

CHAPTER 12:

Comments and Responses

INTRODUCTION

This chapter summarizes and responds to all substantive comments on the Draft Environmental Impact Statement (DEIS) for the Extended New York City Watershed Land Acquisition Program made during the public review period. These consist of comments made at the joint public hearings held by NYCDEP and NYSDEC on July 12, 2010; at SUNY Delhi in Delhi, NY, on July 13, 2010; at Hunter Elementary School in Hunter, NY; and on July 14, 2010 at Tri-Valley High School in Grahamsville, NY; as well as written comments submitted to NYCDEP and NYSDEC. The period for public comment remained open until November 22, 2010.

The names and affiliations of individuals who commented on the DEIS, with the date of the comments, is listed below, followed by a summary and response by the City to all substantive comments. The comments are organized by subject area, generally following the organization of the DEIS. Where similar comments on the same subject matter have been made by more than one person, a single description summarizes all comments on that issue. Following each comment is the list of people who made the comment. The City's responses then follow each comment.

LIST OF GROUPS AND INDIVIDUALS WHO COMMENTED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Written:

- Fay Muir, Croton Watershed Clean Water Coalition (CWCWC), 6-8-10
- Dr. Shyamal K. Sen Gupta, 6-11-10
- James E. Eisel, Delaware County Board of Supervisors, 6-15-10
- Charles F. Gregory, 6-27-10
- Gordon Douglas, Friends of Great Swamp (FROGS), 7-9-10
- James E. Eisel, 7-12-10
- Dr. Shyamal K. Sen Gupta, 7-12-10
- Jay Simpson, Riverkeeper, 7-13-10
- Joy Ann Monforte, 7-14-10
- Thomas A. Axtell, Supervisor Town of Deposit, 7-23-10
- Dennis and Tina Schvedja, 7-28-10
- Dr. Shyamal K. Sen Gupta, 8-2-10
- Wayne Marshfield, Town of Hamden, 8-6-10
- Joan Townsend, 8-10-10
- Mary Beth Murphy, Croton Kensico Watershed Intermunicipal Coalition, 9-10-10
- Christopher J Maney 9-17-10
- Cecile Lawrence, 10-3-10
- Edward Furgol, 10-4-10

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- Eileen McCorry, 10-4-10
- Patricia Norton-White, 10-10-10
- Randy and Kathy Sherwood, 10-14-10
- Tom and Donna Van Sickell, 10-14-10
- Amy Kenyon, Farm Catskills, 10-18-10
- Kate Ryan, 10-21-10
- Richard Kathmann, 10-22-10
- Paula Nelson 10-22-10
- Craig Michaels, Riverkeeper 11-22-10
- Carolyn Konheim and Brian T. Ketcham, P.E. 11-22-10
- Jeffrey S. Baker, Counsel to Coalition of Watershed Towns, 11-22-10
- New York City Watershed Stream Corridor Management Programs 11-22-10
 - Jeff Flack, Executive Director (Greene County SWCD)
 - Gary Capella, Executive Director (Ulster County SWCD)
 - Brian Brustman, District Manager (Sullivan County SWCD)
 - Richard Weidenbach, Executive Director (Delaware County SWCD)
- Cathleen Breen, NYPIRG 11-22-10
- Zachary Thompson 11-22-10
- George George Rodenhausen Rapport Meyers LLP, counsel to EOH Coalition, 11-22-10
- Bruce Dolph, Town of Walton, 11-22-10
- James Eisel, Delaware County 11-22-10
- Christopher Crane, Westchester County Board of Legislators 11-22-10

Oral Testimony:

July 12, 2010, Delhi, NY

- Peter Bracci, Supervisor, Town of Delhi
- James E. Eisel, Chairman Delaware County Board of Supervisors
- Leonard Utter, Supervisor, Town of Middletown, Margaretville
- Dean Frazier, Delaware County Department of Watershed Affairs
- Jack McShane, Andes Resident
- Andrew Mason, Jefferson and Schoharie County.
- Amy Kenyon, Farm Catskills
- Dominic Morales, resident of Delhi
- Sharon Moyse
- Dr. Shyamal K. Sen Gupta
- Joan Archibald-Townsend
- Sally Scrimshaw
- Richard Hirsh

July 13, 2010, Hunter, NY

- Walt Grote, Windham, NY
- Anna Grote, Windham, NY
- Michael McCrary, Councilman, Town of Jewett

- Ms. Priscilla (Apracilla) Graef

July 14, 2010, Grahamsville, NY

- Joy Ann Monforte
- Bill Van Aken
- Stephen Bobik
- Eric Goldstein
- Charles Van Aken
- Richard Coombe
- Jim Metnash
- Dorothy Muthig
- Georgianna Lepke
- Jackie Totten
- Robert Botsford

COMMENTS AND RESPONSES

COMMENTS ON EIS PROCESS

Comment 1: Request extension on Public Comment Period. (Delaware County Board of Supervisors)

Response 1: NYCDEP and NYSDEC extended the public comment period on the DEIS and WSP from the original date of July 30, 2010 to September 15, 2010. A subsequent extension was granted until October 22, 2010. It was further extended to November 22, 2010.

Comment 2: Hearing at Grahamsville was not properly advertised. (Bill VanAken, C. VanAken, Coombe) Request for additional hearing. (B. Van Aken) I really wonder why we didn't get some earlier notification through the town. (Botsford).

Response 2: The following is a list of advertising media that the Notice of Hearing was published in: *Journal News* (Northern Edition), *Times Herald Record*, *Kingston Daily Freeman*, *Oneonta Daily Star*, *Mountain Eagle* and the *Walton Reporter*. In addition, it was published in the Environmental Notice Bulletin and The City Record. The hearings were listed on Mayor's Office of Environmental Coordination Calendar and on the NYCDEP website. In addition, the Notice was mailed to the recipients on the distribution list of the DEIS which included all town supervisors and mayors of municipalities in the watershed. The NYCDEP press department issued a media advisory to the press as well.

Comment 3: I would like to express my appreciation for having one of the hearings in Neversink, so residents wouldn't have to drive so far to express or to listen. (Lepke)

Response 3: Comment Noted.

Comment 4: I finally realize that we're neighbors, and hopefully we can work together, but I think there should be a lot more communication going on. (Botsford)

Response 4: Comment Noted.

Comment 5: NYCDEP should not be the lead agency for its own SEQR review. If the City is allowed to do its own SEQR, then it must be required to review the full economic impact on the individual Towns, Village and Hamlets as well as the economic impact on Delaware County. (Axtell)

Response 5: The definition of a Lead Agency is an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required. A majority of the time, the agency proposing a project is the Lead Agency for that project since it is the agency principally responsible for undertaking, funding and approving an action. Therefore, NYCDEP being the lead agency for the proposed project is consistent with all applicable environmental review regulations in accordance with SEQRA. As lead agency, NYCDEP conducted a thorough review of socioeconomic impacts of the Extended LAP consistent with SEQRA.

COMMENTS ON DEIS

General

Comment 6: NRDC has concluded from preliminary review that the DEIS is consistent with State Environmental Law. DEIS is consistent with public scoping document. There were hearings throughout the watershed on scope, and DEIS is consistent with the scope and publicly approved outline. DEIS has properly analyzed the reasonable alternatives to this project and correctly concluded the continuation of the program would not have significant adverse environmental impacts. (NRDC) The city's draft EIS complies with the relevant statutory and regulatory requirements Overall there are no adverse environmental impacts expected from the proposed Land Acquisition Program. Because of the lack of adverse environmental impacts, mitigation is not necessary. However, the city has nevertheless taken significant steps to address concerns of watershed stakeholders with respect to the land acquisition program. For example, as discussed below, the city has negotiated with watershed stakeholders an agreement on real property tax payments and has committed to a continuation of major new water quality funding projects of benefit to watershed residents. Moreover, as noted above, the two years of negotiations in which watershed stakeholders were represented provided an opportunity to insure that alternatives to the city's original plan were fully considered. Indeed, as noted below, the final draft permit was modified in significant areas to take into account the concerns of watershed stakeholders on such issues as the definition of watershed "hamlet" areas that will now be exempt from acquisition by the city. The City has more than satisfied the SEQRA balancing test requirement, and that consistent with social, economic and other essential considerations, adverse environmental impacts will be minimized or avoided. Indeed, NRDC believes that as now structured as a result of the two years of negotiations with watershed stakeholders, the Land Acquisition Program will be broadly protective of the environmental and economic interests of both downstate and upstate New Yorkers. (Goldstein/NRDC)

Response 6: Comment Noted.

Comment 7: DEIS is consistent with the concept of upstate/downstate partnership. (Goldstein)

Response 7: Comment Noted.

Comment 8: There are inconsistencies, numerous errors in the document. (Bobik)

Response 8: Any errors identified have been corrected in the FEIS.

Project Description

Comment 9: Opposition to Land Acquisition and to its focus in Delaware County. (Eisel, Gregory, Sen Gupta)

Response 9: Comment Noted. The City's EIS analysis indicates that the increased focus of the Land Acquisition Program on Delaware County in the future will not result in significant adverse impacts.

Comment 10: The ten to fifteen-year analysis is not adequate. What happens in 10 to 15 years out? What will be the starting point for measuring potential impacts for the next 10

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year cycle? (Frazier) The DEIS does not address all the concerns we pose from the DEIS scope of work. (Frazier). Our scoping comments requested that time frames be extended beyond the duration of the pending 10-year Water Supply Permit. The DEIS forecasts cover 12-17 years, which we consider insufficient considering the permanent nature of Land Acquisition Program (LAP) conservation easements and land acquisitions. The DEIS would be considerably more instructive if it addressed the long term full socio-economic development potential and the impact of land acquisition on that potential. How does a future where Delaware County communities are allowed to evolve in a manner that is self-determined, based on local land-use planning guided by local knowledge, differ from potential futures in which the LAP permanently constrains development options to varying degrees? These are the questions the DEIS should answer. In lieu of a long term evaluation, the DEP and DEC have elected to focus on the next 15 years with the understanding that a new review under SEQRA would be undertaken for any additional land acquisition thereafter. (Delaware County)

Response 10: The Environmental Impact Statement evaluates the proposed action – the Extended LAP under the new Water Supply Permit. For the purposes of the DEIS, a reasonable worst-case scenario was evaluated for a 10 year Water Supply Permit. The DEIS also considered the possibility of a 5 year renewal in the Greater Impact Alternative. Since issuing the DEIS, a Draft Water Supply Permit was issued, which would grant the City a 15 year permit. The 15 year Greater Impact Scenario was incorporated into the FEIS. Any action beyond 15 years, or land acquisition that exceeds the acreage projected in the 15 year Greater Impact Scenario would be subject to subsequent review. As discussed in Chapter 2 and Chapter 3, over 60% of the developable land will be remaining in all affected towns for long term future growth. In addition, the Extended LAP also includes provisions to focus acquisitions on lands that meet natural features criteria and protect hamlets, agriculture, forestry and recreational uses in the watershed.

Comment 11: Will solicitation stop once solicitation success reaches 20 percent of the available land in this town? (Frazier)

Response 11: For the purposes of the EIS, projections were made of potential future acquisitions. As described in Chapter 1, so as not to underestimate impacts, the projections were conservative for the purposes of developing a 10 year reasonable worst case scenario. In the FEIS, a greater impact scenario was added to be consistent with the permit limits of 106,712 acres. Under the terms of the permit, NYCDEP will only be allowed to acquire land up to this amount. See also Comment 10 above.

Comment 12: DEIS does not specify where the 1,517 acres of projected acquisitions East of Hudson would occur, and it is therefore difficult to critique the acquisitions. (CWCWC)

Response 12: Table 3-62 of the EIS states that the projected East of Hudson acquisitions (1,517 acres) under the 10 Year Projection Scenario are estimated as follows: Town of Kent (987 acres), Carmel (189 acres), East Fishkill (307 acres), and Putnam Valley (34 acres). Under the 15 year Greater Impact Scenario, the projected acquisitions would increase from 1,517 acres to 1,669 acres and are broken down as follows: Town of Kent (1,086 acres), Carmel (208 acres), East Fishkill (338 acres), and Putnam Valley (37 acres).

Land Use and Community Character

Comment 13: How does continued acquisition benefit "local communities"? There are no communities in Delaware County that benefit from water supply from the reservoirs. (Axtell)

Response 13: As described in Chapter 2: Land Use and Community Character, LAP is consistent with many objectives outlined in individual town and regional plans. There are thousands of residences West-of-Hudson, including Delaware County, that receive their water from sub-surface wells or municipally-owned surface reservoirs; protecting land up-gradient of these areas will very likely benefit those properties. Furthermore, preservation of open space and protection of water quality contribute to maintaining the environmental quality of local communities and watershed. Lands acquired by LAP would be opened up for recreation where consistent with water quality and public safety. Cannonsville Reservoir is currently implementing a 3 year pilot program for recreational boating. Furthermore, the Extended LAP also includes provisions to protect agriculture, forestry and recreational uses in the watershed.

Comment 14: The Land Acquisition Program negatively impacts rural character/way of life/sense of place in watershed/future generations. (Gregory, Bracci, Utter, Frazier, Moyse, Archibald-Townsend, B. VanAken, Eisel, Maney)

Response 14: As stated in Chapter 2 of the Draft EIS, and in the individual town-level assessments presented in Chapter 4, the Land Acquisition Program appears to be consistent with many of the goals and objectives for watershed communities described in the towns' comprehensive plans, such as preservation of their rural character; preservation of agriculture, forestry and other working landscapes; expansion of opportunities for outdoor recreation; strengthening of hamlet areas, etc. Watershed communities have other goals to which LAP does not contribute directly – such as creation of new jobs or the development of more affordable housing; but overall, the Program does not conflict with these goals. See also responses to Comments 10 and 13 above.

Socioeconomic Conditions

Comment 15: The Program has already had a detrimental effect on the local economy. (Gregory)

Response 15: The review of the region's economic conditions conducted during the preparation of the Draft EIS found no evidence that the Land Acquisition Program has had a significant adverse effect on the region's economy. Furthermore, and from an overall regional perspective, the West-of-Hudson watershed region had a slow economy during the past decade. See Chapter 3: Socioeconomic Conditions, Existing Conditions.

Comment 16: We want to see a socioeconomic monitoring program and resulting database developed comparable to the extensive water quality monitoring database that has evolved over the years. The MOA asserts that economic vitality is important - with LAP triggering the need for so much economic mitigation, we believe that the LAP should also include economic monitoring to determine how well that mitigation is working. (Delaware County)

Response 16: As discussed below in Comment 72, the negotiated program elements have been incorporated into the Water Supply Permit. These elements are described further in Chapter 1, Project Description. The environmental review concluded that there were no

significant socioeconomic impacts associated with the Extended LAP and therefore no mitigation is provided. Over time, the LAP will be reviewed for socioeconomic impacts during subsequent FAD renewals.

