

SUFFOLK COUNTY PLANNING FEDERATION

In collaboration with

AMERICAN PLANNING ASSOCIATION

NEW YORK DEPARTMENT OF STATE

SUFFOLK COUNTY PLANNING COMMISSION



**Autumn
Planning Conference
2013**

H. Lee Dennison Building
Hauppauge, NY

Thursday, October 17, 2013
General Sessions 3:00-9:00 p.m.



Resource Manual



PO Box 6100, Hauppauge, New York 11788-0099 631-853-5191

October 17, 2013

SUFFOLK COUNTY PLANNING FEDERATION

The Suffolk County Planning Federation was formed in 1994 to provide training opportunities for municipal planning and zoning officials. During the past 19 years, the Federation has hosted an annual training program that has attracted hundreds of local officials as well as town and village staff members, citizens and members of related professions, including environmental science, architecture and law. The programs have been offered at no charge to participants thanks to the support of the Rauch Foundation, Suffolk County, New York State, the American Planning Association and various event sponsors. This support is greatly appreciated.

This resource manual is a supplement to the presentations provided at the conference and can be used as a reference source. Copies of this manual and prior manuals are also available online at the following web address:

<http://www.suffolkcountyny.gov/Departments/Planning/SCPlanningFederation.aspx>

I would like to acknowledge the assistance of the Suffolk County Planning Commission in the development of the conference program and especially the guidance provided by David Calone, chair of the Commission.

I would also like to acknowledge the work of the following County Planning Department staff members in the preparation of the conference program:

Andy Freleng, Chief Planner
Carl Lind, Cartographer
Kate Oheim, Assistant Cartographer
Christine DeSalvo, Senior Clerk Typist

Thank you for your participation in the conference and for your interest in the future of your community.

Sarah Lansdale, AICP
Director of Planning & Environment
Suffolk County Department of Economic Development & Planning

*A cooperative alliance of municipalities dedicated
to the improvement of planning knowledge and practice.*

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**Message from
Suffolk County Executive Steven Bellone**



Welcome to the Autumn Planning conference of the Suffolk County Planning Federation.

Suffolk County is pleased that Brookhaven National Laboratory has once again offered to host this event and assist in providing state of the art training for local planning and zoning board members and to all others with an interest in the most up to date ideas and trends in the field. Through training and knowledge, the best land use and planning decisions can be made for the benefit of both local communities and the broader region.

I would like to thank the Suffolk County Planning Commission and the Long Island Chapter of the American Planning Association for their assistance in putting this event together.

Finally, I would like to thank you for attending this training and for your commitment to your community. Your participation today is an important investment in the future of Suffolk County.

COURSE DESCRIPTIONS

Mobile Work Shop: National Synchrotron Light Source II

Mobile Workshop Tour of the NSLS-II. A substantial amount of work has been completed on the project since the group's first visit. There will be a limit of 25 visitors, they will talk for a few minutes about the various LEED aspects of the building and then break into three groups to tour the facility with our engineers and learn about some of the science.

Moratoria (a) (b) (e)

A moratorium is a local enactment that suspends a landowner's right to obtain development approvals while the local government considers changes to its regulations. Before enacting a moratorium, local officials should be aware of the circumstances in which a moratorium is the most appropriate action for a local government to take. This course looks at, among other things, the court cases that shaped the "rules" for adopting moratoria and the procedures local officials should follow in adopting moratorium laws.

Discovery Park: A Collaborative Repurposing Project for the Future of Brookhaven National Laboratory (e)

Learn about a transformative vision for Brookhaven National Laboratory and the New York region. Envisioned as a joint land use partnership with New York State and Long Island's local and regional government, as well as private industry, Discovery Park will enhance the DOE's investment and assets at Brookhaven National Laboratory and position BNL as a valued and visible community partner. In addition to basic infrastructure renewal, Discovery Park will provide enhanced services for BNL guests and users, facilitate a stronger engagement in energy technology development and deployment, substantially increase the impact of science and technology education, and promote regional economic development.

New Technology and Planning Concepts for Wastewater Treatment (e)

Discussions about the latest environmental issues caused by human-sourced nitrogen, planning efforts, and new technology for decentralized systems. What are our next steps? How can the towns and the County work together to improve decentralized wastewater treatment to protect both aquifer and surface water quality?

Planning and Zoning Case Law (a) (b) (e)

Recent cases that pertain to land use will be summarized and the implications of them on land use regulation at the local level explored. Opinions by the New York State Attorney General, Office of State Comptroller, and Committee on Open Government that pertain to land use and local governance will also be reviewed.

New York Rising Community Reconstruction Zone (CRZ) Program (e)

This past July Gov. Andrew M. Cuomo launched the New York Rising Community Reconstruction Zone (CRZ) Program, an initiative designed by the State following the natural disasters over the past two years that will empower communities hit hard by the storms to create and implement locally-created and federally funded strategies for rebuilding and strengthening their communities against future extreme weather. Learn more about the program and progress of this initiative

Designing Suburban Futures (e)

June Williamson, an architect, urban designer, professor and co-author of the award-winning book "Retrofitting Suburbia," will deliver a presentation on her latest book, "Designing Suburban Futures: New Models from Build a Better Burb" (Island Press, 2013), in which she examines new and innovative urban design ideas for how suburbs might be retrofitted and reimagined over time to sustainably absorb new growth and evolve in relation to changing demographic and economic conditions. These ideas are illustrated by thought-provoking urban design proposals for Long Island from the 2010 Build a Better Burb ideas competition. The open competition, for which June was primary consultant and juror, was sponsored by the Long Island Index, a project of the Rauch Foundation. Also presenting will be Jocelyn Wenk, AICP, Associate Director of the Long Island Index and manager of the Index's ongoing Build a Better Burb initiative.

Enforcement of Zoning and Other Local Laws (e)

Municipalities have various regulations that are an extension of their police power that aren't necessarily enforced by the

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police—zoning, property maintenance, and noise regulations, for example. This session reviews how these regulations are enforced, with discussion of the relationship between the enforcement officer and the review boards, the effect of an appeal of an enforcement action to the zoning board of appeals, and judicial enforcement of violations

New York-Connecticut Sustainable Communities Initiative Projects on Long Island (e)

An unprecedented bi-state collaboration of cities, counties and regional planning organizations has come together to launch New York-Connecticut Sustainable Communities. This initiative, funded with a \$3.5 million U.S. Department of Housing and Urban Development (HUD) Sustainable Communities Regional Planning Grant, will integrate housing, economic development, transportation and environmental planning. The goal of the Consortium is to reposition the New York-Connecticut region to fully harness its innovation capabilities in a competitive global environment, build on its strong foundation of energy efficiency, and become as equitable as it is efficient. Its primary focus is to leverage the most extensive and robust transit system in the nation by developing livable communities with mixed-income housing and employment at key nodes in the MTA Metro-North Railroad and MTA Long Island Rail Road network.

On Long Island, the counties of Nassau and Suffolk and the Long Island Regional Planning Council are undertaking three projects through the Initiative to promote equitable affordable housing opportunities, develop transportation choices, improve the region's economic competitiveness, and enhance rural and suburban neighborhoods by safeguarding rural landscapes and fostering density in transit-served locations:

- **Nassau Infill Redevelopment Study:** The County will conduct a feasibility study of sustainable infill development and opportunities to promote transit-oriented development around up to three LIRR stations located within and surrounding the Nassau Hub Transit Study Area. Building off the County's Job Creation and Retention Plan, this study creates opportunities for serving the needs of current and future residents by: 1) rethinking land use patterns; 2) fostering transit oriented development 3) reducing auto dependence; 4) lowering carbon footprint and; 5) expanding population and tax base.
- **Suffolk County Transfer of Development Rights Study:** With a history of innovative open space protection programs, Suffolk County will develop recommendations for increasing the effectiveness of current transfer of development rights (TDR) programs in order to reduce redundancy and increase efficiency to better promote workforce housing, downtown revitalization, open space preservation, natural resource protection, transit-oriented and targeted economic development. Outcomes should be applicable to similar parts of the regions and growing exurban areas throughout the U.S.
- **Long Island Housing Strategy:** The Long Island Regional Planning Council, working with the counties of Nassau and Suffolk and other partners, will perform research, outreach and public education on the needs, benefits and impediments to increasing the availability of mixed income housing. The outcome will include a "Fair Share Housing Plan" to create mixed income housing options for all distributed throughout Long Island in transit supported locations.

Ethics (a) (b) (e)

State and local ethics laws were created to avert conflicts of interest between the duties of government officials and private interests. Accordingly, the purpose of this ethics seminar is primarily to advise those who either serve as a public employee or official or who work with public employees and officials about New York State public ethics laws, regulations and policies. The course will serve to provide an overview of ethical standards public employees and officials are obligated to uphold and to help prevent ethics violations before they occur.

COURSE CERTIFICATION KEY

This completed course provides the following continuing education credits:

- (a) CEO 1 hr.
- (b) CLE 1 hr. *
- (c) CEO 2 hrs.
- (d) CLE 2 hrs. *
- (e) AICP 1.5 hrs. **

CEO = Code Enforcement Officers;

CLE = Attorneys (Continuing Legal Education);

AICP = American Institute of Certified Planners;

**CLE credit through the Albany Law School Institute of Legal Studies and the NYS DOS. Attorneys requesting CLE credit pay a fee of \$25 per class to the Albany Law School Institute of Legal Studies (certified by the NYS Continuing Legal Education Board).*

*** AICP credit has been requested from the APA through the Long Island Section. Credit was requested for all workshops and the plenary session. The 2008 Fall Planning Conference received credits for all programs. The highlighted workshops are most likely to be granted credits. Contact the APA Long Island Section at LongIslandSection@nyplanning.org for further information.*

Accreditation: The Albany Law School Institute of Legal Studies has been certified by NYS Continuing Legal Education Board as an Accredited Provider of Continuing Legal Education in the State of New York.

SPONSORS

This seminar is provided by the Suffolk County Planning Federation with the assistance and cooperation of the following entities:

Suffolk County Planning Commission - Support and guidance in the planning and delivery of the program has been provided by the Suffolk County Planning Commission (David L. Calone, Chair, Adrienne Esposito, Vice Chair, Michael Kelly, Vice Chair).

Suffolk County Department Economic Development & Planning - Staff assistance is provided by the Suffolk County Department of Economic Development & Planning. The Division of Planning & Environment (Sarah Lansdale AICP, Director) provides research and planning services to the County Executive, the Legislature and the Suffolk County Planning Commission, including advice on open space acquisitions, farmland preservation, demographic trends, municipal land use and affordable housing.

American Planning Association (APA) - The APA represents over 30,000 planners, elected and appointed officials and citizens concerned with land use planning. The [Long Island Section](#) of the NY Metro Chapter of APA offers programs for private and municipal planners and planning and zoning board members. Receive their monthly e-newsletter by sending your contact www.apalongisland.org

New York State Department of State (NYS DOS) - The NYS Department of State (Governor David Paterson) provides training to municipal officials who are seeking basic information about local government powers and duties in relation to the land use review and approval process. Basic land use management training courses are offered for Planning Board and Zoning Board of Appeals

members, elected officials, and zoning enforcement officers.

Brookhaven National Laboratory (BNL) - One of ten national laboratories overseen and primarily funded by the Office of Science of the U.S. Department of Energy (DOE), Brookhaven National Laboratory conducts research in the physical, biomedical, and environmental sciences, as well as in energy technologies and national security. Brookhaven Lab also builds and operates major scientific facilities available to university, industry and government researchers. Six Nobel Prizes have been awarded for discoveries made at the Lab.

Rauch Foundation - The Rauch Foundation is a Long Island-based family foundation that invests in ideas and organizations that spark and sustain early success in children and systemic change in our communities. The Foundation believes in taking a comprehensive approach to problem solving, and their activities extend beyond traditional grant making to include significant research and communications efforts. To learn more about the Rauch Foundation please visit: www.rauchfoundation.org

GUEST LECTURERS

Ray Accettella, CGR, CAPS, Suffolk County Planning Commission

Passion and compassion are two words that come to mind when one endeavors to describe Ray Accettella, Jarro's President. His passion for leadership and self-improvement dates back to his days as a student government president in high school; it manifests itself today in the myriad of building-related educational certifications and qualifications that he has achieved over the years. Ray sits on numerous boards and committees and is deeply involved with local, state and federal government. Ray is a former Planning Board member for the Village of Babylon, the former Chairman of the Zoning Board of the Village of Babylon and a former village trustee. Since 1999 Ray has been a board member of the Industrial Development Agency for the Town of Babylon and also has been a past member of the Town Planning Board. Ray has climbed up the ladder of the Long Island Builders Institute, starting with his being elected secretary in 2006, and culminating with his presidency and chairmanship of the Board of Directors in 2008. He chairs the Education Committee, co-chairs the TARP Committee and plays an active role with the Remodelers Committee and the Builders PAC. Ray has also been active with the National Association of the Remodeling Industry, working as a board member for NYC/LI NARI as well as Chairman of Government Affairs for NARI National. Ray is also a proud member of the New York State Builders Association. For his charitable work, Ray has been honored by the UJA-Federation of New York as well as New Ground of Nassau County. Born and raised in Babylon Village - where he resides today - Ray is the father of three children and grandfather to five. Ray is a proud and active member of the Babylon Fire Department where he has served as Captain. Ray has also served as an active member of the Fair Harbor Fire Department of Fire Island, climbing to the rank of Assistant Chief.

Lanny Bates, Assistant Laboratory Director for Facilities and Operations, Brookhaven National Laboratory

Lanny Bates is responsible for the physical operations, facility modernization, and protection functions at the 5000 acre, 300+ building Brookhaven National Laboratory science campus. This responsibility includes financial responsibility for over \$100M a year of operations and capital budget, administered by over 600 employees.

Bates earned a B.S. in nuclear engineering from Mississippi State University in 1975 and did graduate work in nuclear engineering at the University of Tennessee. He has over 30 years of experience in DOE contractor work at Oak Ridge, TN facilities in addition to Brookhaven.

During his last four years at ORNL, Bates led the division that was responsible for the Laboratory's \$300-million infrastructure modernization program. Under this program, over a million square feet of new facilities were constructed, thereby lowering the average age of ORNL facilities from 45 to 35 years. Building the new facilities enabled the consolidation of over 1,200 staff back on campus from off-site locations. Bates also served as the Executive Vice President of University of Tennessee-Battelle Development Corporation, the not-for-profit corporation established to facilitate private-sector investment in the ORNL modernization program.

At Brookhaven, Bates has led the development of a best-in-class facility management model and has efficiently integrated a variety of functions to improve customer service, develop a vision for science mission readiness, and facilitate services for a robust user community for the Laboratory's science machines.

Bates is the Laboratory champion for Sustainability and has been honored through his career for achievement in environmental stewardship, management excellence, and small business advocacy.

Glynis Berry, AIA, LEED AP, Suffolk County Planning Commission

AIA, LEED AP is a member of the SC Planning Commission. She is a partner of studio a/b architects and director of Peconic Green Growth, a not-for-profit organization that seeks to integrate environmental and community sustainability,

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with a focus on decentralized wastewater treatment. She was a member of the national code committee of the USGBC. Previously, Glynis founded NYC's pedestrian and traffic calming programs, supervised the design and installation of a bicycle network, implemented innovative public policy changes, and supervised the preliminary designs of street projects. Glynis worked at museums as an exhibit designer and director of a children's museum before becoming an architect, planner, urban designer. She holds a BA from Smith College, a March from Yale University, and studied architecture at the Tokyo Institute of Technology on a Monbusho Scholarship.

Paul Beyer, Director of Smart Growth Planning, NYS Department of State

Paul Beyer is the State Director of Smart Growth Planning at the NYS Department of State. In this position, Paul promotes the principles of Smart Growth on the state, regional and local level in New York. Paul's experience in land use and Smart Growth began when he worked in the New York State Legislature, where he focused on land use, environmental and public health policy. Paul served on the Planning Board in the Town of Amherst, NY for five years, where he helped develop the town's Comprehensive Plan. Paul also served on the Board of Directors of Partners for a Livable Western New York, the premier Smart Growth advocacy group in the Buffalo-Niagara region. Paul has a law degree from the University at Buffalo.

Gerry Bogacz, Planning Director, New York Metropolitan Transportation Council (NYMTC)

Gerry Bogacz has been the Planning Director for the New York Metropolitan Transportation Council (NYMTC) since 1997. NYMTC is a regional council of governments which is the metropolitan planning organization for New York City, Long Island and the lower Hudson Valley. NYMTC is responsible for planning for the use of Federal transportation funding in its planning area. Prior to his work at NYMTC, Gerry spent ten years as the Director of Planning for the Westchester County Department of Transportation. He holds a Master's degree in Urban Planning from NYU and a Master's degree in Public Affairs from Fordham University.

David L. Calone, Suffolk County Planning Commission

David Calone has been a member of the Commission since 2006 and Chair since February 2008. He is a the Managing Member of Jove Equity Partners, LLC, a firm that manages private equity and venture capital investments. He serves on the Board of Directors of six privately-held companies. Mr. Calone previously served as a federal prosecutor in the U.S. Department of Justice's Honors Program where he received a 2003 Attorney General's Award for his work in fighting terrorism-related and corporate international crime. Mr. Calone also served as a Special Assistant Attorney General in the New York State Attorney General's Office and was an associate at Paul Weiss Rifkind Wharton & Garrison in New York. He has a degree in economics from Princeton University and received a J.D. from Harvard Law School.

Jennifer Casey, Suffolk County Planning Commission

Jennifer Casey is a partner in the Albertson office of Ahtmuty, Demers & McManus. Ms. Casey began her career with the Firm as a law clerk while attending law school in the evening. Ms. Casey is an experienced trial attorney and currently focuses her practice on construction site accident litigation, premises liability matters, products liability and complex automobile litigation including UM/SUM claims. In connection with her representation of various corporations, Ms. Casey also counsels and represents her clients on employment and labor law issues as well as commercial litigation matters. Ms. Casey handles commercial transportation and trucking litigation. She coauthored the US LAW Trucking Compendium for New York, the DRI Trucking Compendium for New York, and serves on the Firm's US Law Rapid Response Team. Ms. Casey has lectured to the Buffalo Claims Association and Syracuse Claims Association as well as various insurance carriers. She helped design and continues to implement the Firm's Continuing Legal Education Program which is accredited by the New York State Continuing Legal Education Board. Ms. Casey serves on the board of directors of various organizations including the National Association of Insurance Women (New York City Chapter), Huntington Economic Development Corporation, Suffolk County Child Care Council and Suffolk County Red Cross. She is a member of the Class of 2009 of The Energeia Partnership, The Academy for Regional Stewardship at Molloy College.

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Matthew Chartrand, Suffolk County Planning Commission

Matthew Chartrand was born in Brooklyn in 1967. When he was seven his parents moved to Long Island and he has lived in Islip Township for the past 35 years. His personal achievements include coaching West Islip football, serving as an Active Alumni of West Islip High School, performing volunteer work for the community, and Captain of the Varsity Football Team during his high school years. He was awarded the Computer Science Award and taught Computer Education to students in Junior High and Elementary Schools. He performed volunteer service building the Brookhaven Firefighters Museum. Matthew attended Stony Brook University for courses in Computer Science and Liberal Arts. He attained an Associates Degree in Liberal Arts from Nassau Community College and studied Business Management at St. John's University. **In recent years he has completed courses in Business Management at Farmingdale University, Cornell ILR.** Matthew owned a home improvement company until 1993. Matthew is presently a member in good standing of Iron Workers Local 361 and was officially initiated in 1994. He has performed all aspects of the Iron Working industry. He was appointed to the position of Business Agent in 2004 and is now the President of Iron Workers Local 361, which has 850 active members. He is also the Assistant Apprentice Coordinator, involved in the training of 250 Apprentices and 500 Journeymen who participate in upgrading courses. Matthew resides in West Islip with his wife Lori and his four children, Matthew, Jade, Michael and Maggie.

Walter Dawydiak, Acting Director of Environmental Quality for the Suffolk County Department of Health Services

is the Acting Director of Environmental Quality for the Suffolk County Department of Health Services. A Professional Engineer and an attorney with over 25 years of experience in managing environmental programs, he currently oversees a staff of over 100 professionals who comprehensively integrate the protection of the environment and public health. Major program areas include Water Resources (groundwater and drinking water), Wastewater Management, Industrial Pollution Control, Ecology (including beaches and estuary programs), and the Public and Environmental Health Laboratory. Since 2004 Mr. Dawydiak has also served as an adjunct professor, teaching Environment and Public Health at the Stony Brook University School of Marine and Atmospheric Sciences.

Dorian Dale, Chief Recovery Officer, Suffolk County Department of Economic Development & Planning

Dorian Dale serves as director of sustainability and chief recovery officer for Suffolk County. As one of the architects of Long Island Green Homes, the first operational residential property-assessed clean energy (PACE) program in the country, Dale was named the Eighth Citi Distinguished Fellow, NYU Stern School of Business.

Adrienne Esposito, Suffolk County Planning Commission

Adrienne holds a degree in Geology and Environmental Science from CW Post University. She is a co-founder of Citizens Campaign for the Environment and has worked on numerous environmental campaigns for over 28 years. Adrienne has crafted campaigns to engage the public on environmental protection issues including but not limited to upgrading failing sewage treatment systems, protection of drinking and surface water, remediation of toxic plumes, stewardship of land and water, and support for large scale renewable energy projects, reduced pesticide application. Adrienne has received recognition for her work from the US EPA, Southampton College, Vision Long Island, NYLCV, The Long Island Pine Barrens Society, ACE NY and was named "Environmentalist of the Year" by the Times Beacon Record.

Marty has a Bachelor of Science in Marine Engineering from the U. S. Merchant Marine Academy and a Master of Science in Technology Management from Stony Brook University.

John Finn, Suffolk County Planning Commission

John Finn is the Director of Leasing and Acquisitions at Damianos Realty Group LLC and a resident of Smithtown. John has been with Damianos Realty Group since 1998 and has proven himself to be an invaluable asset to the firm, playing an active role in its rapid growth and expansion, while still managing to oversee the day-to-day operations, and has **successfully negotiated countless transactions for the 21 properties in the firm's impressive commercial portfolio. In**

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2008, Damianos Realty Group was awarded the prestigious "Developer of the Year" award by The Association for a Better Long Island and The Commercial Industrial Broker Society for the firm's newest construction project located at 100 Hospital Road in Patchogue- a modern medical office building providing much-needed services to the local community. John was instrumental in the design and development of this 54,000 square foot state-of-the-art medical building, and just a little over a year after the first shovel hit the ground, John and his team already had the building fully leased. John is a member of the Long Island Business News 40 under 40 Class of 2009, which recognizes outstanding individuals in the business community on Long Island. John is a recipient of the Top Commercial Real Estate Power Brokers of the Year award from Costar, the largest commercial real estate information company in the United States, and is an Associate Member of the Commercial Industrial Broker's Society. John is actively involved in charitable and fund-raising events throughout Long Island, including the YMCA of Long Island, Friends of Karen, Long Island Museums, and the March of Dimes. John was elected to the Corporate Board of Directors for the YMCA of Long Island in 2009. John Resides in the Town of Smithtown and has two children.

Andy Freleng, Chief Planner, Suffolk County Division of Planning & Environmental

Andy is Chief Planner at the Suffolk County Department of Planning; Vice Chair of the Central Pine Barrens Credit Clearinghouse; and a member of the Board of Directors of the New York Planning Federation. Prior to coming to Suffolk County, Andy was Chief Planner for the Town of Southampton and prior to that, Chief Environmental Planner for H2M Group (an engineering, architecture and planning firm). In 1999, Andy was elected to the Board of Trustees of the Incorporated Village of Port Jefferson after serving three years on the Planning Board. He served as Trustee until 2003. As Trustee, Andy was responsible for the Conservation Advisory Council, Parks Department, the Department of Public Safety and advisor to the Board of Trustees on matters such as SEQRA, water-front and storm-water issues. Andy holds a Bachelor of Science degree in Environmental Science from Long Island University Southampton College and a Master of Science Degree in Environmental Management from Long Island University C.W. Post Campus. In 1990, Andy was accepted into the American Institute of Certified Planners (AICP).

