



Westchester Joint Water Works

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February 1, 2024

Hon. Vedat Gashi, Chairman and Honorable Members
Westchester County Board of Legislators
148 Martine Avenue, 8th Floor
White Plains, NY 10601

Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison

Dear Chairman Gashi and Members of the County Board of Legislators:

In my previous letter to the County Board of Legislators, dated June 15, 2023 (copy attached), WJWW formally requested the County to approve the proposed real estate transaction (the "Exchange Transaction") by which the County would deed title of the 13.4-acre County-owned parcel adjoining the County airport (the "County Parcel") to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "WJWW Parcel"). In a subsequent letter to the County Board of Legislators, dated June 28, 2023 (copy attached), I wrote to inform the County that on June 27, 2023, the New York State Supreme Court for Westchester County dismissed the only lawsuit that was filed to challenge the proposal to locate the Filtration Plant on the County Parcel.

WJWW is a not-for-profit public benefit corporation formed in 1927 by the State Legislature at the request of the Town/Village of Harrison, Town of Mamaroneck and Village of Mamaroneck to operate a public water system.

I am writing again to update the County on enforcement actions brought against WJWW and its three constituent municipalities, by the U.S. Department of Justice (USDOJ) on behalf of the U.S. Environmental Protection Agency (USEPA), and the New York State Attorney General's office (NYSAG) on behalf of the New York State Department of Health (NYSDOH). In my previous letter to the County Board of Legislators dated June 15, 2023, I indicated that the USDOJ provided notice, in letters dated April 29, 2021 (copy attached) and May 26, 2021 (copy attached), to WJWW and its constituent municipalities, the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck, to comply with the Safe Drinking Water Act (SDWA) and an Administrative Order (AO) issued by the USEPA, dated November 26, 2019.

Federal Enforcement History and Potential Liability without Settlement

In 2019, monitoring data collected by WJWW for the first, second and third quarters of the year established a violation of the Haloacetic Acids (HAA5) maximum contaminant level (MCL). On November 26, 2019, the USEPA issued an Administrative Order (AO) to WJWW under the federal Safe Drinking Water Act (SDWA). The USEPA AO required WJWW to: (i) take certain interim measures (such as water flushing) to reduce the likelihood of a recurrence of the MCL violation and (ii) construct a Filtration Plant to reduce the organic content of the Rye Lake water in the WJWW system, providing a permanent means of reducing HAA5 concentrations. The USEPA AO contained a deadline of October 1, 2020 for completion of the State Environmental Quality Review Act (SEQRA) process for the Filtration Plant, and January 1, 2022 to obtain all permits and commence construction of the Filtration Plant.

Since receiving the USEPA AO, WJWW has complied with the interim measures specified therein, but WJWW could not meet the USEPA AO's schedule for construction of the Filtration Plant due to delays attendant to the SEQRA process, the elapse of time in the County's consideration of the land swap, and delays in local land use permitting dependent upon entering into the contract for the land swap.

WJWW faces significant federal enforcement liability for the violation of the SDWA MCL during the nine-month period in 2019. Civil penalties under this law are assessed in federal court. The maximum civil penalty for statutory violations in 2019 was \$57,317 per day of violation (approximately \$15.7 million for the 9-month violation period). In addition, the violation of the USEPA AO requiring that WJWW build and operate a filtration plant for its Rye Lake water source as a means of reducing the likelihood of future violations of the MCL. As set forth above, the USEPA AO required WJWW to complete the SEQRA process for the filtration plant by October 1, 2020 and begin construction by January 1, 2022. The current maximum statutory penalty under the SDWA is now \$67,544 per day (approximately \$24.7 million per year). Under the current schedule, construction of the filtration plant is scheduled to commence in approximately June 2025 – 3½ years after the deadline in the USEPA AO. The maximum statutory penalties for violating the USEPA AO (at \$24.7 million per year) are approximately \$86.5 million. Thus, the maximum civil penalty is approximately \$102.2 million (\$15.7 million for the 9-month MCL violation and \$86.5 million for violation of the USEPA AO).

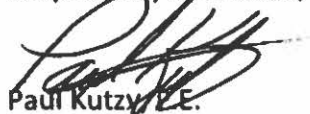
On April 29, 2021, USDOJ, representing the USEPA, sent WJWW a letter stating that the USEPA has referred the matter to USDOJ for civil litigation enforcement in federal court under the SDWA. The USDOJ letter alleged violations of the SDWA by failing to comply with the HAA5 MCL in the first three quarters of 2019 and failing to meet the Filtration Plant milestone dates in the USEPA AO. On May 26, 2021, USDOJ sent a second letter with the same substantive allegations directed to WJWW's three member municipalities (the Town/Village of Harrison, the Town of Mamaroneck and the Village of Mamaroneck). The terms of the proposed consent decree, when approved by the federal court, will supersede the terms of the USEPA AO as to the schedule for completing the Filtration Plant. The settlement injunctive milestones will become enforceable by the federal court.

New York State Enforcement History and Potential Liability
Without Settlement

On June 9, 2004, in a lawsuit brought by the NYS Attorney General on behalf of the New York State Department of Health, the NY State Supreme Court issued a permanent injunction requiring WJWW to build the Filtration Plant to comply with the State Sanitary Code. The injunction was affirmed on appeal and remains in effect today. Due to WJWW's inability to meet the terms of the injunction, approximately \$74.8 million of penalties have accrued under the terms of the State Court judgment and a further penalty of \$13,750 continues to accrue each day (approximately \$5 million per year). Under the terms of the state court judgment, penalties will continue to accrue in the amount of \$13,750 per day until the filtration plant is constructed and begins operation on or about December 31, 2028. Accordingly, in addition to the \$74.8 million in past penalties, WJWW is facing the prospect of an additional \$25 million in penalties over the next five years. These penalties are mandatory (non-discretionary) pursuant to the terms of the state court judgment.

In closing, it should be emphasized that by March 31, 2024, WJWW to obtain County authorization of the real estate transaction by which WJWW is seeking to acquire ownership of the land for the site of the Filtration Plant, is the first critical milestone in the settlement negotiated with the USDOJ and NYSAG.

