the quality of Croton water through source protection is more efficient, less costly with far less impact than building a one billion dollar chemical filtration plant.
- Natural processes have kept the water clean for centuries. There needs to be better and more responsible management of the watershed, including protection of wetlands, control of developments and other water polluting sources.
- Two Westchester towns expressed serious interest in siting the filtration plant in their respective jurisdictions, on commercially zoned sites with no residential uses nearby. While it may cost more, in the short term, to build the plant on the Westchester sites, the long term cost of losing relatively pristine parkland and open space is incalculable and irreversible.
- The proposed project would do irreparable damage to Van Cortlandt Park. Parkland in New York City is a priceless and finite resource that should remain unspoiled and accessible to the public.

- Before relying so heavily on the Croton supply, the New York City should increase funding for infrastructure repair, water conservation, and protecting the existing sources from pollution.
- The project would negatively impact the park ecology and the quality of the environment both during and after construction.
- The DEP's Fair Share analysis is deficient in addressing facility concentration and saturation issues.

**Comments in favor:**

- The proposed project would have a positive impact on the local economy and create business opportunities for construction supply companies and contractors.
- The proposed project would create much needed construction jobs for Bronx and City residents.
- The proposed Water Treatment Plant would provide safe and clean water to Bronx and City residents.
- Constructing the facility at the Mosholu Golf Course would cost \$115 million less than building it in Westchester. The cost saving can be used to benefit Norwood and other communities in the Bronx.
- The facility is designed to have minimal impact on the neighborhood. It will be underground and out of sight. Water filtration plants are good neighbors and not noxious facilities.

**BOROUGH BOARD ACTION**

The Bronx Borough Board, on March 25, 1999, voted unanimously to adopt a resolution proposed by the Borough President disapprove the ULURP application for the Croton Water Treatment Plant. The Borough Board resolution is attached.

**BOROUGH PRESIDENT'S CONSIDERATIONS**

The decision on the Croton Water Treatment Plant will have long term and serious consequences for New York City and the region from the public health, environmental protection and fiscal points of view.

Indeed, the protection of public health is the primary policy goal. In meeting this goal, we must consider important issues that go beyond facility siting and involve broader citywide and regional concerns. In deciding on this application, we must first consider its potential long term impact on the quality the City's drinking water at its source as well as the consumer's tap. Second, we must examine DEP's record in protecting the Croton watershed. Third, we must consider whether there are better alternatives to filtration. Last, but not least, we must consider the appropriateness of the proposed site and the project's impact on the quality of the local environment and on affordable housing in the City.

### **Potential Impact on Water Quality**

The Borough President has stated previously that protecting the watershed and protecting the quality of the City's drinking water are two sides of the same coin. At issue here is whether the protection of the Croton watershed and the quality of the drinking water at its source will be a priority for the City and upstate communities at all, if the water supply is filtered downstate.

Both the Westchester and Putnam counties are in the process of developing plans for their section of the Croton watershed. Notwithstanding congestion, pollution and quality of life problems associated with growth and rapid suburbanization, development pressures for upstate communities remain great. Therefore, there can be little doubt that these watershed plans, and the emphasis they place on watershed protection, will largely be affected by the decision on whether or not the Croton water supply will be filtered downstate. Given the DEP's past record, which will be discussed later in this report, the Borough President believes the construction of the filtration plant will result in the unabated degradation of the watershed and the City's drinking water supply at its source.

It must also be understood that filtration is not a magic bullet. The quality of the water we drink at the tap is directly related to the quality of the water at its source, the watershed. Even without filtration, the DEP and the upstate communities, due to pressures from the real estate and development interests, have done far too little for watershed protection. If the decision is made to construct the filtration facility, we can be certain that such protection measures will take a backseat to development interests.

### **The DEP's Record in Protecting the Croton Watershed**

The DEP has an engineering culture prone to advance large construction projects instead of long term regional planning and conservation. The DEP's role as a construction agency and environmental facilities manager and owner is in direct conflict with the public interest in strong watershed protection and enforcement. When it comes to

watershed protection, especially with regard to the Croton, the agency's actions, which have come under increasing criticism, speak louder than its words.

While, 1997 Watershed Memorandum of Agreement was a major achievement in protecting the Cat-Del system, it left the Croton watershed without sufficient protection. The \$17.5 million, allocated by the City and State for land acquisition, is far too inadequate to safeguard the quality of the Croton water supply and is grossly disproportionate to the \$754 million, or more, which the DEP will likely spend for construction and operation of the filtration plant.

Additionally, located within the Croton watershed are also the West Branch and Kensico reservoirs, which hold and convey the Cat-Del water supply, 90% of the City's drinking water. These reservoirs are at serious risk due to pollution from unplanned development and road construction. This perilously threatens the Filtration Avoidance Determination for the Cat-Del system and raises the specter of a filtration plant for that system at a cost of \$ 6 billion or more.

Early this year, the Natural Resources Defense Council issued a report (Under Attack: New York's Kensico and West Branch Reservoirs Confront Intensified Development), hereto attached, documenting the City's failure to acquire properties in critical areas and thwart development and road building which threaten these crucial links in the Cat-Del system. Leaving these important reservoirs unprotected, to quote the New York Times, "would be pouring clean water into a dirty glass."

Furthermore, instead of taking strong measures to enforce existing watershed regulations and supporting more stringent rules, the DEP has done just the opposite.

The DEP failure to enforce watershed regulations has been well documented. In a report, issued in February 1999 (DEP's Watershed Police: Cops in Cuffs), hereto attached, Robert Kennedy Jr. clearly outlined the agency's sustained and systematic efforts to weaken enforcement which has left the vast watershed area and the water supply system unprotected and vulnerable.

Stringent regulations for discharge of pollutants and strict enforcement of such regulations are of paramount importance to the protection of the watershed and meeting water quality standards. Yet, instead of tightening such regulations, the DEP was quick to loosen rules controlling construction of septic tanks on sloping land around the reservoirs which would increase the risk of bacteria-laden waste water and runoff entering the water supply.

It is undisputed that wetlands, including smaller isolated wetlands, play a critical role in

water purification in the New York City watershed. However, as recently as this February, the DEP Commissioner Joel Miele, in a highly unusual move, withdrew comments submitted by his own Deputy Commissioner which supported stricter rules proposed by the Army Corps of Engineers for development on small wetlands. The rules are strongly supported by the State Department of Environmental Conservation as well as advocates for watershed protection. Commissioner Miele's action is in keeping with the agency's cozy relationship with upstate developers and local officials who favor growth and may cause great harm to the City's capacity to protect the quality of its drinking water. This is an invitation to the City's rate payers to underwrite and mitigate loosely regulated growth in the watershed, to the benefit of upstate real estate interests. Please see the attached letter by the Borough President to Mayor Rudolph Giuliani in this regard.

The DEP's actions are consistent with its pro-filtration position and the fact that the agency has been planning to build the Croton filtration facility for more than a decade. The DEP's position, as expressed by Commissioner Miele at the ULURP Certification, has been that only filtration can ensure that the Croton water supply will meet water quality standards. It must also be kept in mind that the DEP's failure to apply for a filtration avoidance determination, as was provided by Federal law, has, by negligence, put the City on a filtration course in the first place.

#### **Alternative to Filtration - The Non-Filtration Plan**

Thanks to the purifying powers of natural systems and the engineering marvel that is the water supply system, Croton still supplies high quality water that meets all primary water quality standards. With serious and aggressive watershed protection measures and the implementation of the DEP's Optimal Non-Filtration Plan, this system will continue to provide excellent water meeting all primary, health related, and secondary standards which deal with taste, color and odor, for the foreseeable future. This is according to the DEP's own extended study which was verified by an independent consultant to the Croton Citizens Advisory Committee. While both the DEP and the independent consultant agree that the Optimal Non-Filtration Plan will meet all current and projected water quality standard, the proposed programs under the plan must be pilot tested to provide scientific documentation acceptable to the regulatory agencies. These tests are not expected to be completed prior to the scheduled construction of the filtration plant.

It must be understood that filtration avoidance is not just a well-intentioned concept trumpeted by filtration foes, but a viable and implementable alternative which will cost a fraction of the constructing and operating a filtration plant. According to the DEP, the Optimal Non-Filtration Plan will cost approximately \$20 million with annual operating cost of about \$2 million. The addition of engineered wetlands would cost another \$20 million. Adding alum at the Jerome Park Reservoir (JPR) instead of at the Muscoot Dam

(in case Muscoot cannot be permitted) would require an additional \$170 million for the construction of a covered contact tank. Implementation of the Optimal Non-Filtration Plan, therefore, could cost between \$20 and \$210 million in capital costs and \$2 to \$3 million in operating cost. In contrast, construction of the filtration plant at the Mosholu Golf Course is estimated to cost \$660 million with an annual operating cost of \$11 million, a total life cycle cost of \$754 million.

The Borough President recognizes that there are regulatory and practical hurdles for achieving filtration avoidance for the Croton water supply. None are insurmountable, however. In view of the information available on the non-filtration option, The Borough President believes that it would be a breach of public trust to move ahead with a \$750 million project, while there is a viable and much less expensive alternative which will not only protect public health but also preserve fast disappearing regional open space resources for future generations and at the same time relieve the City of an extraordinary financial burden.

### **Project Impacts**

The Borough President is on record for requesting that the DEP include filtration avoidance as one of the alternatives, in fact the preferred alternative, in the Draft Environmental Impact Statement. This would place the analysis of filtration avoidance on par with the filtration alternatives under consideration, making the EIS a document which could truly inform public policy decisions. The DEP refused to do this and proceeded with the filtration avoidance analysis on a separate track from the formal EIS process.

On December 1998, the DEP produced a six volume Environmental Impact Statement which in a nutshell concludes that with the implementation of mitigation measures, the filtration plant at the Mosholu Golf Course will have no significant impacts on the quality of the local environment.

It should be noted that when the DEP was planning to site the facility in the Jerome Park Reservoir, the agency claimed that there would be no significant impacts on the quality of the environment of that community either. Of course, the DEP has now reversed its position and admits that constructing the facility at the Jerome Park Reservoir would have unmitigable environmental impacts. The Borough President believes that if the DEP fully and earnestly considers the environmental impacts of the Mosholu Golf Course site, it would arrive at the same conclusion.

The Croton filtration plant is one of the largest facilities proposed in the City and certainly in The Bronx. The extent and the magnitude of the blasting, excavation and

construction - expected to last more than half but likely to last a full decade - is like no other in the City's recent history. Most significant, the site of this construction activity will not be some industrially zoned property away from residential areas, but one of the most precious pieces of real estate in this borough and this City, the Mosholu Golf Course in Van Cortlandt Park.

The Mosholu Golf Course is characterized by rolling hills type topography with gently sloping open fields and some of the most magnificent tree groves anywhere in the City. It is a place of bucolic beauty as well as an important recreational venue for those who play golf at the facility and those who stroll the grounds. Most important, the Mosholu Golf Course is a highly valued open space resource which plays a critical role in improving and maintaining the quality of the air and of the environment of both the surrounding residential communities and the ecologically sensitive woods and forests in Van Cortlandt Park.

The DEP proposes to turn this precious resource into a 23-acre mine field during construction, and an industrial facility covered with an 11-acres flat deck after construction. Albeit, this deck will be covered by grass.

There can be no doubt that construction impacts will be enormous.

According to DEP, the project will involve the excavation of 1,000,000 cubic yards of soil and rock and pouring of 240,000 cubic yards of concrete requiring 190 trucks per day and 1,000 workers. This is staggering by any standards and will, no doubt, make life unbearable for community resident who, instead of benefitting from the air purifying effects of the park, would be breathing in construction dust and diesel fumes for more than half a decade, and, instead of enjoying the peace and the beauty that the park offers, would have to suffer through rock blasting and rumbling of trucks through their neighborhood and ultimately be witness to the destruction of this unique resource which they now enjoy and cherish. By selecting the Golf Course site, the DEP seems to have abandoned its mission to protect the environment.

More appalling is the fact that the DEP rejected commercially zoned properties, with no residential uses within a mile radius, in the towns of Greenburg and Mount Pleasant in Westchester County and instead selected the Golf Course site. While the supervisors of both towns expressed serious interest in siting the filtration plant in their respective jurisdictions, the DEP refused to even engage in earnest discussions which might have spared The Bronx.

Therefore, it should not come as surprise that the residents of The Bronx, and the immediate community consider DEP's proposal as an outright assault on a precious and

indispensable open space resource which will cause irreparable damage not only to the quality of the environment but the quality of life of the many thousands who live and work in the vicinity of the proposed filtration facility.

Finally, as water and sewer rates continue to increase, our efforts to maintain and develop affordable housing and revitalize struggling communities are jeopardized. The DEP claims that the cost associated with constructing and operating the filtration project will result in a water rate increase of approximately \$22 per year per household. However, the agency leaves out the fact that water rates and sewer rates, which are currently set at 159% of water rates, have been rising steeply over the past decade and are projected to continue to rise sharply. In fact the combined water and sewer rates have more than doubled ( an increase of 116%) in the last decade. This sharp cost of living increase is passed on to every household and business in New York City and may be the last straw, especially, for communities with marginal housing stock.

