

January 30, 2021

From: Jersey City Community Groups

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Copy: Susan Rosenwinkle, Division of Water Quality Bureau Chief, NJDEP

[Susan.Rosenwinkel@dep.nj.gov](mailto:Susan.Rosenwinkel@dep.nj.gov) Mayor Fulop, JC Council Members Jose R. Cunha, Executive

Director, Jersey City Municipal Utility Authority

Re: Comments on the Jersey City Municipal Utilities Authority combined sewer overflow Long Term Control Plan are being submitted by the undersigned organizations.

#### WATER QUALITY:

Despite Jersey City being a river city, residents have extremely limited public access to our waterways. Lack of access forecloses quality-of-life opportunities for a “fishable swimmable” experience, especially in Environmental Justice (EJ) neighborhoods that have the least amount of access to our waterways.

- We have concerns about how decisions made now will affect how people will have access to the waterways surrounding Jersey City in the future, i.e., how CSO decisions will affect where and how the public can access the water. The LTCP report should clearly outline public access to the water.
- If Jersey City decides on the Regional Approach instead of the Municipal Approach, we may save costs but the difference between 85% capture and 78% capture may not bring Jersey City up to fishable swimmable levels. The difference between fishable and swimmable thresholds should be clearly outlined in the report.
- Is Jersey City obligated to the 85% fishable, swimmable primary use threshold by virtue of the US EPA Consent Decree deliverables we are bound by?
- We should seize the opportunity to create public access on top of waterfront grey infrastructure such as parks built on top of holding or storage tanks.
- Samples should be taken from shoreline as well as mid-channel for pathogen testing. Results from mid-channel are drastically different from shoreline testing, which

is where most of the public is able to get access to the water. How long does it take for pathogens to clear a particular area? What is the rate at which they dissipate and do pathogen blooms travel along the waterfront / riverbanks?

The JCMUA should consider how development impacts stormwater runoff, specifically in tidal areas. Here are a few examples for consideration:

- The Bayfront and Skyway Park projects should be considered in the LTCP as opportunities for public waterfront access in the future. These areas should include tidal wetlands and habitat-building native plantings as buffer zones to mitigate sea level rise, storm surge, runoff, etc.
- Before Lincoln Park West was completed, Superstorm Sandy's surge travelled from the Hackensack River, rising over truck Rte 1/9 and travelled into the main park areas, depositing fish in the fences of the baseball track fields and along roadways. The Lincoln Park West wetlands are important coastal buffers for rising tidal surge and sea level rise, which also provide wildlife habitat and should serve as an example to be expanded on in other parts of Jersey City.
- The decommissioned PSEG power plant along the Hackensack River at Van Keuren Ave (E5/6 subdrainage at Duffield Ave 12.02 mg/mo outflow) is located just south along the Hackensack River. This area is a tidal buffer and valued wetlands area. Further development as Industrial use would presumably cause more stormwater runoff and degradation of the natural waterfront buffer against storm surge and sea level rise.

## ENVIRONMENTAL JUSTICE (EJ)

Jersey City is an Environmental Justice community. The JCMUA SIAR Selection and Implementation of the Alternatives Report (**SIAR**) states that "care should be taken to ensure that implementation and benefits of the CSO control technologies are fairly distributed across groups of varying socioeconomic status." The report does not state, however, how the CSO controls will be distributed fairly across these varying groups by geography, and specifically how overburdened environmental justice districts will be impacted. Nor does it provide for how the EJ community, along with the balance of the public, will be engaged in the implementation plans and execution of these solutions, particularly Green Infrastructure.

