

## Comments on Bayonne's Selection and Implementation of Alternatives Report

### Introduction

Bayonne's Long Term Control Plan is inherently inequitable in its financing, it is lacking in public input and nearly devoid of green infrastructure. Bayonne inexplicably failed to consider more equitable means of funding this project, resulting in an unconscionable economic plan that will exacerbate income inequality and reward polluters. Reporting on public input, much less incorporation of public input, is wholly absent in this report aside from unsubstantiated claims. The minimal green infrastructure plan will result in a net loss of green space for the residents of the city and because of its dragged out time line, loopholes and caveats will quite possibly never be fully implemented. The time line for installing green infrastructure is even further deferred in the regional plan which looks to be the plan most likely to be chosen. This further shows disrespect of the public's support and advocacy for green infrastructure. This report in many ways is a betrayal of the public trust in our elected officials to represent us, and our regulatory agencies to protect people's living environment and champion the will, equality and well-being of all the people in public policy.

### Comments:

#### I. Executive Summary

The lack of an executive summary forces a resident/layperson to tease out basic information from tables and reports that are at times dense and difficult to understand. For four out of the nine elements PVSC requires the permittees to address we are referred to the regional Selection and Implementation of Alternatives report (see Bayonne's Section A- Introduction). Bayonne failed to even bother to gather all the information required into one report. Bayonne should have had a summary outlining the main conclusions/time lines, etc. and a report that was complete. The omission of an executive summary makes the process opaque and onerous for the public. It is hard not to see this as another way of discouraging public participation, scrutiny or accountability.

#### II. Green Infrastructure Plan

Bayonne's plan is overwhelmingly gray. Their efforts at implementing green infrastructure are perfunctory and minimal. In light of the effects of climate change, the heat island effect, the aggressive and unchecked luxury development in Bayonne, **the city wide campaign to clear-cut our Green Acres parks of trees**, and public benefits and support for green infrastructure, **green infrastructure needs to play a bigger part in this plan**. The minimizing of green infrastructure is also indicative of the minimizing of public input. We also question some of the numbers in their evaluation of green infrastructure (for example, why does 10% capture provide no further decrease in CSO event count frequency over 5%?, Section C.2.1-Green Infrastructure). Is this correct and do other cities find the same thing? How did they come up with the cost of \$390,000 per acre for green infrastructure (Section D.3.3)? Are these statistics comparable to other municipalities' statistics? Did they model the green infrastructure on the most

expensive controls as some cities did, i.e. "if we do the entire city in bioswales it will cost 'x' ". We would like answers to these questions.

- **Benefits listed are not realized**

For GI the benefits listed were: improving surrounding air quality, reducing the heat island effect, reducing surface flooding and providing public education opportunities (Section D.3.1.3 Green Infrastructure). It is notable that underground detention basins, a main feature of Bayonne's GI plan, do not provide most of this and in fact make some of it worse. There is no budget for public education.

- **Lack of Proper Study/Effective Implementation of GI**

Bayonne's plan also states that *"actually siting and sizing green infrastructure practices will require additional investigations, including geotechnical investigations, that go beyond this planning level study."* (Section D.3.1.3) The idea that none of this has been done after five years indicates to me the lack of effort made by Bayonne to include as much green infrastructure as possible. We were repeatedly told green infrastructure was not effective in Bayonne because of its geology. This kind of statement was meant to put the public off from advocating for green solutions. In fact, geology wasn't even studied. Misleading statements and misinformation is a real problem that has affected the choice of controls for Bayonne. We strongly object to the minimal amount of GI that Bayonne is considering.

The Green infrastructure being considered consists mostly of pervious paving, detention basins and cisterns with only some tree pits and then only if site conditions don't *"limit tree pit feasibility."* (Section D.3.1.3) In other words the green infrastructure proposals are barely green. There will actually be a net loss of green space in this plan. **We also question to what extent underground detention tanks should be considered green especially when trees are destroyed and parks are paved over to install them.**

Bayonne's green infrastructure proposals look like pilot plans. Green infrastructure needs to be implemented on a wider basis with a city wide plan aiming for actual success. They also need to be implemented now, not 25 years from now.

