

**RESOLUTION
NEGATIVE DECLARATION – VILLAGE OF PAINTED POST
LEASE BY PAINTED POST DEVELOPMENT LLC**

A regular meeting of the Board of Trustees (the "Board") of the Village of Painted Post was duly convened on February 23, 2012 at 5:00 p.m. at 261 Steuben Street, Painted Post, New York 14870 and said meeting having been properly publicly noticed and held, and at which there was a quorum present and participating throughout.

The following resolution was duly offered and seconded, to wit:

WHEREAS, the Village of Painted Post, on behalf itself and as the sole member of Painted Post Development, LLC ("PPD") (the "Village"), has directed, by and through legal counsel for the Village, the completion and filing of Part I and Part II of a Full Environment Assessment Form ("Full EAF") prepared in accordance with the requirements under Article 8 of the New York Environmental Conservation Law and applicable regulations including 6 N.Y.C.R.R. 617.1 et seq. known collectively as the New York State Environmental Quality Review Act (referred to hereinafter sometimes as "SEQRA") concerning a proposed lease by PPD to the Wellsboro & Corning Railroad, LLC, a federally regulated railroad (the "Railroad"), of approximately 11.8 acres of a 50 acre parcel formally owned by Ingersoll-Rand Corporation ("IR" or "Ingersoll Rand") located in the vicinity of 450 West Water Street, Village of Painted Post, New York (the "Site") for the development and creation of a transloading facility (the "Facility") that will load surplus potable water from the Village's water distribution system to railroad tanker cars at the Site (the "Lease") for distribution by rail.

WHEREAS, the Site is proposed to be used for the construction and operation of the Facility by the Railroad, and development thereof it at the Site includes the design, planning, construction, equipping, operating and maintaining of a (i) filling/metering station and related improvements to be used for a filling/metering station on the Site; and (ii) a rail siding and related improvements on the Site, as well as related rail loading facilities to connect the existing rail line along Chemung Street to be used solely for the loading and transportation of surplus potable water from the Village's wells located away from the Site and through the Village's water distribution system; and (iii) the acquisition and installation in and around the Site of improvements including certain machinery, equipment and other items of tangible personal property appropriate for the operation of the transloading facility at the Site.

WHEREAS, as set forth in more detail below, the action associated with the leasing of the Site by PPD to the Railroad is being reviewed pursuant to SEQRA, but any activities to be conducted on the Site associated with the Lease, including the construction, development, and operation of the Site as a transloading facility by the Railroad is not subject to compliance with local zoning laws or regulation, nor is such construction, development and operation of the Facility subject to compliance with state law requirements including those under SEQRA, as the development, construction, operation and maintenance of the transloading facility by the Railroad is being undertaken under the jurisdiction of the Interstate Commerce Commission Termination Act of 1995, the Federal Railway Act of 1970 and other federal law and regulations associated with the operation of rail facilities (collectively referred to as "ICCTA"), and because

ICCTA applies to the development, construction, operation and maintenance of the Facility at the Site, local and state law as well as approvals associated with the construction and operation of the Facility at the Site are not required to be obtained and such laws, regulations and requirements are pre-empted under ICCTA.

WHEREAS, the Village's legal counsel directed the submission of the referenced Part I of the full EAF for the Lease, as well as a copy of a site plan and other information to various interested and involved agencies by correspondence dated January 23, 2012 notifying them of the Village's intent to act as lead agency for the SEQRA review to be undertaken of the Lease, and also informing such agencies that the construction and operation of the Site by the Railroad as a transloading facility are matters under the jurisdiction of ICCTA, and therefore exempt from SEQRA and review and local and state approvals.

WHEREAS, PPD has directed the proposed lessee for the Site to make application necessary to construct and operate the Facility including certain applications to the New York State Department of Environmental Conservation ("DEC") associated with stormwater controls and construction at the Site, as well as applications to the New York State Department of Health for the extension of certain service connections and piping on the Site in order to convey surplus potable water from Village wells located away from the Site through the Village water distribution system through lines located on the Site surface, as well as other applications and approvals as appropriate.

WHEREAS, none of the involved agencies including the DEC and DOH has objected to the Village as the lead agency for the SEQRA review of Lease within the 30-day period as required under SEQRA, and as such, pursuant to the applicable requirements, the Village has been installed as the lead agency for the SEQRA review of the Lease. The Village further hereby approves and confirms its desire to act as lead agency for the SEQRA review of the Lease, and confirms that it has been so installed in accordance with regulation.

