

At a Regular Meeting of the
Town Board of Middletown
held on December 8, 2021
at 6:00 pm at Margaretville, NY

RESOLUTION #31 OF 2021

**RESOLUTION OF THE TOWN BOARD OF THE TOWN OF
MIDDLETOWN IN SUPPORT OF DELAWARE COUNTY BOARD
OF SUPERVISORS' RESOLUTION NO. 162**

WHEREAS, on October 27, 2021, the Delaware County Board of Supervisor passed Resolution No. 162 entitled: **DELAWARE COUNTY REQUESTS THAT A MORATORIUM ON NEW PURCHASE CONTRACTS FOR FEE TITLE AND DEP CONSERVATION EASEMENTS, BE IMPLEMENTED IN DELAWARE COUNTY PENDING A COMPREHENSIVE REVIEW OF THE LAND ACQUISITION PROGRAM TO IDENTIFY THE NEED FOR THE CONTINUATION OF LAND ACQUISITION, THE BENEFITS OF LAND ACQUISITION, THE IMPACT OF LAND ACQUISITION ON COMMUNITY SUSTAINABILITY AND THE OTHER TOOLS AVAILABLE TO ACHIEVE MOA LAND ACQUISITION OBJECTIVES.**

WHEREAS, the Middletown Town Board (“Town Board”) has reviewed Resolution No. 162 in detail and by this resolution is indicating its support and its adoption of the facts and principles set forth therein. For purposes of transparency, this resolution restates the rationale and conclusion from the perspective of the Town of Middletown (“Middletown”). A copy of Resolution No. 162 is also attached hereto.

WHEREAS, the fundamental principle of the 1997 New York City Watershed Memorandum of Agreement (the “**MOA Watershed Objective**”) is the following: “[T]he parties recognize that the goals of drinking water protection and economic vitality within the watershed communities are not inconsistent and it is the intention of the parties to enter into a new era of partnership to cooperate in the development and implementation of a watershed protection program that **maintains and enhances** the quality of New York City drinking water supply and **the economic vitality and social character of the watershed communities**”; and

WHEREAS, the 1997 New York City Watershed Memorandum of Agreement (“MOA”) also defined the MOA Land Acquisition Objectives as follows: “the parties agree that the City’s Land Acquisition Program, the City’s watershed regulations, and the other programs and conditions contained in this agreement, when implemented in conjunction with one another, **would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character** and planning goals of each of the watershed communities; and that the City’s land acquisition goals **ensure that the availability of developable land in the watershed will remain sufficient to accommodate projected growth** without anticipated adverse effect on water quality **and without substantially changing future population patterns** in the watershed communities” (hereinafter “**Land Acquisition Objectives**”); and

WHEREAS, with the assistance of the Coalition of Watershed Towns and CWC, Delaware County has developed an Alternative Land Acquisition Program Option (the “Alternative Option”) that provides an opportunity for impacted communities to provide robust/enhanced protection of environmentally sensitive lands in a manner that does not rely on one-time payments for fee title acquisitions of large parcels or conservation easements that burden land in perpetuity. The Alternative Option focuses on environmentally sensitive lands (such as riparian or stream buffers) which directly contribute to water quality and provides for a fixed-term annual rental payment to the landowner; a model that has proven to be effective in Delaware County; and

WHEREAS, the Alternative Option would allow landowners to retain ownership of their property while receiving periodic payments that reflect the water quality protection value their property provides. The Alternative Option provides a financial mechanism to promote community well-being and economic vitality while promoting water quality, thereby achieving the balance of interests required by the MOA. The County envisions an impacted municipality would make a determination and a commitment to participate in the Alternative Option program as a way to provide enhanced protection of sensitive lands in lieu and as a substitute for the continuation of the traditional DEP Land Acquisition Program. The municipal commitment would be for a period of years (e.g., 10 years) during which time, Land Acquisition Program would be suspended within that community; and

WHEREAS, in April 2018, the Delaware County Board of Supervisor passed Resolution No. 74 demanding relief from the City Land Acquisition Program to ensure the continued availability of developable land to accommodate future growth and prevent substantial changes to future population patterns. The DEP, in consultation with DOH, denied Delaware County’s request but agreed that the Delaware County Alternative Option has merit and deserves further discussion; and

