New York Begins to Address Smart Growth and Sprawl

By David K. Gordon

I. Introduction

Land development is a pressing environmental concern in many areas of New York State. The extent and projects which are approved alter the character of communities, and the natural environment. Housing subdivisions, commercial parks and shopping malls outside of existing towns can compromise ecological and human health, consume open space, damage scenery, increase energy use, and cause congestion and pollution. Particularly where the landscape and environmental resources create attractions for tourists and residents, this "sprawl"-type development can reduce quality of life and economic viability and increase municipal costs for infrastructure and services.

Nevertheless, the prevalent development pattern in much of the state over the past several decades has emphasized automobile dependence and physical separation from other land uses, including established downtowns and neighborhoods. As a result, it has consumed substantially more land than prior growth.[1] The ubiquity and convenience of automobiles, relatively inexpensive gasoline for much of the post-WWII period, federal provisions supporting financing of home mortgages, and expanded investment in road construction, including the interstate highway system, have all played key roles in the emergence of "sprawl." With the vast expansion of opportunities for automobile travel, formerly remote areas of land have become more attractive for siting new subdivisions and commercial projects.

The utilization of undeveloped land apart from existing communities has become the dominant model for land development. It has also come under substantial criticism on environmental, social and aesthetic grounds, including increased automobile dependence, energy use, and consumption of land and other natural resources, as well as increased municipal and infrastructure costs. Many critics have advocated alternative patterns of development, which they label "smart growth" because it may avoid many of the impacts of sprawl.

The emergence of suburban sprawl has occurred under, and largely resulted from, a very decentralized system of regulation. The primary permitting authorities for most land development proposals are the local boards where each project is located. Town and village boards and city councils are responsible for the comprehensive plans which broadly set forth each municipality's putative growth goals. Based at least in part on these plans, the legislative body enacts the codes which divide the municipality into zones and specify the allowable land uses and the physical standards for development in each zone. In most municipalities, a planning board reviews the proposed site plans for individual projects.[2]

Due to the nature of typical zoning, few local codes provide a substantive constraint on the progressive consumption of the landscape through sprawl. In many cases, zoning codes reduce the allowed density of construction in undeveloped areas, or require the developer to set aside land for conservation or affordable housing purposes. However, since the vast majority of the area subject to the municipalities' jurisdiction is zoned for some form of real estate development, the codes do little to constrain the sprawl of developed land into the countryside.

Given the emergence of sprawl as a central environmental concern in much of the state, the ineffective regulatory process has created substantial controversy. Nevertheless, the state has continued the traditional municipal jurisdiction over growth, without significantly strengthening local capacity to limit sprawl. The prior three governors have convened in-house task forces to review sprawl/smart growth-related issues, but the legal balance has remained largely unaltered.

In 2010, two state initiatives addressed the control of land development and the underlying controversies. One, which was embodied in new state legislation, for the first time established a state policy to limit sprawl, at least with respect to state infrastructure investments. The second was a "dialog" relating to the administration and implementation of State Environmental Quality Review Act ("SEQRA"),[3] conducted by the New York State Department of Environmental Conservation ("DEC") regional office overseeing the mid and lower Hudson Valley.[4] The state legislation, known as the Smart Growth Public Infrastructure Policy Act, is the subject of Part II of this article. The DEC Region 3 SEQRA Dialog and recommendations will be addressed in Part III.

II. The Smart Growth Public Infrastructure Policy Act

The New York State Smart Growth Public Infrastructure Policy Act ("the Act")[5] was enacted in the summer of 2010 and became effective on September 29, 2010.

The Act is the first statewide legislative declaration of policy on the merits of smart growth or sprawl. The Act encourages state infrastructure expenditures to be consistent with the principles underlying smart growth, including supporting existing infrastructure and communities rather than creating new facilities.[6]

The Act was codified as the new Article 6 of the Environmental Conservation Law. The statutory declaration of policy makes clear the law's focus on limiting environmental and other costs of sprawl. The Act declares:

> It is the purpose of this article to augment the state's environmental policy by

> declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by sprawl facilitated by the funding or development of new or expanded transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure inconsistent with smart growth public infrastructure criteria.[7]

The Act reflects the legislature's finding that sprawl often involves substantial infrastructure costs and can deplete or damage natural resources.