Impacts on Developable Land

Comment 17: I believe your methodology in determining developable land is flawed. If you truly want to know what developable land exists in terms of what the town can realize for future revenue income, you have to look at land that's accessible and usable for housing. To incorporate all the land privately owned is skewing the numbers in your favor, and it throws everything off. I think you are attempting to put the towns out of business. (Bobik)

Response 17: The definition of developable land used in the Draft EIS did not "include all land privately owned." As discussed in Chapter 3, it included "all privately-owned vacant land and low-density residential land (the total area of all residential parcels of 15 or more acres, reduced by 5 acres per parcel to allow for existing homes on these parcels), but excludes from these two categories land that has one or more of the following characteristics: a 100-foot buffer on streams and waterbodies, a 300-foot buffer on reservoirs and reservoir stems, NYSDEC-mapped wetlands with a 100-foot buffer, federal jurisdiction wetlands with no buffer, FEMA 100-year floodplains, slopes of greater than 15 percent or land with slow infiltrating soils (NRCS Hydrological Soil Group D). Land with any one or more of these characteristic is considered "undevelopable." Also excluded was any privately-owned vacant or low-density residential land that under the preceding definition would have qualified as developable, but on which a conservation easement has been granted. Some of the land that qualifies as developable under these criteria may in fact be undevelopable for a variety of practical and economic reasons. For example, some otherwise developable parcels may have no road access, and be located in areas where providing new road access is not practical or economic. However, this same issue would impact acres acquired by the City through LAP, so in that respect the analysis is consistent. In addition, the definition of developable land cited above is conservative. It does not include any developable (but as yet undeveloped) portions of residential parcels of less than 15 acres; or any land currently used for commercial purposes. In all but three towns (Stamford, Conesville and Neversink), the definition of developable land that was used in the DEIS also excluded agricultural land.¹ Because the definition of supply of developable land was so conservative, any overstatement of the supply of developable land due to factors such as inaccessibility is generally offset by the exclusion of developable, higher-density residential, agricultural and commercial land from the estimates used in the DEIS.

¹ In most towns in the west-of-Hudson watershed region, the supply of developable agricultural land is greater than the amount of developable land on which the Watershed Agricultural Council is projected to acquire easements between 2010 and 2022. By excluding both the existing supply of developable farm land and new WAC easements from the calculation, the Draft EIS in effect understates the amount of developable land that is likely to remain in these towns in 2022. However, in three towns where WAC is projected to be particularly active – Stamford, Conesville and Neversink – the opposite is likely to be true – the net effect of counting both the existing supply of developable farm land and projected new WAC easements on such land is to reduce the amount of developable land that would still be available in the three towns in 2027. To be consistent with the principle of basing the analysis on a "reasonable worst-case scenario," in these three towns, the draft EIS *does* include developable agricultural land in its overall definition of developable land.

Comment 18: The City is not targeting all developable lands, so we don't know if the land being targeted is critical to the future economic viability of the town. (Frazier)

Response 18: The EIS analysis estimates that under the 15 year Greater Impact Scenario, all towns would have at least 60 percent of the developable land available in 2009. In addition, the proposed expanded hamlets are intended to keep in reserve the most important properties as identified by local communities as appropriate for future development. The Extended LAP also includes provisions to protect agriculture, forestry and recreational uses in the watershed.

Comment 19: Lands to be acquired over the entire Extended Land Acquisition Program represent about 11 percent of the currently available West of Hudson developable land. 89 percent of developable land would still be available for development at the end of this program. (Goldstein)

Response 19: Comment Noted. Note that in the FEIS, under the 15 Year Greater Impact Scenario, 80 percent of the 34 towns' aggregate supply of developable land as of 2009 would still be undeveloped in 2027; and no town would have less than 60 percent of its 2009 supply of developable land still available in 2027.

Comment 20: Fifty percent of the watershed land mass is in Delaware County and I suspect that the Program will acquire far more than 50% of the Watershed in Delaware County, and that the city will try to purchase all prime developable land. (Eisel)

Response 20: 502,672 acres of Delaware County are within the watershed. In order to acquire 50% of the watershed within Delaware County, LAP would need to acquire 251,336 acres. NYCDEP currently owns 88,050 acres within the watershed portion of Delaware County (including Pre-MOA lands and land under water). The EIS projects that under the 15 year Greater Impact Scenario LAP is estimated to acquire 58,142 acres in Delaware County. It is not the City's interest, nor is the City in a position, to acquire "all prime developable land."

Comment 21: Main concern is City taking up land from future generations. (Metnash) The types of land listed [NYCDEP is interested in acquiring] includes watercourses, wetlands, flood plains and stream buffers. They (NYCDEP) neglected to include on the list land that would be most desirable for economic development or expansion. The various towns and villages within the watershed as well as Delaware County already face difficult economic times. Vacant/ properties inside the villages and hamlets being acquired by NYCDEP are crucial to possible future economic development. (Axtell) Once the city purchases the land, it will lose all potential for further development. The land purchase agreement will hurt the community for years to come. (Dolph) The Draft Environmental Impact Statement (DEIS) acknowledged that the New York City Department of Environmental Protections (DEP) land acquisition is "in perpetuity." This is an irreversible and irretrievable commitment of the land resources of Delaware County. (Delaware County)

Response 21: In the 34 West-of-Hudson towns where at least 5 percent of the Town's total area is within the boundaries of the watershed, the EIS estimates that, after taking into account land needed to support new development and land to be acquired under LAP, 84

percent of the 34 towns' aggregate supply of developable land as of 2009 would still be undeveloped in 2022; and no town would have less than 65 percent of its 2009 supply of developable land still available in 2022. Under the 15 year Greater Impact Scenario, 80 percent of the 34 towns' aggregate supply of developable land as of 2009 would still be undeveloped in 2027; and no town would have less than 60 percent of its 2009 supply of developable land still available in 2027. Thus, while an Extended Land Acquisition Program would in fact reduce the supply of developable land available to future generations in watershed towns, in no case would the reduction be so great as to impose a significant constraint on projected future growth. As stated in Chapter 1, towns will have the opportunity to expand the existing hamlet areas by over 26,700 acres of land that is most important to the towns. This mechanism by which towns can designate properties as off-limits to LAP (in addition to the many that are not eligible for acquisition) was intended to give local communities strong assurances that significant future development would remain available. In addition, as discussed above and in Chapter 3, lands acquired under the extended LAP could allow certain uses such as agriculture, forestry and recreation where consistent with water quality and public safety. This provides some economic benefit to for the local communities

Comment 22: Our economic impact analysis indicated there are potential impacts that the DEIS does not address.(Frazier) In its response to our scoping comments, the NYCDEP declined to compare its forecasts and conclusions with those in Delaware County's Economic Impact Assessment (EIA) published in 2009. We believe that the scenarios for DEP and WAC land acquisition in the EIA, namely 102,000 acres of which half would be developable, remain plausible unless there are legal constraints placed on the amounts of total land and developable land that DEP can acquire in fee or encumber with easements. The DEIS forecasts acquisition of 54,052 acres in Delaware County, of which 12,530 (23%) would be developable. (Figures are 10% higher in one scenario.) Our tally of prior DEP acquisitions is 41,300 acres of which 19,800 (48%) was considered developable. (Delaware County EIA 93). Given that 48% of LAP acquisitions and easements to date were of developable land, we find it highly unlikely that the DEP would ease or acquire a mere 12,530 acres of Delaware County's developable land (or 23% of projected future acquisitions). If this document's prediction of harm to the cultural and economic vitality of Delaware County communities is based on not exceeding the 23% developable land threshold, all activities of the LAP must cease if it is indeed reached, to allow for assessment of the effects of any further acquisition. Land and easement acquisition by other entities (i.e. land trusts) must be included when calculating the ratio of developable to non-developable land for this purpose. (Delaware County)

Response 22: In the 10 Year projection of land to be acquired under the Extended LAP that was presented in the Draft EIS, DEP estimated that through 2022 it would acquire a total of 40,900 acres in Delaware County in fee simple or through conservation easements, and that WAC would acquire agricultural easements covering 13,152 additional acres. This projection was based on DEP's historical experience in Delaware County – where it had acquired a total of 31,174 acres in fee simple or through conservation easements through June 2009 – adjusted to reflect the fact that DEP's plan for the Extended LAP calls for an increased focus on sub-basins that as of 2009 had relatively limited amounts of protected land. DEP's projection further assumed that WAC would acquire easements on a total of 16,000 additional acres of watershed farmland during this period, and that Delaware County's share of all WAC easement acreage would remain the same through 2022 as it had been through 2009.

The 15 Year Greater Impact Scenario included in the FEIS projected that DEP would acquire 10 percent more land in fee simple or through conservation easements through 2027, for a total of 44,990 acres, and that the additional acreage to be covered by WAC easements would remain at 13,152, for a total of 58,142 acres to be acquired in Delaware County through 2027.

The assumption used in Delaware County's economic impact analysis – that LAP would acquire 102,000 additional acres in the County—is not consistent with the NYCDEP's historical experience with LAP acquisitions or on NYCDEP's strategy for future acquisitions in the watershed and Delaware County. In any case, under the terms of the draft Water Supply Permit, LAP acquisitions in the West-of-Hudson watershed through 2027 (including WAC easements) would be limited to a total of 105,043 acres.

As noted in Chapter 3, the Draft EIS used a deliberately conservative definition of what constitutes developable land so that future impacts of the program on the amount of developable land would not be underestimated. The primary focus of the EIS is the prospective impact of future acquisitions. In this context the purpose of using a conservative definition of developable land was to begin the analysis with a conservative measure of each town's current supply of developable land, and thus to produce a conservative estimate of how much developable land would still be available in 2022 (or 2027).

A less stringent definition of what constitutes developable land would in fact increase somewhat the developable percentage of land acquired under LAP through 2009. But it would also *increase* the number of acres of developable land projected to remain in 2022 (or 2027), and thus lessen the projected impact of LAP on the future supply of developable land in watershed towns.

Any possible future acquisitions of watershed land by land trusts or other similar organizations (other than acquisitions made by such organizations under the permit) were not included in the analysis of the impact the Extended LAP on the supply of developable land in watershed towns. The scale of such purchases is unlikely to be great enough to have a significant impact on the overall supply of land.

Impacts on land prices, housing prices and affordability

Comment 23: Opposes land acquisition because it skews real estate market values and impacts land values (Eisel, Frazier)

Response 23: From 2000 through 2007, the price of land increased sharply in most parts of the West-of-Hudson watershed region. The same price trends were evident, however, in areas outside the watershed. See Chapter 3: Socioeconomic Conditions, Impacts on land prices, housing prices and affordability (pages 3-60 to 3-69)

An analysis of data on arms-length sales of privately-owned vacant land in watershed towns found only a weak correlation between the extent of NYCDEP's purchases of land and the rate at which land prices have increased. Overall, the Draft EIS concludes that when land prices were increasing rapidly, LAP was not the sole, or even the primary, driver of land prices in the watershed. Much of the increase was driven by the same factors that prevailed elsewhere. These factors included low interest rates, easy availability of financing, and the speculative dynamic that characterizes all real estate booms, with buyers attracted not by the

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land's value to them or its income-producing potential, but by the belief that they could sell at a profit if prices would continue to rise.

As overall demand for relatively large tracts of vacant land has declined during the past two years, NYCDEP's continued presence in the market may have the effect of keeping prices from falling as rapidly as they might have in NYCDEP's absence. The analysis of housing price trends conducted for the Draft EIS found virtually no relationship between the rate at which housing prices have increased in various market areas within the watershed and the scale of LAP purchases in those areas. There is a much stronger correlation between the rate of home price escalation and the size of the second-home market in relation to the community's total supply of housing (that is, the number of seasonal and recreational units as a percentage of all housing units.)

Comment 24: People that might be interested in buying land inside the watershed with the intent of building a home or starting a business are finding it very difficult to do so. Prices paid by NYCDEP per-acre averages much higher [than market rates], thereby making it unaffordable for others. Existing NYCDEP regulations and cost pertaining to septic system installations makes it less likely that there will be new homes or business ventures started in the watershed. (Axtell)

Response 24: Prices paid by NYCDEP are based on independent appraisals of fair market value, and are broadly consistent with overall market trends. Because per-acre land prices can vary greatly, depending on the location and characteristics of specific properties, the buyer's intended use and other factors (such as how quickly the buyer is prepared to move to closing) there will inevitably be some cases where the prices appraised by NYCDEP exceed prices on what might appear to be comparable properties, and some cases where NYCDEP appraisals are higher than offers made by other prospective buyers of the same property. Region-wide, a large majority of sales of residential land in the West-of-Hudson watershed region involve parcels that are outside the eligibility and/or solicitation criteria thresholds set by NYCDEP for purchase under the Land Acquisition Program. As a result, NYCDEP is generally not competing with most buyers of individual residential properties. The analysis of housing price trends conducted for the Draft EIS found virtually no relationship between the rate at which housing prices have increased in various market areas within the watershed and the scale of LAP purchases in those areas. The analysis of impacts on developable land included the cumulative effects of watershed regulation constraints on siting developments.

Comment 25: The Land Acquisition Program is having a devastating impact on land prices. Downeast Development Consulting Group summarizes that property values in the County have increased notably, making land owners wealthier but raising the cost of land and housing. (Marshfield) The loss of land for new buyers, will drive the prices of land beyond the reach of the majority of people (Dolph)

Response 25: The report prepared by the Downeast Consulting Group does cite the increase in land prices that occurred in the early 2000s; and this trend is analyzed in greater detail in the EIS. As noted above, however, purchases of land and easements by NYCDEP are a fairly insignificant factor among many factors contributing to the escalation of land prices during this period.

Comment 26: NY City and the State should fund affordable housing initiatives in and around villages and hamlets. (Marshfield)

Response 26: The EIS analyzed impacts on affordable housing and found that the types of land purchased under LAP were not similar to those purchased for affordable housing. Funding of affordable housing initiatives is outside the scope of this environmental review.