There was no mention of the terms "ENVIRONMENTAL JUSTICE" or "JUSTICE" or "EQUITY" within the SIAR document. Compliance without equity creates an undue burden on EJ

communities, whether the JC Municipal Approach or the Regional Approach is chosen, given both are intended to be paid for by rate payers. A STORMWATER UTILITY gets us closer to an equitable rate structure. GI is equitable, OPEN SPACE is equitable, TREES are equitable, NATURE is equitable, and Equity should be an emphasis in these plans

- Grey infrastructure can be combined with GI elements and an emphasis on access to the waterfront for the EJ Community and the public at large, while reducing overall capital expenditures on what is now an overly expanded selection of grey infrastructure solutions.
- EJ communities have fewer trees present and a higher rate of tree loss. Canopy restoration is of high value for cooling, heat island effect reduction, transpiration effect, stormwater control, and other positive impacts.
- The EJ community is especially impacted by the lack of “places of refuge” provided by GI. The cross-over benefit of after-hour public use of school playscapes, relandscaped with GI as places of refuge, should be considered. Another example to be considered for potential places of refuge is the use of private development GI sites, e.g., green roofs and perimeter open spaces, which might be given public right-of-way access. This would offer a more across-the-city distributed access opportunity for everyone, especially EJ communities not having access to open space.

## FINANCIAL CAPABILITIES

Jersey City scored an EPA mid-range qualitative score for the financial capabilities assessment. The JCMUA is proposing an extended implementation schedule of 30 years to ease the burden on Jersey City residents, especially for the 12.4% of the population who make less than \$25,000 per household. This 30-year schedule is a more expensive net proposition to ratepayers, in the form of more payments, even though each payment for ratepayers will be less than a shorter 20- year schedule. Using the financial capabilities assessment to increase the implementation timeline for reducing sewage overflows without exploring more equitable financing options, is an inequitable trade-off between cost and access to clean water and the other quality-of-life opportunities we are advocating for.

The Regional Plan doesn't clearly outline how much each municipality would be paying individually, in comparison to an individual Municipal Plan approach. It might be more advantageous to Jersey City to pay for the Municipal Plan on its own if other equitable financing options are considered, e.g., a Stormwater Utility. A longer-term implementation schedule

cannot be the only way to reduce rate increases to ratepayers. Also, even if adaptive management provisions were included in a 30 year implementation schedule, there is no guarantee that capital expenditures would be reduced. "Jersey City will be reticent to commit to long-term capital expenditures for CSO controls without the incorporation of adaptive management provisions." (JC MUA SAIR)

- Innovative funding was not mentioned or explored, e.g., the I-Bank, or various state and federal budget and special purpose funding mechanisms, or even RGGI for GI deployments.
- Successful models for lowering the cost of ratepayer burdens exist that use an equitable Stormwater Utility approach, e.g, Philadelphia, Washington DC
- Philadelphia has created development rules that drastically reduced capture costs to the public and municipality. An analysis is needed that looks at best practices in development rules implemented in other cities like Philadelphia that can be applied here.
- Insurance funds should be utilized. Insurance funds utilizing structured insurance policies, e.g., State or Muni held insurance policies with reinsurance for storm events of a certain size. Impact Bonds, Catastrophe Bonds and Resilience Bonds should be explored. The re:focus Rebound innovative finance program (<https://www.refocuspartners.com/rebound/>) should be investigated for innovative bond design related to project finance.
- Investigate NYC financing for wetland restoration and replacing bulkheads with wetlands to consider approaches to implementing portions of large-scale GI deployment and coastal buffer zones.
- Stormwater Utility ensures increased rate revenues are spent on stormwater solutions and not diverted. A dedicated fund is created that by law can only be spent on stormwater projects and related programs with myriad community benefits. Auditors monitor these funds to ensure they are not raided or transferred for other muni needs. Jersey City should fully explore this possibility and engage the community in a Stormwater Utility decision.

## CLIMATE CHANGE

The SIAR states that, to evaluate CSO alternatives, 2004 was used as the model storm year to model precipitation and sea level rise was considered by analyzing 100 years of tidal data. We

support the use of sea level rise data to evaluate the CSO alternatives. However, both of these data points are based on historical data. Sea Level, Average Rainfall & FlashFlood Warnings are all up significantly.