The Act sets requirements for state expenditures, or other support, for "public infrastructure projects." It forbids "state infrastructure agenc[ies]," which include many state agencies and all state authorities,[8] from approving, undertaking, supporting, or financing a public infrastructure project, unless the project is consistent with a list of "smart growth public infrastructure criteria." Those criteria are as follows:

1. to advance projects for the use, maintenance, or improvement of existing infrastructure;
2. to advance projects located in municipal centers;
3. To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan, and/or brownfield opportunity area plan;
    a. to protect, preserve, and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources;
    b. to foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development, and the integration of all income and age groups;
    c. to provide mobility through transportation choices including improved public transportation and reduced automobile dependency;
    d. to coordinate between state and local government and intermunicipal and regional planning;
    e. to participate in community based planning and collaboration;
    f. to ensure predictability in building and land use codes; and
    g. to promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad-based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.[9]

By enacting smart growth criteria for state infrastructure investments, the bill establishes a preferred pattern of growth.[10]

The Act mandates implementation procedures to support the requirement that infrastructure decisions be consistent with the smart growth criteria. Before making any commitment to construct or finance any covered project, the state agency must prepare a written "smart growth impact statement" attesting that the project, "to the extent practicable," meets the criteria.[11] If meeting the criteria is deemed impracticable, the agency must prepare a "statement of justification" to explain its determination.[12]

The requirement for a smart growth impact statement is similar to the SEQRA mandate for a detailed environmental impact statement to assist the agency in avoiding or minimizing significant adverse impacts. [13] Modeling the smart growth procedure on SEQRA reflects the increasingly central role of environmental impact review in administration of environmental issues, particularly the regulation of land development. However, the Act contains a critical difference: unlike SEQRA, the Act pointedly denies private parties the right to petition the courts to review agency determinations of consistency with smart growth criteria or any other requirement of the Act.[14] This provision is a notable exception from the general availability of judicial review of agency determinations, a common provision of state and federal administrative law[15] and an important component of environmental advocacy by affected individuals and businesses.

The proscription of judicial review, at least of petition by private parties, removes virtually all outside enforcement of the Act, and thereby consigns compliance to the diligence and conscience of the subject agencies. The Act requires each agency to appoint a "smart growth advisory committee" to advise it on compliance with the smart growth criteria.[16] The Act requires the advisory committees to solicit input from and consult with representatives of affected communities and "give consideration to the local and environmental interests affected by the activities of the agency or projects planned, approved or financed through such agency."[17]

The agencies covered by the Act are still in the process of appointing their advisory committees and crafting their implementation procedures, and there have been few decisions implementing the Act to date. Accordingly, there is little indication of the strictness with which the agencies will interpret the smart growth criteria and the consistency requirement. Notably, during his 2010 election campaign, New York Governor Andrew Cuomo pledged to implement the Act.[18] It remains to be seen how the agency advisory committees will instill the legislature's vision of smart growth as a basis for agency infrastructure investments, or if the lack of judicial review will allow for uneven agency implementation of the criteria.

A greater concern is the limited scope of the Act in reducing sprawl. Decades of infrastructure investments by government at all levels, particularly the construction and expansion of highways, have already provided the template for automobile based development into the foreseeable future. Moreover, with the infrastructure already in place, most controversies over sprawl occur at the municipal level, where local agencies have primary authority over growth patterns and individual projects, pursuant to their planning and zoning authority. As a result, even diligent implementation of the Act by state officials is unlikely, by itself, to reverse the prevalence of sprawl in the state's land use. Further state effort to guide development patterns will likely be necessary to realize the new legislative policy supporting smart growth.

III. DEC SEQRA Dialog Recommendations

In 2010, DEC Region 3 conducted a prominent public dialog with developers, environmental advocates, and other interested parties to review strategies to streamline the SEQRA process without compromising the environment or the opportunity of the public to participate (the "Dialog").[19] The Dialog arose at the request of the then-DEC commissioner Pete Grannis, prompted by concerns from developers that the review process for proposed real estate projects was too lengthy, uncertain, and expensive.

