

REPORT ON "AGREEMENT IN PRINCIPLE"

by Carolyn Zolas

Introduction

Belleayre-Crossroads Resort was opposed for eight years by environmental groups, city and state environmental agencies and the people who live in the area as harmful to a fragile wilderness and harmful to the headwaters that fed into the Catskill and Delaware watersheds that supply 90% of NYC's water. Because of the solid wall of opposition to the plan, an "environmental coalition" was chosen to negotiate a settlement. After three years, the result is an Agreement in Principle ("Agreement"), a compromise arrived secretly by several members of the coalition that excluded those who opposed it. Official representatives were excluded from the negotiations, and local and state media were briefed days before a surprise press conference on September 5th, announcing a bold new plan, in part sponsored by Governor Eliot Spitzer.

The Agreement has been presented in such a way that everybody seems to get what they want – environmentalists could say that the already troubled Ashokan reservoir in the Catskills was protected; the state would give the state DEC-run Belleayre Ski Center over \$40 million for expansion, with nine miles of new trails and ski lifts; and the builder could be satisfied that all he had to do was figure out how to move most of his building onto the smaller, (although still one mile square, the largest development ever in NYC's watersheds) west side of the mountain. Better yet, the resort would give an economic boost to the area.

However, like most things that are too good to be true, this is no exception. Rather than a "scaled down" version, the Agreement would still put 85% of the original plan onto a square mile of mountaintop – over six hundred housing units, two hotels, a golf course, and miles of new roads, where a single two-lane road through the wilderness has always washed out in strong rains. Rather than an economic boon, the resort would be a boondoggle, miring the sparsely populated area in New York-style traffic jams, and lighting up the night sky where stars used to be.

Yet the real danger is to NYC's watersheds, where the word "compromise" does not change the laws of nature. This plan would be the first giant step towards filtration of 90% of NYC's water at an estimated cost of at least \$23 billion.

Saving the east side of a mountain will not save our watersheds. As this paper will show, the Agreement does not hold the builder to any measurable standards, while advocating "expedited" consideration of his mammoth proposal through the New York State review process. The Agreement would add an unmeasured pollutant load to the most fragile watersheds in NYC's water system, and would serve as a beacon to developers who will follow.

The Reservoirs

Belleayre Mountain is so big that it straddles two large watersheds that provide 90% of NYC's water, approximately one billion gallons per day. The Catskill and the Delaware system, often

known as the "Cat/Del", is supplemented by the Croton water on the east side of the Hudson, which provides 10% of NYC's water. The Croton watershed has already been polluted by development, and is now under a filtration order; the cost of that filtration has already risen to \$3 billion, even before building has begun.

Filtration for 90% of New York City's water system would significantly add to the City's budget woes, where outstanding debt per capita is projected to reach \$25,679 per NYC household by 2009¹ – without the additional debt of a \$23 billion filtration plant. That would spike water rates higher than they have ever been. It would be the largest filtration system in the world.

While Croton reservoirs East of Hudson have numerous wetlands to protect the water, the shallow, clay soil common in the Cat/Del watersheds west of Hudson has few wetlands that naturally filter the water, and thus it lacks natural protection. A U.S. Geological Study in 2004 found that runoff from county roads caused increased chloride and orthophosphate in streams going directly into the Pepacton Reservoir.² If road salt on a two-lane county road can affect the water, what would happen as a result of a mile square development on top of a mountain?

The Plan

The original proposal for the resort would have developed over almost 2,000 acres – more than four square miles of land on top of the mountain, on both the east side (draining into the Ashokan reservoir, which already has turbidity problems) and the west side (draining into the Pepacton reservoir, which does not yet have problems).

The compromise Agreement would rob Peter to pay Paul, taking the building off the east side of the mountain, and putting it on the west side. Six hundred and twenty-nine housing units would be squeezed onto a square mile, in two hotels and hundreds of houses. There would also be a "championship organic" golf course and a mile-long road up the mountain. This would be visible from Forest Trails which before were shrouded in wilderness.

The development would be bigger than Eagle River, a proposed housing plan on over 600 acres in the Croton watershed east of the Hudson River that was so unpopular with residents that local politicians urged the City to buy the property. Yet the Eagle River proposal did not begin to reach the density or number of units of the Belleayre Agreement, was not on top of a mountain, and did not include a golf course and two hotels.

Stormwater Runoff

The Croton watershed should have taught us that too much building will result in pollution and an order to filter the water. The culprit is phosphorous, which causes algae growth. DEP data show that at least 85% of the phosphorous in the Croton is the result of stormwater runoff - from developments, roads, parking lots, lawns and golf courses.

¹ Hevesi, Alan. "New York City's Growing Debt Burden. Report 4-2006.

² Heisig, Paul M. USGS. "Hydrogeology and Water Quality of the Pepacton Reservoir Watershed". p 13.

According to the EPA, sediment runoff rates during construction of one acre are 1,000 to 2,000 times that of one forested acre. Therefore, sediment flowing from one uncontained acre under construction is equivalent to runoff of two to three square miles of forest.³

This is only half the story on Belleayre Mountain, however, where soils are shallow and have a high amount of clay. Clay stays suspended in water for a long time. If carried into the reservoir, enough cloudy water ("turbidity") could cause a filtration order for the entire watershed.

The Agreement fails to provide any idea of how the heavy storms that often hit the mountain would be contained and treated. It does not give any limits to how much of the phosphorous draining from lawns, roads, parking lots and golf course, will be filtered out or how it will be filtered. There are no details of stormwater plans or expected percentage of phosphorous reduction, and no statement of builder responsibility.

