

ENVIRONMENT

FOR DISCUSSION ONLY 11/3/16

RESOLUTION NO. 2016272

BOND RESOLUTION DATED DECEMBER 8, 2016.

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$1,000,000 SERIAL BONDS OF THE COUNTY OF DUTCHESS, NEW YORK, TO PAY THE COST OF THE ACQUISITION OF PARCELS OF LAND, OR RIGHTS OR INTERESTS IN SUCH LAND, FOR ACTIVE AND/OR PASSIVE PARK PURPOSES AND THE PRESERVATION OF OPEN SPACE AND FARMLAND IN AND FOR SAID COUNTY.

WHEREAS, continuing development within the County of Dutchess, New York (the "County") has demonstrated a compelling need to continue to acquire, preserve, protect and maintain passive and active park land and existing open space and farmland to enhance the general quality of life and the environment of the County, including protection of drinking water sources, the quality of rivers and streams, wild life habitat and natural areas, and thereby benefit the residents and taxpayers of the County; and

WHEREAS, General Municipal Law Section 247 recognizes the value of open space areas and the need to preserve such land in such state and, specifically empowers municipalities with the authority to acquire real property or interests therein to preserve land as open space; and

WHEREAS, if existing open space areas are to be preserved, protected and maintained, the County must develop the capacity to purchase land, easements or other real property interests quickly and efficiently as the need arises and opportunities are identified; and

WHEREAS, this County Legislature recognizes the value of passive and active park land, open spaces and farmlands, and wishes to provide for the acquisition of real property and interests in real property therefor, and hereby finds and determines it to be in the public interest and a proper

public purpose of the County to do so in accordance with the provisions of Section 247 of the General Municipal Law; and

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act ("SEQRA"), have been performed, and site-specific compliance with SEQRA has been or will be performed as such need arises and all documentation relating to SEQRA may be examined at the office of the Clerk of the County Legislature during normal business hours; and

WHEREAS, it is now desired to provide for the financing of the acquisition of such real property and interests therein for said purpose; NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the County Legislature of the County of Dutchess, New York, as follows:

Section 1. The acquisition of parcels of land, or rights or interests in such land, for passive and active park purposes and the preservation of open space and farmland, throughout, and in and for the County of Dutchess, New York, to implement the State authorized programs and policies provided in Section 247 of the General Municipal Law, as such acquisitions may be authorized from time to time by the County Legislature of the County of Dutchess, New York, after due notice and a public hearing as provided thereunder, including incidental expenses in connection therewith, is hereby authorized in and for said County of Dutchess at a maximum estimated cost of \$1,000,000.

Section 2. It is hereby determined that the maximum estimated cost of the aforesaid class of objects or purposes is \$1,000,000, and that the plan for the financing thereof shall be by the issuance of \$1,000,000 serial bonds of said County hereby authorized to be issued pursuant to the provisions of the Local Finance Law.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid class of objects or purposes is thirty years, pursuant to subdivision 21(a) of paragraph a of Section 11.00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the bonds herein authorized will exceed five years.

Section 4. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Commissioner of Finance, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Commissioner of Finance, consistent with the provisions of the Local Finance Law.

Section 5. The faith and credit of said County of Dutchess, New York, are hereby irrevocable pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. To the extent not paid from other sources, there shall annually be levied on all the taxable real property of said County, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 6. Such bonds shall be in fully registered form and shall be signed in the name of the County of Dutchess, New York, by the manual or facsimile signature of the Commissioner of Finance and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the County Clerk.

Section 7. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Commissioner of Finance, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as she shall deem best for the interests of the County; provided, however, that in the exercise of these delegated powers, she shall comply fully with the provisions of the Local Finance Law and any order or rule of the State Comptroller applicable to the sale of municipal bonds. The receipt of the Commissioner of Finance shall be a full acquittance to the purchaser of such bonds, who shall not be obliged to see to the application of the purchase money.

Section 8. All other matters, except as provided herein relating to such bonds including determining whether to issue such bonds having substantially level or declining annual debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the County by the facsimile signature of the Commissioner of Finance, providing for the manual countersignature of a fiscal agent or of a designated official of the County), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the Commissioner of Finance. It is hereby determined that it is to the financial advantage of the County not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in such form

and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the Commissioner of Finance shall determine.

Section 9. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 10. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said County is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 11. This resolution, which takes effect immediately, shall be published in full in *The Poughkeepsie Journal* and *The Southern Dutchess News*, the official newspapers of said County, together with a notice of the Clerk of the County Legislature in substantially the form provided in Section 81.00 of the Local Finance Law.

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FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS (To be completed by requesting department)

Total Current Year Cost \$ 1,000,000

Total Current Year Revenue \$ 0
and Source

Source of County Funds (check one): Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other (explain).

