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**Testimony of Ned Sullivan, President, Scenic Hudson  
to the Joint Legislative Committees for Environmental Conservation and Budget  
regarding Governor Cuomo's Executive Proposed Budget for the 2015-16 State Fiscal Year**

**January 28, 2015  
Albany, NY**

**Introduction**

Good afternoon. My name is Ned Sullivan, President of Scenic Hudson. Thank you, Chairmen and members of the legislature, for the opportunity to testify to you today about Governor Cuomo's proposed Executive Budget for the 2015-16 state fiscal year.

Scenic Hudson works to protect and restore the Hudson River and its majestic landscape as an irreplaceable national treasure and a vital resource for residents and visitors. Our team of experts combines land acquisition, support for agriculture, citizen-based advocacy and sophisticated planning tools to create environmentally healthy communities, champion smart economic growth, open up riverfronts to the public and preserve the valley's inspiring beauty and natural resources. To date Scenic Hudson has created or enhanced more than 65 parks, preserves and historic sites and conserved more than 35,000 acres, including more than 13,000 acres of working farmland in the Hudson Valley.

We advance these capital projects by collaborating with federal, state and local governments, and private citizens, as well as investing our own charitable funds, to arrange the necessary community and financial support necessary for success. In this context, I am proud to serve on Governor Cuomo's Regional Economic Development Council for the Mid-Hudson Region, and of my staff that share their expertise and serve on the Department of Environmental Conservation's Region 3 & 4 Open Space Committees, the Hudson River Estuary Program's Management Advisory Committee, Sea Level Rise Task Force, and other environmental stewardship programs, as well as the Board of Directors for the Hudson River Valley Greenway.

## **Governor Cuomo's Budget Proposal Addresses Most Significant Environmental Challenges in the Hudson Valley**

Governor Cuomo ended his first term by banning horizontal hydraulic fracturing – capping off an outstanding year with a nationally important environmental achievement. The state also brought an end to a utility's plan to construct a costly, energy-intensive desalination plant on the Hudson River, launched the visionary Reforming the Energy Vision proceeding to retool the state's energy grid for the 21<sup>st</sup> century, and dedicated \$20.5 million for farmland protection.

As the Governor begins his second term, he has proposed four items that top his environmental agenda that will have a transformative effect on air and water quality, access to fresh and local food, our collective ability to respond to climate change by creating resilient communities, and the state's economy.

They are:

- A \$20 million allocation to **farmland protection** in the Hudson Valley using bank settlement funds. This will help address the region's and New York City's burgeoning demand for fresh, local food, estimated to be in excess of \$600 million annually;
- A \$10 million increase in the state's **Environmental Protection Fund (EPF)**, bringing the fund to a total of \$172 million, including strategically important increases to the state's land acquisition program, environmental justice grants, stewardship of the State's park system, and Hudson Estuary Management, which will enable reestablishment of the Estuary Program's grants program for local communities;
- Raising the cap on the state's **Oil Spill Fund** to \$40 million to help ensure the ability to respond to the increased risk of an oil spill disaster by boat, barge or rail;
- An investment of \$1.5 billion in a competition among 7 regions of the state for three \$500 million awards to invest in **regional infrastructure**, which may include water and wastewater infrastructure and help address the state's multi-billion need in this area.

## **Recommendations to the Legislature's Response to the Governor's Proposed Budget**

### **Farmland Protection**

The governor has proposed a one-time \$20-million commitment to protect at least 4,600 acres of working farms in the Hudson Valley/New York City foodshed through the purchase of conservation easements. This major boost to conservation goals in the region will help ensure that the valley's family farms remain intact and continue to contribute to New York State's fast-

growing agricultural and food-related industries and make a down payment on securing the NYC/Hudson Valley “foodshed.”

The revenue source of this initiative is the financial settlement funds secured by New York State. This program is expected to be administered by the Department of Agriculture and Markets, but is separate from the proposed \$14 million for statewide farmland protection through the Environmental Protection Fund, and the additional \$30 million in bank settlement funds directed to the Southern Tier region for temporary easements on working farms and related agricultural-economic development.

*Opportunities for Legislative Action:*

- Maintain \$20 million commitment to permanent easements in the Hudson Valley
- Clarify geographic scope of program to include Albany, Columbia, Dutchess, Greene, Orange, Putnam, Rensselaer, Rockland, Westchester, Saratoga, Sullivan, Ulster, Washington and Westchester Counties.
- Maintain the \$30 million for agricultural protection and agricultural economic development in the Southern Tier, and \$14 million for statewide farmland protection through the Environmental Protection Fund.

