

SUPREME COURT  
STATE OF NEW YORK COUNTY OF STEUBEN

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In the Matter of the Application of the SIERRA CLUB;  
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;  
COALITION TO PROTECT NEW YORK; JOHN  
MARVIN; THERESE FINNERAN; MICHAEL  
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST  
DEVELOPMENT, LLC; SWEPI, LP; and the  
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

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VERIFIED ANSWER AND  
OBJECTIONS IN POINT OF  
LAW OF RESPONDENTS  
THE VILLAGE OF  
PAINTED POST, PAINTED  
POST DEVELOPMENT,  
LLC AND SWEPI, LP

Index No.: 2012-0810

Respondents, the Village of Painted Post, Painted Post Development, LLC, and SWEPI, LP (which may be collectively referred to as "Respondents" or may be referred to respectively as the "Village," "Painted Post Development" and/or "SWEPI"), by and through their attorneys, Harris Beach PLLC, for their Verified Answer to the Verified Petition ("Petition") state and allege as follows:

1. Admit those allegations in paragraph 1 of the Petition to the extent they allege that the proceeding is styled an Article 78 proceeding, and admit that certain relief is sought as set forth in the Petition, and admit as set forth more fully in the Administrative Record in this matter filed concurrently herewith and incorporated herein by reference in its entirety ("the Administrative Record") that Respondents undertook certain construction of equipment and improvements on land located in the Village of Painted Post, and deny the remainder of the allegations in paragraph 1, including denying any allegation that Respondents failed to fully comply with applicable law, including the New York State Environmental Quality Review Act (hereinafter "SEQRA") and the

other statutes identified to the extent same are applicable, and as to the balance of the allegations in paragraph 1, deny any attempt by Petitioners to characterize the nature of the construction undertaken by the Respondents, and refer the Court to the Administrative Record, which fully sets forth the nature and extent of any construction activities undertaken pursuant to the action at issue.

2. As to the allegations contained in paragraph 2 of the Petition, deny that the Sierra Club or Sierra Club members will be adversely affected, deny that drinking water supplies may be contaminated, deny the allegations regarding increases in traffic and each of the other allegations concerning other alleged adverse affects identified therein, including adverse affects concerning noise, air contamination and the like, and such allegations regarding the Village of Painted Post and Wellsboro, Pennsylvania, and deny the allegations regarding truck traffic, and deny knowledge or information sufficient to form a belief as to the truth and falsity of the allegations concerning the state of the incorporation of the Sierra Club, as well as allegations regarding its membership and activities its membership has allegedly been involved in, and deny knowledge and information sufficient to form a belief as to the truth or falsity of the allegation as to the number of members who claim to live in the Village of Painted Post or in Pennsylvania, and deny the remaining allegations contained therein.

3. As to the allegations contained in paragraph 3 of the Petition, deny that members of "People for a Healthy Environment" may be adversely affected as alleged therein, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the state of incorporation of the referenced organization, its goals and allegations regarding its focus, and deny the remaining allegations contained therein.

4. As to the allegations contained in paragraph 4 of the Petition, deny that the members as alleged may be adversely effected as identified therein, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning "Coalition to Protect

New York,” including denying knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to the groups purportedly represented by same, as well as the goals such organization or organizations seeks to promote or oppose, and deny the remaining allegations contained therein.

5. As to the allegations contained in paragraphs 5, 6, 7 and 8 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the residence of the Petitioners identified, including John Marvin, Therese Finneran and Michael Finneran, Virginia Hauff, and Jean Wosinski, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to how long such persons have lived at the addresses identified, and deny the allegations contained in said paragraphs regarding alleged adverse affects, including alleged affects from rail traffic, increase noise and air contamination, as well as adverse affects to drinking water quality and any adverse affects on the health of the persons alleged therein, including their spouses and others, and deny that the referenced individuals will be adversely impacted by rail operations, including denying any alleged adverse impacts to health due to the rail operations, and deny adverse impacts from automobile traffic due to rail operations, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the educational background or employment background of Petitioner, Jean Wosinski, but admit that Ms. Wosinski attended more than one meeting, and deny knowledge or information sufficient to form a belief as to whether Ms. Wosinski “objected” to the actions at issue in this matter during any of the meetings or otherwise.

6. As to the allegations contained in paragraph 9 of the Petition, admit that the Village of Painted Post is an incorporated village located within Steuben County, New York, and as to the characterization of the location of the Village concerning various rivers and other topography, refer

the Court to available maps and other information regarding the area, and state that the Village undertakes its responsibilities as required under law and has done so at all times.