### **BOROUGH PRESIDENT'S RECOMMENDATION**

This is one of the most significant public policy issues facing the City and the region. The Croton watershed and the regional environment are at stake, the Van Cortlandt Park and the community around it are at stake, and, affordable housing and other major capital projects in New York City are at stake.

Pursuant the ULURP application and the DEIS for the Croton Water Treatment Plant, the DEP is requesting approval to spend \$750 million, or more, to build and operate a filtration plant which will be funded directly by the rate payers, every family and every business in New York City. In addition, the DEP proposes to place this industrial facility within a beautiful and unique park, the Mosholu Golf course in Van Cortlandt Park. The DEP, the agency which has not taken the necessary measures to protect the Croton watershed, proposes to destroy an indispensable open space resource and the community around it to build a facility which may not be needed in the first place.

The Optimal Non-Filtration Plan is a viable and environmentally responsible alternative for the protection of public health which will cost a fraction of constructing the filtration facility. This alternative will be rendered moot, if the DEP receives the necessary approvals, including for this ULURP application, to build the filtration facility and degradation of the drinking water at its source, will be accelerated by this action.

The community residents, workers, businesspeople, park advocates, environmentalists and their representatives, while fully understanding the need for and the mandate to provide clean and safe water to New York City, have been loud and clear in their unequivocal opposition to the Croton Water Treatment Plant as a means to achieve this

objective. All three affected community boards have been unanimous in rejecting the DEP's proposal to site the facility in the Mosholu Golf Course. The Bronx Borough Board has also voted unanimously to disapprove the project. Clearly, there is unprecedented unanimity on the part of those who would be affected by this project. Constructing the filtration plant in the Golf course site is not only bad public policy, but would reflect a callous disregard for the interest of struggling communities in The Bronx and citywide.

The Borough President has made economic development and job creation a priority of his administration and is cognizant of the need for construction and construction-related jobs as expressed by the trade unions at the various public hearings. The Borough President has worked hard to attract private investment and implement infrastructure and other capital projects that, meaningfully and for the long run, benefit the borough as well as New York City. Projects that enhance communities and maximize local employment and business participation are welcome in The Bronx. In the case of the Croton Water Treatment Plant, however, the Borough President believes that a precious park and the community around it cannot, and must not, be sacrificed to generate economic activity of limited duration and value.

Mismanagement by the DEP of watershed protection strategies and of the process, which could have led to a non-filtration determination by the EPA for the Croton watershed, has created a situation where not only the ratepayers of New York must foot the expense of filtration, but also where a local community is pressured to shoulder the burden of substantial environmental impact of this chemical treatment facility.

This is not a NIMBY issue, but one of gross negligence. Furthermore, the apparent soft stand by the City on ongoing and proposed rules to strengthen watershed protection approaches malfeasance.

Therefore, after careful consideration of public policy exigencies, the facts at hand regarding the proposed project, and input from the affected communities and their representatives, the Borough President strongly recommends the disapproval the DEP's application for siting the Croton Water Filtration Plant at the Mosholu Golf Course in Van Courtland Park.

The Borough President further recommends that the City, in close cooperation with the State and upstate communities, refocus its energies and resources to implement an aggressive regional watershed protection plan and work toward securing a Filtration Avoidance Determination for the Croton water supply system, similar to what was achieved for the Cat-Del system.

Furthermore, the Borough President pledges to work on local, State and Federal levels to remove legislative and regulatory impediments to the implementation of the Optimal Non-Filiation Plan and securing filtration avoidance for the Croton water supply system.

Construction of the filtration plant before all other alternatives are exhausted will send a clear message that watershed protection is no longer a priority and accelerate the degradation of our water quality at its source. Filtration avoidance, on the other hand, will protect the watershed and save our communities in The Bronx and the region. It is the only responsible course of action.

....end....

Dissenting Statement by  
Commissioner Jacob B. Ward

The Department of Environmental Protection's (DEP) and the Department of Citywide Administrative Services (DCAS) application (990237PSX) for use of property in Van Cortland Park (Block 5900, part of Lot 1) as a water treatment facility should be denied.

The majority opinion in approving said use, states:

"The Commission recognizes that the primary reason given by those opposing this application was that the city has failed to pursue non-filtration alternatives to the construction of a treatment plant. The Commission also recognizes, however, that the city and the DEP are currently required under a federal consent decree to complete construction of a filtration plant. DEP and the Law Department have stated that despite efforts by DEP, there has been no indication from the federal government that is prepared to change its position that filtration is required or to allow testing of other methods that would avoid filtration. This issue is uniquely within the DEP's purview and it is the Commission's role to evaluate the subject site selection application".

The above statement we submit is erroneous in several respects. Yes there is substantial and warranted opposition to DEP's application. Indeed such opposition seriously questions the necessity for the proposed water treatment plant. But it also raises other very serious objections and questions as to the propriety and legality of locating said plant in Van Cortlandt Park.

Indeed serious questions have been raised as to the necessity for the proposed Water Treatment Plant. These questions cannot and should not be ignored by the Commission. They are in fact cogently set forth in Bronx Borough President Ferrando Ferrer's submission to\* and testimony before the Commission. In his submission entitled:

ATTACHMENT A

BRONX BOROUGH PRESIDENT FERNANDO FERRER'S  
REPORT AND RECOMMENDATION ON  
THE UNIFORM LAND USE REVIEW PROCEDURE APPLICATION AND  
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE  
PROPOSED CROTON WATER TREATMENT PLANT AT  
THE MOSHOLU GOLF COURSE SITE IN  
VAN CORTLANDT PARK, THE BRONX

The Borough President states in pertinent part:\*

\*"Said submissions are attached to and made a part of this dissent as exhibits 1,2,3 and 4.

"The EPA and the SDOH have taken the public position that New York City must build the Croton Water Treatment Plant in order to protect Public health and comply with Federal and State drinking water regulations. However, a growing number of experts, citizen groups and environmental organizations active on the issue believe that filtration avoidance is a viable option and in fact a better alternative to filtration from fiscal, environmental and public health points of view. In fact, two recent studies, one of which was conducted by the DEP, strongly support this view."

"Currently, the Croton water supply meets all primary water quality standards but fails to meet the secondary, non health related, standards for color, taste and odor at certain times of the year. As more stringent water quality standards go into effect in the future, Croton water under current conditions, is not expected to meet primary standards for disinfection by-products." (emphasis added)

"As stated previously, the DEP has developed an Optimal Non-Filtration Plan which includes various programs to improve the quality of the Croton water supply. According to the DEP's own studies, the Optimal Non-Filtration Plan will likely meet current and future water quality standards. The specific programs include full-scale hypolimnetic aeration of the New Croton Reservoir; continuous addition of alum at the Muscoot Dam or downstream of the New Croton Reservoir; microscreening for larvae removal at the Jerome Park Reservoir; and construction of wetlands/extended retention ponds throughout the Croton watershed. While the DEP's modeling indicates that these programs, will be effective in improving water quality and meeting water quality standards, they must be pilot-tested to provide verifiable scientific documentation acceptable to the EPA and the SDOH. The DEP is currently moving ahead with the necessary work to conduct these pilot tests. Given the milestones established by the Consent Decree, pilot-testing and scientific documentation are not likely to be completed prior to September 2001, when the filtration plant must commence construction." (emphasis added)

"In addition, F.X. Browne Inc. and Environmental Research & Consulting, Inc., the independent consultant (the "Consultant") to the Croton Citizens Advisory Council's Filtration Avoidance Subcommittee, under a contract with the DEP, has prepared a report on the DEP's filtration avoidance strategy. The report generally agrees with DEP's methodology and conclusions, but recommends certain improvements. The final report, which was issued in February 1999, hereto attached, concludes that the Optimal Non-Filtration Plan, based on the modeling results, appears to be adequate to meet water quality standards into the future. In fact, the Consultant, a nationally recognized expert in this field, believes that the DEP's work along with the Consultant's report should be sufficient to appeal to the EPA and the SDOH for consideration of the Non-Filtration Plan." (emphasis added)

DEP asserts that despite its efforts it appears that EPA is not going to change its position that filtration is required nor grant adequate time for the testing of other methods which would not require filtration.

However, the issue is not whether EPA is prepared to amend its ruling, but in reality whether DEP is ready and willing to move as expeditiously as is necessary to test the need for a filtration plant by carrying forward the recommendations of the Optimal Non-Filtration Plan.

Assuming DEP's sincerity in proceeding to carry forward the Optimal Non-Filtration Plan and EPA's unwillingness to grant DEP sufficient time to test the effectiveness and adequacy of said plan, then DEP may, and should seek to obtain relief pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure (FRCP). The Courts have ruled that consent decrees are subject to rule 60(b)(5). The Supreme Court has expressed the view that Rule 60(b)(5) does not require movant to show a "grievous wrong". Also requirements for Rule 60(b)(5) relief which have been identified by a number of the courts include a showing of (1) a change in relevant circumstances or conditions and (2) a hardship on the movant.

Certainly if DEP was in fact intent upon pursuing a Non-Filtration Plan it should be seeking relief in court. Relief which would provide it with adequate time to test said Non-Filtration Plan before taking any steps toward meeting the milestones set forth in the Consent Decree.

The majority opinion, states, that the primary reason asserted by those in opposition was that the city failed to pursue Non-Filtration alternatives to the construction of the proposed Water Treatment Plant. As previously noted such indeed is a valid ground for those in opposition to the application. However, various other grounds were asserted in opposition and such objections are equally important, but in large measure have been ignored by the majority opinion. Thus, Councilwoman June Eisland and Assemblyman Jeffrey Dimowitz not only raised the issue of the need but also asserted that the Water Treatment Plant required state legislature approval before it could be constructed in Van Cortlandt Park. Moreover, in a letter received from the law firm representing the "Friends of Van Cortlandt Park", a Bronx-based community organization, the illegality of constructing the Water Treatment Plant anywhere in the Park was asserted as follows:

"Section 20 of the New York State General City Law specifically states that "the rights of a city in and to its waterfront, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places are hereby declared to be inalienable..." N.Y. General City Law Section 20, subd. 2(McKinney 1989). New York State courts, including the Court of Appeals, have held that Section 20(2) prohibits a city from converting public parkland to a non-park use without the specific and direct approval of the State legislature. Williams v. Gallatin, 229 N.Y. 248, 128 N.E. 121 (1920); Ackerman v. Steisel, 104 A.D.2d 940, 480 N.Y.S.2d 556 (2d Dep't 1984), aff'd, 66 N.Y.2d 833, 498 N.Y.,S.2d 364 (1985). The Second Department has expressly defined the

prohibition against alienation of parkland by a city as follows: "[d]edicated park areas in New York are impressed with a public trust and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred..." Ackerman, 140 A.D.2d at 941. Furthermore, the Court of Appeals has explained that the prohibition against alienation of parkland is absolute, regardless of the alleged good that a proposed encroaching project would confer. Williams v. Gallatin, 229 N.Y. 248, 253, 129 N.E. 121, 122 ("no objects, however worthy, such as court houses and school houses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred"). In sum, New York City lacks the legal authority to construct the WTP at the Mosholu Site or anywhere in the Park without an act of the State Legislature."

The letter from Elizabeth A. Cooke, the Executive Director of the Parks Council not only asserts the fact that the city does not have the legal authority to construct the Filtration Plant in the Park but also notes that the routine operation of the filtration plant will require trucking large quantities of chemicals in and large quantities of concentrated sludge out of the plant everyday. Her letter states:

..."In Volume A of the Draft Environmental Impact Statement (DEIS) Proposed Project Description, Section III pages 23 and 24, there is a listing of the chemicals that will be used in the operation of the plant. They include 6,300 lbs. per day of Sulfuric Acid; 2,800 lbs. a day of Sodium Hypochlorite, 2,500 lbs a day of hydrofluosilic Acid and 12,599 lbs per day of Sodium Hydroxide."

"On page III-25-27 there is a description of the sludge and Filter-to-Waste Water that the plant will produce. It appears that the plant will produce 25,000 lbs a day of concentrated sludge compressed "cake". The diagram in Figure pp.III-7 states that from an average of 13,000 lbs to a maximum of 24,000 lbs of "cakes" of solid sludge will be produced and trucked off-site per day."

The testimony of Arnold Gore of the Van Cortlandt Track Club referred to the above mentioned chemicals. It stated:

"The necessity to obtain a Hazardous Material permit for storage of these chemicals on site belies the assurances that the air quality surrounding the proposed filtration plant will not be significantly compromised. Accidents do occur and planned emissions into the driving range netting will endanger the air breathed by the golfers and students from the high school teams that use the facility."

"The construction and operation of a plant will introduce dangerous chemicals and escaping gases into a residential area of the city. The location in the northwest Bronx is only a very short distance across the Harlem River to Manhattan. The prevailing wind patterns

\*Exhibit 5

\*Exhibit 6 Elizabeth A Cooke's complete letter

will most assuredly reach our neighborhood and beyond. No part of the city will completely escape degradation of air quality."