Carl Gabrielsen, Suffolk County Planning Commission

Carl Gabrielsen is CEO of Gabrielsen Farms LLC one of Long Islands largest greenhouse operations with over 200,000 sq. feet of greenhouses. Gabrielsen Farms supplies flowering plants throughout the Long Island and New York Metro area. Currently, Gabrielsen Farms is in its 3rd year of transitioning into a "growing green" greenhouse facility. Using an integrated pest management system, he has reduced pesticide usage by 90%. Carl has also initiated a program which recycles water and curtails his energy consumption in half by installing energy saving curtains, high efficiency heaters, and smart computers. He also recruits high school students to work collaboratively on data collection as part of the integrated pest management program. His goal is to help other greenhouse facilities and farming operations become **more sustainable. Coming from a farming family which dates back to the 1800's, Carl knows the importance of embracing change.** Some of his current activities include Riverhead Industrial Development Agency Board member, Long Island Farm Bureau member, Ohio Florist Association member, Forget Me Not Foundation Co-Founder; raising funds for needy children and is a sponsor for St. Judes Children Hospital. He has also been a member of the NYS mentoring program for under privileged children, volunteered in soup kitchens and has raised funds for autism foundations. Carl's past professional experiences are comprised of corporate sales manager and grower for Jamesport Flower Shop, land investment on Long Island and upstate New York, Gabrielsen Builders on Eastern Long Island, and hay farming in upstate New York. He currently resides in the hamlet of Northville with his wife and children.

Kevin G. Gershowitz, Suffolk County Planning Commission

Kevin Gershowitz is the President of Gershow Recycling. He graduated from East Islip High School in 1985, and then earned a Bachelor's degree from Ithaca College. After graduating, he went to work at Gershow Recycling, the company started by his father, Sam Gershowitz, in 1964.

Gershow Recycling is one of the region's oldest and most successful environmental companies. The company's mission is Conserving the Future by Recycling the Past. Gershow recognized early on that Long Island had a growing solid waste

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problem that they could help address through recycling. An early initiative of the company was to go to the region's landfills to literally mine thousands of tons of cars that had been entombed.

Gershow recycles scrap metal, including aluminum, brass, copper, steel, cast iron, appliances, motor vehicles and paper. The company purchases metal that would otherwise end up in local landfills. Gershow then converts scrap metal into high-quality scrap products for re-use by manufacturers.

Gershow recycles enough cars each year to stretch end to end from Medford to North Carolina, or you can fill all eight lanes of the Long Island Expressway from the Midtown Tunnel to Riverhead. Gershow currently has eight locations throughout the New York metropolitan area, including: Medford, Bay Shore, Lindenhurst, Huntington Station, Freeport, **Valley Stream, New Hyde Park and Brooklyn. As one of Long Island's largest manufacturing companies, Gershow has a significant impact on the local economy and generates more than 750 jobs.**

Since joining Gershow Recycling, Mr. Gershowitz has held various positions in the company, working his way up to his present position as President. In that capacity, he oversees day-to-day operations along with his twin brother, Elliot, and a team of longtime managers. Kevin is responsible for the ferrous metal portion of the business, dealing with the recycling of steel, while Elliot is responsible for the non-ferrous metals, such as copper, brass and other precious metals. Kevin also handles legal and regulatory matters.

Mr. Gershowitz is a Member of the Long Island Association's Board of Directors and serves as President of the New York chapter of the Institute of Scrap Recycling Industries, Inc. As a founding member of the Long Island Scrap Metal Industry Theft Advisory Group, Mr. Gershowitz supported Suffolk County's law that requires scrap metal recyclers to record all transactions electronically before scrap metal is processed.

Under his leadership, the company has continued to expand despite challenges presented by the economy. In 2007, Gershow opened a new facility in Huntington Station. This was followed by the opening of another facility in Freeport in 2010 and another facility in Valley Stream the following year. In 2010, the company reached an agreement with the Long Island Power Authority for the creation of a LIPA substation at its Medford facility, which will allow the company to **replace its plant's diesel engines with electric and eliminate greenhouse emissions.**

Mr. Gershowitz and his wife Marnie have three children: Jared, Emily, and Max. Mr. Gershowitz is a member of several business and charitable organizations. Through his leadership, the company has supported various environmental and youth related causes, including the Citizens Campaign for the Environment, Long Island Pine Barrens Society, the Great Brookhaven Clean-Up, **the Patchogue Lions Club's Christmas in June, the Girl Scouts' Operation Cookie, as well as local youth athletic programs and other charities.** The company also maintains an annual scholarship program supporting graduating high school students from local school districts. In 2008, Mr. Gershowitz was named Man of the Year by Patchogue-Medford Youth Services.

Christopher Gobler, Professor, School of Marine and Atmospheric Sciences (SoMAS) at Stony Brook University

Christopher Gobler is a professor within the School of Marine and Atmospheric Sciences (SoMAS) at Stony Brook University. He received his M.S. and Ph.D. from Stony Brook University in the 1990s. He began his academic career at Long Island University (LIU) where he was promoted with tenure and became the director of the marine sciences program. In 2005, he joined Stony Brook University as the Director of Programs for SoMAS on the Stony Brook – Southampton campus. His research examines the functioning of aquatic ecosystems and how that functioning can be effected by man or can affect man. He investigates harmful algal blooms (HABs) caused by multiple classes of phytoplankton (cyanobacteria, dinoflagellates, diatoms, pelagophytes) in diverse ecosystems (e.g. estuaries, lakes, coastal ocean) using a variety of methods (field, laboratory, experimental, molecular). Another research focus within his group is climate change effects on coastal ecosystems including studies investigating how future and current coastal ocean acidification effects the survival and performance of early life stage bivalves and fish. A final area of interest is investigating how anthropogenic activities such as eutrophication and the over-harvesting of fisheries alters the natural biogeochemical and/or ecological functioning of coastal ecosystems. Dr. Gobler's research has been supported by grants from and contracts with both government agencies and private foundations, with core research support primarily being from the federal government (NOAA, NSF, US EPA), with additional support from the State of New York and from

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the New Tamarind and Landaeu Foundations. He has published more than 100 papers in international, peer-reviewed journals and has mentored more than 25 graduate students in his lab group. He is two-term (2008-2014; term limit) elected member of the National Harmful Algal Bloom Committee (NHC) commissioned by US Harmful Algal Bloom and Hypoxia Research and Control Act and has served on several committees within the NHC. Gobler is on the Editorial Board of the journal, *Frontiers in Aquatic Microbiology*, and the journal, *Harmful Algae*. Gobler has provided Congressional testimony to the US House of Representatives subcommittee on Water Resources and Environment and has received numerous awards for his research and the usefulness of his science in shaping policy including the **Bay Guardian Award (WaterKeeper's Alliance)**, the **Environmental Equinox Award (Citizen's Campaign for the Environment)**, and the **Trustee's Award for Scholarly Achievement (Long Island University)**.

Michael Kaufman, Suffolk County Planning Commission

An attorney in private practice in Huntington, "of counsel" to the Law Firm of Andree & Kaufman, focusing on corporate law, general business law, and real estate/land use.

Mr. Kaufman has an extensive governmental and land use background, especially in planning and environmental management. A member of Suffolk County's Council on Environmental Quality (CEQ) for over 20 years (6 as Vice-Chair), he has been heavily involved in regional County environmental, planning and SEQRA issues, and worked on numerous County environmental impact statements (EIS). He also serves on the County's Historic Trust, and has been a member of many state and local planning groups such as the MTA's L.I. Transportation Plan. Mr. Kaufman has completely updated several village zoning, land use and environmental codes, and developed and implemented model coastal management plans (LWRP) for several villages. He also has designed and overseen numerous multi-million dollar channel dredging projects combining environmental protection and enhanced marine use.

Educated at the Choate School, Cornell University and University of Miami, winner of a National Science Foundation research scholarship, Mr. Kaufman has lived in a village under 5,000 population for the last 32 years.

Michael Kelly, Suffolk County Planning Commission

Michael Francis Kelly, Esq. is the Principal of Kelly Development Corp. focusing on the development of small subdivisions and consulting on various real estate issues for such organizations as The Long Island Housing Partnership, Avalon Bay Communities and the Clare Rose Organization. Mike is also a partner with Sean Rose in Rose and Kelly Development, LLC. Their focus is on redeveloping blighted sites throughout Long Island. Prior to forming his own businesses, Mike was the Vice President of Land Acquisitions for Pulte Homes of Long Island (2003-2008). He also worked for the Prudential Home Mortgage Company, Chase Manhattan Bank and the Law Firm of Meyer, Meyer and Keneally in Smithtown. Mike has over 20 years of diversified real estate industry experience and gained valuable experience working for these companies as well as TiBi Development. Mike is the Treasurer for LIBI and serves on the Board of Directors of the Down Syndrome Advocacy Foundation. He is also a member of the NY State Bar and its Committee on Land Use and Real Estate Legislation, as well as being a licensed real estate broker and a LIBOR member. **He has been honored as the recipient of the Paul S. Miller "With Liberty and Justice for All" award by Touro Law School in 2006 and The Good Neighbor of the Year from The Central Islip Civic Association in 2008.** Mike actively participates in the Friendly Sons of St. Patrick Society and the Brehon Law Society, both organizations deeply rooted in his Irish heritage. **Mike is a member of Energia, Long Island's regional leadership program within Molly College. He is a member of the Business Improvement District for the Village of Patchogue.** Mike graduated from Chaminade High School and has a B.S. in Finance from Providence College, an MBA from the University of St. Thomas, Minnesota and a Juris Doctorate from Touro Law School. His wife, Kathleen Feeley, Ph.D., is a world-renowned expert on children with Down Syndrome and Autism and a professor at C.W. Post University. Mike and Kathleen live in Stony Brook and have four children; Thomas, John, Owen – The Big O, and Catherine Mary.

Sarah Lansdale, AICP, Director, Suffolk County Division of Planning & Environment

Sarah is the Suffolk County Director of Planning. Prior to joining the County, she was the Executive Director at Sustainable Long Island where she directed ten land use community planning processes in economically distressed communities, resulting in the creation of nine community groups to locally direct revitalization efforts, the adoption of ten land use plans, and the investment of \$500 million in private equity and public funding for mixed-use, transit-

INTRODUCTION

oriented development groups. While at Sustainable Long Island, Ms. Lansdale was part of consulting teams for the Huntington Station BOA and Wyandanch BOA. Sarah also has experience at WLIW21 Public Television, fundraising, and oversees as a Peace Corps volunteer. Ms. Lansdale has a Masters Degree of Urban Planning from New York University and an undergraduate degree in Environmental Studies from the University of Vermont.

Vanessa Pino Lockel, CRZ Suffolk Lead, NYS Homes and Community Renewal

Vanessa Lockel was appointed in May 2013, by Governor Andrew Cuomo, as the Lead of the Suffolk County Community Reconstruction Program. The program is a bottom-up, community driven initiative that empowers localities severely damaged by Sandy, Irene, or Lee to develop comprehensive and innovative local rebuilding plans funded by the state and federal government.

Mrs. Lockel was previously director, spokesperson and registered lobbyist for the New York City Beverage Association, an organization of soft drink distributors and bottling companies in the non-alcoholic beverage industry. She was **responsible for protecting and enhancing the industry's image during Bloomberg's proposed Beverage Ban regulation.**

Mrs. Lockel also served in the public sector for several years. She was Deputy Press Secretary and Financial Education Coordinator in the Office of State Comptroller Thomas P. DiNapoli and Director of Community Outreach at the New York State Banking Department for Superintendent Diana Taylor.

Mrs. Lockel has her Bachelors from Bates College and a Master's in Public Administration from Columbia University's School of International and Public Affairs. She completed Doctoral coursework at Stony Brook University in Social Welfare with a focus on Financial Management. She attended the Enegeia Partnership, a leadership academy dedicated to identifying and addressing the serious, complex and multi-dimensional issues challenging the Long Island region at Molloy College.

Mrs. Lockel resides in Miller Place, Long Island and is married with two children.

John Pavacic , Executive Director of the Central Pine Barrens Joint Planning and Policy Commission

John Pavacic has served in the public sector for more than 27 years. Currently, he works as the Executive Director of the Central Pine Barrens Joint Planning and Policy Commission, an independent subdivision of the State of New York which is charged with the protection, preservation and management of the 102,500-acre Central Pine Barrens area which encompasses portions of the towns of Brookhaven, Riverhead and Southampton.

In his capacity as Executive Director, Mr. Pavacic also serves as the Commission's Ethics Officer and is responsible for administering the Commission's ethics program, ensuring compliance with current New York State ethics statutes and regulations, reporting on Commission activities and conducting training for Commission members and staff.

Previously, Mr. Pavacic served as the Commissioner of the Suffolk County Department of Parks, Recreation and Conservation. Prior to his tenure with Suffolk County, Mr. Pavacic served as the Regional Permit Administrator and chief of the Division of Environmental Permits for the Region 1 (Long Island) office of the New York State Department of **Environmental Conservation (NYSDEC) and with the Town of Brookhaven's Division of Environmental Protection.**

Mr. Pavacic has been involved in land use planning, endangered species protection, coastal management, wetlands conservation, ecological restoration, open space preservation and administration of environmental regulatory programs on Long Island. Mr. Pavacic has also been a presenter on SEQRA administration and implementation and environmental regulations at a variety of seminars, workshops and continuing education legal courses.

He holds a Bachelor of Science degree from Union College in Schenectady and a Master of Science degree from the SUNY College of Environmental Science and Forestry in Syracuse. Mr. Pavacic is a native of Patchogue, Long Island.

INTRODUCTION

Natasha Esther Philip, Esq., Senior Attorney, NYS DOS

Natasha Esther Phillip, Esq. received a Doctor of Jurisprudence degree from Albany Law School with a concentration in Environmental Law. Ms. Phillip frequently lectures and provides advice and assistance to local government officials in order to further their understanding and compliance with federal, state and local laws. Prior to joining the New York Department of State in April 2007, she trained and worked with land use planning and zoning practitioners at the Albany Law School Government Law Center. Her work with the Government Law Center on local government and land use planning issues earned her the 2005-06 American Bar Association State and Local Government Law Section Student Excellence Award and the 2006 Albany Law School Government Law Center Prize. Ms. Phillip is admitted to the practice of law in New York State. She is also a member of the New York State Bar Association.

Zachary Richner, Policy Director, New York Rising Community Reconstruction Program

Zachary Richner, a Long Island native, has been named as a Policy Director of the state's New York Rising Community Reconstruction Program. In his role, Richner will oversee the program's Long Island initiative, which comprises 21 planning areas across Nassau and Suffolk counties.

He will report to the Director of the Governor's Office of Storm Recovery, Jamie Rubin, with whom Richner worked at **President Barack Obama's Hurricane Sandy Rebuilding Task Force. In August, the Task Force, established by presidential executive order and chaired by U.S. Department of Housing and Urban Development Secretary Shaun Donovan, released its report to the president. The report, available at www.hud.gov, proposed over 65 policy recommendations to help the Sandy-affected region rebuild as well as provide for improved recoveries in future disasters that confront the United States.**

Prior to his time at the federal Task Force, Richner served as the Ohio Budget Director for President Obama's 2012 re-election campaign, where Richner managed the largest state budget in presidential campaign history. Richner also has experience at the White House Office of the Chief of Staff, J.P. Morgan Investment Bank and Dewey & LeBoeuf LLP. He is a graduate of Harvard University.

Barbara Roberts, Suffolk County Planning Commission

Barbara B. Roberts has been a member of the Commission since 2006. Prior to her current career as a business consultant, she successfully built and sold FPG International, an agency representing the work of over 1,000 photographers worldwide, and Acoustiguide, the producer of audio tours and equipment for museums worldwide. Earlier in her career she worked on Wall Street for 15 years and was the first woman on the board of directors of Dean Witter. Ms. Roberts has served on numerous non-profit boards, particularly focused on promoting the economic and political empowerment of women, including the domestic violence center, The Retreat. She also has served on the boards of the Group for the South Fork and Guild Hall. She is a David Rockefeller Fellow and served as Chair of the Federal Reserve Bank of New York's Business and Agricultural Advisory Board, was on the Suffolk County Economic Development Board and was a member of the board of the 14th Street Local Development Corp/BID in Manhattan and heads the Women Presidents Organization Long Island Chapter. She holds an Economics degree from Goucher College.

Sean E. Sallie, Nassau County Planning Commission and the Nassau County Department of Public Works

Mr. Sallie is a Senior Planner with the Nassau County Planning Commission and the Nassau County Department of Public Works. Mr. Sallie has more than 9 years experience in environmental impact analysis, land use and comprehensive planning, Geographic Information Systems (GIS) and spatial modeling. Mr. Sallie currently oversees the Planning Commission calendar and serves as the Project Manager for the Downtown Bethpage Retail Market & Revitalization Study and the NY-CT Sustainable Communities-funded Nassau County Infill Redevelopment Study. Mr. Sallie has been involved in the environmental and permitting phases of several development projects requiring multi-jurisdictional coordination including the transfer and redevelopment of the nearly 40 acres of US Navy property adjacent to Nassau Community College, the planned Mitchel Field Athletic Complex and the planned Twin Rink Indoor Ice Skating Rink at Eisenhower Park. Mr. Sallie received a B.A. in Physical Geography and Environmental Systems from the University at

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Buffalo and a M.S. in Environmental Management and Planning from Long Island University. Mr. Sallie is also accredited by the American Institute of Certified Planners (AICP).

J. Edward Shillingburg, Suffolk County Planning Commission

An attorney in private practice, Ed Shillingburg focuses on federal tax issues relating to employee benefits and exempt organizations. He was formerly an attorney in the Tax Division, U.S. Department of Justice and special assistant to the Assistant Attorney General in charge of the Tax Division in Washington, D.C., an associate partner and then head of the ERISA Practice Group and principal tax member of the Exempt Organization Practice Group of Lord, Day & Lord in New York City, and later of counsel to Morgan, Lewis & Bockius also in New York City. Since 1997 Ed, as a sole practitioner, has advised employers on ERISA compliance and exempt organizations on tax and other compliance matters, including local organizations on Shelter Island and the North Fork. Ed is a graduate of Stanford University and Harvard Law School and is admitted to practice in New York, New Jersey and the District of Columbia. He is a trustee of the International Center for Automated Information Research, University of Florida Law School, Gainesville, FL.

Ed was a regular participant in the Sustained East End Development Study, and a former vestry member, warden and **treasurer of St. Mary's Episcopal Church, Shelter Island; former treasurer, Shelter Island Historical Society; former trustee of Our House, Inc., Murray Hill, NJ (group homes and other programs for developmentally handicapped individuals); and former president, Summit Child Care Center, Summit, NJ.**

Ed and his wife have owned their house on Shelter Island since 1985 and have lived there fulltime since 1999. Interested in local history, they research and write about the people and institutions of Shelter Island and have been published in the *Shelter Island Reporter* and *Long Island Forum*. They have published two books about the Nicoll Family of Shelter Island.

Satish Sood, Deputy Commissioner, Nassau County Department of Public Works Planning Division

Mr. Satish Sood currently serves as the Nassau County Public Works, Deputy Commissioner of Planning, since 2010. Mr. Sood is highly experienced in the field of economic development and public administration. Prior to joining the Department of Public Works, Planning Division, Mr. Sood spent over 25 years with New York State Empire Development Corporation where he was most recently the Vice President of Business Continuity and Compliance. Mr. Sood has a Masters of Business Administration (MBA) degree from CW Post/Long Island University and a Masters in Public Administration from Panjab University in India.

Jeffrey Stiles, AICP, Vice President and National Planning Director for Jacobs

Mr. Stiles is a Vice President and a National Planning Director for Jacobs, one of the County's largest consulting firms. The firm specializes in the planning, design and construction management of buildings, infrastructure, oil and gas facilities and technology based applications. He is currently leading the consulting team working with all of the communities in Suffolk County developing Community Reconstruction Plans which will lead to a more resilient south shore.

Mr. Stiles holds a Bachelor's of Science in Urban Planning from the University of Denver. He directs the firm's regulatory approval and planning practice nationwide. Mr. Stiles has 30 years of consulting experience and been involved in all aspects of infrastructure and land use planning. He has worked extensively in the NY Metropolitan area as well as throughout east coast.

In addition to his professional experience, Mr. Stiles has provided leadership roles in a number of professional and community based organizations.

Fred W. Thiele Jr., New York State Assembly

Assemblyman Fred W. Thiele Jr. has served in the New York State Assembly representing the 2nd District since 1993. He is a member of the Assembly Ways and Means, Education, Election Law, Environmental Conservation, Oversight

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Analysis and Investigation, and Transportation committees. He has also served as Supervisor of the Town of Southampton, a Suffolk County Legislator 16th District, and Southampton Town Attorney. He is a graduate of Southampton College of Long Island University and Albany Law School. In 1980, he was admitted to the Bar in the State of New York. Throughout his career he has been instrumental in important land preservation efforts.

Jocelyn Wenk, AICP, Associate Director, Long Island Index, Rauch Foundation

Jocelyn manages Build a Better Burb, a Long Island Index website that provides ideas for revitalizing suburban downtowns. She managed the Index's 2011 Special Analysis, which assessed Long Island's processes for development review. Prior to working for the Rauch Foundation, Jocelyn worked in the Long Island office of AKRF, an environmental and planning consulting firm; she also served as the Long Island office's acting head.

She began her career as a community planning consultant in suburban Detroit.

Ms. Wenk is a trustee of the Society for the Preservation of Long Island Antiquities, the Long Island region's nonprofit historic preservation organization. She is a member of the Class of 2011 of the Energeia Partnership, Molloy College's regional stewardship and leadership academy.

Jocelyn graduated magna cum laude and Phi Beta Kappa from Princeton University, and she has a master of urban planning from the University of Michigan.

John Paul Whelan, Suffolk County Planning Commission

John was involved in residential construction throughout his college years and for five years prior to graduate school. He joined Stelle Architects in 1990, working on residential and commercial design, as well as project management and governmental planning. In 1999, John left Stelle Architects to remain at the Ross School in East Hampton working with various ongoing construction projects and state and local permitting. He then worked as a planner in the Town of East Hampton Planning Department and subsequently two local architectural offices.

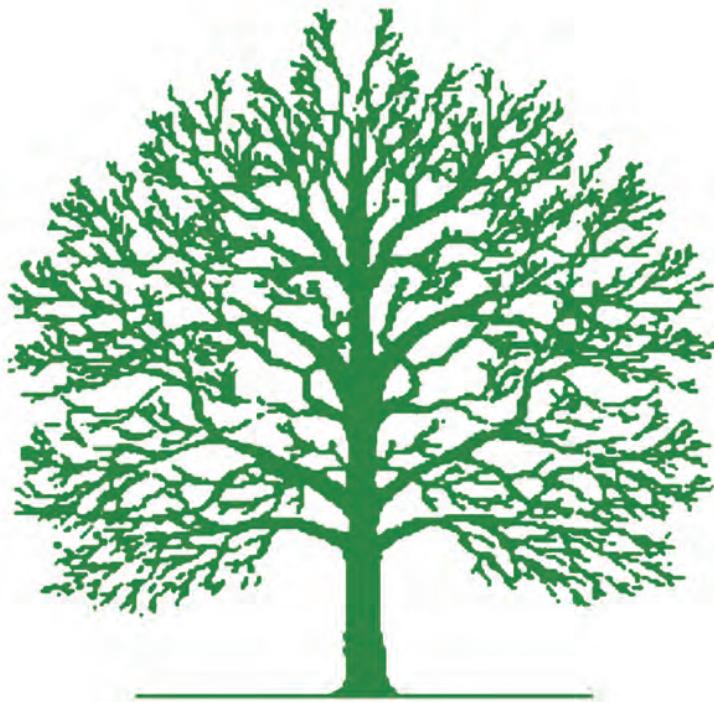
John was pleased to return to the team of Stelle Architects in April 2008. He is currently working on commercial and residential projects.

June Williamson, RA, LEED AP, Associate Professor at The City College of New York's Spitzer School of Architecture

June is author of *Designing Suburban Futures: New Models from Build a Better Burb* (Island Press, 2013) and co-author with Ellen Dunham-Jones of *Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs* (Wiley, 2009/2011), recipient of the 2009 PROSE award in the architecture and urban planning category from the American Association of Publishers. She has taught and practiced architecture and urban design in Boston, Salt Lake City, Atlanta, Los Angeles and, since 2003, New York. A native of Massachusetts, Ms. Williamson holds degrees from Yale College, M.I.T. and The City College of New York.

J.D. Wood, Land Use Training Specialist with the New York State Department of State

J-D Wood is a Land Use Training Specialist with the New York State Department of State. He received a master's degree in Regional Planning from the State University of New York at Albany in 2003, and holds a B.A. in Behavioral Sciences from SUNY Plattsburgh. A former National Park Ranger and Parks & Recreation seasoned veteran (prior to his career in planning), J-D applies his passion for open space, smart growth and preservation of natural and historic resources to his current work. J-D has worked for several Capital Region planning firms, local government planning and advisory boards.



General Session I

Moratoria

LAND USE MORATORIA

NYS Department of State

What is moratoria?

