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December 17, 2010

To: Attached Distribution List of Potentially Involved and/or Interested Agencies (via First Class Mail)

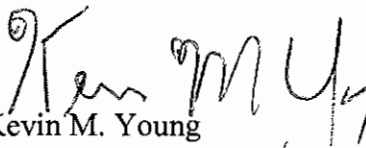
RE: Windham Generic Environmental Impact Statement – SEQRA Findings

Dear Sir/ Madam:

On Thursday, December 9, 2010, the Town Board of the Town of Windham adopted the enclosed SEQRA Findings. The SEQRA Findings are also available online at <http://www.sterlingenvironmental.com/clients/town-windham/index.htm>. On behalf of the Town of Windham, I want to thank you for your input and patience.

If you have any questions, please feel free to contact me directly.

Very truly yours,

  
Kevin M. Young

Enclosure

cc: Stephen J. Walker, Town Supervisor, Town of Windham (via First Class Mail)  
New York State Department of Environmental Conservation, Division of Environmental Permits (via First Class Mail)

List of Involved Agencies/Parties

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TOWN OF WINDHAM  
WINDHAM, NEW YORK

DEVELOPMENT CAPACITIES OF THE TOWN OF WINDHAM  
TOWN OF WINDHAM, GREENE COUNTY, NEW YORK

FINAL GENERIC ENVIRONMENTAL IMPACT STATEMENT

**SEORA FINDINGS**

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## **1. WATER SYSTEM**

The Generic Environmental Impact Statement (GEIS) provides recommendations for enhancing various aspects of Town-owned infrastructure. The Town's water supply system is one of the components which requires the implementation of a long-term improvement strategy.

As reported within the GEIS, Town residents obtain their drinking water from a number of sources and delivery entities. The residents in the Hamlet of Hensonville and residents in the Rt. 23 Hamlet are supplied by water through either private on-site systems or through the Town distribution system.

Other residents in the general area of Windham Mountain obtain their drinking water through the private distribution systems of Crystal Water Company or Windham Mountain Water Company. Residents to the north of the established hamlets obtain their water through private on-site systems or other private entities such as those that supply Windham Ridge Club or Crystal Pond condominium complexes.

The GEIS discusses the challenges that are presented by the presence of so many distinct water systems in such a relatively small geographical area. Further, water supply pump tests reveal that pumping within one area of the underlying aquifer may affect other wells within the aquifer which are some distance apart. Within this arena the GEIS concludes that the Town should pursue a consolidation strategy for these water systems. Consolidation is favored by both the NYSDOH and NYSDEC and, in fact, agency approval of future developments within the Town may be predicated upon consolidation of some or all of the water systems.

Consistent with the GEIS recommendations the Town Board has determined that funding applications should be submitted to potential funding agencies including the NYSEFC/NYSDOH Drinking Water State Revolving Fund (DWSRF) and/or the USDA Water Improvement Program.

The USDA funding application process is basically a two step activity. Step 1 involves the development of a "Pre-eligibility Determination Package". This package incorporates an engineering report which describes the proposed project. Town financial information and water district user rate information is also submitted at this time. USDA representatives then

review this information and issue a “Determination”. The “Determination” letter sets forth the terms of a grant/loan package for the Town to consider. At the present time, USDA grants will cover up to 75% of the cost of the project. The amount of any grant will be dependent upon the compelling need for the project and the user rate which will result from the loan amortization and ongoing operations costs of the system.

Step 2 in the process will occur if the Town wishes to pursue the USDA grant/loan funding. In this event, another package of project and financial cost information will be submitted for USDA review. This step also involves evidence of public support for the project including Bond and Estoppel Notices as well as certain permitting information such as archeological approval from NYSP&HP etc....

In June of this year, Windham prepared the first of the two parts of a USDA financial assistance package and submitted a proposed \$7mm water improvement project for their review. In past years USDA would respond to this Part 1 application with a “Preliminary Letter of Determination” letter which would outline a possible financial package. In this instance USDA representatives contacted Windham after reviewing the Part 1 application. They advised Windham that given a significant queue for project financing and limited federal funding, Windham should resubmit a Part 1 application for a less costly project. They also requested that the 2<sup>nd</sup> part of the application be completed and filed at the same time as the revised Part 1.

In 2011, Windham should submit Parts 1 and 2 of a revised funding application to USDA for a limited project to address existing regulatory obligations. The proposed \$2.4 mm project will include the following items all pertaining to improvements within the Hensonville hamlet:

- Replacement of aging and/or undersized mains;
- Construction of a new 200,000 gallon water storage tank; and,
- Installation of a treatment system to mitigate elevated arsenic levels.

While this project will not satisfy the goal of consolidating the various water systems, including the two municipal systems of Hensonville and Windham, it will bring the water system in Hensonville into compliance with State and federal Safe Drinking Water Regulations and substantially upgrade the distribution system.

## **Funding the Consolidation of the Private and Public Water Supplies**

### **Stonewall Glen**

This 59 residence development is located along South Street. The project owner has received Town Board approval to connect to the Town water supply system adjacent to the school bus garage and bring that water in a new main line across the Windham golf course property and then to South Street. This water line extension will be initially owned by the project developer. He will look to recoup some of the installation costs by providing water to subsequent developers along South Street. One scenario that has been discussed is that at some undefined time the line will be donated to the Town. The Town should make arrangements to take title to that water line extension.