*Policy Basis for increased investment in farmland protection in the Hudson Valley:*

In 2013, Scenic Hudson performed a first-of-its-kind comprehensive study outlining plans for protecting the region’s productive and agricultural lands: *Securing Fresh, Local Food for New York City and the Hudson Valley: A Foodshed Conservation Plan for the Region*<sup>1</sup>. The report utilized state of the art Geographic Information Systems (GIS) analysis to identify the presence of farms in the region, and ranked their soil value, size and density within geographic clusters. The report identified 4,969 unprotected farms, comprising 648,959 acres. A ranking system was applied to so that resources could first be applied to the farms with the greatest productive capacity. As far as we know, this is the first-ever data-driven analysis of its kind.

The Foodshed study has been recognized in the state’s draft Open Space Conservation Plan, which identifies the protection of the NYC/Hudson Valley Foodshed as a priority Project, and has also been referenced in the Mid-Hudson’s Regional Economic Development Council’s strategic plan, as well as the Mid-Hudson Consortium’s Regional Sustainability Plan.

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<sup>1</sup> [http://www.scenichudson.org/sites/default/files/Foodshed Conservation Plan5\\_web.pdf](http://www.scenichudson.org/sites/default/files/Foodshed%20Conservation%20Plan5_web.pdf)

A companion report, also issued in 2013 by Scenic Hudson, *Diversifying Finance of Farmland Protection in the Hudson Valley*<sup>2</sup> adds another layer to this GIS analysis: 53 percent of the area within farmland priority conservation clusters identified in its recent Foodshed Conservation Plan also is located in watersheds ranking high or highest for overall water quality conservation value. (Approximately five percent of this farmland is in areas with highest water quality values.)

A third report, *Local Food Pathways: How Hudson Valley Food Reaches New York City Neighborhoods*<sup>3</sup>, demonstrates that local food reaches New York City in many ways – through farm markets, food banks, the school system, grocery chains, food carts, and restaurants that serve all walks of life. Urban farms and gardens supply some fresh produce, but much local food comes to New Yorkers from farms in the Hudson Valley. This will become increasingly helpful in meeting the goals of New York City local law 50, which encourages city agencies, which serve 260 million meals to the public every year, to buy more of their food from New York State growers, as the supply chain becomes more robust and regional distribution infrastructure is expanded.

All three plans call for a public-private partnership among federal, state and local government—including New York City—as well as land trusts and private philanthropists to secure the highest quality agricultural lands in Hudson Valley counties where it is most promising to reinforce the growing economic sustainability of regional agriculture.

In addition to the benefits to our state’s largest city, farmland protection projects in the Hudson Valley:

- enhance the economic viability of our farms – farmers typically reinvest the proceeds from the sale of development rights into to the productive capacity of their farms or expand their operations;
- maintain scenic working landscapes, rural heritage and quality of life, all of which help drive a multi-billion tourism industry and fuel economic growth;
- ensure a steady clientele for farm-related industries, including veterinary services, feed stores and other agricultural support industries like machine repair;
- safeguard wildlife habitat and environmentally sensitive areas, including local aquifers and drinking-water supplies
- keep a lid on local property taxes by requiring just 37 cents in municipal services for each \$1 of taxes they pay.

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<sup>2</sup> <http://www.scenichudson.org/sites/default/files/farmland-finance-report.pdf>

<sup>3</sup> Currently in draft form. Release expected in the winter of 2015. Report available upon request.

Over the last 25 years, the state has lost almost half a million acres of farmland to subdivisions, strip malls and scattered development. This is a trend that must be reversed. Support for the Governor's farmland protection proposal will help the state regain footing for this critical industry.

### **The Environmental Protection Fund**

During the Governor's first term of office, he demonstrated that he was a responsible steward of the state's Environmental Protection Fund (EPF). The Governor ended the harmful practice of deep budget cuts and sweeps of the EPF. Expenditures from the fund now match or exceed appropriation levels. Through the legislature's work with the Governor, restoration of EPF programs has begun.

The Governor has proposed a \$10 million increase to the fund, including strategic allocations that help the state build community resilience against increased flooding and sea level rise, through a \$3.8 million increase in state land acquisition funding, a \$900,000 increase in Hudson Estuary Management, and the addition of new programs that serve environmental justice communities. The addition of \$900,000 to the Hudson Estuary Program is especially noteworthy in that it will enable the DEC to grow its grant program of local governments and non-profits to advance project that help implement the program's Action Agenda<sup>4</sup>. Funding for the highly-successful Conservation Partnership Program remains flat in this year's budget proposal, and the Governor has proposed creation of a new program modeled on this initiative that would benefit "friends groups" who support the state parks system. Through its many programs, the EPF benefits every county within the state.