Respectfully submitted,



Paul Kutzy, P.E.
Manager, WJWW

cc: Hon. George Latimer, County Executive
Hon. Kenneth Jenkins, Deputy County Executive
Joan McDonald, Director of Operations
Sunday Vanderberg, Clerk of the County Board of Legislators
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck
Hon. Sharon Torres, Mayor, Village of Mamaroneck
Hon. Richard Dionisio, Supervisor/Mayor, Town/Village of Harrison
Lori Lee Dickson, Esq., WJWW General Counsel



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

April 29, 2021

Via E-mail and Federal Express

Lori Lee Dickson, Esq.
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Re: Violations of the Safe Drinking Water Act and EPA Administrative Order by
Westchester Joint Water Works and its Constituent Municipalities

Dear Ms. Dickson:

The U.S. Environmental Protection Agency ("EPA") has referred certain violations of the Safe Drinking Water Act ("SDWA") to the U.S. Attorney's Office for the Southern District of New York for litigation in the U.S. District Court for the Southern District of New York.

These violations relate to the failure of Westchester Joint Water Works and its constituent municipalities, the Town of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck (collectively, "WJWW"), to comply with the SDWA and an administrative order ("AO") issued by EPA dated November 26, 2019. WJWW failed to comply with the maximum contaminant level ("MCL") for five regulated haloacetic acids ("HAA5") and, in particular, exceeded the MCL for HAA5 during the first, second, and third quarters of 2019. While WJWW has implemented interim measures to prevent HAA5 MCL exceedances in the short term, it is presently in violation of the SDWA and the AO, including the requirement that it construct a filtration plant at Rye Lake.

Under the SDWA, the United States may bring a civil action in federal district court to require compliance with any applicable requirement of the statute or to enforce compliance with an AO. 42 U.S.C. § 300g-3(b). The court is empowered to issue such judgment as is necessary to protect the public health, and may also impose on the violator a civil penalty for each day of violation.

We understand that you have represented WJWW for certain purposes in related matters in the past and would appreciate if you can confirm whether you will do so for purposes of the United States' anticipated enforcement action. If so, we would like to arrange a meeting to discuss these violations, and to discuss the terms of a potential judicial consent decree resolving the matter simultaneously with the commencement of litigation. Please contact me at your earliest convenience so that we can set up a meeting to discuss these issues. I can be reached using the contact information below.

Thank you for your cooperation.

Sincerely,

AUDREY STRAUSS
United States Attorney

By: 

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U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
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May 26, 2021

Via Federal Express

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Re: Violations of the Safe Drinking Water Act and EPA Administrative Order by
Westchester Joint Water Works and its Constituent Municipalities

Dear Counsel:

The U.S. Environmental Protection Agency (“EPA”) has referred certain violations of the Safe Drinking Water Act (“SDWA”) to the U.S. Attorney’s Office for the Southern District of New York for litigation in the U.S. District Court for the Southern District of New York.

These violations relate to the failure of Westchester Joint Water Works (“WJWW”) and its constituent municipalities, the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck, to comply with the SDWA and an administrative order (“AO”) issued by EPA dated November 26, 2019. WJWW failed to comply with the maximum contaminant level (“MCL”) for five regulated haloacetic acids (“HAA5”) and, in particular, exceeded the MCL for HAA5 during the first, second, and third quarters of 2019. While WJWW has implemented interim measures to prevent HAA5 MCL exceedances in the short term, it is presently in violation of the SDWA and the AO, including the requirement that it construct a filtration plant at Rye Lake.

Under the SDWA, the United States may bring a civil action in federal district court to require compliance with any applicable requirement of the statute or to enforce compliance with

an AO. 42 U.S.C. § 300g-3(b). The court is empowered to issue such judgment as is necessary to protect the public health, and may also impose on the violator a civil penalty for each day of violation.


We have been in contact with counsel for WJWW and have begun discussions regarding the United States' anticipated enforcement action. Because the Town/Village of Harrison, the Town of Mamaroneck, and the Village of Mamaroneck are also owners and/or operators of the public water system, the United States anticipates that a judicial resolution of this matter will involve the municipalities as parties.

We would like to arrange a meeting to discuss these violations, and to discuss the terms of a potential judicial consent decree resolving the matter simultaneously with the commencement of litigation. Please contact us at your earliest convenience so that we can set up a meeting to discuss these issues. We can be reached using the contact information below.

Thank you for your cooperation.

Sincerely,

AUDREY STRAUSS
United States Attorney

By: 
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Westchester Joint Water Works

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June 15, 2023

Hon. George Latimer
Westchester County Executive
148 Martine Avenue, 9th Floor
White Plains, NY 10601

Hon. Vedat Gashi, Chairman and Honorable Members
Westchester County Board of Legislators
148 Martine Avenue, 8th Floor
White Plains, NY 10601

Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison

Dear County Executive Latimer, Chairman Gashi and Members of the County Board of Legislators:

WJWW is a not-for-profit public benefit corporation formed in 1927 by the State Legislature at the request of the Town/Village of Harrison, Town of Mamaroneck and Village of Mamaroneck to operate a public water system. WJWW supplies water to its three member municipalities for their retail sale to their water consumers and to portions of the cities of Rye and New Rochelle. WJWW also supplies water on a wholesale basis to the Village of Larchmont and Veolia, which sells water to the City of Rye, Village of Rye Brook and Village of Port Chester. In all, up to 100,000 County residents depend on WJWW to provide clean, safe drinking water.

To comply with federal and state drinking water regulations, and to maintain the safety of the water delivered to County residents, WJWW is required to construct a Filtration Plant to treat the water that WJWW withdraws from the Kensico Reservoir. The Filtration Plant is a substantial engineering and construction project with a capital cost of approximately \$138 million. The construction of the Filtration Plant is an urgent matter of public health: the U.S. Environmental Protection Agency ("EPA"), in an administrative order issued to WJWW in 2019, determined that the Filtration Plant is required to address WJWW's recent violations of EPA's maximum contaminant level ("MCL") for haloacetic acids ("HAAS"), as discussed in further detail below.