Attached hereto and made a part of this dissent, as exhibits, are various documents and materials which are either copies of the testimony offered at the April 7, 1999 Hearing or letters and memoranda which were sent to the Commission prior to or after said Hearing by a number of individuals and organizations opposed to the construction of the Water Treatment Plant in Van Cortlandt Park.

These exhibits are: Exhibit 7-A copy of the testimony offered at the Hearing by Jane E. S. Sokolow of the Friends of Van Cortlandt Park, Bronx Water Alliance, M. Sokolow concluded her testimony as follows:

"Proposals to "take" public parkland and precious open space for industrial or any use other than that acceptable or appropriate for public parkland is both an offensive misuse and abuse of the responsibility of those elected and appointed to public office. I urge you not to approve the application(s) before you."

Exhibit 8 - Testimony prepared by the Northwest Bronx Community and Clergy Coalition. The testimony offered covered the following: (A) Alienation of Parkland (B) Increase in Water Bills (C) Filtration is dangerous (D) Filtration is a license to pollute (E) DEP has been inconsistent in their assessment of impacts (F) Traffic (G) Construction of this plant will destroy a Bronx Community (H) Construction of the plant in the Bronx is Environmental Racism (H) will union jobs be created? (I) the Mosholu Golf Course is a valuable community facility (J) Several Westchester Towns want this plant.

Exhibit 9- Materials prepared through the cooperative efforts of the Bronx Council for Environmental Quality, the North West Bronx Community and Clergy Coalition, and the Friends of Van Cortlandt Park. The submission concludes with the statement:

"We ask that you look again at the proposed site for this filtration plant, this time through the eyes of the community residents that have fought for decades to keep our neighborhood a stable and safe place. Our struggle will be lost in one arbitrary city action, unless you view Van Cortlandt Park as the center of a viable community and vote against the construction of the Croton Filtration Plant in the Mosholu Golf Course."

Exhibit 10 - Submission dated April 16, 1999 by John C. Klotz Esq. on behalf of the Croton Watershed Clean Water Coalition (CWCWC). This extended submission of the testimony submitted by Mr. Klotz in opposition to the siting of the plant in Van Cortlandt Park concludes with the following statement:

"The Commission is charged by the Charter with specific responsibilities for planning for the orderly growth of the City and overseeing the implementation of laws that

require environmental reviews of actions taken by the City. We only ask that it discharge these responsibilities now."

"Until now, the Commission, like the public, has been denied an affirmative role in determining the fate of the watershed and the future degradation of the city through urban sprawl. By law, this is your opportunity and obligation to deal with these issues. What you do will be writ large for generations of New Yorkers yet unborn."

Exhibit 11 - Letter dated April 16, 1999 addressed to the Commission from Karen Argenti. The letter concludes with the statement:

..."This ULURP sets bad zoning precedent. If they can do it here they can do it anywhere throughout the city. The proposal is site selection ULURP, not an amendment to the local community. What this means is there is no protection for the existing adjacent residential areas, nor does zoning describe what would be permitted in the buffer areas."

Exhibit 12 - "Can We Drink the Water We Live With" by Paul S. Mankiewicz, Executive Director of the Gaia Institute and Julie A. Mankiewicz Director of Research and Education at the Gaia Institute. This article, subtitled, "New Yorkers Struggle to Let Nature Do the Job", published in the summer 1998 issue of WHOLE EARTH discusses the issue before the Commission - i.e. The Croton. The issue is framed as follows:

..."John Jervis began work in 1836 on a reservoir system in the Croton watershed. Initially delivering ninety million gallons per day from the Croton Watershed, the Croton was expanded in 1892 to 390 million gallons. After 150 years the Water remains remarkably pure and requires no filtration before supplying New York citizens."

"But pure or not, it is the center of a controversy. The EPA has said that the Croton Watershed is stressed from development and has sued New York to force them to build a billion dollar water treatment facility for Croton supply. A coalition of citizens groups and scientists say its cheaper and safer to rely on well stewarded soils and streams within the Watershed. At the heart of the disagreement is a choice: An end billion-dollar filtration facility in a community of 50,000 residents and 25,000 students, or protection and enhancement of watershed ecostructures and functions. The question is what to trust: Nature's diverse and widespread capacities, or one centralized technological filtration facility?"

Toward the end of the Article the author raise the question - "Can we live with the water we drink? Their answer is:

"To live with the water we drink, two ecological principals must become incorporated in the rules and minds of planners, designers, and tenders of drinking water systems. They are: Slow the flow and increase the intimacy between water and filtration media of the watershed. Technically this is described as increasing the hydroperiod and filter contact time. To live with and drink the water in the Croton Watershed, the amount of runoff that infiltrates the soil and enters the groundwater can be maximized. The Gaia Institute suggested this as a workable strategy since 1989. Right now it is ignored."

Perhaps the most important exhibit attached to and made a part of this dissent is Exhibit 13. Said exhibit dated April 22, 1999, is a letter written by Dr. Scott A. Schroeder, Section Chief Pediatric Pulmonary Medicine, Montefiore Medical Center, 111 East 210th Street, Bronx. The letter is addressed "To whom it may concern" and is "Re Construction of Water filtration plant in Van Cortlandt Park." The letter states:

"Asthma affects 7,000,000 children in our country resulting in 865,000 emergency room visits, over 200,000 hospital admissions, and over 10,000,000 days of school missed for these children with Asthma. Nowhere in the United States is the problem of childhood asthma more acute than in the Bronx. In our Borough, children are hospitalized at a rate nine times the national average. In New York City, one child is hospitalized every thirty minutes because of Asthma. Even more disturbing are studies that indicate that the risk of death due to Asthma has also markedly increased among inner-city African American children. African-American children are six times more likely than white children to die from asthma...." (emphasis added)

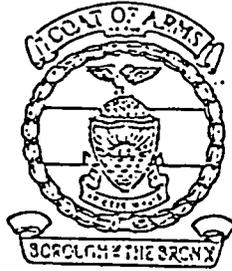
"The causes of these increases in morbidity and mortality are unknown but rapid increases in diseases prevalence are most likely attributable to environmental rather than genetic causes..." Air pollutants from areas of increased traffic density and diesel combustion have been associated with a wide variety of health impacts in children and adults with chronic respiratory illnesses. These include increases in mortality in severe cases, increased hospital admissions, emergency room visits, and days of school and work missed. Over the next seven years it would seem almost inevitable that the ambient levels of most of these by products of combustion will increase in the North Bronx and who will pay for their hospitalization? Who will help them make up the school missed?" (emphasis added)

"...In the Bronx we have a population of children at high risk for respiratory disease (9)\* and any added inflammatory irritants in their environment may cause significant increases in hospitalizations and emergency room visits for our children." (emphasis added)

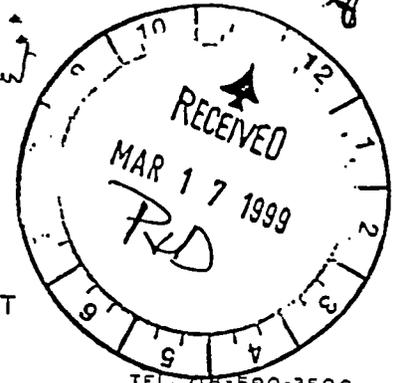
It is submitted that the Commissions approval of the DEP's and DCAS application for siting and construction of the proposed Water treatment Plant in Van Cortlandt Park (Mosholu Golf Course) west of Jerome and Bainbridge Avenues (Block 5900 part of Lot 1) Borough of

the Bronx would be an absolutely erroneous determination, without basis in fact or law. Based upon all of the facts and testimony offered in support and in opposition to the Commission it is submitted that the Application must and should be denied.

"9\* Schroeder SA and Newell P. Management of Children with frequent admissions for Asthma, AMJ Resp Crit Care Med (1998) 157:A539"



*August 1999*



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FERNANDO FERRER  
BOROUGH PRESIDENT

March 12, 1999

Mayor Rudolph Giuliani  
City Hall  
New York, NY 10007

Re: Wetlands Regulation in New York City's Watershed

Dear Mayor Giuliani:

I am writing to ask your careful review of a recent decision by DEP Commissioner Joel Miele that may cause great harm to our City's capacity to protect the quality of its water supply and avoid the expense associated with federally mandated water filtration.

It has come to my attention that in a highly unusual move, Commissioner Miele has notified the U.S. Army Corps of Engineers that he is withdrawing official comments made to the Corps by his Deputy Commissioner, William Stasiuk, P.E., Ph.D., that supported the protection of critical wetlands in the New York City watershed. Commissioner Miele's action appears to fly in the face of the current thinking of environmental experts, including the Corps. It further suggests --and, we note, to a federal agency-- that on a most fundamental issue of water quality, DEP's commitment to watershed protection is soft.

While New York State and federal law prohibits the destruction of larger wetlands (those over 12.4 acres), smaller wetlands are not protected. Under Section 404 of the Clean Water Act, the Corps is authorized to regulate the discharge of fill into small or isolated wetlands. Pursuant to this authority, the Corps developed a controversial system of virtually automatic permitting which applies nationwide and which authorizes certain construction activities within wetlands without site-by-site review. Under this permitting scheme, known as "Nationwide Permit 26", the country has witnessed the loss of hundreds of thousands of acres of wetlands critical to the maintenance of water quality.

Exhibit 4

Mayor Rudolph Giuliani  
March 12, 1999  
Re: Wetlands Regulation in New York City's Watershed  
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But now the Corps has come to believe that isolated wetlands have far greater value than previously recognized and have a greater need for protection. Small wetlands perform critical ecosystem functions by providing, among other things, habitat, flood control, nutrient removal and groundwater recharge. Based upon this new understanding, on July 1, 1998 the Corps proposed modifications to the Nationwide 26 program which strengthen wetland protection. The Corps requested comments from members of the public and other regulatory bodies with respect to those modifications. The Corps comment period ended December 18, 1998.

On August 21, 1998, Dr. Stasiuk requested that the Corps cease the use of the Nationwide Permit within the City's 2,000 square mile watershed area in favor of the stricter guidelines. Dr. Stasiuk proposed that large projects within the watershed which involve significant wetland losses should submit individual permit applications to the Corps of Engineers and prove on a case-by-case basis that their wetland filling activity will not adversely impact water quality.<sup>1</sup>

I believe that this request is sensible, prudent and long overdue within the watershed. It would afford individuals and affected agencies, including the DEP, an opportunity to participate in the permitting process and help protect invaluable wetland resources.

Unfortunately, Dr. Stasiuk's proposal was short lived. In a letter to the Corps dated February 5, 1999, Commissioner Miele publicly disavowed Dr. Stasiuk's comments to the Corps. Referring to Dr. Stasiuk's detailed comments, Commissioner Miele wrote, "I am hereby withdrawing these comments. Please know that the comments you received have not been reviewed, accepted and/or approved by my office and are therefore unofficial."

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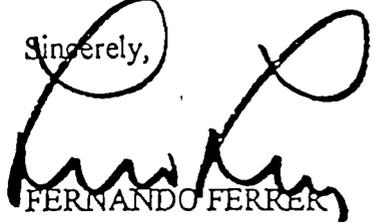
<sup>1</sup> Regional Engineers at the Army Corps are authorized to add regional conditions to the Nationwide permits in order to meet the specific needs of a particularly sensitive or important waterbody or watershed area.

Mayor Rudolph Giuliani  
March 12, 1999  
Re: Wetlands Regulation in New York City's Watershed  
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It is undisputed that wetlands, including smaller, isolated wetlands, play a critical role in water purification in the New York City watershed. They recharge the aquifers that feed our reservoirs their purest waters and maintain stream flows during drought. They act as natural filtration systems, purifying our water by trapping construction runoff, sediments, pesticides, road salts, toxic motor fluids and nutrients such as phosphorous and nitrogen which are the principal source of water quality degradation. They also provide important wildlife habitat and serve flood control functions that are critical to protecting quality of life and property in the 2,000 square mile watershed.

Army Corps engineers must have the authority to consider regional conditions prior to permitting development on critical wetland assets. Therefore, I urge you to act quickly to request that the Corps reopen its comment period, allowing the City to reinstate its original request that the Nationwide permits not apply in the watershed. Over half the state's population relies upon the City's drinking water. The water supply is the City's most valuable asset and its protection is one of our principle obligations to future generations of New Yorkers. As leaders charged with its protection, we must all resist the temptation to allow political considerations to affect our vigilance and commitment and our obligations as trustees.

