New York City Department of Environmental Protection
Bureau of Water Supply

Proposed Incentives to Increase Landowner Participation in the Streamside Acquisition Program

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Prepared in accordance with Section 4.2 of the NYSDOH
2017 Filtration Avoidance Determination

Prepared by: DEP, Bureau of Water Supply

1. Background

The Streamside Acquisition Program (SAP) is authorized by Special Condition 29 of the 2010 Water Supply Permit (WSP) as a riparian buffer acquisition program to be piloted in the Schoharie basin only. The New York City Department of Environmental Protection (DEP) developed the program collaboratively with watershed stakeholders based on a May 2013 Program Development Initiative Report (PDI Report) that was prepared by the Catskill Center for Conservation and Development (CCCD). DEP engaged in a search for one or more interested land trusts to administer the program and selected CCCD. DEP contracted with CCCD to operate the SAP in July 2015 and CCCD began soliciting properties in 2016.

The 2017 Filtration Avoidance Determination (FAD) requires the continued implementation of the pilot SAP and also requires the City to convene a working group of stakeholders to explore payment approaches or incentives that might increase landowner participation in SAP. From January 2018 through January 2019, DEP convened five full stakeholder meetings and four smaller subcommittee meetings to discuss and develop landowner incentives. This report proposes new SAP incentives based on those stakeholder discussions and collaboration between CCCD and DEP.

1.1 Program Goals

The purpose of SAP as outlined in the May 2013 PDI Report is to "permanently protect streams and adjacent buffer land by fee simple acquisition wherever possible and conservation easement acquisition if deemed desirable on properties that are not likely to qualify for other existing acquisition programs."

For SAP, the WSP waives minimum size requirements that otherwise apply to DEP's core Land Acquisition Program (LAP), and it also allows for acquisition of parcels within LAP-excluded designated areas[1] provided that municipalities pass a resolution opting into the SAP. To minimize duplication of services, SAP focuses mainly on properties that are ineligible under other LAP initiatives. For example, parcels under fifteen acres make up 60% of properties and 83% of acres solicited to date by SAP, but larger parcels that require subdivision may be solicited where only portions are expected to be of interest to the program.

1.2 Project Criteria

While criteria for solicitation have evolved over time and will likely continue to evolve, SAP currently seeks out properties with the following characteristics:

- located within an area addressed by an existing DEP Stream Management Plan;
- contains at least two acres of surface water criteria (SWC),[2] which primarily include 300-foot riparian buffers and/or 100-year floodplain; and/or
- vacant and less than about 50 acres in size, or improved (generally this means with dwellings) and between roughly 10 and 50 acres in size.

[1] Special condition 9 of the WSP sets minimum requirements for the size of parcels purchased by DEP, depending on the Priority Area – but there are no size minimums for SAP projects. Special condition 10 limits DEP's ability to acquire parcels within the boundaries of certain hamlet areas designated by towns or villages by resolution.
[2] SWC are defined in special condition 9 of the WSP.

Finally, if the property is within a LAP-excluded designated area, the property must be approved for SAP pursuit by municipal resolution. In general, properties containing large amounts of riparian buffers or floodplain, those containing Stream Protection Areas as identified in Stream Management Plans, and those that provide opportunities for increased connectivity with other protected lands are all of particular interest for SAP consideration.

2. Program Status

2.1 Solicitation and Appraisal

SAP has conducted seven rounds of solicitations through 2018, in total soliciting 264 properties comprising 2,675 acres with an average property[3] size of ten acres. Of these, CCCD responded to interested landowners and where these properties were deemed desirable under SAP, ordered 42 appraisals representing 16% of solicited properties and 13% of solicited acres. Of the 42 appraisals ordered, 39 were received by the end of 2018, with the ensuing purchase offers accepted or rejected. Table 1 provides a summary of relevant data for these 39 properties.

For all properties appraised thus far, 40% require subdivision to create an eligible project; this proportion is expected to rise over time, since early solicitation rounds emphasized small, vacant, less-complex properties during the program's start-up phase. The median size of appraised properties is six acres and the median appraised value is $40,000. Appraised properties are replete with water features, with an average SWC of 76%.

[3] The term "property" as used in this report refers to land under common ownership, whether single or multiple tax parcels.

Table 1: Summary of 39 properties appraised through the SAP as of December 31, 2018.