Identify Line Items(s):

H0????.8020.3007 Partnership for Managable Growth

Related Expenses: Amount \$ 0

Nature/Reason:

Anticipated Savings to County: \$0

Net County Cost (this year): \$1,000,000

Over Five Years: \$0

Additional Comments/Explanation:

Existing funding has been fully committed, leaving no funds for future solicitations.

Prepared by: Eoin Wrafter

2016 - H0500 Partner/Manageable Growth

APPROPRIATIONS

Increase

H0500.8020.3006	Easement - Conservation	\$990,000
H0500.8020.3900	Bond Issuing Costs	\$10,000
		<u>\$1,000,000</u>

REVENUE

Increase

H0500.8020.57100	Serial Bonds	\$1,000,000
		<u>\$1,000,000</u>



COUNTY OF DUTCHESS
DEPARTMENT OF PLANNING AND DEVELOPMENT

To: William O'Neil, Deputy County Executive

From: Eoin Wrafter, Commissioner, Planning and Development 

Re: Resolution Request – Partnership for Manageable Growth

Date: October 25, 2016

I have been meeting with the Department of Law, Finance and Bond Counsel regarding the resolution request for the authorization to issue \$1,000,000 in Serial Bonds of the County of Dutchess, New York, to pay for the continued implementation of the Partnership for Manageable Growth Program established by the DCL Resolution No. 2015-183. One of the purposes proposed for the bond was implementation of the Water and Wastewater Facility Planning and Development grants. After numerous meetings, the County's Bond Counsel has determined that we cannot fund the Water and Wastewater Facility Planning and Development grants through the use of bond funds. However, the grants can be accomplished by using other County funds (General Fund or Fund Balance as examples). The use of bond funds for the construction of a water/wastewater facility by another entity violates the gift and loan of credit prohibition contained in the New York State Constitution, Article VIII, Section 1. Simply put, the County cannot gift or grant its credit to another entity. In order to use bond funds, the County must have a tangible, ownership interest in the water/wastewater facility. The Water and Wastewater Facility Planning and Development grant program, as it is currently written, can only be funded by operational funds.

Within Resolution 2015183, which adopted the Revised Partnership for Manageable Growth Program, was a "whereas" clause which referenced Bond Resolution # 2014323 for \$1,000,000 to implement the PMGP. That "whereas" clause incorrectly included the following text "*with the intent of funding preservation and infrastructure, as defined within the Water and Wastewater Facility Planning and Development Grants section of the DCPMGP*". The bond resolution referred to was specifically authorized by NYS General Municipal Law Section 247 for the acquisition of open space areas. This bond cannot be used for infrastructure. It was my mistake for including this language not understanding that the bond itself did not allow for it.

All previous bonds for implementation of the PMG program were based upon NYS General Municipal Law Section 247 which empowers municipalities with the authority to acquire real property or interest therein to preserve land as open space.

I have attached a revised resolution request and fiscal impact statement that reflects a bond resolution request for \$1 million dollars to implement the Open Space and Farmland Protection component of the PMG. The prior SEAF is still applicable. If you have any questions or require further documentation, please let me know. Thank you for your consideration of this request.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 13. Playgrounds and Neighborhood Recreation Centers (Refs & Annos)

McKinney's General Municipal Law § 247

§ 247. Acquisition of open spaces and areas

Currentness

1. Definitions. For the purposes of this chapter an "open space" or "open area" is any space or area characterized by (1) natural scenic beauty or, (2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources. For purposes of this section natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

2. The acquisition of interests or rights in real property for the preservation of open spaces and areas shall constitute a public purpose for which public funds may be expended or advanced, and any county, city, town or village after due notice and a public hearing may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter, to land within such municipality. In the case of a village the cost of such acquisition of interests or rights may be incurred wholly at the expense of the village, at the expense of the owners of the lands benefited thereby, or partly at the expense of such owners and partly at the expense of the village at large as a local improvement in the manner provided by article twenty-two in the village law entitled local improvements.

3. After acquisition of any such interest pursuant to this act the valuation placed on such an open space or area for purposes of real estate taxation shall take into account and be limited by the limitation on future use of the land.

4. For purposes of this section, any interest acquired pursuant to this section is hereby enforceable by and against the original parties and the successors in interest, heirs and assigns of the original parties, provided that a record of such acquisition is filed in the manner provided by section two hundred ninety-one of the real property law. Such enforceability shall not be defeated because of any subsequent adverse possession, laches, estoppel, waiver, change in character of the surrounding neighborhood or any rule of common law. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any acquisition pursuant to this section, unless such general law expressly states the intent to defeat the enforcement of any acquisition pursuant to this section.

Credits

(Added L.1960, c. 945, § 2. Amended L.1963, c. 736, § 1; L.1969, c. 996, § 1; L.1972, c. 892, § 26; L.1977, c. 964, § 1.)

McKinney's General Municipal Law § 247, NY GEN MUN § 247