Since 2019, WJWW has been working with the County to undertake the evaluations and legal processes required to construct the Filtration Plant on a vacant 13.4-acre parcel of County-owned land at the periphery of the County airport (the "County Parcel"). This

effort has included the execution of a 2021 Memorandum of Understanding between the County and WJWW, public hearings, and the preparation of all required SEQRA documents, the Storm Water Pollution Prevention Plan for the County Parcel (the "**SWPPP**"), and the final engineering documents for the construction of the Filtration Plant at the County Parcel. With the County's consent, WJWW has also submitted permit applications to state and local agencies.

On May 26, 2023, the New York City Department of Environmental Protection ("**NYCDEP**") approved the SWPPP, confirming that the construction of the Filtration Plant at the County Parcel will not harm the Kensico Reservoir, will have no stormwater impact on downstream properties, and will comply with the stringent NYCDEP standards for the protection of Kensico Reservoir and its watershed.

In light of the NYCDEP approval, WJWW is now formally requesting the County to approve the proposed real estate transaction (the "**Exchange Transaction**") by which the County would deed title of the 13.4-acre County Parcel to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "**WJWW Parcel**").

To assist the County in evaluating the request to approve the Exchange Transaction, this letter:

- provides the required background information, including the location of the County Parcel and WJWW Parcel;
- describes the history of WJWW's effort to construct the Filtration Plant;
- summarizes the terms of the contemplated Exchange Transaction;
- summarizes the Filtration Plant's environmental impacts;
- explains why the County Parcel is the best location for the Filtration Plant; and
- explains why it is critically important that the County consider WJWW's request soon, so as not to further delay construction of the Filtration Plant.

As requested, attached are:

- A draft of the real estate contract to effectuate the Exchange Transaction (Tab A);
- A Federal Aviation Administration ("**FAA**") letter regarding the Exchange Transaction (Tab B);
- Environmental review materials – the Draft Environmental Impact Statement ("**DEIS**") (Tab C), the Final Environmental Impact Statement ("**FEIS**") (Tab D),

SEQRA Findings (Tab E), and a resolution regarding minor post-FEIS site plan changes (Tab F);

- The SWPPP (Tab G) and NYCDEP's approval of the SWPPP (Tab H);
- Final design documents (Tab I).
- Basis of estimate cost report (Tab J)

Public comments on the Filtration Plant are included in FEIS Appendix A (Tab D).

Background

The map below shows the location of: (i) Rye Lake (a component of the Kensico Reservoir); (ii) the location of the existing Rye Lake Pump Station; (iii) the existing raw water transmission main that conveys water from the Pump Station to the Purchase Street Storage Tanks; (iv) the County Parcel on Purchase Street, adjacent to this transmission main; and (v) the WJWW Parcel:



The areas bounded by the dashed orange lines depict the two 13.4-acre tracts that would be subject to the proposed Exchange Transaction. The Filtration Plant must be

located in this general area because the Filtration Plant will filter the raw water from the Rye Lake Pump Station before the water is conveyed to the Purchase Street Storage Tanks.

History of WJWW's Effort to Build the Filtration Plant

In 1994, an engineering firm retained by WJWW prepared a site evaluation report to identify possible locations for the Filtration Plant. The report ranked the County Parcel as the overall best location for the facility. See FEIS, Appendix C, p. at 7 (discussing "Site 3"). The report deemed the County Parcel superior to all other locations because: (i) the site fronts Purchase Street (a State Highway also known as Route 120); (ii) the Filtration Plant would therefore be in close proximity to the existing WJWW water transmission main beneath Purchase Street, thereby minimizing cost and construction impacts; (iii) the County Parcel has easy access, via Purchase Street, to Interstate 684, facilitating truck traffic; (iv) the County Parcel is zoned for business use (rather than residential use); and (v) the existing trees at the County Parcel would screen views of the Filtration Plant from vantage points in the surrounding area. *Id.* at 4, 8 & Table 8.

The same report deemed the current WJWW Parcel (which had yet to be purchased by WJWW) as the second most suitable location for the Filtration Plant. *Id.* at 8 & Table 10 (discussing "Site 5"). The report noted, however, that unlike the County Parcel, the WJWW Parcel is zoned for residential use and that there would be greater visual and construction noise impacts to the surrounding neighbors. *Id.*

At that time, however, Westchester County declined to make the County Parcel available to WJWW for construction of the Filtration Plant. As a result, in 1998, in anticipation of the potential need to build a Filtration Plant for its Rye Lake water source, WJWW acquired the WJWW Parcel and adjoining land that collectively comprised a 39-acre parcel with frontage on Purchase Street.

In 2000, WJWW sold approximately two-thirds of the 39-acre parcel to Sylvan Development, retaining the WJWW Parcel and an easement running from Purchase Street to the WJWW Parcel. See DEIS Figure 5-2.

On June 9, 2004, the Supreme Court for Westchester County issued a permanent injunction requiring WJWW to build the Filtration Plant in order to bring its system into compliance with the New York State Sanitary Code, which regulates public drinking water systems. That injunction remains in effect today.

After the Court's ruling, WJWW pursued an unsuccessful appeal and an unsuccessful petition to the New York State Department of Health ("NYSDOH") to forgo construction of a costly filtration plant in favor of a less costly ultraviolet treatment facility.

Thereafter, WJWW prepared to proceed with construction of the Filtration Plant on the WJWW Parcel. The project was identified as exempt from SEQRA pursuant to the Type II category that is today codified at 6 N.Y.C.R.R. § 617.5(c)(35) (“a particular course of action specifically required to be undertaken pursuant to a judgment or order”). WJWW submitted applications for site plan approval and a special exception use permit to the Harrison Planning Board, which issued a negative declaration under SEQRA and granted certain approvals on June 21, 2005. A local property owner (Sylvan Development), however, thereafter brought a raft of lawsuits challenging different permits and approvals for the proposed facility at the WJWW Parcel.