- Local law or ordinance
 - ▣ Temporarily suspends landowner's right to obtain development approval(s)
 - ▣ Address circumstances not addressed by current laws
- Community considers revisions
 - ▣ Comprehensive plan; and/or
 - ▣ Land use regulations



Adoption after the fact is senseless

“Otherwise, any movement by the governing body of a city to zone would, no doubt, frequently precipitate a race of diligence between property owners, and the adoption later of the zoning ordinance would in many instances be without effect to protect residential communities – like locking the stable after the horse is stolen.”

- ▣ Downham v. Alexandria, 58 F.2d 784 (D.C. Va., 1932)

Moratoria prevents

- Rushed development
- Inefficient & ill-conceived growth
- Hasty decisions that might result in disadvantages to landowners & the public
- Immediate construction inconsistent with comprehensive plan



Impermissible reasons

- Slow down development in hopes that developer will go away
- Halt development while community considers buying land
 - ▣ Oakwood Island Yacht Club v. City of New Rochelle, 59 Misc.2d 355 (Sup. Ct. Westchester Co. 1955), aff'd. 36 A.D.2d 796 (2d Dept. 1971), aff'd. 29 N.Y.2d 704 (1971)

Authority

- Municipal Home Rule Law or “police power”
 - ▣ Courts have said that moratoria is “stop gap” zoning
- Local legislative body has the power to “enact reasonable stopgap or interim legislation prohibiting commencement of construction for reasonable time during consideration of proposed zoning changes”
 - ▣ Hasco Electric Corp. v. Dassler, 143 N.Y.S.2d 240 (1955)

General Police Power

Non-zoning moratoria are temporary restrictions imposed by municipality under general police power in response to immediate health & safety problem

- Municipality must justify such temporary measures:
 - It acted in response to dire necessity
 - Its action is reasonably calculated to alleviate or prevent crisis condition
 - It is presently taking steps to rectify the problem

GPP – Prevent crisis condition

“... the municipality must establish that it has acted in response to a dire necessity, that its action is reasonably calculated to alleviate or prevent the crisis condition, and that it is presently taking steps to rectify the problem.”

- Belle Harbor Realty Corp. v. Kerr, 35 N.Y.2d 507 (1974)

Types of moratoria

Possible approvals affected

- New land use applications
- Projects currently before review boards
- Issuance of permits
 - Building, sign, water & sewer connection
- Establishment of certain businesses
 - Adult use, junkyards, mining, etc.
- Siting of certain uses
 - Solid waste facility, etc.



Possible exemptions

Moratoria often exempt certain activities, such as:

- Construction applications that have been approved & begun, even where rights have not vested
- Construction of single-family homes
- Minor expansions or additions to buildings, such as garages for residences
- Projects under review, such as subdivision applications which have received preliminary approval

Subdivisions

- Default approval of subdivisions
 - If board fails to take action within statutorily prescribed time frames
- Moratorium suspends subdivision applications
 - May delay action beyond time frames
- Moratorium should state that it supersedes default approval provision
 - Specify exact provision
 - Town Law §276(8)
 - Village Law §7-728(8)
 - General City Law §32(8)

Turnpike Woods, Inc. v. Tn of Stony Point, 70 N.Y.2d 735 (1987)

Use variances

Municipality undertaking rezoning may enact moratorium on granting of use variances by Zoning Board of Appeals (ZBA) even though local law would be inconsistent with general law

- Attorney General Inf. Opinion 87-22

Make laws legally defensible

Key elements

- Reasonable time frame relative to action being addressed
- Specified time when moratorium expires
- Valid public purpose
- Addresses situation where burden imposed is shared substantially by public at large
- Strict adherence to statutory adoption procedures

Duration

- Must be relatively short
 - Not excessively long or unfixed
 - Specify duration
 - Relate closely to actions necessary to address the issues
- Municipality must actively engage in planning or developing regulations
 - Rubin v. McAlevey (see above); and Lake Illyria Corp. v. Tn of Gardiner, 43 A.D.2d 386 (3d Dept. 1974)



Duration

Struck Down – Too Long

- 7 years: Comprehensive plan & draft zoning
 - Lakeview Apartments v. Town of Stanford
- 5 years: Local Waterfront Revitalization Plan
 - Duke v. Town of Huntington
- 5 years: Draft new zoning law & master plan
 - Mitchell v. Kemp

Upheld – Reasonable Duration

- 2 Year: Wind energy projects
 - Variance
 - 90-day extension
 - Highly technical nature
 - Ecogen, LLC v. Town of Italy
- 1 year: Adjust zoning related to big box development
 - Village of Rockville Center

Purpose statement

Local law should state purpose(s) for adopting moratoria, such as:

- The town is facing unprecedented growth & development following the announcement of a chip fabrication plant
- New commercial businesses are unsightly & detracting from a pristine view
- The town is waiting for results of an environmental study

Identify intended accomplishments

- Develop or amend:
 - Comprehensive plan
 - Zoning regulations
 - Subdivision regulations
 - Site plan regulations
 - Other land use regulations
- Make improvements to:
 - Road system
 - Water or sewer infrastructure



Identified changes not enforceable

“... It is a sensible and practical way to insure that decisions on land usage, arrived at on the adoption of the Master Plan but not yet enforceable because the zoning amendments have not been adopted, can be effective, provided, of course, they be embraced in the amendments.”

- *Rubin v. McAlevey*, 54 Misc.2d 338 (Sup. Ct. Rockland Co. 1967), *aff'd*. 29 A.D.2d 874 (2d Dept. 1968)

Takings

- Advantages to municipality must outweigh potential hardships to landowners
 - *Charles v. Diamond*, 41 N.Y.2d 318 (1977)
- Temporary takings that deny landowner all use of their property are permissible according to the United States Supreme Court
 - *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002)



Vested rights

- The right to build or use property:
 - According to law as it existed prior to effective date of moratorium
 - If land owner has undertaken substantial construction & made substantial expenditures prior to effective date of moratoria
 - *Ellington Construction Corp. v. ZBA of the Incorporated Village of New Hempstead*, 77 N.Y.2d 114 (1990)
- Obtaining vested rights essentially makes use under construction legal non-conforming use

Vested rights

- Moratoria may not be used to stop building operations begun under a valid building permit and which continued in good faith to the extent that property owner had secured vested rights
 - *Hasco Electric Corp. v. Dassler*, 143 N.Y.S.2d 240 (1955)
- Valid building operations may not be stopped in anticipation of a moratorium in order to prevent landowner from qualifying for vested rights
 - *Temkin v. Karageuzoff*, 43 A.D.2d 820 (1st Dept. 1974)

Procedures

Strictly adhere to procedures

Cite one of two sources of authorization and follow procedures within:

- 1) Local law adoption under General Police Power
 - Municipal Home Rule Law §20–27
- 2) Amend zoning by local law or ordinance
 - Town Law §263-265
 - Village Law §7-706 & 7-708
 - City Charter

Noticing, filing and referral

- Open Meetings Law, Public Officers Law §102-110
 - Notice to media and public
 - Access
- General Municipal Law §239 M
 - County referral only for enabling statute method
 - *Lo Conti v. City of Utica Dept. of Building*, 57 Misc.2d 815 (Sup. Ct. Oneida Co. 1966)
- Public hearing
- File local law or ordinance

Refer to county planning

If moratorium applies to zoning and to real property within 500 feet of:

- Municipal boundary
- Boundary of state or county
- Park or recreation area
- R-O-W of state or county road
- R-O-W of county-owned stream or drainage channel
- Boundary of state or county land on which a public building is located
- Boundary of farm operation in a state agricultural district



County planning may affect vote

- If County Planning Agency recommends proposed zoning moratorium be:
 - Disapproved
 - Approved with modification
- Governing board may act contrary but only by supermajority vote



SEQRA

State Environmental Quality Review Act (SEQRA) classifies Moratoria as Type II Actions

- Type II Actions have been determined not to have a significant impact on environment
- Once classified, they require no further review under SEQRA
 - Make notation in file

Variations from moratorium

- Variance: law should contain provision that allows property owners to apply for relief from moratorium
- Granting moratorium variance must be held to same standards as permanent regulation
 - *Held v. Giuliano*, 46 A.D.2d 558 (3d Dept. 1975)

Moratorium law must specifically state supersession of state statute if Governing Board will consider variances instead of ZBA

Variance standards

Court held that adult community should get a variance:

- Extraordinary hardship
- No adverse impact health, safety & general welfare
- Not substantially undermine land use plan & revision process under review

- Town Law §§267, 267-a & 267-b
- Village Law §§7-712, 7-712-a & 7-712-b
- General City Law §§81, 81-a, & 81-b

Montgomery Group, LLC v. Town of Montgomery, 4 A.D.3d 458 (2d Dept. 2004)

New York Department of State

(518) 473-3355 Training Unit

(518) 474-6740 Counsel's Office

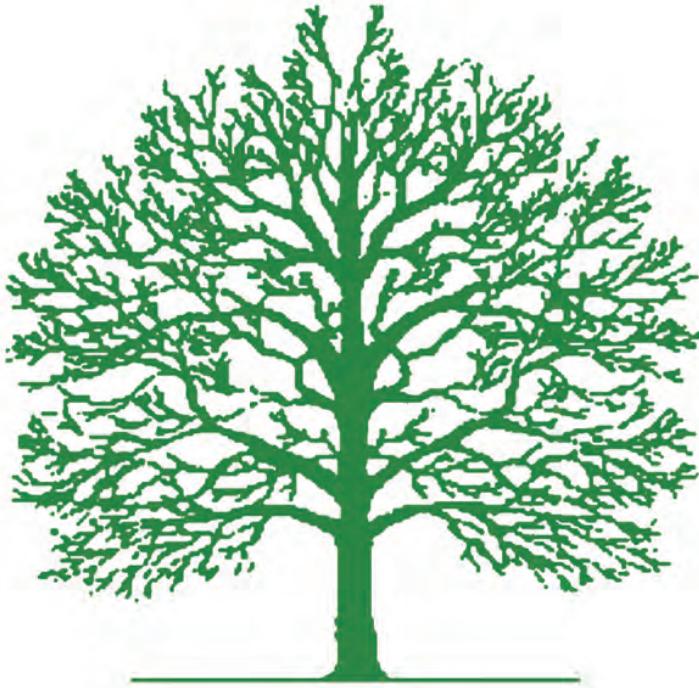
(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov

www.dos.ny.gov/lq/lut/index.html





General Session I

Discovery Park: A Collaborative Repurposing Project for the Future of Brookhaven National Laboratory

Discovery Park

A Collaborative Transformation Project at Brookhaven National Laboratory

Suffolk County Planning Federation Conference
October 17, 2013

Lanny D. Bates
Assistant Laboratory Director
Facilities & Operations

BNL History

- Almost seven decades of outstanding scientific achievement
- Founded on March 21, 1947
 - Columbia, Cornell, Harvard, MIT, Johns Hopkins, Pennsylvania, Princeton, Rochester, Yale
- Funded by AEC for research into the peaceful uses of the atom to improve public well-being
 - Promote basic research in the physical, chemical, biological, and engineering aspects of the atomic sciences
- Establish a national laboratory in the Northeast to design, construct, and operate large scientific machines that individual institutions could not afford to develop on their own
- Seven Nobel Prizes

Laboratory at a Glance

- Only multi-program National Laboratory in the Northeast
- Physical Assets
 - 5,320 acres
 - 321 buildings; 4.88 million SF
- Human Capital
 - 3,041 staff
 - 4,427 facility users
 - 400 undergrad/grad students
- Support of over 1,100 NYS Researchers
 - 850 Academic
 - 185 Medicine
 - 45 Industry
 - 25 State & other
- Strong Regional Partnership with Stony Brook University

- Total 2009 economic output
 - \$704 Million
 - 5,400 jobs
 - \$212 Million goods and services
 - \$74.7 Million in new construction and renovation
- Annual economic output 2010-2014
 - \$950 Million / 7,100 jobs

Current Situation

Moving from 40-65 year old buildings to safe, mission-ready science facilities and infrastructure

- BNL is one of the oldest of the DOE multi-program laboratories – weighted average building age
- 69 buildings (over 850K SF) date back to WW II
- 24% of offices are in legacy WW II buildings
- Mission Readiness requires demolition, new construction, renovation, and recapitalization
- Scientific strategies require and benefit from increasing external and particularly regional partnerships (Energy, Discovery to Deployment, Education, etc.)

Current Situation

Moving from 40-65 year old buildings to safe, mission-ready science facilities and infrastructure

Mission Ready Facilities & Infrastructure

Campus development zones which inform strategic infrastructure, facility, and BNL business growth decisions

Funding Strategy



Federal Projects
Unique Scientific Capabilities



Laboratory Generated
Small Projects/Renovation Energy and Utilities - UESC



Private Partnership Lease
Discovery Park



Brookhaven Science Associates

Discovery Park – A Transformative Project

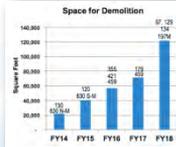
- Envisioned as a joint land use partnership with New York State and Long Island's local and regional government, as well as private industry
- Discovery Park will enhance the DOE's investment and assets at Brookhaven National Laboratory and position BNL as a valued and visible community partner
- Discovery Park will leverage assets and needs in several critical areas
 - Laboratory Revitalization
 - Guest and User Services
 - Energy Science and Technology
 - Next Generation Workforce Development
 - Discovery to Deployment Partnerships



Brookhaven Science Associates

Laboratory Revitalization

- One in four BNL office occupants reside in World War II-era facilities
- Discovery Park's Administrative Office Building can leverage private-sector shared resources
- Migrating to modern administrative offices will provide a more sustainable operation and an estimated 35 percent footprint reduction
- Elimination of legacy buildings will eliminate millions of dollars of growing functional, maintenance, health and safety, and fire protection legacy



Brookhaven Science Associates

Guest and User Portal

- The current and expanded major facilities (NSLS-II and RHIC to eRHIC) attract over 4,000 machine users from across the world each year and user facility demand is projected to expand by 50 percent
- A critical demand exists for "dorm style" user facility accommodations that are conventionally co-located and integrated with BNL's research operations and facilitate an unmatched scientific community



Averaging 68,000 room nights per year over last ten years

Brookhaven Science Associates

Regional Energy Science & Technology Center

- BNL's role in solving regional and national energy problems brings a variety of capabilities, including the 32MW Long Island Solar Farm and BNL's Microgrid as an inherent 'Lab Plant' research tool for grid research
- Discovery Park will include the Advanced Electric Grid Innovation and Support (AEGIS) Center for electric network monitoring, analysis, and modeling creating a significant tool for the Northeast region
- Broad regional partnerships with DOE and BSA will provide support



Brookhaven Science Associates

Next Generation Workforce Development

- As an anchor for Discovery Park, the **Portal to Discovery** provides a new hands-on science educational capability for substantially expanding the current 40,000+ students/year
- In addition to STEM education, the facility serves as an iconic entrance, visitor processing, outreach, scientific "Summer School," and service facility, available for community use
- Funding for the Portal to Discovery will be leveraged by developing partnerships with local not-for-profit organizations and the DOE



www.Portaltodiscovery.c

Brookhaven Science Associates

Discovery to Deployment Partnerships

- Discovery Park can provide space for new businesses and industrial partnerships in immediate proximity to the scientific engine and user facilities of BNL
- BNL has the track record and the expertise to connect technologies and entrepreneurs to sources of capital, service providers, manufacturing, and market channels

Infrastructure Renewal, Revitalization, and Repurposing

Development Characteristics

- 40 acres
- 730,000 SF
- 1,000 - 1,500 occupants

Features

- Traffic circle / roundabout
- Portal to Discovery
- New security gate
- 200K GSF Lab/Admin. Buildings
- Danish House (Conf./Retreat)
- AEGIS Facility
- Child Development Center
- 30K GSF Research Lab
- Visitor/user/guest housing

Existing Brownfield Site

- Current facilities are well beyond their expected life cycle and continue to deteriorate
- Two facilities have already experienced structural failure and have been demolished
- Housing units range from studios to multi-bedroom apartments, which are not best positioned to meet the laboratory's housing strategy
- BNL has a sustained business of 68,000 room nights per year on average

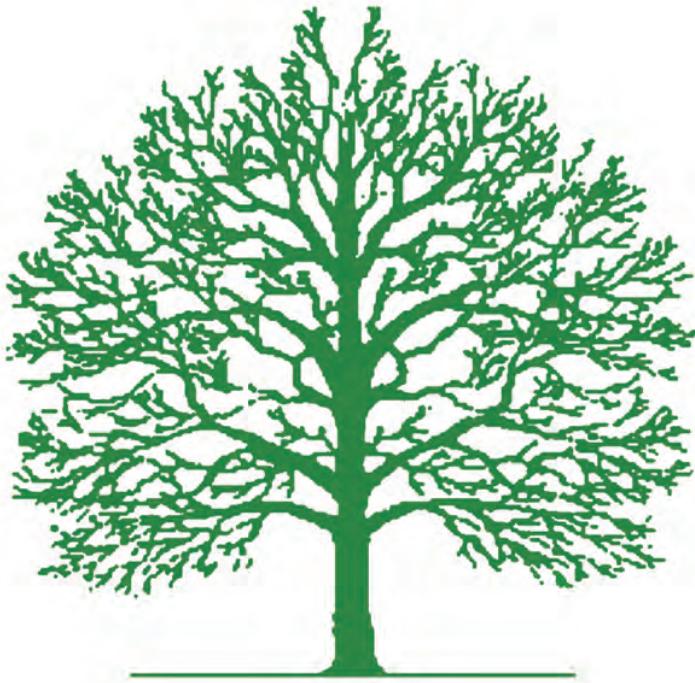
Proposed Improvements

- New state-of-the-art offices, laboratories, and support facilities
- Provide redeveloped secondary housing for BNL's underserved national and international community of researchers and students
- Visitor and guest processing, amenities, and outreach
- Rehabilitated scientific community and atmosphere
- Integration of existing child development center
- Expansion space for technology and industry partnerships

Infrastructure Renewal, Revitalization, and Repurposing

- Discovery Park will provide a new "Front Door" to the campus, reflecting the world-class scientific research being performed at BNL
- The revitalization of this brownfield site maximizes its potential while respecting the existing environmental characteristics of the campus
- Beyond simply renewing infrastructure, the improvements will refocus the existing site to serve as a modern, expanded gateway to the DOE science capabilities in an open environment
- The development provides the option for non-DOE investment in infrastructure and for increased partnerships and collaboration

Additional Questions and Comments?



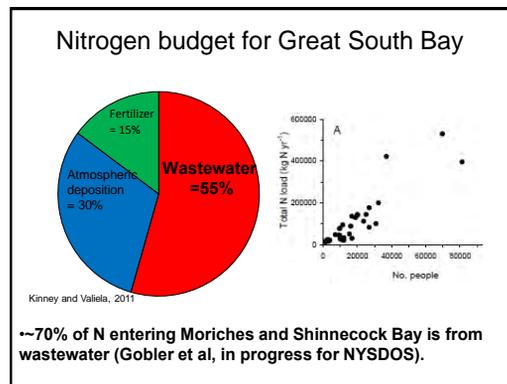
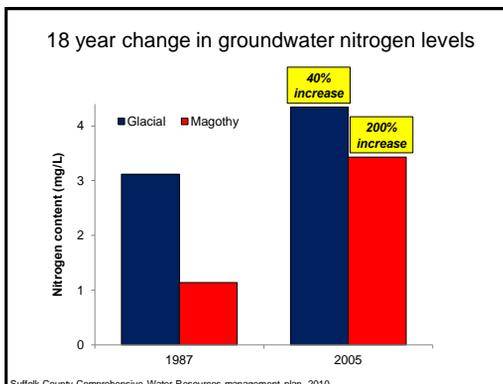
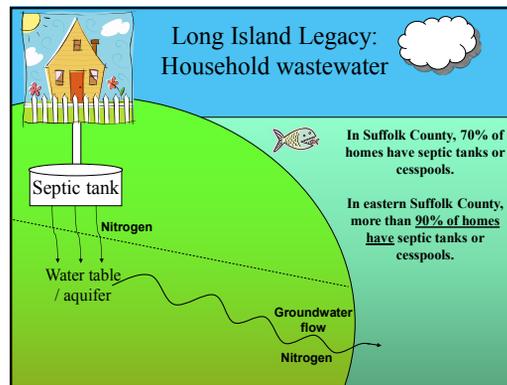
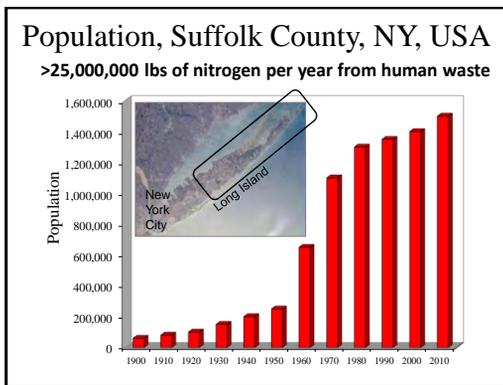
General Session I
New Technology and Planning Concepts for Wastewater Treatment

Nitrogen Driven Degradation of Long Island Water Bodies

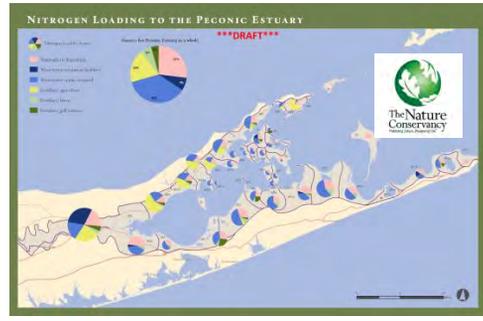
Christopher J. Gobler, Ph.D.
Stony Brook University, School of Marine and Atmospheric Sciences

“Nitrogen is the critical limiting factor to algal growth in Long Island coastal marine waters”

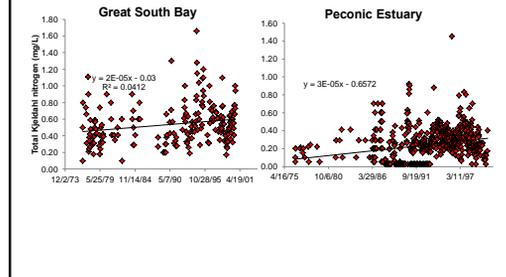
– Dr. John Ryther, Woods Hole Oceanographic Institute, Science Magazine, 1971



Peconic nitrogen loading budgets



Rising nitrogen levels in our bays



NYSDEC Impaired Water Bodies list



What impairments are brought about by excessive nitrogen loading?

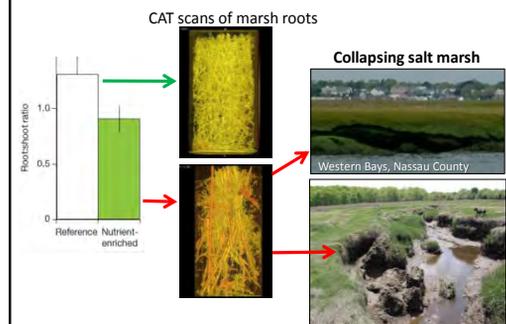
- **Loss of critical habitats:** Eelgrass, salt marshes
- **Low dissolved oxygen levels, hypoxia**
- **Acidification, low pH**
- **Macroalgal blooms:** Sea lettuce, *Ulva*
- **Toxic algal blooms:** Red tides, brown tides
- **Loss or depletion of shellfisheries and finfisheries**

Nitrogen impacts on salt marshes

- Salt marshes are critical habitats for protecting land, filtering terrestrial pollutants, migratory birds, and marine life on Long Island.
- Nitrogen is accelerating the disappearance of salt marshes across Long Island.