Sincerely,



FERNANDO FERRER

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April 9, 1999

**VIA FEDERAL EXPRESS**

City Planning Commission  
Calendar Information Office - Room 2E  
22 Reade Street  
New York, NY 10007

Re: Comments on Proposed Site Selection of Mosholu  
Golf Course Site for Croton Water Treatment Plant  
CEQR No. 98DEP027; ULURP No. 990237PSX.  
Public Hearing Date April 7, 1999

Dear Commissioners:

We represent the Friends of Van Cortlandt Park ("Friends"), a Bronx-based community organization dedicated to preserving Van Cortlandt Park's natural environment, supporting the Park's educational and recreational programs, encouraging youth involvement in Park programs and protecting the unique resources and historical sites within the Park from destructive activities. Founded in the late 1800s, the Park provides New York City with 1142 acres of valuable open space and recreational grounds; over half of it wooded, and the remainder filled with trails, wetlands, lakes and streams, ballfields, picnic areas and two golf courses. In addition, the urban forests of the Park help reduce air and noise pollution created by the surrounding urban environment. Friends has worked in partnership with the New York City Department of Parks and Recreation and with the City Parks Foundation on many projects to raise funds for the restoration and revitalization of the Park.

Exhibit 5

Friends is strongly opposed to the construction of the Croton Water Treatment Plant ("WTP") at the proposed Mosholu Golf Course Site or any other location in the Park. The proposed siting of the WTP in the Park is in blatant disregard of New York City's responsibility to preserve City parks for the health, safety and welfare of the public. As evidenced by the opposition of the local community boards and the Bronx Borough Board, this proposal also disregards the needs of the affected community. Most significantly, however, New York City lacks the legal authority to construct the WTP anywhere in the Park without an act of the State legislature.

Section 20 of the New York State General City Law specifically states that "the rights of a city in and to its waterfront, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places are hereby declared to be inalienable. . . ." N.Y. General City Law §20, subd. 2 (McKinney 1989). New York State courts, including the Court of Appeals, have held that Section 20(2) prohibits a city from converting public parkland to a non-park use without the specific and direct approval of the State legislature. Williams v. Gallatin, 229 N.Y. 248, 128 N.E. 121 (1920); Ackerman v. Steisel, 104 A.D.2d 940, 480 N.Y.S.2d 556 (2d Dep't 1984), aff'd, 66 N.Y.2d 833, 498 N.Y.S.2d 364 (1985). The Second Department has expressly defined the prohibition against alienation of parkland by a city as follows: "[d]edicated park areas in New York are impressed with a public trust and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature, plainly conferred. . ." Ackerman, 140 A.D.2d at 941. Furthermore, The Court of Appeals has explained that the prohibition against alienation of parkland is absolute, regardless of the alleged good that a proposed encroaching project would confer. Williams v. Gallatin, 229 N.Y. 248, 253, 128 N.E. 121, 122 ("no objects, however worthy, such as court houses and school houses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred"). In sum, New York City lacks the legal authority to construct the WTP at the Mosholu Site or anywhere in the Park without an act of the State Legislature.

Not only would the City be in violation of New York State law, were it to commence construction at the Mosholu Site without an express act of approval by the State legislature, but the City would be in violation of its own zoning and land use laws. Pursuant to Section 11-13 of the New York City Zoning Resolution, where a "public park or portion thereof is sold, transferred, exchanged, or in any way relinquished from the control of the Commissioner of Parks and Recreation," no building permit may be issued nor may any use be permitted on such property until a zoning amendment designating a zoning district for that property has been adopted by the City Planning Commission. Sections 200 & 201 of the New York City Charter mandate that the Uniform Land Use Review Procedure ("ULURP"), New York City Charter

City Planning Commission  
April 9, 1999  
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§197-c, be completed before any amendment of the Zoning Resolution designating a zoning district is adopted.

The construction of the WTP, estimated to take at least five years and remove at least 23 acres of parkland from public use, and the contemplated permanent changes to the Mosholu Site, including, but not limited to, the significant increases in grade and the presence of the plant and its associated structures, which will permanently exclude the public from certain areas of the Park, clearly require the Department of Parks and Recreation to relinquish a portion of the Park. Thus, pursuant to the New York City Zoning Resolution, an amendment designating a zoning district is required and must be proposed and submitted to the relevant community for comments through the ULURP procedure before any construction commences.

In sum, the current ULURP application to construct the WTP at the Mosholu Site is legally defective in at least two significant areas. First, it fails to address the fact that express approval through an act of the State legislature will be required by New York State law before construction can commence. Second, it fails to address the zoning changes and procedures that would be mandated under New York City's own zoning and land use laws, if the WTP were to be constructed at the Mosholu Site.

For these reasons, the City Planning Commission must reject the ULURP application and the CEQR DEIS referenced above. Should the City Planning Commission approve the current application as proposed, without requiring modification to meet the deficiencies addressed above, please be advised that Friends intends to institute appropriate legal action to prevent construction from commencing in violation of City and State law.

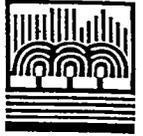
Some time ago, Friends expressed a strong and genuine interest in meeting with the City so as to avoid time consuming and disruptive litigation over the proposed WTP project. The City's decision to impose onerous conditions on any such meeting made it nothing more than a meaningless sound bite. Having moved forward with the selection of the Mosholu Site, the City has left Friends with few alternatives. Friends continues, however, to seek a solution to this dispute without litigation and is willing to engage in discussions in furtherance of such a solution.

Very truly yours



Howard B. Epstein

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Walter Zacharius

Elizabeth A. Cooke  
Executive Director

May 25, 1999

Hon. Jacob B. Ward  
City Planning Commission  
22 Reade Street  
New York, NY 10007

Dear Commissioner Ward:

Thank you for the opportunity to discuss the proposed siting of the Croton Filtration Plant at the Mosholu Golf Course within Van Cortlandt Park. The Parks Council is opposed to the placement of this facility in parkland for several reasons.

**The Water Filtration Plant is an Industrial Facility** and it should be located on a site zoned for industrial functions. The routine operation of the filtration plant will require trucking large quantities of chemicals in and large quantities of concentrated sludge out every day.

In Volume A of the Draft Environmental Impact Statement (DEIS), Proposed Project Description, section III, pages 23 and 24, there is a listing of the chemicals that will be used in the operation of the plant. They include 6,300 lbs. per day of Sulfuric Acid; 2,800 lbs. a day of Sodium Hypochlorite; 2,500 lbs. a day of Hydrofluosilicic Acid and 12,599 lbs. per day of Sodium Hydroxide.

On page III-25 to 27 there is a description of the sludge and Filter-to-waste water that the plant will produce. It appears that the plant will produce 25,000 lbs. a day of concentrated sludge compressed "cake". The diagram in Figure PP.III-7 states that from an average of 13,000 lbs. to a maximum of 24,000 lbs. of "cakes" of solid sludge will be produced and trucked off-site per day.

Prior to the City's request to the place a Filtration Plant in Van Cortlandt Park, agencies followed the zoning code and other processes established for the placement of similar facilities. For instance, in May of 1984 the DEP applied for and received a special permit to place a demonstration plant and pumping station at Jerome Park Reservoir in an R6 zone. They needed the special permit *for just the pumping station* because the zoning code states that "a public service establishment including a potable water pumping station can only be placed in a residential district with a special permit and provided that it will serve the residential areas within which it is proposed to be located and demonstrates that there are serious difficulties in locating it in a district wherein it is permitted as of right."

There is no mention of water filtration plants in the zoning code. The City's position appears to be that zoning codes do not apply to parkland as long as the City places a recreational or park-like function on the roof of whatever facility they build in the park.

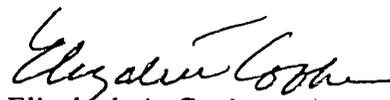
The Parks Council believes that **the City does not have the legal authority** to construct the Filtration Plant in the park without an act of the State legislature. Some attorneys are researching the protections for parks provided in Section 20 of the NYS General City Law. We believe that the City would also be in violation of Section 11-13 of the New York City Zoning Resolution, if it proceeds. Please see attached letter of April 9, 1999 prepared by Schulte Roth and Zabel that provides references and quotes of relevant cases and codes.

**DEP should not be expanding its facilities in parks.** The Department of Environmental Protection has not met commitments made to restore parkland on two major projects undertaken in the Bronx. DEP was suppose to create lawns and planted areas over their work site in Pelham Bay Park. However, they covered the work site with construction debris instead of soil and the area will not support desired flora and fauna. In Van Cortlandt Park, there has been a delay of over twenty years in restoring the area on top of the water tunnel. It appears that (for whatever reasons, however understandable) DEP does not necessarily have the skills, resources, control of circumstances, etc. required to restore parkland, as promised, for public use and the activities that existed prior to their construction projects.

**The topography of Van Cortlandt Park will be substantially altered** by the construction of the proposed filtration plant. In the DEIS, Proposed Project Description, section III, page 10 on Table PP.III-1 it states that the existing grade is approximately 170 to 200 feet and that the final grade will be 205 feet. Therefore, in some places the grade of the land will be raised by over 30 feet. The description says, "to accommodate the existing sloping site topography, the facades of the building would be constructed as bermed and landscaped embankments. The maximum height of these embankments (on the east side) would be about 35 feet."

The use of over 23 acres of parkland will be permanently restricted to only those activities that can be safely managed on the roof of a substantial industrial plant. The City says the proposal is justified because in the past the City has built valve chambers or water tunnels under parkland. However, those projects are not analogous uses and some of the construction projects have not achieved the goal of restoring parkland to public use.

Sincerely,

  
Elizabeth A. Cooke

*We are writing to all of the commissioners,  
in the hope of influencing  
some more of them to oppose  
this bad idea.*

*We would like to see serious  
exploration of Westchester sites.*

Comments  
City Planning Commission Hearing  
Site Selection of a Water Treatment Facility  
in Van Cortlandt Park

CEQR: No. 98DEP027  
ULURP: No. 990237PSX

April 7, 1999

Jane E.S. Sokolow  
Friends of Van Cortlandt Park, Bronx Water Alliance  
2 Spaulding Lane  
Bronx, NY 10471

I live in the Bronx. I drink NYC—Cat/Del water. I am an ecologist and a conservationist. I believe in clean water, open space and parkland and preserving the quality of life in my community and my borough. I also believe in jobs and job opportunities for the residents of the Bronx—where they are appropriate.

The site selection issue before you is NOT ABOUT jobs, or “not in my backyard,” or the need for clean water. It’s ABOUT the process that was, or in many instances was NOT followed to select a site for the Croton Water Filtration Plant, and about the definitions or interpretations of the assumptions that have been made in the selection. And, it’s about setting a BAD precedent for parkland in the City of New York.

1. The original siting criteria (Croton Water Supply, Extended Study Program Report, Nov. 1997, p. 5.2) specifically states “the exclusion of sites on parklands” as one of the four limiting criteria applied against the list of possible sites. Why were these siting criteria ignored for the Borough of the Bronx?
2. City parks and urban woodlands are set aside for public park use. Preserving, protecting and maintaining them for that purpose does not include the construction of an industrial facility—even if it is deemed a “critical public facility.” Alternative sites exist. And, if a piece of Van Cortlandt Park can be taken for non-park use, it sets an extremely ominous precedent. What parkland anywhere in New York City will be safe from the next “critical public facility?”
3. In November of 1989, this Commission adopted *Criteria for the Location of City Facilities* a.k.a. Fair Share. These criteria include completing a Fair Share analysis before a site is selected. Why was the site for this project selected before a Fair Share Analysis was initiated AND completed?
4. The plan calls for the proposed facility to be built “underground.” While it is true that some of the project will be underground in the sense that it will be under the surface of the present grade, the northeast end will be under 35’ of soil. In other words the elevational grade change to the site will be significantly altered. The

terrain and topography will look nothing like the original site, but instead rather like a landfill or mined site after it has been "reestablished." "Restoration" of this site back to what DEP will be "borrowing" will not be possible, nor can the site ever be used for another recreational or park use.. **Comparing the site restoration of this project to the restoration of the site in Central Park under which the third water tunnel runs is disingenuous. The third water tunnel is buried far below the original surface of the parkland, leaving the topography in its original state. And there is little, if anything, to indicate that there is something buried there.**

5. Finally, I urge each of you to make a site visit to the Bronx. Walk through Van Cortland Park. Walk through the community of Norwood—the community adjacent to the proposed construction site. It is an economically stable and thriving community. Can you in all conscience vote to put this facility at a site that will likely cause the destabilization and disintegration of a residential community of people when for a higher dollar cost the project could be put at a more appropriate site in Westchester? Is the dollar amount that might be saved up front worth more than the community of Norwood?

Proposals to "take" public parkland and precious open space for industrial *or any* use other than that acceptable or appropriate for public parkland is both an offensive misuse and abuse of the responsibility of those elected and appointed to public office. I urge you to not approve the application(s) before you.