WHEREAS, in accordance with the requirements of SEQRA, the Village has carefully considered and analyzed the relevant areas of impact and potential impact on the environment from the Lease as is set forth in more detail below by undertaking a review of the relevant conditions and relevant issues associated with the Lease, including by the Village considering and reviewing the completed Full EAF, including Parts I and II of it, and by reviewing additional information concerning the Lease as well as the site plan prepared by the engineer for the Railroad for the transloading facility, as well as considering the report dated November 11, 2011 prepared by Hunt Engineers, Architects and Land Surveyors, PC (the "November 2011 Hunt Report"), as well as considering the requirements for ongoing uses and operations of the former IR Foundry contained in the bargain and sale deed entitled "Former Ingersall-Rand Foundry Site, Steuben County, Painted Post, New York, dated August 1, 2005 (the "2005 Deed") and documents, plans and requirements under the 2005 Deed, including the installation and maintenance of certain institutional controls (i.e., fencing, installation of a cover over a portion of the property, restriction on the use of water derived from the site, etc.), as well as protocols for the handling and removal of certain soils on the Site and in the area of the Site, and other applicable documents, reports and matters for the Site.

WHEREAS, the Village has considered information from other involved agencies, including correspondence from the New York State Department of Environmental Conservation and correspondence, comments and input and other information from other involved and/or interested agencies;

NOW, THEREFORE, BE IT RESOLVED: Upon thorough review and due consideration of the Village of the Full Environmental Assessment Form, including reviewing the completed answers to Parts I and II of such form and reviewing applicable correspondence and input from interested and involved agencies, including correspondence from the New York State Department of Environmental Conservation and considering the requirements of the 2005 Deed for maintaining and operating land associated with the former foundry, as well as considering the November 2011 Hunt Report, the proposed site plan completed for the Site for construction and operation of the transloading facility, as well as considering the provisions of the Lease and other applicable documents as well as considering the fact that the construction, operation, and maintenance of the Site as a transloading facility by the Railroad is not subject to SEQRA review or other local zoning or other requirements the Village makes the following findings:

I. The Village has considered leasing of the Site pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) as proposed herein, including but not limited to considering each of the provisions of the Lease, including each of the schedules attached to it, and considering the actions related to the Lease, but also considering the fact that any actions associated with the construction, development, operation and maintenance of the transloading facility by the Railroad on the Site are subject to ICCTA pre-emption, and therefore such actions are not required to be reviewed under SEQRA.

II. The Village has previously classified its review of the Lease as a Type I action pursuant to 6 N.Y.C.R.R. §617.4.

III. The Village has carefully reviewed the Full Environmental Assessment Form including the responses provided in Parts I and II of same, as well as considering other pertinent documents previously referenced including the 2005 Deed, the November 2011 Hunt Report, as well as the site plan prepared by Hunt Engineers for operation of the Facility on the Site, and also on file with the Village and considering the criteria in 6 N.Y.C.R.R. §617.7(c), including but not limited to considering whether the Lease contemplates substantial adverse changes in various pertinent environmental media including to air, to ground or surface water, as well as changes to quantity or quality of traffic as well as considering changes to noise levels, and from odors, and the Village has considered the comments and input received by involved and interested agencies, as well as the comments and concerns of the public and other information provided to the Village.

Based upon the foregoing, the Village through its Board of Trustees has thoroughly reviewed the potential relevant area of environmental concern and finds the Lease will not result in any potentially significant adverse impact on the environment for the following reasons:

- A. *Transportation.* The Lease will not result in any significant additional vehicular traffic associated with the Site or associated with the construction, development or operation of the transloading facility on it. Moreover, as detailed previously, while ICCTA preemption applies so that an evaluation of any potential impacts on transportation including from any additional traffic is not required to be performed under SEQRA; nevertheless, the transloading facility proposed for the Site including its development, construction and operation is not anticipated to result in any significant additional vehicular traffic, as the operations at the Site will be loading of train cars with surplus potable water. Indeed, as set forth in detail in Part I and Part II of the EAF, there is no anticipated material increase in vehicular traffic, including truck traffic associated with operation of the transloading facility. Some additional traffic will be generated during construction of the Facility, but as construction is only expected to last for less than five (5) months, any such impacts will be short term and are not anticipated to be significant.
- B. *Community and Neighborhood Character and Land Use.* The Lease Site is located in an area zoned for industrial use under the Village Code which classifications that apply to the Site including several allowable uses consistent or specifically authorized by the development and operation of the transloading facility, including warehousing and other industrial uses; as such the Facility is consistent with such zoning for the area of the Site. In addition, it is believed that the operation of the transloading facility at the Site is not inconsistent with any adopted master plan or similar plan for the area associated with the Site.
- C. *Noise and Odor.* The Lease is not expected to result in any significant increase in noise or odors. Further, the operation of the transloading facility, while not subject to SEQRA review pursuant to ICCTA pre-emption, is also not expected to result in any significant increases in noise or odor as the operation of the Facility will be undertaken in such a manner that no significant adverse noise and/or odor impacts are anticipated as water will simply be loaded automatically onto train cars and the train cars will be moved into and out of a rail siding associated with the lease Site. As indicated, any impacts associated with construction would be short term and are not expected to be significant.
- D. *Public Health.* As set forth in more detail in the EAF, the Lease Site is located on land previously operated by Ingersoll Rand as a Foundry and for other operations. The Lease Site including a larger parcel of land on which it is located has been the subject of numerous investigations and remedial actions to address contamination, and the area encompassing the area including the Site was formerly listed as an inactive hazardous waste site by the State of New York. Pursuant to numerous investigations and remedial actions including removal actions, soil cleanup, etc. and other remedial actions, the New York State Department of Environmental Conservation (hereinafter referred to as "the DEC" or "the Department") has de-listed the Site or removed it from the inactive hazardous waste site list, as the Department has determined that required investigation and remediation of contamination associated with the former Ingersoll Rand Foundry and associated operations area has been completed to the Department's satisfaction.