As a result, the Planning Board rescinded its prior negative declaration and approvals, determined that it would serve as the lead agency for the SEQRA review, and issued a positive declaration under SEQRA on June 11, 2007, thereby requiring preparation of an environmental impact statement (“**EIS**”) prior to the Planning Board’s decision-making on WJWW’s applications to build the facility at the WJWW Parcel.

In accordance with a scope determined by the Planning Board, WJWW proceeded to prepare a draft EIS, which the Planning Board certified as complete on September 25, 2007. The public hearing on the draft EIS was conducted on November 15, 2007. Subsequently, the Town Planner, on behalf of the Planning Board, prepared a six-page memorandum providing review comments on the draft EIS. His review comments requested further discussion of the potential for adverse impacts on adjoining residential land and a further analysis of alternatives, including an evaluation of whether the County had changed its prior position as to the availability of airport land for the Filtration Plant and an evaluation of a regional water treatment facility instead of a WJWW-owned treatment facility.

WJWW had completed its obligations as the applicant for full compliance with the SEQRA review process by submitting a proposed Final Environmental Impact Statement to the Planning Board in July 2008. Yet the Planning Board never completed the SEQRA process for WJWW’s proposal to build the Filtration Plant on the WJWW Parcel. Without completion of the SEQRA review process, no further action could be taken to construct the Filtration Plant at that location.

As a result of the stalled Planning Board process, WJWW explored partnering on a County-lead regional water treatment and conveyance alternative. This option was further evaluated by WJWW, but ultimately, the other regional water utilities involved pursued options that did not provide treated water to WJWW’s system.

With the regional water treatment and conveyance option no longer available, WJWW then investigated the viability of constructing a pipeline for the conveyance of treated water from New York City’s Shaft 20 in Yonkers, which would eliminate WJWW’s use of untreated Rye Lake water. In 2016, the alternative was rejected due to its exorbitant cost and the identified adverse environmental impacts.

Thereafter, in 2019, as a result of further discussions between WJWW and the County, WJWW learned that the County – subject to compliance with SEQRA and other conditions – would consider the parcel exchange transaction by which WJWW would acquire the 13.4-acre County Parcel in exchange for the 13.4-acre WJWW Parcel.

As a result, WJWW’s planning efforts reverted to the original preferred alternative of locating the Filtration Plant on the County Parcel. In a letter to the County dated September 30, 2022, the FAA determined that the proposed land swap “would have no material impact on aircraft operations, at, to, or from the airport; would not affect the safety of people and property on the ground adjacent to the airport as a result of aircraft operations; and would not have an adverse effect on the value of prior Federal investment ... [and therefore] the FAA does not have the authority to ... disapprove ... the proposed project.” FAA Letter, p. 2 (Tab B).

The Terms of the Proposed Exchange Transaction

The proposed exchange contract between the County and WJWW is attached as Tab A. It provides for the County to deed title to the County Parcel to WJWW in exchange for WJWW deeding title to the WJWW Parcel to the County. WJWW provided the draft exchange contract to the County Attorney on March 7, 2023 and has not received any comments on the form of the document.

The two parcels are of the same acreage, and both are unimproved land adjoining the airport. A licensed appraiser, in reports dated March 27, 2023 and provided to the County Attorney at that time, has determined each parcel to be of the same value. Accordingly, the proposed exchange contract provides for the exchange of the parcels without additional cash consideration paid by either party.

The proposed exchange contract further provides that the transaction would “close” (*i.e.*, the titles would be exchanged by the parties pursuant to the contract) only after WJWW receives the remaining discretionary permits and approvals required for WJWW to construct the Filtration Plant at the County Parcel.

The proposed contract further provides for a process by which the County would allow the Filtration Plant to connect to the airport’s sanitary sewer system, with WJWW to bear the costs of the connection.

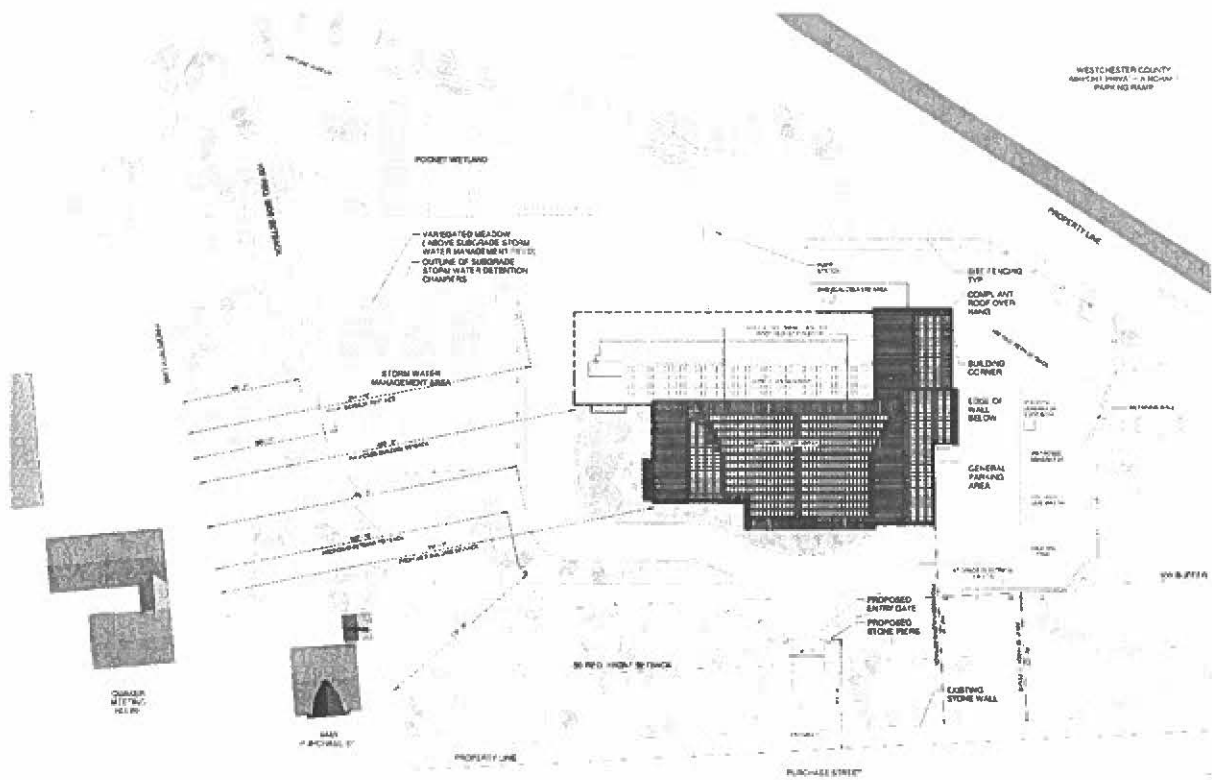
The SEQRA Process and Environmental Impacts

