



Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

February 1, 2013

Sent Via Email

James E. Johnson, Esq.
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New York, N.Y. 10022

**United States *ex rel* Anti-Discrimination Center of Metro New York, Inc. v.
Westchester County, New York (No. 06 Civ. 2860 (DLC))**

Dear Mr. Johnson:

In your letter dated January 23, 2013, you asked that we provide materials showing the inclusion of the Discretionary Funding Policy (or a description thereof) in connection with municipal applications for Legacy Program and flood mitigation funds.

In response, we enclose the text on Discretionary Funding Policy that will appear in the 4Q 2012 Quarterly Report in Section VI. We also enclose a copy of excerpts from the Stormwater Reconnaissance Plan for the Saw Mill River - Pocantico River Watershed, in which the requirements of the Discretionary Funding Policy are set forth.

Sincerely yours,

A handwritten signature in black ink that reads "Kevin J. Plunkett".

Kevin J. Plunkett
Deputy County Executive

Attachments

Cc: Hon. Robert P. Astorino, County Executive
Robert Meehan, Esq., County Attorney
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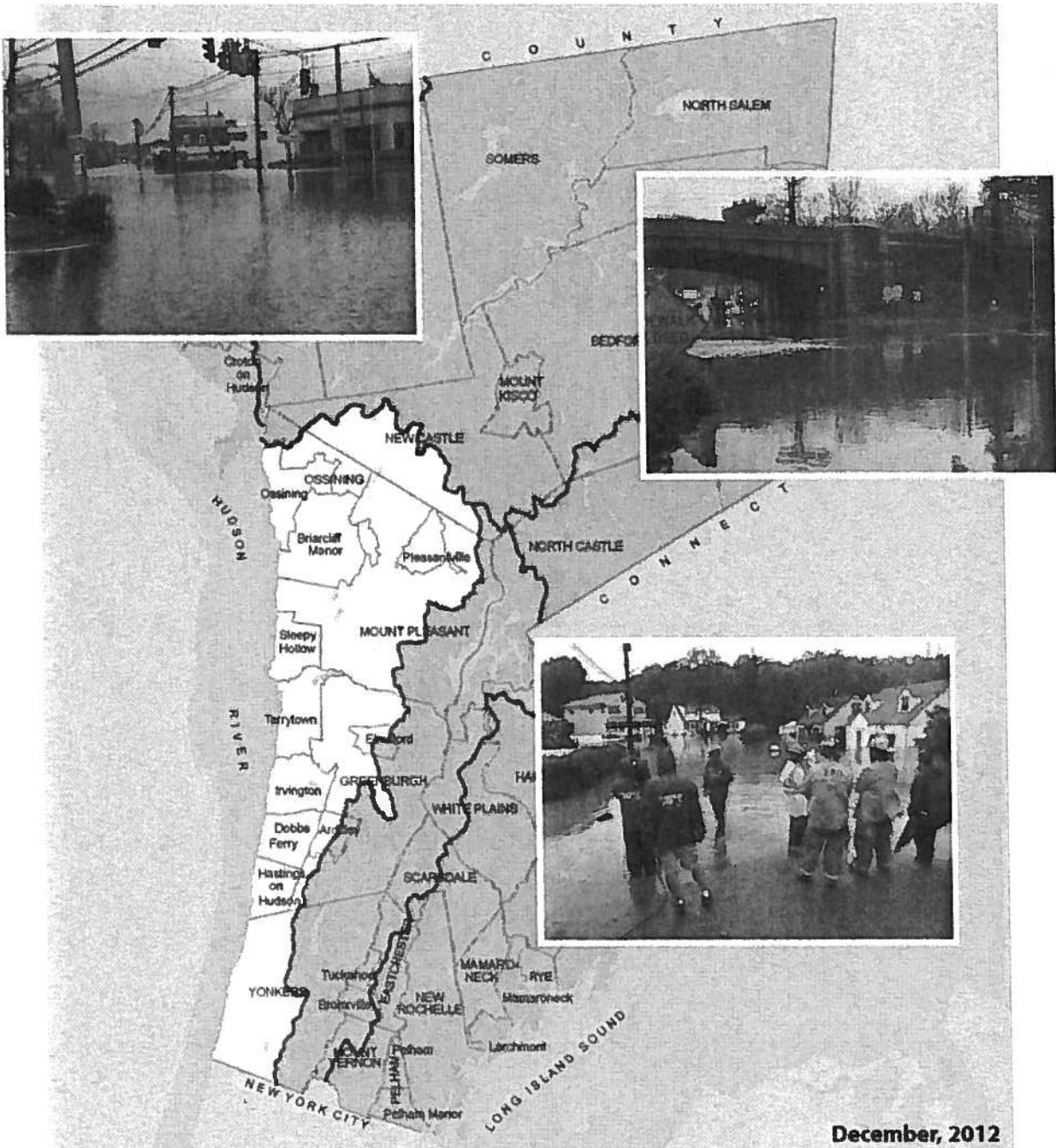
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Robert P. Astorino, Westchester County Executive
County Board of Legislators