**Testimony Against the Proposed Filtration Plant in Van Cortlandt Park's  
Mosholu Golf Course**

**Prepared by the Northwest Bronx Community and Clergy Coalition  
For the City Planning Commission Hearing 4/7/99**

**Alienation of park land**

- The city has speculated that this will be 5-7 years of construction, affecting 28 acres of Van Cortlandt Park
- The New York City Corporation Counsel has ruled that this is not an alienation of park land because they plan to re-build the park on top of the factory
- This "park" will be at an elevation of 205 feet, 35 feet higher than the current elevation of parts of the park
- The final affected area will be 23 acres
- Even if the City does rebuild the park, it will be lost to the community for at least 5-7 years
- If the City does not follow their plan, which would not be unprecedented, the community will lose parkland without the necessary state legislation
- The Corporation Counsel's ruling effectively removes any debate in Albany around this taking of parkland
- If the City can do it here, they can do it anywhere

**Increase in water bills**

- The costs of water and these capital projects are paid by New York City residents
- By 2010 water rates for New York City rate payers will increase by 75%
- The filtration plant will cost at least \$660 million to construct, and it has been speculated to cost as much as \$100 million per year to operate
- This cost will be paid by New York City water rate payers through a 4% rate increase in 2010, on top of the 75% increase
- This increase will be born by low income residents, since the water and sewer tax is already a regressive tax. Low income residents live in homes with older plumbing, have larger families and stay in their homes during the summer for the most part, they use more and pay for more water. Since sewage costs are 159% water costs, low income people pay more for the infrastructure of the system
- When metering of the water started, the increase in cost for water threatened low income co-ops (Housing Development Fund Corporations) and homeowners, since the cost was more than was budgeted
- All buildings with any sort of City Rehabilitation money (Participation Loan Program and 8A Loan funding, for example) have been metered
- The increases in water will be paid by renters, either through higher rent guidelines increases or a straight pass-along of the bills (as with the ConEdison bills)

**Filtration is dangerous**

- Chemical filtration is a process that actually adds chemicals to drinking water
- The process of filtration actually increases the intensity of the existing pathogens in the water by collecting them in one place, at the filtration plant
- Any error, human or mechanical, at the filtration plant, can release all of these pathogens directly into the drinking water

- This occurred in Milwaukee, where thousands of people became ill and over 100 people with immune deficiencies died, and in Las Vegas, where hundreds of people became ill and many people with immune deficiencies died
- 600,000 gallons of chemicals, including volatile chlorine, will be shipped through the local community and stored at the filtration plant, which is a hazard to the surrounding community
- 30,000 pounds of chlorine is already stored in the area, at Gate House 5 just south of Van Cortlandt Park. DEP's plan calls for the construction of a 16 foot in diameter tunnel from the filtration plant to the Jerome Park Reservoir, next to Gate House 5. A chlorine leak or spill, or an accident during construction could release a toxic cloud of chlorine gas over a two mile area, and could lead to the evacuation of residents, students and merchants within a half mile radius

### **Filtration is a license to pollute**

- The City has entered into an agreement with the Federal EPA to keep the area clean around the Catskill and Delaware watersheds, which supply 90% of New York City's water
- This agreement calls for curbs in development, more responsible development, and the enforcement of pollution guidelines in the area of these watersheds
- The City did not enter into this agreement for the Croton Watershed despite the fact that Croton water met and continues to meet all EPA drinking water guidelines
- Building a filtration plant will allow further pollution in the Croton Watershed because the guidelines will not be as strict and the City will have less political will to enforce the guidelines
- Residents in Putnam and Westchester Counties have joined with New York City groups and formed the Croton Watershed Clean Water Coalition in opposition to the filtration plant, because they do not want further pollution and sprawl in their communities
- YOU CAN'T CLEAN DIRTY WATER

### **DEP has been inconsistent in their assessment of impacts**

- Said originally that it wouldn't have an impact on Jerome Park reservoir
- Now they're saying that the reason they chose Van Cortlandt Park is because of the tremendous impact it would have on the Reservoir
- DEP's current presentation says "Major construction at either JPR or Harris Park could not be isolated from surrounding residents and schools"
- This is inconsistent

### **Traffic**

- 233rd and Deegan and Jerome Avenue intersection already rated an "F" by DOT
- There will be an 8% increase in traffic at this intersection resulting from this construction

### **Construction worker traffic**

- At peak - 1,077 workers on site (union overestimates - 5,500)  
At peak - 383 autos - the math doesn't work - less than a third of the workers will drive to work?, still too many vehicles

### **Truck traffic**

- At peak - 190 trucks each day
- "Revised signal timing" will mitigate this

- "An improved site entrance" - does that mean a new entrance ramp off the Deegan through Van Cortland Park - how many more acres of the park will we lose with this "mitigation"
- These suggestions mediations aren't realistic and won't mitigate our concerns and we believe that they are being offered during community hearings to shut us up
- DEP estimates that 313,516 trucks will be required to haul the materials in and out of the site. Jerome Avenue will have to be repaved after the construction.

#### **Construction of this plant will destroy a Bronx community**

- The City has proposed the construction of this 11 acre factory, affecting 23 acres of park land, in Van Cortlandt Park
- They have stated that construction will take between 5 and 7 years, which is probably a conservative estimate
- 22,600 residents and 6,464 students live within a half mile radius of the site
- This area includes a successful Business Improvement District (BID) along Jerome Avenue, Montefiore Medical Center, North Central Bronx Hospital, and part of the Amalgamated Houses
- Construction of this "underground" facility will require blasting through 60 feet of bedrock crushing 583,000 cubic yards of rock at the site and hauling over a million cubic yards of soil and rock away
- This blasting could damage the surrounding infrastructure, including apartment buildings and the adjacent elevated 4-train
- DEP estimates that 313,516 trucks will be required to haul the materials in and out of the site. Jerome Avenue will have to be repaved after the construction.
- A small wetland will be destroyed during the construction, and supposedly "replaced", an acre of mature forest will be clearcut

#### **Construction of the plant in the Bronx is Environmental Racism**

- The 1990 census records the area around the Golf Course as 45% Non-white Hispanic, 16% Asian and 15% Black
- Environmental justice calls for community involvement in all environmental decisions that impact their neighborhood
- The community was not involved in the over 20 year process towards the construction of this plant, until the State and City Environmental Quality Review Processes (SEQRA & CEQRA) started in 1993 with a community hearing
- The community was not involved in the decision by the City and the State to filter the water in the first place

#### **Will union jobs be created?**

- At peak, DEP has stated that there will be 1,077 workers on site
- At previous hearings, the union representatives have estimated that 5,500 jobs will be created for this project
- We want jobs to be created - we want to work with the unions to assure that New York City union members build this plant if it needs to be built, in Westchester

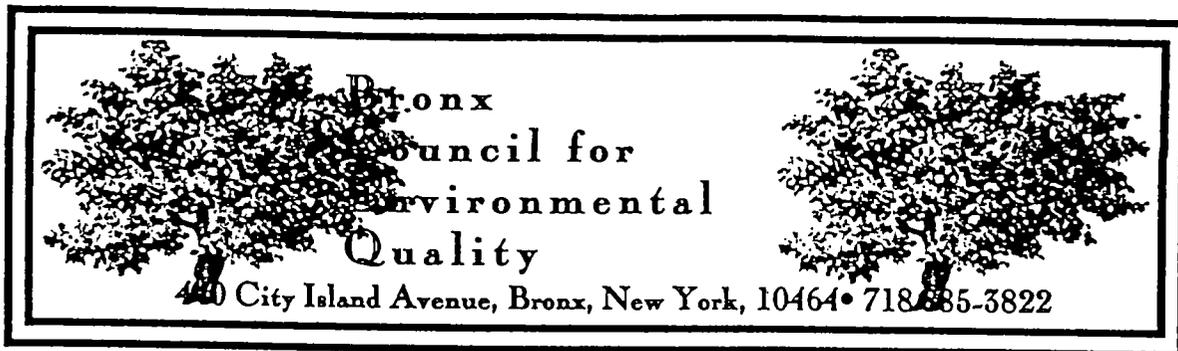
- There are lots of other projects that would create jobs – DEP spends \$1 billion each year on capital projects
- The Kingsbridge Armory should be renovated as a community and education facility, and that should be done using union labor
- The unions should not be pushing for a project that will destroy a working class community, where many union members live and send their children to school

#### **The Mosholu Golf Course is a valuable community facility**

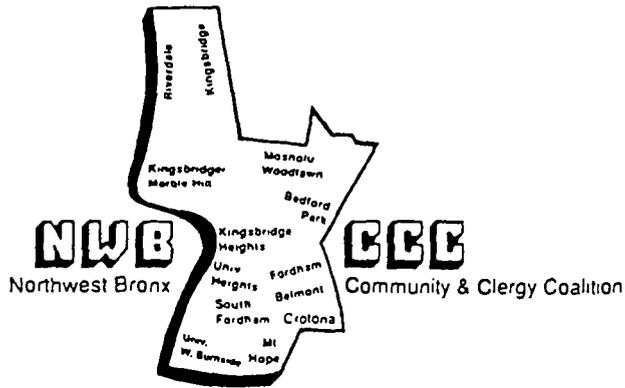
- The filtration plant will destroy 28 acres of the park during the construction
- Will the city really re-build the course?
- 30 years ago, the City claimed that they would rebuild our park on top of the 3<sup>rd</sup> water tunnel at 242<sup>nd</sup> and Van Cortlandt Park East
- The course draws people from New York City, Westchester and Rockland Counties
- Weekday users are primarily retirees
- Five local school teams, including the teams from Bronx Science and Lehman High School, use the course for practice and competitions
- 32,669 rounds of golf were played on the Golf Course in 1997
- The Golf course has been tentatively selected by the Professional Golf Association Tour to potentially host a golf training center for disadvantaged youth – this could not happen with the construction of the plant

#### **Several Westchester Towns want this plant**

- The increased expense of building the plant in these communities will be offset since a community in the Bronx will not be destroyed
- The Town Supervisors in Greenburg and Mt. Pleasant have been pursuing this plant, and have agreed to allow the plant to be built in both of their communities
- The Supervisor of Greenburg, Mr. Feiner, actually wrote a letter to DEP after the site was chosen voicing his disappointment that they did not chose his town



*These materials were prepared through the cooperative efforts of the Bronx Council for Environmental Quality, the North West Bronx Community and Clergy Coalition, and the Friends of Van Cortlandt Park.*



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May 17, 1999

Jacob B. Ward  
City Planning Commission  
22 Reade Street  
New York, NY 10007-1216

Dear Commissioner Ward,

The Northwest Bronx Community & Clergy Coalition is a grassroots community organization working in the Northwest section of the Bronx. We have worked on issues ranging from bank redlining to improved education facilities to the return of drug confiscation money to the community. We are currently celebrating 25 years of working on issues of concern in the community. One issue that we have been working on for the past eight years has been the sustainability of the New York City Water supply.

The City Planning Commission has been reviewing the proposed Croton Filtration plant through the ULURP. We understand that you will be voting on this proposal on June 1<sup>st</sup>. Since we have been working on this issue for such a long period, we would like to share some of our concerns with you.

#### *Siting the Plant in Van Cortlandt Park*

As the chair of the City Planning Commission, you are currently reviewing the siting of this plant. We were told that the commission visited the Mosholu Golf Course on a tour hosted by the DEP. We would have liked to have been a part of that tour, since we are the people who live, work and play in that area. If the DEP's computer generated pictures are any indication of the perception they have of the community before and after the construction, we feel that you did not receive a tour that represents the real community.

If we had given you a tour of our community, we would have shown you the surrounding streets, which are filled with 5-6 story residential buildings and stores, churches and hospitals, 22,600 residents and 6,464 students. DEP has not addressed the impact that the blasting through the adjacent bedrock will have on these buildings, although they have stated that one of our major roads, Jerome Avenue, will have to be repaved after the construction is complete. This road runs directly under the elevated 4 train line, which serves as the major commuter link for this part of the Bronx and runs down the east side of Manhattan.

It is important that you view this part of the city at 8 am, and after 2:30 pm, when most of the activity occurs in the area. At these times, parents are out with their children, using the many nearby facilities including grocery stores, banks, clothing stores, and THE PARK. The traffic is increased by those using the two local hospitals: Montefiore and North Central Bronx. The traffic at the intersection of 231<sup>st</sup> Street and Jerome Avenue has already been given an "F" rating by the DOT, and this does not account for the traffic from the 190 daily trucks and 1,077 workers building the plant.

Attached is a letter discussing the asthma problems in the community, and the way that these problems will be exacerbated by the construction. The dust from blasting and hauling away 1 million cubic yards of rock and dirt. This will impact the elderly, the young, and those using the hospitals.

Finally, this is parkland. Robert Moses, as Parks Commissioner, paved over this green space to build the Henry Hudson Parkway, the Deegan and the Mosholu Parkway extension. The damage to wildlife and their natural habitat is remembered to this day. The third water tunnel was built under the park recently, with the promise that the park would be restored on top. This has not happened. DEP probably did not show you the dirt patch left where acres of trees had grown for centuries. Even if the DEP completely restores the land on top of the filter factory, much of it will be 35 feet above its current elevation. This 28 acres of land will never be restored to its current condition. A City Planning Commission decision to allow this "alienation" of park land will continue in the Moses legacy of environmental and community destruction.

### ***The Federal Consent Decree***

The consent decree does not remove the City Planning Commission from the siting decision making process. In every meeting that we have had with the EPA and the White House Council on Environmental Quality, they have consistently stated that they have nothing to do with the siting of the plant. **THAT IS YOUR DECISION.** The consent order does not call for a rubber stamp over any administration choice. It is essential that you judge the siting proposal based on its merits, not under the pressure of a federal mandate.

