

RESOLUTION #2 OF 2023

RESOLUTION OF THE TOWN OF MIDDLETOWN SUPPORTING THE DECEMBER 2022 REVISED FAD

WHEREAS, in the Spring of 2022 the New York State Department of Health (DOH) released for comment a draft Revised Filtration Avoidance Determination (FAD) as part of the mid-term review of the 2017 FAD; and

WHEREAS, the West of Hudson Communities (including, but not limited to, the Coalition of Watershed Towns, Delaware, Greene, and Schoharie Counties, the Towns of Windham, Ashland, Lexington, Prattsville, Jewett, Olive, Shandaken, Conesville, Gilboa, Roxbury, Middletown, Andes, Bovina, Stamford, Kortright, Tompkins, Harpersfield, Walton, Delhi,) submitted comments/Board resolutions to DOH (the "West of Hudson Communities Comments") which focused upon (1) the need to end the core land acquisition program as recognize in the 2020 findings of the National Academies of Sciences, Engineering and Medicine (NASEM) of its study of the watershed protection program; (2) the need to revise the Streamside Acquisition Program (SAP) to require local governments consent for participation in the program; (3) support for a community based streamside protection program in which the land owners are compensated for stewardship; (4) a requirement that the Conservation Easement granted by the City to NYSDEC for all fee acquisitions be modified to incorporate the requirements and the objectives of the 1997 Memorandum of Agreement ("MOA") ; and (5) assure greater compliance by New York City with its MOA obligations as exemplified by the 2022 dispute regarding the acceptance of septage waste at City-owned wastewater treatment plants and a sustainable contract administration process and

WHEREAS, in December 2022 DOH issued the final Revised FAD (together with a Comment/Response Document) which directly incorporated and responded to the West of Hudson Comments and specifically stated as follows:

- (1) "NYSDOH agrees that strategic, well-reasoned acquisition of water quality protective parcels should be the focus of the LAP, while allowing future community growth to occur in a manner that is consistent with the existing character and planning goals of each of the Watershed communities."
- (2) "NYSDOH agrees that changes to core LAP are necessary in the West of Hudson watershed, as guided by the recommendations of the NASEM expert panel. The program should be focused on the most sensitive areas for water quality protection, including floodplains, riparian areas, wetlands, and steep slopes. NYSDOH agrees that both the Long-Term Land Acquisition Plan and the successor Water Supply Permit should be shaped by the NASEM Expert Panel recommendations and stakeholder input."

- (3) “The reduction in LAP solicitation goal from 300,000 acres to 200,000 acres through 2024 is based on recommendations of the NASEM Expert Panel as well as stakeholder input. Solicitation beyond 2024 is contingent upon re-issuance of a WSP authorizing continuation of the LAP beyond 2025.”
- (4) NYSDOH understands that there are several areas of interest that stakeholders have regarding the current and future implementation of SAP. NYSDOH encourages stakeholders to engage in productive discussions with the City and CCCD to integrate common-sense program modifications **which will position SAP to operate with wide-spread municipal support in the future**. To encourage the resolution of these issues, the Revised 2017 FAD now includes a requirement for a dedicated SAP workgroup and a specific reporting requirement on the workgroup’s recommendations. While the determination for the expansion of the Pilot SAP to the remainder of the WOH watershed has not yet been made by NYSDEC, as described in Special Condition 29 paragraph (f), NYSDOH notes that paragraph (f) states that “Such written determination shall include addressing NYCDEP recommendations.”
- (5) “Under the Conservation Reserve Enhancement Program (CREP), administered by the US Department of Agriculture’s Farm Service Agency and the Watershed Agricultural Council, farmers can receive annual rental payments in exchange for removing environmentally-sensitive land from production and installing conservation practices like vegetated streamside buffers, exclusion fencing, and animal crossings. These rental agreements usually run for 10-15 years, unlike watershed conservation easements which run in perpetuity. The commentors are suggesting a similar program be explored as an option for owners of non-agricultural land. **This potential program should be explored in the context of the streamside acquisition workgroup**”
- (6) “NYSDOH and the City acknowledge the existing conservation easement language may need to be revised in light of some recent conflicts with public benefit projects. The City agrees to work with the communities to explore potential language changes to future conservation easements which would allow for such activities to take place. The Revised 2017 FAD has been updated to reflect this new activity”
- (7) NYSDOH supports the recreational use of protected land in the Catskill/Delaware Watershed where such use does not threaten to have an adverse impact on NYC water quality. Paragraph 72 of the 1997 Memorandum of Agreement included mountain bicycling as a recreational activity not likely to be allowed on City land. The City has opened over 135,000 acres of watershed lands to other recreational opportunities, where it can be demonstrated that recreational use will not harm water quality. **The City may consider requests to open specific City-owned parcels to connect existing or planned trail networks where municipal and organizational partners have the capacity to effectively steward the activities and ensure no threats to water quality.**”

NOW THEREFORE, LET IT BE RESOLVED that the Town Board of the Town of Middletown hereby thanks the Department of Health for carefully considering the comments of the West of Hudson Communities and incorporating those comments in the Revised FAD and accepts the Revised FAD as a reasonable compromise to assure the continued protection of New York City's water supply while recognizing the needs of the watershed communities; and

LET IT BE FURTHER RESOLVED, that the Town of Middletown is committed to continuing to work with the other watershed stakeholders to develop a revised LAP and SAP that is consistent with the MOA, the NASEM findings, the Revised FAD and the evolving needs of the watershed communities.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.


Motion made by: Nelson Delameter

Seconded by: Christopher Dabritz

Resolution adopted by a vote of 5 ayes and 0 nays

I hereby certify that the above resolution was duly adopted by the Town Board of the Town of Middletown at its regular monthly meeting held on March 8th, 2023.

Dated: March 8th, 2023



Patricia F. Kelly
Town Clerk
Town of Middletown

SEAL

I, Patricia F. Kelly, Town Clerk of the Town of Middletown, Delaware County, DO HEREBY CERTIFY that I have compared the preceding resolution with the original thereof filed in my office at Margaretville, NY on the 8th day of March, 2023 and adopted by the Town Board of the Town of Middletown, Delaware County, New York on the 8th day of March, 2023 and that the same is a true and correct copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed the seal of said Town of Middletown this 8th day of March, 2023.

Patricia F. Kelly

Patricia F. Kelly

Town Clerk

Town of Middletown



SEAL