In theory, SEQRA is an anomalous target for reforming the land development review process. SEQRA applies to all state and local government decision-making that may have an adverse impact on the human environment or natural ecosystems. SEQRA is utilized by all state and local agencies and authorities in their program planning, promulgation of regulations, funding and undertaking their own projects such as road or building construction or condemnation of land. At its core, it provides a detailed framework for review of prospective environmental impact, to ensure that the agency is aware of the potential for such impact and analyzes this potential.[20]

SEQRA review provides the agency with the information necessary to determine whether there may be significant adverse impacts, to mitigate such impacts where they exist, and to deny the proposal or consider alternatives if it is not possible to reduce the impacts to an acceptable level. Yet, in the Dialog, the developers' primary complaint did not concern these "substantive" attributes of SEQRA, which can require changes to, or disapproval of, their proposed projects. Instead, the focus of their concern was the detailed procedures which agencies apply to formalize their review of environmental impact.

The SEQRA review procedures may seem more onerous to proponents of land development than other types of proposals because of the dearth of substantive restrictions governing sprawl. Many other areas of environmental review are governed by detailed codes specifying performance standards, and in some instances prescribing the methods and practices to be used, to protect the environment.

Zoning codes contain dozens of pages of specific criteria for development projects, including density requirements, limitations on uses, setbacks, height restrictions and numerous other standards. But sprawl and other areas of environmental concern are typically outside these specifications. As a result, developers commonly propose projects which comply with zoning codes but contribute to sprawl and violate many or all of the smart growth standards now recognized by the state. When this happens, the public often demands that the SEQRA review include analysis of one or more potentially significant environmental impacts which may not be addressed by any substantive regulation. In effect, the SEQRA review becomes the substitute for standards governing the location of development and the impact of sprawl.

Substantive concerns commonly include increased vehicular traffic, loss of open space, increased erosion and runoff with multiple potential impact on ground and surface water, potential damage to habitats, wetlands, and natural resources, and increased municipal costs, particularly for schools in the event of housing projects.[21] They also may include the impact on aesthetics and community character, particularly where the development is sized or designed in conflict with hitherto rural surroundings.

Thus, in many circumstances especially common in land development, the prospect of degraded resources results in significant controversy regarding the sufficiency of the SEQRA review. Where the lead agency[22] requires analysis of contended issues, the process may take substantially longer and cost more than the applicant's expectations. These frustrations, resulting from the lack of competent planning and standards for growth, have led to calls for mandatory time frames for SEQRA determinations and in some circumstances, complaints about agency delay and inappropriate motives by public commenters.[23]

As a consequence, business and development advocates have periodically called for reform of SEQRA review. The last major revision to DEC's SEQRA regulations in 1995 resulted in few substantial changes in applicable procedures. A 2005 proposal by the New York State Senate to institute time frames on various SEQRA determina-

tions never emerged from committee.[24] The DEC Region 3 Dialog became the latest review of SEQRA prompted by development concerns.

The constraints DEC placed on the Dialog reflected the agency's reluctance to substantially modify SEQRA based on land use controversies. In his initial charge to the parties, then-Commissioner Grannis asked for recommendations that could be implemented in the Region "within a short time frame without legislative or regulatory changes."[25] The former commissioner's avoidance of statutory or regulatory amendments by itself ensured that the core procedures would remain intact. The request for promptness and the limitation to Region 3 implementation further guaranteed a relatively informal and modest approach to reform. And his charge not to compromise the protection of the environment or the opportunity for public participation[26] recognized the importance of SEQRA in avoiding the potential for adverse impacts, particularly where there are no substantive standards, and the agency's unwillingness to infringe on this function in streamlining the procedures.

In this context it is not surprising that the first set of Dialog recommendations recognized that deficiencies in land use planning were at the root of the complaints about the SEQRA process. As a result, it recommended reform of the planning framework. DEC explained:

> Land use planning and SEQRA have become increasingly interwoven in recent years. While intended to be complementary activities, each activity is distinctly different. Local government land use planning (legally termed "comprehensive planning") is by definition a proactive, analytical effort designed to set public policy and to guide implementation tools such as zoning, subdivision regulations, capital financing and others. The best plans are also consensus-based and positive in policy. In New York State such planning is also generally non-mandatory (some basic procedures such a public hearing and compliance with SEQR are required IF a locality chooses to complete and adopt a "plan").
>
> Environmental assessment on the other hand is also analytical but is reactive triggered by a distinct, proactive action, be that a proposed plan, a rezoning, or one or more discretionary development permits. Such assessment is also rarely if ever voluntary but is mandatory as defined in State rules and regulations. As noted by some presenters, this assessment is also not about positive policy setting but about "proving negatives" that there will NOT be any significant, adverse environmental impact from certain proposed action.[27]