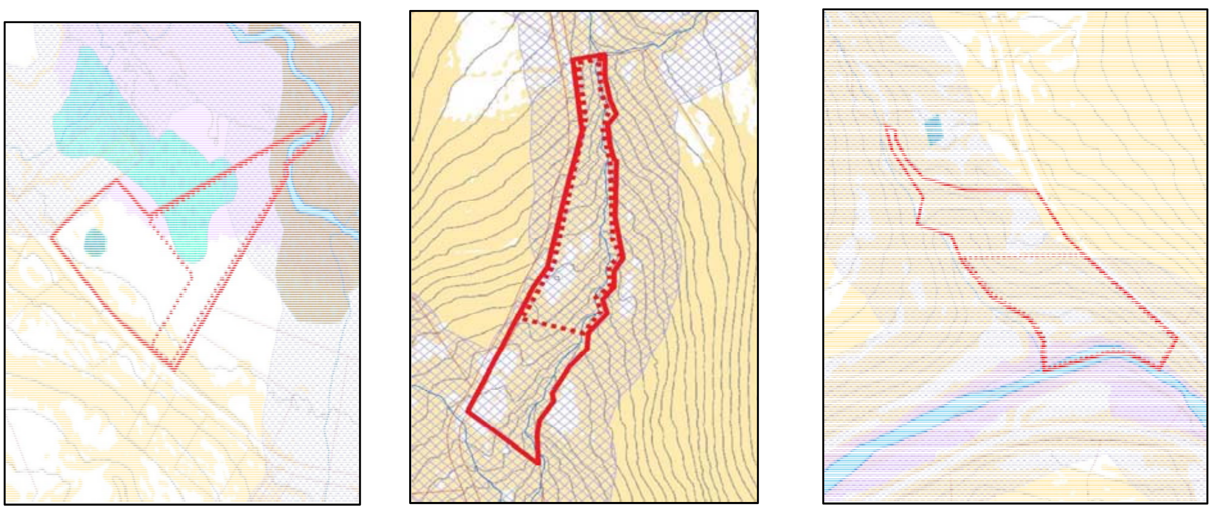
Town	Acres	% SWC	Subdivision Required? [1]	FMV	Offer Accepted?
Ashland	2.1	98%	No	$40,000	Yes
Ashland	5.3	77%	No	$38,000	No
Hunter	5.0	100%	No	$8,000	No
Hunter	5.8	98%	Yes	$45,000	Yes
Hunter	6.6	65%	Yes	$35,000	No
Hunter	8.9	100%	Yes	$35,000	No
Hunter	10.1	94%	No	$20,000	No
Hunter	23.9	49%	Yes	$242,075	Yes
Jewett	4.9	37%	No	$14,500	Yes
Jewett	4.9	23%	No	$14,500	Yes
Jewett	5.0	82%	No	$45,000	Yes
Jewett	5.0	93%	Yes	$30,000	No
Jewett	6.7	92%	Yes	$48,000	No
Jewett	6.9	66%	Yes	$40,000	Yes
Jewett	8.2	71%	Yes	$40,000	No
Jewett	9.1	70%	No	$75,000	No
Jewett	9.4	73%	Yes	$55,000	Yes
Jewett	11.3	100%	No	$55,000	Yes
Jewett	13.5	75%	No	$140,333	No
Jewett	18.3	78%	Yes	$145,410	Yes
Lexington	3.0	100%	Yes	$11,000	No
Lexington	7.5	100%	Yes	$49,500	No
Lexington	9.7	83%	No	$53,000	Yes
Lexington	10.6	85%	Yes	$40,000	Yes
Lexington	13.2	92%	No	$116,160	No
Prattsville	3.2	93%	No	$50,000	No
Prattsville	5.7	89%	No	$35,000	Yes
Prattsville	6.0	100%	Yes	$24,000	Yes
Prattsville	8.0	48%	No	$52,800	No
Prattsville	17.0	70%	No	$114,580	Yes
Prattsville	22.0	48%	Yes	$87,340	Yes
Windham	0.5	100%	No	$11,000	Yes
Windham	2.3	100%	No	$30,000	Yes
Windham	2.3	100%	No	$45,000	Yes
Windham	2.4	85%	No	$22,000	Yes
Windham	3.1	100%	No	$37,000	Yes
Windham	3.3	69%	No	$50,000	Yes
Windham	6.0	61%	No	$82,200	Yes
Windham	6.0	100%	Yes	$30,000	No

