

**New York City Department of Environmental Protection
Bureau of Water Supply**

**Land Acquisition Program
Non-Financial Incentives for the Streamside Acquisition Program**

December 2021

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



Prepared by: DEP, Bureau of Water Supply

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 Reservoir basin and funded through the City's Land Acquisition Program (LAP). The New York City Department of Environmental Protection (DEP) developed the SAP 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 began contracting with CCCD in July 2015 to administer the pilot SAP and the first landowners were solicited in 2016.

The 2017 Filtration Avoidance Determination (FAD) requires the City to continue implementing the pilot SAP. The 2017 FAD also requires that the City convene a working group of stakeholders to explore enhanced payments and other incentives that might increase landowner and municipal participation in the SAP. With input from stakeholders, DEP developed an initial set of financial and non-financial incentives focusing on municipal outreach and payments to landowners, which was submitted to the New York State Department of Health (NYSDOH) in March 2019. NYSDOH approved these incentives in September 2019 and requested that DEP develop and submit an implementation schedule for the SAP incentives.

In October 2019, DEP submitted a proposed schedule to begin implementing certain SAP financial incentives during 2020. For the two primary non-financial incentives (determine whether revisions to local subdivision ordinances might facilitate SAP parcel configurations, and explore a process through which third parties could accept ownership of fee simple or conservation easements acquired via the SAP), DEP proposed holding another round of stakeholder meetings during 2020-2021, and submitting a final report to NYSDOH in late 2021 that fleshes out these two incentives based on additional stakeholder discussions and collaboration with CCCD over the past two years. This report fulfills the 2017 FAD requirement for exploring enhanced payments and other incentives that might increase SAP participation.

Program Status

Since inception of the SAP, CCCD has solicited 328 properties¹ comprising 3,340 acres with an average property size of 10.2 acres and average surface water criteria (SWC) of 91.8%. Of these CCCD responded to interested landowners whose properties were deemed of interest, and ordered appraisals on 64 properties² representing 19.5% of solicited properties and 16.0% of solicited acres. Table 1 provides summary statistics for all 64 properties appraised to date. It should be noted that for those properties that have closed, the fair market value (FMV) does not necessarily represent the final purchase price because it may be adjusted for certain incentive payments and/or a difference between expected and surveyed acreage. Also, the eight landowners who have "accepted purchase offers" include those with verbal acceptances and those having contracts in transit for signatures.

¹ As used in this report, "property" refers to land in a single project, whether one or more tax parcels.

² Excludes repeat appraisals of the same property, when updates or reconfigurations require follow-up appraisal reports; data in the March 2019 deliverable included multiple appraisals of the same property.

Table 1. Summary statistics for all SAP projects appraised as of November 24, 2021.

	Landowners	Acres	SWC	FMV
Purchase Offers Refused	24	210.6	85%	\$1,319,516
Rescinded Contracts	2	10.7	97%	\$87,000
Purchase Offers Out	1	17.3	93%	\$236,325
Accepted Purchase Offers	8	55.6	85%	\$548,810
Executed Contracts Yet to Close	4	42.1	84%	\$186,325
Closed	25	197.8	73%	\$1,383,449
Total:	64	534.1	n/a	\$3,761,425
Average:	n/a	8.3	81%	\$58,772

Existing SAP Incentives

Prior to the 2017 FAD, DEP and CCCD had already implemented various incentives to increase landowner participation in the pilot SAP, such as increasing the size of down payments and reimbursing landowners for the removal of debris or improvements, and certain subdivision costs. Beginning in 2020, DEP and CCCD began implementing several new financial incentives that were developed collaboratively by watershed stakeholders and approved by NYSDOH pursuant to the 2017 FAD. Below is a brief summary of existing SAP incentives.

