

MODOCK SPRINGS VALUE PROTECTION PLAN D R A F T

The New York State Department of Environmental Conservation (“DEC”) completed a remedial investigation/feasibility study in 2008 to evaluate the release of contamination into Modock Springs. Information relating to DEC’s investigation is available at [website]. As part of the remedial investigation/feasibility study, DEC analyzed groundwater samples and tested the sub-slabs of all of the 64 homes within the Modock Springs aquifer area that was the subject of DEC’s investigation.

In response to the data obtained and evaluated by DEC, sub-slab vapor depressurization systems have been installed in six of the homes where DEC determined there was the potential for vapor intrusion. 33 other homes received sub-slab depressurization systems paid through a grant provided by New York State Senator Nozzolio. DEC and/or the Town have also made public water available to all of the homes in the area. As a result of those actions, DEC has determined that the Modock Springs aquifer area does *not* represent a current risk to the health of the residents of the area.

Despite the determination by DEC that there are no current risks to human health as the result of the environmental condition of Modock Springs, the Town of Victor (“Town”) recognizes that recent publicity may have an adverse impact on the resale value of the homes in the area. The Town believes it is in the best interest of the entire community to take steps to respond to those circumstances with a plan to protect the values of affected homes.

Accordingly, the following benefits should be made available to the owners of the homes identified on Schedule A:

1. Public Water

- A. Homes currently connected to public water. The current owners of homes that are connected to the public water system should be reimbursed for all connection fees which they have paid to the Town since September 1, 1999. They should also receive interest-free loans for other costs which they have incurred since September 1, 1999, to connect to the public water system (e.g., trenching, piping and backfilling). The loan provided to current owners should be secured by a mortgage which will be due and payable upon the sale or transfer of the home.
- B. Homes not currently connected to public water. All connection fees should be waived by the Town and current owners of the remaining 13 homes that are not connected to the public water system should receive interest-free loans for the costs which they incur to connect to the public water system, provided the system connection is established on or before June 1, 2009. The loan provided to current owners should be secured by a mortgage which will be due and payable upon the sale or transfer of the home.

2. Sub-Slab Depressurization Systems

MODOCK SPRINGS VALUE PROTECTION PLAN

D R A F T

- A. Homes currently without sub-slab depressurization systems. The current owners should be reimbursed for the costs which they incur to install sub-slab depressurization systems (“SSDSs”) in homes that do not have such systems, provided that the system are installed on or before June 1, 2009, and provided that the systems are installed by a contractor selected by the current owner from among the contractors identified on Schedule B.
- B. Homes with inadequate sub-slab depressurizations systems. The current owners should be reimbursed for the costs which they incur to modify SSDSs that do not meet the standards used by DEC [**Paul, please define the DEC standard here**] to evaluate the performance of such systems, provided that the systems are modified on or before June 1, 2009, by a contractor selected by the current owner from among the contractors identified on Schedule B.
- C. Physical testing for all sub-slab depressurization systems. The current owners shall obtain at least one physical test of his or her home’s SSDS at the time the system is installed or modified and a second physical test within 90 days prior to the expiration of the warranty on the system. The first physical test must be performed by the contractor that installs or modifies the system. The second physical test must be performed by a different contractor (i.e., not the contractor which installed or modified the SSDS) selected by the current owner from among the contractors identified on Schedule B. The current owners should be reimbursed for the costs which they incur for the first and second physical tests of the systems. The Town should provide assistance to home owners to enforce warranties against the contractors which install or modify SSDSs that fail the second physical test.

3. Current Home Owners’ Value Protection Assurance

- A. Reimbursement for a current owner’s loss upon the sale of a home. For a period of 20 years from the date of this Plan, the current owners should be reimbursed for any loss they may incur upon the sale of their homes caused by or resulting from the environmental condition of Modock Springs aquifer area. The amount of a current owner’s loss will be computed as the difference between the fair market value of the home, as determined according to the process described in Section 3(B) of this Plan, and the actual purchase price which the current owner receives to sell and/or transfer the home in a *bona fide*, arms length transaction for fair value. (For example, the current owner of a home with a fair market value of \$300,000 that is sold by the current owner for \$280,000 will have a loss of \$20,000.)