The grants are not mentioned in the plan but other reporting indicates the Fitzpatrick Park plan " will be funded partially by a Hudson County Open Space Trust Fund Grant in the amount of \$661,000, and funding from the New Jersey Water Bank in the amount of \$1,478,547.50" for the Fitzpatrick Park project. This information should be included in this report.

The city's website, which contains only a few paragraphs explaining this CSO LTCP after all this time, spends part of its very few lines telling the public that green infrastructure is not required, indicating their lack of commitment to the public's wishes.

- **Inadequate Time line**

The time line in Bayonne's report allows 30 years to complete minimal green infrastructure. **10 years to install a tree pit.** The time line in the regional report is even worse for completing some of the green infrastructure projects ; much of it not even begun for decades.(Table J-1) This time line makes a

mockery of the community members who have spent the years of this process advocating for green infrastructure in the plan and trees as part of that plan. It is also an insult to the residents who suffer increasing heat, the loss of spaces of refuge from the heat, relentless construction ,deteriorating air quality, and the clear-cutting of our city parks. (According to a 30 year average from NOAA, summer heat is the number 1 weather related killer in the U.S.)

If this time line and sparse plan for GI is accepted we will know that not only does Bayonne not care about addressing climate change, but neither does Gov. Murphy's DEP have any interest in public participation, green infrastructure or protecting existing trees , green spaces or quality of life

**Trees should be planted immediately.** The benefits will be immediate and will only increase as will their value. It is one of the only controls that will substantially increase with time both economically and environmentally, instead of deteriorate. It is completely illogical and unreasonable to defer tree planting. We have advocated for trees through this entire process as one of the most intrinsically and naturally effective and economical ways of lessening runoff while providing benefits to the surrounding community and offsetting climate change. There is no reason to keep ignoring the public on this.

- **Priorities**

The one GI plan that has been prioritized is sited in a public park in the neighborhood of City Hall. This project's plans are complete and funding has been secured and work has begun. We were told on more than one occasion this plan (a cistern) **would address flooding in the basements of nearby privately owned properties.** I do not know who owns these properties nor why they were given priority over all the other neighborhoods with seemingly more severe flooding problems but I feel it is worth asking the question and we deserve an answer.

The other prioritized sites being public housing developments and schools are commendable. We would suggest the siting should expand to include every neighborhood and especially blighted streets which have no trees or green space at all.

- **Fitzpatrick Park**

The GI project that is to be implemented in the first five years is a cistern at Fitzpatrick Park. Concerns about the plan for Fitzpatrick Park were dismissed at the PVSC supplemental team meeting by representatives of PVSC and the DEP as being outside the parameters of Bayonne's LTCP. This was false. It is one of the main features of Bayonne's GI plan in the LTCP.

**There was no public input on the park plan**, perhaps apart from a few people with inside access to the administration. It fails to provide the benefits Bayonne sets out as hallmarks of GI (i.e. "improving surrounding air quality, reducing the heat island effect", etc.) and in fact makes these things worse.

Cisterns and pervious pavement should be sited in areas of existing paving and instead **public parkland is being stripped of its trees and green space to install a cistern for runoff from surrounding areas** to be diverted there. The majority of the trees are being removed. Public funds both from Hudson County and the water bank are being used for this plan in which the public had no say or part.

When it was pointed out at the regional meeting that Green Acres used the terms CSO and city wide storm management in their legal letter to Bayonne when approving the plan I was told the plan had nothing to do with this process and the park was something Bayonne was "doing on its own."

This issue speaks both to the state of public input in this process and Bayonne's plans for GI. The one substantial plan that Bayonne developed for GI included zero public input/ participation. **The GI plan removes trees and green space and paves over a park.** It will increase the heat island effect. Mature shade trees, if replaced at all, are mostly being replaced by fir trees which will not have the large canopies that provide shade to park users. It will also take decades for the new plantings to reach the maturity of the trees destroyed. Due to increased paving in the park, water runoff will actually be added to. This additional runoff will then also have to be captured. **Objections were ignored and dismissed at the municipal level, the regional (PVSC) level, and the state (Green Acres and DEP) level.**

- **Tanks size and siting**

I am also concerned with the siting of tank BA017. The tank location is in a proposed waterfront park, the report states "the tank will be located in the green space"(Figure D-8). Several of the tanks will be located in parks. Those set to be sited under tennis courts/parking lots seem appropriate, although I find it concerning that public parks are targeted in this way for grey infrastructure. However, siting a tank in a green space makes it no longer a green space. It is another instance of losing green space to this plan, increasing the heat island effect, depriving the residents of green space and replacing it with grey infrastructure

Despite asking repeatedly, **the public still has neither been informed of the dimensions of these tanks, nor the size of excavations that will be required.** Only the capacity of these tanks are indicated which is only partially useful in the public's conception of them.