The consent order does allow for further discussion if there is new technology. In meetings that we have had with federal officials, they have stated that New York City must present a watershed management plan to the federal government for a dialogue to begin on avoidance of filtration. City officials, including DEP Commissioner Miele, have stated that they are interested in avoiding filtration, but that the EPA will not allow it.

We believe that the City Planning Commission could bridge the communication gap between the Federal Government and New York City through a vote against the siting of this plant in Van Cortlandt Park. The City would then be forced to discuss their watershed protection plans, which exist, with EPA. The fines that are feared to result from this action are discretionary and may not occur with some communication.

We ask that you look again at the proposed site for this filtration plant, this time through the eyes of the community residents that have fought for decades to keep our neighborhood a stable and safe place. Our struggle will be lost in one arbitrary city action, unless you view Van Cortlandt Park as the center of a viable community and vote against the construction of the Croton filtration plant in the Mosholu Golf Course.

We would like to speak to you at any point before the vote to discuss this issue further. I can be reached at (718) 655-1054.

Sincerely,



Fay Muir

NWBCCC Water & Sewer Committee

April 16, 1999

CITY PLANNING COMMISSION  
22 Reade Street  
New York, NY 10007-1216

Re: C 990237 PSX  
CEQR No. 98DEP027X  
Calendar Item #3; April 7, 1999  
Extended Remarks

Dear Sirs and Mesdames:

On behalf the Croton Watershed Clean Water Coalition (CWCWC), I submit the following extended remarks of my testimony of April 7, 1999 in the above referenced items. The CWCWC's president, Dr. Marian Rose, has also submitted remarks and these remarks may be read as a supplement to hers.

## 1. Introduction.

The City Planning Commission (the "Commission") is being asked to approve the selection by the N.Y.C. Department of Environmental Protection ("DEP") of the Mosholu Public Golf Course in Van Cortland Park as the site for an industrial facility to filter drinking water from the Croton water supply (the "Croton") of the New York City water system. Water from the Croton currently meets all federal standards for drinking water purity and safety.

The CWCWC opposes the siting of the plant in Van Cortland Park and maintains that the facility is not needed. A vigorous program of watershed protection and enhancement would assure the safety of the Croton for generations to come. A widely praised program for filtration avoidance has been adopted for the two other constituent supplies of the NYC water system: the Catskill and the Delaware. The same regulatory regime applies to all three constituents of the water supply. The principal distinction between the Catskill-Delaware and the Croton systems is a studied determination to abandon the Croton to pressures of development.

The CWCWC is presently litigating the legality of the Croton filtration determination in both the enforcement action brought by the U.S. Environmental Protection Agency ("EPA") and an action to mandate a "dual track" approach to filtration that it commenced in the U.S. District Court for the Southern District of New York. Its motion to intervene in the EPA action was denied and is currently on appeal to the U.S. Court of Appeals for the Second Circuit. The action in the Southern District is *sub judice*.<sup>1</sup>

## 2. The Croton determination: Urban Sprawl and the failure of "political will."

One myth that is perpetrated by the DEP and the federal government is that N.Y. City is being forced to filter the Croton because it "failed" to apply for a filtration avoidance determination.

Each of the City Environmental Quality Review law ("CERQ"), the State Environmental Quality Review Act ("SEQRA"), the State Sanitary Code ("SSC"), Safe Water Drinking Act ("SDWA") and the EPA's Surface Water Treatment Rule ("SWTR") require notice to the public of important environmental decisions and the affording to the public of an opportunity to participate in the regulatory process. In the case of the decision to filter the Croton, no such notice was given and no such participation allowed.

To the contrary, the decision to build a filtration was taken in secret and violated applicable laws and regulations. The determination to filter the Croton was, and is, primarily a judgment that the City either lacked the political will to regulate, or was a culpable participant in, rampant development in the Croton watershed that is urban sprawl at its worst.

For all intents and purposes, the City's decision to prepare to filter the Croton was made in November 1991, when the DEP issued a report entitled "New York City's Long-Range Water Quality, Watershed Protection and Filtration Avoidance Program". The report noted that the City had concentrated on engineering solutions to the City's water supply problems and neglected to protect adequately the watershed from incursion. It concluded that:

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<sup>1</sup> Information on these law suits may be found on my web page. Included, among other things, are factual affidavits of Dr. Paul Mankiewicz and community activist Karen Argenti, our briefs on appeal to the Second Circuit and our own plenary complaint in the Southern District. The address is <http://www.walrus.com/~jklotz/croton.htm>

" . . . Unfortunately, this focus on engineering resulted in a failure to grasp the significance for the water quality of the suburbanization of Westchester and Putnam Counties. Lacking both the appropriate staff and the political will to assert its authority to protect the watershed, the City allowed land use changes in these counties, where the Croton reservoirs are located, to proceed largely unchallenged. The City did not attempt in any systematic way to limit the size and nature of residential and commercial activity near the Croton tributaries or to protect Croton water from the effects of environmentally insensitive development. Consequently, though the quality of Croton water is currently high and basically meets the avoidance criteria, the foreseeable cumulative impact of the by products of development -- runoffs from roads and lawns, discharges from sewage treatment plants and failed septics -- has forced the City to prepare to filter Croton water. . ." (emphasis supplied)

There is no evidence that this Commission played any role in this monstrous decision to abandon the Croton. Nonetheless, in April 1992, the City prepared a contract for the design of a filtration plant at the Jerome Park Reservoir ("Jerome Park").<sup>2</sup> That ought to have triggered ULURP and CERQ reviews. None was conducted at that point in time.

In October 1992, the DEP and the State entered into a stipulation that called for the construction of the Jerome Park filtration plant. On January 13, 1993 -- one week before a new national administration was inaugurated -- the EPA Region 2 Administrator adopted the stipulation as a formal determination pursuant to the SWTR. Because New York State lacked primary enforcement authority in the watershed at that time, federal action was required.

Later in 1993, when the DEP finally attempted an environmental review of the plan to build a filtration plant at Jerome Park, it withdrew the proposal because of both public clamor and a faulty engineering.

Now it proposes a plant for Van Cortland Park. This time, each of the three Community Boards adjacent to the site, as well as the Bronx Borough Board, have unanimously opposed the present proposal.

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<sup>2</sup> The affidavit by Ms. Argenti which details many of these facts may be found on my web page at: <http://www.walrus.com/~jklotz/karen.htm>

### 3. The responsibilities of the City Planning Commission.

The Commission is not a detached adjudicatory body in this matter. The issues at bar go directly to the specific functions and responsibilities thrust upon the Commission by the City Charter.

The Charter charges the Commission with the responsibility for "the conduct of planning relating to the orderly growth, improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population." City Charter, §192(d). In addition the Commission has the specific obligation to oversee "implementation of laws that require environmental reviews of actions taken by the city." City Charter, §192(e)

The claim of need in the pending matters arises from a consent decree voluntarily entered into by the City. That consent decree was entered in action whose foundation was a 1992 stipulation by the DEP and N.Y. State that the City would filter the Croton supply. The CWCWC maintains that the City's stipulation to filter the Croton and the resultant federal determination based upon the stipulation was in direct, near contemptuous, disregard of specific requirements for public participation through notice of opportunity for a hearing required by the CEQR, SEQRA, SSC, SDWA and the SWTR.

This decision to filter the Croton was as important a planning determination as has been made in the City over the past several decades. It is not only that urban sprawl threatens water quality. Sprawl development denies to central cities needed development opportunities. Sprawl development may have denied the City of New York the tax benefits of the headquarter developments for IBM and Swiss Re among others, as they fled to areas bordering watershed lands. In the watershed, sprawl creates additional problems of traffic congestion and air pollution. Almost all urban planners now realize that limitation of sprawl is central to any sensible urban plan. Yet, in 1991, the DEP decided without any reference to this Commission that they could no longer fight to protect its watershed and instead, decided to abandon the Croton.

In 1991, the DEP decided that the City lacked the "political will" to discharge its responsibilities to its citizens to protect the Croton. The City Planning Commission played no role in that decision. Neither is there any record of its participation in the 1992 City-State stipulation nor 1993 EPA

determination.

The CWCWC maintains that the procedures used in determining that the Croton water supply be filtered were deeply flawed. As a matter of fact the decision to filter the Croton water supply was not a "determination" at all. It was a deal cooked-up by the regulators who found it impossible to publicly defend their plans in the open forums required by the City, State and federal law. There were no findings or admissions of fact. There was no application of law and regulations. The procedure was furtive, secretive and mendacious.

#### 4. The Consent Decree.

The DEP insists that the provisions of the Consent Decree are its justification of "need" as required by applicable regulations.

The Consent Decree makes specific allowance for consensual modifications and excuses the City for failures to meet milestones caused by *force majeure* – such as legal actions. The Decree also specifically provides for the institution and completion of ULURP proceedings. Given the specific notice of, and provision for, ULURP proceedings, it is clearly within the province of the City Planning Commission to address, and exercise, its responsibilities pursuant to ULURP.

There has never been a determination that the City is liable for fines, simply an agreement by the City to perform certain work in lieu of fines. The enforcement statute which allowed the EPA to sue the City specifically grants the court considerable leeway on the issues of fines.<sup>3</sup> The statute provides:

"The court may enter, in an action brought under this sub-section, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed \$ 25,000 for each day in which such violation occurs." (emphasis supplied)

There is nothing in this statute that would compel any court to fine the City for any violation. The DEP's prediction of catastrophic fines is not supported by the law.

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<sup>3</sup> 42 U.S.C. § 300g-3(b)

Each member of the Commission has received from Dr. Rose a copy of video produced on behalf of CWCWC dealing with the issue of filtration. It runs about 28 minutes. I ask that when the members view it, they take particular note of the actions of the water authority in Massachusetts which has not supinely rolled over to the EPA but is insisting on its rights, and the rights of the consumers of its water, to pursue filtration avoidance. Please note that by most measures, Croton water quality equals or exceeds that in Massachusetts. Massachusetts water exceeds the water quality of most filtered systems.

In opposing the mandates of the EPA, are the authorities in Massachusetts acting irresponsibly, or are they simply fulfilling their obligation the public which both they and the EPA are expected to serve?

The provisions of the Consent Decree were negotiated in private with any representative of the public being excluded. Moreover, applications to intervene by the CWCWC, the Town of Yorktown and the City of Yonkers were denied.

By long precedent, the denial of the intervention applications was not a determination of the proposed intervenors' claims. The Consent Decree, therefore, has no preclusive effect on those claims. It is not res judicata and does not collateral estop the CWCWC from making its claims here, or in any other forum.

The CWCWC has both filed its own action and appealed the denial of its intervention application. Thus, to a significant degree, the Consent Decree is not yet a "final determination."

Finally, in her decision approving the Consent Decree (without a public hearing), the judge specifically noted the right of any party to seek modification pursuant to the provisions of Rule 60(b) of the Federal Rules of Civil Procedure. That Rule provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. . . . [T]he court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment

should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . ."

The CWCWC submits that it is the obligation of the Commission to discharge its duties under ULURP by applying sound planning and environmental principles. If it does so, it need not fear the wrath of any judge – or bureaucrat.

**5. The EPA's own standards mandate a "hard look" at the need for filtration**

The Council on Environmental Quality, as part of its oversight of implementation of the National Environmental Policy Act ("NEPA"), compiled a list of the forty most asked questions in a memorandum to agencies for the information of relevant officials. In order efficiently to respond to public inquiries this memorandum was reprinted in the Federal Register at 46 Fed. Reg. 18026 (1981). It should be noted that the NEPA is widely regarded as a less stringent review statute than either SEQRA or CERQ.

Of particular relevance to the issue of whether the consent decree bars consideration of a filtration avoidance alternative for the Croton watershed is the following frequently asked question and its response:

"2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?"

"A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a)."

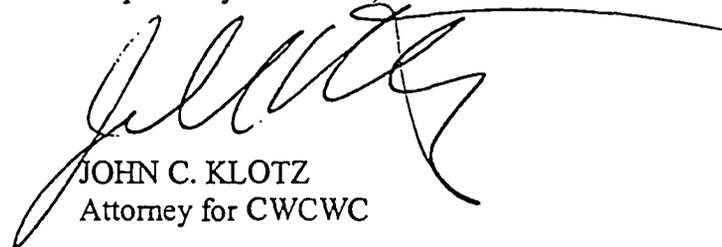
Under the EPA's own guidelines, even if the law did require filtration, a hard look at a no filtration option is required.

6. Conclusion.

The Commission is charged by the Charter with specific responsibilities for planning for the orderly growth of the City and overseeing the implementation of laws that require environmental reviews of actions taken by the City. We only ask that it discharge those responsibilities now.

Until now, the Commission, like the public, has been denied an affirmative role in determining the fate of the watershed and the future degradation of the City through urban sprawl. By law, this is your opportunity – and obligation – to deal with these issues. What you do will be writ large for generations of New Yorkers yet unborn.