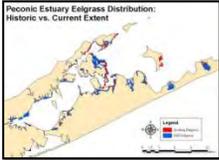
Nitrogen loading as a driver of salt marsh loss on Long Island, Deegan et al 2012, Nature





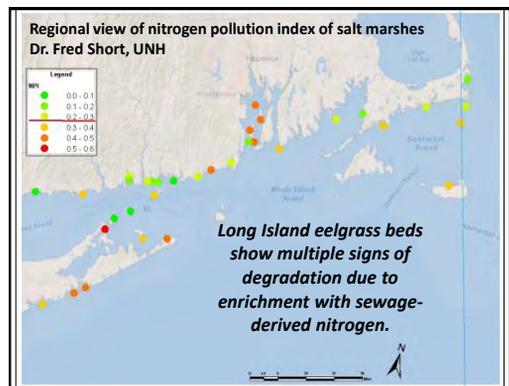
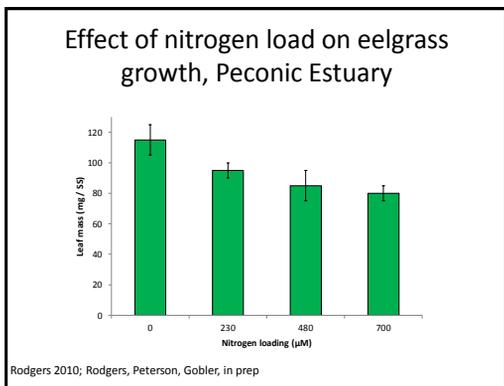
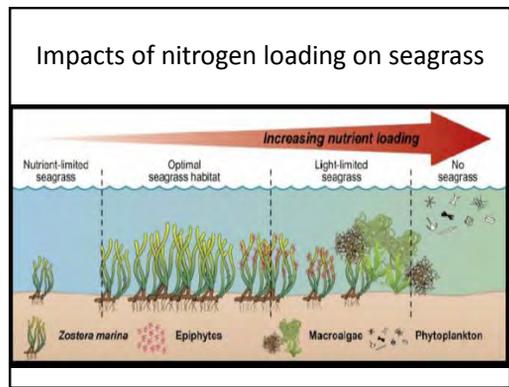
Nitrogen impacts on seagrasses

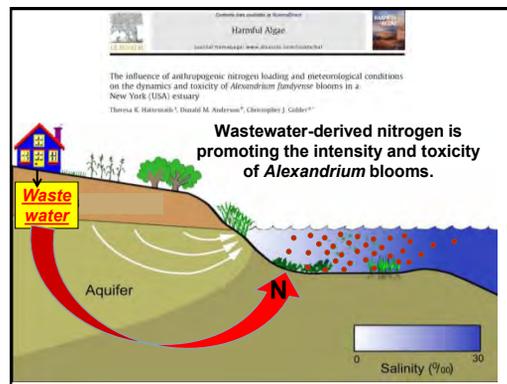
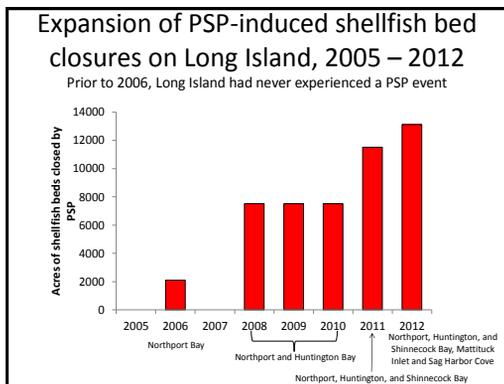
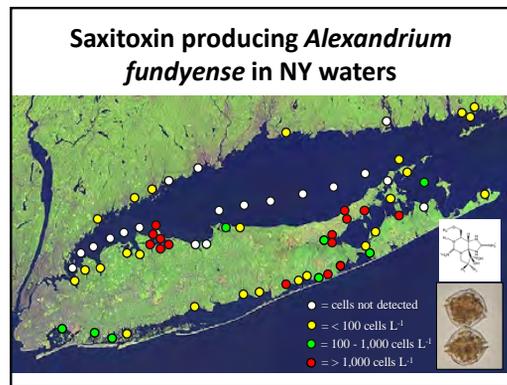
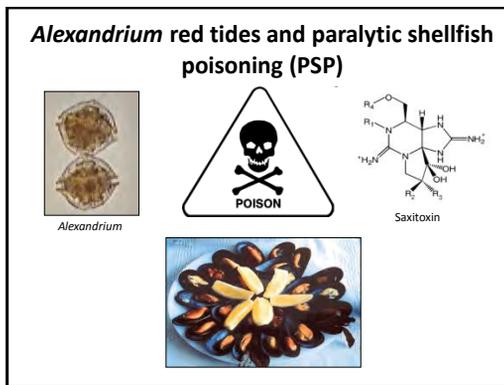
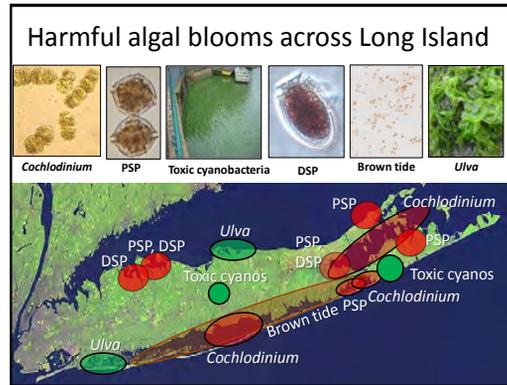
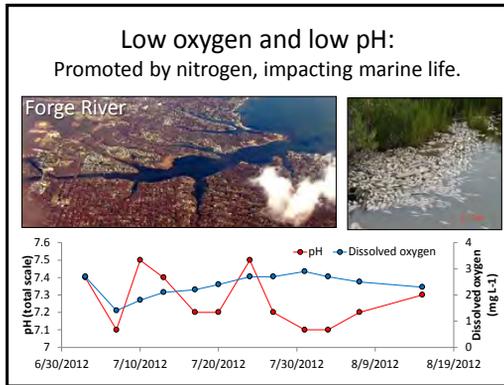
- Eelgrass are critical habitats for marine life on Long Island.
- Nitrogen is accelerating the disappearance of eelgrass across Long Island.

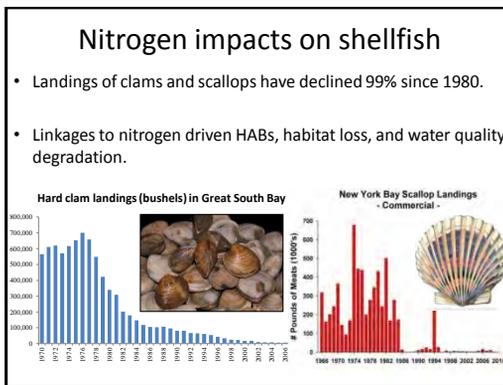
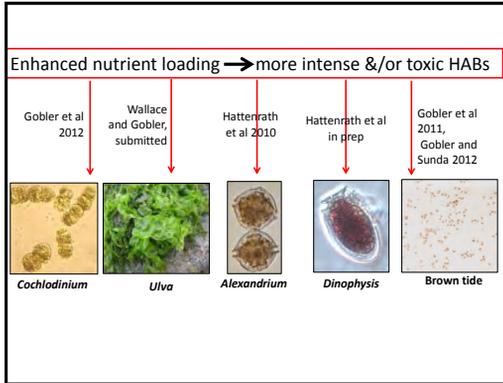


Peconic Estuary Eelgrass Distribution: Historic vs. Current Extent

Legend: Historic Extent, Current Extent





- ### What impairments are brought about by excessive nitrogen loading?
- Loss of critical habitats:** Eelgrass, salt marshes
 - Low dissolved oxygen levels, hypoxia**
 - Acidification, low pH.**
 - Macroalgal blooms:** Sea lettuce, *Ulva*
 - Toxic algal blooms:** Red tides, brown tides
 - Loss or depletion of shellfisheries and finfisheries**

Suffolk County Department of Health Services
Division of Environmental Quality

Wastewater Treatment
New Technology and Planning Concepts
S.C. Planning Federation
October 17, 2013

Focus on Wastewater, Nitrogen, & Estuaries
1) Comprehensive Water Resources Management Plan
2) Ongoing/Upcoming Efforts
-Wastewater Studies and Pilot Programs

Why the Fuss?

- ~1.5 million people, >900 sq miles/600,000 acres
 - Mostly unsewered (~70% of population)
- Vulnerable sole source aquifer
 - Diffuse public water supply well network (>1,000 wells)
 - Often relatively shallow (upper glacial aquifer)
 - ~45,000 private wells
- Wetlands, surface waters, 3 major estuary systems
 - Groundwater and surface waters are connected
 - All Suffolk estuary systems impaired by **NITROGEN**
 - Peconics, South Shore Estuary Reserve, Long Island Sound
 - Eutrophication and low dissolved oxygen
 - Mounting evidence suggesting linkage to harmful algal blooms

Comp Plan- The "Nutsell"

- 704 Public Water Supply "Source Water Assessments"
 - Enhanced modelling tools (sources, impacts)
- Identified "sensitive areas" (open space, pollution control)
 - Contributing to public supply wells and surface waters
- Public water supply is safe
 - Overall good-to-excellent quality
 - Manageable stresses (e.g., nitrogen in N/W Suffolk)
 - Ample quantity to meet demands (Pine Barrens may be used for East End)
 - Private wells still a concern
 - More action needed to protect surface waters from excess nitrogen
 - Continuing need to focus on VOC controls
- Promote planning, tools & case studies for development
 - E.g., Mastic sewerage study; DPW subregional sewer planning
 - Improve STP performance in "sensitive areas"

Comprehensive Water Resources Management Plan
Groundwater Models for Entire County

Figure 2

Comprehensive Water Resources Management Plan
Major Nitrogen Findings

- Nitrogen levels (TN) increasing since 1987 in all aquifers, by ~ 1-2 mg/l
- Avg TN in public water supplies still ~3-4 mg/l (well below MCL of 10)
 - >98% meet 10 mg/l standard before treatment; 87%<6 mg/l.
- Major concerns:
 - Surface waters (guideline ~ 0.5 mg/l)
 - Private wells
 - Agricultural & unsewered areas (lbs <0.5 ac pre-dating Sanitary Code)

Septic Tanks/Leaching Pools in Suffolk County



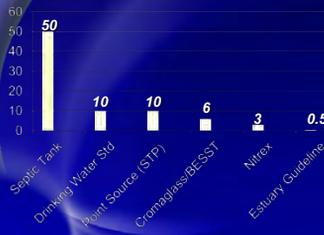
Advanced Treatment (Sewage Treatment Plants, or STPs)
 * Secondary (remove additional BOD and TSS)
 -O₂ and bacteria
 * Tertiary (remove nitrogen)
 -anoxic bacteria

Sewage Treatment Plants - - 195 sewage treatment plants currently operating

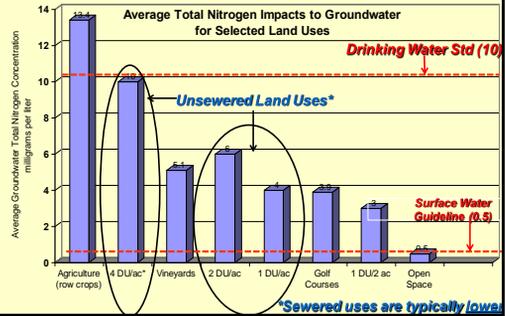


Performance Improved
 - From average 10 mg/l discharge to 7 mg/l

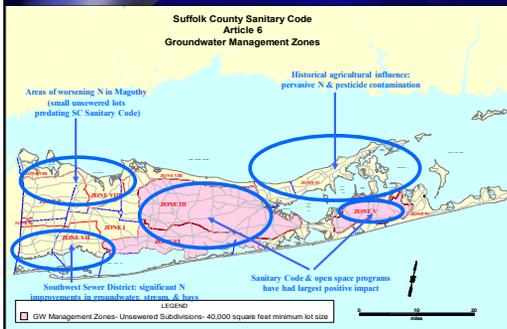
Total Effluent Nitrogen Discharge & Standards/Guidelines



Land Use & Nitrogen Impacts



Nitrogen Status/Trends



Smart Growth Assessment Mastic/Shirley Pilot Area

Groundwater now exceeds 10 mg/l TN
 Full build-out: 14 mg/l projected
 Sewering: would reduce TN to <4 mg/l





Open Space Programs are Critical...



But more needs to be done!

- Industrial/commercial VOCs (Reducing Toxics/Articles 7 and 12)
- Agricultural nitrogen and pesticides (BMPs/AEM/LI Pesticide Mgt. Strategy)
- Monitor emerging issues (PPCPs)
- Wastewater Planning/Management
- Pre-Article 6 small lots, & accommodating new growth (for surface waters)
- Additional protection in "sensitive areas"
- Open Space criteria; STP siting and performance; wastewater alternatives.

Wastewater in Suffolk County: 2012 Needs Assessment

- Cluster Systems
 - 153 Decentralized private on-site sewage treatment systems (43 more Municipal)
 - All Facilities (except 5 legacy systems) are required to meet total nitrogen discharge standards
 - Cost to maintain these systems over the next 20 years - \$233 Million
- Individual On-sites
 - 325,777 homes that are not sewered in Suffolk County
 - Recent GIS analysis suggests that 156,000 are in "sensitive areas" (25-year travel time to surface waters)
 - 252,530 homes pre-date current treatment standards (septic tank + leaching pool)
 - Cost to upgrade existing systems to current standards - \$5 Billion
 - Cost to provide advanced treatment for all existing systems - \$18 Billion
- Commercial On-sites
 - Currently 39,768 businesses that are not sewered in Suffolk County (8,000 total facilities)
 - Average sanitary gallons per day per business is ~500 gpd; per facility - 2500 gpd
 - Cost to upgrade existing systems to current standards - \$545 Million
 - Cost to provide advanced treatment for all existing systems - \$1.3 Billion

On-Site Sewage Disposal System Study (OSDS #1)

- ◆ Study was based on the following criteria:
 - ◆ Alternative OSDs capable of consistently achieving below 10 mg/L for nitrogen
 - ◆ Technologies needed to comply with Federal, State, and local regulations, as well as NSF 245
 - ◆ 2 studies in 1
 - Residential homes (< 1,000 gpd)
 - Small Commercial (1,000 gpd to 30,000 gpd)
 - Includes condos, apartments, and shopping centers, etc.
 - ◆ 11 major process categories were evaluated
 - ◆ 4 technologies were found to treat the sewage to the required level on a consistent basis
 - SBR, MBR, fixed-film and suspended growth.

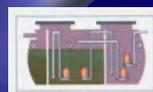
On-Site Sewage Disposal System Study (OSDS #1)

- ◆ Residential Findings – Single Family homes
 - ◆ 14 residential systems were studied in depth
 - ◆ Only 1 consistently meets 10 mg/L for nitrogen
 - Nitrex
 - ◆ While Nitrex did meet 10 mg/L
 - Only a handful in operation
 - Alkalinity and BOD₅ breakthrough are two issues that may require further examination
 - ◆ Large capital cost (\$30,000-\$40,000)
 - ◆ Further study and modeling are necessary to determine if additional nitrogen controls are required and to what extent

On-Site Sewage Disposal System Study (OSDS #1)

- ◆ Commercial Findings (to 15,000 gpd)
 - ◆ 9 commercial systems were studied in depth
 - ◆ 4 new technologies were added to the list of Approvable technologies
 - Nitrex
 - BESST
 - Aqua Point – Bioclere
 - WesTech STM-Aerotor
 - ◆ Existing technologies of Cromaglass, SBR, and MBR are still acceptable
 - ◆ SCDHS will continue to evaluate new technologies as they are proposed and will update the list as appropriate
 - ◆ Reduced Separation Distances (75') under Appendix A

Cromaglass (Total nitrogen - 10 mg/l)



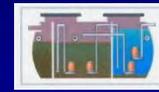
Step 1 - suspended growth nitrification



Step 2 - suspended growth denitrification



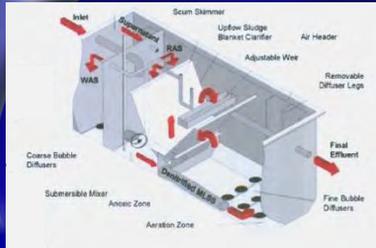
Step 3 - transfer/settle



Step 4 - decant

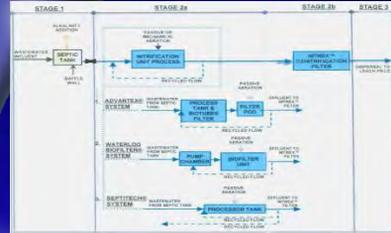
BESST

Average total nitrogen of 8.3 mg/l for 3 in steady state



- ◆ Nitrification – suspended growth
- ◆ Denitrification – suspended growth

Nitrex



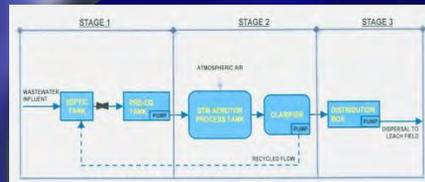
- ◆ Total nitrogen 2-4 mg/L
- ◆ Fixed-film nitrification
- ◆ Fixed-film denitrification

Aqua Point - Bioclere (Effluent Nitrogen – 8.4 mg/L)



Fixed-film and suspended growth nitrification and denitrification

WesTech – STM-Aerotator



- ◆ Effluent Nitrogen – 3-6 mg/L
- ◆ Cost - ~ \$50 /gallon
- ◆ Facultative system



Next Steps

- ◆ Consider revising Appendix A to 30,000 gpd
- ◆ Administrative Issues
 - Change required to Article 6 of the Sanitary Code
 - Change required to Appendix A (standards for small subsurface STPs)
 - Requires prior approval of Board of Health, Legislature, and SEQRA
- ◆ Practical Issues
 - Ability of the technology to be scaled up
 - Field verification of systems
 - Multiple systems in operation
 - Good track record of performance
 - No history of odors/operational issues

Next Steps

- ◆ OSDS #2
 - ◆ Flows to 1000 gpd
 - ◆ 50% removal of nitrogen (NSF 245)
 - ◆ Budget of ~\$300,000 from ¼% monies
 - ◆ An additional \$100,000 will be added from SSER
 - ◆ Draft work plan
 - System selection (in-house)
 - Selection of study communities
 - Development/refinement of groundwater models
 - Modeling at various build out scenarios and nitrogen levels (surface water impacts)
 - Develop cost benefit analysis and evaluate performance standards
 - Evaluate cluster systems & results of sewer studies
 - Develop regional costs for implementation & finance mechanisms
 - Develop regional criteria, plan and map for implementation
- ◆ Final Report in 2015

Early Actions (2013-14)

- ◆ ¼% ASRF Sewer District Expansions: ~\$20 Million
 - ◆ Riverhead, Northport, Babylon, Patchogue
- ◆ Decentralized Cluster Pilot Design Project (1/4%)
- ◆ SCDEDP Empire State Economic Dev Grant Application
 - ◆ \$1.8 million requested (\$1.3 million ¼% match proposed)
 - ◆ Accelerate planning and pilot systems (~100 homes)
- ◆ SCDHS in-house review of viable NSF 245 50% removal systems (<1,000 gpd) for use in Suffolk County
 - Goal of DHS approved systems list for 2014



Planning for Decentralized Wastewater

Glynis Berry, AIA, LEED AP
Peconic Green Growth

- Long Island Sound Futures Fund/NFWF
- Henry Phillip Kraft Family Memorial Fund at the Long Island Community Foundation
- Suffolk County Water Quality Protection and Restoration Program
- GIS by the Town of Southampton
- Engineering: Natural Systems Utilities

Local Nitrogen Reduction Goals for WATER QUALITY

PECONIC ESTUARY GOAL:
Reduce nitrogen from existing on-site development by either 33% or 25%

LONG ISLAND SOUND GOAL:
Top priority: reduce nitrogen loads from human sources to the Sound by 58.5% by 2014.
Nonpoint sources: 10%

Local Nitrogen Reduction Goals

Is 50% or 75%- 90% reduction enough?

FUTURE CONTROL VS. EXISTING CONDITIONS (nonconforming)

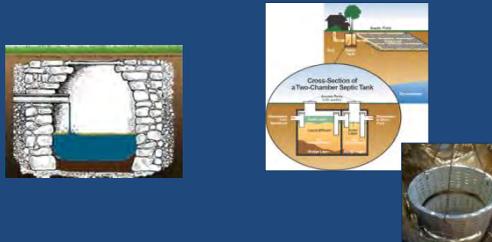
FLOW (mg/L) VS. TOTAL POUNDS OF NITROGEN

DRINKING WATER (10mg/L) VS. SURFACE WATER BODY (0.4 mg/L)

UNIVERSAL STANDARD VS. LOCALIZED TARGETS

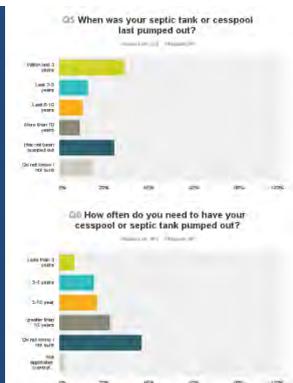
On-Site Systems:

Cesspools < 1973 vs. Septic Systems, Leaching Pits or Fields



SURVEY

Serviced?



Q15 When was your septic tank or cesspool last pumped out?

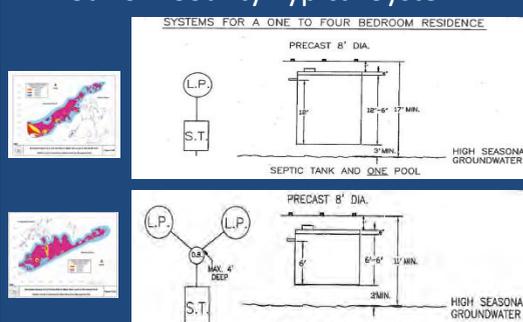
Response	Percentage
Within last 2 years	~25%
Last 2-5 years	~15%
Last 6-10 years	~10%
Over 10 years	~10%
Has cesspool/cesspool not used	~10%
Don't know/never pumped out	~20%

Q16 How often do you need to have your cesspool or septic tank pumped out?

Response	Percentage
Less than 2 years	~10%
2-4 years	~15%
4-6 years	~15%
Over 6 years	~15%
Don't know/never pumped out	~35%

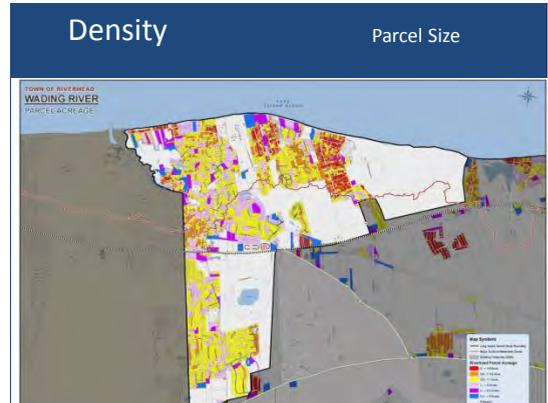
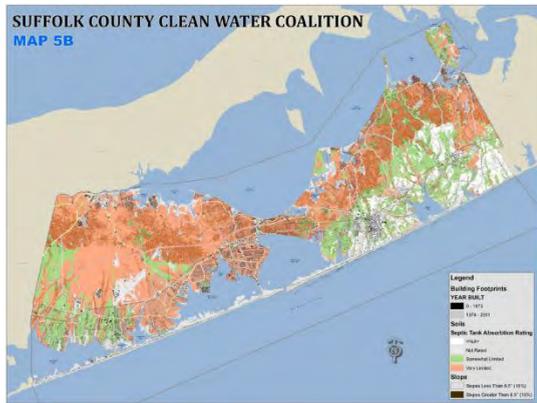
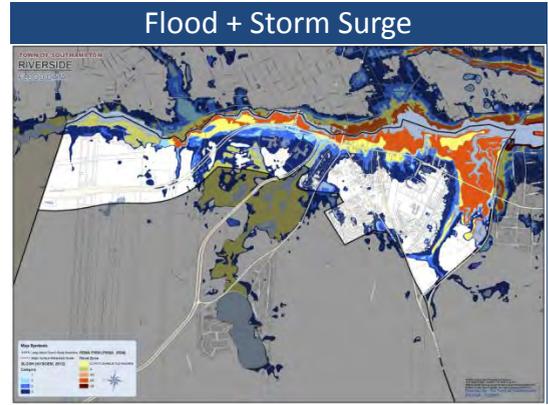
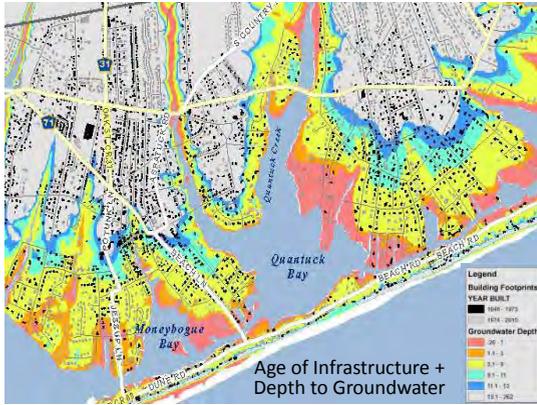
Suffolk County Typical System

SYSTEMS FOR A ONE TO FOUR BEDROOM RESIDENCE



SEPTIC TANK AND ONE POOL
PRECAST 8' DIA. 38'-6" 1' MIN. 3' MIN. HIGH SEASONAL GROUNDWATER

SEPTIC TANK & TWO POOLS
PRECAST 8' DIA. 6' 6'-6" 1' MIN. 2' MIN. HIGH SEASONAL GROUNDWATER



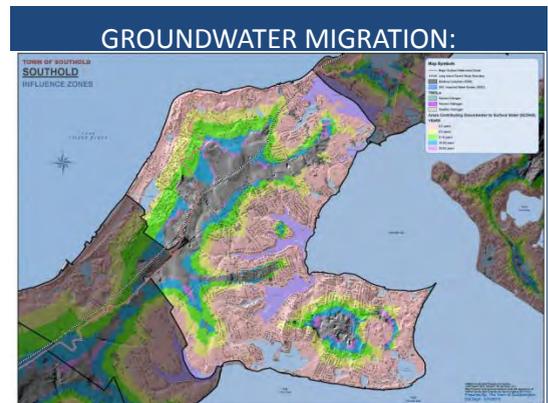
Density vs. Wastewater Regulation

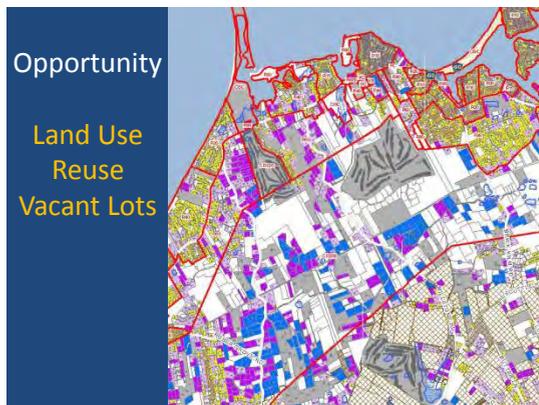
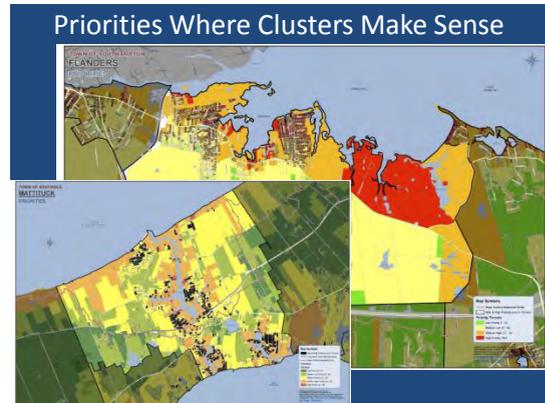
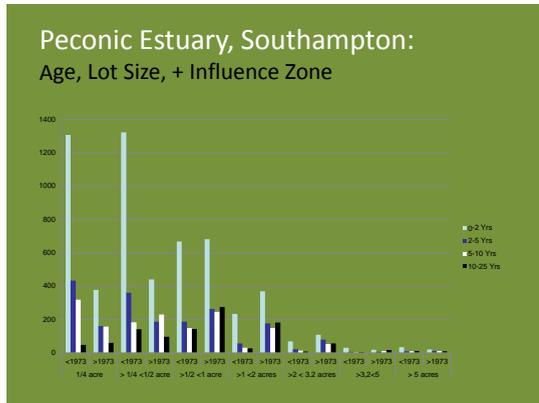
Is 50% or 75% reduction enough?
 What if we address non-conforming situations?