Stormwater Reconnaissance Plan for the Saw Mill River - Pocantico River Watershed Westchester County, New York



December, 2012

DEPARTMENT OF PLANNING
Edward Burroughs, AICP, Commissioner

DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION
Jay T. Pisco, PE, Commissioner

**Stormwater Reconnaissance Plan for the
Saw Mill River - Pocantico River Watershed
Westchester County, New York**

December 2012

**Prepared by:
Westchester County Department of Planning
Westchester County Department of Public Works and Transportation**

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- B: Major Drainage Basins and Table of Municipalities
- C. Municipal Questionnaire and Flood Prone Areas Sample Rating Sheet
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- E: Maps of Drainage Basin and Flood Areas Identified by Municipalities
- F: Correspondence with New York State DEC and US Army Corps of Engineers,
and USACE Reports

EXECUTIVE SUMMARY

WESTCHESTER COUNTY STORMWATER MANAGEMENT LAW

The Westchester County Stormwater Management Law was adopted in 2011 to address flooding problems, a situation of regional concern impacting every municipality in Westchester County, by prioritizing projects to be funded through a partnership of municipalities and the County.

Flooding tends to be intermunicipal in nature. The Stormwater Management Law recognizes this and encourages municipalities to work together on solutions. To ensure the most appropriate approach and encourage the most effective use of limited resources, the law requires the Commissioner of Planning, in consultation with the Commissioner of Public Works and Transportation, to prepare reconnaissance plans with the cooperation of municipalities, locally appointed watershed advisory boards and the County Stormwater Advisory Board appointed by the County Executive and Board of Legislators.

This reconnaissance plan addresses the Saw Mill River and Pocantico River watersheds, including an area along the Hudson River in southwestern Westchester County that drains directly into the Hudson River. The Saw Mill River–Pocantico River Watershed Reconnaissance Plan, therefore, covers an area consisting of the Saw Mill River watershed, the Pocantico River watershed and a number of smaller watersheds where stormwater drains directly into the Hudson River or via small streams that empty into the river. The study area encompasses a wide range of land use and development density including urban downtown Yonkers and residential neighborhoods of suburban character. Overall, there is a moderate level of impervious surfaces associated with development. The study area has experienced a variety of flooding problems, most notably along the Saw Mill River where there is a record of significant repetitive property damage and road closures.

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Project Funding Considerations:

The Stormwater Management Law strongly encourages intermunicipal cooperation and collaboration. The law requires that reconnaissance plans identify “municipalities interested in executing Intermunicipal Agreements (IMAs) with the County” as well as recommend terms and conditions of the IMAs. Municipalities interested in participating in the funding program created by the Stormwater Management Law may demonstrate such an interest through the submission of a letter from the Chief Elected Official and municipal resolution from the governing body. Such documents must describe a willingness to work with other municipalities in the watershed as well as the County and must also express a willingness to implement the recommendations included in the reconnaissance plan. Participation in a watershed organization memorialized by an intermunicipal agreement among watershed municipalities is an excellent way to demonstrate a municipality’s level of commitment to working collaboratively. Municipalities may also find

cost efficiencies when working together as a group to address the recommendations included in this plan.

Projects for flood mitigation must achieve the objectives described in the Conclusions section of this report. In addition, in order for the County to participate with municipalities in funding projects to mitigate flooding, the following must be satisfied prior to submission of a request for bonding. If a municipality has a concern with one or more of these issues, they should consult with County staff prior to making a formal request. It may be possible to fund portions of projects that do comply with these requirements, while excluding County funding reimbursement for other portions of the project.

- Maximum of 50 percent of eligible costs. In no case can the County reimburse the municipality for costs exceeding 50 percent of the value of eligible costs as determined by the County. A detailed scope of work, identifying eligible and, if appropriate, non-eligible expenses will be prepared and become part of the intermunicipal agreement between the County and municipality. Any significant change in project scope may require Board of Legislators approval.
- Ownership interest. The County requires an interest in any property (through an easement or lease) for which bonded funding will be used. The interest must ensure that the improvements made will remain in place and functional in accordance with the intended design. The County must also have the authority to inspect, maintain and correct any changes made to any such improvements. While the intermunicipal agreement may assign one or more of these responsibilities to the municipality, any agreement with a property owner must ensure these rights for at least the life of any County bonds issued to fund the project.
- Municipal efforts to better manage stormwater runoff. The municipality must demonstrate efforts to address each of the municipal recommendations included in the reconnaissance plan. With few easily implemented practical opportunities to eliminate flooding problems, comprehensive efforts must include measures to reduce stormwater runoff generated from sites throughout the entire watershed.