DEC's report also included statements from participants emphasizing the need for better land use planning, irrespective of any SEQRA reforms. One comment prominently quoted in DEC's Final Recommendations asserted:

> The problem isn't SEQRA, it's a lack of adequate investment, leadership, coordination and funding for local and regional land use planning…. SEQR is an inadequate substitute for good local and regional land use planning…. Until the state provides real guidance and support for comprehensive land use planning consistent with regional, state interests, then SEQR will continue to be an open ended replacement that includes inherent uncertainty.[28]

DEC did not include recommendations for any specific improvements in land use, zoning, or local environmental regulation, but instead listed a series of incentives and initiatives to be applied or emulated generally.[29]

A notable suggestion, repeated by several commenters, was the expanded use of Generic Environmental Impact Statements ("GEIS"). In essence, this would attempt to frontload the environmental review of land development by assessing cumulative impacts at the planning stage instead of during the reviews of individual projects.

Under SEQRA, GEISs are used to assess the expected generalized impacts of an agency's programmatic decision-making.[30] After a GEIS is prepared, the environmental review for individual projects, which are consistent with the GEIS, need only consider the projects' impacts which were not already considered in the GEIS.[31]

The expanded use of GEISs for land development, as contemplated by DEC and the commenters, would significantly alter current practice. GEISs for comprehensive plan and zoning revisions typically contain little analysis of the environmental impacts of the development they authorize. Often comprehensive plan amendments serve as their own GEISs.[32] As Orange County Planning Commissioner David Church, a member of DEC's Core Working Group, noted:

> GEISs are minimal, light documents designed more to complete the procedural requirements for non-site specific reviews. The[y] have little meaningful application when later implementation or site specific actions come on.[33]

SEQRA regulations allow GEISs to be general evaluations of the impacts of broadly applicable plans and regulations, when the site specific applications are not yet known.[34] GEISs similarly may identify one or more miti-

gation measures, without any plans to utilize them.[35] Unless the GEISs for comprehensive plans and zoning regulations refocus on the detailed impacts of development in particular parcels, such reviews cannot eliminate the need for individual studies.

A related problem is the tendency of most GEISs to assess the impact of land use amendments in comparison to the prior municipal plans and codes. For example, GEISs often report that proposed legislation will result in environmental benefit, because they either allow less development or improve the provisions for sensitive environmental resources. Indeed, such environmental benefit is often the purpose of the amendments, particularly in areas where environmental protection is popular (presumably including many of the municipalities where developers complain about delays in the SEQRA reviews of their projects). In contrast, the impacts of individual projects are measured against the physical state of the land prior to development (typically, open land), unless a project was previously approved on the site. As a result, whatever the merits of standard GEIS assessments of planning and zoning amendments, they do not comply with the public need and statutory mandate for review of the impact of development projects on the local environment.

Frontloading these analyses to a GEIS sufficient to reduce the need for, or scope of, a site-specific SEQRA review would demand a vastly increased commitment to land use planning and smart growth. Aside from the far greater expenditure for SEQRA review of the comprehensive plans and zoning codes, fundamental change to the planning process would be the likely result. The predicted impact would almost certainly engender demands from the public for a reduction in the scope of permitted growth, and for locating it in the areas of the municipality where it would do the least damage. Current plans and zoning codes authorize far more extensive development—sprawl over the vast majority, if not all of, the landscape—than would be acceptable to many communities. The costs of the SEQRA review would similarly encourage the municipal planners to specify and concentrate on the growth they advocate, and avoid counterproductive projects.

While the DEC Dialog contained several recommendations for expanding SEQRA education and coordination,[36] the failure of municipal planning and zoning to address the problems created by development has emerged as the fundamental shortcoming. With widespread opposition to the growth authorized by municipal plans and zoning codes, individual project reviews have grown more rigorous and lengthy. By failing to address sprawl—indeed, by creating plans and codes which authorize it—the current planning system dissatisfies both members of the public concerned about environmental preservation and developers seeking to create residential and commercial real estate.[37]

Conclusion

Sprawl development has resulted in substantial impacts and controversy throughout many areas of New York State, as well as other areas of the United States. Recent state legislation has recognized sprawl as a problem, and has directed state agencies to utilize their infrastructure expenditures to encourage better patterns of growth. However, with the majority of sprawl authorized by municipal boards, and substantial infrastructure already in place, the effectiveness of the Smart Growth Infrastructure Act in abating sprawl remains to be seen.