Down Payments

The size of down payment is prescribed by SAP policy. If the FMV of a property is under \$10,000, the 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, the SAP provides a \$5,000 down payment, which is also considerably higher than core LAP or market standards. 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 will receive more money earlier in the contract process. To date, 13 closed deals and three pending purchase contracts have taken advantage of these incentives.

Reimbursement for Debris Removal

Properties with streams tend to flood and collect debris, so there can be significant cleanup issues associated with properties containing streams. 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. To date, three landowners have taken advantage of this incentive.

Reimbursement for Removal of Improvements

As with standard LAP projects, SAP sellers are reimbursed up to \$3,000 for the removal and decommissioning of the following improvements regardless of FMV: (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. To date, two landowners have taken advantage of this incentive.

Reimbursement for Subdivision Costs

Sellers are reimbursed up to \$5,000 for certain costs associated with subdivisions where local approval is needed to facilitate acquisition. This includes a survey of areas not being acquired, other site services such as percolation tests, or other engineering items 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 the SAP. To date, ten closed projects and three pending purchase contracts have taken advantage of this incentive.

Incentive Payments

As developed pursuant to the 2017 FAD, the following three financial incentives became available to owners of certain SAP-eligible properties starting in 2020, and are cumulative where properties contain more than one benefiting feature: (1) landowners whose properties contain at least 85% SWC receive a \$2,000 incentive payment; (2) landowners whose properties are valued at \$40,000 or less receive a \$3,000 incentive payment; and (3) landowners whose properties are valued at \$40,000 or less and require subdivision receive a \$1,000 incentive payment. To date, five closed projects and three pending purchase contracts have taken advantage of one or more of these newer financial incentives.

Option Contract

Also developed pursuant to the 2017 FAD, the SAP now offers a Purchase Option for situations where more than one landowner is required to create a compelling SAP acquisition by combining properties, and it becomes necessary to incentivize several landowners to sign purchase agreements. For these situations, a Purchase Option has been structured to allow periodic payments to potential sellers to bind them to sell at a future time when one or more properties are deemed ready to acquire. Although this newer incentive has been available since June 2020, no Purchase Options have been executed yet due mainly to the pandemic-induced pause in solicitation activities.

Proposed New SAP Incentives

When DEP initially proposed a suite of new SAP incentives in March 2019, two of the non-financial incentives (determine whether revisions to local subdivision ordinances might facilitate SAP parcel configurations, and explore a process through which third parties could accept ownership of fee simple or conservation easements acquired via the SAP) were deemed to require additional input from watershed stakeholders. Starting in November 2020 and continuing through most of 2021, DEP held a series of meetings for the full group of stakeholders and a smaller subcommittee to begin fleshing out details for each of the non-financial incentives. DEP

convened the final stakeholder meeting in October 2021, during which the following SAP incentives were finalized.

Model Subdivision Ordinance

For acquisitions that require subdivisions, LAP policy is to adhere to the “home rule” principle for local zoning and ordinances by avoiding variances and waivers to create subdivisions; in other words, eligible vacant lots are fully approved pursuant to local law. This ensures the City acquires land that can indeed be subdivided and prospectively developed; properties that do not meet local ordinances cannot be easily subdivided and thus should present lesser threats to water quality. As part of the new suite of SAP incentives, and consistent with input from CCCD, the Coalition of Watershed Towns (CWT), and watershed stakeholders, DEP proposes the following model subdivision ordinance language for consideration by West of Hudson watershed towns, to enable the creation of parcels for acquisition by the SAP that would not otherwise be approvable under existing local laws.