### **Windham Sporting Club**

This proposed development is before the Planning Board. A total of 320 units have been proposed with an associated water demand of approximately 100,000 gallons per day. The project owner anticipates that the development will be connected to the municipal water system.

Through discussions with the Town, the owner understands that the project will be required to facilitate the consolidation of the municipal systems in the hamlets of Hensonville and Windham. There are two possible routes. One route would be to cross the land of Windham Sporting Club. This route is more cost effective and easier to implement. The second route would be to install the line along Rt. 296 from Hensonville to the intersection of South Street and then west to the connection with the new Stonewall Glen extension line installed across golf course property. Installation of a water distribution line to the intersection of South Street will allow for the provision of water to the numerous businesses in that area. It will also enable the potential consolidation of the water systems which serve Hotel Vienna and the Thompson House.

In light of all these factors we suggest the following strategy:

- The Town Board should research whether a new provision to the existing Water Use Law should be developed which identifies a one time fee (or special benefit assessment) for the connection of new units to the municipal system. Under this new law the Town Board would have the discretion to waive all or some of the special benefit assessment if a property owner extended municipal lines to reach the subject property.
- Stonewall Glen should be allowed to install the connecting line which they have proposed from the Town well field to South Street. The owner should also be permitted to recoup some of their installation costs through future connections to water users along South Street. A plan for the eventual transfer of this line to the Town should also be developed.
- The Windham Mountain Sporting Club project agreement for the supply of water should obligate the applicant to facilitate the installation (or a portion thereof) of a connecting water line from Hensonville to the aforementioned Stonewall Glen extension line on South Street.
- The Town should proceed with the process of submitting a revised USDA application for improvements to the Hensonville water system.
- Windham Mountain and Windham Mountain Village – The Mountain has been and still remains the economic engine for the Town. As development has progressed on Windham Mountain the issue of water supply has been a continuing item for discussion. NYSDOH has recently stated that additional development on the Mountain property, and the associated provision of potable water, is predicated upon the consolidation of their system with the municipal system. Based upon the likelihood of future development on Windham Mountain property it would seem prudent that consolidation discussions be initiated and that an actual plan for consolidation be developed and implemented. The consolidation plan should also include the water supply wells for Windham Mountain Village, the Thompson House and other private system with access to the system.

- The Town Board shall commission a Supplemental GEIS on the consolidation of the water supply. As part of that report, the Engineer will prepare a conceptual plan for the consolidation, a cost estimate for the design and construction of the consolidation, a funding plan, the terms and conditions for providing various users with water and proposed water rents.

## 2. WASTEWATER

Influent flow records to the new Windham municipal wastewater treatment plant for 2008 and 2009 are presented in the GEIS and have been discussed at a public hearing scheduled as part of the GEIS adoption process. In addition, data was presented regarding capacity which has been allocated to various entities but has not been fully realized. By contract with the Town of Windham, these entities can discharge wastewater to the municipal system; however they typically fall short of their contracted amount. Thus, capacity at the wastewater treatment plant has been “reserved” in the event that their future flows approach the contracted amounts. These entities include:

- Residential lots within the sewer district which have been improved but which have not utilized the allocated wastewater flow;
- Ski Windham;
- Thompson House;
- Crystal Pond;
- Windham Ridge Club; and,
- Windham Mountain Village

Data presented at the public meeting indicates that the highest monthly average daily flow recorded to date was 156,000 gallons. This occurred during February 2008 – the height of the ski season.

The “reserved,” and currently unused, capacity for the aforementioned entities is approximately 200,000 gallons. This is a conservative estimate since it assumes that each entity will discharge all of their allocated wastewater flow, an unlikely event in a seasonal community like Windham.

While the existing SPDES permit for the wastewater facility is 445,000 gallons per day, the existing flow (156,000 GPD) and reserved flow (200,000 GPD) only total 356,000 GPD. Thus, at least 84,000 gallons of unused and unreserved capacity exists.

There are no specific action items recommended at this time with respect to the new municipal system other than that the Town Board requests that the operator of the sewer system track, to the extent possible, the flows into the sewer system (in particular, the flows from the above users) to

locate and identify any infiltration and/or inflow and report their results to the Town Board on a periodic basis. Infiltration and inflow should be addressed as soon as it is discovered.

Although sewer infrastructure is currently adequate, the Town is extending collection lines to the district boundary in selected areas of town using funding from the NYCDEP N.I.P. (Contract 7). Improvements are also planned at the existing pump station (permanent generator). The Town has and will continue to partner with other agencies to pursue efficiencies at the plant (primarily NYSERDA).

The Town Board is also considering establishing a septic maintenance district in order to maximize the effectiveness of the CWC Septic Rehabilitation Program. CWC Septic Rehabilitation Program is being guaranteed funding through 2026. The funding will be sufficient for CWC to fund the replacement/repair of 300 septic systems per year. Whether the program will be funded after 2026 is uncertain. In addition, CWC's septic maintenance program is being funded consistent with historical levels through 2026. In the phosphorous restricted basins in the NYC East of Hudson Watershed, the MS4 permits require the municipalities to adopt a local law that requires each septic system to be inspected and potentially pumped every five years. In order to be proactive, the Town Board should consider adopting a similar law for those septic systems eligible for a septic system funding from CWC. This local law would ensure that the failures are discovered and addressed while funding is available.