1 This column indicates whether a project requires local subdivision approval.

2.2 Project Design

In some cases, the SAP acquires vacant and patent tax lots in their entirety. This generally occurs for parcels that (a) are entirely covered (or nearly so) with SWC, (b) contain substantial water features but do not meet local subdivision requirements, or (c) are otherwise impractical to subdivide. Certain situations will require subdivision before land can be acquired by SAP. For example, no parcels acquired with LAP funds, including SAP projects, may contain a habitable dwelling (unless part of a Flood Buyout Program), so a property that contains a dwelling must be subdivided in accordance with local subdivision regulations to create a vacant parcel for SAP purposes. In addition, improved or vacant parcels with features of interest to SAP may be acquired by subdivision to leave in private ownership vacant developable areas that are distant from water features, in recognition of local concerns about the continued availability of developable land to support future community growth.

When designing subdivision configurations, SAP takes into account numerous factors such as natural features (topography and stream frontage), human-made features (rock walls and road frontage), local zoning and subdivision regulations (minimum lot size, road frontage requirements, etc.), and the requirement that all transactions must be based on the premise of willing seller / willing buyer. Figure 1 illustrates some typical SAP subdivision configurations.



6 of 10 acres appraised | 7 of 12 acres appraised | 3 of 6 acres appraised

Figure 1. Examples of typical SAP subdivision configurations.

2.3 Acceptance Rates

Through the end of 2018, 39 appraisals have resulted in 23 accepted offers, for an acceptance rate of 59%. Attempting to compare similar geographic areas and timeframes, this acceptance rate is consistent with that for DEP's core LAP in the Schoharie Basin since 2012, during a period when market conditions were roughly similar to SAP's (Table 2). There are also similarities in acceptance rates when comparing responses to SAP purchase offer to responses across the entire West of Hudson watershed. SAP and LAP fee simple appraisals exhibit similar purchase offer acceptance rates overall, and they also both show a difference depending on the outreach method. In both cases, purchase offers resulting from landowner call-ins are accepted at a higher rate – 70% to 73% – while appraisals resulting from program-initiated solicitation have lower purchase offer acceptance rates of about 55%. Thus the impetus for developing additional incentives does not seem overly compelling.

Table 2. Appraisal and Offer Acceptance Rates for SAP (2016-2018) and Core LAP (2012 Through 2018).

	Outreach Method	Appraisals	Accepted	Rate
LAP Fee Appraisals [1]	City-Initiated	71	39	55%
	Owner-Initiated	11	8	73%
	Total	82	47	57%
SAP Appraisals	City-Initiated	29	16	55%
	Owner-Initiated	10	7	70%
	Total	39	23	59%

[1] To compare similar categories, LAP Fee Appraisals are shown for properties under 100 acres during a period of similar operation to SAP, and for projects in the Schoharie basin only. LAP acceptance rates for categories of smaller properties (i.e. under 25 acres or under 50 acres) are also in the same range.

2.4 Declined Offers

Where known, it is instructive to consider the reasons that landowners decline SAP purchase offers, since increasing the acceptance rate is the main goal for developing SAP incentives. Few clear patterns have emerged for declined offers; qualitative feedback from landowners indicates that their reasons for declining offers are numerous and nuanced. Beyond straightforward situations where values do not meet landowner expectations, other stated reasons include: (1) concerns about length of closing period; (2) questions related to public access and privacy after the property is conveyed; (3) angst about potential complications related to the subdivision approval process; (4) personal and family situations; and (5) concerns about specific contract terms. It should be noted that this mix of reasons for declined SAP offers appear similar to those encountered in DEP's core LAP.

The incentives described in this report seek to address some of the reasons for declined offers. It should be noted that any voluntary (willing seller / willing buyer) program that employs fair market value (FMV) to determine the purchase price is expected to have an acceptance rate considerably below 100%. However, given that SAP will continue over time to solicit the same portfolio of properties that remain of interest, acceptance rates will increase over time as personal situations for landowners evolve or properties are sold to new owners.

3. Existing SAP Incentives

Prior to the 2017 FAD, DEP had already implemented various incentives to increase landowner participation in the pilot SAP. For example, DEP applied all existing core LAP incentives to the original SAP model purchase contract, which was updated with additional incentives in late 2017. Below is a brief summary of existing incentives currently available through the pilot SAP.