WHEREAS, the government stakeholders concurred that the appropriate opportunity for further discussion of the Alternative Option would be in the proceeding to amend the 2010 City of New York Water Supply Permit, which may provide for the expansion of the current Stream Acquisition Program (“SAP”) beyond the Schoharie Basin and the development of a new Long-Term Land Acquisition Plan for the period 2023-2033. The findings of the NAS Expert Panel will be considered as part of this proceeding and Delaware County will be provided an opportunity to seek a permit modification adding its Alternative Option program to the Water Supply Permit. All parties reserved whatever rights they have to oppose or support such a modification; and

WHEREAS, DEC recently announced it will make a determination to expand SAP beyond the Schoharie basin to the entire watershed, that this determination is not subject to review under the State Environmental Quality Review Act (“SEQRA”) and does not require due process or a modification to the 2010 Water Supply Permit. According to DEC, homeowners will have the ability to request that SAP acquisitions of individual parcels in excluded hamlet areas and hamlet expansion areas be approved on a case-by-case basis by making direct appeals to the Town/ Village Board. This may include both vacant lots and improved lots, both of which are

eligible for SAP acquisition under the 2010 Water Supply Permit (although DEC states that the purchase of improved lots is not intended); and

WHEREAS, the Town maintains the potential impacts that would result from an extension of SAP to the entire watershed (and resulting expansion of the land acquisition program) must be reviewed under SEQRA. There has been a significant change in circumstances since the SAP program was first envisioned and implemented under the 2010 Water Supply Permit. This change in circumstances requires the preparation of a supplemental Environmental Impact Statement (EIS) in order to identify and take a “hard look” at the impact this expansion of the land acquisition program would have on the environment and the sustainability of our community; and

WHEREAS, fee acquisitions under SAP are subject to Section 82 of the MOA which requires the City to grant to NYSDEC a conservation easement to ensure that such land is “held in perpetuity in an undeveloped state in order to protect the watershed and New York City’s drinking water supply.” The Conservation Easement required by DEC under Section 82 of the MOA prohibits in perpetuity the following activities on the acquired property:

- “construction of any new ... structures normally requiring a building code permit”;
- “storage of petroleum ..., hazardous materials”
- “excavating, extraction, grading, or removal of soil, sand and gravel”
- “use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other motorized vehicles recreation purposes”
- “the expansion of any existing or construction of any new paved driveways, roads, and parking lots”
- “the commercial, residential or industrial use”
- “except in accordance with Article 49 of the ECL, the siting or routing of any facilities required for ... the transmission, or distribution of **gas, electricity, water, telephone, or cable television services** on, *over* or under the Protected Property”
- “the commercial, residential or industrial use of the Protected Property(ies) in such a manner that: (i) causes the introduction of sediments, ... or other pollutants to any watercourse or wetland on the Protected Property(ies) that may adversely affect the quality of such watercourse or wetland; (ii) interferes with or disturbs open space, vegetated areas or steep slopes on the Protected Property(ies); or (iii) is otherwise inconsistent with the purposes of this Easement.”

WHEREAS, the Town requests that the DEC, the Catskill Center and DEP identify and evaluate the potential adverse impacts on municipal and private functions if the City proceeds with an expansion of SAP beyond the Schoharie basin and encumbers large sections of stream buffer/ corridors with restrictive conservation easements in perpetuity. Specific areas of concern include impacts on the following:

- Installation and upgrade of electrical, water, gas, telephone, broadband/cable lines as needed to provide basic utilities
- Maintenance, upgrade, expansion, widening, safety improvements to existing roads and extension of existing roads.

- Installation, expansion, and replacement of communication towers (including the necessary utilities)
- The siting, maintenance, and expansion of stream crossings
- Flood mitigation projects
- Renewable Energy Projects

NOW, THEREFORE, BE IT RESOLVED the Town of Middletown Town Board joins in the Delaware County Board of Supervisors petition to DEC, DOH and DEP requesting for the following relief:

- (1) The FAD requires application for a WSP to succeed the 2010 WSP is required by June 2022 and that the City develop a new Long-Term Land Acquisition Plan, which will cover the period 2023-2033 and which will consider the findings of the National Academies Expert Panel review. Given the uncertainties created by the change in circumstances, effective January 1, 2022 and extending through completion of the permitting process, the City refrain from entering into new contracts to purchase fee title and/or conservation easements under the Land Acquisition Program within the Town of Middletown;
- (2) In developing the Long-term Land Acquisition Plan for the period 2023-2033 and the WSP renewal application due June, 2022, that DEP limit its land and conservation easement acquisition within the Town to WAC Conservation Easements, flood mitigation projects, stream protection/management, the Delaware County Alternative Pilot Land Acquisition Proposal and a voluntary SAP plan.