### **3. AFFORDABLE HOUSING**

Section 7.1 of the draft GEIS identified the lack of affordable housing as adversely affecting the community by causing the displacement of residents, particularly the elderly. The price of housing in the Town is disproportionately high compared to all of Greene County due primarily to the development associated with Windham Mountain.

Town residents, seasonal workforce and the elderly will benefit through a more diversified housing stock and access to affordable housing.

The Town can move on several fronts. Future retail and commercial development projects for the commercial areas of Windham and the core of Hensonville can be encouraged to integrate affordable apartments. Abandoned and/or underutilized properties can be acquired and aggregated to allow creation of mixed residential/commercial uses more in keeping with the surrounding land use. One potential example is the former car dealership property in Hensonville.

Steering investment and development opportunity to abandoned and underutilized areas of the Town will add much needed housing while also eliminating the blighted properties which currently serve as a deterrent to investment.

The Town could also invite developers of affordable housing to submit a proposal to provide affordable options in a public/private model that takes advantage of federal and State grants and funding.

#### **4. HEALTH CARE**

Section 7.8.1.1 of the draft GEIS identified that adequate health care is lacking in the Town. Residents must travel to Kingston, Hudson or further for needed services. The population base of the Town simply does not support health care practices with diverse medical specialties. However, the Town may consider partnering with Windham Mountain to provide expanded health care and emergency care services to Town residents during winter weekends and part time during the ski season.

The Town and Windham Mountain should determine if the combined need of the community and Windham Mountain may support a full time health and emergency services clinic at least during December through March and July and August.

The Town could also explore coordination with Greene County and adjacent towns to site a new medical facility to better serve the mountaintop communities.

## **5. STORMWATER**

Stormwater management is highly regulated by the NYSDEC and NYCDEP for individual projects. There is little additional regulation or oversight required by the Town. On the other hand, the Town may have the opportunity to encourage a regional stormwater management approach within its review of individual site plan applications.

In certain areas, such as South Street, where the density of development and topography limit the opportunity for onsite stormwater management systems, the Town may consider area-wide stormwater solutions. An area-wide stormwater solution may necessitate creating a stormwater management district or the coordination among various development projects to encourage an area-wide study and evaluation of comprehensive solutions rather than attempting to manage stormwater onsite on an individual project basis. In particular, the Town Board could consider the creation of a stormwater district within the South Street/Windham Mountain area in order to fund an area-wide stormwater study and to evaluate the feasibility of a comprehensive solution. The study could potentially be funded as a supplemental GEIS focusing on regional stormwater management solutions. As part of the study, the Town should consider the development of a large detention pond on South Street near the Bataviakill. The pond could enhance the valves within the area, provide a potential source of water for snow making, provide some recreational opportunities and provide a focal point for the community.

In the meantime, funding is being pursued by Greene County to mitigate an existing problem at the intersection of County Route 21 and State Route 23. NYS DOT has committed to correct their issue at State Route 23 in the spring of 2011. Some preliminary design work is complete.

## **6. FIRE PROTECTION / AMBULANCE SERVICES**

The Town relies on a volunteer fire department. With a dwindling population and many people commuting out of Town for work, there is a lack of available volunteers for much of the day. Ambulance service, including paid paramedics, is provided by the Town.

As development occurs, the burden on the existing fire department and ambulance service increases as does the cost to provide these services. Due to the lack of available volunteers, the Town may be faced with a need for paid fire response personnel. The Town should investigate strategies with the local fire department to increase the number of volunteers including educational programs for local high school students regarding the benefits of being a volunteer upon graduation from high school.

## **7. TELECOMMUNICATION INFRASTRUCTURE INTERNET, CABLE TELEVISION SERVICE, CELL PHONE SERVICE**

In 2004 and 2005, Greene County conducted interviews with telecommunication providers within the County to assess the state of current infrastructure. The findings are found in the 2007 Greene County Comprehensive Economic Development Plan. Mountain top towns, including Windham, are the most underserved within the County since providers are hesitant to expand into rural and less populated areas where there is a low client base. Existing developed areas of Windham are currently served by two telephone and two cable television and internet providers. The two internet providers, Verizon and Mid-Hudson Cable, currently provide service to the Town. Verizon provides the following connection speeds from slowest to fastest: dial-up, T-1, DSL, Cable, T-3, OC1, OC3 and ATM. Mid-Hudson Cable provides T-1, DSL and Cable. DSL is available to residents that live within 3.4 miles of the central provider office.

Satellite internet is an option for underserved areas where the necessary infrastructure is not currently available. However, this is a costly alternative with high start-up costs. To improve satellite and wireless access, local providers, Surfernet and NYAir are in the planning stages of constructing a telecommunications tower in the Town of Durham, NY.

The GEIS reports that there are no cell towers within the Town of Windham. A cell tower was installed above Windham Mountain in the Town of Jewett. Additional towers will be located approximately 16 miles to the northeast in the Town of Freehold and in Rensselaerville to the north. Users indicate that cell phone reception through Verizon Wireless is fairly strong throughout the center of the Town on Main Street and at Windham Mountain. There is little or no reception in the Hamlet of Hensonville. Other wireless providers, including Cingular and AT&T, appear to have little or no coverage in the Town.

The lack of wireless coverage and the lack of broadband coverage is not acceptable. As a Town whose main industry is tourism, visitors expect to find and depend on wireless coverage when they visit the Town. Local residents need wireless coverage for safety, tracking their children and doing

business. Many small businesses use wireless as their main form of communication rather than an unmanned landline phone.