WJWW, as lead agency, has completed the SEQRA process for constructing and operating the Filtration Parcel on the County Parcel, as follows:

- On March 10, 2021, the Commissioner of the New York State Department of Environmental Conservation (“**NYSDEC**”) determined that WJWW would serve as the lead agency for the SEQRA review.
- On March 23, 2021, WJWW adopted a draft scope for the EIS.
- On April 13, 2021, WJWW held a duly noticed public session on the draft scope.
- On May 10, 2021, WJWW closed the public comment period on the draft scope, and thereafter considered all comments received on the draft scope and prepared a response to comment document.
- On October 26, 2021, WJWW published the final scope for the EIS.
- On April 12, 2022, WJWW accepted the DEIS as adequate and complete for public review.
- On May 25, 2022, WJWW held a duly noticed public hearing on the DEIS.
- On June 6, 2022, WJWW closed the public comment period on the DEIS.
- On September 28, 2022, WJWW published the FEIS.
- On October 12, 2022, the WJWW board enacted a resolution approving the issuance of WJWW’s SEQRA Findings Statement.

The County Board of Legislators and relevant County departments were identified as “involved agencies” and were provided with all SEQRA notices and documents throughout the process.

To assess the potential environmental impacts of the Filtration Plant, the DEIS and FEIS examined the site plan that WJWW has proposed for the facility. The site plan depicted below is similar to the one assessed in the DEIS and FEIS but reflects minor changes made after publication of the FEIS to reduce construction in the buffer area to the wetlands on the County Parcel:



The site plan locates the Filtration Plant roughly in the center of the County Parcel. The plant would be set back approximately 155 feet from Purchase Street and 288 feet from its northern neighboring property. The plant would be setback at a minimum of 100 feet from the airport property, meeting the Town of Harrison's rear and side yard setback zoning requirements. As depicted in the site plan, the many existing trees (light green) and newly planted trees (darker green) would partially screen views of the plant from Purchase Street to the west and the neighbors (a residence and house of worship) to the north.

The DEIS and FEIS assessed the environmental impacts of the Filtration Plant at the County Parcel with respect to all relevant area of potential concern, including Land Use, Zoning, and Public Policy, Community Character and Visual Impacts, Fiscal and Economic Impacts, Community Service, Utilities, Stormwater, Geology- Soils and Topography, Vegetation and Wetlands, Archaeological and Historical Resources, Traffic and Transportation, Noise, Air, Public Health, and Construction. The documents also identify numerous mitigation measures to reduce the potential for environmental impacts in these areas. The mitigation measures include:

- Restricting the area of clearing to only what is necessary to provide the space needed for essential equipment, project infrastructure, and workspaces that ensure a safe and fully functional facility.

- Implementation of a landscaping plan, including the installation of approximately 300 trees, to replace some of the invasive vegetation to be cleared, enhancing the visual quality of the development with diverse indigenous species, screening man-made structures from the street and other public vantage points, and retaining natural vegetation along the street as a buffer.
- Designing the building to comply with the dimensional zoning standards of the County Parcel's business district zoning including yard setbacks, building height, and building lot coverage, so that the building is contained within the requisite zoning envelope.
- Exterior lighting to be energy efficient and shielded and directed downward so as not to illuminate off-site areas or parts of the site that do not need to be lit.
- The façade of the building will include a partial stone veneer that resembles the stone used in walls along the street and the building will be of muted colors to blend into its surroundings. A gabled roof will make the building look less commercial. The front façade will include windows and translucent panels to provide visual interest.
- The Filtration Plant will connect to an existing sanitary main on the airport property via a four-inch force main to the Westchester County Airport Sewer Collection System to eliminate the need for onsite sewage discharge. Treatment of the wastewater will occur at the Blind Brook Wastewater Treatment Plant, which is outside of the Kensico Watershed.
- Photovoltaic arrays (solar panels) will be installed on the roof of the building to reduce demand for nonrenewable energy resources and partially offset energy and climate-related impacts.
- Preparation and implementation of a SWPPP that meets the standards and requirements of NYSDEC, NYCDEP, and the Town/Village of Harrison code.
- Utilization of dust control practices during construction, including providing a temporary truck wash off station onsite to remove dust from construction vehicles and equipment before exiting the site, applying water or calcium chloride to bare soil periodically as necessary, maintaining low onsite construction vehicle speeds, and covering stockpiles if they are to remain for more than a few days.
- Construction dump trucks will be covered when exporting from the site.
- Delineate by temporary fencing areas of clearing prior to disturbance to prevent accidental encroachment into wetlands or areas that are not to be disturbed.

- The required two emergency generators will be installed on the south side of the building, which is as far as possible from the residence and Purchase Friends Meeting House properties to the north.
- Sound barriers consisting of sound attenuated enclosures and exhaust silencers will mitigate noise from the generators and 100-foot front and side setback buffers will further reduce impacts from noise on the surrounding neighborhood.
- All construction equipment will be turned off when not in use, as New York State law requires no idling of unused equipment in excess of five minutes.
- Use of ambient sensitive self-adjusting back up alarms.
- Mufflers will be required on all equipment.
- The Project will adhere to the Town/Village of Harrison Noise Ordinance limits. No construction will take place on Sundays.
- The above ground propane storage tank and backup diesel generator tanks will be equipped with overflow fill protections and meet all applicable requirements of Federal, State, and local agencies, including secondary containment.
- Truck drivers will be directed to use major roads and highways where possible to avoid the use of residential roads and back streets. All construction truck traffic will be required to approach and depart the Site from and to the north.
- Retain reusable soil on-site to the extent practical to reduce off-site shipments/truck trips.