½ ACRE or 1 ACRE USAGE

50% or STP with 75 – 90% NITROGEN REDUCTION:

Flow	actual SC average # of Acre	% N load to # of Acre	% to # of Acre	% to # of Acre	% to # of Acre
1 DU/acre onsite, no treatment	5mg/L	26.82	100%	36	134%
2 DU/acre onsite, 50% treatment	5 mg/L	26.82	100%	36	134%
4 DU/acre onsite, 50% treatment	10 mg/L	53.64	200%	72	268%
2 DU/acre onsite, 75% treatment	2.5 mg/L	13.41	50%	18	67%
4 DU/acre onsite, 75% treatment	5 mg/L	26.82	100%	36	134%
3 Average Suffolk County population/loading used		2.98			
Loading of 1-1.3 #N/person/ year or 5-6 kilograms (p10)					
Discharge from traditional septic tank to 9 #N/person/ year (p11), water usage 75 gal/person/day					
4.4 gal acre is equivalent to 300 gal per DU					
5 Assumed maximum occupancy per zoning at 2/bedrm, 4 bdrm					



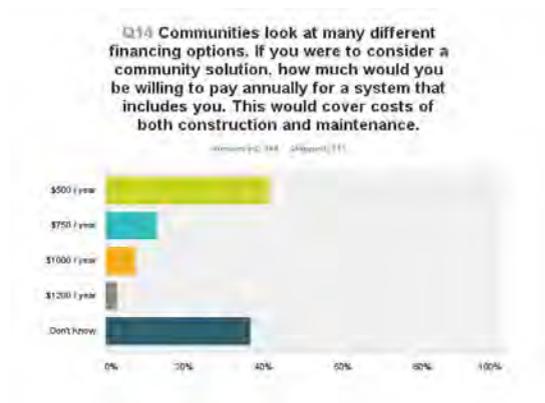


Water Use

Table 1. Typical Domestic Daily per Capita Water Use.³

Use	Gallons per Capita	% of Daily Total
Potable indoor uses		
• Showers	11.6	7.0%
• Dishwashers	1.0	0.6%
• Baths	1.2	0.8%
• Faucets	10.9	6.6%
• Other uses, leaks	11.1	6.7%
Subtotal	35.8	21.7%
Non-potable indoor uses		
• Clothes washers	15.0	9.1%
• Toilets	18.5	11.2%
Subtotal	33.5	20.3%
Outdoor uses	95.7	58.0%

Low Impact Development Center



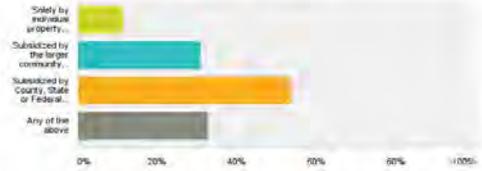
What is a Reasonable Cost?

EPA recommends 2% for water/wastewater
Social Equity Issues

SUFFOLK COUNTY 2011

SC Median Household Income: \$87,187 = \$1,744
 Lowest Town Median: \$69,097 = \$1,382
 SC Individual Per Capita Income: \$36,588 = \$ 732

Q15 How do you think a community system should be funded? You may check more than one choice.



Approaches

- Conservation
- Enhanced Treatment
- Clustered Systems
- Central Sewer Districts

Approach: Conservation



Septic Tank + Leaching Field

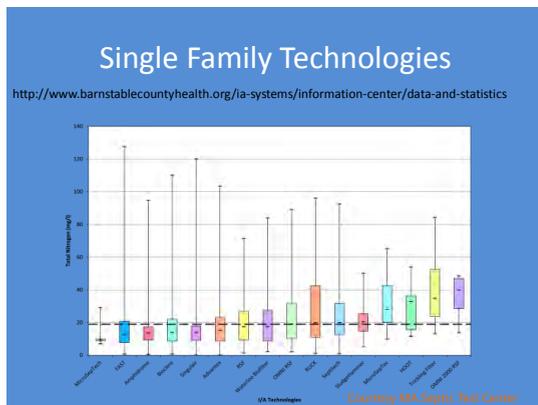
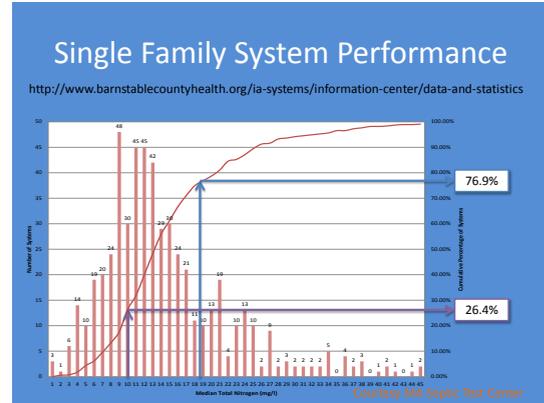


TECHNOLOGY OPTIONS FOR SENSITIVE SITES





Installed

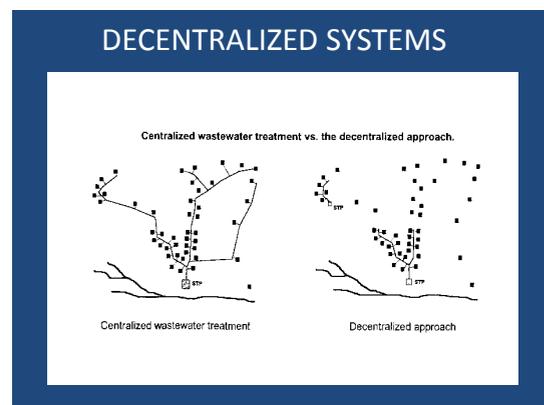


Interventions for Large Onsite Systems

Vegetated Recirculating Gravel Filters

TREATMENT SYSTEM UPGRADE FISHERS ISLAND, NY ALTERNATIVE 1		TREATMENT SYSTEM UPGRADE FISHERS ISLAND, NY ALTERNATIVE 2	
DESCRIPTION	COST	DESCRIPTION	COST
Mobilization	\$ 50,000	Mobilization	\$ 50,000
Site Work	\$ 60,000	Site Work	\$ 80,000
Site Utilities	\$ 25,000	Site Utilities	\$ 35,000
Process Tanks/Mechanical	\$ 150,000	Process Tanks/Mechanical	\$ 350,000
Vegetated Recirc. Gravel		Vegetated Recirc. Gravel	
Filters	\$ 240,000	Filters	\$ 240,000
Carbon Feed System	\$ 0	Carbon Feed System	\$ 20,000
Odor Control System	\$ 30,000	Odor Control System	\$ 20,000
Disposal System	\$ 35,000	Disposal System	\$ 50,000
Building	\$ 70,000	Building	\$ 20,000
HVAC/Plumbing	\$ 30,000	HVAC/Plumbing	\$ 32,000
Electrical/Controls	\$ 135,000	Electrical/Controls	\$ 230,000
Miscellaneous/Management	\$ 150,000	Miscellaneous/Management	\$ 150,000
Construction Subtotal	\$ 965,000	Construction Subtotal	\$ 1,340,000
Engineering (12%)	\$ 115,800	Engineering (12%)	\$ 160,800
Total	\$ 1,080,800	Total	\$ 1,500,800

Courtesy Green Growth



Components of a Clustered Effluent Collection & Treatment Approach

Wastewater Quality - Hillsdale

Parameter	Influent	Effluent
BOD	160 mg/l	15 mg/l
TSS	42 mg/l	8 mg/l
TKN	44 mg/l	12 mg/l
Nitrate	---	5 mg/l
pH	---	7.3

Residential & Light Commercial Nitrex™ Wastewater System – Mashpee, MA

Effluent Total Nitrogen 3.4 mg/l
Quarterly Operator Visits

Mashpee, MA Wastewater System at Substantial Completion

Mashpee, MA Wastewater System at Completion

Environmental Engineers/CrossTeam
LOMBARDO ASSOCIATES, INC.

Aqua Point - Bioclere

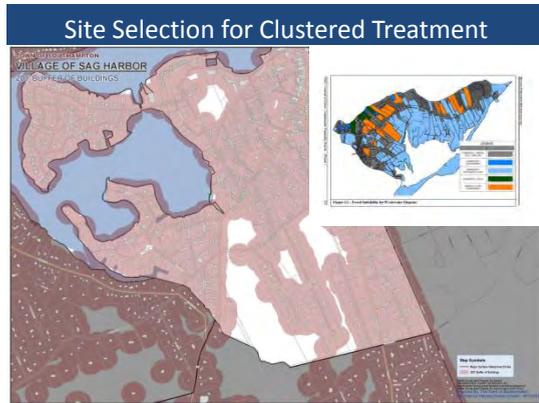
Fixed-film and suspended growth nitrification and denitrification

Single Unit, Package Plant

35

Conventional Sewage Treatment Activated Sludge System

36



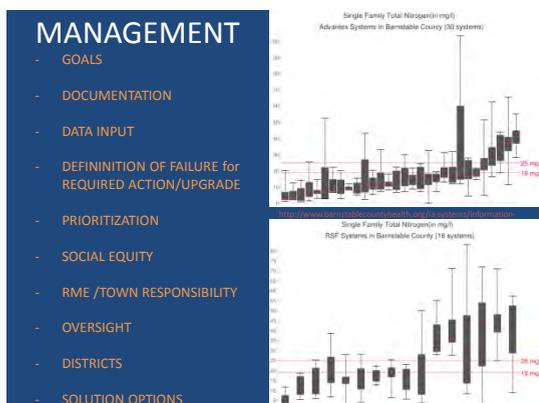
REUSE

- High School, NC
25000 GPD
Indoor use (toilet flush)
Outdoor use (irrigation)
Constructed wetland and UV
- City Park, NC
1500 GPD
Indoor use (toilet flush)
Onsite MBR, UV and CI
- Greenhouse Use
- Urine Separation - Fertilizer
Private School, Northern Ohio, Passerella Architects



Composting + Urine Separation

Rich Earth Institute



www.peconicgreengrowth.org
info@peconicgreengrowth.org

New Technology + Planning Concepts for Wastewater Treatment

- * Adrienne Esposito
- * Christopher Gobler
- * Walter Dawydiak
- * Glynis Berry
- * Assemblyman Fred W. Thiele Jr.



Long Island's Drinking Water Threats & Solutions

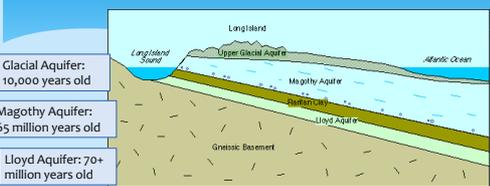
Adrienne Esposito
Citizens Campaign for the Environment



Where Does Long Island Get Drinking Water?



Where does LI get our drinking water?



Glacial Aquifer: 10,000 years old

Magothy Aquifer: 65 million years old

Lloyd Aquifer: 70+ million years old

Long Island is a sole-source aquifer region, which means we residents rely on groundwater for 100% of our drinking water. A clean, healthy aquifer system is vital to maintaining Long Islanders' quality of life. Contamination of groundwater from improper household hazardous waste disposal negatively impacts public health, our environment and pollutes groundwater supplies.

Summary Position

- * From Draft Comprehensive Plan Introduction of 12/7/2010
- * **"Much of the County's ground and surface water resources continue to meet the water quality criteria established to assess resource suitability for its best intended uses."**
- * **"Nevertheless, the data also shows a continued and gradual decline of water quality. Unfortunately, these concerning trends identify the need for increased water protection efforts at the County level (ES-1)."**

Summary Findings – Nitrates Septic, Sewage Plants, Fertilizers

- * Nitrate pollution is largely due to human settlement
 - * Negatively impacts groundwater, marine & freshwater ecological resources.
- * Nitrate levels are increasing in all Long Island aquifers
 - * Total Upper Glacial Public Supply Wells – up by 40% (4.34 mg/l)
 - * Total Magothy Public Supply Wells - up 200% (3.4 mg/l)
- * Deeper supply wells now used to reach cleaner water
- * 1/3 of private wells tested exceed nitrate targets (4-6 mg/l)
 - * Approximately 10% exceed 10 mg/l MCL threshold

Summary Findings – Nitrates Septic, Sewage Plants, Fertilizers

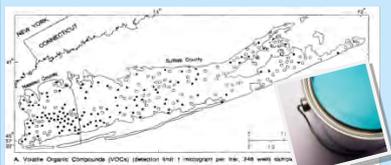
- * “Sanitary wastewater management is the most important factor affecting nitrate levels throughout most of the County.”
- * Many sewage plants (STP’s) reduce nitrates, but SCDHS faced recent “challenges” getting nitrate compliance from STP’s
 - * Proliferation of smaller plants more difficult to monitor & maintain
- * 1MM Suffolk residents use 340,000 on-site wastewater systems
 - * Nitrate reduction very limited & highly variable (10-50%)
- * 60% of residential properties in Suffolk do not meet minimum lot size to achieve Article VI drinking water protection goals <10mg/l

Key Goals of Comp. Water Plan

- * Nitrogen should be reduced to the greatest extent feasible and practical for the protection of current and future drinking water supplies and the ecological functions of streams, lakes, estuaries and marine waters.
- * Groundwater Nitrogen inputs in the County’s surface waters should be reduced consistent with the goals of the Long Island Sound Study, Peconic Estuary and South Shore Estuary Reserve Programs, to protect, preserve and restore the estuaries

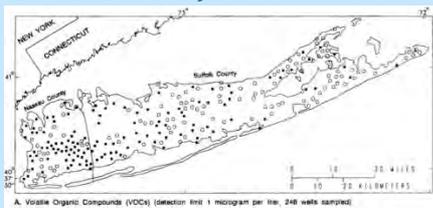
Volatile Organic Chemicals

- * VOCs used in the most common products of HHW were found at high concentration in the Magothy Aquifer, which is main aquifer used for drinking water.
- * PCE was present in 4x more wells in 2005 than in 1987.
- * Levels of TCE increased 150%
- * In 1987, 1 well exceeded drinking water standard of 5 ug/l. In 2005-9 wells exceeded drinking water standards.



Volatile Organic Chemicals

- * VOC (PCE) were present in 4x more wells than in 1987.
- * Levels of TCE increased 150%



Long Island Pesticide Use Management Plan: A Decade Overdue



Under development since 1998, the goal of the plan is to protect Long Island’s sole source aquifer from pesticide contamination.



Recently the DEC released a plan to the public that does not take action to protect drinking water from pesticides.

In 2000-2001, 834 private and non-community drinking water wells were tested on LI for the frequency and co-occurrence of pesticides with other pesticides and pesticide degradates. Results:

- * pesticide related compounds were detected in 422 wells (50.6%) of the wells
- * more than one pesticide related compound was found in 323 (38.7%) of the wells
- * 5-9 pesticide related compounds were detected in 127 (15.2%) of the wells
- * 10 or more pesticide related compounds were detected in 4 (.5%) of the wells

Pesticides

- * Extensive investigations have identified 117 pesticides in drinking water.
- * The Top 3 pesticides found in drinking water include:
 - * Imidacloprid
 - * Atrazine
 - * Metalaxyl



The NYSDEC documents 117 pesticides in our groundwater. We need to work to ban the top 3 most detected: **Atrazine, Metalaxyl, and Imidacloprid.**

Metalaxyl: Detected 1,327 times in 546 locations. Linked to kidney and liver damage & toxic to birds

Atrazine: Detected 124 times in 51 locations. Banned in European Union in 2004 because of persistent groundwater contamination.

Imidacloprid: Detected 890 times in 179 locations. Has been found in concentrations as high as 407 ppb (Standard 50ppb).

Pesticides-Imidacloprid

- * Detected 890 times in 179 locations.
- * Has been found in concentrations as high as 407 ppb (Standard 50ppb).
- * Can be found in 100's of products.
- * Used on lawns, turfs, golf courses, farms, pets, in households.
- * Can leach quickly through soils, contaminating groundwater
- * Toxic to fish and crustaceans.

Pesticides Metalaxyl

- * Detected 1,327 times in 546 locations
- * Fungicide that leaches in sandy soils
- * Linked to kidney and liver damage
- * Toxic to birds

Pesticides-Atrazine

- * Detected 124 times in 51 locations
- * Banned in European Union in 2004 because of persistent groundwater contamination.
- * Most widely used herbicide in US, 76 million lbs applied each year.
- * 2009 NY Times article: potential cause of birth defects, low birth weights, and menstrual problems when consumed at concentrations below federal standards.
- * 2010 study: 75% of male frogs sterile & turned 1 in 10 male frogs to females.

Pharmaceuticals

- * Pharmaceutical drug contamination in our groundwater, rivers, estuaries, and bays is an emerging issue throughout our state, and our Nation.
- * 41 million Americans drinking water from a source containing trace amounts of pharmaceutical compounds.
- * In 2002, the United States Geological Survey (USGS) found trace amounts of antibiotics, hormones, contraceptives and steroids in 80% of the water they tested.

Emerging Contaminant: Pharmaceutical Drugs

In 2002, USGS and US Department of the Interior partnered with the Suffolk County Water Authority to complete a study on Suffolk County groundwater.

Of 70 samples collected from 61 wells in the upper glacial and Magothy aquifers, 28 samples contained at least one PhAC compound.

In 2002, the United States Geological Survey (USGS) found trace amounts of **antibiotics, hormones, contraceptives and steroids in 80% of the water they tested.**

Synthetic steroids, such as estrogens, are known endocrine disruptors. Trace amounts of these compounds are known to cause feminization, reproductive problems, and hormone system disruption in fish.

CITIZENS CAMPAIGN FOR THE ENVIRONMENT



Analysis of Existing Drug Disposal Plans at Health Care Facilities in Suffolk County, NY



What We Can Do

1. Properly dispose of pharmaceuticals at take-back programs - don't flush!

Suffolk County Take Back Program: In the first 4 months 800 lbs of drugs collected!

Nassau County Take Back Program

Suffolk County Law



Ban the top 3 pesticides on Long Island



STOP using toxic pesticides and fertilizers on lawn and in gardens



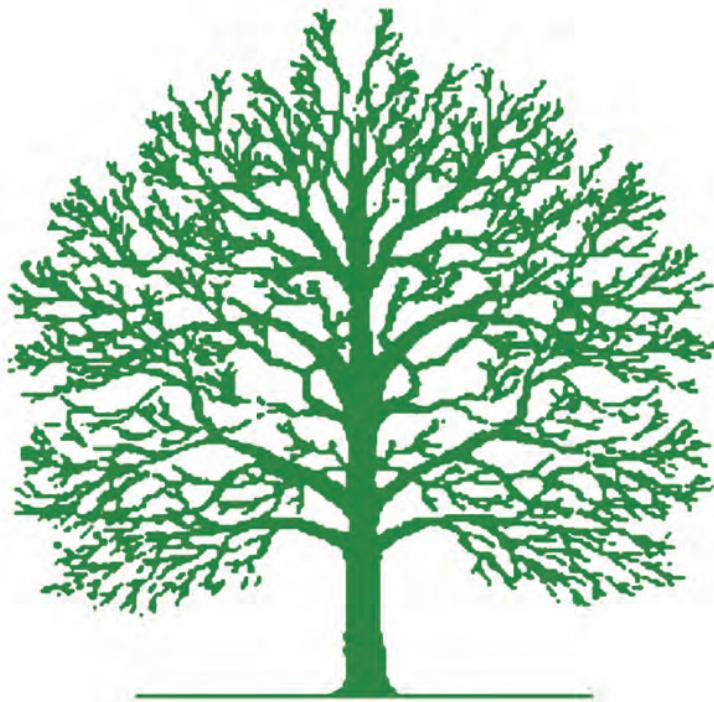
Do not pour chemicals, oils, grease down the drain- Use STOP days!



Use less hazardous products—such as green cleaning products







General Session II
Planning and Zoning Case Law Update

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

PLANNING & ZONING CASE LAW UPDATE: 2013

PRESENTER:

Natasha E. Phillip, Esq.

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REGULATION(S)

State Environmental Quality Review Act

Revisions to the State Environmental Quality Review Act (SEQRA) implementing regulations, set forth in Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 617), are ongoing by the Department of Environmental Conservation (DEC). The full and short environmental assessment forms (EAFs) have been revised and became effective October 7, 2013. The DEC is also working on an EAF Workbook to accompany the revised short EAF. Additional information about updates to the SEQRA implementing regulations is provided on the DEC website at <http://www.dec.ny.gov/permits/357.html>.

OPINION(S)

Attorney General

In addition to the planning board that is authorized to be established pursuant to the State Planning and Zoning Enabling Laws, the Attorney General (AG) has concluded that a “town board is authorized to establish a second planning board to review and determine only site plans within a planned development district.”¹

The facts upon which the AG Opinion was based are that a special planning board, with limited jurisdiction, was proposed to be established in a Town to relieve some of the anticipated burdens to the regular Planning Board associated with development of a 452-acre parcel. Due in part to that development proposal, the Town Board entertained a zoning change application to create a planned development district pursuant to Town Law section 261-c, during which time the developer proposed that the 342-acre project would be accomplished in phases, over 15 to 20 years, and, at each phase of development, a separate site plan application would be submitted for Town review and decision.

The AG Opinion provided three main reasons for its conclusion that the Town Board is authorized to create the contemplated special planning board to review and decide only applications for site plans within the planned development district:

- 1) The Town Board has the flexibility to establish the special planning board pursuant to Town Law § 274-a(2), because that provision expressly empowers the town board to

vest the review, approval or disapproval of site plans to “the planning board or such other administrative body that it shall so designate.”