Public concern about sprawl at times results in increased rigor and length in the review of proposed projects. Developer dissatisfaction with these reviews has led to complaints about some practices of municipal boards in applying SEQRA. When DEC Region 3 conducted a Dialog on the use of SEQRA in land use reviews, the resulting report recommended improvements in municipal planning, in addition to modest reforms in SEQRA training and coordination. Changes in planning and zoning to specify smart growth, which is more desirable to host communities, could reduce both sprawl and lengthy project review.

Endnotes

1. For example, the New York State Department of State estimates that in upstate New York, "developed land increased 30% between 1982 and 1997, while the population increased just 2.6%." *Smart Growth*, NYSDOS Division of Local Government Services, available at smartgrowthny.org/lg_sg_final.pdf (last accessed July 11, 2011).
2. *See generally* Town L. Art. 16; Village L. Art 7.
3. SEQRA is codified in Article 8 of the Environmental Conservation Law, and its implementing regulations are in Part 617 of Title 6 of the New York Code of Rules and Regulations.
4. DEC Region 3 covers New York City's northern suburbs and exurbs including Ulster, Dutchess, Orange, Putnam, Rockland, Westchester and Sullivan Counties.
5. ECL §§ 6-0101–6-0111.
6. ECL § 6-0105; *see also*, S. Hoyt New York State Assembly Memorandum In Support of Legislation, Assembly Bill: A8011b, Assemblyman; S. Oppenheimer New York State Senate Introducer's Memorandum In Support S5560b (which justify the bill as necessary to target state infrastructure funding toward smart growth:

   > Sprawl is a problem that has exacerbated New York's financial crisis. The extension of infrastructure to areas that have traditionally been green fields have caused runaway expenditures and economic costs….
   >
   > [S]tate infrastructure funding decisions have supported settlement and land use patterns which necessitate expansive and expensive infrastructure resulting in new roadways, water supplies, sewer treatment facilities, utilities and other public facilities at great cost to the taxpayer and the ratepayer. With this pattern of dispersed development, public investment in existing infrastructure located in traditional main streets, downtown areas and established suburbs has been underutilized and those areas have suffered economically.

New York State needs to focus on smart spending that supports existing infrastructure and development in areas where it makes economic and environmental sense.

7. ECL § 6-0105.

8. ECL § 6-0103[2] (the Act defines "state infrastructure agency" as any of the following agencies: the department of environmental conservation, the department of transportation, the department of education, the department of health, the department of state, the state environmental facilities corporation, the state housing finance agency, the housing trust fund corporation, the dormitory authority, the thruway authority, the port authority of New York and New Jersey, the empire state development corporation, the New York state urban development corporation all other New York authorities, and any subsidiary or corporation with the same members or directors as any of the listed public benefit corporations).

9. ECL § 6-0107[2].

10. *See also* S8612, 214th N.Y. Leg Sess. § 1 (same as A7335-A, 214th N.Y. Leg Sess. § 1) (proposed ECL § 3-0317[1]) (proposed legislation in 2008 would have established many of the same criteria and generally required state agencies to consider smart growth principles in implementing state policies and programs and in reviewing applications. The bill passed both houses of the legislature but was vetoed by former governor David Paterson on September 25, 2008. The bill would have defined New York's "smart growth principles" as follows:

> a. public investment: to plan so as to account for and minimize the direct and indirect public costs of new development, including infrastructure costs such as transportation, sewers and wastewater treatment, water, schools, recreation, open space and other environmental impacts;
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> b. economic development: to encourage redevelopment of existing community centers, and to encourage new development in areas where transportation, water and sewer infrastructure are readily available;
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> c. conservation and restoration: to protect, preserve, enhance and restore the state's natural and historic resources, including agricultural land, forests, surface water and groundwater, waterfronts, recreation and open space, scenic areas, significant habitats, national and state heritage areas and regional greenways and significant historic and archaeological sites and to facilitate the adaption of such resources to climate change;
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> d. partnerships: to establish intermunicipal and other intergovernmental partnerships to address development issues which transcend municipal boundaries, and which are best addressed by effective partnerships among levels of government, in order to increase efficient, planned, and cost-effective delivery of government services by, among other means, facilitating cooperative agreements among adjacent communities and to ensure within a regional context, the appropriate balance between development and open space protection;
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> e. community livability: to strengthen communities' sense of place by encouraging communities to adopt development and redevelopment strategies which build on each community's vision for its future, including integration of all income and age groups, mixed land uses and compact development, transportation choices, downtown revitalization, open space protection, brownfield redevelopment, enhanced beauty in public spaces, and diverse and affordable housing in proximity to places of employment, recreation and commercial development;
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> f. transportation: to provide transportation choices, including increasing public transit, pedestrian and bicycle and other choices, in order to improve health and quality of life, reduce automobile dependency, traffic congestion and automobile pollution and promote energy efficiency;
>
> g. consistency: to ensure predictability in building and land use codes; and
>
> h. sustainability: to strengthen existing and create new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.