The DEC limits builders to clearing 5 acres at one time during construction. The purpose of the rule is to manage disturbed soil so it does not get washed out during storms. In his original plan, the builder proposed a variance, exposing as much as 50 acres of raw earth at one time on the project site.⁴ This compromise Agreement does not hold the builder to the 5-acre standard. The hotel itself is 5 acres, with two stories of underground parking lot.

Several years ago, flooding problems occurred during and after construction of the Hanna Country Inn and Golf Resort a short distance away from this project. Five-acre road excavation, approved by DEP, failed repeatedly during storms, turning the East Branch of the Pepacton Reservoir into the appearance of "thick chocolate milk".⁵ The road up the mountain on the Belleayre site is much longer – one mile, flanked by housing.

The Agreement proposes a stormwater monitor – hired by the developer, a problem of conflict of interest.

Effects of blasting

The 5-acre Wildacres Hotel would require years of blasting through several stories of rock. There is nothing in the Agreement about the effects of this blasting and the possible damage to structures in the area or the aquifer. This is not addressed in the Agreement.

Water Supply

The pump test for water has not been done, and the water source has not been decided; in fact the pump test protocol has not been agreed upon and is not part of the Agreement. The builder will use "best efforts" to use the wells recommended by the coalition representatives, but nothing prevents the builder from seeking to obtain water from the town of Fleischmanns, which has already refused water for the proposed resort, fearing water shortages down the road. This Agreement was so rushed that there is not a guarantee that water would even be available.

³ Tierney, James. Office of the New York State Attorney General. "Comments of the New York City Watershed Inspector General on the Draft Environmental Impact Statement and Associated Environmental Permits with Respect to the Proposed "Belleayre Resort at Catskill Park". p 11

⁴ Ibid. p 16.

⁵ Ibid. p 17.

Steep Slopes

The Agreement states that no building will be done on slopes over 20%. This statement is apparently incorrect, since the Wildacres Hotel (5 acres) location is on steep slopes of 35%. The word "building" is misleading, since it does not include the extensive lawns, landscaping and fairways, which would take up many of the 748 acre site.

The forest on this mountaintop is the only thing holding the shallow dirt on the mountain. A major portion of this site would be clear-cut, replacing trees with lawns, fairways, and impervious surfaces such as buildings, roads and parking lots. The issue of tree removal and its effect on the land has not been addressed in the Agreement, other than a confusing reference to tree stumps left on the roughs of the golf course to anchor the soil. Most of the square mile would be "unanchored".

Steep slopes present a great danger of run-off and flooding during storms. For this reason, it is generally considered that slopes over 15% should not be used as setbacks to protect water sources.⁶ However, this Agreement raises the normal DEC definition of steep slopes from 15% to 20%, possibly because over 50% of the original building site was on steep slopes over 15%.⁷

Steep slopes will also be blasted away to maintain a final roadway grade not to exceed 15%; however the Agreement does not state how this grade will be achieved, other than the vague statement that the builder will "minimize the extent of cuts and fills".⁸

The Agreement would allocate "sufficient space on benches along the slope for stormwater management practices to treat runoff from all disturbed areas". This raises the question of what would happen if planned lagoons along the road should fail, and flood the road.

Ski Center

The state is reportedly paying \$47 million of taxpayers' money to the DEC-run Belleayre Ski Center for expansion and upgrades. The builder will deed over 78 acres of the old Highmount Ski Center to the state to construct and maintain at least one ski lift and 9 miles of ski trails – all at taxpayers' expense.

Snow making for the new trails would use water resources. DEC would add to the stream flow in Birch Creek from October 15 through April 15. There is no mention of the effects of this on native habitat.

Nine additional miles of ski trails would be extremely harmful to the environment.

Golf Course

The golf course would be "state of the art organic". However, the builder could apply for emergency use of non-approved chemicals. After five years, the builder could apply to the DEC

⁶ National Research Council. Watershed Management for Potable Water Supply. National Academy Press, 2000. p 440.

⁷ Office of the NYS Attorney General. p 9.

⁸ Dean Gitter, et. al. "Agreement in Principle. September 5, 2007. p 5.

to drop the organic designation. The Agreement does not show any supporting evidence that organic golf courses work in this kind of environment. An article by the United States Golf Association⁹ noted that the USDA had no organic standards for golf courses. Organic golf courses require different management practices and additional personnel.

Of particular concern in the watershed, natural organic fertilizers contain a high amount of phosphorous, the culprit that caused all the algae growth in the Croton, and led to a filtration order there.

Secondary Effects

The Agreement fails to address the problems associated with putting 629 housing units in a sparsely populated area, where the average town population is 400 – 500.

Approximately 600 workers would be required to work for minimum wage. They would have to be brought in, and would not be able to pay for housing in the area.

Existing police, fire, education, and social services would be swamped, and would need to be expanded at great cost to local taxpayers.

Route 28, the only road into the area, is a two-lane highway, and would experience paralyzing traffic jams. Rte 49A, a small road that runs over the mountain, is periodically washed out by snow, ice and rainstorms. With this Agreement, it would become a major thoroughfare, and the resort would run alongside it for a mile.

Summary

In order to save the east side of the mountain, the Agreement would give the builder the right to build out a square mile on the top of a fragile mountain in the middle of the watershed, while at the same time lauding the plan as an environmental advance. Yet there is nothing in the Agreement that promises to limit stormwater runoff, and the builder retains most of his original, mammoth building plan. No consideration has been given to the problems caused by clear-cutting almost a square mile of land and nine miles of ski trails, or the secondary effects of such a large influx of people and workers to the area.

The Agreement begs the question of who is protecting the water for nine million people.

⁹ Nelson, Matt. Green Section Record. January/February 2005

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