BE IT FURTHER RESOLVED that this resolution be sent to New York Governor Kathy Hochul, US Congressman Antonio Delgado, NYS Senators, NYS Assemblymen Crouch and Miller, EPA Region 2 Acting Director Walter Mugdan, NYSDEC Commissioner Basil Seggos, NYCDEP Commissioner Vincent Sapienza and NYSDOH Commissioner Mary Bassett.

RESOLVED that this Resolution take effect immediately.

WHEREUPON, the Resolution was put to a vote and recorded as follows:

Motion made by: Julia Reischel

Seconded by: Brian Sweeney

Resolution adopted by a vote of 5 ayes and 0 nays

I hereby certified that the above resolution was duly adopted by the Town Board of the Town of Middletown at its regular meeting held on December 8th, 2021.

Dated: December 8th, 2021

Patricia F. Kelly
Patricia F. Kelly, Town Clerk
Town of Middletown



SEAL

STATE OF NEW YORK }
COUNTY OF DELAWARE }
TOWN OF MIDDLETOWN }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Middletown at a regular meeting held December 8th, 2021, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
Supervisor Davis		Yea/Nay/Abstain
Councilperson Sweeney		Yea/Nay/Abstain
Councilperson Delameter		Yea/Nay/Abstain
Councilperson Reischel		Yea/Nay/Abstain
Councilperson Dabritz		Yea/Nay/Abstain

Dated: December 8th, 2021

Patricia F. Kelly
Patricia F. Kelly, Town Clerk
Town of Middletown



SEAL

RESOLUTION NO. 162

TITLE: DELAWARE COUNTY REQUESTS THAT A MORATORIUM ON NEW PURCHASE CONTRACTS FOR FEE TITLE AND DEP CONSERVATION EASEMENTS, BE IMPLIMENTED IN DELAWARE COUNTY PENDING A COMPREHENSIVE REVIEW OF THE LAND ACQUISITION PROGRAM TO IDENTIFY THE NEED FOR THE CONTINUATION OF LAND ACQUISITION, THE BENEFITS OF LAND ACQUISITION, THE IMPACT OF LAND ACQUISITION ON COMMUNITY SUSTAINABILITY AND THE OTHER TOOLS AVAILABLE TO ACHIEVE MOA LAND ACQUISITION OBJECTIVES WATERSHED AFFAIRS

WHEREAS, the fundamental principle of the 1997 New York City Watershed Memorandum of Agreement (the “**MOA Watershed Objective**”) is the following: “[T]he parties recognize that the goals of drinking water protection and economic vitality within the watershed communities are not inconsistent and it is the intention of the parties to enter into a new era of partnership to cooperate in the development and implementation of a watershed protection program that **maintains and enhances** the quality of New York City drinking water supply and **the economic vitality and social character of the watershed communities**”; and

WHEREAS, the 1997 New York City Watershed Memorandum of Agreement (“MOA”) also defined the MOA Land Acquisition Objectives as follows: “the parties agree that the City’s Land Acquisition Program, the City’s watershed regulations, and the other programs and conditions contained in this agreement, when implemented in conjunction with one another, **would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character** and planning goals of each of the watershed communities; and that the City’s land acquisition goals **ensure that the availability of developable land in the watershed will remain sufficient to accommodate projected growth** without anticipated adverse effect on water quality **and without substantially changing future population patterns** in the watershed communities” (hereinafter “**Land Acquisition Objectives**”); and

WHEREAS, Section 1 of the New York City Water Supply Permit indicates that the “terms and conditions of this permit are authorized by, and designed to ensure that the project is consistent with section 15 -1503 (2)... of the Environmental Conservation Law.” In 1997, when the permit was issued, Section 15-1503 (2) provided that “before granting a permit, a permit renewal or permit modification pursuant to this section, the Department shall ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state likely to result from the proposed project or work”; and