11. ECL § 6-0107[3] (the Act provides:

> Before making any commitment, including entering into an agreement or incurring any indebtedness for the purpose of acquiring, constructing, or financing any project covered by the provisions of this article, the chief executive officer of a state infrastructure agency shall attest in a written smart growth impact statement that the project, to the extent practicable, meets the relevant criteria set forth in subdivision two of this section, unless in any respect the project does not meet such criteria or compliance is considered to be impracticable, which shall be detailed in a statement of justification.

12. *Id.*

13. ECL § 8-0109.

14. ECL § 6-0111.

15. *See, e.g.*, CPLR 7801, 7803; 5 USC § 702.

16. ECL § 6-0109 Smart growth advisory committees are described by the Act as follows:

> The chief executive officer of each state infrastructure agency shall create a smart growth advisory committee to advise the agency regarding the agencies' policies, programs and projects with regard to their compliance with the state smart growth public infrastructure criteria. Such committees shall consist of appropriate agency personnel designated by the chief executive officer to conduct the evaluation required by section 6-0107 of this article. Such committees shall solicit input from and consult with various representatives of affected communities and organizations within those communities, and shall give consideration to the local and environmental interests affected by the activities of the agency or projects planned, approved or financed through such agency.

17. *Id.*

18. *See* Andrew Cuomo, *The New NY Agenda: A Cleaner, Greener NY*, 8th in a Series, at 22–23, October 2010, available at d2srrmjar534jf.cloudfront.net/6/d4/3/1266/andrew_cuomo_cleaner_greener_ny.pdf (last accessed July 11, 2011).

19. A description of the Dialog and the recommendations arising from it are in DEC's report, *State Environmental Quality Review (SEQR) Dialog, NYS Hudson Valley Catskill Region (DEC Region 3) SEQR Process Final Report And Recommendations* June 23, 2010 ("*Final Report*") at 3, 5. The Final Report, although dated June 23, 2010, was released in December, 2010. To assist in coordinating the Dialog, DEC recruited two prominent SEQRA stakeholders, Jonathan Drapkin, President of Mid-Hudson Pattern for Progress which advocates economic growth, and Ned Sullivan, President of Scenic Hudson, a conservation group. The group held three public meetings, on November 20, December 4 and December

18, 2009, where it heard from chosen speakers, and reviewed extensive written comment which it published in an appendix to its recommendations.

20. Standard SEQRA procedures include an environmental assessment form, a declaration of significance, and for projects with potentially significant impacts an environmental impact statement ("EIS"). Where an EIS is required, the process often includes scoping, and a public hearing on a draft EIS, and it must include an opportunity to comment on the draft EIS, a response to those comments, and publication of a final EIS and a statement of environmental findings, among other procedures. Where significant new information arises, the lead agency may require a supplemental EIS to address the environmental impacts implicated in the new information. *See generally* 6 NYCRR §§ 617.6, 617.7, 617.8, 617.9, 617.11.

21. *See* ECL § 8-0109[2](d), (f).

22. Under the SEQRA regulations, the lead agency is the agency that coordinates the review of environmental impact and makes the critical determination whether to require an environmental impact statement, when more than one agency has approval authority over the proposal. *See* 6 NYCRR §§ 617.6(b), 617.7.

23. *See* State Environmental Quality Review (SEQR) Dialog, NYS Hudson Valley Catskill Region (DEC Region 3), *A regional effort to identify opportunities to improve the SEQR process*, Appendix B at 115 (An anonymous commenter to DEC summarized this point of view as follows:

> The main problem is that it [SEQRA] is being misused… As we know, most EIS's take too much time, over-study issues that are not vital, and do their best to gloss over issues that are. In addition, the process is generally adversarial. A proponent prepares the EIS, which the lead agency accepts when it (finally) deems it complete, and the public, in order to attack the proposal itself, attacks the EIS. The lead agency acts as referee, when its role under SEQR is actually to evaluate and balance the competing economic, environmental and social forces of any proposal.)