Based on these mitigation measures and the results of a thorough environmental review, the DEIS and FEIS concluded that locating the Filtration Plant at the County Parcel would not result in any significant impacts to the environment.

Because the County Parcel is located in the watershed of the Kensico Reservoir, the Filtration Plant and its sewer line require approvals from the NYCDEP, including its approval of the SWPPP. *See* Public Health Law § 1100; 10 N.Y.C.R.R. § 128-3.9; 15 Rules of the City of New York (“**RCNY**”) Chapter 18. To approve the SWPPP, NYCDEP must determine that the Filtration Plant will comply with rigorous standards to protect the reservoir from contamination, degradation and pollution. *See* 15 RCNY § 18-39. As noted above, on May 26, 2023, NYCDEP approved the SWPPP, confirming that the construction and operation of the Filtration Plant at the County Parcel will not harm the Kensico Reservoir and will comply with the stringent performance standards required for new construction in its watershed. Similarly, the NYC Watershed Inspector General, an office within the Environmental Protection Bureau of the New York Attorney General’s office, reviewed drafts of the SWPPP and determined that the final SWPPP had addressed each of its earlier comments.

Reasons for Locating the Filtration Plant on the County Parcel

The SEQRA Findings Statement approved by the WJWW board of trustees on October 12, 2022, selected the County Parcel as the best location for the Filtration Plant, as compared to the WJWW Parcel and the other alternatives studied in the DEIS and FEIS. All three members of the WJWW board – the Town Supervisor/Mayor of the Town/Village of Harrison, the Town Supervisor of the Town of Mamaroneck, and the Mayor of the Village of Mamaroneck – approved the resolution to issue the SEQRA Findings Statement selecting the County Parcel as the location for the Filtration Plant.

The SEQRA Findings Statement acknowledges that the WJWW Parcel has two environmental characteristics that weigh in its favor: (a) unlike the County Parcel, it is not within the Kensico Reservoir watershed; and (b) construction of the Filtration Plant at the WJWW Parcel would require the removal of approximately 366 trees with a diameter of 8" or greater, which is fewer than the approximately 408 trees of this size that would be removed to construct the Filtration Plant on the County Parcel. In considering the first issue, WJWW concluded that the Filtration Plant, as designed, will not result in adverse impacts to the Kensico Reservoir because of the Filtration Plant's comprehensive stormwater management facilities and the requirement that the facility's design, operations, construction and SWPPP comply with the stringent regulations that the NYCDEP has put into place to protect the reservoir. WJWW also noted that water treatment facilities are commonly located within the New York City watershed. As to the issue of tree removal, WJWW noted that the removal of trees at the WJWW Parcel would impact an ecologically valuable native Oak-Tulip Tree Forest as compared to the trees at the County Parcel, most of which are less ecologically valuable invasive species and Successional Southern Hardwood Forest.

Against the two considerations favoring the WJWW Parcel, the SEQRA Findings Statement weighed the following considerations favoring the County Parcel:

- The County Parcel is in a business (non-residence) zoning district, while the WJWW Parcel is in an R-2, One-Family Residence zoning district. As noted above, a key impediment to the Planning Board's completion of action on the prior SEQRA review to build the Filtration Plant on the WJWW Parcel was the perceived conflict and concerns regarding project consistency with surrounding residential land uses given that the WJWW Parcel is situated in the R-2 One-Family Residence district.
- The County Parcel is bordered to the northeast, east, southeast and south by airport-related uses. Within a ½-mile from the County Parcel there are several water supply facilities, including the Rye Lake Pump Station and ultraviolet (UV) treatment facility, and the Purchase Street Water Storage Tanks, all owned and managed by WJWW. The Rye Lake water source is also within a ½ mile from the County Parcel. Interstate 684 is approximately 500 feet from the County Parcel,

and Westchester County Airport is contiguous to the County Parcel. Development of the Filtration Plant on the County Parcel would be consistent with the surrounding utility and transportation facilities.

- By contrast, the WJWW Parcel is adjacent to the airport only on its narrow eastern lot line; it is otherwise surrounded by land zoned for residential use. *See* DEIS Figure 5-3. The WJWW Parcel is adjacent to existing residential uses to the north and a golf course to the south and adjoins the presently undeveloped but approved Sylvan Development residential subdivision to the west, with access to Purchase Street only through this subdivision via a residential side street. The WJWW Parcel is surrounded by fewer utility and transportation land uses and more residential land uses than the County Parcel.
- The construction of the facility on the WJWW Parcel would require disturbance of regulated freshwater wetlands. By contrast, the construction of the Filtration Plant on the County Parcel avoids any disturbance of wetlands.
- The construction of the facility on the WJWW Parcel would involve more extensive construction to provide the requisite utility connections, because the WJWW Parcel is not situated proximate to existing utility lines. All utilities – and a new water main – would have to run along the proposed 2,700-foot long access road within the easement from Purchase Street. DEIS Figure 5-2. The County Parcel has more convenient connections to existing utilities and the existing water main beneath Purchase Street due to its location with frontage on Purchase Street.
- The WJWW Parcel – unlike the County Parcel – has no direct street frontage on Purchase Street, requiring a long driveway and associated increase in tree clearing and construction disturbance. *See* DEIS Figure 5-2. The 12.77 acres of disturbance on the WJWW Parcel is more than double the 6.16 acres of disturbance required for construction of the Filtration Plant on the County Parcel. The construction of the facility on the WJWW Parcel would result in approximately double the extent of impervious surfaces (4.6 acres), as compared to the 2.4 acres of impervious surfaces to be constructed at the County Parcel.