7. As to the allegations contained in paragraph 10 of the Petition, admit that SWEPI, LP is a limited partnership formed in the State of Delaware, and state that it conducts certain business concerning oil and gas exploration, and deny knowledge or information sufficient to form a belief as to why Petitioners made SWEPI a party herein, and as to the allegations regarding SWEPI's execution of an agreement to purchase certain surplus goods or services from the Village of Painted Post, refer the Court to the referenced purchase agreement which is submitted as part of the Administrative Record (and is hereinafter referred to as the "Surplus Agreement"), and admit that SWEPI was authorized to enter into the Surplus Agreement, admit the approval by the Susquehanna River Basin Commission concerning the sale of surplus water authorizes SWEPI to use such water for its business, as more fully set forth in the Surplus Agreement, and deny knowledge or information sufficient to form a believe as to the truth or falsity of the remaining allegations contained therein.

8. As to the allegations contained in paragraph 11 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the length of the rail line referenced therein, and the location of same, but admit that Wellsboro & Corning Railroad, LLC (the "Railroad") is a federally chartered railroad, with an office located in Exton, Pennsylvania.

9. As to the allegations contained in paragraph 12 of the Petition, admit that Painted Post Development, LLC is a limited liability development company, and admit that the Village of Painted Post is its sole member, and as to allegations regarding Painted Post Development's relationship with the Railroad, refer the Court to a certain lease agreement executed by Painted Post Development and the Railroad (the "Lease"), which is submitted as part of the Administrative Record, for its true and

accurate contents, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein, including Petitioners' rationale for making Painted Post Development a party in this proceeding.

10. As to the allegations contained in paragraph 13 of the Petition, admit that as required under applicable law, the Village provided notice to applicable agencies and was installed as the lead agency, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein, and refer the Court to the Administrative Record, which sets forth in detail the actual record of the proceedings referenced therein, including notices sent, resolutions enacted, and other matters.

11. As to the allegations in paragraph 14 of the Petition, as more fully set forth in the Administrative Record, together with the Affidavits submitted herewith, the Board of Trustees on behalf of the Village of Painted Post, voted on and adopted certain resolutions on February 23, 2012, and such resolutions were filed in accordance with law, and deny the remaining allegations contained therein.

12. As to the allegations contained in paragraph 15 of the Petition, refer the Court to the resolutions at issue enacted by the Village for their true and accurate contents, including the nature of findings issued by the Village by the Board of Trustees on behalf of the Village (the Village and the Village Board of Trustees may be referred to hereinafter collectively as the "Village"), and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, including any attempt to characterize the resolutions adopted, including the negative declaration resolution adopted therein as such documents speak for themselves, which documents are submitted as part of the Administrative Record.

13. As the allegations contained in paragraph 16 of the Petition, deny that the Village's determination to issue a negative declaration as alleged was based solely upon the referenced

environmental assessment form (“EAF”), and deny that pertinent information contained in the EAF was mistaken or incorrect in any material manner, and deny that the Village failed to comply with applicable regulations including SEQRA, and deny the remaining allegations contained therein.

14. As to the allegations contained in paragraph 17 of the Petition, deny that the Village failed to undertake the requisite analysis, including taking a hard look at potential adverse environmental impacts as required under applicable law, deny that the Village was required to examine impacts concerning water supply and other matters concerning areas located in and around Wellsboro, Pennsylvania, and deny the remaining allegations contained therein.

15. As to the allegations contained in paragraph 18 of the Petition, deny that the Village exempted itself from any requirements under New York law, and refer the Court to the actual resolution itself and the underlying documents upon which it was based, which are submitted as part of the Administrative Record, for their true and accurate contents as such documents speak for themselves, and deny the remaining allegations contained therein.

16. As to the allegations contained in paragraph 19 of the Petition, deny the Petition’s characterization of the Village’s findings regarding the Interstate Commerce Clause Termination Act (“ICCTA”), deny the remaining allegations regarding alleged contamination concerns therein, and deny the remaining allegations contained in that paragraph.

17. As to the allegations contained in paragraph 20 of the Petition, as more fully set forth in the Affidavits submitted herewith, deny that the Railroad is required to obtain any permits or authorizations from the Surface Transportation Board or the Federal Railroad Administration, and deny that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. applies under any circumstances to the actions at issue, and deny the remaining allegations contained therein.

18. As to the allegations contained in paragraph 21 of the Petition, deny the allegations contained therein, and state that by enacting a resolution and considering the type of action

associated with the action at issue, the Village in fact undertook the required review, and as to the allegations concerning the contents of the regulations at issue, including 6 N.Y.C.R.R. 617.5(c)(25), refer the Court to the actual text of the regulation identified for its true and accurate contents, as such regulation speaks for itself, and deny the remaining allegations contained therein.