- Require projects be designed for climate change capacity for *future projections for 50 - 70 years from now*. For example, New York City uses this approach in designing for increased capacity.
- Require CSO permit holders to use NJDEP's new data on sea-level rise and increased precipitation from the NJ 2020 Scientific Report on Climate Change to design, implement, and evaluate the selected alternatives to CSOs in the next permit.
- Jersey City is a river city, which is quite vulnerable to climate change impacts, and while the Jersey City Stormwater Ordinance / Flood Zone Overlay provides for progressive local regulatory oversight of development that might otherwise work against infrastructure retrofit and expansion plans, numerous sections of Jersey City are already overbuilt. Without implementing expanded corridors of large scale GI, which can encompass broader definitions for bringing online High Performance Public Spaces (HPPS) that would serve environmental, social, economic development and equity interests, Jersey City will not be fully prepared to weather the coming climate change impacts.

#### GREEN INFRASTRUCTURE (GI)

The JCMUA's SIAR proposes managing 7% of runoff from hard surfaces with bioswales and rain gardens to be implemented starting in 2021. In the Regional Plan, green infrastructure for Jersey City is not implemented until 2036. Waiting 15 years to implement green infrastructure projects would leave Jersey City residents without the benefits of green infrastructure to reduce flooding and mitigate the impacts of climate change for all that time.

- Why is there such an extended timeline discrepancy to implement GI if Jersey City moves in the direction of a Regional Plan ?

The JCMUA SIAR uses the same language that is included in Bayonne's report regarding adaptive management for financing the LTCP. "Jersey City will be reticent to commit to long-term capital expenditures for CSO controls without the incorporation of adaptive management provisions." Adaptive Management could include implementation of Green Infrastructure.

- An assessment should be done to determine if doing Green Infrastructure right away would shorten the capital expenditure timeline.

- A Triple Bottom Line Assessment has not been done by JC consultant Arcadis. Their flawed approach to cost benefit analysis has assessed GI thru the lens of Grey Infrastructure.
- JC MUA consultant ARCADIS prepared a model stating that Jersey City is not a candidate for more than 7% GI due to major limits like bedrock conditions and contamination. Rutgers disagrees with this very limiting assessment and has implemented many examples of workarounds for these conditions. Rutgers solutions include a combination of smart tree pits as part of expanded green streets design and more shallow, layered, staging bioswales for infiltration purposes, which allow for both stormwater management and canopy restoration efforts.
- The Arcadis analysis was based upon information and data collected years ago for developers' EIS assessments, rendering the analysis both dated and controversial, given by Rutgers standards there are GI opportunities beyond the regions of the city cited by Arcadis as having potential for GI.
- At the site of approved new coastal riverfront developments, such as Bayfront and Skyway Park, tidal wetland restoration should be implemented instead of bulkheads or other traditional build outs that are less beneficial. A good example of this better approach was implemented at Hunter's Point South Waterfront Park in Queens NYC and protected the area from storm surge and flooding during Superstorm Sandy.
- GI can be implemented immediately in existing right-of-way and development projects and should be a larger % of the plan if we consider an Adaptive Management approach, which the City of Jersey City has determined makes sense. Such an approach would allow the City to remain flexible in committing to long-term capital expenditures on behalf of LTCP solutions. "Jersey City will be reticent to commit to long-term capital expenditures for CSO controls without the incorporation of adaptive management provisions." (JCMUA SIAR).
- GI is cheaper and offers more quality-of-life benefits when viewed through a triple bottom line approach, which was not applied by ARCADIS.
- Jersey City MUA has stated they want to partner with Developers for GI opportunities, yet there is no incentive package in place to do so. Discussion have been had about implementing this, but further action has been stalled.
- Most of the GI in the SIAR is focused on Public Lands; there should be consideration and inclusion to extend GI incentives to private lands equally.

- GI provides “places of refuge” for the wider community, and is especially important in an urban environment like Jersey City. Places of refuge should not be **only** parks to which residents must travel to experience open space but should include trees and GI installations on streetscapes in the residential neighborhoods.