3.1 Down Payments

In most cases, the SAP purchase contract delivers a down payment to sellers, where there is no escrow requirement, within 90 days of the contract execution date. The standard contract period is 14 months for existing parcels or 18 months for properties that require subdivision, although closings may happen much faster for projects that involve no title defects or encroachments. The down payment can be used by sellers for any purpose at their discretion, but is intended as a means to offset property taxes and/or the cost of seller's contractual obligations prior to closing. The amount of down payment is prescribed by SAP policy: if the FMV of a property is under $10,000, SAP makes a down payment equal to 50% of the FMV, which is much higher than core LAP and conventional market standards. If the FMV is between $10,000 and $50,000, SAP provides a $5,000 down payment, which is again considerably higher than core LAP or market standards, and if the FMV is above $50,000 the down payment is 10% of the total FMV. The goal of this sliding scale is to incentivize landowners with low-FMV land to accept offers because they receive more money earlier in the contract process.

3.2 Reimbursement for Debris Removal

Properties with streams tend to flood and collect debris, so there can be significant clean-up issues associated with certain SAP properties. The anticipated cost of removing debris and conveying a clean site can deter a landowner from accepting a purchase offer. For this reason, DEP and CCCD created a mechanism to reimburse sellers for clean-up costs up to $5,000 where FMV is under $30,000, and reimbursement of $3,000 for FMVs ranging from $30,000 to $50,000. These reimbursements do not include remediation of hazardous material but they do incentivize acceptance rates for certain properties that have modest clean-up issues. The caps are intended to protect DEP from paying for unreasonable cleanup costs for debris that should be the landowner's issue to address, whether or not associated with streams and flooding. In all reimbursement situations, a seller must provide proof for the removal work performed by a professional vendor and may not be reimbursed for their own personal efforts, because the latter are difficult to value.

3.3 Reimbursement for Removal of Improvements

DEP's core LAP provides for reimbursement to landowners for removal of certain improvements, which process was also incorporated into SAP. Regardless of FMV, sellers are reimbursed up to $3,000 for the removal and decommissioning of the following improvements: (1) wellheads and associated pumps, electric service, pipes; (2) septic fields and tanks; (3) electric poles, wires, transformers; (4) barns and sheds; and (5) pavement, tarmac and foundations.

Sellers are also reimbursed up to $5,000 for decommissioning and/or removing dams, bridges and culverts if DEP deems necessary. This incentive allows landowners to receive reimbursements for removing improvements that do not contribute to FMV and which the City has no interest in acquiring with the property, and/or would require additional resources to remove after closing. In all reimbursement situations, a seller must provide proof of the removal work performed by a professional vendor and may not be reimbursed for their own personal efforts, since the latter is difficult to value.

3.4 Reimbursement for Technical Subdivision Costs

Another existing incentive that was derived from DEP's core LAP is to reimburse sellers up to $5,000 for certain costs associated with a subdivision where such approval is needed to facilitate acquisition. This includes survey of areas not being acquired, and other site services such as percolation tests and/or other engineering that may be required by the town. Landowners are reimbursed for specified costs at closing, which in most cases covers the entire subdivision process and avoids significant out-of-pocket expense for sellers. These subdivision costs are above and beyond the routine survey of each property, which are always paid for by DEP and/or SAP.

4. Proposed New Incentives

After the initial stakeholder group met in early 2018 to discuss SAP incentives, the entire group participated in a brainstorming session moderated by CCCD that produced many suggestions for increasing landowner participation. DEP and CCCD subsequently worked to identify and assess the most viable ideas and present them back to the larger stakeholder group for further discussion. From July 2018 through January 2019, DEP and stakeholders worked closely through a subcommittee process to collaboratively develop the following list of proposed new incentives for SAP.

4.1 Revising the Model Purchase Contract for Certain Categories of Properties

The first category of incentives involves a revision of the current model purchase contract used by the SAP for certain categories of projects. While adhering to DEP's restrictions against paying a purchase price in excess of fair market value ("FMV") for real property interests, DEP proposes a new set of incentive payments during the contract phase for projects that involve relatively high SWC and/or low FMV. These payments are intended to incentivize landowners with low-utility properties, such as properties within the floodplain and/or that are otherwise undevelopable, since these are generally low value with low assessments and low carrying costs and therefore may not be worth the effort for landowners to sell without incentives. At the same time, there are some transaction costs and efforts that are borne by sellers irrelevant of price or size of property, making transaction costs for low-value properties a higher percentage of the purchase price. The proposed incentive payments are not considered reimbursements, but rather as support for transaction-related services and carrying costs to this category of seller. This payment would likely be made early in the contract period, but following the completion of preliminary survey and title work to ensure that the project does not have a fatal flaw.