The Need for Prompt Approval of the Exchange Transaction

In consultation with the County, WJWW has proposed the land swap to expedite construction of the Filtration Plant. Since the County expressed its receptivity to the land swap in 2019, WJWW has spent almost four years and \$7 million to date preparing engineering plans, the SWPPP and the required SEQRA documents to move the project forward. At this point, the planning process can go no further unless and until the County approves the Exchange Transaction, because the Town of Harrison Planning Board has stated that it will not schedule a public hearing on WJWW's pending land use applications unless and until the County approves the transaction.

WJWW is under substantial pressure to construct the Filtration Plant as soon as possible. This pressure comes from different sources.

First and foremost is that the Filtration Plant is required to bring the WJWW system into compliance with safe drinking water regulations and ensure the safety of the drinking water that WJWW supplies to up to 100,000 County residents. The federal Safe Drinking Water Act regulations establish a MCL for HAA5 at 0.060 milligrams per liter. 40 C.F.R. § 141.64(b). The EPA has determined that organic materials in surface water interact with required treatment chemicals to form HAA5 in drinking water. *See* National Primary Drinking Water Regulations; Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388, 393 (Jan. 4, 2006). The EPA has determined that the MCL for HAA5 provides for increased public health protection against the increased risks for cancer and reproductive and developmental health effects (*i.e.*, birth defects) from exposure to HAA5. *Id.* at pp. 394-400. Monitoring data collected by WJWW in the first, second and third quarters of 2019 established a violation of the HAA5 MCL in the WJWW system. In immediate response to these MCL violations, WJWW began an aggressive water distribution system flushing program that wastes approximately 80 million gallons of water per year at a cost of close to \$500,000 per year to water consumers. These measures remain in place and are expected to continue until the Filtration Plant is constructed and operational. As a result of the MCL violation, on November 26, 2019, the EPA ordered WJWW to construct the Filtration Plant to reduce the organic content of the Rye Lake water in the WJWW system, thereby reducing the likelihood of future violations of the HAA5 MCL. And as noted above, WJWW was, many years ago, subject to a state court injunction requiring it to construct the Filtration Plant in order to comply with State law.

The second source of pressure is that U.S. Department of Justice on behalf of EPA and the New York Attorney General's office on behalf of NYSDOH have provided notice to WJWW and its three member municipalities that they will bring enforcement actions against WJWW and the municipalities seeking massive civil penalties of many millions of dollars if a consent decree is not signed committing WJWW and the municipalities to construct the Filtration Plant on an expedited schedule that can only be met by continuing on the path we have been on for the last four years of building the Filtration Plant on the County Parcel. These are not idle threats: statutory penalties under the Safe Drinking Water Act are up to \$32,500 per day per violation, and penalties for violating State law are also substantial. It is the WJWW system water customers or the municipalities who would ultimately bear the cost of paying these civil penalties if the Filtration Plant is further delayed. These enforcement actions can only be resolved by proceeding with the proposed consent decree that is currently being negotiated by the parties – a settlement of the enforcement actions that assumes that WJWW can proceed with its plan to construct the Filtration Plant on the current schedule that takes advantage of the work we have done to design and obtain approval of the Filtration Plant's construction on the County Parcel.

County disapproval of the proposed Exchange Transaction – or prolonged inaction on WJWW’s request for approval – would delay construction of the Filtration Plant thereby putting the health of up to 100,000 County residents at risk. Given the enormous amount of effort required to construct the facility, attempting to move the proposal back to the WJWW Parcel – as the County Parcel neighbors have suggested – would delay its construction by years and add millions of dollars to the project cost and consequently result in even higher water rates for consumers. This delay would have grave consequences for public health by deferring the mitigation of an already existing public health threat that will only be made worse by the progression of climate change. For all these reasons, WJWW respectfully requests that the County approve the proposed Exchange Transaction as soon as possible.

WJWW would be pleased to provide any further information that the County may request to consider the request for approval of the Exchange Transaction.

Respectfully submitted,



Paul Kutzy, P.E.
Manager, WJWW

cc: Hon. Kenneth Jenkins, Deputy County Executive
Joan McDonald, Director of Operations
Hon. Thomas A. Murphy, Mayor, Village of Mamaroneck
Hon. Rich Dionisio, Supervisor/Mayor, Town/Village of Harrison
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck

Attachments:

Tab A Draft Exchange Transaction Contract
Tab B FAA Letter dated September 30, 2022 regarding Exchange Transaction
Tab C DEIS for Filtration Plant on County Parcel (without appendices)
Tab D FEIS for Filtration Plant on County Parcel (without appendix B)
Tab E WJWW SEQRA Findings Statement for Filtration Plant on County Parcel
Tab F Post-FEIS site plan change resolution and technical memorandum
Tab G Storm Water Pollution Prevention Plan for Filtration Plant on County Parcel
Tab H NYCDEP Approval dated May 26, 2023 for Filtration Plant on County Parcel
Tab I Final Engineering Documents for Filtration Plant on County Parcel
Tab J Basis of Estimate Cost Report for Filtration Plant on County Parcel



Westchester Joint Water Works

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June 28, 2023

Hon. George Latimer
Westchester County Executive
148 Martine Avenue, 9th Floor
White Plains, NY 10601

Hon. Vedat Gashi, Chairman and Honorable Members
Westchester County Board of Legislators
148 Martine Avenue, 8th Floor
White Plains, NY 10601

Re: Westchester Joint Water Works ("WJWW") Request for County Approval of the Exchange Transaction for Construction of a Filtration Plant in the Town of Harrison

Dear County Executive Latimer, Chairman Gashi and Members of the County Board of Legislators:

In my letter dated June 15, 2023 (copy attached), WJWW formally requested the County to approve the proposed real estate transaction (the "**Exchange Transaction**") by which the County would deed title of the 13.4-acre County-owned parcel adjoining the County airport (the "**County Parcel**") to WJWW for construction of the Filtration Plant in exchange for a WJWW-owned 13.4-acre parcel, also adjoining the County airport, that WJWW would deed to the County (the "**WJWW Parcel**"). I am writing again to inform the County that on June 27, 2023, the New York State Supreme Court for Westchester County dismissed the only lawsuit that was filed to challenge the proposal to locate the Filtration Plant on the County Parcel. A copy of the Court's decision is attached.