WHEREAS, the City’s Land Acquisition Program is premised on the principle that surface runoff from impervious surfaces and concentrated human activity poses a contamination threat to the City’s water supply. In developing the City Land Acquisition Program, the parties were concerned that the vast amount of open space within the West of Hudson Watershed created the potential for new significant adverse development in an unfiltered watershed. The City’s Land Acquisition Program was a tool to prevent and control such development; and

WHEREAS, in 1997 when the parties executed the MOA, approximately 11% of the watershed lands within Delaware County were under New York City and/or New York State control. Twenty-three years later, according to the December 2020 Land Acquisition Report, 28.4 % of the watershed lands within Delaware County are under New York City and/or New York

State control and such control is closing in on the 30% benchmark (as suggested in the 2012- 2022 Long-Term Land Acquisition Plan) when memorandum of contract properties are included; and

WHEREAS, the past twenty-three years of post MOA activity have demonstrated that despite the vast amount of open space in the watershed lands within Delaware County, due in large part, to topography, climate, high/unsustainable cost of new infrastructure and general economic and social realities, there is little or no potential for new significant adverse development in the watershed lands within Delaware County (in other words, the threat that the City Land Acquisition Program was designed to address does not exist in the majority of watershed communities within Delaware County); and

WHEREAS, during negotiations of the 2017 Filtration Avoidance Determination (FAD), New York City Department of Environmental Protection (NYC) agreed to reevaluate the 2010 Water Supply Permit Environmental Impact Statement conclusions regarding whether the City's Land Acquisition Program "would allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals of each of the watershed communities; and [whether] the City's land acquisition goals ensure that the availability of developable land in the watershed will remain sufficient to accommodate projected growth without anticipated adverse effect on water quality and without substantially changing future population patterns in the watershed communities" ("NYC 2017 Individual Town Assessment"); and

WHEREAS, on October 31, 2017 as provided for in the 2017 Filtration Avoidance Determination and in response to NYC 2017 Individual Town Assessment, Delaware County and the other West of Hudson Counties, with support from the Coalition of Watershed Towns and financial and technical support from the Catskill Water Corporation, conducted an evaluation of the impacts from the City's Land Acquisition Program. Delaware County issued the following report: *New York Land Acquisition Town Level Assessment 2017: Delaware County Evaluation and Response ("Delaware County 2017 Report")*; and

WHEREAS, *Delaware County 2017 Report* concluded and demonstrated that in a substantial number of Delaware County towns the actual amount of developable land remaining is insufficient to "allow existing development to continue and future growth to occur in a manner that is consistent with the existing community character and planning goals" of those communities; and thus the "City's land acquisition goals for those communities did not ensure... the availability of developable land... will remain sufficient to accommodate projected growth" and thus the continuation of City's land acquisition could "substantially changing future population patterns..."; and

WHEREAS, at page 36 the 2017 FAD, DOH/EPA required a two-step review to the land acquisition program. The first review is in 2018 and applies to updating the 2012-2022 Long-Term Land Acquisition Plan. The 2017 FAD provides as follows:

The City provided new or updated Town Level Assessments for 21 WOH towns to NYSDOH, USEPA, NYSDEC, and WOH stakeholders. Following the release of those assessments, the City will accept stakeholder comments for 180 days. Based on the updated Town Level Assessments and its review of comments received, the City will evaluate the need for modification of its 2012-2022 Long-Term Land Acquisition Plan and discuss its conclusions with NYSDOH, USEPA, and NYSDEC. The City will share any proposed modifications to its solicitation plan, or the basis for a conclusion that no modifications are warranted, with the WOH stakeholders. During the period between February 14, 2017 and the City's adoption

of a modified solicitation plan or conclusion that no modifications are necessary, the City agreed to limit solicitations in certain towns.