The 31 Westchester County municipalities that are “eligible municipalities” pursuant to the August 10, 2009 Stipulation and Order of Settlement and Dismissal in *U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York* (the “Settlement Agreement”) are subject to additional application requirements. The Settlement Agreement required that the grant of discretionary intermunicipal funding by Westchester County to eligible municipalities shall be conditioned, as appropriate, upon the recipient eligible municipality’s commitment to affirmatively further fair housing within its borders. The County’s contribution in the funding of flood and stormwater mitigation projects is considered discretionary intermunicipal funding.

7. CRITERIA FOR FLOOD MITIGATION PROJECTS

Many of the areas within the watershed that experience repetitive flooding are in areas of dense development, which limits the variety of ways to manage floodwaters and reduce flood damage. There is a saying that “one person’s flooding problem is another person’s flooding solution.” Mitigation must not solve a problem for one site by creating a problem for another. Therefore storage and runoff reduction is preferred over conveyance off-site. Projects must also be cost effective, including maintenance costs. All flood mitigation project proposals must address the following goals:

- Design efficacy. Projects must be effective, following generally accepted engineering practices and utilizing appropriate data and levels of accuracy. Managing stormwater runoff on-site is preferred to conveyance off-site.
- Achieve the maximum cost effectiveness, as determined by an analysis of benefits resulting from the project compared with costs associated with the project construction and long term operation. Benefits should include not only the number of properties and persons benefitted from the project but the degree of benefit. Costs must include non-structural costs such as property ownership and permitting issues and long term operation and maintenance costs.
- Achieve the most valuable benefits as possible. High priority benefits include the protection of human safety and life, critical facilities, housing and business establishments.
- Consider a wide variety of alternatives, including both structural and non-structural alternatives as well as various levels of protection.
- The project design and analysis must demonstrate that it will not create or exacerbate flooding conditions elsewhere in the watershed. Design concepts that merely push water to another property or jurisdiction should not be deemed acceptable. Projects cannot be designed in a vacuum and must consider impacts or lost opportunity for other flood problem areas throughout the watershed.
- Reduce stormwater volume. A flood mitigation project should include measures to reduce the volume and rate of stormwater runoff. Projects that merely move water from one area to another are generally not preferred compared with projects that manage stormwater runoff generated from the site.

In addition to the project goals described above, in order for the County to participate with local municipalities in funding projects to mitigate flooding, the following must be satisfied as part of the project. If a municipality has a concern with one or more of these issues, they should consult with County staff prior to making a formal request. It may be possible to fund portions of

projects that do comply with these requirements, while excluding County funding reimbursement for other portions of the project.

- Maximum of 50 percent of eligible costs. In no case can the County reimburse the municipality for costs exceeding 50 percent of the value of eligible costs as determined by the County. A detailed scope of work, identifying eligible and, as appropriate, non-eligible expenses will be prepared and become part of the intermunicipal agreement between the County and municipality. Any significant change in project scope may require County Board of Legislators approval.
- Ownership interest. The County requires an interest in any property for which bonded funding will be used. The interest must ensure that the improvements made will remain in place and functional in accordance with the intended design. The County must also have the authority to inspect, maintain and correct any changes made to any such improvements. While the intermunicipal agreement may assign one or more of these responsibilities to the municipality, any agreement with a property owner must ensure the County these rights for at least the life of the bond.
- Municipal efforts to better manage stormwater runoff. The municipality must demonstrate efforts to address each of the municipal recommendations included in the reconnaissance plan. With few easily implemented practical opportunities to eliminate flooding problems, comprehensive efforts must include measures to reduce stormwater runoff generated from sites throughout the entire watershed.

The Stormwater Management Law strongly encourages intermunicipal cooperation and collaboration. The law requires that reconnaissance plans “identify local municipalities interested in executing Intermunicipal Agreements (IMAs) with the County” as well as recommend terms and conditions of the IMAs.

Municipalities interested in participating in the funding program created by the Stormwater Management Law may demonstrate such an interest through the submission of a letter from the Chief Elected Official and municipal resolution from the governing body. Such documents must describe a willingness to work with other municipalities in the watershed as well as the County and must also express a willingness to implement the recommendations included in the reconnaissance plan. Participation in a watershed organization memorialized by intermunicipal agreement among watershed municipalities is an excellent way to demonstrate a municipality’s level of commitment to working collaboratively. Municipalities may find cost efficiencies if working together as a group to address the recommendations included in this plan.