Respectfully submitted,



JOHN C. KLOTZ  
Attorney for CWCWC

cc N.Y.C. DEP

Karen Argenti  
3330 Giles Place, Bronx, NY 10463  
718-543-1812  
April 16, 1999

33

Honorable Joe Rose  
Chair, City Planning Commission  
22 Reade Street  
New York, NY 10007

Re: Croton Water Treatment Plant ULURP and Draft Environmental Impact Statement (DEIS)

Dear Chairman Rose and City Planning Commissioners,

These comments concern the above stated project. I have found this project to be very complex and confusing, so I urge caution before you make a decision. The DEIS should examine the decision, the alternatives, and the selection of the preferred site. It does not.

Although made many years ago, no environmental review has ever examined the decision to filter or not to filter. The law is clear – the water must meet the criteria, and the Croton meets the SWTR criteria to avoid filtration. The New York City Department of Environmental Protection (DEP) was not required to apply, no form application exists, and the schedule was not for the water supplier, but for the primacy agent to review the system's data. *It is a myth that the DEP did not apply for filtration avoidance in time.* In this case, the primacy agent was the EPA, and they should have reviewed the statistics and determine in writing if filtration was needed. They could not do that since the statistics show that the Croton meets all standards. Moreover, the quality of the Croton water has not changed over time; so *it is also a myth that the Croton is degraded by development.*

Therefore, the first alternative for you to look at is the non-filtration option, and you will find that it has not been given the hard look required by SEQRA/CEQR. The DEP knows that this is critical; that is why they are pursuing a dual track. You should consider this first, and you should demand that the DEIS address this deficiency. Since the federal and state regulatory agencies made serious mistakes, you now have the opportunity to set the record straight. Support the DEP's dual track approach, and suggest that the agency make this the preferred choice. Unfortunately, this DEIS/ULURP application does not seriously consider the no build alternative – not building a plant. The DEP says that is because they are under a consent decree, but that is not the protection afforded the public under SEQRA/CEQR.

On the second track, the "build" alternative, if you find you must choose, then you must choose the alternative with the least impact. Once again, the DEIS did not choose the build option with the least impact. In fact, it is worse. This project includes unnecessary components and overly large facilities – some of which are twice the size of existing conditions. This makes the project's impact irreversible and unmitigable. Some of the build alternatives were removed for no good reason. The DEIS has not proven the need for the pumping station or the clearwell, or that they are required as part of the consent decree or stipulation, or that they have to be built in the Bronx anyway.. *They are not required by the federal mandate, nor are they required by the state sanitary code.*

Choose the alternative that is in an appropriate zone. This ULURP sets bad zoning precedent. If they can do it here, they can do it anywhere throughout the city. The proposal is site selection ULURP, not an amendment to the Zoning Resolution adding a category for Water Treatment Plant, and a Pumping Station that does not serve the local community. What this means is there is no protection for the existing adjacent residential areas, nor does zoning describe what would be permitted in the buffer areas.

Thank you. Please reply with your response.

Sincerely,

  
Karen Argenti

Exhibit 11

# Can We Drink the Water We Live With?

New Yorkers Struggle to Let Nature Do the Job

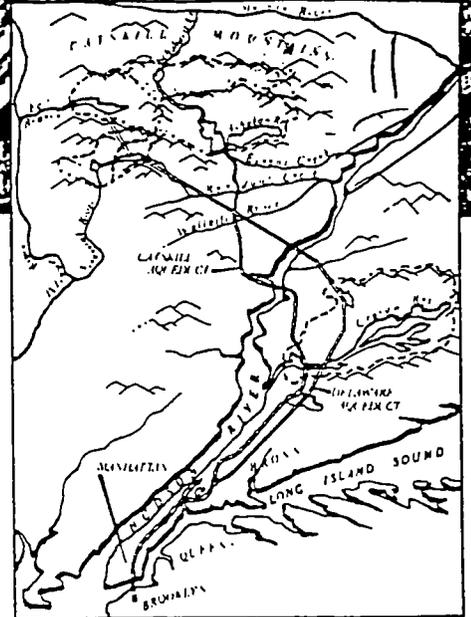
**A**t the time of contact with Europeans in lower Manhattan, the water supply of the local Werpoes peoples came from a fresh-water pond near where the Tombs now stands. The pond and marshes covered about forty-eight acres and were fifty to sixty feet at their deepest. "The Collect" in English (*Kalch-Hook* in Dutch) was fed by springs, which to this day erupt into cellars. The pond drained down a small channel paralleling Canal Street to the East River.

New York City now supplies about 1.4 billion gallons per day to some nine million users—a flow equivalent to a river about fifty feet wide and four feet deep moving at white-water speeds of more than ten feet per second. The

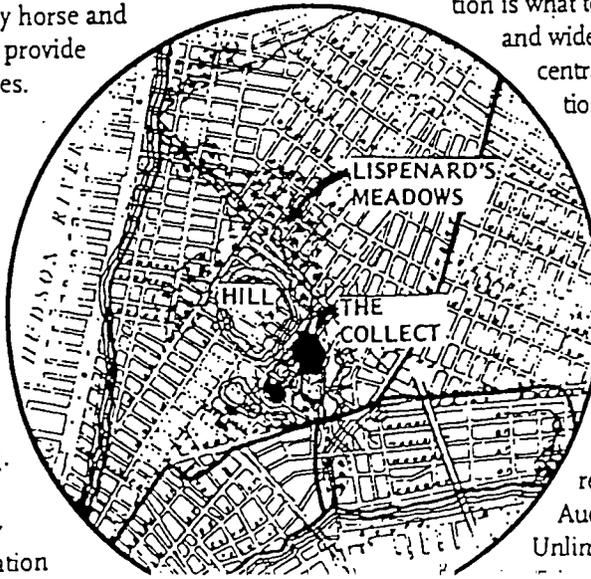
Collect became polluted by horse and cow manure and couldn't provide adequate water to fight fires. Pressed by epidemics and costly fires, John Jervis began work in 1836 on a reservoir system in the Croton watershed. Initially delivering ninety million gallons per day from the Croton watershed, the Croton aqueduct was expanded in 1892 to 390 million gallons. After 150 years, the water remains remarkably pure and requires no filtration

But pure or not, it is the center of a controversy. The EPA has said that the Croton watershed is stressed from development and has sued New York to force them to build a billion-dollar water treatment facility for the Croton supply. A coalition of citizen groups and scientists say it's cheaper and safer to rely on well-stewarded soils and streams within the watershed. At the heart of the disagreement is a choice: an end-of-the-pipe billion-dollar filtration facility in a community of 50,000 residents and 25,000 students, or protection and enhancement of watershed ecostructures and functions. The question is what to trust: nature's diverse and widespread capacities, or one centralized technological filtration facility?

The Bronx Council for Environmental Quality, the Northwest Bronx Community & Clergy Coalition, Bronx and citywide housing groups, block and community associations, the Croton Watershed Clean Water Coalition, local and regional chapters of the Audubon Society, Trout Unlimited, and the Sierra Club.



Above: The New York City water supply comes from the Croton watershed, the Catskill Mountains watershed, and the Delaware River, by way of two tunnels under the Hudson River.



Left: The original water supply of Manhattan overlaid on today's street patterns.

Paul S. Mankiewicz  
Julie A. Mankiewicz

trusts, and trail groups, among others, advocate a watershed maintenance and restoration program to insure that the Croton water quality remains top-notch. Connect street and land surface runoff with the soils and subsoils, wetlands, forests, meadows, and streams and let these ecostructures bio- and geochemically treat, filter, adsorb, and absorb pollutants and pathogens (the disease-causing organisms). Let nature do the purification work.

### The Soil/Watershed Alternative

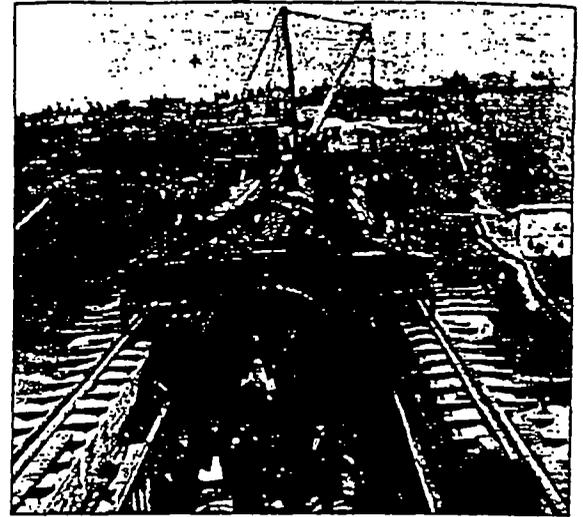
Soil is the key to clean water. Soil works as a physical strainer, a biochemical renovator, and a biological recycler of all wastewater passing through it. The story is as complex as a single cell or the biosphere itself. Besides a mix of grains of sand, silt, clay, and organic matter (humus), each teaspoon of rich soil contains a million to a billion bacteria, hundreds of thousands of protozoa, up to a hundred thousand or more algae, and up to millions of fungal strands (see box). The soil community eliminates pathogens, turbidity, and most color and taste problems in six ways: (1) it harbors creatures who out-compete the pathogens for food, as well as protozoa that prey on pathogens; (2) the soil, bacteria, and fungi produce antibiotics that poison pathogens (penicillin is produced by a soil mold); (3) the clay in the soil adsorbs viruses and other potential pollutants and the hydrophobic

(water-repelling) surfaces adsorb uncharged particles that could degrade drinking water supplies; (4) the soil's texture and structure act as a physical strainer; (5) the soil environment is so different from the host which

excreted the pathogen that the pathogens simply die from different moisture, temperature, acidity, and nutrient conditions; (6) the pathogens get trapped in the humus (the organic component of soil) where they eventually die from the extremes of wetness and dryness. Keep water in close contact with living soils as it flows from hill slopes to streams, and it is purified. The Croton has some 300 square miles of soil of varying depths and qualities.

### All or Nothing Rules

To date, federal regulations only address one question—to build or not to build a costly central-

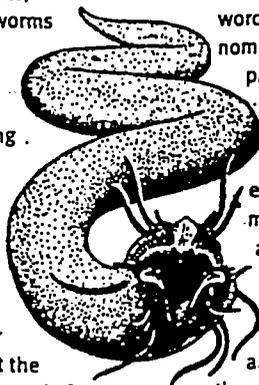


THE NEW YORK HISTORICAL SOCIETY

The 33-mile Croton aqueduct, opened in 1842, crosses the Harlem River, in foreground. The photo, circa 1890, shows the new tunnel for water (open pipe) and the older pipes (below). The Bronx (background) was rural.

Soil is a combination of "inert" grain particles with pore openings between the particles and many millions to billions of microscopic creatures who inhabit each cubic inch. Arrays of clay with sand and silt particles shape pore spaces into three-dimensional strainers that keep bacteria from moving into receiving waters. Hungry protozoa clean each bit of the strainer, consuming a million or more bacteria each day. Soil texture and structure also provide space for rootlets of plants and strands of fungi to intermingle, creating a "rhizosphere" or "root ecosystem" where truly biogeochemical wastewater treatment occurs. Roots, rootlets, and fungi, together with worms and beetles, also create large conduits which can increase the flow of surface runoff into the filtering soil and water table by ten- to a hundredfold.

The "inert" grain particles are the surfaces for attachment for stabilizing the flows through the soil. Clay particles, for instance, are so small that the total surface area in one pound of clay is the same as twenty-five acres of land surface.



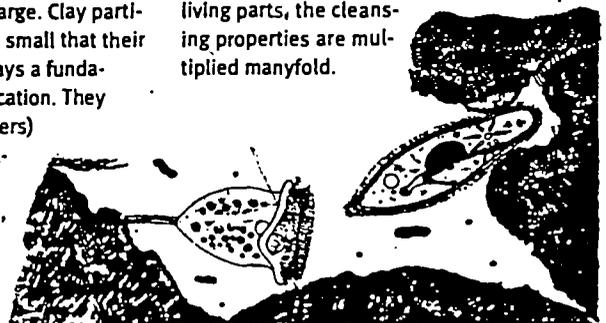
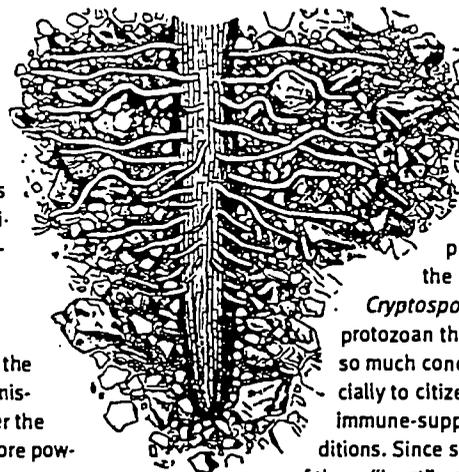
The microbial and rhizosphere community distributed in the soil profile can be seen as the ecological structure which fosters the purification process and slows the flow (in technical terms, increases hydroperiod) for the whole watershed.