The following incentive payments could be combined; a landowner may be eligible for none, several, or all of the incentives. These incentives are specifically targeted toward the Schoharie basin pilot program. If SAP is expanded into real estate markets beyond the Schoharie basin, the amounts and thresholds for these incentives may need to be adjusted based on conditions in other areas.

A. Surface Water Criteria

Wetlands, floodplains and riparian buffers have extremely high value for water quality protection, yet typical appraisal conventions do not take such features into account when establishing FMV because the real estate market does not attribute measurable value to them. Properties with very high proportions of water features are generally considered less developable (or even undevelopable) by the appraiser, town zoning or subdivision ordinances, and prospective buyers. Although these properties may not be easily developed, their stream buffers and floodplains may be highly sensitive to activities such as forestry, agriculture, landscaping, trails, or the limited development allowed as of right; many thus remain of interest to the City for water quality protection. To incentivize higher SWC properties, DEP proposes that the SAP model purchase contract provide a one-time $2,000 payment for projects that contain 85% or greater SWC regardless of the FMV. Considering that SAP properties contain on average 75% SWC, this incentive is proposed to encourage landowners with above-average SWC properties to participate.

B. Low-Value Properties

Many properties of interest to SAP are relatively small, irregular in shape, or not considered developable due to a high proportion of SWC or limited feasible access. Regardless of other incentives these projects may be eligible for, DEP proposes that SAP would also offer $3,000 for each property whose FMV is below the current average of $40,000. To further incentivize low-value properties, DEP proposes that the SAP would provide an additional $1,000 to those projects with a FMV below $40,000 if they require subdivision. This incentive is expected to encourage subdivisions that are desired or required to create a SAP parcel with a higher percentage of SWC, leaving behind more 'dry' land in private hands for potential future development. By providing these incentives for properties with very low FMV, DEP hopes to increase the number of accepted offers for lands that have high SWC.

4.2 Option Agreement

The Purchase Option, or "Option," is a form of purchase contract that offers increased flexibility to the buyer, and payments to the seller for carrying costs (such as property taxes) during a contract term that may be longer than the standard term. Once signed, the Option provides the buyer with the right to purchase the property at FMV for a set period of time when benchmarks not controlled by the seller are attained; for example, when a neighboring property that makes the subject property more compelling (or eligible) is acquired, the buyer can exercise the Option and trigger a closing.

DEP proposes to use the Option as a SAP incentive in cases where the City would only be interested in acquiring subject land if it was part of a larger assemblage (i.e., if a neighboring property provides necessary access for the subject, or if streambank erosion exists that can only be remediated with the control of adjoining properties). Such Options would incentivize landowner interest in selling properties that would currently not meet acquisition criteria on their own. In these cases, SAP would appraise a property and enter into an Option to purchase on the condition that certain properties along a particular stream reach would also be optioned and acquired.

DEP initially proposes to set the Option term at three years and to make annual payments of 3% of the FMV of the property or $500, whichever is larger. These payments are intended to offset the seller's carrying costs while nearby parcels are being pursued. The seller would retain the Option payments regardless of closing with the City. Payments would be distinct from FMV and such amounts would not be deducted from the purchase price at closing as down payments are. If the Option approached the three-year time period without closing, terms could be extended upon mutual agreement of all parties. The Option payments would be made annually, conditioned on a site inspection to confirm that conditions of the property remain consistent with the appraisal and Option contract.

Assuming the closing has not taken place after 30 months, DEP proposes that the Option would allow for an appraisal update 30 months into the 36-month term at the landowner's discretion, which is offered to protect the landowner in a market perceived to be rising. The timing of closing and site service work would need to be determined on a case-by-case basis depending on status of associated Options and/or on other factors relating to title or survey.