Similarly, high speed internet is a crucial factor in whether a business moves to or leaves the Town. In this competitive environment, students, families and businesses need high speed internet in order to compete and survive. There is grant money available to help rural areas expand broadband coverage. The Town has joined with other towns and a local provider in an application for grant funding.

Rural communities like Windham cannot simply wait for private providers to reach their area. Companies like Timewarner Cable generally require a density of 20 homes per mile to provide cable and internet service. The wireless technology is advancing and changing so quickly that the wireless providers are forced to focus their capital efforts on large metropolitan areas in order to upgrade their service to incorporate the latest technology. In addition, the topography and development restrictions that exist in a town like Windham create a significant obstacle to telecommunication service providers considering an expansion of services in the Town. In order to attract wireless providers and new broadband coverage, Windham should facilitate solving the siting issue. In other words, Windham needs to identify the areas that need service and the possible locations for providing such services.

To the extent that there is funding available, the Town Board should consider preparing a supplement to this GEIS specifically to summarize existing coverage and identifying potential locations and/or solutions. Greene County is currently conducting a study or survey with respect to broadband coverage. The Town should wait for that study to be issued before commencing any further investigations.

The Town should consider locating and constructing cell towers on Town or city owned property. The towers could be funded with a low interest loan from the Catskill Fund for the Future with payment secured with long term leases from telecommunication carriers.

The telecommunications service provider needs a good site with usable and unrestricted access and the ability to connect to power and/or high-speed telephone services. The myriad of restrictions and bans on development that are unique to Windham are a significant deterrent to

service providers who, facing capital, time and other constraints, may not be able to properly plan a network in Windham within a reasonable time period. As stated above, Town officials can help the process by doing some of the legwork up-front.

On a final note, the FCC is considering a substantial revision to the Universal Service Fund (USF) to facilitate broadband deployment in rural America. A recent consultant solicitation on this initiative is available and should be reviewed as part of the Supplemental GEIS.

## 8. IMPACT OF NEW YORK STATE LANDS AND THE NEW YORK CITY LAND ACQUISITION PROGRAM

The Town of Windham is located entirely within the geographic boundary identified in the 1997 Watershed Memorandum of Agreement as the City of New York Catskill-Delaware West of Hudson Watershed. *See* Watershed MOA Ex. I (map of City of New York Land Acquisition Priority Areas, Catskill-Delaware System, West-of-Hudson). The Catskill system consists of the Schoharie and Ashokan reservoir systems, and the Delaware system consists of the Cannonsville, Pepacton, Neversink and Roundout reservoir systems. Pursuant to the 1997 Watershed MOA and the 1997/2007 filtration avoidance determinations issued by the U.S.E.P.A., the City of New York (“City”) was required to enact its land acquisition program a part of the City’s efforts to avoid filtering its water supply under the federal Safe Drinking Water Act and related surface water treatment rule. This section examines the potential impacts of New York State lands and the City’s land acquisition program on the Town of Windham.

### *A. Status of Land in Public Ownership*

As of December 31, 2009, the City, through its land acquisition program in the MOA and filtration avoidance determinations, has protected an additional 102,688 acres (including farm easements secured by the Watershed Agricultural Council [“WAC”]), a 290% increase over 1996. In many watersheds, the City’s land holdings increased dramatically compared with pre-1997 MOA ownership patterns by the City. *See* New York City Dept of Environmental Protection Filtration Avoidance Annual Report For the Period January 1 through December 31, 2009, dated March 2010 p. 23. Overall, during the last approximate 12 years, City controlled land (including easements secured by both NYCDEP and WAC) has been expanded threefold to 138,197 acres. In 1996, roughly 3.5% of the Catskill/Delaware watershed was owned by the City; today, roughly 13.5% is City controlled. *See Id.* p. 23.

Through the end of 2009, 36% of the entire 1,049,810 acre Catskill/Delaware watershed system was protected by outright ownership or easement held by NYCDEP, WAC, or NYSDEC, or by other public or private open space entities, such as municipal parks or land trusts. *See Id.* at p. 89. The City owned or controlled approximately 61,400.8 acres before 1997. *See Id.* p. 90. However, under the LAP, the City has acquired

approximately 63,233 acres of lands in fee simple absolute in the Catskill/Delaware watershed, and approximately 19,867 acres in easement. WAC has acquired approximate 18,174.3 in conservation easements in the Catskill/Delaware watershed. New York State owns approximately 206,680.3 acres of land in the Catskill/Delaware watershed, with other dedicated open spaces totaling approximately 8,707.5 acres. In total, by the end of 2009 there were approximately 378,063.2 acres of land held for conservation or public land in the Catskill/Delaware watershed, with approximately 671,746.5 acres of land remaining in private ownership. *See Id.* p. 90.