19. As to the allegations contained in paragraph 22 of the Petition, deny the allegation that the contract at issue concerned the ownership of land, and state that the contract at issue is the Surplus Agreement, which addresses the sale of certain surplus water under certain conditions, and refers the Court to the Surplus Agreement for its true and accurate contents, which is submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

20. Deny the allegations contained contain in paragraph 23 of the Petition, and specifically deny that any segmentation occurred.

21. As to the allegations contained in paragraphs 24 and 25 of the Petition, admit that the Village Board of Trustees voted upon and approved on February 23, 2012 a resolution that was filed on that date concerning the Village's sale of certain surplus water, and admit a resolution was voted upon and approved by the Village Board of Trustees and was filed on February 23 concerning the Lease by Painted Post Development, and refer the Court to those documents, which are submitted as part of the Administrative Record, for their true and accurate contents, and deny the remaining allegations contained therein.

22. Deny the allegations in paragraph 26 of the Petition, and state as provided for in the applicable resolutions that the Mayor of the Village was authorized by such resolutions to execute various agreements, and further state that the resolutions at issue were fully implemented and approved and filed on February 23, 2012.

23. As to the allegations contained in paragraphs 27 and 28 of the Petition, admit that the Mayor of the Village executed an agreement between the Village and SWEPI, whereby the Village

under certain circumstances would sell surplus water to SWEPI, subject to the various provisions and caveats stated therein, including among other conditions that there is adequate surplus water to so supply SWEPI, and other conditions satisfied as more fully set forth in the Surplus Agreement, and refer the Court to the Surplus Agreement for its true and accurate contents, which is submitted as part of the Administrative Record, and as to the allegations contained in paragraph 28, admit that a lease was executed as between Painted Post Development and Railroad, and refer the Court to the provisions of Lease, which is submitted as part of the Administrative Record, for its true and accurate contents, and deny the remaining allegations contained therein, including any attempt to characterize the area where the project at issue was built, and further state that such area is specifically zoned industrial.

24. As to the allegations contained in paragraph 29 of the Petition, state that the circumstances surrounding the execution of the referenced documents, which are submitted as part of the Administrative Record, including the Surplus Agreement and the Lease, speak for themselves, and deny the allegations contained therein, including any characterization or selective quotation from the agreements at issue.

25. Deny the allegations contained in paragraph 30 of the Petition, and state that the Village resolution issuing a negative declaration was voted on, adopted and filed on February 23, 2012 in accordance with applicable law, and state that any additional notice provided to various agencies does not alter the fact that the negative declaration issued by the Village was issued and became effective on February 23, 2012.

26. As to the allegations contained in paragraph 31 of the Petition, admit that certain facilities and improvements have been constructed on the premises subject to the Lease (hereinafter the "Transloading Facility"), and refer the Court to the Lease for its true and accurate contents, which is submitted as part of the Administrative Record, and admit that the premises on which the



Transloading Facility is located will allow for the loading of 42 rail cars, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein.

27. As to the allegations contained in paragraph 32 of the Petition, refer the Court to the November 2011 Report prepared by Hunt Engineers, Architects and Land Surveyors, P.C., entitled Engineering Report for the Wellsboro & Corning Railroad, Painted Post Transloading Facility (the “Hunt Report”) for its true and accurate contents, which is submitted as part of the Administrative Record, and state that the Hunt Report contains among other information, specifics concerning the equipment and facilities constructed on the premises on which the Transloading Facility is located, and deny the remaining allegations contained therein.

28. As to the allegations contained in paragraph 33 of the Petition, deny that there is any plan to remove 42 loaded rail cars every 16 hours, and deny the remaining allegations contained therein.

29. As to the allegations contained in paragraphs 34 and 35 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the calculations therein, including what Petitioners contend is the weight of a gallon of water or the weight of the rail cars, deny that significant noise will result from coupling or uncoupling of rail cars, and deny that diesel engines will be running such as to cause any significant noise impacts, and deny the remaining allegations contained therein.

30. Deny the allegations contained in paragraph 36 of the Petition, and state that the Village undertook an appropriate review of the project at issue, including the operations associated with the premises which is the subject of the Lease.

31. As to the allegations contained in paragraph 37 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein as to the

number of engines it will take to move 42 rail cars, and deny the remaining allegations contained therein.

32. As to the allegations contained in paragraph 38 of the Petition, respectfully refers the Court to the actual text of the website identified, and deny knowledge or information sufficient to form a belief as to whether same is relevant in any fashion to the matters associated with the actions at issue.