The Governor's proposal recognizes the link between the EPF creating jobs and protecting the environment. A 2012 analysis by the Trust for Public Land found that for every \$1 the EPF invests in land and water protection, \$7 in economic benefits is returned to the state through natural goods and services like the removal of air pollution, water quality protection and storm water management. The fund has been proven to support more than 350,000 jobs in New York State, across a broad spectrum of industries, including outdoor tourism, agriculture and protecting drinking water for millions of New Yorkers. EPF supported industries generate approximately \$40 billion for the state's economy each year. In the Hudson Valley, the EPF is widely considered to be one cornerstone of the region's \$4.2 billion tourism economy.

A new report, *Land Stories: Creating Jobs, Building Healthier and More Resilient Communities*<sup>5</sup>, was produced by Scenic Hudson on behalf of the state's conservation community. It details personal stories and economic benefits of land conservation successes throughout the state.

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<sup>4</sup> <http://www.dec.ny.gov/lands/5104.html>

<sup>5</sup> [http://www.scenichudson.org/sites/default/files/LandStories\\_2015\\_web\\_0.pdf](http://www.scenichudson.org/sites/default/files/LandStories_2015_web_0.pdf)

The EPF is funded primarily through the state's existing Real Estate Transfer Tax, which is expected to generate nearly \$1 billion in the current fiscal year, and continue to grow now that the real estate market has recovered. However, in this year's budget proposal the Governor has proposed increasing funding for the EPF through a sweep of the state's Regional Greenhouse Gas Initiative (RGGI).

*Opportunities for Legislative Action:*

- Support continued restorations of the Environmental Protection Fund, at a minimum of \$172 million. This \$10M increase is progress towards our shared goal of reaching a \$200M EPF in the near future, and a fully-funded \$300M EPF in the long-term.
- Seek a revenue source other than RGGI to fund the EPF. The Real Estate Transfer Tax has rebounded significantly in recent years and has historically been the source of EPF funding. On principle, one environmental program (in this case RGGI) should not be diminished to support growth in another.

**Oil Spill Fund**

Governor Cuomo has responded to risks posed by the sudden and drastic increase in the transport of highly volatile Bakken crude oil<sup>6</sup> and difficult to clean Tar Sands crude oil through New York State through an increase in the cap on the amount of license fees that are deposited into the state's oil spill fund to \$40 million (an increase of \$15 million), funded by an increase in the license fee. The proposal also increases the surcharge on barrels of oil transferred at facilities in New York but then exported. The proposal also recommends that management of the fund be transferred to the New York State Department of Environmental Conservation; that fund proceeds may be used for planning and prevention activities; and, includes new authority for the state to assess penalties against polluters without having to incur the delay and costs associated with going to court.

Scenic Hudson believes that bolstering the Oil Spill Fund is necessary for the state to adequately respond to oil spill disasters and ensure that investments made in the Hudson Estuary are protected and maintained for future generations<sup>7</sup>. The fund is the state's first line of defense against oil spills and is solely liable for financing cleanup when responsible parties are unable or unwilling to pay. Ironically, while there are no limits on the state's liability in the event of a spill, railroads and shippers of the oil may not be fully responsible for the cost of oil spill cleanups in some situations. And, in some cases, railroads may not carry sufficient insurance to cover the costs of contributing to spill cleanup.

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<sup>6</sup> The U.S. Energy Information Administration estimates that 87 percent more crude oil is being transported through New York now than in 2008.

<sup>7</sup> <http://www.scenichudson.org/sites/default/files/crude-oil-transport-map-2014.pdf>

Opportunities for Legislative Action:

In responding the Governor's proposal for administration of the fund, Scenic Hudson recommends that the Legislature consider the following policy goals:

- Ensure that purpose of the Oil Spill Fund remains dedicated. The chosen administrator should provide the greatest assurance that the fund remains intact and not subject to annual budget appropriations or potential sweeps to the General Fund.
- Propose language that would define the portion of the fund under the Governor's proposal that may be used for planning and response on an annual basis. A reasonable limit should be set on the amount of the fund allowed for these purposes, and not left open-ended.
- Ensure that the amount in the fund will be sufficient to address the need. Huge amounts of Bakken Crude are currently being transported through the state and down the Hudson River Valley every day. For perspective, Quebec's claim for cleanup and reconstruction costs for the Lac Megantic disaster which involved a derailment and explosion of a train carrying Bakken crude was \$400 million, while the total cleanup costs of the Kalamazoo River pipeline spill of 843,000 gallons of heavy tar sands crude is now at \$1.18 billion.
- Ensure that the change in the fee structure will be sufficient to meet the chosen cap on the fund within 12 months.
- Avoid developing a situation where taxpayers may have to foot the bill for a costly and catastrophic cleanup. Limits on liability and financial security of private parties potentially responsible for future spills should be set at levels to ensure that the responsible party will compensate the fund for any losses it incurs<sup>8</sup>. In particular:
  - a. Amend the Navigation Law so that there is a requirement for railroads to have evidence of financial security in some amount. *(This is what CA and MN have done; railroads have brought challenge in CA.)*
  - b. Amend the Navigation Law so that railroads are required to have comprehensive oil spill response plans in the event of a spill, ostensibly increasing the odds that the responsible party will handle a spill in accordance with the plan and the State will not have to do it using Oil Spill Fund moneys. *(CA did this and it is being legally challenged.)*

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<sup>8</sup> More detailed analysis on these legislative recommendations is available upon request.

- c. Specific authority for DEC to contract with Oil Spill Removal Organizations (OSROs) or other private response corporations in order to have in place a system of response equipment, especially response vessels on the Hudson River.
- d. The State may also want to increase penalties under the Navigation Law (currently \$25,000 per violation per day).
- e. The State could also increase the Rail Safety Fee under Transportation Law § 135 to support DOT enforcement. A portion of fees collected could also be deposited into the Oil Spill Fund.

#### Water and Wastewater Infrastructure

Governor Cuomo has proposed a \$1.5 billion upstate economic development initiative makes water and wastewater infrastructure eligible for potential funding for three winning regions. The Governor's focus on the multi-billion dollar need for water and wastewater infrastructure repair and upgrades is certainly welcome. My own experience as a member of the Mid-Hudson Regional Economic Development Council has been that prioritizing investments within the state's regions makes sense. The process helps ensure that co-benefits are realized through the investment of limited state resources.

While this is a directionally correct proposal, there remains no source of *statewide* funding for green infrastructure and resiliency projects, including water and wastewater infrastructure, open space and wetlands protection, climate change adaptation, and waterfront revitalization sensitive to climate change/sea level rise.

As Scenic Hudson noted in its 2012 report *Diversifying Finance of Farmland Protection in the Hudson Valley*<sup>9</sup> there is a general sense among many municipal leaders that finance opportunities for environmental investments through the Environmental Facilities Corporation (EFC) still fall short of the need as many local governments are resource constrained – even with low interest rates, taking full advantage of the Corporation's programs is challenging. Enhanced financing that combines grants plus low-interest loans is a recipe that can enable more municipal partners to invest in local water and wastewater infrastructure.

#### Opportunities for Legislative Action:

- Earmark a portion of the \$1.5 billion for the infrastructure competition to be set aside specifically for water and wastewater investments. Language should be developed that prioritizes investments in developed existing urban centers (as opposed to new

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<sup>9</sup> <http://www.scenichudson.org/sites/default/files/farmland-finance-report.pdf>



development in outlying areas). This will help ensure that state monies comply with the Smart Growth Public Policy Infrastructure Act.

- Develop language that encourages non-traditional green infrastructure solutions to storm and wastewater language, including rain gardens, bio-swales, and other proven nascent technologies.
- Broaden the definition of communities that may apply for the Governor's proposed 0%-interest rate infrastructure loan program through the EFC. Currently, this only applies to communities that demonstrate hardship. The option should also be extended to projects that would generate the greatest environmental benefit, regardless of local economic conditions. One approach may be for state grants to supplement loans from the EFC under the State Revolving Fund program.
- Urge that all regions be eligible to apply for these grants based on urgency of need to address water quality and legal compliance with environmental need, financial need, and leveraging by county and local government and private funding sources.

### **The Hudson River Valley Greenway**

The Governor's budget proposal for the Hudson River Valley Greenway holds funding flat again this year.

The agency has reported that it has exhausted *prior*-year funding directed by the Legislature that has allowed it to implement catalyst grants to Hudson Valley communities wishing to develop local plans and projects consistent with Greenway planning principles. Many projects funded by the agency in the past have blossomed to become cherished community resources, notably Walkway Over The Hudson State Park, and countless trails and local landmarks.

*Opportunity for Legislative Action:* Direct funding to the agency so that it may reestablish its catalyst grants program.