The Town of Windham is approximately 28,098.09 acres in size. *See Draft Town of Windham Land Analysis, Greene County, New York December 2009 map, prepared by Delaware Engineering, P.C., Dec 2008, rev. Sept 11, 2009, rev. Dec. 3, 2009.* The Town of Windham is located entirely within the City's Catskill/Delaware West-of Hudson watershed. As of the end of 2009, the City owned or had pending transactions to acquire approximately 2,666.79 acres of land in fee in the Town of Windham. The City simultaneously held approximately 227.32 acres in conservation easements in the Town of Windham. The NYSDEC owned approximately 5,958.77 acres of land in the Town during that period. *See Id.* Most of the land in Windham is not easily developable due to steep slopes, watercourses, wetlands and flood plains. Of the 19,800 acres of land that is privately held within the Town of Windham, approximately 27% is estimated as being potentially developable. Appendix Z to the MOA entitled: *New York City Department of Environmental Protection Land Acquisition Solicitation Process, 1996*, describes the solicitation process to be implemented by the City in its land acquisition program. It provides as follows:

The City will conduct a site visit on each parcel where the landowner has indicated, in response to City solicitation or where the landowner contacts the City on their own initiative, that he/she is interested in selling a parcel. The City shall make a determination, based on the site visit, and using the agreed-upon water quality criteria, whether the property contains significant natural features important for water quality protection. If the City determines that the

property does not exhibit such features, it shall not be counted towards the applicable acreage requirement. If the City determines that the property does exhibit such features or is a necessary parcel toward meeting the acreage requirement for the priority area, it shall count towards meeting the target, and the City shall be obligated to make an offer to purchase and shall be obligated to purchase the property if the offer is accepted.

*B. Land Eligible for Land Acquisition*

The entire Town of Windham is located in the City's west of Hudson Catskill-Delaware watershed. Additionally, approximately 50% of the land mass comprising the Town of Windham is located within the area of land designated as the Catskill State Park by New York State. The State forest preserve park lands owned in the Town constitute approximately 21% of the Town's land mass, and are required to be kept as forever wild under Article 14 of the State Constitution. The City's ability to acquire any remaining lands in the Town of Windham for watershed protection is generally governed by the Watershed MOA, the City's filtration avoidance determinations, and the City's water supply permit from the NYSDEC. *See Watershed MOA paragraph 54 et seq; see also U.S. E.P.A. New York City Filtration Avoidance Determination dated July 2007, section 4.2.*

The Catskill/Delaware watershed has been divided into Priority Areas 1A, 1B, 2, 3, and 4 by the City in the MOA; 1A being the highest priority. The Catskill/Delaware watershed priority area are as follows: 1A (sub-basins within 60-day travel time to distribution that are near intakes), 1B (sub-basins within 60-day travel time to distribution that are not near intakes), 2 (sub-basins within terminal reservoir basins that are not within priority areas 1A and 1B), 3 (sub-basins with identified water quality problems that are not in priority areas 1A, 1B and 2), and 4 (all remaining sub-basins in non-terminal reservoir basins). A map of the boundaries of Priority Areas 1 (1A and 1B combined), 2, 3, and 4 is provided in the MOA at Attachment I. The Town of Windham contains land areas identified as Priority Areas 3 and 4. *See MOA Attachment I.* Approximately ½ of the Town's land mass is identified as Priority Area 3. Approximately 1/3 is identified as Priority Area

4. The remaining portion is the State Forest Preserve. To acquire lands or conservation easements in Priority Areas 3 or 4, the lands must meet the identified “Natural Features Criteria,” including being at least ten acres in size and must: (A) Be at least partially located within 1,000 feet of a reservoir; or (B) Be at least partially located within the 100-year flood plain; or (C) Be at least partially located within 300 feet of a watercourse, as defined in the New York City Watershed Regulations; or (D) Contain in whole or in part a federal jurisdiction wetland greater than five (5) acres or a NYSDEC mapped wetland; or (E) Contain ground slopes greater than fifteen percent (15%). *See* MOA paragraph 63.

The MOA provided initial solicitation and acquisition targets for the City to achieve under the City’s 1997-2007 filtration avoidance determinations. *See* MOA paragraph 64.<sup>1</sup> The 2007 FAD expanded the City’s prior land acquisition program, including allowing the City to commit an additional approximately \$240 million dollars for land/easement acquisition in the Catskill/Delaware watershed over a second 10 year period. *See* 2007 FAD section 4.2.<sup>2</sup> The 2007 FAD further increased the City’s solicitation and acquisition targets for acquisitions in the Catskill/Delaware watershed. *See* 2007 FAD section 4.2 (requiring annual revisions to solicitation plans, to increase solicitations annually by at least 50,000). The City’s 2012-2022 Long Term Acquisition Plan specifically provides “Following the new funding commitments contained in the 2007 FAD, the City’s 2008 to 2010 Solicitation Plan called for an additional 90,000 acres of new solicitation. These additional acres were solicited primarily in Priority Areas 3 and 4 (since Priority 1 and 2 had already been almost entirely solicited), effectively raising the level of solicitation in those Priority Areas above the levels specified in the MOA.” *See* New York City DEP Long Term Land Acquisition Plan 2012 to 2022, dated September 30, 2009, p. 4. As such, the City’s long term acquisition plan to implement the 2007 FAD has direct implications for the Town of Windham, as the Town is predominately identified as having Priority 3 and 4 land areas.

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<sup>1</sup> Stating “the 1997 FAD will require the City to solicit, consistent with paragraph 60 above, owners of 61,750 acres of eligible land in Priority Areas 1A and 1B; 42,300 acres of eligible land in Priority Area 2; 96,000 acres of eligible land in Priority Area 3; and 155,000 acres of eligible land in Priority Area 4 for a total of 355,050 acres of eligible land.”