Innovative opportunities for implementing GI across Jersey City were not included in the report. We recommend a more thorough analysis that includes:

- GI incentives to homeowners, small business, and industrial facilities, through a range of opportunities that include Native Habitat / Rain Garden and Stormwater Utility programs should be developed.
- A mandate for underground engineered structural solutions for hollow sidewalks on the perimeter of all new development projects, in addition to the onsite stormwater capture mandate in the JC Stormwater Ordinance. Such solutions include enhanced tree pit technology, e.g., the solution that was deployed in the Powerhouse District at The Lively project.
- Jersey City MUA has stated it wants to partner with Developers for GI opportunities, yet there is no incentive package in place to do so. Discussion about implementing this has been had, but further action has been stalled.
- Play areas in public schoolyards should be restored. Right now most public schoolyards are paved asphalt used totally or partially for parking lots. Use modern GI models: permeable pavers, holding tanks, trees, native rain garden habitats, outdoor classrooms, playscape with direct soil access as opposed to plastic and impermeable play areas or play equipment. Partner with the NJ School Construction Authority to transform schoolyards and rooftops into play spaces that perform GI stormwater management.
- Consider a stormwater utility which can create fee reductions to incentivize property owners to install rain gardens, water barrels, and nature-based landscape systems that absorb stormwater and provide wildlife habitat.
- Discourage variances that increase impermeable surface area, and enforce existing zoning regulations on lot coverage. Gardens and parks shouldn’t be the only places that give water access to the soil.
- Incentives for developers to revisit approved projects and include more GI could afford a construction benefit to the project owner. In the same spirit, consideration

could be given for retrofitting existing properties., e.g., adding units reasonably equivalent to the exchange of a dynamic green amenity roof top with public access.

- Any and all road safety improvements, PSEG utility projects, MUA projects, etc., should automatically trigger that GI alternatives be considered before public access right-of-way work concludes, including curb extensions, enhanced tree pits, bioswales, and water harvest for reuse.
- All municipal and public buildings should be required to optimize GI opportunities, such as requiring Green Roofs, Blue Roofs for all municipal public buildings as well as for new development projects. All municipal and public buildings should be required to optimize GI opportunities.

## PUBLIC PARTICIPATION

The report notes that six public meetings were held that were attended by the Jersey City Stormwater Treatment & Resiliency Team (JC START), Sustainable Jersey City, and Hudson County Sierra Club. The inclusion of these groups in the CSO permit process should be continued. The types of green infrastructure that are included in the report show that the groups' comments were considered.

The only public comment that is referenced is that "they clearly have stated that they want additional green infrastructure including, but not limited to, bioswales, rain gardens, trees, and rain barrels or cisterns included in the JCMUA plan." The report did not include any specific feedback from the affected public on the selected alternatives cited in the proposed JC LTCP draft, including the myriad benefits the public cited for GI, which were never included in the Financial Capabilities Analysis.

NJ DEP requirements lacked a mandate for public participation with explicit deliverables that would guide JCMUA and ARCADIS to create a two-way dialog to insure collaboration or empowerment of the public in the process.

- In the future Public Participation should include choices, voting, educational experiences, school projects and education, public participation campaigns with awards and recognition for ideas, input, hands-on activities, childcare, meals, kids STEAM activities, etc.
- Involvement of Public & Charter School Communities is essential, along with Private School participation.



- At public meetings meant to inform and collaborate about stormwater solutions and potential alternatives, the contractor ARCADIS was present as a representative of the MUA. As a contractor, ARCADIS did its job as engineers defending their analysis and recommendations that they were hired to provide to JC MUA. ARCADIS was not prepared, however, to engage the public or create an open dialog with the public. Unfortunately, they frequently silenced public comments and took issue with cornerstone members of the community who were trying to understand the big picture for Jersey City and the problems we were trying to solve with a LTCP, and who were bringing their concerns about cost and lack of more GI in the alternatives mix, among other concerns.
- Municipal officials and their consultants need a model or guidelines for a successful Public Participation engagement strategy, including a step-by-step outline of approaches and deliverables.
- CCMUA, the former Director Andy Kricun, and Camden SMART are the model for both LTCP Assessment and subsequent implementation engagement for Public Participation. NJDEP should share a roadmap of their process, broken down for best practices to be implemented by other municipalities around the state.

Signed by the following organizations:

Canco Park Conservancy  
The Embankment Preservation Coalition  
Powerhouse Arts District Neighborhood Association  
Riverview Neighborhood Association  
Sustainable Jersey City