- 2) The authority of Municipal Home Rule Law section 10 is broad, and case law reviewing that authority, allows the town board to adopt local laws establishing more than one planning board.²
- 3) At the time when the State Legislature re-codified the zoning and land use laws in the Town Law (and the analogous counterparts in the Village Law and the General City Law) in the 1990’s, the Legislature did not restrict or otherwise evidence the intent to preempt a town board’s authority to select, by local legislation, which board should be designated to review site plans. The AG Opinion did not consider the Court of Appeals case of *Matter of Cohen v. Bd. of Appeals of Vill. of Saddle Rock*, 100 N.Y.2d 395 (2003), to be applicable here.³

CASES

Development of Mineral Resources —

The Department of Environmental Conservation (DEC) administers New York’s Mineral Resources Programs primarily under the legislative authorization in Article 23 of the Environmental Conservation Law. Title 19 of Article 23 specifically regulates the oil, gas and solution mining (OGSM) industries; the extractive mining industry is regulated under Title 27 of Article 23. Courts in New York have widely clarified and explained the proper construction of Title 27 in relation to the authority of local governments to regulate land use and, in recent months, that body of case law has served as the primary basis for construing local governments’ land use authority under Title 19 of Article 23 – the OGSM Law.⁴

The DEC is presently studying the environmental impacts associated with high-volume hydraulic fracturing (hydrofracking), which is one process that can be used to extract natural gas from shale and other rock formations. In advance of a DEC final study, some municipalities have taken certain regulatory actions affecting the land under which natural gas may exist, which have been the subject of litigation.⁵ The Appellate Division, Third Department (Appellate Court) heard two of those cases, *Anschutz Exploration Corporation v. Town of Dryden*⁶ and *Cooperstown Holstein Corporation v. Town of Middlefield*,⁷ and rendered decisions on May 2, 2013.⁸

In those cases, two Supreme Courts (trial courts) upheld separate zoning provisions for two towns that prohibited the use of land for the exploration of oil, gas and solution mining. The Appellate Court affirmed the holdings of the Supreme Courts that the zoning regulations at issue were not preempted (express/field preemption) or (conflict/implied preemption) by the Oil, Gas and Solution Mining Law.

The Appellate Court found no express (field) preemption after construing the legislative history and statutory preemption clause in the OGSM Law (Title 19 of ECL Article 23), which provides that “[t]he provisions of [ECL article 23] shall supersede all local laws or ordinances relating to the **regulation** of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the [RPTL]”.⁹ The Court accorded the word “**regulation**” with a common definition (i.e., “an authoritative rule dealing with details or procedure”), since the word was not defined in ECL Article 23, and concluded that the zoning regulations at issue did not seek to regulate the details or procedure of the OGSM industries; rather, the regulations simply established “permissible and prohibited uses of land” within the Towns “for the purpose of regulating land generally”. The Appellate Court further stated that, although municipal zoning regulations would have an incidental effect upon the OGSM industries, they “are not the type of regulatory provision that the Legislature intended to be preempted by the OGSML”.

The Court’s review of the legislative history for the OGSM Law revealed no clear expression of legislative intent to preempt local control over land use”. In the absence thereof, the Court declined to give the OGSM Law a construction that would “usurp the authority traditionally delegated to municipalities to establish permissible and prohibited uses of land within their jurisdictions.” In further support of its determination that the Legislature did not intend for the OGSM Law to preempt the zoning authority of municipalities, the Appellate Court choose to follow *Frew Run Gravel Products v. Town of Carroll*¹⁰ and other decisional case law interpreting a similar supersession provision contained in Title 17 of ECL Article 23 – the Mined Land Reclamation Law.

The Appellate Court also found no implied preemption, based on the reasoning that the zoning regulations at issue neither conflicted with the language or the policy of the OGSM Law.

Governmental Immunity from Zoning

To determine whether the actions of governmental units are “exempt” from local zoning regulations, the New York Court of Appeals in the 1988 case of *Matter of County of Monroe v. City of Rochester*¹¹ established a method for resolving inter-governmental land use disputes using the “balancing of public interests” analytic approach. That approach provides that, unless a statute exempts it, the encroaching governmental unit is presumed to be subject to the zoning regulations of the host community where the land is located and, to rebut that presumption, the host community must weigh nine factors to determine whether or not it is in the public interest to continue to subject the encroaching government to its land use regulations.¹²

In the case of *County of Herkimer v. Village of Herkimer*,¹³ the County of Herkimer proposed to locate a new correctional facility in an abandoned shopping center within the Village of Herkimer, and the County also sought permission from the Village for sewer service and hookups to that facility. Seemingly in response to the County’s proposal, the Village denied the proposed sewer hookups and rezoned the area wherein the shopping center is located (C-3 Central Commercial Districts and I-I Industrial Districts) to prohibit any “correctional facility, correctional institution, or jail”. The County commenced court action challenging the Village’s denials.

The Appellate Division decided the case on four grounds. The first ground was whether or not Herkimer County was immune from the Village’s zoning regulations. The Appellate Division remitted that matter to the Supreme Court for development of a record upon which the Supreme Court would consider the location of the new correctional facility in light of the balancing of the public interests test. The Appellate Division found no merit to the three remaining grounds of whether: 1) state preemption existed; 2) the Village violated the principle that zoning regulates the use and not the user or occupiers of land; and 3) the zoning amendment constituted exclusionary zoning.

Zoning and Conditions: Regulates Use, Not User

Zoning is not an exercise of the general police power delegated to municipalities. Zoning more specifically regulates the use, area, density and intensity of development on land: and, to be valid, any such regulation must advance, at a minimum, a legitimate governmental interest that can be served by zoning. Zoning that regulates the user and not the use is *per se* invalid.¹⁴

In *Sunrise Check Cashing v. Town of Hempstead*,¹⁵ the Court of Appeals invalidated a zoning provision applicable within the Town’s business district that stated: “In any use district except Y Industrial and LM Light Manufacturing Districts, checking-cashing establishments are hereby expressly prohibited.”¹⁶ The zoning provision was held to have violated the principle that zoning is concerned with the use of land, and not with the identity of the user. The Court of Appeals reasoned that the check-cashing zoning provision could not be justified on the grounds advanced by the Town. Otherwise stated, the specific purposes the Town outlined as justifying its checking-cashing zoning provision stated no legitimate governmental interests that could be advanced through zoning.

The Court of Appeals reviewed a memorandum (with a stated subject of “Public Policy behind Check Cashing Ordinance”) from a deputy town attorney, dated December 13, 2005. In several pages of that memorandum, check-cashing establishments were criticized on social policy grounds. Other sections of the memorandum referred to studies reporting that check-cashing establishments exploited the poor and African Americans. The memorandum also concluded that the check-cashing zoning provision would encourage young and lower income people to open up bank accounts, save their money, and develop a credit rating; the regulations would also remove a seedy type of operation, akin to pawnshops and strip clubs, from the commercial areas of the Town. The Town made no attempt to defend the purposes advanced in the memorandum as legitimate objects of the zoning power. Instead, the Town tried to save the check-cashing zoning provision by attributing to it a different (general police power) purpose – protecting the health and safety of the community against the dangers created by armed robber. Whatever the merits of this view as a policy matter, the Court of Appeals concluded that they were not legitimate governmental interests that justify a zoning enactment. Therefore, the check-cashing zoning provision was obviously concerned not with the use of the land but with the business conducted by its operators.

Some guidance from the Court of Appeals:

“It is true that there are cases in which the nature of the business is relevant to zoning because of the businesses’ ‘negative secondary effects’ on the surrounding community; this is true of so-called ‘adult entertainment’ uses¹⁷, but, despite the reference to ‘pawnshops and strip clubs’ in the deputy town attorney’s memorandum, the Town has not tried to show and does not argue that check-cashing services are in a similar category.”

Another case that explains this principle is the case of *Edson v. Southold Town Zoning Board of Appeals*.¹⁸ In that case, a Christmas tree farm owner applied for a farm stand permit and was denied the permit by the Town Building Inspector. The farm owner appealed the permit denial to the Zoning Board of Appeals, and the Inspector's denial was upheld. The farm owner also applied for and was granted an area variance subject to certain conditions. Specifically, the ZBA prohibited the storage of incidental accessory items that are not produced on the farm within 4,826 square-foot area of the subject partitioned building, and the ZBA limited the operation of the farm stand to the period from Labor Day through March 31.

The farm owner commenced court action challenging the conditions. The Supreme Court, Suffolk County denied the farm owner's petition and dismissed the proceeding. The Appellate Division, Second Department (Appellate Court) reversed, finding that the farm owner was entitled to the farm stand permit and annulling the challenged conditions.

The Court concluded that the owner could meet the area requirements set forth in the zoning regulations with his proposal to partition his 7,826 square-foot building for the purpose of creating a space where the proposed farm stand would locate, and that the owner's proposal would not exceed the area limitation of 3,000 square feet for farm stands as set forth in the Town Code. The farm owner further established that his property met the other Town Code requirements for the issuance of the permit, and that the percentage of the items offered for sale at the farm stand that would be grown by the farm owner would conform to the requirements of the Town Code.

In disallowing the challenged conditions, the Appellate Court held that the ZBA did not have the authority to attach a condition to the farm stand permit approval that the ZBA arbitrarily distinguished between the types of inventory to be offered for sale by permitting the storage of farm stand inventory produced on the farm in the partitioned area adjacent to the proposed farm stand, while prohibiting the similar storage of incidental accessory items that are not produced on the farm. Likewise, the ZBA was deemed to have no authority either under the Town Law or the Town Code, or any evidentiary basis, for the imposition of the condition limiting the operation of the proposed farm stand to a particular season or to specific dates.

Zoning: Uniformity Requirement

New York zoning statutes require local zoning regulations to be “uniform for each class or kind of buildings throughout each district”.¹⁹ In *Tupper v. City of Syracuse*,²⁰ the Appellate Division, Fourth Department (Appellate Court), invalidated two ordinances because they violated the uniformity requirements of General City Law §20(24). The two ordinances imposed parking requirements for one and two-family residences that were owned by absentee owners. Those properties were required to have one off-street parking space for each potential bedroom; Absentee-owner properties held or acquired before passage of the ordinances were exempt, but would need to meet the new requirements if any “material changes” were made to them.

The Appellate Court stated that the uniformity provisions are intended to protect against local legislative overreaching by requiring zoning regulations to be passed without reference to the particular owners. In each of Syracuse’s ordinances however, buildings within the same class were treated differently based solely on the status of the property owner (i.e., absentee property owners as opposed to owners who occupied the property). The Appellate Court concluded that, such a distinction may be constitutionally valid, but would be invalid under the uniformity requirements of the General City Law and the City of Syracuse Charter.

The next ground for invalidation of the two ordinances was that they violated section 35 of the Second Class City Law, which required, in part, that no ordinance may be passed by the common council on the same day in which it is introduced, except by “unanimous consent.”²¹ The Court established that the unanimous consent requirement can take one of two meanings: (1) that the common council must unanimously consent to the merits of the ordinance on the same day, or (2) unanimously consent to the procedure for voting on the same date on which the ordinances were introduced. But, because it was undisputed that three of the nine council members voted “nay” to the ordinances, the Court held that, under any of the above interpretations for Section 35, the “unanimous consent” requirement was not met, and thus the ordinances were invalidated.

Nonconforming Use

The case of *Ploof v. Apostol*,²² upheld the City of Albany Zoning Board of Appeals determination, made pursuant to Albany City Code § 375-91, to discontinue a legally existing nonconforming use after a six months amortization period. Section 375-91 of the City Code

established procedures for the City Zoning Board of Appeals to terminate a nonconforming use within such reasonable amortization period as the Board may establish if, after one or more public hearings, the use is deemed to be a general nuisance.²³

Two multi-unit apartment buildings, which were legally pre-existing prior to adoption of the zoning regulations then applicable, were at issue in the case. After the holding of several public hearings, the City ZBA determined that the activities in and around the apartment buildings constituted a general nuisance. The owner of the two buildings was given six months to discontinue or amortize his investments in those buildings.

The owner challenged the City ZBA decision in court. In upholding the Supreme Court's decision to affirm the nuisance determination and the reasonableness of the amortization period, the Appellate Division, Third Department, found that the record supported the City ZBA's decision. The record for the City ZBA's hearings and proceedings detailed that:

Some 70 arrests were made at one of the apartment buildings between 2004 and 2010, and 65 arrests at the other. Reports and data either originating from or compiled by the Albany Police Department further demonstrated that, between 2004 and 2009, the apartment buildings received a disproportionately high number of calls for service compared to similarly situated properties and, a substantial percentage of those calls were considered by the police to be "nuisance calls," or those calls involving complaints of fireworks, domestic incidents, "groups annoying," loud music, animal control issues and neighbor disputes. Also included in this category of nuisance calls were "certain types of calls or crimes that repeatedly require[d] police response," such as those involving weapons, drug sales, assaults and other criminal activities. In addition, at several public hearing dates, numerous neighboring property owners supplemented the statistical data by providing oral and written comments of the violence, intoxication and drug dealing they have witnessed occurring in and around the two apartment buildings.

Subdivision

A planning board may not modify a preliminary plat and then disapprove of a final plat layout that conforms to the modifications required by the board. In addition, absent new information, a subsequent modification or rejection of a preliminarily approved subdivision layout is an arbitrary and capricious act subject to invalidation.²⁴

In *Nickart Realty Corp. v. Southold Town Planning Board*,²⁵ the owner of certain property located within the Town of Southold (Nickart) sought approval of a plan to subdivide that property into two lots to allow construction of a single family dwelling on each. Each of the two resultant lots would be less than the 20,000 square feet in buildable lot area required under the Town's regulations; therefore, Nickart needed to obtain certain variances.

Nickart applied and was granted a zoning variance from the Southold Zoning Board of Appeals in 1997 and, in 2006, the Suffolk County Department of Health Services granted a variance from the Suffolk County Sanitary Code, permitting the installation of a private on-site sewage system and allowing Nickart to take advantage of a type of transfer of development right known as "sanitary flow credit".²⁶ After the variances were granted, in April 2010, the Southold Planning Board granted conditional final plat approval for the Nickart plan; in June 2010, the Planning Board also deemed the final plat approval substantially complete. Yet, in July 12, 2010, the Planning Board adopted a resolution granting a "conditional" final plat approval requiring, for the first time, that Nickart submit proof of either: 1) its compliance with Town of Southold Code, Chapter 117, which places strict limits on transfers of sanitary flow credits; or, 2) an approval from the Suffolk County Department of Health Services (Suffolk County) that was not dependent on a transfer of sanitary flow credits. The Planning Board reasoned that the Southold Code on sanitary flow credits allowed transfers only in connection with affordable housing and that the broader allowances for transfer of sanitary flow credits under the Suffolk County Code could not override the limitations imposed under the local Southold Code.

In affirming the trial court's holding that the Southold Planning Board July 2010 conditional final approval for the Nickart plan was arbitrary and capricious, the Appellate Division, Second Department, stated that a planning board may not, in the absence of significant new information, deny final subdivision approval if a property owner implements the modifications or conditions required by a preliminary subdivision approval. The Court reasoned that the Southold Planning Board had long known that Suffolk County has granted a variance from its Sanitary Code based on the transfer of sanitary flow credits; moreover, "the Planning Board specifically referenced that transfer in its April 2010 conditional preliminary approval. Inasmuch as no significant new information came to light after the Planning Board gave its approval to the preliminary plat, its imposition of additional requirements in the conditional final approval was, as the Supreme Court correctly held, arbitrary and capricious."

Another case that explained this principle is *Town of Amherst v. Rockingham Estates*,²⁷ where the Plaintiff sought a court judgment declaring that the final plat filed by Defendant in the Erie County Clerk’s Office was null and void. The Supreme Court denied Plaintiff that relief and the Appellate Division, Fourth Department (Appellate Court) reversed.

According to the Appellate Court, the Plaintiff established, and Defendant did not dispute, that the preliminary plat submitted by Defendant and approved by the Town of Amherst Planning Board proposed and included a **public sanitary sewer easement**. The final plat, however, **described the sewer easement as private**, rather than public. The Town’s regulations, together with Town Law § 276(4)(b) and (d), which define a preliminary and final plat, support Plaintiff’s contention that a final plat should differ from the preliminary plat, if at all, only by any modifications that were required by the Planning Board at the time of approval of the preliminary plat. Additionally, the Town’s own regulations provided that “[t]he final plat shall conform to the layout shown on the approved preliminary plat plus any recommendations made by the Planning Board.” As a result, the Appellate Court held that the Planning Board’s approval of the final plat was in error, and, as such, the plat must be rescinded.²⁸

Site Plan

Village Law §7-725-a(3); General City Law § 27-a(3); and Town Law § 274-a(3) provides that when a proposed site plan contains one or more features which do not comply with the zoning regulations, applications may be made to the zoning board of appeals for an area variance without the necessity of a decision or determination of the administrative official charged with the enforcement of the zoning regulations. The case of *Putter v. Zoning Board of Appeals of Village of South Nyack*,²⁹ appears to have upheld a locally imposed requirement for the planning board to issue a recommendation to the ZBA, before it could decide any such area variance application.

Putter involved a building permit that was issued in 1999 to construct a single-family dwelling on property located in the Village of South Nyack. When Putter sought renewal of the building permit in late 2009, the Village Building Inspector denied the application on the basis that the “as-built” construction on the property deviated, in certain respects, from the site plan approval granted in 1999 by the Village of South Nyack Planning Board. The Building Inspector instructed the petitioner to have the property either conform to the 1999 approved site plan or

seek a variance.

Putter simultaneously filed an appeal from the denial of his application and a request an area variance from the Village Zoning Board of Appeals. After conducting a public hearing over two days in April and May 2010, the ZBA upheld the Building Inspector's denial of Putter's application to renew his building permit on the ground that the initial building permit issued in 1999 expired no later than 30 months after the issuance of the permit. The ZBA also declined to determine Putter's area variance application, noting that, pursuant to the Village Local Law, that application must be referred to the Planning Board for an advisory opinion before the ZBA may act.

The Appellate Court determined that the Village ZBA's decision not to act on Putter's area variance request before the Village Planning Board has provided to the ZBA a recommendation was consistent with Village Local Law §§ 110–13.3(A) and 110–14.5, which explicitly directed the Village ZBA not to move forward on its review of an area variance application until Putter has appeared before the Planning Board and the Planning Board has been afforded the opportunity to issue an advisory opinion to the ZBA as to the request. Accordingly, the Court held that Putter's contention that the Village ZBA improperly declined to act on his application for an area variance was without merit.³⁰

Special Use Permit

A use permitted by special use permit (or special exception permit) in municipal land use regulations is tantamount to a legislative finding that if the special permit or exception conditions are met the use will not adversely affect the neighborhood and the surrounding areas. Noncompliance with a condition that was imposed when the special use permit was granted, may result in revocation of that permit.

In *Sea Cliff Equities, LLC c. Board of Zoning Appeals of Incorporated Village of Sea Cliff*,³¹ the Appellate Court sustained a decision of the Village ZBA to revoke a special use permit for noncompliance with the conditions that were imposed when the permit was granted.

Special Use Permit: Religious Use

Religious institutions are not exempt from local zoning laws. Greater flexibility is required, however, when a municipality evaluates an application for a religious use as opposed to

when evaluating an application for most other uses.³² In particular, courts have stated that a local zoning board is required to “suggest measures to accommodate the proposed religious use while mitigating the adverse effects on the surrounding community to the greatest extent possible.”³³

In the case of *Tabernacle of Victory Pentecostal Church v. Weiss*,³⁴ the Church owned property, with no on-site parking, located within two zoning districts in the Town of Hempstead, the front was situated in a business district and the rear situated in a residential district. A special exception permit (called a special use permit under State Law), and an area variance for waiver of the parking requirements, were sought so that religious services could be held on the subject premises. The Church proposed to the Hempstead Zoning Board of Appeals (ZBA) that it intended to allow only 105 people to enter the sanctuary, and that two church vans would transport half of its approximately 60 members to the site, resulting in the need for off-site parking for, at most, 8 to 10 vehicles during its peak hours of operation. The Hempstead ZBA denied the applications.

The Appellate Court annulled the Hempstead ZBA’s decision to deny the Church’s applications for special exception permit and an area variance, and remitted the matter to the Board with a direction to grant the Church’s applications with such reasonable conditions that may be imposed. According to the Appellate Court, the record reflected that the Hempstead ZBA suggested no measures that would have accommodated the proposed religious use while mitigating the adverse effects on the surrounding community. Despite the conditions proposed by the Church, the Hempstead ZBA denied the Church’s applications in their entirety, even though the proposed religious use could have been substantially accommodated. Furthermore, the evidence and record compiled by the Hempstead ZBA was insufficient to rebut the presumed beneficial effect of the proposed religious use in the zoning district and community.

Town Law § 274-b(9)³⁵ imposes a 30-day statutes of limitations period within which a person aggrieved by a decision of the local body authorized to review a special use permit application may file a Civil Practice Law and Rules (CPLR) Article 78 Proceeding with the Supreme Court. In the two recent cases of *Royal Management, Inc v. Town of West Seneca*,³⁶ and *Young Development, Inc. v. Town of West Seneca*,³⁷ where the Town Board retained the authority to review and approve special use permits, it was held that the four-month statutes of limitations period in CPLR 217 rather than the 30-day period in Section 274-b(9) applies when

an aggrieved person seeks judicial review of the governing board's special use permit decision.

SEQRA / Special Use Permit / Open Meetings Law

The case of *Frigault v. Town of Richfield Planning Board*,³⁸ was commenced by a group of local citizens and property owners (Frigault) seeking review of the Town of Richfield's decisions to issue a negative declaration pursuant to the State Environmental Quality Review Act (SEQRA) and to approve a special use permit application for construction of six wind turbines and associated facility on 1,190 acres of land (wind project). That case also decided whether such decisions, which were rendered on November 22, 2011, violated the Open Meetings Law (Public Officers Law, Article 7) and must be annulled.

Frigault argued that since the wind project was classified as a Type I action, the Town failed to comply with SEQRA when it issued a negative declaration after the preparation of an environmental assessment form (EAF) rather than requiring the preparation of an environmental impact statement (EIS).³⁹ The SEQRA regulations state that to determine that an EIS will not be required for a Type I action, a lead agency need to determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant. Both the Supreme Court and the Appellate Division, Fourth Department (Appellate Court) held that SEQRA was not violated because, after engaging the services of a consulting firm that completed a full EAF and circulated it to the public and various state agencies, the Board took a hard look and issued a negative declaration after a thorough and reasoned analysis addressing the areas of relevant environmental concern—land, water, air, plants and animals, agricultural land resources, aesthetic resources, historic and archeological resources, open space and recreation, noise and odor, among others.⁴⁰

Frigault also argued that the Open Meetings Law (OML) was violated when at the scheduled time of the November 22, 2011 meeting, the Board changed location from the Town Hall to another larger venue to accommodate the large crowd. The Appellate Court held that such a last minute change, which was unanticipated and reasonable, meet the goals of the OML. Moreover, the Appellate Court held that if the change in venue violated the OML, it was merely technical, rendering the November 22nd decisions of the Board voidable by a court upon good cause shown. Frigault, the Appellate Court stated, did not show good cause for a declaration that the actions taken by the Board at the November 22 meeting were void.

The Appellate Court did affirm, however, the Supreme Court's annulment of the special use permit (SUP) (Village Law §7-725-b; General City Law § 27-b; Town Law § 274-b) decision, because no public hearing was held, and the Otsego County Planning Department received no written notice and no referral of the "full statement"⁴¹ in at least 10 days prior to that public hearing. In addition, the Town's SUP regulations required SUP approval only if eight enumerated conditions have been met. However, the record of the Board meetings did not reflect that the Board directly addressed each of the conditions, therefore, the Appellate Court held that it was unable to undertake intelligent review of whether the Board's determination that the wind project complied with the Town regulations was based on substantial evidence on the record.

Municipal Review of Applications Filed by Landowner's Agent

A duly authorized agent of a landowner may submit an application for land use relief on behalf of that landowner. In the case of *Huszar v. Bayview Park Properties, LLC*,⁴² a party challenged the Town of North Hempstead Zoning Board of Appeals' decision to grant one or more area variances for property owned by Bayview Park Properties, LLC (Bayview), on several grounds, including on the ground that the Zoning Board did not have permission or jurisdiction to undertake its review since each variance application was submitted to the Board, on behalf of Bayview, by one of Bayview's members. The Appellate Division, Second Department reversed the trial court's decision that the Zoning Board did not have jurisdiction to conduct its review of the variance applications, based on the Court's findings that the application packet and all documents before the Zoning Board for consideration clearly noted that the applicant was an authorized agent of Bayview.