<sup>2</sup> The City is separately able to acquire agricultural easements in the Catskill/Delaware watershed through WAC under the MOA. *See* MOA paragraphs 77-78. This program similarly had its funding increased in the 2007 FAD. *See* 2007 FAD section 4.2.

The City has generally had a 20% historical success rate with its solicitations in Green County, acquiring approximately 16,072 acres in fee and/or conservation easements. If the City has a future success rate for its solicitations increased to 27% in Greene County, the City could acquire an additional 16,760 acres in fee and/or conservation easements during the next 10 to 15 years.

C. *The New Land Acquisition Program*

In its DEIS, the City identified the impact its future land acquisition program will have on the availability of developable land within the Watershed and, in particular, within the Town of Windham. Based upon historical success rates, the City estimated the total acreage of land within the Town of Windham that will be purchased over the next 12 years and the percentage of that land that is considered developable land. Preliminary draft estimates suggest that DEP may purchase as much as 17 percent of the available developable land within the Town of Windham by 2022 leaving approximately 73% of the current supply of developable land in private ownership. If the city is required to continue and refund the land acquisition program for 30 years covered by the planning period of this GEIS, the City would have the potential to purchase as much as 50% of the current supply of developable land in private ownership. In its DEIS, the City concludes that the acquisition of the 17% of the available developable land with the Town of Windham during the period 2010 to 2022 and will not have a significant impact on development within the town. The DEIS estimates that during the period 2010 to 2022, approximately 10% of the developable land remaining in private ownership will be used for development. If those acreage rates continue for the entire planning period (e.g. 30 years), by the end of the planning period, 67 % of the remaining developable land will be consumed by either development and/or will be consumed by the City's Land Acquisition Program. If those acreage rates continue for 45 years, the Town will no longer have any remaining vacant developable land in private ownership.

In September, 2007, DEP issued a Negative Declaration under SEQRA for its Long Term Watershed Protection Program including the long term acquisition program required by the 2007 FAD. The Coalition of Watershed Towns immediately commenced an Article 78 proceeding against DEP asserting that the Negative Declaration was arbitrary and capricious

and in violation of State law. The Coalition of Watershed Towns claimed that New York City had failed to take a hard look at the potential long term community impacts from an additional 10 year \$240 million land acquisition program. The Coalition agreed to stay the litigation and to negotiate with DEP, DEC and the other stakeholders on the terms and conditions of the long term land acquisition program subject to the constraints of the 2007 FAD. Under the 2007 FAD, DEP had to submit an application for a new water supply permit in January 2010. The existing water supply permit is due to expire in January, 2012. As part of its application for a water supply permit, DEP declared itself lead agency and has issued a Positive Declaration indicating that the long term land acquisition plan may have a significant adverse impact on the environment. In the spring, 2010, the City conducted a scoping for the DEIS and on April 30, 2010 issued its final scope for the DEIS. In July, the City issued the DEIS. The public comment period closed on November 22, 2010.

After three years of negotiation, the Town of Windham will support the renewal and updating of the City Water Supply Permit. First, the Town acknowledges the professionalism, good faith and significant effort that DEC and DEP has devoted to this process and expresses its appreciation for working with all of the stakeholders to develop a permit that is consistent with applicable law and balances the competing interests. Second, Town acknowledges that DEC, DEP, DOH, EPA, CWT, the environmental parties and the local communities have acted in accordance with their obligations under the MOA to work together in good faith to develop water quality protection programs while, at the same time, ensuring the viability and growth within the local communities. The Town Board asserts that the partnership created by the MOA and the obligations thereunder to work together to solve water quality issues has proven to be a successful model not only in 1997 but thirteen years later in 2010. Immediately below are the critical principles from which the Town has decided to support the water supply permit.

The Town Board does not agree that a robust Land Acquisition Program is necessary to protect water quality within the New York City Watershed. The Town Board understands, however, that DEC, DOH and EPA all agree that a robust Land Acquisition Program is a critical component of a long term water protection strategy. As a result, CWT has attempted to identify the measures necessary to protect our rural

communities from the impact of deed restrictions that prohibit forever all forms of commercial and residential development.

Many (if not all) of the West of Hudson communities were settled as a result of the harvesting of the various natural resources ( agriculture, forestry, mining, recreation) and through the terms of the proposed WSP, the parties have been able to ensure that future generations will continue to have access to the natural resources on land purchased by the City.

To the extent future development is going to be possible from an economic and environmental perspective; the available land should generally be dry land with access to infrastructure. In the draft WSP, there are provisions which allow the local communities to set aside certain areas within their town where commercial and/or residential development is possible. The parties have agreed that the Town may protect the 1997 Designated Area (1,148acres) and the 2010 Expanded Designated Hamlet Area (2,797 acres) from land acquisition under the Water Supply Permit (for a total of 3,945 acres).

Because the deed restrictions that come with a robust Land Acquisition Program are in perpetuity, the WSP and the documents of conveyance must contain safeguards to ensure that decisions regarding the future use and enjoyment of these controlled parcels will be made in a fair and transparent manner that, while protective of water quality, also recognize the needs of a living community to adapt to an ever changing world and technology. As identified below, the parties have agreed to a variety of modifications to the Land Acquisition Program to ensure future generations have the flexibility to adapt to ever changing technology and economy.