And even then, the word "inert" is a misnomer. The smaller the particle, the more powerful its surface energy and electrochemical charge. Clay particles, for instance, are so small that their electrochemical charge plays a fundamental role in water purification. They are hydrophilic (water-lovers) and tend to: adsorb (electro-chemically hold) viruses, certain proteins, and specific bacteria so they can't move; react with nutrients like phosphates and nitrates; precipitate atoms

like Strontium go so they can't poison the water supply; and react with lime to change acidity. Uncharged particles, like peat moss parts, are hydrophobic (repel water) but tend to adsorb uncharged

particles like the cysts of *Cryptosporidium*, the protozoan that is causing so much concern, especially to citizens with immune-suppressed conditions. Since soil is a mix of these "inert" particles and living parts, the cleansing properties are multiplied manifold.

Far left: Nematode: a protozoa predator. Below: A soil pore with protozoa and bacteria (rod-shaped).



cal filtration effectiveness. Even with a filtration installation, a continually degrading watershed will only make matters worse and force an even more expensive water treatment process in the future.

Unencumbered by information to determine if the big filtration facility is necessary, the EPA has upped the ante by suing New York and filing an intent to sue Massachusetts for not complying with their filtration mandate.

### The Bigger Picture

The Surface Water Treatment Rule brings up some larger questions. Can the presence of humans be beneficial? Can sustainable development enhance economic well-being, the environment, and water quality in communities that live within their own or someone else's water supply? Can we drink the water we live with?

To live with the water we drink, two ecological principles must become incorporated in the rules and minds of the planners, designers, and funders of drinking water systems. They are: slow the flow and increase the intimacy between water and the filtration media of the watershed. Technically, this is

ment and treatment.

Hot spots along the thousands of miles of roadway and human-built hard surfaces in the Croton watershed must be located and mapped. Sources of runoff carrying the wastes of vehicle exhaust, pets, pigeons, and septage need to be identified. From this map and assessment, the best management of biogeochemical purification by the soil and increased hydroperiod can be determined. Comparative costs of enhancing ecological structures are likely to be a fraction of the annual interest on the billion dollars required for centralized technological filtration.

By monitoring the watershed, it may become possible to continually improve the benefits of wet-

land, upland soil and in-stream water purification. Predicting precise costs is difficult because each monitoring station would be custom designed to fit landscape and water quality conditions, but information on water quality would make it possible to evaluate the pollution source, its risk to human health and water quality, and potential costs of avail-

able management practices to solve the problem, i.e., a risk based, cost-benefit approach to improving water quality.

Sustainable development continues to generate discussions in agencies around the country, but not much has been accomplished on municipal, state and federal levels to achieve sustainable goals. But now, the defining criterion is at hand: development is sustainable when it protects and enhances water quality in the watersheds where we live and work. ⊕

Paul S. Mankiewicz, executive director of the Gaia Institute, is trained in physical chemistry, developmental biology, and ecological engineering. He specializes in the interface of plants, soils, water, and atmosphere.

Julie A. Mankiewicz, director of research and education at the Gaia Institute, teaches environmental studies at Queens College Worker Education Extension Center, City University of New York. She specializes in biochemical stormwater treatment and the restoration of

### Gaia Institute

99 Bay Street, City Island, NY 10464,  
718/885-1906, fax 718/885-0882,  
gaiainst@aol.com (preferred).

The purpose of the Gaia Institute is to test and demonstrate ways that the ecological components of human infrastructure, as well as watersheds and estuaries, can be enhanced through integrated waste-to-resource technologies. Projects include designing and monitoring test systems for biogeochemically purifying stormwater in Queens, utilizing salt- and fresh-water wetlands to mitigate pollution in Pelham Bay, and serving as scientific consultants on the restoration of landscapes and water bodies throughout the region.

A central-city distribution reservoir (1893) at Fifth Avenue and 42nd Street in Manhattan, the site now occupied by the New York Public Library.



described as increasing the hydroperiod and filter contact time. To live with and drink the water in the Croton watershed, the amount of runoff that infiltrates the soil and enters the groundwater can be maximized. The Gaia Institute has suggested this as a workable strategy since 1989. Right now it is ignored.

Landscape-based treatment installations which can be replicated throughout the watershed will provide decentralized, redundant, robust, and lower-cost water quality protection and enhancement with increased health protection. They should also yield higher water quality. This tool kit includes: terraces, gabions, coupling wetlands with upland soils, stream bank stabilization, in-stream aeration, and infiltration hollows and basins. Since the first rains after a period of dryness wash over eighty percent of surface pollutants into receiving waters, the new approach would be designed for "first flush" catch-

ALBERT EINSTEIN COLLEGE OF MEDICINE OF YESHIVA UNIVERSITY

THE CHILDREN'S MEDICAL CENTER AT MONTEFIORE  
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To whom it may concern

April 22, 1999

Re: Construction of water filtration plant in Van Cortlandt Park

From: Scott A. Schroeder, M.D.



Asthma affects 7,000,000 children in our country resulting in 865,000 emergency room visits, over 200,000 hospital admissions, and over 10,000,000 days of school missed for these children with asthma. Nowhere in the United States is the problem of childhood asthma more acute than in the Bronx. In our borough, children are hospitalized at a rate nine times the national average. In New York city, one child is hospitalized every thirty minutes because of asthma. Even more disturbing are studies that indicate that the risk of death due to asthma has also markedly increased among inner-city African-American children. African-American children are six times more likely than white children to die from asthma. The increases in deaths, hospitalizations, emergency room visits, and school absenteeism has occurred over the last twenty years at a time in which hospitalization for all other illnesses has ben decreasing.

The causes of these increases in morbidity and mortality are unknown but rapid increases in disease prevalence are most likely attributable to environmental rather than genetic causes. Inferring from research that has studied the links between air pollution and respiratory illnesses, it is feasible that both acute and chronic changes in the ambient environment could contribute to the increases in morbidity and mortality. Air pollutants from areas of increased traffic density and diesel combustion have been associated with a wide variety of health impacts in children and adults with chronic respiratory illnesses. These include increases in mortality in severe cases increased hospital admissions, emergency room visits, and days of school and work missed. Over the next seven years it would seem almost inevitable that the ambient levels of most of these byproducts of combustion will increase in the north Bronx and who will pay for their hospitalizations? Who will help them make up the school missed?

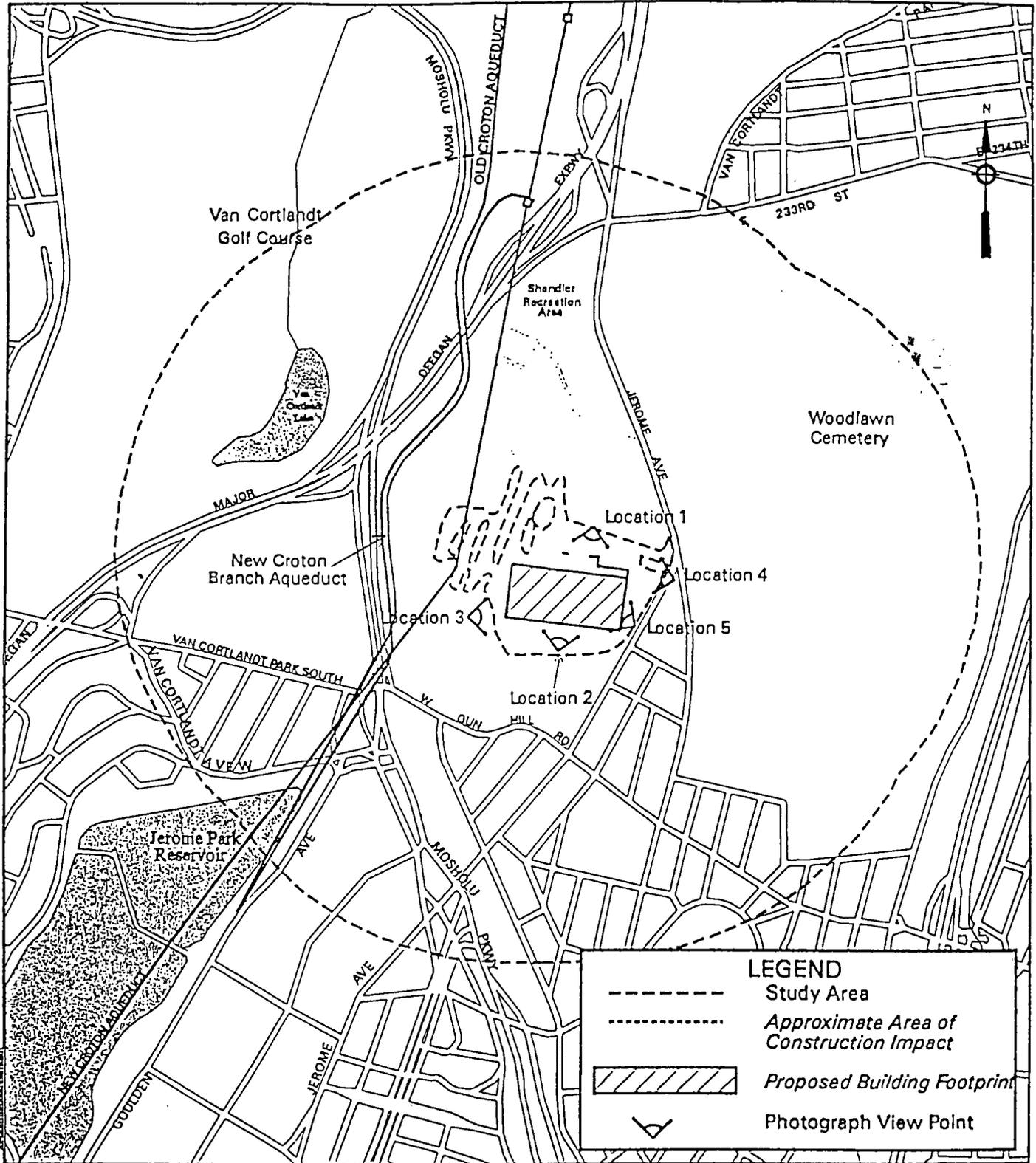
In Provo, Utah, Pope and colleagues found that hospital admissions of children for acute

respiratory disease were closely related with levels of fine particulate pollution (particles less than 10 microns in size (1). In southern Ontario, hospital admissions for children in the summer are associated with ambient ozone and sulfate levels. Over a 6-year period, Burnett found that among infants, 15% of the summer hospital admissions were pollution related (2). In New Jersey, in a study of seven hospitals over a 5-year period, a consistent increase in emergency room visits correlated with ozone levels in the summer(3). In Puerto Rico, environmental factors have been shown to be related to exacerbations of asthma (4); and Puerto Rican children have about double the prevalence of asthma compared to Mexican-American children (5). In the cross-sectional comparison of six cities in the United States, children's symptoms of cough and phlegm were associated with increased levels of pollutants (6). Dodge et al. Found evidence that respiratory symptoms in children were related to SO<sub>2</sub> pollution levels (7) and Dockery and Pope have recently provided evidence linking increased fine particulate pollution (PM<sub>10</sub>) with a range of acute respiratory effects in both children and adults (8).

When all of the data are taken together there is no doubt that relatively low levels of pollution are responsible for increasing morbidity and even mortality in children. Photochemical air pollution at current levels, particularly when associated with sulfate aerosols, as seen with the burning of diesel fuel and increased H<sup>+</sup> levels is having an impact on acute respiratory disease as well as on asthma in children. In the Bronx we have a population of children at high risk for respiratory disease (9) and any added inflammatory irritants in their environment may cause significant increases in hospitalizations and emergency room visits for our children.

#### References:

1. Pope CA III. Respiratory hospital admissions associated with PM<sub>10</sub> pollution in Utah, Salt Lake and Cache Valleys. *Arch Envir Health* (1991) 46:90-97.
2. Burnett RT, et al. Effects of low ambient levels of ozone and sulfates on the frequency of respiratory admissions to Ontario hospitals. *Envir Res* (1994) 65:172-194.
3. Cody RP, et al. The effect of ozone associated with summertime photochemical smog and the frequency of asthma visits to hospital emergency room departments. *Envir Res* (1992) 58:184-194.
4. Montealegre F, et al. Environmental factors precipitating bronchial asthma exacerbations in southern Puerto Rico: a pilot study. *Asthma* (1993) 30:219-227.
5. Carter-Pokras OD, et al. Reported asthma among Puerto Rican, Mexican-American, and Cuban children, 1982 through 1984. *Am J Publ Health* (1993) 83:580-582.
6. Ware JH, et al. Effects of ambient sulfur oxides and suspended particles on respiratory health of preadolescent children. *Am Rev Resp Dis* (1986) 133:834-842.
7. Dodge R, et al. A longitudinal study of children exposed to sulfur oxides. *Am J Epidem* (1985) 121:720-736.
8. Dockery DW and Pope CA III. Acute respiratory effects of particulate air pollution. *Ann Rev Public Health* (1994) 15:107-132.
9. Schroeder SA and Newell P. Management of children with frequent admissions for asthma. *Am J Resp Crit Care Med* (1998) 157:A539.



Location of Photograph Viewpoints at Mosholu Golf Course - Van Cortlandt Park Bronx, N.Y.