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Using Local Land Use Authority to Protect Water Quality

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March 7, 2024

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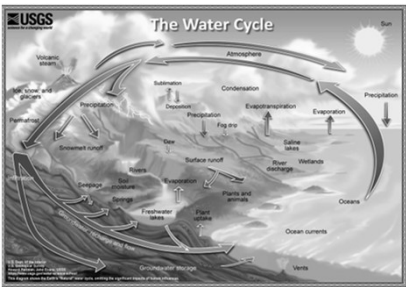
Water Quality

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The Hydrologic (Water) Cycle



- Continuous movement of water on, above, and below Earth's surface
- NY's water resources contribute to our quality of life

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Impact of water quality at the local level

There are Federal and State water quality protections in place, but protection at the local level is still a critical component of water quality protection and management



Water Quality impacts:

- Drinking
- Recreation
- Community resilience

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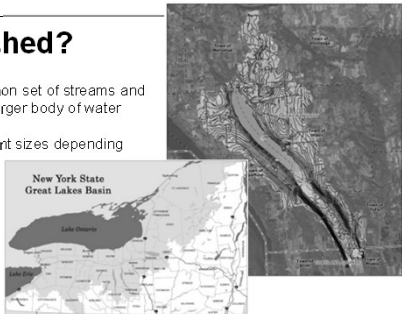
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What is a watershed?

- Area of land that contains common set of streams and rivers that all drain into single, larger body of water
- Can be broken down into different sizes depending on the scale you want examine

Example:
The Otisco Lake Watershed is all the waters that drain into Otisco Lake, but Otisco is also part of the larger Great Lakes Basin




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WHAT IS SOURCE WATER?

Your drinking water can come from:



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WHAT IS SOURCE WATER?

Your drinking water can come from:

WHY PROTECT SOURCE WATER?

Potential contaminants can come from:

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WHAT IS SOURCE WATER?

Your drinking water can come from:

WHY PROTECT SOURCE WATER?

Potential contaminants can come from:

SOURCE WATER PROTECTION ACTIONS

Communities can take action by:

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Local and Regional Solutions

Variety of options available to municipalities and regional groups for protecting and improving water quality:

- Drinking Water Source Protection Program (DWSP2)
- Watershed Planning (includes 9E)
- Local Land Use

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Together, we can protect your drinking water

- Increase Funding Opportunities
- Protect Water Quality
- Prevent Contamination
- Promote Local Resiliency
- Strengthen Community Partnerships

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How DWSP2 can help

- Free technical assistance
- Flexible schedule
- Completed Drinking Water Source Protection Plan
 - Mapping of the drinking source water and surrounding area
 - Complete inventory of potential contaminant sources
 - Thorough list of source water protection actions
 - Guidance on funding sources and strategies

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DWSP2- Support

Over 15 technical assistance providers available free of charge

Over 80 communities accepted into the program

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Watershed Planning

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Watershed planning

- Watershed plans look at an entire watershed
- Collaborative planning and protection approach to address not only individual water resources in given watershed, but all land from which water drains
 - Approach encourages communities to integrate water and land resource protection and restoration with growth management and local and regional level
- Explores existing conditions, such as local land use practices, and makes recommendations on improvements that can be made locally and regionally

Photo: Upper Hudson River Watershed Management Plan

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Nine Element watershed planning

- Type of watershed management plan detailing community's water quality concerns and strategy to address concerns requiring additional quantification of pollutant loading and estimates of pollutant reductions to achieve water quality goals than standard watershed plans.
- NYS DEC adopted EPA's framework that has nine key elements to ensure:
 - contributing causes and sources of nonpoint source pollution are identified;
 - key stakeholders are involved in planning process; and
 - Identify restoration and protection strategies to address water quality concerns.
- DOS and DEC work closely throughout process to provide assistance and coordinate approval for plans developed through Local Waterfront Revitalization Program (LWRP) grant

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From planning to implementation

- DWSP2 and Watershed Planning are programs to have a holistic look at water quality at your drinking water source and within your watershed
- Both types of planning efforts encourage municipalities to examine existing local laws and take critical look at potential updates or additions
- Next, we will detail various land use techniques that can be and have been successfully used to improve water quality at local level

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Land Use Solutions for Water Quality

For examples of many model local laws please visit:
<https://dos.ny.gov/model-local-laws-increase-resilience>

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“No Adverse Impact” principle

- Ensure that actions taken in floodplains and throughout the watershed don’t lead to adverse impacts on property and rights of others
- Local adverse impacts should be based on physical, environmental, social, and economic conditions

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Comprehensive Plan

- Sets land use goals and recommended actions to achieve those goals.
- Public participation may secure support for goals and implementation.
- Recognizes importance of water resources and highlights need to protect water quality, quantity, and natural resources, including stream corridors and wetlands.
- Includes data and maps of watershed, water resources, and floodplains to help identify areas where growth should be focused and where development should be limited.
- Referencing watershed plan within comprehensive plan creates consistency between and provides formal County adoption and support action items.


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Critical Environmental Area (CEA) designation

Geographic area with exceptional or unique character...with inherent ecological, geological, or hydrological sensitivity that may be adversely affected by any change. 6 NYCRR 617.14(g)



Benefit: alerts that there are important features to consider

Limitation: doesn’t substitute for land use controls; no automatic restrictions on activities

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Stissing Mountain CAC in Pine Plains has sensitive steep slopes and protects drinking water supplies

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Zoning

- Regulates use, density, form, and siting of development
- Directs growth and development to appropriate areas and away from sensitive areas, such as stream corridors and wetlands
- Includes special use permits and overlay zones
- Land use tool that drives comprehensive plan’s drives goals

Examples to protect water quality:

- zone sensitive areas for low density and limited uses;
- establish standards applicable to all zones (like stream setbacks, stormwater management, or steep slope standards).