WHEREAS, the second more comprehensive review begins in 2022 and requires the City to develop a new Long-Term Land Acquisition Plan for the period 2023-2033. Page 36 the 2017 FAD provides as follows:

The current WSP became effective December 2010 and expires in 2025. While the term of the 2017 FAD extends into 2027, solicitation and funding requirements for the LAP beyond 2024 are contingent upon reissuance of the WSP. Application for a WSP to succeed the 2010 WSP is required by June 2022 to ensure adequate time for stakeholder input on the conditions of the successor WSP. In addition, the FAD requires the City to develop a new Long-Term Land Acquisition Plan, which will cover the period 2023-2033 and will consider the findings of the National Academies Expert Panel review of the City's Watershed Protection Program. It is anticipated that the long-term plan and the Expert Panel findings will also help inform the conditions of the successor WSP; and

WHEREAS, the 2017 FAD calls for the continuation and funding for the City's Land Acquisition Program through 2027. In its consent to the 2017 FAD, in a letter dated December 27, 2017 to Howard Zucker, Commissioner New York State Department of Health, from Peter D Lopez, Region 2 Administrator, EPA stressed as important the "City and state efforts" in "the ongoing review of town-level assessments" and "City and state efforts" "to refine the program so as to ensure the City is soliciting parcels that will provide the highest value of watershed protection as well as address other important objective in the watershed"; and

WHEREAS, given the findings and conclusion above, in April, 2018, Delaware County Board of Supervisor passed Resolution No. 74 demanding that as part of the 2018 update to the 2012-2022 Long-Term Land Acquisition Plan, for those communities where the city's land acquisition goals do "not ensure ... the availability of developable land ... will remain sufficient to accommodate projected growth" and/or where the continuation of City's land acquisition could "substantially chang[e] future population patterns...(Special Condition 2, Water Supply Permit)", some form of relief be provided; and

WHEREAS, in order to provide that relief, with the assistance of the Coalition of Watershed Towns and CWC, Delaware County developed an Alternative Land Acquisition Program Option that will provide the impacted communities an opportunity to provide robust/enhanced protection of environmentally sensitive lands in a manner that will not "substantially chang[e]future population patterns...". The Option includes a fixed-term annual rental payment model that has proven to be effective in Delaware County. The Option focuses on environmentally sensitive lands (such as buffers) which directly contribute to water quality. This program would compensate landowners for the water quality protection provided by their land (including enhanced vegetated buffers) while still maintaining ownership. It will provide the balance between water quality and community sustainability and economic viability as required by the MOA. The impacted municipality would have to make a determination and a commitment to provide enhanced protection of sensitive lands in lieu and as a substitute for the continuation of the traditional DEP Land Acquisition Program. The municipal commitment would be for a period of years (e.g., 10 years); during that commitment period, DEP Land Acquisition Program would be suspended within that community; and

WHEREAS, in response to Resolution No. 74, in consultation with DOH, the DEP denied Delaware County's request. All of the government stakeholders, however, agreed that the

Delaware County Alternative Pilot Land Acquisition Proposal is a tool that will enhance the overall water quality protection from acquisition funds and that the proposal has merit and deserves further discussion. The government stakeholders concurred that the appropriate opportunities for the further discussion will be provided in the proceeding to amend the Water Supply Permit to expand the Stream Buffer Program and the City's development of a new Long-Term Land Acquisition Plan, which will cover the period 2023-2033 and will consider the findings of the National Academies Expert Panel. During those proceedings, Delaware County would have an opportunity to seek a permit modification adding the Delaware County Alternative Pilot Land Acquisition Proposal to the Water Supply Permit. All parties reserve whatever rights they have to oppose or support such a modification; and

WHEREAS, in August, 2020, the National Academies of Sciences published its report entitled, Review of the New York City Watershed Protection Program. In that report, NAS adopted a specific conclusion and recommendation to "reduce expenditures in the land acquisition program to fund other programs that will lead to more direct improvements to water quality". NAS Report, p.385. The recommendation to reallocate funds is based on "the seemingly small incremental contributions of the Land Acquisition Program to drinking water quality and its negative effects on community vitality, compared with the likely improvements to water quality from additional resources provided to these other programs." NAS Report, p. 385.

WHEREAS, NAS also recommended that the City be provided flexibility to implement an optimal variety of programs that would focus watershed management actions on the most valuable lands for water quality protection while recognizing legitimate concerns for community development. NAS Report, p. 220. Shifting funding and emphasis from acquiring large parcels in the fee-simple and New York City conservation easement programs to the protection of riparian lands on critical areas of tributary streams through the Flood-Buyout and Streamside Acquisition programs was one example that was recommended and encouraged. These programs were recommended because they "offer[] another opportunity to simultaneously address community needs and watershed protection" by providing a "financial mechanism" to promote community well-being and economic vitality in the watershed while promoting the protection of high potential water quality impact areas. See NAS Report p. 215-216 [discussing the NYC FBO program].