Finally, in 2010, the overwhelming source of funding for local municipal services (including road and education) is from real property tax. The overwhelming source of real property tax is from developed property (vacant land accounts for a small percentage of the overall assessed value). As greater and greater portions of the Town become subject to deed restrictions preventing development, the tax burden on the developed properties will continue to rise. As a result, the WSP contains provisions that help ensure the owners of land subject to the deed restrictions will pay their fair share of property tax.

As a result of nearly three years of negotiations with various stakeholders including the DEP, DEC, DOH, EPA, environmental parties and our local communities, DEC has agreed to include and require as part of the WSP measures necessary to ensure the Land Acquisition Program will not have a long term negative impact on the local communities West of the Hudson. Those mitigation measures have been incorporated into the draft WSP. The Town Board has been briefed in detail on the terms and conditions in the latest draft of the WSP. Provided the mitigation measures included in the draft WSP remain intact and the parties execute the current draft of the Side Agreement, the Town Board will support the permit.

Modifications to the New York City Land Acquisition Program negotiated by the Coalition of Watershed Towns include the following:

1. Revocable Permits. DEP has agreed to modified its regulations regarding revocable permits to reduce the fees charged for municipal uses and recreational uses.

2. DEP has agreed to work with property owners who require a revocable permit from DEP for access and/or utility easements to provide assurances to banks and finance institutions relating to revocable permits.

3. DEP has agreed to allow cell towers and commercial wind towers on property it owns in fee subject to insuring no significant impairment to water quality and local approvals.

4. DEP will modify its conservation easement to allow cell towers and wind towers on property subject to conservation easements subject to protections to ensures no significant impairment to water quality.

5. The City has agreed to allow snowmobile trails on and across its property provided an agency or association accepts responsibility for the trail and maintains those trails.

6. For all Watershed Agricultural Conservation Easements purchased after January 1, 2011, DEP has agreed to pay real property tax.

7. With properties it purchases in fee, DEP has agreed to allow the assessors to modify the assessment and to base future assessments on the purchase price times the equalization rate. Moreover, DEP has agreed not to

challenge the assessment for 30 years (instead of 20 years) from the date of purchase provided the assessment does not increase at a rate faster than the assessment on other vacant land.

8. To the extent that communities fail to update their assessments upon City purchases, the agreement makes clear that the assessments could be updated at any time.

9. The City has agreed to language indicating that it has an obligation to make the natural resources on lands it acquired available to the communities subject, of course, to water quality considerations. Natural resources includes: agriculture, forestry, firewood, maple syrup, blue stone, recreational, wind towers, cell towers.

10. The City and WAC will include as part of the local consultation process all available information regarding known natural resources on the property being acquired or subject to the conservation easement.

11. The City has agreed to fund the septic system replacement and rehabilitation program at historical levels (300 septic systems per year) for the duration of the permit (through 2026).

12. The City has agreed to fund the septic maintenance program (maintenance of up to 20% of the septic systems that have been remediated on an annual basis) through the duration of the permit (i.e., 2026).

13. The City has agreed to fund the Small Business Septic Program consistent with existing funding levels for the duration of the permit (i.e., 2026).

14. The City has agreed to fund the Stormwater Retrofit Program consistent with historical levels of activity through 2026.

15. Both the City and WAC will be precluded from purchasing land in fee and purchasing conservation easements in the expanded hamlet designation areas. The Towns must pass a resolution within 180 days of the effective date of the permit (towns must provide written notice to all affected property owners 30 days prior to passing the resolution, newspaper notice and public hearing).

16. The Town has 180 days from the effective date of the permit to pass the following two resolutions:

- (i) Expanding the designated hamlet (if applicable).
- (ii) Determining whether to preclude acquisitions in fee and acquisitions of conservation easements in the 1997 designated area and the expanded hamlet (if any) (written notice to affected land owners, 30 day comment period, public hearing). Expanded hamlet areas are entitled to the less restrictive stormwater regulations.

17. In order to purchase property or conservation easements, the property must meet the following special criteria:

- (i) 50% or more of the property must have 15% slopes; or
- (ii) 7% or more of the property must contain water courses, wetlands or be in the floodplain or be within a certain distance of a water course or wetland.

[Within the Town of Windham, the 7%/50% criteria eliminated an additional 175 acres]

18. WAC has agreed to modify its conservation easement to mandate an informal dispute resolution procedure in which a farmer can seek arbitration in front of a DEC Administrative Law Judge.

19. WAC will amend its conservation easement to give preference to any local and/or regional land trust in the assignment of the WAC easement if for some reason the easement must be assigned.

20. WAC has agreed to comply with the substance of the transparency requirements in the Public Officers Law (open meetings and Freedom of Information) in all areas associated with the Land Acquisition Program and the stewardship of those lands.

21. WAC has agreed to adopt guidelines indicating that reserved uses (commercial forestry, blue stone mining, rural enterprises, wind towers, cell towers, etc.) are permitted uses subject to reasonable criteria to protect water quality and the agricultural values.

22. The above obligations will be enforceable by the Town through the MOA.

*D. Recreational Opportunities*

As of the end of 2009, the NYSDEC owned approximately 5,958.77 acres of land in the Town. According to the NYSDEC State Lands Interactive Mapper (website <http://www.dec.ny.gov/outdoor/45415.html>), the DEC lists State property that is open to the public for recreational opportunities as Elm Ridge Wild Forest (Forest Preserve), Mt. Hayden State Forest (State Forest), Windham Black Ridge Wild (Forest Preserve), Mt. Pisagh State Forest (State Forest), Ashland Pinnacle State Forest (State Forest). See <http://www.dec.ny.gov/outdoor/45415.html>, for map of State lands in the Town of Windham; see also <http://www.dec.ny.gov/outdoor/7801.html> (listing areas open to the public for recreation in Greene County). The NYSDEC requires licenses for certain activities on State lands, including hunting, fishing and other similar sporting activities. See <http://www.dec.ny.gov/63.html>.