24. *See* 2005 SB 5411. Among other things, the bill would have required a determination within sixty days of the submittal of a proposal whether an environmental impact statement would be needed; limited the scoping process to a maximum of sixty days after the receipt of the draft scope; required a determination whether a draft environmental impact was complete within ninety days; limited the public review of a draft environmental impact statement, including public hearings and written comments, to ninety days; and required a final environmental impact statement to be completed within sixty days. *Id.* at §§ 3-4. It would also have required the lead agency and the applicant to agree on the lead agency's consultants, and established an environmental review board with jurisdiction to adjudicate complaints against agency administration of the SEQRA procedures. *Id.* at §§ 1, 5, 9. The bill was not voted out of committee.

25. State Environmental Quality Review (SEQR) Dialog, NYS Hudson Valley Catskill Region (DEC Region 3) SEQR Process Final Report And Recommendations June 23, 2010 ("Final Report") (DEC labeled the dialog an effort to "streamline[e] SEQRA without compromising environmental protection or public participation" and to "improve the State Environmental Quality Review (SEQR) review process without compromising environmental protection or opportunities for stakeholder input.").

26. *Final Report* at 3.

27. *Id.* at 16.

28. *Id.* at 14 (quote by Mark Castiglione, AICP and Acting Executive Director, Hudson Valley Greenway).

29. *Final Report* at 14–15. The recommended programs included the Shawangunk Ridge "Green Assets" initiative and Local Waterfront Revitalization Plans (LWRPs) under the state Coastal Zone Management Program. *See id* at 15. The Shawangunk Ridge "Green Assets" initiative is an intermunicipal habitat protection strategy outlined in *Green Assets: Planning for People and Nature Along the Shawangunk Ridge*, Shawangunk Ridge Biodiversity Partnership, 2006.

30. *See* 6 NYCRR § 617.10(a)(4) (authorizing GEISs for "an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations or agency comprehensive resource management plans").

31. Under the DEC SEQRA regulations, a specific subsequent action does not require any further SEQRA review if it was fully considered in a GEIS and the findings statement. 6 NYCRR § 617.10(d)(1). If the project was not fully addressed in the GEIS then it will require a new declaration of significance, and either a supplemental environmental impact statement if its impacts are potentially significant or a negative declaration if they are not. 6 NYCRR § 617.10(d)(3), (4). *See also* N.Y. Gen City Law § 28-a(9), Town Law § 272-a(8), Village Law § 7-722(8) (exempting from SEQRA review "subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in…[a] generic environmental impact statement and its findings").

32. *See* N.Y. Gen City Law § 28-a(9), Town Law § 272-a(8), Village Law § 7-722(8) (authorizing comprehensive plans to serve as their own environmental impact reviews).

33. *Final Report*, Appendix B at 21; *see also Final Report*, Appendix C at 40 (David Porter similarly noted:

> Quite often,…[GEISs] are so broad in nature or so outdated that site-specific detailed review, using the latest methodology will still be needed. GEISs are helpful but should not be assumed to automatically provide "shovel-ready" green lights for sites falling later within their area scopes.).

34. *See, e.g.*, 6 NYCRR § 617.10(a).

35. *See, e.g.*, *Eadie v. N. Greenbush Town Bd.*, 7 N.Y.3d 306, 318-319 (2006).

36. *See generally*, *Final Report* at 18–30 (Among other things, the dialog recommended expanding education and training of municipal officials conducting SEQRA reviews, producing regional SEQR guidance, increasing the availability of DEC staff to provide SEQR Advice and assistance and greater use of mediation and dialog among stakeholders.)

37. Developer dissatisfaction with the review process for commercial and residential projects has resulted in proposals for weakening the regulatory system, in addition to the SEQRA Dialog. *See e.g.*, 2011 Assembly bill 347A / Senate bill 4554A which would significantly restrict the ability of municipalities to amend their zoning regulations in response to proposed land development projects in Dutchess, Orange, Putnam, Rockland and Westchester Counties in the Hudson Valley.

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