### III. Public input

Public input barely rose to the level of informing the public, much less involving the public in the decision making process. We have strong concerns that the majority of the residents of Bayonne remain ignorant of this process. Public statements from the city on the cost of GI, (one billion dollars!) and implementability, (i.e., the “geology of Bayonne” prevents its efficacy), were repeated often but unsubstantiated and unverifiable. Gaps in public participation were blamed on the public, as in, if few people attended poorly advertised meetings, it was the public's fault for not making themselves aware of the meeting.

There were no surveys and no canvassing of neighborhoods for their input. Although there were public meetings, they were minimal on the city level. There was **one** community meeting per ward that was run by the city. There are no comments from the public documented either in this report or the previous Evaluations of Alternatives report. Bayonne, in the introduction of this report, states that 4 out of 9 elements that are required in the LTCP will not be addressed in their report but rather in the Regional SIAR. (Section A -Introduction). No links are provided, making public comment even more burdensome to the public. One of the four elements is public input. Bayonne's report states public acceptance was considered (Section C.1, D.3). With no documentation this is unverifiable. As a member of the public I have never felt there was support for public participation. If you weren't in agreement with the city it was an uphill battle to be heard and not just contradicted. Lack of documentation of public input was apparent, and pointed out, in Bayonne's DEAR report and has evidently been accepted by the DEP, as there has been no improvement.

GI was downplayed and discouraged at every PVSC meeting and virtually every municipal meeting that I attended.

We were told by Mr. Tim Boyle, Bayonne's lead on the CSO LTCP, at our ward's community meeting that the residents would be “taken along for the ride” regarding the LTCP. That is the kind of language that rebuffs and devalues the residents who will pay for this.

**People who were experts in their fields who attended regional and municipal meetings were argued with/refuted regarding their own areas of expertise**, by representatives of the city and PVSC who were *not* experts in these fields. What chance does a resident have? Public participation was chilled and discouraged.

Some **people who attended meetings never returned** because every response to an audience question or concern communicated that 1. Your concerns are not valid and 2. Your priorities are not important. There was no sense that anyone planned to make any effort to realize what the public wanted. The administrations of the municipalities were privileged over the public. The temperature of these meetings were consistently adversarial.

As Bayonne did not bother with public participation in their LTCP, apart from claiming they considered it, and instead referred us to the regional report, this is from the regional SIAR:

### *"G.3 FUTURE PUBLIC PARTICIPATION*

*"PVSC and each of the CSO Permittees are committed to **active public participation and consultation during the planning, design and construction** of CSO control projects. Future public participation will be designed to educate the public about the status of the program; progress in implementing the program; to inform neighborhood residents and businesses before, during, and after construction; and to report on progress in reducing CSOs and improving water quality as a result of the program on an as-needed basis as determined necessary by the Permittee."* (bold mine)

The regional plan claims "commitment" to public input. This is meaningless without documentation and without it being a requirement and without it being verifiable. No reporting = no demonstrable input. There is no proof of input and no requirement. It was inadequate and will continue to be ignored if there are no consequences for failing to do so or if there are no incentives for succeeding. Bayonne provided almost zero reporting on this and so have gotten away with inadequate input. I do not believe the public participated in nor were they consulted (!) in choosing the "the design, planning and construction of the CSO projects". Were we "consulted" on the Fitzpatrick park plans? No. The members of Bayonne's supplemental team were told to say only positive things about the park plans (to be clear I am NOT saying they obeyed, I am saying that that was what they were told). That was the type of "input" that the city would consider. Were we consulted on siting of tanks? Designs? No. It was hard, if not impossible, to even be given approximate dimensions of these proposed tanks. It is laughable to think the public was "consulted". PVSC further goes on to state that basically the public will just get information going forward. Some of the most crucial information will only be provided on an as-needed basis determined by the municipalities. I have had to put in OPRA requests and/or appeal to Green Acres just to see the city's park plans. The city only provided the public with the plans for Fitzpatrick Park at (and not before) the very short, very poorly advertised, and ill attended presentation made long after the plans were finalized. Bayonne WILL NOT and does not supply information unless required, sometimes, not even then.