MODOCK SPRINGS VALUE PROTECTION PLAN D R A F T

- B. Process to establish the amount of the current owner's loss. Within 30 days before a home is listed for sale, the current owner shall obtain an appraisal from a licensed real estate appraiser. The appraisal shall estimate the fair market value of the current owner's home based on generally accepted criteria for the appraisal of personal residences, *exclusive* of any diminution in the value of the home that may be caused as the result of the environmental condition of Modock Springs aquifer area. The appraisal shall also include an estimate of the value of the home as impaired or diminished as the result of the environmental condition of Modock Springs aquifer area. The Value Protection Plan Panel described in Section 5(B) may, at its option, accept the appraisal of the home established in the appraisal provided by the current owner or, in the alternative, it may request a second appraisal of the fair market value and/or impaired value of the home based on the same the criteria. If the difference between the appraisals is less than 10%, the average of the appraisals should be used to determine the fair market value and/or impaired value of the home. If the difference between the appraisals is 10% or more, a third appraisal shall be obtained. The three (3) appraisals shall be averaged together to determine the fair market value and/or impaired values of the home. The current owner should be reimbursed for the reasonable cost of all appraisals.
- C. Process to determine whether the proposed sale price is for fair value. If a current owner sells a home for an amount that equals or exceeds the impaired value, the transaction will be presumed to be for fair value for the purpose of Section 3(D)(ii). If the current owner sells the home for an amount which is less than the impaired value, the Value Protection Plan Panel described in Section 5(B) shall determine within __ days from the date the owner submits a proposed purchase contract for the home to the Panel whether the sale price is for fair value for the purpose of Section 3(D)(ii).
- D. Eligibility requirements for current home owners:
- i. A home must be connected to the public water system and have an installed and functional SSDS.
 - ii. The sale and/or transfer of ownership of a home must be a *bona fide*, arms length transaction for fair value.
 - iii. In the case of a sale and/or transfer of a home within or among a family, the home owner's benefits under Section 3(A) are not available to the current owner. However, the current home owner's benefits under Section 3(A) of this Plan are transferable to the family member(s) who purchase and/or obtain ownership of the home.

4. Home Buyers' Value Protection Assurance.

MODOCK SPRINGS VALUE PROTECTION PLAN D R A F T

- A. Reimbursement for a buyer's loss. For a period of 20 years from the date of this Plan, the Town shall reimburse any natural person ("buyer") who purchases and continuously occupies a home from a current owner for any loss that he/she may incur upon the sale of the home as the result of the environmental condition of Modock Springs aquifer area.

- B. Process to establish the amount of the buyer's loss. The amount of a buyer's loss will be calculated as the difference between the original purchase price and the actual purchase price which the buyer receives to sell and/or transfer the home in a *bona fide* arms length transaction for fair value. The Panel should determine in all cases whether the sale is for fair value.

- C. Process to obtain benefits. If the buyer sells the home for an amount that equals or exceeds the impaired value or the original sales price, whichever is less, the transaction shall be presumed to be for fair value for the purposes of Section 3(D)(ii). If the current owner sells the home for an amount which is less than the impaired value or the original sales price (whichever is less), the Value Protection Plan Panel described in Section 5(B) shall determine within __ days from the date the owner submits a proposed purchase contract whether the sale price is for fair value.

- D. Eligibility Requirements for the home buyer's benefits:
 - i. A home must be connected to public water system and have an installed and functional SSDS.
 - ii. The sale and/or transfer of the home must be a *bona fide*, arms length transaction for fair value.
 - iii. In the case of a sale and/or transfer within or among a family as described in Section 3(C)(iii), the home buyer's benefits under Section 4(A) of the Plan will be available to the subsequent natural person who purchases and continuously occupies the home.

5. Other Terms of the Plan.

- A. As a condition of eligibility for the benefits of this Plan, current owners must provide the Town of Victor with a release of any and all claims they have or may have against the Town for any personal injury or property damage relating to or arising from the environmental condition of Modock Springs.

- B. A five (5) member panel, known as the Value Protection Plan Panel, should be established. The Panel should consist of a licensed real estate agent, licensed property appraiser, banker, attorney and a town resident. The Panel should

MODOCK SPRINGS VALUE PROTECTION PLAN D R A F T

determine, when required by this Plan, whether a transaction is for fair value. In determining whether a sale of a home is for fair value, the Panel should consider comparable home values, the appraisal or appraisals estimating the fair market value and impaired value of the home, the efforts of the owner to sell the home, the length of time the property was listed and/or made available for sale, the knowledge and experience of any real estate agents engaged by the owner to sell the home and the proximity of the home to the plume. The Panel should also consider any other factors or circumstances that may help it to determine whether a sale is for fair value.

- C. All disputes arising from or relating to this Plan, including but not limited to the interpretation of the terms and conditions of this Plan, the requirements for eligibility, the determination of whether the sale or transfer of a home is a *bona fide*, arms-length transaction should be determined by the Value Protection Plan Panel. The determination of the Panel regarding all matters relating to this Plan should be binding, final and non-reviewable.
- D. All requests for payment of benefits under this Plan must be accompanied by appropriate documentation supporting the request for benefits.
- E. Definitions:
 - i. The date of this Plan is _____, 2008.
 - ii. “area” refers to the location in the general vicinity of Modock Springs aquifer area where DEC conducted a remedial investigation and feasibility study, as illustrated on Schedule A.
 - iii. “home” refers a residence identified on Schedule A.
 - iv. “current owner” refers to the owner or owners of the fee interest in a residence identified on Schedule A as of the date of this Plan.
 - v. “buyer” refers to the natural person or persons who purchase a home identified on Schedule A from a current owner and resides there continuously until it is sold or transferred.
 - vi. “loss” refers to the difference between the fair market value of a home, as determined in the procedures provided in Section 3(B) of this Plan, and the actual purchase price for which the home is sold in a bona fide, arms length sale for fair value.
 - vii. “fair market value” refers to the value of a home based on generally accepted criteria for the appraisal of a personal residence, *exclusive* of any diminution in value as the result of the environmental condition of Modock Springs aquifer area.

**MODOCK SPRINGS VALUE PROTECTION PLAN
D R A F T**

- viii. “impaired value” refers to the diminished market value of a home as a result of the environmental condition of Modock Springs aquifer area.

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