Comment 27: A larger part of the difference [between Delaware County EIA and the NYCDEP DEIS] is from the DEP assuming a much lower tax rate per acre than our norm for vacant land. We estimate \$75-125/acre for property taxes on undeveloped land, prior to any reduction on appeal. The DEIS implies \$25/acre (\$800,000 taxes on 31,174 acres) on the prior LAP acquisitions. None of this land has been held for 20 years. Thus DEP may have been paying only one third of what others pay for their unoccupied land. A more reasonable assumption for the expanded area would be to use the \$75-125 estimate. Under the terms of the draft WSP, the local communities will be able to ensure that vacant land purchased by the City will be properly and fairly assessed at its market value times the local equalization rate and that assessment will be allowed to increase at the same rate as other vacant land within the community. (Delaware County)

Response 27: Comment Noted. The taxes paid by NYCDEP on land acquired under LAP (whether on fee interests or on the value of easements) are based on values determined by the local taxing jurisdictions. The DEIS figure of \$800,000 in taxes paid in Delaware County (actually \$850,836) are actual taxes paid, not a projection.

Comment 28: The DEIS compares selected land prices inside and outside the watershed as a basis for concluding that the prior LAP had no effect on prices. It then extrapolates that the Extended LAP would also have no net effect. There is a significant issue with the comparison between the inside- and outside-the-watershed areas being compared, one that was not addressed in the DEIS: those inside the watershed are subjected to DEP's expensive wastewater and stormwater requirements, and those outside the watershed are not. The cost and delays involved in complying with DEP's regulations reduce the appeal of land for development, which would be reflected in the lower price of that land. This effect could mask an increase in land prices stemming from the DEP being a continuously funded, ever-present potential buyer. (Delaware County)

Response 28: The Draft EIS does not conclude that LAP has had no effect on land prices. It acknowledges that LAP may have been a (relatively minor) factor among a number of factors contributing to the rise in land prices between 2000 and 2007, and that since 2007 LAP has probably had the effect of keeping land prices from dropping as sharply as they might have in the program's absence.

It is possible that the rise in watershed land prices documented in the Draft EIS might have been somewhat greater in the absence of various requirements imposed by NYCDEP's watershed rules and regulations – that is, the anticipated cost of compliance with those requirements might have been reflected in somewhat lower land prices. However, the analysis presented reflects the cumulative effects that both the Watershed Rules and Regulations and the LAP have had on land prices. It is also worth noting that purchases of land for development of a type or on a scale that would entail significant incremental costs for compliance represent only a portion of all land transactions in the region.

Agriculture

Comment 29: The DEIS says that agriculture is not particularly important to the economy of the watershed which is just erroneous. Agriculture significantly represents more jobs and more capital investment and more of the economy than tourism and recreation.) We think that land acquisition does have an impact on agriculture and that should be addressed and mitigated in the DEIS. (Kenyon) The EIS downplays the importance of agriculture to the economy of the region while comparatively over-stating the value of recreational lands. Farm Catskills is supportive of the steps that the NYC DEP has taken to make its landholdings more accessible for recreation. Yet agriculture is another land use that protects the watershed, and is an even more significant contributor to the local economy. Therefore the LAP impacts on this industry of small businesses that relies on access to land should be more carefully considered in the EIS and steps should be taken to mitigate adverse impacts on farmland price and availability. Other analyses not considered in the EIS have shown that the LAP has already and will likely continue to put upwards pressure on agricultural land prices and result in the loss of more than 400 jobs over the next ten years. This should be taken into consideration for the EIS to be comprehensive and credible. (See NYC Watershed Economic Impact Assessment Report, Downeast Consulting Group, May 2009. Online at www.delcowatershed.com) (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 29: As the EIS notes, agriculture itself represents a relatively small share of total employment and income in watershed counties, and agriculture's role in the region's economy has been declining for several decades. This is not, however, the only measure of the industry's significance. Especially west of the Hudson, agriculture (like recreation) represents a larger share of the region's export base than its share of total income and employment; and there are important linkages between farming and some other industries in the region (such as providers of agricultural supplies and equipment, and dairy processing). The FEIS acknowledges more explicitly these aspects of agriculture's role in the economy. However, as analyzed in the EIS, the land acquisition program would not be expected to have a significant impact on agriculture for the following reasons:

- As discussed in Chapter 3 the total volume of farmland has been declining in non-watershed counties as well;
- NYCDEP's acquisitions of previously-active farmland in fee simple involve only a small percentage (1.4 percent for the West of Hudson watershed as a whole) of the total volume of land removed from agricultural use since 1997; and
- Farm land acquired by NYCDEP in fee simple can be returned to active agricultural use through the issuance of permits.

It should also be noted that the relative importance of agriculture to the local economy varies within the region. Agriculture plays a greater role than recreation in the economies of Delaware County and Schoharie County but a lesser role in Greene, Ulster and Sullivan counties. The estimate of job losses in farming and related industries presented in the Downeast report (referenced in the comment) are based on an assumption that NYCDEP will engage in extensive purchases of active agricultural land in Delaware County, and that as a direct result of these purchases, active agricultural use of the acquired land will end. NYCDEP currently has 23 five-year permits in place allowing farm operators in the

watershed to use NYCDEP-owned land for agricultural production. As shown in table 3-43, 80 percent of all land on which NYCDEP has issued farm permits is located in Delaware County. As discussed above, research conducted during the preparation of the EIS found no evidence that LAP is a major contributor to the decline of farming in the region. Furthermore, the WAC program helps to preserve working farms.

Comment 30: The NYCDEP is making unprecedented strides towards encouraging the principles of Smart Growth by more actively encouraging and allowing future development in hamlet areas and walkable Main Streets with access to infrastructure connections. But the Main Streets of our rural communities are interconnected with the health of our farm and forestry businesses that depend on natural resources. Our communities cannot expect to survive on tourism and recreation businesses alone. Every community's comprehensive plan in Delaware County states the overwhelming support that residents and property owners have for the farms here. Every dollar spent at a farm has a positive ripple effect and turns over multiple times in the local economy. One acre of farmland can generate many thousands of dollars in annual farm sales, which means an even greater net impact on the economy—the EIS should more carefully consider the degree to which the LAP's acquisition of farmland past and projected impacts this. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 30: NYCDEP agrees that economic vitality of hamlets and village centers depends in part on the economic health of the communities that surround them and the industries that support those communities, including agriculture, recreation, manufacturing and others; and the EIS explicitly acknowledges the value that watershed communities attach to the preservation of agriculture. However, research conducted during the preparation of the EIS found no evidence that LAP has a significant adverse impact on these industries. Furthermore, the WAC program provides a positive effect on preserving working farms.

Comment 31: Clean water and good food are not separate issues. New York City and New York State should require its environmental and food policy programs to come out of their policy silos and work together. The Land Acquisition Program should support efforts of other city and state programs to protect the city's food supply, and invest in the Catskill region to keep the farmland active, viable, and well-managed as part of the city's water and food-shed. The fact that the agricultural sector has declined in the past decades is not a reason to suggest that it is relatively unimportant—rather a call to action for all interested parties, including New York City to counteract the globalization of our food supply and boldly work to protect the watersheds as a source of clean drinking water and of good foods for both New York City and the Catskill region. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 31: In 1992 NYCDEP developed the Watershed Agriculture Program to promote healthy farming and reduced runoff from watershed farms. Since 1992, NYCDEP has invested over \$120 million to this effort. Additionally, to preserve farmland throughout the watershed, NYCDEP has allocated over \$45 million in farm easements. NYCDEP's investment in farm improvements and preserving farmland serves as a national model on the synergy of promoting both clean water and food production.

Comment 32: The EIS also asserts that the LAP has a neutral or net positive impact on agriculture and therefore no changes to the program or mitigation steps need to be taken

(ES-33). This is not accurate, as reflected by the experience of farmers themselves, not represented in the EIS. The NYCDEP Land Acquisition Program has a real impact on the future shape of watershed communities because of the permanence of its acquisitions and its restrictions on the uses of land. Conversations with numerous farmers tell the stories of prime farmland the NYCDEP purchased that farmers would have bought if they had known it was for sale; of land they no longer have access to for historic agricultural uses after NYCDEP purchase; and of farmland prices being driven higher. Farmers in Delaware County who participated in a survey conducted by the Economic Development Department identified the NYCDEP land acquisition program as one of the barriers to their future viability as land becomes less available and more expensive. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 32: As noted in the Draft EIS, between 1997 and 2009 land acquired by NYCDEP in fee simple in Delaware County that had recently been in active agricultural use totaled less than 800 acres. Even if the cessation of agricultural use had been a direct result of acquisition by NYCDEP, the 800 acres of previously-active agricultural land acquired by NYCDEP during this period would represent only 2.4 percent of the 33,600-acre decline in active farmland that (as reported by USDA) occurred in Delaware county between 1997 and 2008. Moreover, of the 800 acres of former farmland acquired by DEP in Delaware County, as of the fall of 2009, 530 acres had been returned to agricultural use under permits issued by DEP. As noted in the Draft EIS, the escalation of land prices in the years prior to the recession was due to many factors; communities that are wholly outside the watershed, and not affected by LAP, also experienced sharp increases in land prices. While higher land prices (along with depressed farm incomes) may make agricultural land less affordable for current or aspiring farmers, the analysis of data on land sales conducted during the preparation of the Draft EIS suggests that LAP was a fairly insignificant factor of many factors contributing to the rise in prices prior to the recession. The conclusion that the Land acquisition as a whole – including the WAC agricultural easement program – has had a neutral to mildly positive impact on agriculture appears to be justified as discussed above and by the evidence reviewed during the preparation of the Draft EIS.

Since the end of the real estate boom, DEP's purchases of watershed land may have had the effect of keeping prices from falling as much as they would have in the absence of such purchases. Especially in this context, however, it is important to remember that the impact of maintaining land values is not solely negative. More stable land prices can help stem the deterioration of loan-to-value ratios – and may, for example, make it easier for some owners to refinance outstanding loans. Finally, to date the WAC program has clearly allowed participating farm-owners to monetize the potential development value of their land, while keeping it in agricultural use and preventing further losses. LAP's negligible direct impact on the amount of land in agricultural use in the watershed region, LAP's limited impact in terms of land values, and the positive impact of the WAC easement program on keeping land in agricultural use, appear to justify the conclusion that on the whole, the Land Acquisition Program has had a neutral to mildly positive impact on agriculture in the region

Comment 33: The NYC DEP must take action to develop a more viable (from the farmers' perspective) program to lease its farmland holdings to farmers. This program should include a more robust outreach through local institutions about available land and the program requirements; a significantly longer lease term of at least five (5) years with an option to renew; and the ability for farmers to make long-term investments in fencing, trees or soil amendments. Particularly for new and young farmers, accessing land is one of the biggest

barriers to success. But no farmer can build a business and make the required capital investment around a one to two year lease with an uncertain future. All forms of agriculture require a ten year investment horizon—consider that the USDA considers any farmer who has been in business for less than 10 years a “beginning farmer.” The success of the program should be measured by the degree of outreach the DEP does with farmers (this could take place through local partner farm service providers), and the degree to which farmers utilize the land. It is not sufficient for the DEP to simply say “the land is available to lease” with no evaluation of the program to determine if the outreach and lease terms are practical and useable by farm businesses. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 33: NYCDEP sends out notices about leases for agricultural use of City lands to WAC who disseminates it throughout the agricultural community and has public notices in local papers about these leases. NYCDEP recently met with the WAC Agricultural Committee to discuss our program and have added information to our website. The leases are for 5 years and have the option for another 5 year renewal. This has been in place for about four years. NYCDEP looks to our partner, WAC, to help with outreach to the farming community. Another way to measure the success of the program is the number of leases for agricultural use of City lands that are active, which is now over 50. NYCDEP is constantly reviewing feedback on our program and looking for ways to improve it. Several modifications to our agreement have been made over the years to expand uses and provide greater flexibility.

Comment 34: There is a design flaw in the NYCDEP current and proposed programs to protect farmland from development while keeping it part of the agricultural community. At least 40% of active farmland in the watershed is owned by non-farmers who allow farms to use their land and receive the agricultural tax exemption. These property owners are being solicited directly by the NYCDEP and many will choose to sell their land, when it could instead both be protected and remain as a locally-owned asset, either by a farmer or a community owned land trust, keeping the land in active agriculture while also protecting it from future development. Local community land trusts need to be involved in the solicitation process, to provide an opportunity to keep land in ownership by a local resident or organization who will protect the land and keep it actively used. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann) The NYCDEP should immediately stop purchasing active agricultural land and invest in a pilot community land trust program. There are numerous cases where the owner wishes to sell rather than put an agricultural easement on the property. When solicitation brings to DEP’s attention a farmland parcel they might purchase, the DEP should partner with a local land trust to purchase the property in fee. At that point, the land trust can make the land available for purchase by a farmer, subject to future development restrictions, for a period of six months. This would allow local farmers the opportunity to purchase the property at its agricultural value and keep the land locally-owned, while also achieving the goal of watershed protection. If no farmers bid on the property, the land trust could then transfer title to the NYCDEP, or purchase the property at its agricultural value, retain local ownership and lease it to a farmer for growing food. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann)

Response 34: The City works closely with the Watershed Agricultural Council to ensure that farms with Whole Farm Plans are considered for Farm Easements; the City also allows farmers to ‘lease’ certain newly-acquired land for farm uses. WAC easements are intended

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to provide a similar benefit as land trusts-- local ownership and “active use” – for purposes of protecting water quality and agricultural use in tandem. NYCDEP cannot acquire dwellings, and land trusts that may be in position to do so using DEP funds under the upcoming WSP will need to convey dwellings on small lots back into circulation.

Comment 35: The NYCDEP can and should do more to keep farmland affordable and available for farmers, thereby mitigating adverse impacts of its LAP on farming. The goals of watershed protection and local ownership of farmland are not incompatible. NYCDEP should mitigate the Land Acquisition Program’s impact on farmland affordability by developing and funding a program that would give farmers an additional option to protect farmland affordability, through the sale of an Option to Purchase at Agricultural Value. This is a program that has been successful in Vermont for over ten years, and has resulted in farms remaining active and owned by farmers, rather than transferring to a second homeowner when the farmer who conserved the land stops farming. This is a voluntary program which has been proven in other areas to achieve long-term affordability of agricultural land for farmers. There are young people in the watershed communities with farming experience and a desire to own and operate a sustainable farm—they would invest in these farms if they were available at their agricultural value—something that the NYC programs do not currently protect. (Farm Catskills, Kenyon, Lawrence, Furgol, McCorry, Norton-White, Sherwood, Van Sickell, Ryan, Kathmann). We would be very interested in the City developing a voluntary program like other large scale agricultural easement programs that address affordability of farm land. An affordability element could be added to the agriculture easement program. There could be a process for our farm land to remain in private ownership subject to a conservation easement rather than it being purchased by the City; this is where the land trusts would come in. We think there’s an opportunity to further develop the rural land trusts in keeping land in private ownership and still protecting the water, and we hope to see the City also continue to improve its process of leasing lands for agriculture. (Kenyon) I think we have valuable land that is being tied up now in the watershed that can be used for sustainable agriculture, community agriculture and more for economic development. (Morales)

Response 35: Chapter 1 of the FEIS describes the City funded farm easement program managed by the Watershed Agricultural Council (WAC). This program is intended to protect water quality while simultaneously allowing farming to continue. Chapter 3 discusses the interface between LAP and agricultural use, and notes that the City has opened 661 acres (of the 1,135 acres of the active agricultural land it has acquired to date) to farming. As discussed above, LAP has had little effect on land prices. As stated in the Draft Permit, the Extended LAP makes natural resources available where consistent with water quality, public safety and operational concerns.