33. As to the allegations contained in paragraph 39 of the Petition, state that the Village undertook appropriate consideration of operations associated with the actions at issue, and deny that the Village failed to take into account potential impacts from the operation of the Transloading Facility at the premises which is the subject of the Lease, and deny the remaining allegations contained therein.

34. As to the allegations contained in paragraphs 40 and 41 of the Petition, deny the characterization as to where rail cars will “enter and exit,” deny the allegations as to what constitutes “the center of the Village,” and deny knowledge or information sufficient to form a belief as to whether the premises subject to the Lease is located on the “Western side of the Center” of the Village, but admit that the Transloading Facility is located at 350 West Water Street, Painted Post, New York, and state that the premises subject to the Lease is located in an area specifically zoned for industrial uses, and the premises subject to the Lease is located on a pre-existing rail line which has been located in the Village for many decades, and deny that any “new spurs” are being constructed on the premises subject to the Lease, but state that a rail siding will be so constructed to accommodate certain loading operations, and deny the remaining allegations contained therein.

35. As to the allegations made in paragraphs 42, 43 and 44 of the Petition, deny Petitioners’ characterization of Chemung Street, and state that it is one of several streets in the Village that run east and west and that the premises subject to the Lease is located on a site which is

zoned industrial, and deny that residential homes that are located in proximity to the premises subject to the Lease are “adjacent to it,” but admit that the location of the streets and the geographic layout of same speaks for itself, and admit that trains have been operating in the Village for many decades in the location at issue, and deny the remaining allegations contained therein.

36. As to the allegations contained in paragraph 45, 46, 47, 48, 49 and 50 of the Petition, deny the allegation regarding 42 cars as constituting a “lengthy train,” deny the allegation that such a train would take “considerable time” to move through the Village, deny any allegation of significant automobile traffic tie ups, deny that when trains do operate on Chemung Street that “all cross traffic is blocked,” and state that there are alternative routes available to persons located on Chemung Street if they were to desire to take an alternative route for any reason, including that they did not wish to cross over Chemung Street, or Chemung Street became difficult to cross for any reason, and deny that stalled traffic will create significant air contamination from idling motors, and refer the Court to the actual text of the regulation identified for its true and accurate contents, as such regulation speaks for itself, and deny that automobile traffic blockages will occur, deny that the Village’s environmental review failed to take into account impacts as required by application law, and deny the remaining allegations contained therein.

37. As to the allegations contained in paragraphs 51 and 52 of the Petition, refer the Court for the location of the rail line at issue, which has been in place in the Village of Painted Post for many decades, and which has served numerous industries, and deny as speculative and without basis that rail line congestion will occur and/or will negatively impact Dresser-Rand’s operations.

38. As to the allegations contained in paragraphs 53, 54, 55 and 56 of the Petition, deny each of the allegations therein, including that the nature of any facilities located outside of the Village of Painted Post are similar to the matters at issue including the equipment and improvements located on the premises subject to the Lease, deny that automobile traffic blockage will occur, deny

that traffic patterns will be altered or that noise impacts or air contamination will increase to any material degree, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations implying that there will be significantly increased heavy truck traffic concerning facilities to which surplus water may be taken, except admit that the routes that rail cars will travel from the Village will be in a generally southerly direction.

39. As to the allegations contained in paragraphs 57 and 58 of the Petition, admit that surplus water will be sold and admits pursuant to the agreements at issue and that such water will be transmitted to rail cars from facilities and equipment located on the premises subject to the Lease, and refer the Court to the agreements for their true and accurate contents, and admit that there have been facilities added to the Village of Painted Post water system between 1941 and 1980, and deny the characterization of the addition of such facilities as “expansions of the system,” and deny the remaining allegations contained therein.

40. As to the allegations in paragraph 59 of the Petition, admit that the Village water system serves its residents through a number of connections, and refer the Court to the Village’s 2000 Annual Drinking Water Quality Report for data concerning same, which speak for themselves, and admit that the Village water system provides water to residents of the Village of Riverside and the Town of Corning, and deny knowledge or information sufficient to form a belief as to the remaining allegations contained therein, including the characterization of the Village’s water system.

41. As to the allegations contained in paragraph 60 of the Petition, refer the Court to the Water Study referenced therein for the full text of same, and deny that the capacities identified for the wells identified in paragraph 60 are accurate as of today, and deny knowledge and information sufficient to form a belief as to the truth and falsity of the remainder of the allegations contained therein.

