



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

January 25, 2017

**By Email and Mail**

Ms. Alison Simon, Town Clerk  
Town of North Castle  
15 Bedford Road  
Armonk, NY 10504

Re: **Comments on Draft Scoping Document for the Vue**

Dear Ms. Simon and Members of the Town Board:

The Watershed Inspector General appreciates this opportunity to comment on the draft scoping document for the proposed Vue project in North Castle.

We thank you in advance for your consideration of these comments.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Philip Bein".

Philip Bein  
Watershed Inspector General  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
(518) 776-2413

A handwritten signature in cursive script that reads "Charles Silver".

Charles Silver, Ph.D.  
Watershed Inspector General Scientist  
Environmental Protection Bureau  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
(518) 776-2395

**SEQRA Scoping Comments for the Draft EIS  
The Vue  
1700 Old Orchard Street  
Town of North Castle  
Westchester County, New York**

**Comments of the Office of Watershed Inspector General  
January 25, 2017**

The Office of the Watershed Inspector General (“WIG” or “WIG Office”)<sup>1</sup> respectfully submits these comments on the scoping document for the draft environmental impact statement (“DEIS”), with respect to the proposed Vue multi-family housing project. The Vue Project is located in the Town of North Castle in Westchester County, NY (“The Vue Project” or “Project”). In these comments we request that the DEIS analyze purchase of the site by New York City at fair market value as an alternative to the project.

**The Vue Project**

The proposed Vue Project is on 12 acres of a 22-acre forested parcel. The Project would disturb 6.7 acres of land, create almost three and a half acres of impervious surface, and is located within 750 feet of the Kensico Reservoir in the New York City Watershed. If The Vue Project is approved, the remaining 10 acres will become permanently preserved open space. (The Jennie Clarkson Campus, which is a public school in Westchester County for grades 7-12, occupies 14 acres of land adjacent to the proposed Vue site.) The Vue Project includes two 4-5 story buildings with 200 residential units and 420 underground parking spaces. Twenty of the residential units will be Affirmatively Furthering Fair Housing.

**The Kensico Reservoir**

The Kensico Reservoir typically supplies drinking water to 8 million people each day. It contains water conveyed from the City’s six Catskill and Delaware system reservoirs located West of the Hudson River, as well as water from its own watershed,

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<sup>1</sup> The position of WIG was established by Executive Order No. 86 on August 19, 1998, and continued in accordance with Executive Order No. 5 on January 1, 2007. See 9 NYCRR §§ 5.86, 6.5. Pursuant to these Executive Orders, the WIG’s purpose is “to enhance current efforts to protect the New York City drinking water supply from activities that have the potential to adversely affect the New York City Watershed reservoirs and tributaries.” See *id.*, § 5.86. The WIG is a joint appointee of the Governor and Attorney General within the employ of the Attorney General.

which consists of 6,160 acres of land. The Kensico Reservoir Watershed is highly developed, and includes portions of the Towns of Harrison, Mount Pleasant, North Castle, New Castle, and Greenwich, Connecticut. Water is usually detained in the Kensico Reservoir for 15 to 25 days before entering the NYC distribution system.

Ensuring water quality in the Kensico Reservoir is of the utmost concern because it is a terminal reservoir -- the last stop before the water is distributed to consumers. Kensico Reservoir water is unfiltered and receives limited treatment (*e.g.*, chlorination and orthophosphate) before it reaches the taps of New Yorkers. The Project Site lies well within the “sixty-day travel time” of the water which is supplied to consumers. Sixty days is generally viewed as the life span for many disease-causing microbes in fresh water, such as *Giardia lamblia* and *Cryptosporidium*. This limits opportunities for pollutants to settle out, become assimilated by plants and animals or otherwise become attenuated. This contrasts sharply with water from the Catskill and Delaware system, which provides many such pollution mitigation opportunities as it flows within a chain of reservoirs and other waterbodies over long distances and time before reaching the Kensico Reservoir.