As documented in the 2005 Deed (together with attachments) as well as documented in the November 2011 Hunt Report, the Department has determined that the investigation and remediation of the land formerly encompassing the Ingersall Rand Foundry and other operations on portion of which the transloading facility is proposed to be operated, has been appropriately remediated and investigated, and as such has been delisted as the investigation and remediation of that property has resulted in it achieving a Class C certification under the applicable New York regulations, with the Department specifically finding that "the primary contaminants of concern at the site [former Foundry parcel] included PCBs and PAHs. PCB contaminated soil and structures have been remediated....No environmental problems associated with the disposal of hazardous waste remain at this site." Further, the 2005 Deed requires that certain institutional controls and other measures be implemented including but not limited to implementation of a soil fill management protocol and as detailed in the November 2011 Hunt Report and as set forth in the proposed Lease, the transloading facility at the Site will be operated in accordance with the 2005 Deed's requirements and in accordance with other requirements imposed by the New York State Department of Environmental Conservation as well as required by additional permits and authorizations sought and obtained for the Site by Hunt Engineers on behalf of the Site Lessee, including a permit issued under the New York State Pollutant Discharge Elimination System Program ("SPDES") whereby a Storm Water Pollution Prevention Plan ("SWPPPP") has been developed and will be implemented and further detailed below, as well as the implementation of permanent stormwater measures on the Site have been designed and will be constructed as part of the Facility on the Site.

E. Stormwater. As detailed in the documents reviewed by the Village herein, no significant adverse impacts to stormwater are anticipated, as the Site is the subject of a permit issued under the SPDES permit program administered by the Department, including measures that will be implemented during construction. Further, the Site which has been the subject of investigations and remedial actions is the subject of a soil fill management plan that provides conditions on the excavation and handling of soils and which will be implemented as part of the conditions under the Lease, including maintaining measures for the construction and development of the Site to control stormwater runoff including the implementation of a SWPPPP. Further, as discussed, previously in this resolution, the transloading facility will be operated in accordance with DEC requirements for the retention of stormwater.

F. Endangered Species. As detailed in the correspondence to the New York State Department of Environmental Conservation, a survey was undertaken to determine whether endangered or threatened plant or animal species were located on the Site. Based upon the DEC review of these matters, the development of the Site and the Lease will not adversely impact such species.

NOW THEREFORE BE IT FURTHER RESOLVED AS FOLLOWS:

IV. The Village has considered the Lease pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) and based on the foregoing the Village finds that

the Lease will not have a significant adverse impact on the environment and hereby adopts a negative declaration for the lease by PPD to the Wellsboro & Corning Railroad, LLC.

V. This resolution has been prepared in accordance with Article 8 of the New York Environmental Conservation Law and associated regulations under the New York State Environmental Quality Review Act by the Village of Painted Post with its offices at 261 Steuben Street, Painted Post, New York.

VI. The requirements of SEQRA concerning the lease have been satisfied.

VII. The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[X]	[]	[]	[]
William Scheidweiler	[]	[]	[]	[X]
Richard Lewis	[X]	[]	[]	[]
Richard Thorne	[X]	[]	[]	[]
Ralph Foster	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Certification

I, the undersigned, being the Clerk of the Village of Painted Post hereby certified that the foregoing is a complete and accurate copy of a resolution duly enacted by the Village of Painted Post at a regular meeting thereof held on the 23rd day of February, 2012, duly called, publicly noticed and publicly held at which a quorum was present and participating thereat throughout and that said resolution has not be rescinded, modified or amended in any respect.

DATED: February 23, 2012

Anne Names
Anne Names, Clerk of the Village of Painted Post, New York