“Notwithstanding any other provision of this law, the Planning Board may approve the subdivision of land that creates up to two lots which do not meet some or all of the requirements of this law provided that one lot is under purchase contract with the City of New York and/or another entity as part of the City of New York’s Streamside Acquisition Program (SAP) as authorized by a water supply permit issued by the New York State Department of Environmental Conservation (and therefore such lot will be subject to a conservation easement granted to that Department). The second lot, which is not subject to the SAP purchase contract, should, to the maximum extent practicable, meet the minimum dimensional requirements of lots and must have access to a public road. The second lot must either contain an existing residence or commercial structure or be capable of accommodating such a building consistent with any applicable regulations, including but not limited to regulations for the construction of a well and septic system. Any application for the subdivision of a lot under this section shall also demonstrate a means of physical access to both proposed lots, whether by easement, frontage on a public highway, or other means. Any subdivision approved pursuant to this section shall be null and void if said purchase contract is terminated or rescinded without the transaction being completed.”

Third-Party Ownership

Perhaps due to many properties being successfully acquired by local municipalities through the New York City-Funded Flood Buyout Program (NYCFFBO), watershed stakeholders proposed the potential interest of municipalities or not-for-profit organizations in acquiring properties through the SAP, which would avoid City ownership. Some stakeholders suggest this approach might encourage hamlets to “opt-in” to the SAP where certain acquisitions could serve the dual purpose of protecting water quality and providing recreational corridors or other compatible uses consistent with local comprehensive plans. DEP subsequently discussed with CCCD and other stakeholders if and under what circumstances third parties might want to acquire ownership of real property interests that are secured through the SAP. Attached to this

report is the proposed criteria and process developed by DEP, CCCD, CWT, and other watershed stakeholders to support third-party transactions under the SAP.

Summary

The two non-financial SAP incentives presented in this report were developed in consultation with many watershed partners and stakeholders. DEP suggests that the next step for implementing the subdivision ordinance is for CWT to distribute the proposed model language to municipalities in the Schoharie basin, where the pilot SAP is currently restricted. If the SAP is expanded beyond the Schoharie basin pursuant to a WSP determination by the New York State Department of Environmental Conservation (NYSDEC) and associated requirements of the 2017 FAD, DEP anticipates CWT distributing the model language to the Delaware County Planning Department and other local municipalities throughout the West of Hudson watershed.

While there was general consensus among all stakeholders on the process document for third party ownership of SAP-acquired properties, there remain a few issues to resolve prior to finalizing this process. One key issue requires agreement on the stewardship obligations to be required of third party owners, including potential sources of stewardship funding; this subject will require further discussion. Once the stewardship issue is addressed, DEP expects to apply for a WSP modification that allows for third party ownership of SAP-acquired real property interests. If a WSP modification is granted, the City expects to work with NYSDEC, CCCD and CWT to draft a conservation easement which will be applied to all SAP properties acquired in fee simple by eligible third parties.

**Process for Third Party Ownership of Properties Acquired
Under the Streamside Acquisition Program**

Purpose/Benefit

Pursuant to the 2017 Filtration Avoidance Determination (“FAD”), the New York City Department of Environmental Protection (“DEP”) issued a report in March 2019 proposing incentives to increase landowner participation in the Streamside Acquisition Program (“SAP”). In that report, third party ownership of properties to be acquired through SAP (“Community SAP Ownership”) was identified as a potential tool that could meet multiple stakeholder objectives, and/or increase the likelihood that municipalities or non-profit entities would opt to acquire SAP properties (“Community SAP Owners”) pursuant to the 1997 Watershed Memorandum of Agreement (“MOA”).

The purpose of this document is to outline DEP’s proposed process and criteria for acquisitions of properties for Community SAP Ownership in fee simple or conservation easement (“CE”).

Criteria for Community SAP Ownership

- A. Community SAP Ownership will be considered only where the landowner, the Catskill Center, DEP and the local municipality (town or village) in which the property is located agree in writing that the property is a good candidate for Community SAP Ownership. Properties eligible for SAP acquisition but deemed unsuitable for Community SAP Ownership will remain eligible for DEP ownership.
- B. The Community SAP Owner must be a municipality, county, New York State agency, or 501(c)(3) organization with a mission focused on conservation, land protection or public recreation. Eligible Community SAP Owners to hold CEs must be qualified to hold CEs pursuant to Section 49-0305 of the New York State Environmental Conservation Law.
- C. All properties under consideration for acquisition via SAP must meet SAP eligibility criteria as established in the 2010 Water Supply Permit (“WSP”) Special Condition 29d, or such eligibility for SAP as may be set forth in any future FAD or WSP amendment or update.