Westchester County Discretionary Funding Policy

The 31 Westchester County municipalities that are “eligible municipalities” pursuant to the August 10, 2009 Stipulation and Order of Settlement and Dismissal in *U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York* (the “Settlement

Agreement”) are subject to additional application requirements. The Settlement Agreement required that the grant of discretionary intermunicipal funding by Westchester County to eligible municipalities shall be conditioned, as appropriate, upon the recipient eligible municipality’s commitment to affirmatively further fair housing within its borders. The County’s contribution in the funding of flood and stormwater mitigation projects is considered discretionary intermunicipal funding.

Each eligible municipality requesting County funds shall be required to commit to the County, in writing, that it is in compliance with the following terms and conditions in connection with its commitment to affirmatively further fair housing:

- (a) Recipient eligible municipality has adopted municipal zoning code provisions and/or policies which reflect the guidance provided the Model Ordinance Provisions approved pursuant to the Settlement Agreement and demonstrate a commitment by the eligible municipality to affirmatively further fair housing, including a ban on local residency requirements and preferences and other selection preferences that do not affirmatively further fair housing, except to the extent provided in the Model Ordinance Provisions;
- (b) Recipient eligible municipality will offer the County a Right of First Refusal to retain and/or purchase any and all land acquired in rem to be used for housing that affirmatively furthers fair housing; and
- (c) Recipient eligible municipality will actively further implementation of the Settlement Agreement through its land use regulations and other affirmative measures to assist the development of affordable housing.

Such commitments by recipient eligible municipality shall be in the funding agreement between the County and the recipient eligible municipality.

The funding agreement will also provide that housing units that affirmatively further fair housing must be marketed in accordance with Westchester County’s Affirmative Fair Housing Marketing Plan approved pursuant to the Settlement Agreement, throughout the period of affordability.

Should recipient eligible municipality fail to abide by any of these conditions, recipient eligible municipality will be obliged, upon thirty (30) days written notice by the County, to refund any discretionary funding paid to the recipient eligible municipality.

Text on Discretionary Funding Policy to appear in
2012 4th Quarter Report in section VI. Overall Progress

No eligible municipality has applied for or requested discretionary funding from the County since the Discretionary Funding Policy was approved by the Monitor on January 10, 2012. The Discretionary Funding Policy provides the approach to be followed when and if an eligible municipality applies for or requests discretionary funding from the County. The County will implement that approach when an eligible municipality makes a request for discretionary funding. Significantly, the major source of discretionary funds that the County could award would be Community Development Block Grants. However, through this quarter, these funds have been withheld by HUD.

Without an application or request for discretionary County funds from a municipality, there is no circumstance that would trigger the County's review of a municipality's compliance with the terms and conditions of the Discretionary Funding Policy. However, the County continues to make the 31 eligible municipalities aware of the Policy and to reference its provisions in all relevant documents.

For example, during the 4th Quarter, the County completed the first of six stormwater management Reconnaissance Plans, one for each of the six major watersheds in Westchester County. The preparation of the plans is required under the Westchester County Stormwater Management Law that was adopted by the County Board of Legislators in 2011. The Law is intended to address flooding problems, a situation of regional concern impacting every municipality in Westchester County, by prioritizing projects to be funded through a partnership of municipalities and the County. The first plan, and each of the five plans yet to be completed, will include a section outlining "Project Funding Considerations" in the Executive Summary. This section includes the statement, "in order for the County to participate with municipalities in funding projects to mitigate flooding, the following must be satisfied prior to submission of a request for bonding." Several technical requirements are then listed followed by this paragraph:

The 31 Westchester County municipalities that are "eligible municipalities" pursuant to the August 10, 2009 Stipulation and Order of Settlement and Dismissal in U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York (the "Settlement Agreement") are subject to additional application requirements. The Settlement Agreement required that the grant of discretionary intermunicipal funding by Westchester County to eligible municipalities shall be conditioned, as appropriate, upon the recipient eligible municipality's commitment to affirmatively further fair housing within its borders. The County's contribution in the funding of flood and stormwater mitigation projects is considered discretionary intermunicipal funding.

The main body of the Reconnaissance Plan includes the full text of the Discretionary Funding Policy.

The County is in the process of preparing a comparable written outline of terms, conditions and requirements for a municipality to apply for County funding through the County's Legacy

Program. The Legacy Program is a County initiative to join with local governments and other agencies and non-profit organizations to partner in the preservation of open space and the development of recreation facilities. As stated above, no eligible municipality has applied for or requested the discretionary funding available from the County through the Legacy Program since the Discretionary Funding Policy was approved by the Monitor on January 10, 2012.

Appendix VI-2: Excerpts from “Stormwater Reconnaissance Plan for the Saw Mill-Pocantico Watershed”