Decisions - Filings

Village Law §7-725-a(11); General City Law § 27-a(11); and Town Law § 274-a (11), provide for the filing of an Article 78 proceeding under the Civil Practice Law and Rules to challenge a planning board's decision on a site plan application. Such Article 78 must be commenced within 30 days after the filing of a planning board decision in the office of the municipal clerk. The case of *In re Shepherd*,⁴³ instructs that the aforementioned decision must include how each member of the board voted and it must be filed with the municipal clerk to commence the running of the 30 day statute of limitations period.

In that case, site plan approval was granted by the Village of Head of the Harbor Planning Board for certain residential property, and some of the landowners neighboring such property commenced court action challenging the site plan determination and other decisions (neighbors). Because the subject property abuts Stony Brook Harbor, the site plan application was also reviewed under a Local Waterfront Revitalization (LWR) Program in effect in the Village. On January 11, 2011, the Village Planning Board approved the site plan proposal after it was deemed by the Village Board of Trustees as consistent with the LWR Program.

The Appellate Court reversed the Supreme Court's decision to dismiss, as time barred, the neighbor's court challenge to the site plan decision. The Appellate Court reasoned that, after site plan approval was granted on January 11, 2011, by letter dated January 25, 2011, the Chairman of the Planning Board informed the site plan applicants of the Planning Board's decision to grant approval subject to 11 enumerated conditions (Chairman's Letter). A copy of the Chairman's Letter was filed with the Village Clerk on **January 31, 2011**.

The Appellate Court held that **the Chairman's Letter**, which "was merely notice that a decision had been made",⁴⁴ did not constitute a decision for purposes of the 30-day statute of limitations,⁴⁵ because it **did not indicate the vote of the Planning Board's members**. The Court further concluded that the Village respondents have not submitted a document that could be construed as the Planning Board's decision. The only document in the record that could reasonably constitute the Planning Board's decision, according to the Court, is the minutes from the meeting on January 11, 2011, which contains the text of the resolution approving the site plan application and indicates that the resolution was unanimously adopted by the Board members present.⁴⁶ The Court however, did not accept **the minutes** as the decision, because **there was no indication on the copy of the minutes in the record as to when, or even if, it was filed with the Village Clerk**, and the Village respondents have offered no evidence by way of an affidavit indicating *when or if the minutes were filed*, the 30-day limitations period did not begin to run before this matter was commenced on March 10, 2011. Accordingly, the cause of action is not time-barred, and the Court remitted the matter to the Supreme Court, Suffolk County, for a determination on the merits of the matter, giving the neighbors time to serve and file their answers.

The Appellate Court upheld the Supreme Court decision to dismiss, as time barred by the applicable four-month statute of limitations period, the neighbors challenge to the Village Board

of Trustees' finding that the site plan was consistent with the LWR Program. The Court reasoned that the consistency determination of the Board of Trustees, issued on October 13, 2010, was a final and binding determination that began the running of the four-month limitations period, making the consistency challenge that commenced on March 10, 2011, untimely.

The neighbors also sought a judgment declaring that the site plan applicants were not entitled to certain variances purportedly necessary for construction of the residence. The Appellate Court determined that since the site plan applicants did not yet file an application for any variance for the property for which site plan approval was granted, and the Village Zoning Board of Appeals did not yet issue any final or applicable variance determination, the neighbor's variance claim was not ripe for judicial review.

Endnotes

¹ 2012 N.Y. Op. Atty. Gen. No. 1 (January 13, 2012).

² According to the AG Opinion a town board “may adopt local laws relating to the property, affairs, and government of the Town, to the powers and duties of its officers and employees, and to the powers granted to it by the Statute of Local Governments, and it may amend or supersede any provision of the Town Law in relation to matters on which it is authorized to adopt local laws, except to the extent the Legislature restricts the adoption of such a local law. Municipal Home Rule Law § 10(1)(ii)(a)(1),(a)(14),(d)(3). Because the town board has the power to adopt, amend, and repeal zoning regulations, Statute of Local Governments § 10(6), it therefore has the power to supersede a provision of the Town Law in its application to the town and the power to adopt zoning regulations. These powers in turn have been held to authorize the creation of a special board to which the town board delegated the authority to determine certain applications. *See Matter of Torsoe Bros. Constr. Corp. v. Architecture & Cmty. Appearance Bd. of Review*, 120 A.D.2d 738 (2d Dep’t 1986) (site plan review by special board); *see also Sherman v. Frazier*, 84 A.D.2d 401 (2d Dep’t 1982) (upholding town’s authority to create board to determine special permit applications by those who own illegally converted two-family houses); *Kasper v. Town of Brookhaven*, 142 A.D.2d 213 (2d Dep’t 1988) (same, accessory apartment permits). For both of these reasons, we believe that establishing a special board as you have described falls within the town board’s authority.”

³ In that case, it was concluded that the “amendment of a provision of the zoning laws governing villages constituted a restriction by the Legislature that prevented villages from superseding it. At issue was a local law adopted to re-establish, within the village, a standard of review of applicants’ denials of area variances that had existed under the pre-amended zoning provisions of the Village Law. The village argued that its supersession authority allowed it to amend, insofar as it applied to the village, the new standard enacted by the Legislature. The Court disagreed, holding that the Legislature had intended to occupy the field of area variance review, and thus that it had preempted local supersession authority. 100 N.Y.2d at 402.”

⁴ The Court of Appeals in *Frew Run Gravel Products v. Town of Carroll*, 71 N.Y.2d 126 (1987), affirming, 125 A.D.2d 928 (4th Dept. 1986), first provided the proper construction of the express supersession clause contained in former § 23-2703(2) of Title 27 which provided:

“For the purposes stated herein, this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from enacting local zoning ordinances or other local laws which impose stricter mined land reclamation standards or requirements than those found therein.”

The Court of Appeals reasoned that the Town of Carroll Zoning Law is not a law ‘relating to the extractive mining industry’”, the Court of Appeals stated that “in establishing districts in which some uses are permitted and other prohibited, is the sort of local law contemplated by the Legislature in this supersession provision,” as the purpose of the zoning regulation is to regulate land use generally. By so doing, “the zoning ordinance inevitably exerts an incidental control over any of the particular uses or businesses which, like sand and gravel operations, may be allowed in some districts but not in others...[T]his incidental control resulting from the municipality’s exercise of its right to regulate land use through zoning is not the type of regulatory enactment relating to the extractive mining industry...”

In addition, the Court of Appeals held that local governments may enact local laws imposing land reclamation standards that were stricter than the State-wide standards under Title 27 of Article 23. The Court found that the supersession provision “contains a proviso that the statute shall not ‘be construed to prevent any local government from enacting local zoning ordinances or other local laws which impose *stricter mined land reclamation standards or requirements* than those found therein”, in effect by “permitting stricter local control of reclamation”. (Compare, in *Northeast Mines v. State of New York Department of Environmental Conservation*, 113 A.D.2d 62 (1985), appeal dismissed, 67 N.Y.2d 917 (1986), where it was held that regulating the removal of earth and earth products and establishing maximum depths for excavation were superseded by section 23-2703(2) of Title 27. Thus, for local regulations to be preempted under Title 27 they must pertain to “actual mining activities”.)

The State Legislature in 1991 (by Chapter 166) amended Title 27 of Article 23 including section 23-2703(2) to state as follows:

“For the purposes stated herein, this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from:

- a. enacting or enforcing local laws or ordinances of general applicability, except that such local laws or ordinances shall not regulate mining and/or reclamation activities regulated by state statute, regulation, or permit; or
- b. enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts. Where mining is designated a permissible use in a zoning district and allowed by special use permit, conditions placed on such special use permits shall be limited to the following:

-
- (i) ingress and egress to public thoroughfares controlled by the local government;
 - (ii) routing of mineral transport vehicles on roads controlled by the local government;
 - (iii) requirements and conditions as specified in the permit issued by the department under this title concerning setback from property boundaries and public thoroughfare rights-of-way natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision three of section 23-2711 of this title;
 - (iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the state; or
- c. enacting or enforcing local laws or ordinances regulating mining or the reclamation of mines not required to be permitted by the state.”

The case of *Gernatt Asphalt Products v. Town of Sardinia*, 87 N.Y.2d 668 (1996), reversing, 208 A.D.2d 139 (1995), first established that the new supersession provisions do not supersede or preempt local government authority to enact land use and zoning regulations that do not directly regulate mining activities. “The patent purpose of the 1991 amendment was to withdraw from municipalities the authority to enact local laws imposing land reclamation standards that were stricter than the State-wide standards under the [Mined Land Reclamation Law].” To preempt local control over land use, the Court of Appeals further held the statute must include a “clear expression of legislative intent”.

Thus far, the courts have used the *Gernatt Asphalt Products v. Town of Sardinia* case to construe municipal land use authority in relation to the supersession clause under Title 19 of Article 23 of the Environmental Conservation Law, which regulates the oil, gas and solution mining industries.

⁵ See, *Jeffrey v. Ryan*, 37 Misc.3d 1204(A), 961 N.Y.S.2d 358 (N.Y.Sup. October 2, 2012), where the Broome County Supreme Court invalidated the City of Binghamton’s Local Law 11–006, which essentially banned activities associated with gas drilling and exploration for 24 months after enactment (on December 2013), unless sooner repealed. That Local Law was deemed to be a police power moratorium that was not adopted: 1) in response to a dire necessity; 2) reasonably calculated to alleviate or prevent a crisis condition; and 3) that the municipality is presently taking steps to rectify the problem”. The Court found that: 1) Binghamton provided no evidentiary proof that would justify the banning of gas exploration, storage and extraction on health and safety grounds; 2) if the activities that would be banned by the Local Law are such a grave threat to health and safety, Binghamton did not explain how any such threat would suddenly no longer exist in December 2013 – the date the law was set to expire; and 3) the two year “sunset” rendered the Binghamton’s claims that the law is solely an exercise of their police powers misleading, as the natural gas activities could not be “so detrimental that it must be banned, **but only for two years**, particularly when it is clear that Binghamton is not engaging in any investigation, studies or other activities in the interim in order to determine if there is a way to alleviate any harm to the people of the city from this future activity.” Moreover, “there can be no showing of dire need since the New York State Department of Environmental Conservation has not yet published the new regulations that are required before any natural gas exploration or drilling can occur in this state. Since there are no regulations, no permits are being granted. Second, since the DEC is not yet issuing permits, there is also no crisis nor a crisis condition that could possibly be shown by the City at this time.

⁶ *Norse Energy Corp. USA v. Town of Dryden*, 35 Misc.3d 450 (Sup. Ct. Tompkins County February 21, 2012), affirmed, 108 A.D.3d 25, (3d Dept. May 2, 2013), leave to appeal denied, 2013 WL 4562930 (N.Y. August 29, 2013). Anschutz Exploration Corporation is the predecessor in interest to Norse Energy Corp. USA.

⁷ 35 Misc.3d 767 (February 24, 2012), affirmed, 106 A.D.3d 1170 (3d Dept. May 2, 2013), leave to appeal denied, 2013 WL 4561213 (N.Y. August 29, 2013).

⁸ 35 Misc.3d 767 (February 24, 2012), affirmed, 106 A.D.3d 1170 (3d Dept. May 2, 2013), leave to appeal denied, 2013 WL 4561213 (N.Y. August 29, 2013).

⁹ Environmental Conservation Law § 23-0303(2).

¹⁰ 71 N.Y.2d 126 (1987).

¹¹ 72 N.Y.2d 338, 533 N.Y.S.2d 702 (N.Y. 1988).

¹² See, Governmental Immunity From Zoning, Department of State’s James A. Coon Local Government Technical Series at http://www.dos.ny.gov/lg/publications/Governmental_Immunity_from_Zoning.PDF, listing the balancing of the public interests factors: 1) the nature and scope of the instrumentality seeking immunity; 2) the encroaching government’s legislative grant of authority; 3) the kind of function or land use involved; 4) the effect local land use regulation would have upon the enterprise concerned; 5) alternative locations for the facility in less restrictive zoning areas; 6) the impact upon legitimate local interests; 7)

alternative methods of providing the proposed improvement; 8) the extent of the public interest to be served by the improvements; and 9) intergovernmental participation in the project development process and an opportunity to be heard.

¹³ 2013 WL 5397296 (4th Dept. September 27, 2013).

¹⁴ Matter of Dexter v. Town Bd. of Town of Gates, 36 N.Y.2d 102 (1975); see also, St. Onge v. Donovan, 71 N.Y.2d 507 (1988), where the Court of Appeals made clear that a municipal administrative entity, where appropriate, may impose reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impacts to an area that might result from the grant of a variance of special permit. Such conditions might properly relate to “fences, safety devices, landscaping, screening and access roads relating to period of use, screening, outdoor lighting and noises, and enclosure of buildings and relating to emission of odors, dust, smoke, refuse matter, vibration noise and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area”.

¹⁵ 20 N.Y.3d 481 (N.Y. 2013), reargument denied, 21 N.Y.3d 978 (June 25, 2013).

¹⁶ The provision was located in Section 302(K) of article XXXI of the Building Zone Ordinance of the Town of Hempstead, adopted January 10, 2006.

¹⁷ See Stringfellow's of N.Y. v. City of New York, 91 N.Y.2d 382, 395–396 (1998).

¹⁸ 102 A.D.3d 687 (2d Dept. January 9, 2013).

¹⁹ General City Law § 20(24); Town Law § 262; Village Law § 7-702.

²⁰ 2012 WL 975614 (4th Dept. March 23, 2012).

²¹ Cities having a population ranging from 50,000 to 250,000 are classified as second class cities and each are generally governed under, individual city charters, and the Second Class Cities Law.

²² 101 A.D.3d 1345 (3d Dept. 2012).

²³ Albany City Code § 375-91. General nuisances. [Amended 3-16-2009 by Ord. No. 64.101.08]: Upon a complaint registered by the Commissioner, 50% of the property owners within 200 feet of a nonconforming use or the Common Council member in whose ward such nonconforming use is situated, which is considered to be a general nuisance or a hazard to the health, safety, welfare and morals of uses or structures within 200 feet of such nonconforming use or uses, the Board of Appeals shall hold a public hearing and make a finding with respect to the nuisance or hazardous condition which exists and shall determine the necessity of terminating such nonconforming use. Such uses shall be terminated within such reasonable time as shall be determined by the Board as related to the reasonable amortization of the capital investment in such uses.

²⁴ Town of Amherst v. Rockingham Estates, 98 A.D.3d 1241, 951 N.Y.S.2d 602, 2012 N.Y. Slip Op. 06406 (4th Dept. 2012); Matter of Long Is. Pine Barrens Socy. v. Planning Bd. of Town of Brookhaven, 78 N.Y.2d 608, 612, 578 N.Y.S.2d 466, 585 N.E.2d 778, quoting Matter of Sun Beach Real Estate Dev. Corp. v. Anderson, 98 A.D.2d 367, 373, 469 N.Y.S.2d 964, *affd.* 62 N.Y.2d 965, 479 N.Y.S.2d 341, 468 N.E.2d 296.

²⁵ 2013 WL 5226146 (2d Dept. 2013).

²⁶ The variance was based, in part, on the transfer, from another parcel of real property to the Nickart parcel (i.e., property owner), of a type of development right known as a “sanitary flow credit.”

²⁷ 98 A.D.3d 1241, 951 N.Y.S.2d 602, 2012 N.Y. Slip Op. 06406 (4th Dept. 2012).

²⁸ see Matter of Reiss v. Keator, 150 A.D.2d 939, 941–942, 541 N.Y.S.2d 864; see generally Matter of Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 281–282, 525 N.Y.S.2d 176, 519 N.E.2d 1372, *rearg. denied* 71 N.Y.2d 995, 529 N.Y.S.2d 278, 524 N.E.2d 879, *cert. denied* 488 U.S. 801, 109 S.Ct. 30, 102 L.Ed.2d 9.

²⁹ 101 A.D.3d 1127(2d Dept. December 26, 2012).

³⁰ The State Site Plan Law for municipalities in General City Law § 27-a(3); Town Law § 274-a(3); Village Law § 7-725-a(3) authorizes an applicant for site plan review to, at the same time, file an application for an area variance with the zoning board of appeals if one or more features of the property, which is the subject of the site plan application, does not conform to the applicable zoning regulations. Municipal governing boards are also authorized under the State Planning Board Law in General

City Law §27(14)(a); Town Law §271(14)(a); Village Law § 7-718(14)(a) to refer matters or a class of matters to the Planning Board before final action is taken by municipal officers or the governing board.

³¹ 2013 WL 1984429 (2d Dept. May 15, 2013).

³² See, Matter of Genesis Assembly of God v. Davies, 208 A.D.2d 627, 628; see also, Matter of Capriola v. Wright, 73 A.D.3d 1043, 1045; Matter of St. Thomas Malankara Orthodox Church, Inc., Long Is. v. Board of Appeals, Town of Hempstead, 23 A.D.3d 666.

³³ Id.

³⁴ 101 A.D.3d 738 (2d Dept. December 5, 2012).

³⁵ Similar provisions in General City Law § 27-b(9); Village Law § 7-725-b(9).

³⁶ 2012 WL 975609 (4th Dept., March 23, 2012).

³⁷ 91 A.D.3d 1350 (4th Dept. January 31, 2012).

³⁸ 107 A.D.3d 1347 (3d Dept. June 27, 2013).

³⁹ The SEQRA implementing regulations in NYCRR 617.7 provides, in relevant part:

- (a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.
 - (1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.
 - (2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.
- (b) For all Type I and Unlisted actions the lead agency making a determination of significance must:
 - (1) consider the action as defined in sections 617.2(b) and 617.3(g) of this Part;
 - (2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;
 - (3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and
 - (4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

⁴⁰ 107 A.D.3d 1347, 1350 (stating that the “full EAF was replete with studies on environmental issues, including the project’s impact on bats and birds, “shadow flicker,” noise, cultural resources and visual effect, and the Board afforded members of the public an opportunity to voice their concerns with respect to the project. In addition, the Board received input as to the project’s environmental impacts from various state agencies, including the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, the Department of Transportation, and the Department of Agriculture and Markets... At the conclusion of the environmental review process, the Board issued a thorough and reasoned analysis addressing the areas of relevant environmental concern—land, water, air, plants and animals, agricultural land resources, aesthetic resources, historic and archeological resources, open space and recreation, noise and odor, among others—which, in our view, demonstrates that the Board took the requisite hard look at those concerns”).

⁴¹ 107 A.D.3d 1347, 1352-3 (stating that Town Law §274-b(7) and General Municipal Law § 239-m(1)(c) provides that a full statement consists of all materials required by and submitted to the Board as an application on the proposed action, including a completed EAF and all other materials required by the Board in order to make its determination of significance pursuant to SEQRA. Here, the only public hearing held by the Board in connection with the project occurred before the negative declaration was issued and prior to the Board’s referral of the project to the Otsego County Planning Department for its review (see, General Municipal Law § 239-m (2), (3)(a)(iii)). *1353 The County Planning Department was not provided with written notice of the public hearing, nor have respondents demonstrated that the County Planning Department received all of the materials on which the Board relied in reaching its negative declaration. In fact, the record does not reflect that the County Planning Department was provided with a full statement of the proposed action until November 2011, just days before the Board issued its resolution granting the special use permit).

⁴² 2013 WL 5225997 (2d Dept. September 18, 2013).

⁴³ 103 A.D.3d 901 (2d Dept. 2013).

⁴⁴ See, *Matter of Sullivan v. Dunn*, 298 A.D.2d at 975, 747 N.Y.S.2d 666; see *Matter of Allens Cr./Corbett's Glen Preserv. Group v. Town of Penfield Planning Bd.*, 249 A.D.2d at 922, 672 N.Y.S.2d 222.

⁴⁵ See, *Matter of Sullivan v. Dunn*, 298 A.D.2d 974, 975, 747 N.Y.S.2d 666; *Matter of Allens Cr./Corbett's Glen Preserv. Group v. Town of Penfield Planning Bd.*, 249 A.D.2d 921, 922, 672 N.Y.S.2d 222.

⁴⁶ See, *Matter of Kennedy v. Zoning Bd. of Appeals of Vil. of Croton-on-Hudson*, 78 N.Y.2d 1083, 1084–1085, 578 N.Y.S.2d 120, 585 N.E.2d 369; *Matter of King v. Chmielewski*, 76 N.Y.2d 182, 186, 556 N.Y.S.2d 996, 556 N.E.2d 435; *Matter of 92 MM Motel, Inc. v. Zoning Bd. of Appeals of Town of Newburgh*, 90 A.D.3d 663, 664, 933 N.Y.S.2d 881; *Matter of Mosher [Town of Southport Zoning Bd. of Appeals]*, 5 A.D.3d 840, 841, 772 N.Y.S.2d 640; *Matter of Casolaro v. Zoning Bd. of Appeals of Vil. of Elmsford*, 200 A.D.2d 742, 742, 607 N.Y.S.2d 79.

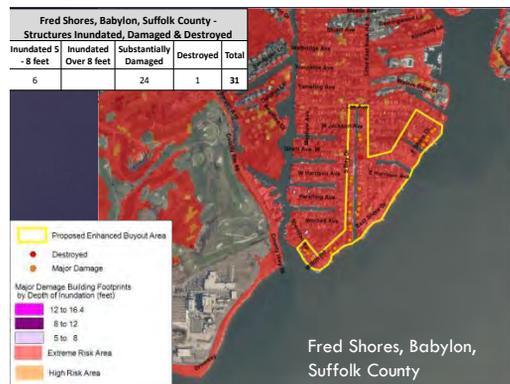


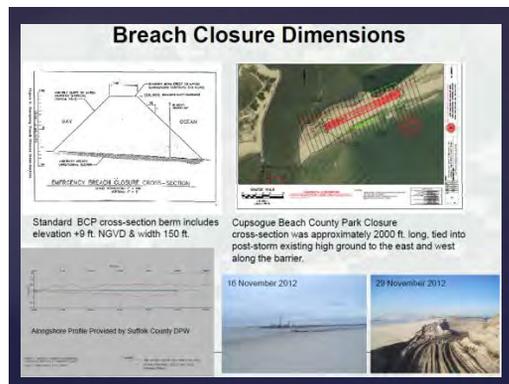
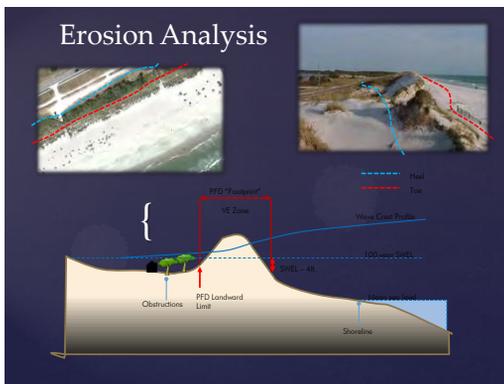
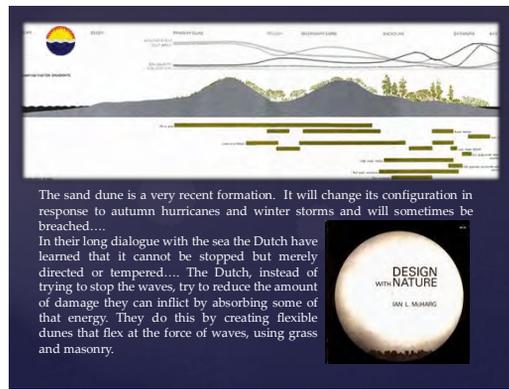
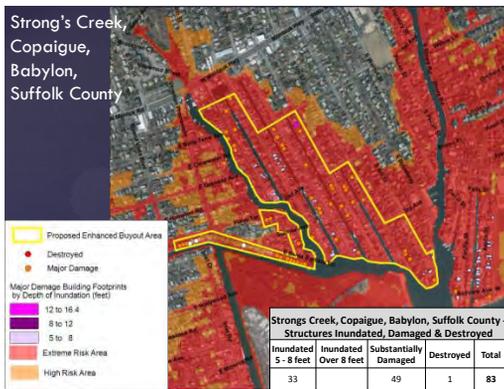
General Session II
New York Rising Community Reconstruction Zone (crz) Program