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Subdivision

Division of a parcel of land into a number of lots, blocks or sites with or without streets for the purpose of sale, transfer of ownership, or development.

GOALS:

- Not to create any unbuildable lots.
- Ensure future development adequately protects riparian areas and wetlands from physical disturbances, hydrological modifications, and pollutant loading.
- Ensure practices are in place to protect water quality and quantity, such as individual wastewater treatment systems and stormwater management systems.

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Realty subdivision “5-5-3”

- Division of **5** or more residential lots
- **5** acres or less
- within **3** year period
- Applies with or without zoning
- Applicant needs Health Department approvals to ensure safe water and sewage disposal

- PBH Article 11, Title 2
- ECL Article 17, Title 15


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Cluster subdivision

- Local governing board may permit or require clustering
- Concentrate development where most appropriate
- Density neutral but with smaller lots than zoning allows
- Preserves important resources like streams, riparian areas, wetlands, steep slopes, ground water



- Village Law §7-738
- Town Law §278
- General City Law §37

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Conservation subdivision

- Type of cluster subdivision that puts preservation first
- At least 50% of parcel is set aside for open space or parkland

Town of Hamptonburgh

- Required to protect important natural features
- Density bonus if at least 50% is reserved in perpetuity as open space


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Site plan review

- Regulates the arrangement, layout, and design of a proposed use of a SINGLE parcel.
- Can be used to ensure new development avoids sensitive areas like watersheds.
- Review elements must be listed in local site plan review law otherwise they are unenforceable.



Standards might incorporate water quality protections including:

- building location,
- road design,
- stormwater management, and
- wastewater treatment.

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Special use permits aka conditional uses

- Use permitted by zoning but subject to additional requirements to ensure that proposed use is in harmony with surroundings.
 - Land use diversity while insuring compatibility with adjacent uses
 - Runs with land, not landowner
- Town of New Paltz has steep slope development conditions for approval, like soil stabilization measures

Examples of Conditions:

- Provide buffer areas and best management practices for control of nonpoint source pollution adjacent to stream corridors or wetlands.
- Require that a percentage of land be left as open or green space.

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Overlay zoning

Protect watershed by applying common set of standards over underlying districts:

- Base layer sets permitted uses and dimensions
- Overlay sets additional requirements within boundaries
- Could include use restrictions, landscaping requirements, and standards for environmentally sensitive areas

Standards might address:

- riparian buffer protection
- floodplain management,
- stormwater management,
- aquifer or source water protection
- habitat protection, or
- amount of impervious cover.

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Model source water protection law

Sets conditions for special use permits, including identifying how water budget and water-quality impacts will be mitigated:

• Address gaps in state/federal laws	• Adds requirements to pumping tests
• Includes performance specs	• Bans new tank burial under 1,100g
• Bans some higher risk activities	• Incentivizes septic density concepts

EPA models: source water (groundwater) and surface water (reservoir):
<https://www.epa.gov/nps/urban-runoff-model-ordinances-source-water-protection>

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Open space protection

- Improve water quality, quantity and natural resources by limiting development on sensitive areas using zoning, cluster subdivision, site plan review, transfer of development rights
- Town of Red Hook uses incentive zoning to preserve open space

Steps:

- categorize open space resources;
- examine their use and function within community;
- set priorities for protection;
- consider best options for use and protection of open spaces

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Wetlands protection

Recognize importance of wetlands in protecting water quality and habitat

Town of Southampton Wetlands Protection Law (1993):

- restore wetland and buffer areas, mitigation for proposed new development or expansion.
- requires permit for projects with filling, digging, dredging, or other activities associated with new construction, installation of fences, vegetation pruning, demolition, and environmental testing within wetlands and specified wetland buffer zone

Use comprehensive plan, subdivision, site plan review, special use permit standards to help prevent wetlands degradation.

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Intermunicipal Agreement (IMA)

Cooperative/contractual agreement between two or more municipalities (or counties) to provide any facility, service, activity or undertaking which each has power to provide separately.

- GMU Article 5-G
- NYS Constitution Article IX § 1

Cost efficient way to:

- Protect shared natural resource
- Prevent border wars
- Plan jointly/regionally
- Promote shared economic issues

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Canandaigua IMA

- Re-established Canandaigua Lake Watershed Council
- Participating municipalities provide funding to implement plan, including hiring
- Canandaigua Lake Watershed Manager for day to day coordination of plan
- IMU 5 year duration (2005-2009)

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Village of New Paltz

- Source water crosses jurisdictional boundaries
- Supply serves multiple communities
- Working with DWSP2 technical assistance, and incorporated priority for water protection in comp plan

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City of Auburn

- Working with TA provider on DWSP2 on a plan for source water protection
- Received \$75,000 grant for acquisition of wetlands to protect city's water supply.

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Resources and technical assistance

NYS DOS Division of Local
Government Services

- <https://dos.ny.gov/services-and-support>

Drinking Water Source Protection Plan

- source.water@dec.ny.gov

- Presentation
- Fact Sheet
- Roles and Responsibilities
- Potential Benefits

NYS DOS Office of Planning Development and Community
Infrastructure: Watershed Planning

- <https://dos.ny.gov/water-resources-management>
- <https://dos.ny.gov/model-local-laws-increase-resilience>

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