WHEREAS, as stated above, when DEP refused Delaware County's Resolution No. 74 request, the government stakeholders concurred that the appropriate opportunities for the further discussion will be provided in the proceeding to amend the Water Supply Permit to expand the Stream Buffer Program and the City's development of a new Long-term Land Acquisition Plan, which will cover the period 2023-2033 and will consider the findings of the National Academies Expert Panel. During those proceedings, Delaware County would have an opportunity to seek a permit modification adding the Delaware County Alternative Pilot Land Acquisition Proposal to the Water Supply Permit. All parties reserve whatever rights they have to oppose or support such a modification.

WHEREAS, DEC has announced that it will be making a determination to expand the SAP program to the entire watershed and that its determination is not subject to SEQRA and does not require any due process or permit modification. According to DEC, the town or village decision to allow SAP land acquisition in excluded hamlet areas, hamlet extension areas and villages can be made on a homeowner-by-homeowner basis for individual lots by Town Boards. According to the Water Supply Permit, both vacant lots and improved lots are eligible for acquisition (although DEC states that the purchase of improved lots is not intended). At the present time, SAP will focus on NYC fee purchases which will be subject to Section 82 of the MOA. That section requires "the City to grant to NYSDEC a conservation easement that shall run with the land on all lands acquired under the land acquisition program to ensure that such land is held in

perpetuity in an undeveloped state in order to protect the watershed and New York City's drinking water supply." The Conservation Easement required by DEC under Section 82 of the MOA prohibits in perpetuity the following activities on the acquired property:

- "construction of any new ... structures normally requiring a building code permit";
- "storage of petroleum ..., hazardous materials"
- "excavating, extraction, grading, or removal of soil, sand and gravel"
- "use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other motorized vehicles recreation purposes"
- "the expansion of any existing or construction of any new paved driveways, roads, and parking lots"
- "the commercial, residential or industrial use"
- "except in accordance with Article 49 of the ECL, the siting or routing of any facilities required for ... the transmission, or distribution of **gas, electricity, water, telephone, or cable television services** on, over or under the Protected Property"
- "the commercial, residential or industrial use of the Protected Property(ies) in such a manner that: (i) causes the introduction of sediments, ... or other pollutants to any watercourse or wetland on the Protected Property(ies) that may adversely affect the quality of such watercourse or wetland; (ii) interferes with or disturbs open space, vegetated areas or steep slopes on the Protected Property(ies); or (iii) is otherwise inconsistent with the purposes of this Easement."

WHEREAS, the Delaware County Board of Supervisors requests that the DEC, the Catskill Center and DEP identify and evaluate the potential adverse impacts on the following municipal and private functions if the City owns and controls large sections of stream corridors throughout Delaware County in perpetuity:

- Installation and upgrade of electrical, water, gas, telephone, broadband/cable lines as needed to provide basic utilities
- Maintenance, upgrade, expansion, widening, safety improvements to existing roads and extension of existing roads.
- Installation, expansion, and replacement of communication towers (including the necessary utilities)
- The siting, maintenance, and expansion of stream crossings
- Flood mitigation projects
- Renewable Energy Projects

WHEREAS, Delaware County asserts that DEC's determination to expand the SAP to the entire watershed (regardless of whether it requires a permit modification proceeding) constitutes an Action under SEQRA. Under 6 NYCRR 617.9 (a) (7), a lead agency may require a supplemental EIS to address adverse environmental impacts not adequately addressed in the EIS that arise from a "change in circumstances related to the project." In order to implement the expanded SAP program, DEP would have to enter into a long-term program agreement with the Catskill Center (or some other vendor) to administer and steward the program. DEP has indicated that it would take approximately 18 months to negotiate, execute and register a program agreement. To the extent the program agreement commits DEP to fund SAP post 2025, the agreement is beyond the 2010 SEQRA process and triggers a new SEQRA review. The 2010 SEQRA process evaluated the impact of the Land Acquisition Program on the supply of developable land for community sustainability through the existing permit period. Since 2010, there has been multiple changes in circumstances (the "Change in Circumstances") that alter the need and potential supply of the developable land and the environmental and community impact:

- (i) the COVID epidemic and the demographic changes resulting from it;
- (ii) the need/demand for literally **millions** of acres of land in upstate New York for wind and solar farms to generate renewable energy to meet the 2019 Climate Act statutory mandate to power 100% of the grid by renewable energy by 2040 (e.g., in order to make up electricity generation loss due to the closure of the Indian Point Nuclear Power Plant will require wind farms occupying more than 329,000 acres; in order to make up electricity generation loss due to the closure of the fossil fuel plants and to address the transition from gasoline powered vehicles to electric vehicles will require wind farms occupying more than several millions acres). NYSERDA, in a press release, recently announced signing a contract for a “174 mile transmission line [running] from this Fraser substation in Delaware County to the Rainey Substation” in Queens “to create a modern transmission system capable of delivering... renewable electricity to high demand areas in downstate New York.” That transmission line (which is underground along the existing Marcy South right of way) will cross and be under a significant portion of City owned property, some of which may be subject to the DEC conservation easement prohibition on new electrical transmission lines. The conservation easement required by DEC on all of the land acquired by NYC under the Land Acquisition Program also prohibits solar generating facilities and battery storage facilities and associated transmission facilities. Neither the closure of the Indian Point Nuclear Power Plant, the enactment of the 2019 Climate Act nor NYSERDA’s decision to contract for the transmission line starting at Fraser substation in Delaware County nor DEC’s decision to prohibit utilities crossings and solar facilities on City acquired property were subject to any evaluation under SEQRA relating to the Land Acquisition Objectives;
- (iii) The 2020 legislative enactment of the Accelerated Renewable Energy Growth and Community Benefit Act which streamlined and expedited large scale renewable energy development in New York by establishing a general permit process, eliminating, and superseding local (including DEP) and other state agencies approvals including SEQRA review. By adopting this law, the Legislature acknowledged that the regulatory impediments to new development were prohibitive and were preventing needed projects from being implemented. This enactment substantiates and supports the reality that the regulatory impediments to new development within the NYC Watershed is overwhelming and has contributed to the total lack of large-scale new development with the Delaware County NYC Watershed during the 23 years since the execution of the MOA;
- (iv) DEC denied the water quality certification to the Constitutional Pipeline in April 22, 2016. That pipeline was going to provide natural gas to the Delaware County communities including the Village of Delhi (and its two industrial dairies). The pipeline would have allowed the community, its homes and its industries to reduce their dependence on fuel oil and propane. Given the low population density in Delaware County, the Constitutional Pipeline was an unique opportunity to obtain access to low cost clean energy supply. Instead, DEC made a determination that water quality considerations trumped community sustainability considerations.
- (v) DEC’s determination to prohibit in perpetuity on property acquired by the City under the MOA Land Acquisition Program “the siting or routing of any facilities required for ... the transmission, or distribution of **gas, electricity, water, telephone, or cable television services** on, over or under” such property violates the MOA. In negotiating the 1997 MOA and the Land Acquisition Program, Delaware County, among others,

was extremely concerned about the impact of City ownership of large quantities of vacant land on the ability of communities and the public to obtain utilities easements to cross such land to support their homes and infrastructure. The City agreed that in lieu of providing utilities easements, the City would continue (and expand) its revocable license permit program which allowed utilities crossings of City acquired property at an affordable rate without undue delay and bureaucracy. That agreement was incorporated into Section 153 of the MOA which requires the City to “continue its policy of granting permits allowing City property to be crossed for access to utility services” including, and, in particular, to the rural electric cooperatives. The Conservation Easement required by DEC prohibits such utilities crossings on land acquired under the MOA Land Acquisition Program, totaling frustrating DEP’s commitment in MOA Section 153;