4.3 Total Cumulative Incentives

DEP proposes that the incentives described above may be combined in any number of ways to further enhance landowner interest and participation in the SAP. For example, a property with 89% SWC ($2,000 incentive payment) and a FMV of $28,000 ($3,000 incentive payment), which requires subdivision ($1,000 incentive payment), would receive $6,000 in payments in addition to the purchase price to be paid during the contract period. A property with 87% SWC ($2,000 incentive payment) and a FMV of $45,000 (no incentive payment) which requires subdivision (no incentive payment because it is over the $40,000 FMV threshold) would receive $2,000 in payments in addition to the purchase price to be paid during the contract period. A property with 78% SWC (not high enough to receive the SWC incentive payment) and a FMV of $36,000 ($3,000 incentive payment) which requires subdivision ($1,000 incentive payment) would receive a total of $4,000 in addition to the purchase price.

4.4 Non-Financial Incentive Tools

In addition to incentive payments, DEP and stakeholders have developed and propose the following non-financial tools to increase landowner participation in SAP.

A. Conveyance of SAP-Acquired Properties to Third Parties

Some communities within the Schoharie basin have comprehensive recreational plans that include public access trails planned for properties that are SAP-eligible. Since certain trails may not be consistent with DEP interests, DEP is amenable to creating a process that would allow for third parties such as municipalities and/or land trusts to accept ownership of properties acquired through SAP, provided that land management is consistent with water quality protection and that acquisitions are consistent with requirements of the MOA[4], WSP, and FAD, which includes among other things the obligation to convey a conservation easement to New York State on all lands acquired in fee simple. DEP is committed to continue working with stakeholders toward this goal.

B. SAP-Friendly Subdivision and/or Zoning Ordinances

Another potential SAP incentive would be to modify local ordinances to allow for subdivisions currently prohibited by local ordinance, so that wetter portions of parcels could

[4] The Memorandum of Agreement, signed by watershed stakeholders in 1997.

become eligible for acquisition while leaving behind developable land for future community growth. DEP and stakeholders spent considerable time discussing how this might be accomplished in the context of conventional appraisal methodologies, which employ *Highest and Best Use*[5] principles. The challenge is that municipalities currently require that to adjust their ordinances, (1) the subject parcel must be stated (in the local resolution or plat approving the subdivision) as intended for SAP acquisition, and (2) subdivision plats for otherwise unapprovable lots are stamped as "development prohibited" (or similar) because septic fields are impossible to site or have not been proved out. Both of these concepts run against *Highest and Best Use* as considered by typical appraisals, and would limit the properties to low-value activities such as recreational use, resulting in very low appraised values; the proposed process would thus undermine the goal of creating landowner incentives to sell. DEP is willing to continue discussing possible solutions with stakeholders.

C. Increased municipal outreach

During stakeholder discussions, CCCD stated that it intends to increase municipal outreach to better understand local community goals and to seek pre-solicitation planning input from local officials within hamlet areas. If successful, this could result in one or more municipalities 'opting in' their hamlet-designated areas for the SAP, thus incentivizing and increasing landowner participation. DEP supports this approach as one of the non-financial incentives.

5. Conclusion

The 2017 FAD requires development of potential incentives that could serve to increase landowner participation in the SAP. To achieve this, DEP convened stakeholder meetings throughout 2018 and early 2019 to brainstorm ideas and develop them into viable proposals. This report details the following SAP incentives proposed for implementation in the Schoharie basin as part of the pilot SAP:

1. Financial Incentives:
    a. Revise the existing model purchase contract to provide the following new payments, distinct from FMV, to sellers:
        i. $2,000 for properties with over 85% SWC; and/or
        ii. $3,000 for properties valued at under $40,000; and/or
        iii. $1,000 for properties requiring subdivision that are valued under $40,000.
    b. Develop a new purchase contract which includes an Option Agreement to provide for annual payments equal to the larger of $500 or 3% of the appraised FMV of the property. This Option is intended to facilitate greater protection of water features on multiple adjacent properties that collectively become more compelling than one would as a stand-alone project. By offsetting carrying costs for sellers of certain types of properties, this proposal could incentivize greater participation of landowners.

[5] The Fifth Edition of The Dictionary of Real Estate Appraisal by the Appraisal Institute defines Highest and Best Use as: "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value."

2. Non-Financial Incentives:
    a. Continue to discuss with interested stakeholders, in particular New York State in regard to the need for a conservation easement applicable to properties acquired with DEP funding, how ownership of SAP properties might be taken on by third parties in certain cases.
    b. Continue to discuss with interested towns how local subdivision ordinances might be revised to allow for subdivisions applicable to the SAP in ways that would avoid reducing FMV.
    c. Continue to discuss with interested towns and villages how they may opt in to the SAP for designated hamlets.

End