42. As to the allegations contained in paragraphs 61, 62 and 63 of the Petition, deny that well number 1 is being brought back into service, and state that the Hunt Report speaks for itself, and refer the Court to the Hunt Report for its true and accurate contents, which is submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

43. As to the allegations contained in paragraph 64 of the Petition, admit that the Village water system does draw certain water from the aquifer(s) identified, and admit that the New York State Department of Environmental Conservation (“NYSDEC”) has identified the Corning aquifer as one of several “primary aquifers” associated with the Cohocton River, and among other so-called primary aquifers in the State of New York, and refer the Court to the actual text of the documents cited in paragraph 64, including to the “1990 DEC Division of Water, Technical and Operational Guidance” for their true and accurate contents, which documents speak for themselves, and deny the remaining allegations contained therein.

44. As to allegations contained in paragraphs 65 and 66 of the Petition, refer the Court to the regulations or guidance at issue concerning their application to the wells utilized by the Village water system, including any designation of such wells, and state that, upon information and belief, any such regulatory designations associated with such wells to the extent material were considered by the Susquehanna River Basin Commission in its authorization to allow the Village to withdraw surplus water, and admits as set forth previously, that one of the aquifers at issue is a primary water supply aquifer among several others in the State of New York, and deny the remaining allegations contained therein.

45. As to the allegations contained in paragraphs 67 and 68 of the Petition, state that the Hunt Report speaks for itself, refer the Court to the Hunt Report, which is submitted as part of the Administrative Record, for its true and accurate contents, and deny that the project at issue would require the pumping of 1.44 million gallons per day, but admit that the Hunt Report analyzed

projected demand based upon 1,000 gallons per minute, and refer the Court to the document referenced in paragraph 68 for its true and accurate contents, and deny the remaining allegations contained therein.

46. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 69 and 70 of the Petition, including the allegations of the number of water users in the Village in 2001, and deny that the withdrawal associated with the project at issue is two to three times the rate of withdrawals by the Village from the wells identified, and deny that the Village failed to consider whether increased pumping activities at issue would result in adverse impacts, and deny that the water at issue will be drawn from well number 1.

47. As to the allegations contained in paragraphs 71 and 72 of the Petition, deny that the Village failed to consider appropriate impacts from the withdrawal of water at issue, and as to the allegations contained in paragraph 72, refer the Court to the document associated with the deed for the premises which is subject to the Lease, including the previously referenced management plan and other documents including the delisting documents, which documents are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

48. Deny the allegations contained in paragraphs 73, 74, 75 and 76 of the Petition, and refer the Court to the Hunt Report for its true and accurate contents, which report is submitted as part of the Administrative Record.

49. As to the allegations contained in paragraphs 77, 78, 79, 80 and 81 of the Petition, denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, including the allegations that seek to characterize such report based upon a selective quotation of it, as such report speaks for itself.

50. As to the allegations contained in paragraphs 82 and 83 of the Petition, deny that the Village failed to consider the impacts from the actions at issue, deny that contamination would occur

under the circumstances set forth therein, and deny that industries might find it necessary to incorporate additional filtration systems, and refer the Court to the reports referenced therein, as such reports speak for themselves, and deny the remaining allegations contained therein.

51. As to the allegations contained in paragraphs 84 and 85 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what large scale withdrawals were made by Ingersoll-Rand and Corning, Inc. and for what purposes such water was used, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether such water so withdrawn was available, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether water withdrawn as part of the actions at issue will not be returned to the aquifer at issue, and deny the remaining allegations contained therein.

52. As to the allegations contained in paragraphs 86, 87 and 88 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 86, and regarding the allegations in paragraphs 87 and 88, deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the text of the Draft Supplemental Generic Environmental Impact Statement referenced therein, and refer the Court to such document for its true and accurate contents, and deny that such report is relevant in any manner to the actions at issue.

53. As to the allegations in paragraph 89 of the Petition, deny that the Village's environmental review failed to take into account impacts as required by applicable law, and deny the remaining allegations contained therein.

54. As to the allegations contained in paragraph 90 of the Petition, deny knowledge or information sufficient to form a belief as to the truth or falsity of allegations therein, including statements made in newspaper articles cited therein.

55. As to the allegations contained in paragraphs 91 and 92 of the Petition, deny that a permit is required from the DEC as referenced therein, and deny the remaining allegations contained therein.

56. As to the allegations contained in paragraph 93 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 92 of the Petition as if more fully set forth herein.

57. As to the allegations contained in paragraphs 94, 95 and 96 of the Petition, respectfully refer the Court to the regulations at issue, including those regulations found under SEQRA which speak for themselves, and deny any attempt by Petitioners to characterize such regulatory requirements, but admit that the Board of Trustees on behalf of the Village undertook appropriate actions to make determinations as part of the resolutions at issue for the actions at issue, as more fully set forth in the Administrative Record.