Comment 36: Farm land no longer being useable is going to be a major problem down the road. (Archibald-Townsend)

Response 36: As noted in the Draft EIS, total farm acreage in the watershed counties has been declining for several decades. Through its easement program and other services, the Watershed Agricultural Council seeks to keep land in active agricultural use. And as noted above, whenever possible DEP seeks to make land it has acquired that is suitable for agricultural use available to local farm operators through the permit process.

Comment 37: Benefits to agriculture are dubious. Who will be left to make such a monumental financial commitment to farming the land remaining here that cannot afford to buy it? (Frazier)

Response 37: The Draft EIS does not suggest that NYCDEP's purchases of land in fee simple provide a significant benefit to agriculture; rather, it suggests that the total amount of recently-used farmland bought by NYCDEP in fee simple is too small to have any significant impact on farming in the region. The Watershed Agricultural Council's farm easement program clearly provides a financial benefit to owners who wish to keep farming their land. However, as the Draft EIS acknowledges, the program's long-term effectiveness in helping to maintain the economic viability of farms on which easements have been granted is less clear.

Comment 38: The WAC program is not helping farmers; it is destroying them. WAC easements are encompassing lands that have no farm value, lands that are of value to communities but not to farming. WAC easements should provide that the property could be sold at agricultural value to another farmer and the WAC program fund the difference between it and the market value to the selling farmer. The way WAC has it set up today is that every farm under their program will eventually be sold to a second home owner and will never return to the term farm again. (Marshfield)

Response 38: The review of the WAC easement program conducted during the preparation of the Draft EIS found no evidence suggesting that the WAC program's direct impact on farmers is negative. A farm is eligible for an easement if it has a Whole Farm Plan (WFP), and farms with WFPs are usually active and productive. It is true that agricultural use under an easement is not "forced" but rather "allowed", so that if a landowner chose to cease farming s/he would not be in violation of the easement. However, most eased farms are quite large, and include only one or a few dwellings, and the easement restricts further housing development outside of building envelopes. So while there are no obligations for the owner to undertake agricultural uses, those uses offer remunerative activities while "second-home ownership" does not; reason thus dictates that in general there would be a bias toward ownership of such eased properties by those interested in farming.

Comment 39: WAC easements place too many restrictions on the farmer. The farmer should be able to access their property for mining, wind power, and other natural resources as well as utility use. WAC should be paying taxes on the developable portion of the land restricted under the easement. Further, gravel mining should be allowed on WAC easements, similar to the allowance under Ag and Markets. Further, seeking unanimous approval by WAC committees when a farmer wishes to engage in timber or bluestone extraction is not right and should be changed to a majority approval of that committee. (Marshfield)

Response 39: The WAC easement was drafted to allow maximum flexibility for farming and related activities and works hand-in-hand with a whole farm plan. Gravel may be extracted as "may be reasonably necessary to carry out the uses permitted on the Property under the terms of the Easement." Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may be placed on the easement, subject to applicable governmental approval, but only in a manner consistent with the conservation purposes of the easement and with prior written approval of WAC if such devices or equipment are planned outside of the Acceptable Development Area. The easement also

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allows for bluestone mining and forestry. NYC pays the portion of taxes for lands under the easement for the portion of the property encumbered by an easement. The City has agreed to pay taxes on lands under easements acquired on or after January 1, 2011, even if the underlying property is otherwise tax exempt because of an agricultural assessment. Large-scale gravel mining would not be consistent with the conservation purposes of the easement. To date, there have been no denials of a forestry or bluestone project.

Impact on Local Government Revenues

Comment 40: As less land becomes available for private development, local tax base will shrink even further, resulting in higher taxes or less services for residents. (Gregory). Loss of the desirable developable land will place a bigger tax burden on the remainder of residents throughout Delaware County. (Axtell, Dolph). Taxes continue to go up due to the lack of taxable property in the village of Delhi area thanks to County and State purchases. This needs to stop. No more purchases. We don't need to have our taxes increase due to fewer taxable parcels (Maney). A good portion of the land that they're acquiring, if they didn't acquire it, if somebody else purchased it, could be developed so we will lose any future increase in a tax base by people who would buy the property and build houses on it. (Moyses) Removal of every single acre affects the existence of the town, reducing future tax revenue, and burdening existing residents. (Monforte) As greater and greater portions of our communities become subject to deed restrictions precluding 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. (Delaware County)

Response 40: Because the current supply of developable land (and the supply that will still remain after 15 years) generally appears adequate to accommodate the projected level of new development, it is unlikely that additional LAP acquisitions at the level projected in the EIS would significantly constrain taxable development in watershed towns. As discussed further in Chapter 3, under Impacts on Local Government Resources, studies of the fiscal impact of new development have often found that the cost of community services associated with new residential development exceeds the revenues that the new development generates.

Comment 41: Misconception that more people up there, the more holes we fill, that our taxes are going to go down. The more homes we bring, taxes are going to go up. (Hirsh)

Response 41: Comment Noted.

Comment 42: New York City can grieve taxes on the fee purchase property after they own it for a certain number of years, and will claim that the land is no longer useable for any purpose, no longer developable and therefore they should have their assessments lowered. (Moyses) Concern over tax implications must be addressed. To suggest that the city will never challenge their taxes on newly-acquired lands because they represent such a small part of their tax liability is impossible to stand by over the long term. (Frazier). The City is committed not to challenge tax assessments on acquired conservation easements and I want to find out if that is actually true and why not do the same thing for lands acquired in fee? (McShane)

Response 42: Chapter 3 of FEIS addresses the property tax issues under the discussion of Impacts to Local Government Resources. Under the draft Water Supply Permit, the City

cannot grieve taxes on newly acquired land for a 30-year period beginning on the date of each acquisition, provided assessors adhere to requirements outlined in State law. The City recognizes community concern over taxation of newly-acquired lands. While it is true that the City cannot (and has not) guaranteed that it will never challenge such assessments, there are several reasons to expect that such challenges will be minimal. First, the City has agreed to extend the prohibition on City challenges on assessment of newly-acquired land from 20 to 30 years from the date of acquisition. Second, while there are certain conditions under which the City can challenge assessments during that initial 20- or 30-year period, the City has not challenged the assessments on any newly-acquired land since the first parcels were acquired in 1997. Third, provided that assessments of City-owned vacant land are generally in line with assessments on similar, private land, the City would have no reason to challenge those assessments.

Comment 43: While NYCDEP did state that 'NYC pays full taxes on all land and facilities,' they neglected to advise that they have the right to challenge the assessment on newly acquired lands after 20 years. There is no doubt that NYC will do this. NYCDEP seeks reduction in land use classification to vacant, swamp or other similar classifications. These reductions will also severely affect the tax base and further increase the tax burden on our residents. Since the NYCDEP states that land acquisition is essential to assuring water quality, then that makes the land acquired more valuable and should be assessed according to that standard. It is also understood that NYCDEP provides drinking water not only to itself but to several towns and villages outside the City for which they receive revenue. This then is a commercial business. Their lands should be assessed accordingly. (Axtell)

Response 43: As described above, the City has agreed to extend the limitations on assessment challenges from 20 to 30 years. It is true that beyond that timeframe the City would have the right to challenge its assessments, but we do not expect to exercise that right unless individual parcels are unfairly assessed. We expect that City lands will be assessed similarly to other private vacant lands in the same towns, and therefore challenges should be rare. The City does provide drinking water to a number of municipalities along the aqueducts, but State law requires that water be provided at cost.

Comment 44: City-purchased land should never be tax exempt.(Archibald-Townsend)

Response 44: State law does not allow for exemption in the case of City-acquired watershed land. The City pays taxes on the full assessed value of all of its land holdings.

Comment 45: Taxes- you don't pay full value on the reservoir. Also understand the taxes do not increase like our landowner's taxes increase with value. (C. VanAken)

Response 45: The City pays full taxes as assessed, and has no reason to expect that assessors treat City-owned properties differently than privately-owned properties. Under the Tax Litigation Avoidance Program, which the City is required to fund under the draft permit, the City will make substantial resources available to communities to resolve disputes concerning the valuation of the City's "unique properties" in the watershed, such as reservoirs and dams. The City has seen a substantial increase in its property tax bills during the last ten years just as most other landowners have.

Comment 46: I feel that each town in the Watershed should be compensated with money (our Tax Dollars also) for the percentage of land that is owned by the Watershed. So if you

currently own 35% of Delhi there should be a certain percent paid to Delhi. The same for Bovina, Hamden, Walton, Margaretville, etc. Each year if that increases so should the percentage of money paid to each town increase. (Townsend)

Response 46: Comment Noted.

Comment 47: The socio-economic analysis of the LAP entirely ignores the enormous benefit of the Catskill-Delaware system (Cat-Del) to New York City and adjacent municipal areas. SEQRA requires assessing the secondary and indirect impacts of proposed Actions. Seen in this context, the DEIS and related negotiations address relatively trivial economic issues and escape identifying larger inequities and their consequences. A rarely recognized value of Cat-Del water is that the City profits from the commodity it gets virtually for free. We have calculated that applying the prevailing rates for water to annual usage produces annual revenue of \$1,727,406,417. In comparison, the total adopted DEP expense budget for FY2010 for both water delivery and waste treatment is \$1,023,628,315, a difference of \$703,778,102 excluding the revenues from wastewater treatment. Where does this more than \$700 million in water supply revenues go each year? Since the water revenue collected by the Water Board goes into the City's General Fund, it is hard to know if the surplus water revenue is being used to pay for debt incurred from General Obligation bonds that may have funded some past water related program—or whether, as with many special City levies, the water revenue gets lost in the general funds that are dispersed among many City services according to the priorities of the presiding mayor and City Council.

While the transfer of water and sewer revenues to non-water uses may be disturbing to rate payers, environmental advocates and bond holders who take lower interest rates because of the assurance that the bonds are fully backed by water rates rather than faith in the credit of the City government, the magnitude of the transfer is also relevant to local officials and residents in the Cat-Del system. These interests and the LAP DEIS have been primarily focused on the fiscal impact of the LAP on local taxes, which are in the low millions of dollars, rather than on the opportunities to divert some small part of the \$700 million transfer annually of water funds (or \$2.5 billion in “lost” waste water treatment fees). It is clearly legitimate to claim a portion of these surplus funds as a payment for resources appropriated by the city. Indeed, a lot more financial compensation can be made to the towns of the Cat-Del water shed at very little impact on the City's finances. A major rethinking of adequate compensation for the restrictions on development and usage of land in the watershed is particularly warranted when it is clear that the City is extracting a precious resource for free.

[There is a] widely-accepted notion that an area's common resources cannot be exploited without some sort of compensation to the community where these resources originate. Developing the mandate and form of this compensation will require broader analysis that should be a condition of the FEIS. Civic leaders and elected officials in the Cat-Del system should stand strong to claim a fair share of the city's bounty that is more than paid for by rate payers and bond holders on the unfounded assumption that the funds are dedicated exclusively to water supply and wastewater treatment. (Konheim and Ketcham)

Response 47: As a matter of law, New York City's water rates must be set to cover the system's operating and capital expenses each year. For more information on the setting of the City's water and sewer rates, please refer to “Public Information Regarding Water and Wastewater Rates,” New York City Water Board, which is available at www.nyc.gov/nycwaterboard. This document identifies all system expenditures upon which the rate is based. In addition NYCDEP has agreed as part of the negotiations to continue to

fund Partnership programs to benefit the watershed communities. This funding will be included as part of the permit.

Comment 48: This land acquisition program is promoting cleared lands to grow up into more forest and uncultivated areas. Our stretched and stressed volunteer fire departments in Delaware County do not need tens of thousands of more combustible lands to protect. On top of that our fire department and ambulance squads depend on taxes to survive and to be here when they supply their services to our people and our people needing life and death help. With no added growth from building and with no additional people coming in to our areas, our volunteer departments will not survive, at least as a volunteer service to our county, one of the poorest counties in the State of New York. This land acquisition program is destructive to our emergency and fire departments as well to our County. (Marshfield)

Response 48: Given a continuing decline in the total acreage in Delaware County that is still in active agricultural use, the reversion of some farm land to forest, brush or meadowland may be inevitable. Over time, this process could potentially increase the risk of fire and the workload borne by local fire departments. The Land Acquisition Program, however, is not a significant contributor to this process. Previously-active farmland purchased by NYCDEP in fee simple since 1997 represents only 2.4 percent of the land removed from agricultural use in Delaware County between 1997 and 2008. Moreover, as of the fall of 2009 about two-thirds of 791 acres of previously-active Delaware County farmland acquired by NYCDEP in fee simple since 1997 was being used by local farmers for a variety of agricultural purposes, under permits issued by NYCDEP. As noted above, a review of NYCDEP's payments of local property taxes to local governments and school districts in the watershed found no evidence that LAP has to date had any significant adverse impact on school district or local governments; nor does it appear likely that LAP will significantly constrain new taxable development. Additionally, NYCDEP will be developing a forest management plan for all City-owned lands in the watershed and that plan will specifically address fire risk management, among other things

Natural Gas Drilling

Comment 49: If the City implements through NYSDEC more stringent or impossible rules to have gas drilling on a property, I feel that is a taking of private property rights. Landowners within the watershed who lose the rights to drill for gas should be compensated adequately by NYC users of their water. (McShane) Should allow natural gas to pay for some stuff in this country and put people to work. (C. VanAken) The City Study of natural gas drilling projected there would be nine wells per drill site every square mile in their analysis for the stated DEIS. Our estimates using their concentration data suggest that the economic loss could amount to hundreds of millions of dollars annually. (Frazier)

Response 49: The Extended LAP does not impose rules concerning natural gas drilling in the New York City watershed; accordingly this comment addresses issues beyond the scope of this environmental review. While the City has stated its belief that hydraulic fracturing in the watershed poses an unacceptable risk to water quality and water supply infrastructure, the City has not adopted or proposed any rules concerning hydrofracking. As noted in Chapter 3, NYSDEC is currently completing a supplemental generic environmental impact statement ("SGEIS") for natural gas drilling using high-volume horizontal drilling in the Marcellus Shale formation that underlies much of the New York City watershed.