Development adjacent to the Kensico Reservoir is expected to increase discharges of polluted stormwater. According to EPA, land development “can result in both short- and long-term adverse impacts to water quality in lakes, rivers and streams within the affected watershed by increasing the load of various pollutants in receiving water bodies, including sediments, metals, organic compounds, pathogens, and nutrients.”<sup>2</sup> Turbidity facilitates the transportation of pollutants, including metals, organic compounds, and pathogens. It can also shelter pathogens that pose risks to public health from exposure to attack by chlorine, a disinfectant routinely used in the Kensico Reservoir to protect public health. These include *Giardia lamblia*, *cryptosporidium*, and *E. coli* O157:H7, all which can cause serious illness or death, especially among very young, old and people with compromised immune systems.<sup>3</sup> In addition, the organic particles that contribute to turbidity can also combine with chlorine to create disinfection by-products which may increase the risk of cancer or early term miscarriage for people drinking the water.<sup>4</sup>

One very important method for protecting the watershed of an unfiltered water supply system is the ownership and preservation of land in its natural undeveloped state. The land acts as a sponge, absorbing and filtering stormwater pollutants before they reach the Reservoir. Here, the City holds only 34% of the land within the Kensico Watershed. This percentage is much less than that of watersheds in other cities that operate unfiltered

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<sup>2</sup> EPA, Draft Proposed Rule for Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Category, Docket No. 01644, at 49-50. February 12, 2002.

<sup>3</sup> In August 1999, the largest outbreak of waterborne *E. coli* O157:H7 illness in United States history occurred at the Washington County Fair in New York, when a private drinking water supply well became contaminated with that pathogen, infecting 781 people, and resulting in the hospitalization of 71 people and two deaths.

<sup>4</sup> See National Research Council, “Watershed Management for Potable Water Supply: Assessing the New York City Strategy” (2000) at 2, 5-6, 102-05, 109.

drinking water supply systems: Boston owns and preserves 75% of its watershed, Portland, Oregon 100%, San Francisco 88%, and Seattle 99.6%.

In addition, the portion of the Kensico Reservoir's water that comes from the Catskill and Delaware system is already highly stressed by turbidity. In its 2007 Filtration Avoidance Determination, which allows the City to operate its drinking water without filtration, EPA found that "significant improvement to the City's ability to prevent, manage, and control turbidity in the Catskill System [which supplies almost half of the water in Kensico Reservoir] is required in order to maintain filtration avoidance for the long-term."<sup>5</sup>

Pollution of the Kensico Reservoir could threaten the City's ability to maintain filtration avoidance, which would require it to build a filtration plant for its distribution system. The plant would entail capital expenditures of over \$10 billion and annual operation and maintenance costs exceeding \$100 million. Under the federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* ("SDWA"), EPA promulgated the Surface Water Treatment Rule, which requires that a public drinking-water system supplied by surface waters satisfy water quality standards, either by installing a filtration system or by meeting criteria, including a "watershed control program," to protect the quality of the water in the absence of filtration. *See* 40 C.F.R. §§ 141.70, 141.71.

Under the SDWA, Kensico water must comply with water quality standards for turbidity and pathogens. EPA limits raw water turbidity at the intake to the distribution system in the Reservoir. Turbidity at this location in excess of 5 nephelometric turbidity units is not allowed. *See* 40 CFR § 141.71(a)(2). In addition, because of the health risks associated with pathogens in a drinking water supply, EPA requires that each unfiltered water system meet strict requirements "ensuring that the system is not a source of a waterborne disease outbreak." 40 C.F.R. § 141.71.

### **The WIG's Recommendations**

Given the size of the proposed area of development, its extremely sensitive location close to the Kensico Reservoir, and the relatively small percentage of undeveloped land in the Kensico Watershed, the WIG opposes the Vue Project as proposed and believes that in its place New York City should purchase the 22 acre forested land at fair market value, so that it will continue to function as a vital pollution buffer. Accordingly, the DEIS should fully review the City's purchase of the site at full market value as an alternative to the Project.

We are concerned that the Vue Project could cause adverse impacts to the Kensico Reservoir. First, the Project would create almost 3.5 acres of impervious surface and physically disturb an additional 3 acres of adjacent forested land that currently absorbs and filters stormwater pollutants, preventing them from discharging into that Reservoir.

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<sup>5</sup> 2007 FAD, pp. 13-14.

Second, the Project itself would likely generate additional stormwater pollutants during its construction and operation. The Project could cause construction related erosion and sedimentation (e.g., siltation from excavation) and discharges of turbidity in runoff; increased stormwater flow from additional impervious surfaces; and runoff containing other pollutants (e.g., oil, grease, and automotive fluids from parking areas; flower, shrub and tree fertilizers from landscaped areas; pesticides from lawns; and pathogens carried in stormwater into the Reservoir from newly created impervious surfaces).

If you have any questions about the WIG's scoping comments, please do not hesitate to contact the undersigned.

Thank you for your consideration of these comments.

Respectfully submitted,



Philip Bein  
Watershed Inspector General  
Assistant Attorney General  
Environmental Protection Bureau  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
(518) 776-2413



Charles Silver, Ph.D.  
WIG Scientist  
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