58. As to the allegations contained in paragraph 97 of the Petition, refer the Court to the regulations at issue, including the regulations found under SEQRA, which speak for themselves, and deny Petitioners' attempt to characterize such regulatory requirements.

59. As to the allegations contained in paragraph 98 of the Petition, deny that the Village promulgated a negative declaration on March 9, 2012, as such negative declaration was voted upon, passed and filed in the Village Clerk's Office on February 23, 2012 and not March 9, 2012, and deny the remaining allegations contained therein.

60. As to the allegations contained in paragraphs 99 and 100 of the Petition, refer the Court to the regulations at issue, including the regulations found under SEQRA, which speak for themselves, and deny Petitioners' attempt to characterize such regulatory requirements.

61. Deny the allegations contained in paragraphs 101, 102 and 103 of the Petition.



62. As to the allegations of paragraph 104 of the Petition, refer the Court to the requirements under the SEQRA, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what petitioner believes or contends is “universally accepted,” and admit that the Village undertook the requisite review it was required to under applicable law, and deny the remaining allegations contained therein.

63. As to the allegations contained in paragraphs 105 and 106 of the Petition, admit that due to a typographical error the words non-applicable was filled in for one of the questions identified, admit that the actual water usage was set forth in the EAF and specifically considered by the Village as more fully set forth in the resolutions adopted by the Village, refer the Court to the EAF and such resolutions, which are submitted as part of the Administrative Record, for their true and accurate contents, and state that in completing the EAF, the aquifer at issue was not identified as a primary aquifer, but because those issues were considered by Hunt and the Village and as such was made part of the Village’s negative declaration, and the failure to identify the aquifer at issue as a primary aquifer was not material under the circumstances, and state that as to the allegations regarding the vehicular trips generated per hour, the Village considered the use of rail traffic, but did not believe that “vehicular trips” under the EAF applies to rail traffic and, in any event, such rail traffic was considered, and while impacts from such rail operations were considered, analysis of impacts from same are also subject to pre-emption under the Interstate Commerce Clause Termination Act, and deny that the Village failed to consider operating noise as the resolutions at issue specifically identified such considerations, deny the allegations that the actions at issue will produce significant air quality impacts and deny that the Village failed to consider same, deny that area around the site is not suitable for the actions at issue as the site is zoned industrial, deny that the actions will create a demand for community provided services, as the only water to be sold as surplus water and the Village as well as the Susquehanna River Basin Commission has determined that such

water is in more than adequate supply, deny that the actions at issue required any funding, and deny that any federal approvals are required for the actions at issue, and admit that the Village completed such form, and refer the Court to the form for its true and accurate contents, any deny the remaining allegations contained therein.

64. Deny the allegations contained in paragraphs 107, 108 and 109 of the Petition.

65. As to the allegations contained in paragraph 110 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 109 of the Petition as if more fully set forth herein.

66. As to the allegations contained in paragraphs 111 and 112 of the Petition, deny the allegations contained therein, and refer the Court to the regulations at issue, including those regulations promulgated under the SEQRA, which regulations speak for themselves.

67. As to the allegations contained in paragraphs 113 and 114 of the Petition, deny that the sale of surplus water is not a bulk sale, because such sale of surplus water is a bulk sale, and refer the Court to the regulations at issue, including those regulations promulgated under the SEQRA, which regulations speak for themselves, and deny that the Village has provided any ownership interest in the aquifer or wells at issue, and state that in accordance with the documents at issue the Village has merely agreed to provide certain surplus water under certain conditions pursuant to the agreement at issue, and deny the remaining allegations contained therein.

68. As to the allegations contained in paragraphs 115 and 116 of the Petition, deny that the Village has designated pumping capacity of Village wells as "surplus water," and refer the Court to the agreements at issue for their true and accurate contents, which are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

69. As to the allegations contained in paragraphs 117 and 118 of the Petition, refer the Court to documents at issue, including the State Water Supply Commission's establishment of the

water system in the Village, as well as the regulations at issue, which documents and regulations speak for themselves, and deny that the Village failed to undertake its duties as required, and deny the remaining allegations contained therein.

70. As to the allegations contained in paragraph 119 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 118 of the Petition as if more fully set forth herein.

71. As to the allegations in paragraphs 120, 121, 122 and 123 of the Petition, deny that the Village segmented its review under applicable law, and deny the remaining allegations contained therein.

72. As to the allegations contained in paragraph 124 of the Petition, deny the characterization of Petitioners as to the Village's actions, refer the Court to the agreements identified therein for their true and accurate contents, which are submitted as part of the Administrative Record, and deny the remaining allegations contained therein.