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As noted in Chapter 3, the New York City watershed is excluded from the pending SGEIS concerning natural gas drilling using high volume horizontal drilling in the Marcellus shale formation. Any drilling application within the New York City watershed will require “a case by case environmental review process” “to address continuation of the FAD.” Furthermore, there are no pending applications for horizontal drilling located in the New York City watershed and any drilling would go through significant reviews and must demonstrate that it would pose no threat to water quality and the Filtration Avoidance Determination. In this connection, and as noted at EIS Chapter 3, the extent and location of natural gas drilling in the watershed, and the associated economic impacts, are not reasonably foreseeable.

Town Level Assessments

Comment 50: References used are misleading. Pages 4-120-122 refer to Town of Denning Comprehensive Plan, but fail to mention the plan makes no reference to the permanent removal of property from future development. (Monforte)

Response 50: The language that refers to the Town’s comprehensive plan has been revised to make clear that the plan does not explicitly address the question of how much land might be acquired by NYCDEP; and that consistency between the plan’s objectives and LAP’s impact on land use and community character in Denning should not be taken to imply any endorsement of either LAP’s current operations or its proposed extension.

Comment 51: Developable land is extremely limited with 73% already protected and what is not is undevelopable due to flood plains, stream management, steep incline, etc. DEIS projection is that by 2022, Denning will only have 4.2 percent developable land left. That is not acceptable. (Monforte)

Response 51: The estimate that the supply of developable land remaining in Denning as of 2022 would represent only 4.2 percent of the Town’s total area (about 2,757 acres) needs to be seen in context. The DEIS also estimates that as of 2009, only about 6.4 percent (4,187 acres) of the Town’s total land area was developable. While the remaining supply of developable land as of 2027 will indeed be limited, the EIS estimates the number of new units to be built in Denning would average only 3 per year. Based on the average size of residential parcels developed in Denning during the past decade, development at this rate would consume about 12 acres of developable land each year.

Comment 52: Denning is currently working on revising zoning laws and LAP should take this into consideration. (Monforte)

Response 52: In general, LAP purchases vacant land or low density residential. Since LAP would not result in changes to land use, it should not conflict with zoning laws. The proposed zoning changes, which are based on the 2007 comprehensive plan, are generally geared to ensuring that future growth is compatible with the Town’s rural character and hamlet development. The Extended LAP generally does not conflict with this goal.

Comment 53: In the Town of Denning, is the additional 5,046 acres to be purchased from 2010 to 2022, as proposed in the DEIS in accordance with the new 10 year filtration waiver from the EPA? (Monforte)

Response 53: The estimate of 5,046 acres is the City's best estimate of the maximum number of acres that would be acquired between 2010 and 2022. Under the 15 year permit scenario, this number is 5,551 acres. These estimates are consistent with the 2007 FAD because the FAD does not dictate or restrict the number of acres the City must acquire.

Comment 54: Is this additional 5,046 acres including some of our developable lands, in addition to the amount of land previously agreed to in the 1997 MOA? (Monforte)

Response 54: Yes. Page 4-122 of the DEIS discusses the projected acreage and includes approximately 1,359 acres of land that is expected to be developable. Under the 15 year Greater impact scenario, the land to be acquired is projected include approximately 1,495 developable acres, The remaining supply of developable land under this scenario would be 4.0 percent of the Town's land area in 2027, rather than 4.2 percent in 2022.

Comment 55: All towns should have individual assessments in Delaware County given their area of focus. (Frazier)

Response 55: All towns were evaluated individually for impacts of the LAP on the amount of developable land in each town. Based on this initial assessment, certain towns meeting certain criteria were selected for more in depth Town Level Assessments. Town level assessments were performed for 19 watershed towns that met or exceeded one of the following criteria:

- Those in which LAP is projected to acquire 20 percent or more of the town's 2009 supply of developable land; and
- Those in which 10 percent or more of the town's 2009 supply of developable land is projected to be consumed by residential development and LAP is projected to acquire greater than 5 percent of the town's 2009 supply of developable land.
- Towns with very little developable land (developable land in 2009 was less than 10 percent of town area or less than 3,000 acres)

Six towns in Delaware County were selected for further assessment. No potential significant impacts were identified for these towns.

Comment 56: The Town of Middletown has a total acreage of approximately 60,000 acres. Out of this, 42,000 acres are at a 15 percent or greater slope, 4,800 acres are water buffers, 6,000 acres are owned by New York City, 9,600 acres are owned by New York State. As you can see, we are running out of land, even though some of the steep slope is owned by the State of New York. Land is a very important commodity, farmers need land, building developers need land, and any expansion of any kind needs land. The Town of Middletown is already being stranded by the lack of developable land. All of our tax base is predicated on land and what is built onto it. The continued purchase of land by NYCDEP, coupled with the historic desire to have assessments lowered, will only result in deadly strangulation of the watershed communities. It has been suggested by some that New York City pay a surcharge over and above the taxes agreed upon payments under the MOA to these communities to help them finance the basic needs of their taxpayers. (Utter)

Response 56: Based on the definition of developable land cited above on p. 12-8 (which excludes land with slopes of more than 15 percent, water buffers, State- and City-protected land and several other types of land not suitable for development, such as land in flood

plains), the analysis conducted for the Draft EIS estimated that in 2009, 7,455 acres of privately-owned vacant and low-density residential land in Middletown (12 percent of the Town's total area) could be considered developable. As acknowledged on p. 12-8, this estimate includes some land that may not currently be developable for a variety of practical and economic reasons – such as inadequate road access or lack of other infrastructure, and real estate values that cannot support the investment that would be needed to overcome these problems. At the same time, the definition cited above excludes other types of land that may in fact be developable – such as agricultural land, commercial properties, and undeveloped portions of residential properties of less than 15 acres. On balance, it appears that there is still a substantial amount of land potentially available for new development in Middletown. For impacts on taxes, see responses in section “Impacts on Local Government Revenues” above. See also responses to comments 64 and 65.

Comment 57: 25,000 acres in the Town of Hamden have over 15 % slope, 728 acres are within waterway buffer zones, and 3,400 acres are unsuitable for building and septic systems. That leaves only 5,872 acres left for development in the Town of Hamden, which in turn means that 85% of our land already is not suitable for building. Isn't that already enough land to protect and preserve our water supply that serves the downstate area? (Marshfield)

Response 57: Using the definition of developable land cited on page 12-8, the Draft EIS estimated that in 2009, Hamden had approximately 6,146 developable acres of privately-owned vacant and low-density residential land – slightly higher than the Town's estimate cited above. Between 2010 and 2022, the Draft EIS projects that NYCDEP will acquire approximately 724 acres of developable land in Hamden – about 11.8 percent of the town supply of developable land, according to the Draft EIS; or about 12.3 percent according to the Town's estimate. These projected acquisitions will thus (by either definition) leave at least 87 percent of Hamden's current supply of land available to support new development, during the 2010-2022 period and beyond. See also responses to comments 64 and 65.

Comment 58: In 1997 our two designated hamlet areas in Hamden were developed without rights of exclusion from NYCDEP purchases, which in turn bred WAC easement purchases in each, one having stymied any hamlet growth forever and the other the WAC easement created hardships for the NYCDEP funded Community septic program. Lands in the designated hamlet areas need to be off hands to purchases by the City or their associated land trusts. (Marshfield)

Response 58: The new Water Supply Permit would allow communities to restrict future conservation easements in Hamlet areas.

Comment 59: The Town of Hamden has updated its comprehensive plan. In 2000 the Town of Hamden had 92 parcels used for agriculture, today we have 45 parcels and there is now only 3,029 acres of prime agricultural lands in town. Our median household income is \$35,313, not \$43,357 as the DEIS proclaims. We have set many goals in our plan, such as 1. to protect surface and groundwater supplies from pollution, maintain high quality physical environments and preserve wildlife habitats, 2. encourage conservation subdivision designs where lots are clustered to provide open space buffers that can trap storm water run-off, 3. promote the development of an economically viable agricultural sector and the preservation of working farms, 4. discourage use of permanent conservation easements as a preservation approach in favor of more flexible approaches such as leased development rights and other

limited duration techniques, 5. promote the use of NYC acquired land for agricultural purposes and discourage further City acquisition of farmland, and 6. acquisitions of additional conservation easements in town should be opposed. These are only a sample of 44 goals set by our plan. (Marshfield)

Response 59: Comment Noted. The median household income of \$35,313 cited in Hamden's comprehensive plan is the median household income for the Town, as reported in the 2000 Census. The higher figure cited in the Draft EIS is an estimate of median household income in 2008 based on data from DemographicsNow. The Town Level assessment for Hamden has been revised to include the principal goals stated in the Town's 2010 comprehensive plan, and to take into account the analysis of remaining buildable land included in the plan.

Comment 60: In the Draft Environmental Impact Statement it suggests that "156 additional units will be built by 2022." I'm here to tell you that in 2009 and so far in 2010 we have issued only one housing building permit. Before that 10 home building permits were issued per year, and that was a real busy year for us. At this rate realistically, I project new housing units constructed through to 2022 to be between 50 and 100 units. The EIS also states "the purchases of an additional 2,700 acres will protect our Town's low density rural character and provide opportunities for outdoor recreation." To make it very clear the Town of Hamden needs economic development incentives so that we can blend that in with our "low density character." Outdoor recreation does not give us our needed economic boost. If you think we support the LAP because it supports our rural character, you're wrong. The concluding statement in the EIS that "The Extended LAP would not be expected to result in any potentially significant adverse impacts on land use, socioeconomic conditions or community character in Hamden." This is absolutely wrong on all counts. Having lived in this town for over 40 years, and having been Supervisor of this town for over 17 years, I have witnessed the adverse effects of the land acquisition program that has affected the economics and character of this town. (Marshfield)

Response 60: As stated in the DEIS, Chapter 4, the projected number of new residential units (156) is not meant to indicate the level of residential development that is *likely* to occur in Hamden between 2010 and 2022. It is instead intended to define a "reasonable worst-case scenario" with respect to the potential for conflict between the Land Acquisition Program and Town's need for land to support new development, and any adverse impacts that might arise from such conflict. The use of a lower rate of residential development would result in a lower estimate of land needed to support such development, and thus reinforce the conclusion that LAP is unlikely to conflict with future development.

The Draft EIS recognizes the need for economic development in Hamden and other watershed towns. The proposed expansion of designated hamlet areas is intended in part to ensure that LAP does not conflict with this need. Moreover, while LAP cannot by itself ensure that the types of economic development sought by the Town will in fact occur, other resources are available under the 1997 MOA (including those offered by the Catskill Watershed Corporation) to support economic development in Hamden. See also responses to comments 64 and 65.

Comment 61: Regarding hamlet of Andes and other hamlets and restriction on selling development rights: first of all there has been no due process; no one in the Town of Andes ever spoke to me or anyone else that I know of. The coalition of watershed towns concept that taking away my rights to establish an agricultural easement on my hamlet farm thru

WAC is un-American and more in keeping with the concept of a commune in order to theoretically support hamlet growth while losing your personal property rights. Will this brushstroke over the hamlet affect most of the residents? No it will not. It only targets a handful of property owners under the guise of not discriminating against those few property owners who might actually qualify under present WAC acreage requirement standards. I am the only property owner in Andes interested at present in the Ag easement program as far as I know. That makes me the one target of the Town. As for future development of the hamlet taking away my rights in order to ensure keeping the property open for future development is sheer crystal ball politics and totally speculative. 10 years/20 years/30 years. Keeping my property away from New York City easement has no basis in reality. In the 13 years since 1997 MOA no development has occurred within the hamlet that would not have occurred anyway. No light industry. The towns have to compete with each other's for the development they may be seeking. Will my property or some other be offered as a tax incentive to bring in industry? This means not only do I lose my own rights but in essence they are to be offered to some incoming entity to lure it into the hamlet. Holding my land for some future ends is nothing less than property speculation. There has not been any investigation as to whether my property would even be developable and for what. The Towns have no evidence or proof or basis for taking my property rights away from me. (Nelson)

Response 61: The City has long recognized the rights of local municipalities to determine whether certain population centers and associated parcels (“designated hamlets”) should be excluded from the LAP. The question of whether - and if so how - towns communicated with their residents about such town decisions has to date been for the towns themselves to address. The 1997 MOA and Water Supply Permit (WSP) issued by DEC, which imposed requirements on how the City operates the LAP, imposed no requirements on whether or how towns should seek public participation in their decision-making process. However, the Draft 2010 Water Supply Permit (which can be viewed at <http://www.dec.ny.gov/permits/70376.html>) does provide that unless a municipality engages in a process of public participation, any decision it makes with respect to excluding LAP from acquiring parcels in designated hamlets would be void (see Special Condition 10). In addition, municipalities have the right to remove parcels from (but not add parcels to) the list of parcels proposed for LAP exclusion prior to such decision(s), although this option is not available in incorporated villages. It is expected that this new process, would provide for the public participation desired by those with concerns, especially affected landowners.

Water Quality and Natural Resources

Comment 62: Broad scientific consensus recognizes the long-term environmental benefits that result from land acquisition and NYCDEP’s Land Acquisition Program remains an international model that highlights the positive effects on land, air, and water quality, as well as habitat protection that can be achieved through robust land protection efforts. (Riverkeeper).

The single most effective strategy for ensuring the long-term safety of a surface drinking water drinking supply is to safeguard the watershed lands that surround, and drain into its reservoirs. This conclusion is widely shared by independent water experts. [I want to] restate the importance of the Extended LAP to the health and economy of NYC and New York State. The primary line of defense for safeguarding this water resource is land acquisition

and protecting the forest, meadows and streams in their natural state. USEPA, National Academy of Sciences, The American Waterworks Association and experts from around the country have all concluded that land acquisition is an indispensable and essential element to providing a safe drinking water supply. It is necessary for the NYC drinking water supply. While New York City has made significant progress in advancing its Watershed Land Acquisition Program over the past 13 years, a large portion of the city's watershed lands remains vulnerable to pollution and water quality threats. Significantly, of the country's five major unfiltered drinking water systems, New York City protects the smallest percentage of its watershed lands through ownership and easements. Portland, San Francisco and Seattle own or control virtually 100% of their watershed lands. Roughly 45% of the lands in Boston's watershed are protected. But even with the success of the city's program since 1997, only 34% of the Catskill/Delaware watershed lands are owned or controlled by New York City or New York State. In part for these reasons, EPA and the State Health Department, consistent with the federal Safe Drinking Water Act, have made the continuation of a vigorous watershed land acquisition program a cornerstone requirement of New York City's 2007 filtration avoidance determination. (Goldstein/NRDC)

Response 62: Comments Noted. The purpose of the Extended LAP is presented in Chapter 1 and Chapter 5 further discusses the water quality benefits of land acquisition.