- (vi) In the 2010 Land Acquisition Permit proceeding, the parties agreed that grantor’s reserved rights for certain activities were to be treated as permitted uses subject to certain conditions and determined through a due process procedure with a reasoned elaboration determination. Notwithstanding that agreement, the DEP and other stakeholders took the position that the reserved rights were in the discretion of the Grantee and that the Grantor lacked standing to challenge the Grantee’s decisions. DEP’s position was adopted by the Appellate Division Third Department in the following two cases: Matter of Darwak v. City of New York, 188 A.D.3d 1511 (2020); Argyle Farm & Props, LLC v. Watershed Agric. Council, 135 A.D. 3d 1262 (2016). Delaware County believes that it is against public policy and long-term community interest to grant unfettered control in perpetuity to a third-party entity over large sections of the county (and, in particular, stream corridors where the hamlets are located); and
- (vii) In a Notice of Incomplete Application dated March 3, 2021 for a proposed project in the Town of Roxbury, Delaware County, DEC determined that the proposed project site is within a “designated Potential Environmental Justice Area and is characterized as being located within an area with environmental justice factors.” The guidance document states “a potential environmental justice area means a minority or low-income community that may bear a disproportionate share of the negative consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal programs and policies”. The guidance goes on to state that under Commissioner Policy -29 (CP-29), Environmental Justice and Permitting, environmental justice concerns must be incorporated into the NYSDEC environmental review process and the DEC’s application of SEQRA. Based on the guidance document, it appears that large sections of the NYC Watershed within Delaware County are potential Environmental Justice Areas due to low income. As a result, Commissioner Policy -29 (CP-29), Environmental Justice and Permitting requirements should be incorporated into the NYSDEC’s determination to expand the SAP and to any water supply permit modification/renewal process.

WHEREAS, Delaware County Board of Supervisors have an obligation to ensure that the residents of Delaware County are entitled to live in communities that can sustain critical municipal services and that those residents have access to services necessary to maintain a reasonable quality of life. In other words, Delaware County Board of Supervisors has an obligation to ensure that the MOA Land Acquisition Objectives are implemented as agreed.

WHEREAS, the Land Acquisition Objectives are a continuing obligation – not a static obligation. Twelve more years of open space land acquisition and the fee acquisition of stream

corridors in Delaware County (after 23 years of open space land acquisition) will have an adverse impact on our residents' access to services necessary to maintain a reasonable quality of life and community sustainability with little or no water quality benefits in violation of the MOA Land Acquisition Objectives.

NOW, THEREFORE, BE IT RESOLVED the Delaware County Board of Supervisors petitions DEC, DOH and DEP for the following relief:

- (1) The FAD requires application for a WSP to succeed the 2010 WSP is required by June 2022 and that the City develop a new Long-Term Land Acquisition Plan, which will cover the period 2023-2033 and which will consider the findings of the National Academies Expert Panel review. Given the uncertainties created by the Change in Circumstances, effective January 1, 2022 and extending through completion of the permitting process, the City refrain from entering into new contracts to purchase fee title and/or conservation easements under the Land Acquisition Program within Delaware County;
- (2) The expansion of the SAP beyond the Schoharie Basin within Delaware County be addressed by DEC in a DEC-initiated permit modification proceeding under 6 NYCRR Part 624 and be subject to review under SEQRA and/or be consolidated with the permit renewal process.
- (3) By December 1, 2021, Delaware County staff prepare and submit to DEP and all of the stakeholders an updated Alternative Land Acquisition Program Option Plan for incorporation into the 2023-2033 Long-Term Land Acquisition Plan and its application for renewal of its WSP.
- (4) In developing the Long-term Land Acquisition Plan for the period 2023-2033 and the WSP renewal application due June, 2022, that DEP limit its land and conservation easement acquisition within Delaware County to WAC Conservation Easements, flood mitigation projects, stream protection/management, the Delaware County Alternative Pilot Land Acquisition Proposal and a voluntary SAP plan.

BE IT FURTHER RESOLVED that this resolution be sent to US Congressman Antonio Delgado, New York State Governor Kathy Hochul, State Senator Fred Akshar, State Senator Peter Oberacker, State Senator Mike Martucci, Assemblyman Brian D. Miller, Assemblyman Chris Tague, Assemblyman Joe Angelino, EPA Region 2 Acting Director Walter Mugdan, NYSDEC Commissioner Basil Seggos, NYCDEP Commissioner Vincent Sapienza and NYSDOH Commissioner Mary Bassett.

State of New York
County of Delaware

I, Christa M. Schafer, Clerk of the Board of Supervisors of Delaware County, do hereby certify that the above is a true and correct copy of a resolution adopted by said Board on the 27th day of October 2021 and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Board at Delhi, New York, this 27th day of October 2021.


Clerk, Delaware County Board of Supervisors