The WJWW Board of Trustees is comprised of the Supervisor/Mayor of the Town/Village of Harrison, the Supervisor of the Town of Mamaroneck, and the Mayor of the Village of Mamaroneck. The litigation challenge that has now been rejected by the Court had sought to nullify the unanimous resolution of the WJWW Board, made on October 12, 2022, to approve a resolution selecting the County Parcel as the best location for the Filtration Plant pursuant to the State Environmental Quality Review Act ("SEQRA"). The Court upheld WJWW's determination that, from an environmental perspective, the County Parcel is the best location for the Filtration Plant. *See* Decision, pp. 14-18.

The Court also rejected petitioner's contention that the Filtration Plant would result in significant noise impacts (Decision, pp. 9-10), rejected petitioner's contention that the Filtration Plant would result in significant historic and archaeological resource impacts (*id.*, pp. 10-12), rejected petitioner's contention that the Filtration Plant would result in significant adverse visual impacts (*id.*, p. 11); rejected petitioner's contentions that the Filtration Plant would result in significant growth-inducing impacts (*id.*, pp. 12-13), and rejected petitioner's challenge to the assessment of the Filtration Plant's effect on water rates. *Id.*, pp. 13-14.

The Court also held that WJWW complied with all of the required SEQRA procedures in preparing the DEIS, FEIS and SEQRA Findings Statement for the Filtration Plant. *See* Decision, pp. 3-5.

More specifically, with regard to the selection of the County Parcel as the preferred location for Filtration Plant, the Court stated that:

[T]he record reflects that [WJWW] ... considered the [County Parcel] ... location preferable due to the lesser impact that it would present to the significant existing and progressing residential use of the areas lying in close proximity to the [WJWW Parcel].... [T]he Court finds that the record amply demonstrates that [WJWW] ... undertook the requisite hard look at feasible alternatives to the [County Parcel] ... for the location of the [Filtration] Plant, and further provided a reasoned elaboration for its conclusion that the development and operation of the Plant upon the [County Parcel] ... would be a superior choice when compared against the ... alternative [the WJWW Parcel].... [T]his Court's review of the respondent WJWW's determination to deem the DEIS and FEIS complete ... reveals that the respondent [WJWW] identified the pertinent areas of environmental concern, took a hard look at those areas and made a reasoned elaboration of the basis for its determination.....

Decision, pp. 16-18.

Regarding the issue of airport growth, the Court stated that:

[T]he primary concern raised by the petitioner relates to its speculative concern that the development of the [Filtration] Plant upon the ... [County Parcel] might impact the County's potential plan for growth of the airport in the future , [but] Westchester County's representation that it has no intention of making any use of that land parcel for the expansion of the ... [airport], nor any other development or use aside from serving as an undeveloped buffer between the ... [airport] and surrounding properties is referenced within the DEIS and the Findings Statement.... [T]he record is devoid of any indication that the development and

operation of the Plant to filter and treat water from the nearby Rye Lake could in some manner spur or otherwise induce commercial, residential or any other form of increased development upon any parcel of land associated therewith, which leaves the petitioner's contrary suggestion to be lacking a fact-based foundation.... Accordingly, the Court finds that the record amply demonstrates that [WJWW] ... undertook the requisite hard look at the potential growth inducing impact of the proposed [Filtration] Plant....

Decision, pp. 12-13.

Regarding the issue of noise buffering, the Court stated that:

[T]he primary concern which the petitioner raises is related to the proposed removal of trees incident to the diminishment of noise buffering that is anticipated by the petitioner as a result ... As detailed in the DEIS and FEIS, and summarized in [WJWW's] ... Findings Statement, the proposed construction of the Plant could require the removal of approximately 408 trees, whereas the landscaping plan associated with the development of the Plant site provides for the installation/planting of approximately 300 new trees, in addition to the existing unspecified number of trees which will remain undisturbed within the area lying between the Plant and the Meeting House. In addition, the DEIS, FEIS and Findings Statement reveal that although the Meeting House is currently impacted by significant levels of noise generated by the routine operation of the ... Airport due to its location beneath the flight path used by planes accessing one of the airport runways, the proposed location of the Plant upon the undeveloped land lying between the Meeting House and the airport-related facilities would serve as an additional noise buffer inuring to the benefit of the petitioner.... Furthermore, the record demonstrates that the only anticipated exterior noise emanating from the Plant's operations would be generated by the Plant's own air-conditioning units and [emergency] generators, which would be mitigated by sound-attenuated enclosures and exhaust silencers.... [T]his Court finds that the record reveals that [WJWW] ... made a reasoned elaboration of the basis for its challenged determination as required by SEQRA.

Decision, pp. 9-10.

Regarding the issue of visual impacts, the Court stated that:

In relation to [the potential for visual] impacts upon the petitioner's members, the record reveals that the ... DEIS, as well as ...


[WJWW's] Finding Statement, reflect its consideration and recognition of the mitigating effects anticipated from the existing trees and the additional trees to be planted in the buffer area of concern to the petitioner, as well as the several hundreds of feet of distance between all points of the proposed Plant and the petitioner's property, the design of the proposed Plant's dimensions and appearance in compliance with all applicable zoning codes, [and] the design of exterior lighting to minimize its exposure to the Meeting House and its surrounding environs....

Decision, p. 11.

* * * *

WJWW would be pleased to provide any further information that the County may request to consider the request for approval of the Exchange Transaction.

Respectfully submitted,



Paul Kurzy, P.E.
Manager, WJWW

cc: Hon. Kenneth Jenkins, Deputy County Executive
Joan McDonald, Director of Operations
Hon. Thomas A. Murphy, Mayor, Village of Mamaroneck
Hon. Rich Dionisio, Supervisor/Mayor, Town/Village of Harrison
Hon. Jaine Elkind Eney, Supervisor, Town of Mamaroneck

Attachments:

Tab A WJWW Letter dated June 15, 2023
Tab B Court Decision dated June 27, 2023