Comment 63: Since water quality in Delaware County is high, no population explosion is anticipated, and there is very little development pressure, what is the justification for land acquisition? How much land is enough to protect water quality? Request for quantitative/scientific study demonstrating land acquisition will improve water quality. (Eisel, Bracci, Frazier, Morales, Maney). NYCDEP has yet to show how land acquisition actually does assure water quality. (Axtell). This is being done in the assumption of water quality, yet I have not seen anything that proves the acquisition of all this land will improve water quality. (Dolph). The CWT does not believe that the DEIS adequately addresses the needs for further land acquisition and simply accepts the decision to purchase more land as a requirement of the FAD. The DEIS fails to consider trends in water quality in the watershed and fails to evaluate the impact of the watershed regulations that were revised in 1997, the watershed protection and partnership programs and their impact on improving water quality and the effect of the previous land acquisition program. (CWT)

Response 63: As discussed in Chapter 5, the Extended LAP is intended to provide long-term benefits to the water quality of the City's water supply system through the preservation of sensitive lands proximate to water resources. Land acquisition is an anti-degradation strategy, which avoids adverse water quality impacts associated with development and other land uses. As presented in the EIS, beneficial impacts on water quality and natural resources of land preservation and smart growth principles are well documented in the literature cited in this chapter. The Extended LAP would not result in significant adverse impacts on water quality.

Comment 64: Why is it necessary for NYCDEP to be earmarking huge sums of money to acquire the most desired developable land inside the communities in the watershed. Most of the land being acquired is non-forested. By NYCDEP's own admission, managed forested land "supports water quality," How does acquiring vacant properties help water quality? (Axtell)

Response 64: Approximately two-thirds of the West-of Hudson, lands acquired under LAP is forested. As described in Chapter 5, NYCDEP prioritizes parcels with greater water quality benefit. LAP helps maintain water quality by protecting water quality sensitive lands

The expansion of Town hamlet areas, and keeping development in areas where it has historically occurred is encouraged by LAP and consistent with principles of “smart growth,” as discussed in the Water Quality chapter.

Comment 65: I would like to see a moratorium on land acquisition, until a collaborative effort between the towns and NYCDEP to come up with plans using planning boards to develop a case-by-case basis how do we develop this land and at the same time keep water quality. I don’t see any land use planning taking place here, or a meeting of minds to come up with a solution. (Morales) NYC should focus acquisitions on lands that will provide the highest level of protection to the water supply, avoiding the acquisition of lands where potential impacts can otherwise be mitigated. Our community is concerned that properties most susceptible for development will be purchased by the City leaving less desirable properties available for future expansion and growth. (Marshfield) In the “FUTURE WITHOUT PROPOSED ACTION” section, it states (Page 5-6) :“Without the Extended LAP, development can be expected to occur in a more diffuse manner, also known as sprawl, in areas where adverse impacts could be greater. Without the Extended LAP, new development could occur in areas that are less suitable from an ecological standpoint and could be more damaging to water quality. Greater parcel fragmentation could also occur, with adverse impacts on natural resources and habitats.” Sprawl does not have to occur. The Town could control this through land use regulations (including site plan, which could also include buffer or sensitive areas, etc.) without utilizing the LAP. In the “PRIORITIZATION” (Page 5-7) it states, “The LAP first prioritizes property for solicitation on the basis of its location within the water supply system, followed by site specific characteristics so as to maximize the water quality benefit of the lands acquired.” Prioritization of land when proposing the Agriculture] and Farmland Protection Plan in our County, as well as Albany County, had a negative connotation and a sense that property rights are being taken away, while a goal of this plan is to protect property rights. Also, part of the strategy of the LAP is allegedly to acquire parcels adjacent to those already owned by the City, without regard to water quality impact. These priorities are conflicting. (Thompson)

Response 65: NYCDEP does not participate in local land use planning. Ensuring protection of lands with water quality sensitive features is proposed to be accomplished through the targeted purchase of lands based on Natural Features Criteria, including wetlands, floodplains, and lands within 300 feet of streams, ponds or lakes or within 1,000 feet of reservoirs and lands with moderate to steep slopes. As a result of the negotiations with the watershed communities and other stakeholders, the Extended LAP will incorporate numeric thresholds to define the minimum amount of the specified natural features that must be present on a property to qualify for acquisition. The parties have agreed that properties in Priority Areas 2, 3 or 4, must meet either or both of the following thresholds:

- At least seven percent (7%) of the property exhibits Surface Water Features¹, or
- At least fifty percent (50%) of the property exhibits slopes greater than 15 percent.

¹ Surface Water Features include 1,000 foot buffers around reservoirs, 300 foot buffers around watercourses, 100-year floodplains, DEC-mapped wetlands or federal jurisdiction wetlands over 5 acres.

The expanded hamlet areas under the Extended LAP (See Chapter 1) would further support these development patterns. Concentrating future development around hamlet areas where much of it historically and currently occurs is consistent with the principles of smart growth and associated benefits on water quality and the environment. The proposed Extended LAP is consistent with these outlined principles, with numerous Comprehensive Plans prepared by towns, and should have a net benefit to water quality while minimizing impacts to future growth. There has been a collaborate process in discussing the hamlet expansion areas, and the natural features criteria between the City and watershed stakeholders

Comment 66: If resources and funds are used for matters not directly related to protecting water quality, there will be less funds available to address water quality. This mission creep must be addressed explicitly in the EIS. (Delaware County)

Response 66: Chapter 1 of the EIS describes the areas of focus for the Extended LAP. As noted in Chapter 1, there are a number of natural features criteria that must be present on a property in order to qualify for acquisition in Priority Areas 2, 3 and 4. NYCDEP believes these thresholds and other program elements will promote the wise use of acquisition funds over the long term.

Comment 67: Even small land acquisitions have an impact on overall water quality, which was proven by research from Yale and SUNY ESF. (McShane) Delaware County has fundamental disagreements with the findings of the Yale SUNY-ESF Study. (Delaware County)

Response 67: Comments Noted. This study was referenced in the EIS.

Comment 68: Supports conclusion that land acquisition will help protect our environment and particularly our waterways. (Mason)

Response 68: Comment Noted.

Open Space and Recreation

Comment 69: I would argue that recreational use is limited. (no horses, no snowmobiles, no four wheelers). Land is not mowed, and there are no longer trails. (Moyse). On land NYCDEP has taken they have lost snowmobile trails. The more you acquire, the less we have to ride on. You are taking away recreation (Muthig)

Response 69: Many or most properties that the City acquires in fee simple were previously posted against trespass, so most recreational use created by the City represents new opportunities for the public. In regard to snowmobiles in particular, the City has a policy of allowing existing trails to continue and partnering with organizations who are willing to maintain existing trails and/or develop new ones. Additionally, NYCDEP has issued several land use permits for organization that are willing to construct and maintain hiking trails.

Comment 70: Claims of recreational benefits are vague and overstated (Frazier)

Response 70: Comment Noted.

Comment 71: Land Acquisition also increases public access to the land for recreation. (Mason)

Response 71: Comment Noted.

Mitigation and Unavoidable Impacts

Comment 72: There has been progress in "mitigating" impacts of the LAP since 2009 (listed below). The DEIS catalogues many related negotiations, such as the pending expansion of hamlet areas and opening up more DEP-controlled land to low intensity recreational use. These mitigations should be written into the water supply permit and listed in the mitigations section of the EIS. There are two sources of mitigation measures produced from the negotiations that should be documented in the Final Environmental Impact Statement. First, those measures agreed to by parties to the negotiations presented as Special Conditions (SC) in the NYSDEC Draft Water Supply Permit # 0-9999-00051100001 Second, the Side Agreement between several parties to the negotiations including but not limited to the CWT, DC, NYC DEP and the Catskill Watershed Corporation. (Delaware County)

Response 72: The above referenced elements have been incorporated into the Water Supply Permit and the side agreement and are described further in Chapter 1 of the FEIS. The environmental review concluded that there were no significant impacts associated with the Extended LAP and therefore no mitigation is provided.

Alternatives

Comment 73: NYCDEP should build a filtration plant. (Gregory, Moyse, B. VanAken, C. VanAken,) Article in the paper says they're going to have to spend \$20 Billion to filtrate. Back in '97 the figure was \$8B. If you built it in 97, you could have built 2 and half filtration plants by now and employed some people. (C. Van Aken)

Response 73: NYCDEP believes that watershed protection, instead of building a filtration plant (which would, itself, have a large carbon footprint), is better for the environment, those who consume NYC water and for communities of the watershed.

Comment 74: Continuing a vigorous land acquisition program is also an essential economic imperative. Land acquisition is a key requirement under the federal Safe Drinking Water Act for systems seeking to avoid the federal filtration mandate." EPA has specifically required New York City to increase its land ownership in the watershed to avoid having to build extensive filtration facilities for the Catskill/Delaware water supply. Alternatively, requiring filtration of this system, which provides approximately one billion gallons of water a day to half the state's population, would cost ten to fifteen billion dollars in capital expenditures alone, according to New York City's Department of Environmental Protection, as well as operating costs of several hundred million dollars per year. The burden on city water ratepayers of such a filtration order would be dramatic and could have a significant ripple effect on housing and economics in New York City, the fiscal engine of New York State (Goldstein/NRDC)

Response 74: Comment Noted. Filtration of the Cat-Del system is discussed in the No Action Alternative.

Comment 75: The DEIS does not seriously consider as an alternative the "no action" alternative on not purchasing more land and simply discounts such an option as not being

consistent with the FAD, without seriously considering if the FAD could be revised and the slim likelihood that the primacy agency would order filtration solely on the basis of a lack of further land acquisition. (CWT)

Response 75: The Extended LAP is a key requirement under the Filtration Avoidance Determination (FAD). As a regulated water supplier, NYCDEP must comply with the terms of the FAD and cannot reasonably assume that the determination would continue in the absence of a key program.

COMMENTS ON LAND ACQUISITION PROGRAM

Comment 76: Riverkeeper feels that the hamlet expansion areas as outlined in the draft Water Supply Permit and the City’s DEIS are equitable and will help upstate communities grow in a manner consistent with watershed protection. Riverkeeper feels the Natural Features Criteria Modifications, combined with the ability of the primacy agency to make further modifications should filtration avoidance be threatened as a result, achieves the right balance for protecting water quality and promoting sensible upstate economic development. (Riverkeeper)

Response 76: Comment Noted.

Comment 77: Riparian Buffer Pilot Program and Involvement of Land Trusts are Positive Steps. Towards this end, Riverkeeper urges the City to draft an internal guidance document that clarifies interpretation of “habitable dwellings” under MOA paragraphs 42 and 67 in the hopes that NYCDEP will be able to solicit certain properties with high water quality protection values that it previously deemed off-limits for purposes of land acquisition. (Riverkeeper)

Response 77: The City and other parties, including Riverkeeper, intend to enter into an Agreement that, among other things, recognizes that “uninhabitable dwelling” can be an ambiguous term and provides that the City will use good faith efforts to ensure that the City does not acquire a habitable dwelling.

Comment 78: A cornerstone of the 1997 Watershed MOA was the establishment and dedication of funds for a variety of programs that promote watershed protection and sustainable economic development. These programs have created jobs and funneled millions of dollars directly into upstate communities. In fact, some programs, such as the Watershed Advisory Council’s Whole Farm Plan and easement programs, have been so successful that stewardship costs for maintaining these programs have risen significantly. Riverkeeper urges the City to continue, and in some cases increase, its historic level of funding for these critical programs in order to ensure their continued success. (Riverkeeper)

Response 78: Comment Noted. Under Special Condition 26 in the Draft Water Supply Permit, the commitments to these Watershed Partnership Programs are identified.

Comment 79: In light of the negotiated elements of the WSP and Agreement, the CWT is prepared to support the WSP. The WSP and Agreement include important elements necessary to satisfy the equity elements of ECL §15-1503. The new WSP continues important elements of the 1997 WSP, such as: prohibition on the use of eminent domain; protection of villages and hamlets; the requirement that eligible lands meet natural features criteria, recreational uses of City-owned land; payment of taxes on the City-owned land and continued support of various watershed protection and programs.

The new WSP and Agreement build upon the 1997 WSP and MOA in important ways, clarifying issues that arose from the first permit and addressing new issues. Important elements of the new permit and Agreement include: putting a hard cap on the amount of acreage that can be acquired under this permit, providing a mechanism for communities to expand the hamlet areas that were previously identified in 1997; allowing towns and villages to prohibit City acquisitions of conservation easements in hamlets and villages instead of only prohibiting fee acquisitions; presenting minimum numerical thresholds for the natural features criteria to assure that the City complies with the provisions of the Attachment Z of

the MOA; extending the commitment to not challenge the tax assessments on newly acquired lands to 30 years; committing to continued support of various watershed protection and partnership programs; insuring WAC transparency and committing the City to Tax Litigation Avoidance Program which it is hoped will resolve decades of contention on the taxation of the City's reservoirs and infrastructure in a manner that is fair and equitable to all parties.

While the CWT supports the new WSP, conditioned as it is, that does not mean that the CWT believes the new LAP is justified. Nor should CWT's acceptance of this permit mean that CWT will necessarily support a future or extended LAP. In fact the CWT does not feel that the City or the state have demonstrated a need for the further acquisition of lands in the West of Hudson Watershed. We believe that further acquisitions beyond the 105,000 acres could present unmitigatable damage to the ability of the communities to maintain a sustainable base of development on which the communities can thrive. (CWT)

Response 79: Comment Noted.

Comment 80: 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. This mitigation measure is critical to address the long term needs of the communities.(Delaware County)

Response 80: NYCDEP recognizes the importance of the hamlet expansion areas. As described in Chapter 1, The City, together with the State, EPA, and several environmental groups have worked diligently with the CWT, the watershed counties, and individual towns to balance community concerns over opportunities for future development with water quality protection needs in determining an appropriate scope for each town's proposal.