Process for Third-Party Acquisitions of SAP Properties

1. Standard SAP Procedures. Except as indicated in this document, SAP acquisition of properties to be held by third parties will be conducted in accordance with existing SAP land acquisition procedures.

2. Project Initiation. Like all SAP acquisitions, SAP third-party acquisitions may be initiated in one of four ways:
 - a. Outside Excluded Areas (a.k.a. designated hamlets):
 - i. The Catskill Center may directly contact owners of SAP-eligible properties;
 - ii. Landowners may directly contact the Catskill Center to express interest in SAP.
 - b. Within Excluded Areas (a.k.a. designated hamlets):
 - i. A municipality may pass a resolution authorizing SAP solicitation within all or part of an Excluded Area, after which the Catskill Center may directly contact such owners of SAP-eligible properties;
 - ii. Landowners may contact SAP directly to express interest, in which case the Catskill Center will suggest that they approach the Town Board regarding a potential resolution authorizing a SAP purchase of the property.
3. Consideration of Community SAP Ownership. During the initial stages of consideration of a potential SAP acquisition (solicitation, site inspection, and pre-appraisal discussions), the landowner, the Catskill Center and DEP will identify whether the property might be a good candidate for Community SAP Ownership, or the municipality may suggest good candidate properties to the Catskill Center.
4. Confidentiality. In order to protect landowner confidentiality, and in order for a property to be considered for Community SAP Ownership, the landowner must provide written permission to allow the Catskill Center to discuss specific details of the project with the municipality and the potential Community SAP Owner.
5. Community Consultation. In instances where the Catskill Center, the landowner, and DEP all agree that a property might be a good candidate for Community SAP Ownership, the Catskill Center will reach out to prospective Community SAP Owners to assess interest. If a prospective Community SAP Owner which is not the local municipality is under consideration, then the Catskill Center will provide written notice to the municipality in which the property is located, describing the proposed Community SAP Ownership and requesting written comments, agreement or objections, within 60 days. In cases where a municipality objects in writing to Community SAP Ownership, Community SAP Ownership will not be pursued, but SAP-eligible parcels may still be acquired by DEP as usual.
6. Four-Party Purchase Contract. Interested and eligible Community SAP Owners should state in writing that they understand the process will include their participation in a four-party purchase contract with the City, the Catskill Center and the seller.

7. For Fee Simple Acquisitions:

- a. Community SAP Owners must agree in writing to assume full responsibility for any/all property stewardship costs and property taxes, if applicable; DEP and watershed stakeholders agree to continue discussing the source and amount of funding necessary to steward these properties in perpetuity.
- b. All third party owners will be required to convey a CE to the New York State Department of Environmental Conservation (NYS DEC) on the property as agreed to by watershed stakeholders, similar to the CE that has been used for municipal acquisitions in the New York City Funded Flood Buyout Program.
- c. DEP shall have an exclusive and irrevocable right of first refusal interest to acquire the property for \$10 that would be triggered if a non-municipal Community SAP Owner becomes legally dissolved or declared insolvent consistent with the New York Not-for-Profit Corporation Law, or otherwise ceases to operate stream conservation activities or is otherwise unable to perform its obligations;

8. For SAP CE Acquisitions:

- a. A draft SAP CE, approved by the City, in which the City will have the right to enforce the terms of the CE as a third-party beneficiary, will be attached to the purchase contract prior to execution;
- b. Community SAP Owners must agree in writing to assume full responsibility for any/all property stewardship costs and property taxes, if applicable; DEP and watershed stakeholders agree to continue discussing the source and amount of funding necessary to steward these properties in perpetuity.