73. As to the allegations contained in paragraphs 125, 126 and 127 of the Petition, deny that the Village will be unable to provide surplus water without the facility referenced, deny that the Village failed to comply with various requirements under applicable law including the SEQRA, deny that the Village segmented any review under the SEQRA and applicable law, and deny the remaining allegations contained therein.

74. As to the allegations contained in paragraph 128 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 127 of the Petition as if more fully set forth herein.

75. As to the allegations contained in paragraphs 129, 130, 131 and 132 of the Petition, refer the Court to the regulations at issue for their true and accurate contents, deny that Respondents

were required to obtain a permit under the circumstances giving the clear provisions of the regulations and statutes at issue, and deny the remaining allegations contained therein.

76. As to the allegations contained in paragraphs 133, 134, 135 and 136 of the Petition, refer the Court to the text of proposed laws, amendments, and regulations for their true and accurate contents, and deny Petitioners' characterization of the proposed laws and regulations at issue, and deny the remaining allegations contained therein.

77. As to the allegations contained in paragraph 137 of the Petition, repeat and re-allege each of the responses set forth above in this Answer to paragraphs 1 through 136 of the Petition as if more fully set forth herein.

78. As to the allegations contained in paragraphs 138, 139, 140 and 141 of the Petition, deny the Petition's characterization of the Village's negative declaration, and refer the Court to such negative declaration for its true and accurate contents, which is submitted as part of the Administrative Record, deny that any permits or authorization is required from the Surface Transportation Board or the Federal Railroad Administration, and deny the remaining allegations contained therein.

79. Deny each and every allegation contained in the Petition not heretofore admitted, denied or otherwise controverted.

80. Deny that the Petitioners are entitled to any relief, including the relief sought as is set forth in the wherefore clause found in the Petition, including denying that Petitioners are entitled to any of the relief sought in subparts 1 through 9 of the Petition.

#### AS AND FOR A FIRST OBJECTION IN POINT OF LAW

81. Petitioners lack standing to maintain this proceeding both in their capacity as organizations and associations, as well as in their individual capacities because among other things, the organizations have not demonstrated that they have standing through individuals and those

organizations and/or associations are not otherwise entitled to maintain this action, and because the individual and organizational Petitioners herein have alleged no particularized injury or other injury as required under law, because none has suffered any harm distinct from the general public and no other distinct or separate injury or damages is alleged as required.

AS AND FOR A SECOND OBJECTION IN POINT OF LAW

82. Upon information and belief, Petitioners' claims are barred under applicable statutes of limitation and/or by the doctrine of laches because Petitioners failed and refused to initiate this action in a timely manner and/or otherwise failed to exercise their rights in a timely manner under the circumstances.

AS AND FOR A THIRD OBJECTION IN POINT OF LAW

83. The Petition should be dismissed in its entirety because the claims alleged therein fail to state any claim as a matter of law.

AS AND FOR A FOURTH OBJECTION IN POINT OF LAW

84. Petitioners, by and through their Petition, fail to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH OBJECTION IN POINT OF LAW

85. The actions undertaken by the Respondents, including the Village, were reasonable, in good faith, and such acts were not arbitrary, capricious or in excess of authority, nor were such actions taken in absence of substantial evidence.

AS AND FOR A SIXTH OBJECTION IN POINT OF LAW

86. The Administrative Record contains more than ample factual bases concerning the determinations made by the Village, and the Village conducted a proper and valid review of the project at issue in conformity with applicable standards and law. As such, the Petition should be dismissed in its entirety.

AS AND FOR A SEVENTH OBJECTION IN POINT OF LAW

87. The Village identified the areas of environmental concern associated with the project at issue, and took the requisite “hard look” and thereafter issued a reasonable elaboration for its determination that no significant adverse impacts would result from the actions at issue, including complying with each applicable law, rule and regulation including but not limited to those found under the SEQRA and as such, the determinations made by the Village as required including by virtue of the negative declaration which it issued on February 23, 2012 should be sustained in every respect.

AS AND FOR AN EIGHTH OBJECTION IN POINT OF LAW

88. Petitioners have failed to exercise and to exhaust their administrative remedies.

AS AND FOR A NINTH OBJECTION IN POINT OF LAW

89. Petitioners claims, including those purporting to be made under federal law, including but not limited to the National Environmental Policy Act of 1969 and other federal law, including federal statutory law cited in the Petition, may only be initiated and filed by an action undertaken in federal court, and may only be initiated after certain conditions and other prerequisites are met, including but not limited to exhaustion of administrative remedies, and because Petitioners have failed to satisfy such requirements and prerequisites each of the Petitioners’ claims under federal law and otherwise must be dismissed in their entirety.