Comment 81: NRDC has reviewed the Draft Permit and believes that it is consistent with law and with the state's broad public interest. First, the permit, as now proposed is in accordance with the 2007 USEPA filtration avoidance determination, which pursuant to the federal Safe Drinking Water Act, directed New York City to commit 241 million dollars to fund its Land Acquisition Program over the next decade. The proposed permit will allow that program to move forward on the timetable required by the avoidance determination, pursuant to federal law and implementing regulations. Second, the proposed permit is consistent with State Environmental Conservation Law, Section 15-1503(2), which requires, among other things, that the project is just and equitable to all affected municipalities and their inhabitants. As now set forth in the draft permit and supporting documents, insure that the city's implementation of the land acquisition program will be just and equitable to watershed stakeholders. The proposed permit, of course, continues the city's long-standing practice of acquiring watershed properties only from willing sellers; eminent domain is specifically precluded. All sellers would receive fair market value for their lands as determined by an independent, certified New York State Appraiser. In addition, as noted in the draft permit itself, the city's land acquisition goals recognize the importance of ensuring that the availability of developable land in the watershed will remain sufficient to accommodate project growth without adverse effects on water quality and without substantially changing future population patterns in the watershed communities. Finally, the proposed permit conditions and supporting agreements reflect the work of more than two years of negotiations among all the affected stakeholders. Numerous provisions in those documents respond to watershed stakeholder concerns of equity, such as provisions relating

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to city payments of taxes on watershed lands, city funding for septic systems rehabilitations of watershed homeowners, and city agreements to exclude significant watershed acreage from possible future acquisition following designation of hamlet extension areas by the watershed towns themselves. (Goldstein/NRDC)

Response 81 : Comment Noted

Comment 82: Natural features criteria need to be defined more than just having the presence of any amount of slope or stream. (Marshfield)

Response 82: As discussed in Chapter 1, natural features criteria thresholds have been developed through a negotiation process between the City and West of Hudson Watershed Stakeholders to meet that very concern. The new Water Supply Permit will require that City fee and conservation easement acquisitions will have to contain at least 7 percent surface water criteria or 50 percent steep slopes (in Priority Areas 2, 3 or 4) in order to qualify for acquisition.

Comment 83: Riverkeeper's position is that the land acquisition program described in MOA Article II does and should apply to the City's 2012 WSP. (Riverkeeper) The new permit must be consistent with the principles set forth in the MOA (EOH Coalition)

Response 83: The City has reached agreement with Riverkeeper, among other signatories of the MOA, that affirms the rights and responsibilities of the MOA parties with respect to the LAP. The City expects this agreement to be signed before or at the same time the Permit is issued.

Comment 84: I ask that permission for NYCDEP to purchase more land be denied. (Utter). This program should not be renewed. (Axtell)

Response 84: Comment Noted.

Comment 85: I am writing to express my strong support of the NYCDEP watershed land acquisition program. Seven years ago, my wife and I purchased a home because it is within the NYC Catskills Watershed. We enjoy the rural character, and wish it to stay that way. The people living within the NYC Watershed are very fortunate. In NJ, citizens have passed open space bonds and taxes at all levels: state, county, and municipal, totaling billions of dollars to protect open space. In Delaware and surrounding Counties, citizens are getting necessary land acquisition for free. In addition, these open space acquisitions, particularly the lands under easement, are helping to keep local agricultural efforts going. NYCDEP also spends millions of \$ on various agricultural programs, a huge shot in the arm for the local economies. Local citizens receive free septic systems, worth upwards of \$30,000 apiece, again more millions. Hunters, fishermen, and hikers have thousands of acres at their disposal, again for free (NYC picking up the tab). Wonderful for local citizens and tourism alike. Of course the intent of the Watershed Land Acquisition program is to comply with the FAD, and provide clean drinking water to millions of NYC residents. In providing this pure drinking water, NYC efforts have been used as an example countless times across the country. In essence, if it isn't dirty, you don't have to clean it. I applaud NYC's efforts and look forward to the continued success and expansion of NYCDEP's Watershed efforts. (Schevejda)

Response 85: Comment Noted.

Comment 86: No brainer that this is a good thing. (Hirsh)

Response 86: Comment Noted.

Comment 87: Everybody here wants clean water, but what people resist is that it feels like someone out of the area is telling you what to do. We do have to balance that of taking care of our water supply and our environment for everybody. (Scrimshaw)

Response 87: Comment Noted. LAP operates under a “Willing Buyer / Willing Seller” policy. Landowners and the City must both enter into a proposed transaction on a strictly voluntary basis. Landowners are under no obligation to sell until and unless they sign a contract of sale.

Comment 88: It seems the motivations for these acquisitions are to provide open space to the environmental community. (Bracci) LAP must protect the land required to meet definitive water quality goals, and nothing more. There are private and public interest groups that believe the LAP is an ideal opportunity for preserving open space and preventing development; they believe that open space should be the primary purpose of the LAP. We disagree. (Delaware County)

Response 88: The goal of the NYC Land Acquisition Program is to protect environmentally-sensitive land in the NYC watershed as part of the City’s overall watershed protection Program. LAP is a key component of the City’s efforts to provide high quality drinking water without filtration of the Catskill-Delaware System. Protection of open space and expanding recreational opportunities are collateral results of the Land Acquisition Program.

Comment 89: The Land Acquisition Program is not really about protecting water quality but is a tool being used to gain total control in the watershed. (Axtell)

Response 89: Comment Noted. See Response to Comment 88 above.

Comment 90: I was under the impression that the current contract was ending in 2016, and now it’s 2022. Has it already been extended six years? (Moyse)

Response 90: The current Filtration Avoidance Determination (FAD) expires in 2017. The current Water Supply Permit expires in 2012. The city is seeking a successor Water Supply Permit that would last 15 years from the date of issuance.

Comment 91: What is the next step after 2022? Do you need another reservoir? (Totten)

Response 91: The City has no plans to develop another reservoir.

Comment 92: Is there anything that you would be doing to preclude the resale of property that you've purchased through your land acquisition project? I hope there would be some way to exclude re-sales. (Graef)

Response 92: Filtration Avoidance depends on the City’s successful demonstration that the property it acquires is protected in the long term. Pursuant to the MOA, there are strict guidelines under which such transfers could take place. All lands acquired in fee simple must be subject to a conservation easement (NYSDEC CE) that is conveyed by the City to

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NYSDEC. This NYSDEC CE creates an otherwise perpetual prohibition against development of the property that can only be extinguished in Priority Areas 3 and 4 (or 'B' and 'C' in the Croton) if the proceeds are used to acquire real property interests in Priority Areas 1 and 2 (or 'A' in the Croton). The City has no intention to exercise such conveyances. The City could theoretically convey its own conservation easements, on land it acquires that remains subject to a NYSDEC CE, to an entity such as a land trust or municipality if that entity agrees to pay taxes acceptable to the local assessor. Apart from one large property in Windham that is currently being transferred to NYSDEC (with the support of local communities), which will be managed for public access in concert with NYSDEC's neighboring holdings, and the potential for similar transfers to NYSDEC of lands adjacent to State land, the City has no intentions to convey other properties.

Comment 93: It is positive that NYCDEP is open to future flood buyouts. (McShane)

Response 93: Comment Noted.

Comment 94: Concerned that the towns arbitrarily expand the hamlets without contacting the landowners within those expansion areas. (McShane)

Response 94: As a result of the ongoing negotiations with watershed stakeholders, the Water Supply Permit will include requirements that municipalities notify affected property owners prior to adoption of binding resolutions to expand hamlet areas.

Comment 95: It seems there is not a collaborative effort to do natural resource inventory. (Morales)

Response 95: NYCDEP has engaged the US Forest Service to develop a comprehensive forest inventory of all its watershed lands and develop a 10 year forest management plan. The inventory is now complete and plan development will take place in the Fall and Winter of 2010-2011; the plan will be finalized by November 2011. This will help the long-term planning related to forest management. Additionally, NYCDEP has begun to include natural resource information in its community review process with towns.

Comment 96: I don't feel that our tax dollars should be used to buy land when there are issues that are more pressing. (Townsend)

Response 96: The City's LAP is funded by water user ratepayers, not NYS or local taxes.

Comment 97: On many surveys it says NYSDEC and NYCDEP. NYSDEC lands is assessed for \$300 to \$700 an acre, which is six years behind the times. Are you going to put that back to the previous assessment of the State or are you going to keep the NYCDEP land assessment? (B. VanAken)

Response 97: Each City survey is certified to NYSDEC because under the MOA, the City is required to convey a conservation easement to the State on all lands acquired in fee simple. It is the assessor's duty to determine how the City's real property interests are assessed in any given year. As stated above, the City pays taxes on the full assessed value of all of its land holdings.

Comment 98: You do not manage your land properly. The last 10 years there's been mercury in the fish. That mercury comes from your operations. The last ten years you've also sprayed herbicide around all the reservoirs. You need to get local people involved and employ local people. (B. VanAken)

Response 98: There is no basis for the assertion that the City's water supply operations have led to increased mercury levels in fish. NYCDEP applies herbicides as needed to control invasive species, such as Black Swallowwort, that could be detrimental to water quality. NYCDEP employs hundreds of people at its facilities throughout the watershed and its investments in watershed protection and economic development throughout the watershed support hundreds of additional jobs.

Comment 99: I feel the requisite plan for quarrying on NYCDEP lands goes over and above and beyond too far the NYSDEC regulations which are far more than adequate to protect the land when the quarrying goes on. These new regulations on the easement lands will put a lot of my bluestone quarrying friends out of business. (McShane)

Response 99: Pages 3-35 and 3-36 of the DEIS addresses mining. The City allows bluestone mining on lands under easement with approved bluestone mining plans. And as stated in the draft side Agreement DEP will work with the local communities and local stakeholders (farmers, blue stone miners, maple syrup farmers, foresters/loggers, etc.) to help ensure that the natural resources (including commodities such as timber and bluestone as well as recreational opportunities) are available on City-owned lands, on a case by case basis, subject to water quality, operational, and other reasonable concerns, consistent with the terms of NYSDEC's conservation easement on such property. NYSDEC is a stakeholder and the mining regulatory agency and holds the State's conservation easement. Access to natural resources is to be encouraged and DEP will continue to explore options, expand and develop programs (including working with local stakeholders) to facilitate such access."

Comment 100: I was always concerned with the rules and regulations and the control by NYCDEP on the land. Approximately how many violations by owners have been found, owners of the land on the conservation easement? I'd like to know what the penalties have been for the violations and what those violations have been. (McShane)

Response 100: In the past 10 years there have only been 3 "major" violations on NYCDEP conservation easements. NYCDEP's practice is to work with the landowner to rectify violations and restore damage rather than to seek penalties. Of the three violations, NYCDEP and the owner were able to resolve before going to court in two cases. In one case, NYCDEP begin legal action however NYCDEP and the landowner were able to settle the case out of court. There have been approximately 5 "minor" violations, mostly technical language violations that were resolved with landowners. The City has not sought penalties in connection with violations of conservation easements.

Comment 101: For land presently under a NYCDEP conservation easement, could the balance of it be sold to the City so that the City would own it in fee? (McShane)

Response 101: On several occasions, landowners under easement have offered their encumbered properties to the City. The City is not obligated to acquire such properties, and

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in some cases cannot due to the existence of dwellings, but in several cases we have pursued such opportunities when presented.

Comment 102: If you're going to have a conservation easement that the NYCDEP will do an analysis of the landowner's stated plans for future use, I was wondering what the purpose of that analysis was and what that would be used for when you're negotiating a conservation easement on the property. (McShane)

Response 102: Since an easement involves a long-term relationship between the grantor, the grantee, and the land, it is ideal if the grantor's land use plans and activities are considered during the design of a conservation easement. Such effort is expected to result in minimizing of potential future conflicts, so that it is in the interest of the local community as well. The landowner's interests are often consistent with, but in any case must be balanced by, the necessities of protecting water quality. The City also considers other factors in the design of easements such as treating all landowners equitably, and operating a very large program as efficiently as possible.

Comment 103: Our big concern is over accessibility that is being given to the properties that NYCDEP is buying, expressing particular concern over property number 5447, which is adjacent to our property. If public access is allowed, it could allow the public to access neighboring properties. It would basically open our property to public access and to hunting, fishing, trapping and whatever you allow. And that is our biggest concern. Can you give me any advice as to what or who to talk to get this signage left white as it is now or as it is going to be, but my understanding is that our town board has recommended that you open it up to public access. So do you have any suggestions? (W. Grote) We specifically brought the property because we had nice privacy. So now I think we feel very violated now. I don't have a problem with NYCDEP being there and understand the need for water quality protection, but would prefer that the NYCDEP property would remain closed to the public. We've had in the past ATV's up there. Who is going to police this? I would like to think that you can, but I don't think there's enough people available. (A. Grote)

Response 103: Local communities have lobbied very strongly over the years for the City to open its fee simple acquisitions for public access. The City considers town comments during the Local Consultation process very seriously, and we also maintain open lines of communication with towns, and with neighbors, long after properties are acquired. To resolve concerns about uses on specific parcels, we recommend the landowner seek to schedule a discussion with both town officials and City land management staff. The majority of our lands open for recreation receive limited use. We suggest you make sure your property is properly posted. NYCDEP also posts additional "private land ahead" signs when a landowner makes us aware of trespassing problems. Landowners who do not agree with the recreation designation should contact their town supervisor.

Comment 104: Both people within the Town of Jewett and neighboring towns are concerned as to what control NYSDEC/NYCDEP has over forestry practices on both conservation easements and on NYCDEP land. Some of these practices are destructive to roads and the environment. We have noticed that on some conservation easements, small trees are being taken out and there seems to be no indication of reforestation. What protection will the towns have against overuse and what procedures do we put in place for making complaints? (McCrary)

Response 104: NYCDEP professional foresters review and approve forest management activities on NYCDEP Conservation Easements. NYCDEP works closely with the landowner to ensure the long-term health of the forest is considered and proper road placement, construction and maintenance are followed. NYCDEP also recommends landowners hire professional foresters to help the landowner plan and carry out forest improvement projects. Forests in the northeast do not lend themselves to “reforestation” and allowing natural regeneration is the preferred method. NYCDEP Foresters recommend practices that can help enhance natural generation and help with its success. NYCDEP also requires landowners and their foresters/loggers to follow the practices as detailed in the “New York State Forestry Best Management Practices for Water Quality – BMP Field Guide 2000.” NYCDEP considers long-term forest health, including proper silvicultural practices, to be one of the most important components of long-term watershed protection. NYCDEP is undertaking a comprehensive forest inventory of all its lands and developing a long-term forest management plan. (Also to be included as a special condition under the Water Supply Permit) NYCDEP has also funded the WAC Forestry Program who had developed several hundred forest management plans for private landowners and offers cost-share programs. Any complaints on eased lands can be forwarded to NYCDEP Watershed Lands and Community Planning Section Chief at (845) 346-7862.