**Public input MUST be required in the next permit** (with penalties for failure to provide better access, platforms for public input and incentives for good faith efforts) and there must be evidence it was actually **incorporated**. These reports are NOT accessible for a layperson. There must be a reasonable and accessible mechanism for public input. The municipalities must be supported in this. Bayonne considered an interactive website devoted to this process where comments and questions could be submitted and responded to, *if it was affordable*. Apparently they found it too costly as it never materialized.

## **IV. Financing Inadequate**

The financial plans based on median income and rate increases is inherently inequitable and unjust. The corporations that profit from large paved areas and development create a burden of water runoff on the surrounding community and the surrounding community has to pay for its mitigation. They do not proportionately share in either the financial burdens of this LTCP nor will Bayonne even consider large parking lots for siting cisterns or pervious paving if they are privately owned [this was stated at the first, and what turned out to be the last, city community meeting in our ward].. **Public land and public funds are being used for what, in many cases, is a problem caused by private properties** (i.e. shopping center parking lots, construction sites, etc.) Bayonne will not even consider making the financing more equitable as their priorities are always with protecting and favoring developers' interests and bottom lines. Middle and low income ratepayers will be struggling to foot the bill for water runoff caused by some of the richest corporations in the nation. Bayonne indicates that the burden on ratepayers will soon exceed their ability to pay and asserts they can not meet the goals of the permit in the time frame for this reason. And yet they will not consider alternatives that would include the polluters taking any responsibility.

**As the financing stands, Bayonne is openly incentivizing and rewarding polluters and environmental degraders.** The surrounding community is made to pay for dealing with the negative effects of any amount of paving and its subsequent runoff, therefore environmentally destructive development will continue to be the most profitable course for property owners.

What is even more egregious is that households below the poverty line are set to have their rates increased in a way that they can ill afford, to pay for some of the wealthiest property owners' pollution. Bayonne did not even bother to explore alternatives to this horrendous financing plan. Are people now meant to choose not only between rent, medicine, utility bills and eating but water as well?

Bayonne, with no explanation, did not consider the I-Bank.

The permit going forward must REQUIRE that cities find alternative funding that includes the wealthy polluters and relief for low income households. Letting the generators of pollution off the hook guarantees this is not sustainable. It is not even logical or reasonable. Further, the current approach to financing plans will be used to justify inaction.

### **Final Comments**

Going forward the next permit needs to require, with real accountability, public participation or it simply will not happen. Public commentary needs to be documented in order to assess the municipality's responsiveness to public priorities and needs. Public outreach needs to be planned and documented and lack of public outreach needs to be addressed with penalties and remedies. Public participation needs to be required at every phase and there needs to be evidence that the public had input in setting priorities and in choosing alternatives. The projects must show public input was incorporated and not merely "considered". The next permit needs to require robust measures to counteract climate change. Issues such as heat, loss of habitat, environmental degradation, quality of life and soil conservation need to be part of the solutions. These barely get a passing glance in Bayonne's report, if that. Environmental and economic justice need to be requirements going forward. Bayonne's report is silent on these matters. As

a result, injustice and inequality are baked in to the plan with low and middle income residents being disproportionately burdened. If these things are not required with real consequences for non-compliance this will remain an unjust, unfair, non-transparent and lopsided process with the state lending its considerable authority, by intention or by default, to the stakeholders with the most money and power.

**The DEP in this permit suggested people had a right to participate, a right to controls that would mitigate climate change and a right to a livable environment. In failing to require these things these rights were denied to the public.** The NJDEP can and should help to insure a better outcome with both requirements and aid to the municipalities to fulfill the promise of equity, a green environment and public input.

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