The Town Board should seek grant funding to catalogue the open space within the Town available for recreational use including the uses allowed on each parcel. That catalogue could be published to promote tourism. That catalogue could also be used to promote a master plan for town-wide recreational uses. The Town could use its share of the Local Consultation Funds (\$30,000) to work with DEP during the acquisition process to ensure that recreational uses are allowed on City property consistent with the plan.

*E. Real Property Tax Statements*

The MOA established a frame work for assessment of real property taxes and challenges to real property taxes on lands and easements acquired by the City under the MOA and related filtration avoidance determinations. See generally Watershed MOA paragraph 79-81. A number of municipalities in the west of Hudson Catskill/Delaware watershed have experienced and expressed concern with the substantial costs associated with City legal proceedings challenging local tax assessments on City lands and easements. While local municipalities are seeking to amicably resolve tax assessment issues with the City moving forward, the City's projected increase in acquisitions under the 2007 FAD, including the projected acquisitions in Priority Areas 3 and 4 and the Town of Windham, imposes potential significant costs for the Town if the Town is required to litigate real property assessments with the City. See generally letter to William C. Harding, Ex.

Director Watershed Protection and Partnership Council, from the Coalition of Watershed Towns, dated May 22, 2007, with attached comments/responses. In the MOA and in the water supply permit, DEP has agreed not to challenge the Town's assessment on vacant land provided the assessment is consistent with the purchase price paid by the City for the parcel times the equalization rate and provided that the assessment does not increase at a rate faster than other vacant land within the Town. Under the draft WSP, the City has agreed not to challenge the assessment under the foregoing conditions from 30 years from the date of purchase. The Town should instruct the assessor to investigate the land purchases made by the City since 1997 to determine whether the Town has properly assessed property that the City acquired consistent with the MOA. For those parcels that are under assessed, the assessor should make a determination whether to modify the assessment consistent with the MOA. During the local consultation process, to the extent the information is available, the assessor should provide the City and/or the property owner with an estimate of the assessment consistent with the MOA formula post closing.

## **9. IMPROVEMENTS TO REGULATORY PROCESSES TO REDUCETHE COST OF DEVELOPMENT**

In today's economy, upstate communities have to compete with other similarly situated communities for new investment. Windham has been fortunate over the past 30 years to experience some growth in second home development. Based upon past experience and after an evaluation of local real estate market, Windham anticipates that over the next twenty to thirty years that there could be a demand for new second homes of approximately 40 to 50 homes per year. At the present time, there is a number of proposed projects that are in the planning and/or have obtained project approval. The demand for new second homes continues to be far less than the level experienced in 2003 to 2007 and the prices that individuals are currently willing to pay makes new construction not feasible. In one development with fully constructed new units, the price of new units has dropped by 40% from the price levels at the beginning of 2008. In order to compete going forward, Windham needs to adopt smart regulations and streamline approval procedures. Below are some recommendations that Windham could implement to promote growth while, at the same time, protecting its community character and the environment.

1. **SEQRA Process:** The Windham Planning Board should seek lead agency status on any new significant project within the Town of Windham that requires subdivision approval or site plan approval. As the lead agency, the Planning Board could use the SEQRA process to achieve the mitigation measures that are most important to the long term sustainability of the community.
2. When SEQRA was enacted in 1976, there were very few regulatory programs in place at the state and federal levels to address environmental impacts. Today, however, there are extensive and, in some cases, overlapping regulations and approvals in place to address and mitigate all types of environmental impacts. Those regulatory approvals and programs are described in the GEIS. Environmental impacts to wetlands, groundwater, surface water, storm water, drinking water, waste water, sanitary discharge, air, cultural resources, endangered species, toxic substances and petroleum storage are addressed and mitigated by existing state, federal, local and city regulatory programs. With respect to those areas, the SEQRA process

should focus on whether the project can comply with the applicable regulatory standards. The Town Board considers those regulatory programs as sufficiently protective to constitute adequate mitigation of the environmental impacts and adequate, in most cases, to prevent a significant adverse environmental impact.

3. In addressing SEQRA, the Planning Board should not allow the cost and time associated with SEQRA compliance be the determinative factor that defeats a project. The purpose of the SEQRA is to inform the decision making agency with the necessary information to make an informed decision whether a project meets all applicable criteria; the process itself should not be the determinative factor.
4. In reviewing applications, the Planning Board should, to the extent consistent with its authority, shift the cost of the review to the applicant. At the same time, the Planning Board should not require the applicant to pay for duplicative reviews. If State, federal, New York City and/or other local agencies have review and approval authority over a particular impact or activity, the Planning Board should limit its review to that necessary to ensure compliance with their regulatory authority.
5. In addressing visual impacts, the Planning Board should adopt general guidance document identifying mitigation measures that it recommends applicants incorporate into their project design. By providing some general guidance, the Planning Board will facilitate the applicants incorporating into their project design the visual features important to the Town.