AS AND FOR A TENTH OBJECTION IN POINT OF LAW

90. Upon information and belief, some or all of Petitioners’ claims regarding alleged violations of laws do not provide for the private right of action, and on that basis, the Petition should be dismissed in part or in whole.

AS AND FOR AN ELEVENTH OBJECTION IN POINT OF LAW

91. Each of the Petitioners' claims are barred by the doctrine of mootness, as construction of the project was substantially complete before the original return date for this proceeding, thereby mooting each of the claims made by Petitioners.

AS AND FOR A TWELFTH OBJECTION IN POINT OF LAW

92. Each of the claims asserted in the Petition are barred because Petitioners have failed to join parties necessary to adjudicate this matter, including indispensable parties.

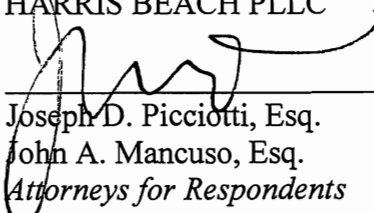
AS AND FOR A THIRTEENTH OBJECTION IN POINT OF LAW

93. Petitioner alleges no breach of, or refusal to perform, a duty enjoined upon Respondents Painted Post Development and SWEPI, LP, no proceedings taken or about to be taken by the Respondents Painted Post Development and SWEPI, LP, and no determination made by the Respondents Painted Post Development and SWEPI, LP capable of review or of being raised under CPLR § 7803 or otherwise in accordance with Article 78 of the CPLR. Therefore, the Petition must be dismissed.

WHEREFORE, Respondents the Village of Painted Post, Painted Post Development, LLC and SWEPI, LP demand judgment dismissing the Petition, together with reasonable attorneys' fees and costs, and such other and further relief as this court deems just and proper.

Dated: August 3, 2012  
Pittsford, New York

HARRIS BEACH PLLC



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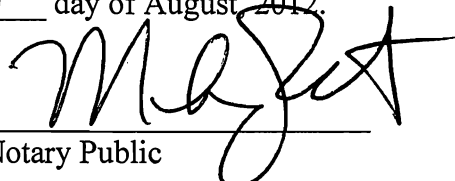
VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF STEUBEN    ) ss.:

ROSWELL CROZIER, being duly sworn, deposes and says he is the Mayor of the Village of Painted Post as well as being a member of the Board of Trustees of the Village of Painted Post ; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent and except as to those matters stated upon information and belief, and that is to those matters, he believes them to be true based upon reasonable inquiry.

  
\_\_\_\_\_  
ROSWELL CROZIER

Sworn to before me this  
1<sup>st</sup> day of August, 2012.

  
\_\_\_\_\_  
Notary Public

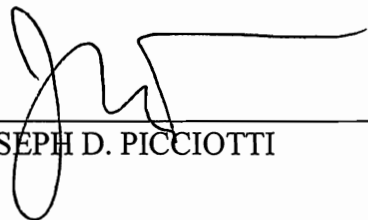
**MUNESH PATEL**  
Notary Public, State of New York  
No. 02PA6109397  
Qualified in Ontario County  
Commission Expires May 10, 2016

VERIFICATION

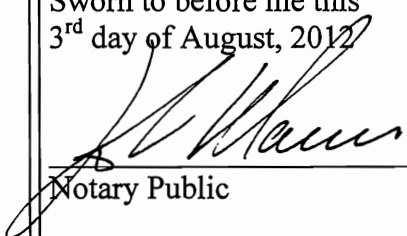
STATE OF NEW YORK     )  
COUNTY OF MONROE    ) ss.:

JOSEPH D. PICCIOTTI, being duly sworn, deposes and says: that he is an attorney for Respondent SWEPI, LP in this article 78 proceeding; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent and except as to those matters stated upon information and belief, and that as to those matters, he believes them to be true based upon reasonable inquiry.

That the reason this verification is made by the deponent and not by Respondent SWEPI, LP is that SWEPI, LP does not now reside within the County of Monroe, where deponent resides and has his office; and the sources of deponent's information and the grounds of his belief as to all matters herein stated are the records of said defendant and the results of an investigation into this matter, conducted on behalf of said Respondent.

  
\_\_\_\_\_  
JOSEPH D. PICCIOTTI

Sworn to before me this  
3<sup>rd</sup> day of August, 2012

  
\_\_\_\_\_  
Notary Public

**JOHN A. MANCUSO**  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires May 22, 2014