Comment 105: 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. (Delaware County) There has been much progress in the last year to open up DEP-controlled land to locally beneficial economic activity. It is highly desirable to keep land in agriculture – including the ability to change crops and allow bluestone and sand/gravel potential to be realized in addition to allowing winter and summer low intensity recreation, expanded boating on the reservoirs, etc. DEP must streamline administrative requirements in using their land, and either directly or through local partners it should actively promote these local economic uses. (Delaware County)

Response 105: As discussed in Chapter 1, there are a number of uses allowed on water supply lands, including recreation, forestry, mining, and low intensity cultivation. These are expected to continue and possibly be expanded on lands purchased under Extended LAP, subject to future approvals, as applicable and where consistent with water supply protection, operations, and public safety.

Comment 106: It is our request that the NYSDEC should require as a condition of this permit, sustained NYC DEP funding of the Stream Corridor Management Program(s) throughout the watershed. These programs are consistent with, and complement, the programs of the Catskill Watershed Corporation and the Watershed Agricultural Council’s Agricultural and Forestry Programs. (New York City Watershed Stream Corridor Management Programs). DEP’s Stream Management Program goal was to integrate flood hazard mitigation, stormwater management, protection of drinking water supply and quality, and enhancement of fisheries habitat and riparian ecosystem function, using a watershed scale assessment of fluvial geomorphology and associated hydrology and hydraulics. The MOA recognized the importance of stream stabilization and called for a program of Stream Corridor Protection by developing sub-basin level Stream Corridor Management Plans.

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Therefore, the NYCDEP WSP should specify adequate funding for this important program. (Breen/NYPIRG)

Response 106: The WSP will be updated to include (SC 25(b)(13)) the following language: "Stream Management Program: Consistent with the terms of the 2007 FAD and pursuant to the City's contracts with Soil and Water Contract Districts in Delaware County (\$8,251,000), Greene County (\$10,748,506), Ulster County (\$4,460,000), and Sullivan County (\$3,292,684) and with Ulster County Cornell Cooperative Extension (\$3,647,570), the City shall provide funding for the continuation of each of the existing Stream Corridor Management Program contracts. For the duration of this Permit, the City commits to fund the Stream Corridor Management Program pursuant to any subsequent FAD or FAD amendment which shall be incorporated herein and made an enforceable condition of this permit."

Comment 107: The ability of WAC to perform to the best of its ability is hampered by what can only be described as a stalemate. A number of projects that would have been beneficial to water quality protection have not moved forward because of the unresolved issue of unanimous consent on the WAC Governance Committee. This issue must be resolved if the City and WAC are to have a productive working arrangement and since they have yet to resolve the problem, the NYCDEP WSP as well as the MOA ¶180 Agreement ("side agreement") should address this critical issue. Conservation easements require stewardship of land in perpetuity and without adequate stewardship funding WAC's ability to effectively steward farm easements is severely limited. Therefore, the NYCDEP WSP should direct the City to allocate significant capital investment that should be placed in the WAC's endowment fund to ensure long-term stewardship responsibilities of WAC conservation easements.

Response 107: DEP funds WAC's stewardship activities for the term of the City's contractual engagement with WAC. DEP intends to continue contracting with WAC for the foreseeable future. WAC has always had a contractual obligation to garner funds for stewardship beyond the term of contract engagement with the City. In early 2011, DEP and WAC will be engaged in contract renewal discussions and will seek to memorialize clarifying language in the contract.

Comment 108: In the interest of water quality protection, the NYCDEP WSP should require the Forestry Conservation Easement Program be subject to the same approval process as the Riparian Buffer Program (RPB) as stated in Special Condition 29, whereby the City will be required to submit to NYSDEC for approval a written recommendation regarding the implementation of the RBP. (Breen/NYPIRG)

Response 108: DEP's reading of the draft WSP is that both the RPB (see SC 29f) and the Forest Conservation Easement Program (see SC 31b) involve similar requirements for DEP to submit written recommendations to NYSDEC.

Comment 109: Waters of Cross River could also be diverted into the Delaware Aqueduct and lands around this reservoir should also be protected, including lands in Towns of Bedford and Lewisboro. Even though Croton Watershed waters will be filtered in the new treatment plant in the Bronx, this will not help the local watershed communities that rely on these waters as their drinking supply. NYCDEP should continue to pursue acquisitions in the Croton Watershed. CWCWC Requests NYCDEP to consider partnering with local agencies

to buy 29-acre property on Granite Pointe that is surrounded by the Amawalk Reservoir, which supplies parts of Yorktown, Cortland and Somers. There is sufficient space in Putnam County to justify acquisition and preservation of lands as Open Space.

CWCWC proposes two acquisitions: Kent Manor (113 acres in Town of Kent) and Hillcrest Commons (108 Acres in Town of Carmel) (CWCWC)

Friends of Great Swamp (FROGS) supports NYCDEP's proposal to continue land acquisition in the three watersheds and emphasizes importance of directing a portion of the LAP funds to acquiring lands in the East Branch of the Croton Watershed. Specifically, Friends of the Great Swamp recommend that NYCDEP purchase additional wetlands and buffer lands along the East Branch Croton north of the Doansburg Road Crossing which should also include the main tributary of the East Branch at this point, the lands on the south side of Haviland Hollow Brook. Four or Five Million dollars should be allocated to purchase lands along the East Branch Croton in the next few years. The NYCDEP, working in conjunction with federal funding available through the Highlands Funding project or partnering with Frogs through the North American Wetlands Act Funding, should be able to leverage federal funds to aid in their land acquisition efforts. Additional watershed protection of the other major tributaries of the East Branch Croton: Muddy Brook, Mountain Brook, Stephens Brook and Brady Brook can be obtained by obtaining conservation easements from property owners abutting these brooks. Such conservation easements should assure that no building takes place within 100 feet of the banks of each brook and that no storm water runoff be discharged within 100 feet of each stream bank. Planting trees along the stream banks and planting other water filtering vegetation would allow natural vegetation to act as filters to ensure the quality of water entering these brooks would retain their purity. Local conservation organizations, like Friends of the Great Swamp, the Putnam County Land Trust and the Oblong Land Conservancy would partner with NYCDEP's efforts to obtain these easements.(FROGS)

The NYCDEP application heavily emphasizes land acquisition in the West-of-Hudson watershed rather than the East-of-Hudson watershed. Most of the funds from the proposed Land Acquisition Program (LAP) would be used to purchase land in the WOH watershed areas," According to the DEIS, cost-benefit considerations and property availability would favor WOH land acquisitions over EOH acquisitions. However, acquiring land by fee simple and conservation easements East-of-Hudson is just as important as in the WOH region. During Filtration Avoidance Determination (FAD) review, the Environmental Protection Agency (EPA) has urged land acquisition or conservation easements to protect remaining open space in the Kensico watershed.⁸ If non-point runoff in the Kensico basin results in water quality degradation, then the water protection expenditures WOH have less ultimate impact. Acquiring land WOH to protect the water supply thus becomes futile if water quality may worsen downstream. The 1997 Memorandum of Agreement (MOA) expressed the importance of using land acquisition to protect the Croton watershed.¹⁰ As such, land acquisition East-of-Hudson to protect the Croton and Kensico watersheds is still needed. Additional land solicitations should be evaluated for the Kensico basin, as there was only a nineteen recent success rate, and only seventeen percent of the total land in the area was solicited. While Westchester County is generally more expensive for purchasing property, presently low market values could allow for more favorable agreements. Conservation easements should also be emphasized as an alternative to property purchases East-of-

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Hudson, and the easement arrangement can have favorable tax benefits for landowners. If a landowner has a qualified conservation easement that meets IRS requirements, they can “receive an annual income tax credit for 25% of the property taxes ... up to \$5,000.” In particular, there may be opportunities within the Croton watershed for watershed agricultural easements, which are recognized in the MOA and the Draft Permit. The Draft Permit should also recognize the East-of-Hudson communities in defining the capacity of the Watershed Agricultural Council (Draft Permit definition only identifies partnership with West-of-Hudson communities). Several reservoirs within the East-of-Hudson watershed provide emergency protection for the Catskill/Delaware systems (West Branch, Croton Falls, Cross River, Kensico reservoirs). The importance of water quality in these reservoirs is underscored as NYCDEP completes repairs to its infrastructure, such as its pending repairs and improvements to the Catskill and Delaware aqueducts.¹⁴ Accordingly, the land acquisition and watershed programs associated with the water supply permit should allocate funds towards the protection of these reservoirs that also serve a critical emergency function. (Crane/Westchester County Board of Legislators)

NYCDEP should be required to continue funding the EOH Land Acquisition Program. The Draft Permit must consider not only the impacts of conducting a land acquisition program, but also the impacts of abandoning it. The applicant’s vastly different commitment to land acquisition EOH and WOH has thrown off the long- negotiated compromise reached by the parties in the MOA and has created a situation where the EOH communities are stuck with the burden of the compromise without retaining the benefit. EOH inhabitants receive relatively little benefit in relation to the extremely high cost of compliance with watershed regulations. (EOH Coalition)

Response 109: Since the inception of the LAP, the City has acquired considerable amounts of land in the East of Hudson watershed region, totaling 11,194 acres. NYCDEP will continue to acquire properties in East of Hudson that play an important role in water quality protection. NYCDEP land acquisition priorities for the next phase of the program are detailed in NYCDEP’s September 2009 Long-Term Plan for Land Acquisition available at http://www.nyc.gov/html/dep/pdf/resources/lt_plan_final.pdf

OTHER COMMENTS

Comment 110: Concern over previous use of glass on the streets in Oneonta. EPA, NYCDEP, NYSDEC, CWS should evaluate if the underground and reservoir water has at all been polluted. If found, the Oneonta government must eliminate pollution completely solely at their cost. I most strongly urge Water Supply permit be temporarily suspended and held in abeyance until NYSDEC ensures that waters have not been polluted by glass. (Sen Gupta)

Response 110: Comment Noted. The City is not aware of any mechanism through which the use of glass on the streets of Oneonta might affect, or be affected by, the City’s Land Acquisition Program. Oneonta is outside of the NYC Watershed.

Comment 111: We need to have a livelihood in the watershed in order to keep the low-density land use patterns, in order to protect 9 million people’s water. It’s critical that you continue the partnership programs with the upstate communities. Urge to consider opening Neversink reservoir for boating and recreation. Also bike trails around the reservoirs so that we could have bed and breakfasts, we could start selling more produce at farm stands and along with that additional workers. (Coombe) I support opening up reservoirs to the public in order to create jobs for future generations. (Metnash)

Response 111: NYCDEP is in the second year of the Cannonsville Pilot Boating project and to date, the Pilot has gone well. A study is currently under way to assess the impacts, both positive and negative, of the Pilot program. Depending on the results of that study, expansion to other reservoirs will be considered provided willing partners can be found.

Comment 112: What's the backup plan if the sewer system goes bad? (Botsford)

Response 112: Wastewater treatment plants are permitted by NYSDEC and regulated by NYSDEC and NYCDEP. If problems are identified, the permit holder is required to remediate.

Comment 113: [I]t is the strong belief of CKWIC that NYSDEC has mandated the phosphorus reduction requirements based on the needs of the New York City drinking water supply and therefore NYCDEP should be held accountable for funding the expenditures that the CKWIC municipalities will face regarding phosphorus reduction requirements. To this end, CKWIC would like to create an agreement, in similar fashion to the MOA, to address furthering the goals of the municipalities, NYSDEC and NYCDEP. (Murphy)

Controlling stormwater runoff and reducing phosphorus in the EOH is critically important; therefore, the NYCDEP WSP should recognize the City's responsibility and require them to not only remove their own allocation of phosphorus but also require them to work in partnership with the EOH municipalities in their regional effort. Furthermore, the NYCDEP WSP should require the City make available adequate funding and technical resources to EOH. (Breen, NYPIRG) DEP should be required to Pay the Cost of the Heightened MS4 requirements. The burden of the TMDL implementation plan should be addressed by the Draft Permit. (EOH Coalition)

It is encouraging that the draft water supply permit ("Draft Permit") acknowledges East-of-Hudson (EOH) non-point source controls for funding and partnership with NYCDEP. East-of-Hudson municipalities are significantly impacted by additional non-point source requirements under NYSDEC's Municipal Separate Storm Sewer System (MS4) permit and the non-point source implementation plan for the phosphorus Total Maximum Daily Load (TMDL) for certain reservoirs in the Croton watershed. Among other requirements, these newer obligations require municipalities to implement stormwater retrofit projects, map stormwater conveyance systems, and increase septic system administration - all at a time when municipal funds are stretched thin in the present recessionary climate. Previous estimates on stormwater retrofits alone in the EOH watershed are over \$200 million, according to a 2008 NYSDEC report. The Draft Permit obligates NYCDEP to expend significant funds for non-point source protection programs in the West-of-Hudson (WOH) Similar NYCDEP funding for the East-of-Hudson watershed is warranted to achieve non-point source protections for the Croton and Kensico basins. NYSDEC should accordingly require increased NYCDEP funds for enhanced watershed protection and partnership programs within the EOH watershed, in order to parallel the increased protection measures that have been required of this area. As NYSDEC is aware, the Westchester municipalities in the EOH watershed have historically collaborated to pursue water quality initiatives and programs, which collaboration continues under the new MS4 permit requirements. Such partnership indicates that additional NYCDEP funds for non-point source protections would

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receive prudent consideration by these municipalities, helping to attain a greater benefit/use from the funds (Crane/Westchester County Board of Legislators).

Response 113: The EIS found no significant impacts on the East of Hudson Watershed from the Extended LAP. Nonetheless, although NYDEP is under no obligation to do so, in the spirit of partnership, NYCDEP has committed to provide \$10 million for East of Hudson Non-Point Source Pollution Control Program.

Comment 114: NYCDEP has implemented the "Bluebelt" system in Staten Island to accomplish water quality and flood control objectives. This system diverts stormwater to manmade but natural looking ponds and streams that are surrounded by vegetation and wetlands to purify the water and avoid discharge to storm sewers. Nitrogen and phosphates are naturally removed, at substantially reduced costs (tens of millions of dollars). The Bluebelt program exhibits partnership among federal, state, and local agencies. While there may be some differences in types of stormwater management needs between the Staten Island and New York City watershed communities, the Bluebelt approach may have applicability for non-point source control in the EOH watershed and should be considered. It may be possible to utilize the lands acquired by NYCDEP to implement a similar program.

Response 114: Comment Noted.