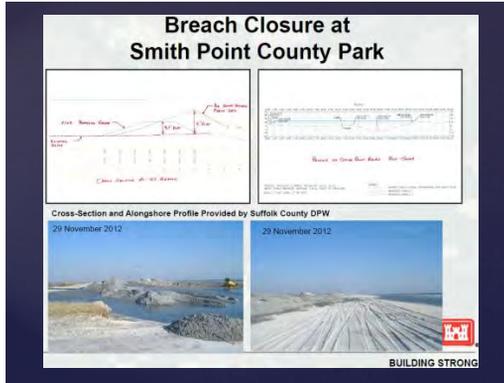


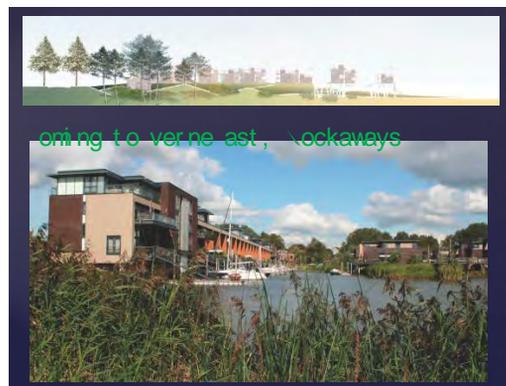
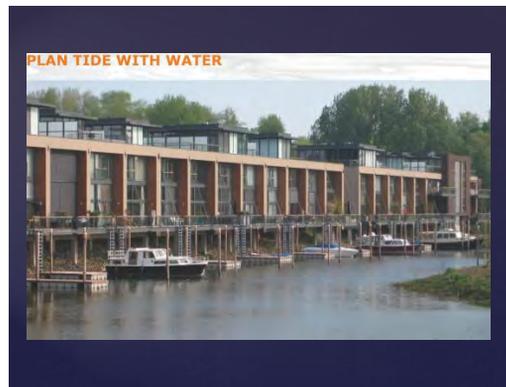
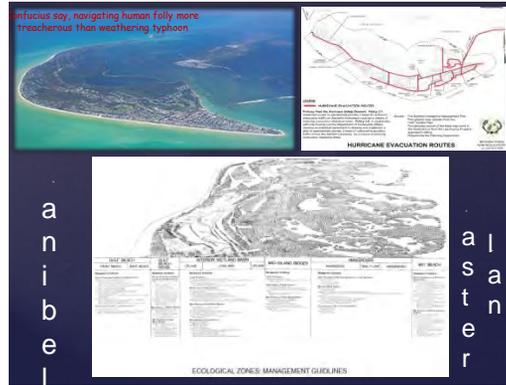
Sandy Impacts:

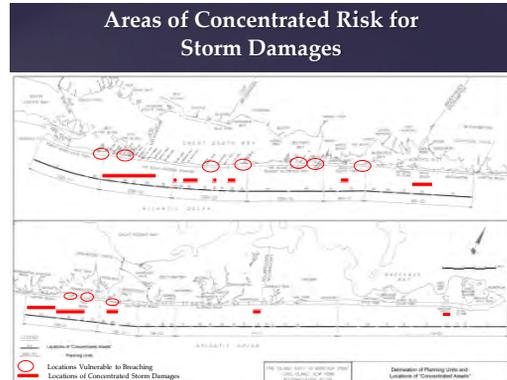
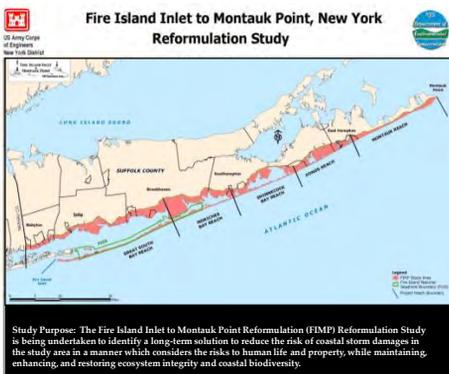
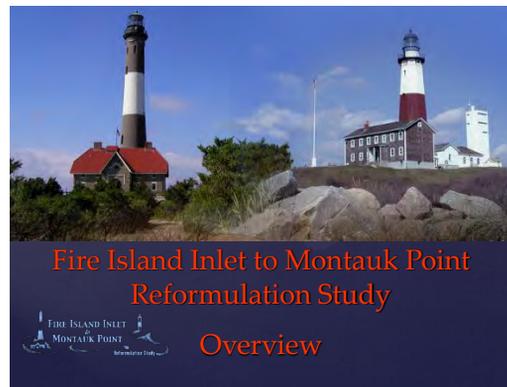
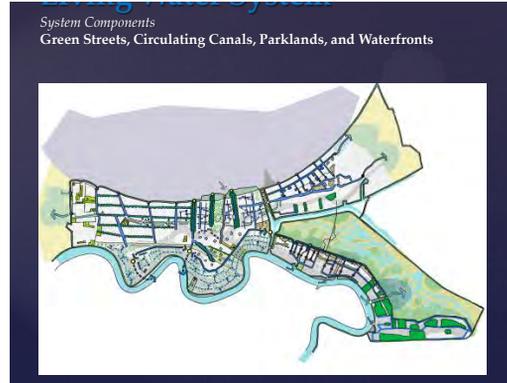
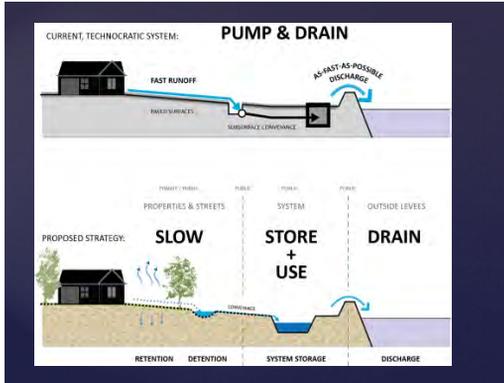
- Severe Shoreline Erosion & Dune Loss
- Three Breaches of Barrier Island, multiple overwashes
- Extensive Back Bay Flooding
- Significant Change in Barrier Island Habitats
- Extremely Vulnerable Condition driving local actions











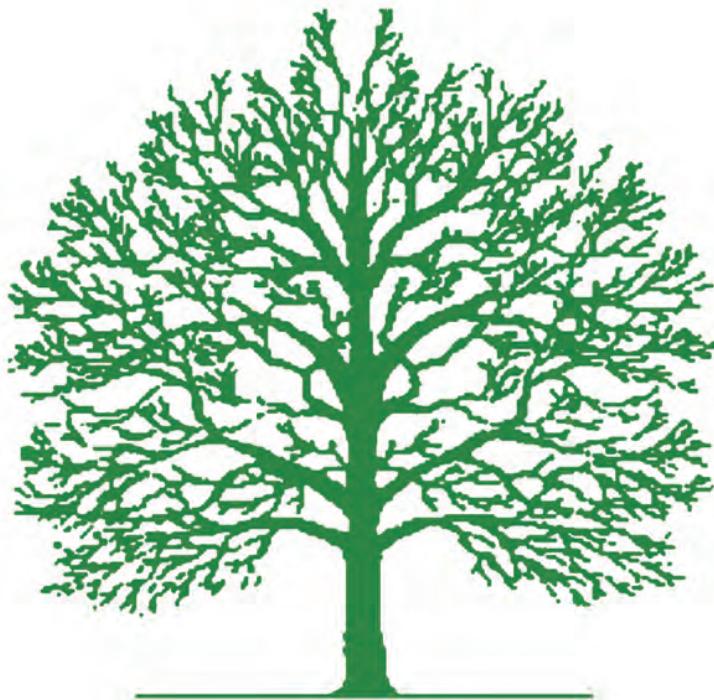
Sandy Legislation Opportunities

- > Sandy Supplemental provides for a cost-sharing formula-100% Federal cost for initial construction
- > Funds remain available until expended
- > Impacts on current Cost Sharing

FEATURES	Approx. Cost	Fed / Non-Fed (Pre-Sandy)	Fed / Non-Fed * (post-Sandy)
Beachfill	\$140 Million	\$90 M / \$50 M	\$140 M / \$0
Building Retrofits	\$550 Million	\$360 M / \$190 M	\$550 M / \$0
Road Raising	\$15 Million	\$10 M / \$5 M	\$15M / \$0
Groin Modification	\$10 Million	\$6.5 M / \$3.5 M	\$10 M / \$0
Restoration	\$60 Million	\$39 M / \$21 M	\$60 M / \$0
Inlet Management	\$5.5 M per cycle	\$3.5 M / \$2 M	\$5.5 M / \$0
Breach Response	\$6-12 M per closure		
TOTAL	\$780 M	\$509 M / \$271 M	\$780 M / \$0

* Costs associated with LERRR's (Land, Easements, Rights-Of-Way, Relocation, and Disposal Areas) still in question

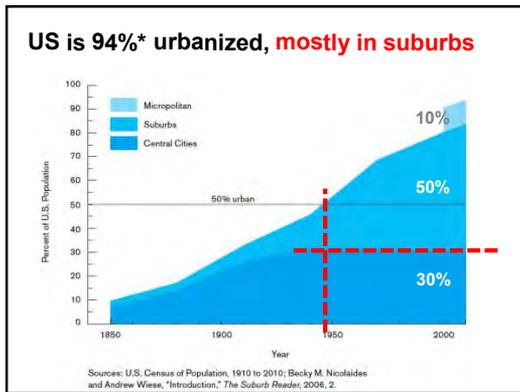
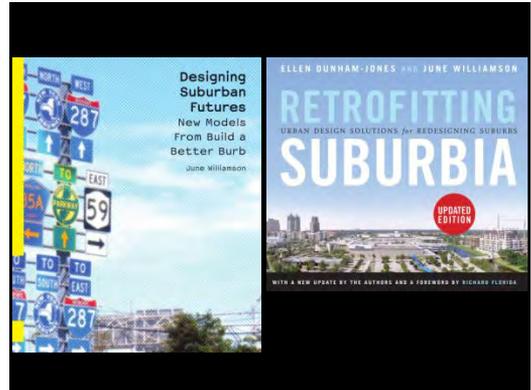




General Session II
Designing Suburban Futures

Designing Suburban Futures, Now!

June Williamson, RA, LEED AP
The City College of New York / CUNY
jwilliamson@ccny.cuny.edu



the 21st century challenge

How do we accommodate more growth –
AND improve the quality of life in blighted areas
AND improve the sustainability of our lifestyles
within our EXISTING urban & suburban places?

Or, how do we retrofit our least sustainable landscapes into more sustainable & resilient places?

Photo: June Williamson, from *Retrofitting Suburbia* (May, 2008, 2011)

opportunities: underperforming asphalt

Prototypes of suburban form that are low-density, single-use, and car dependent:

- Residential subdivisions & garden apartments
- Strip corridors & vacant big box stores
- Regional shopping malls
- Infilling edge city
- Industrial and office parks

Context for Change

Brief history of North American suburbs and suburbanization, 1850 to present

Long Island Index

pastoral paradigm



Downing, A. J. (Andrew Jackson), 1815-1852
Country House in the Pointed Style

Arthur 103
4

"Improvements"

A.J. Downing, *The Architecture of County Houses* (1850)

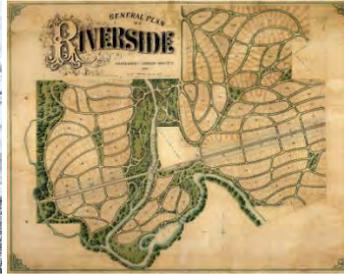


The Lackawanna Valley, c. 1856
George Inness, American (1825 - 1894)

Riverside, near Chicago, IL (1869)

F.L. Olmsted & Calvert Vaux

"...no great town can long exist without great suburbs."



Elite Enclaves Today: McMansions & Gated Communities



Source: Worlds Away Book & exhibit

Source: D. Hayden, Field Guide to Sprawl

Untitled (Elsa), 2003
Angela Strassheim,
Courtesy Marvelli Gallery, New York

McMansion subdivision
Near Orlando, FL,
Photo by Alex McLean

streetcar paradigm



Streetcar in West Roxbury, and early suburb of Boston, 1904
(from Sam Bass Warner, *Streetcar Suburbs*, p. 28)

Arthur 103
4

"The Time of the Trolley"

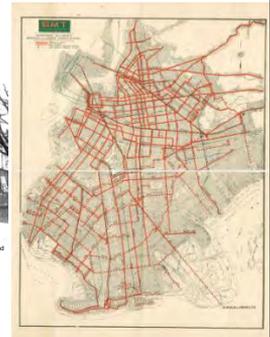
Kenneth Jackson,
Crabgrass Frontier (1985)



Source: Last Trolley of Queens and Long Island

From 1890 to 1903, almost 30,000 miles of new electrified track in the US

- Increased the speed of city travel to 20 mph
- Affordable: 5 cent fare



Brooklyn Trolley System

Long Island Index

Radburn, NJ (1928)
 Clarence S. Stein & Henry Wright
 "A Town for the Motor-Age"



Cul-de-sac: back/front inversion

Broadacre City (1930s – 50s)
 Frank Lloyd Wright
 "going to the country by means of the machine"



Apotheosis of decentralization: a contemporary "greenfield" subdivision



Foreclosed: Rehousing the American Dream at MoMA (2012)
 "Garden in the Machine" by Studio Gang (top) and "Nature-City" by WORKac



building and selling the dream



National Association of Real Estate Brokers (NAREB), brochure, 1922

Class & Race Diversity in Suburbia (pre-1945)
 Self-built and self-provisioned neighborhoods



Defense worker spends his day working on a new home he is building on outskirts of Detroit, 1941

Eight Mile-Wyoming neighborhood near Detroit, 1941
 Library of Congress photos by John Vachon

Long Island Index

Structural Racism

Private deed restrictions extended to race and ethnicity
Also encoded in the federal Home Owners' Loan Corporation (HOLC) surveys



Country Club District, Kansas City, MO
"Restricted" development by J.C. Nichols, ca. 1910

1937 HOLC Map
Philadelphia, PA

http://art.emory.edu/mfmg/HOLC_1937.html

cul-de-sac paradigm



Kaffeeklatsch in Park Forest, IL,
photo by Dan Weiner for Fortune, 1953

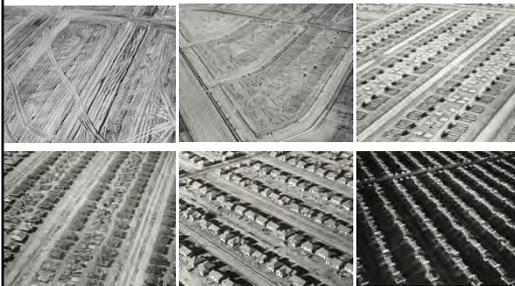
Author 103

Lakewood, CA (1948-)

Developers: Ben Weingart, Mark Taper & Louis Boyer

"Life on the grid"

- J.D. Waldie in *Holy Land: A Suburban Memoir*



Grading Lakewood, William Garnett, 1950

Levittown, NY, NJ, PA, PR (1947-)

Developers: Levitt & Sons

"And they're all made out of ticky tacky,
And they all look just the same."
- Malvina Reynolds, *Little Boxes* song (1962)



Page from Bill Owens, *Suburbia* (1970)

Author 103

Environmentalism

Frothy detergents started turning up in tap water in late 1950s

"white beer"

Alkyl benzene sulfonate (ABS)



Source: LIFE Magazine, July 1953

Adam Rome, *The Bulldozer in the Countryside* (2001)

Second Wave Feminism

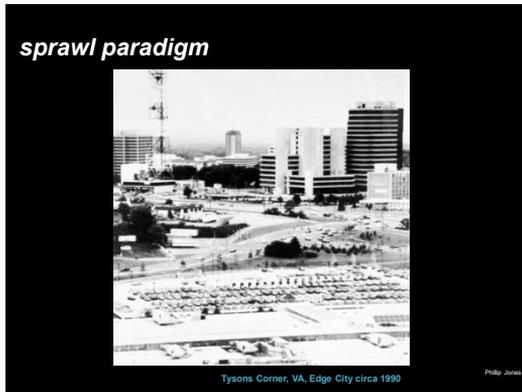
"the problem
that has no
name"

- Betty Friedan in
*The Feminine
Mystique* (1963)



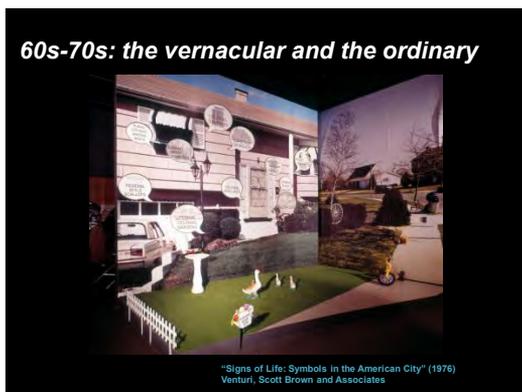
Untitled, 1998-2002
Gregory Crewdson

Long Island Index

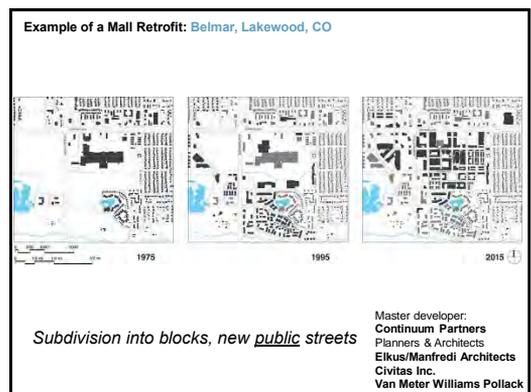
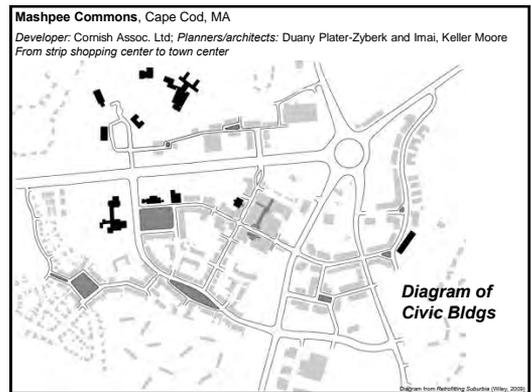
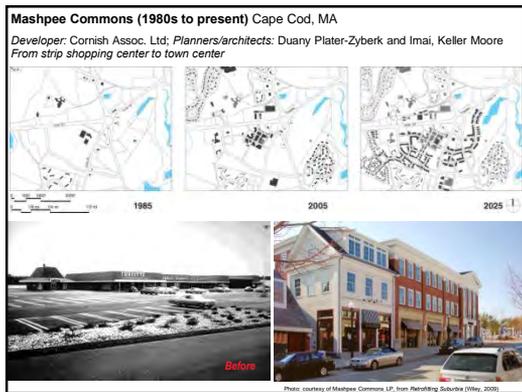
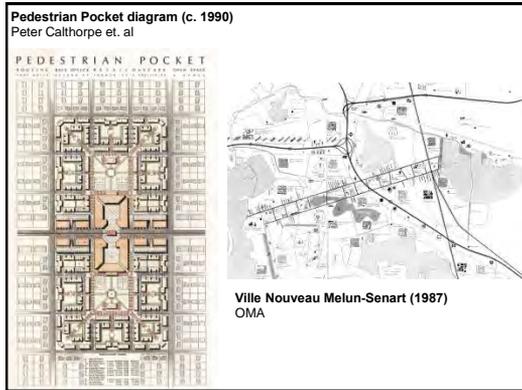


Design Culture Responds to Sprawl

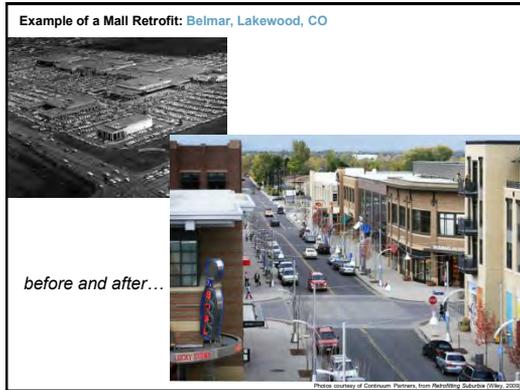
1960s to 2010s



Long Island Index



Long Island Index

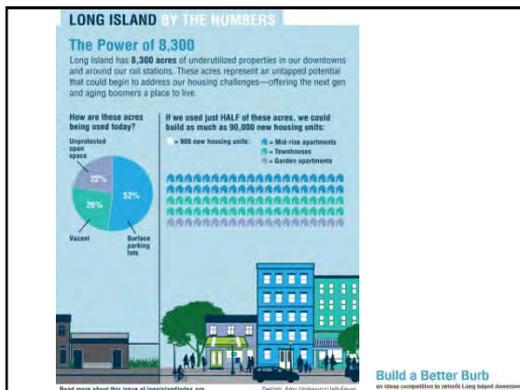
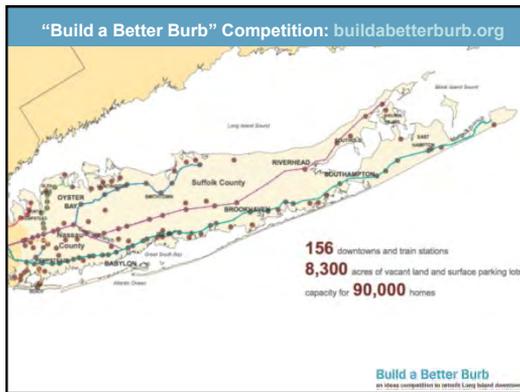


Design and Suburban Resilience

Build a Better Burb competition for Long Island

"There has been a crisis of imagination, and your bold new ideas are urgently needed. There should be no preconceptions about what is or is not possible."

- From the competition brief, written by June Williamson



LONG ISLAND INDICATORS

9 Facts and 1 Conclusion about Building in Long Island Downtowns

- FACT: COMPLEX** - No one knows how to build the urban.
- FACT: BLOWN** - No one knows how to build the suburban.
- FACT: SPINAKED** - No one knows how to build the urban.
- FACT: CAR RULE** - No one knows how to build the urban.
- FACT: COSTS ADD** - Time and money are not being used as well as they could be.
- FACT: FEW PLANS** - Long Island has no plan for the future.
- FACT: NEW ZONING MISSING** - Without proper zoning, we're not building what we need.
- FACT: CAN'T BUILD RENTALS** - We're not building what we need.
- FACT: RENTALS NOT DEFERRED** - We're not building what we need.

CONCLUSION: Without addressing the nine items above, Long Island will fail to live up to... it's potential.

Build a Better Burb
an ideas competition to revitalize Long Island downtowns

Long Island Index

"Build a Better Burb" Competition: Process

LONG ISLAND INDEX

Outreach campaign on LI buses and in libraries to encourage public voting online (summer 2010)

See bold new ideas for our downtowns
Go to www.buildabetterburb.org
Vote for your favorite

LONG ISLAND INDEX

Build a Better Burb
an online competition to revitalize Long Island

SUBHUB TRANSIT SYSTEM

Builds small business inside transit stations

Subhub is a transit station that is also a small business incubator. It is a place where small businesses can start up and grow. It is a place where people can get a job and start their own business. It is a place where people can get a better life.

SUBHUB transforming transit stations & schools into generators of small businesses

Jury Winner: DUB Studios: Michael Piper, Frank Ruchala, et al.

Build a Better Burb
an online competition to revitalize Long Island

Connects downtown to the 'burbs

CONNECTIONS

CONNECTIONS connect people and places. SUBHUB creates a network of transit and other public spaces that connect downtown to the burbs.

TO GET TO THE BURBS

TO GET TO THE BURBS

SUBHUB transforming transit stations & schools into generators of small businesses

Jury Winner: DUB Studios: Michael Piper, Frank Ruchala, et al.

Build a Better Burb
an online competition to revitalize Long Island

Facilitates farms and business in the 'burbs

PROVIDES SUPPLY SYSTEM FOR HOME BUSINESSES AND AGRICULTURE

IN ADDITION TO TRANSIT, SUBHUB OFFERS A PLACE FOR SMALL BUSINESS AND AGRICULTURE. SUBHUB PROVIDES A RIGHT-SIZED FORM FOR FARMERS, HOME BUSINESSES AND AGRICULTURE.

SUBHUB transforming transit stations & schools into generators of small businesses

Jury Winner: DUB Studios: Michael Piper, Frank Ruchala, et al.

Build a Better Burb
an online competition to revitalize Long Island

AgISLAND putting the "farm" back in "Farmingdale"

1. Transit Oriented Development, 2. Self-Storage, 3. Warehouse/Logistics, 4. Commercial Greenhouses, 5. Food processing and distribution center, 6. Self-Storage, 7. Warehouse/Logistics, 8. Self-Storage, 9. Warehouse/Logistics, 10. Self-Storage, 11. Warehouse/Logistics, 12. Self-Storage, 13. Warehouse/Logistics, 14. Self-Storage, 15. Warehouse/Logistics, 16. Self-Storage, 17. Warehouse/Logistics, 18. Self-Storage, 19. Warehouse/Logistics, 20. Self-Storage, 21. Warehouse/Logistics, 22. Self-Storage, 23. Warehouse/Logistics, 24. Self-Storage, 25. Warehouse/Logistics, 26. Self-Storage, 27. Warehouse/Logistics, 28. Self-Storage, 29. Warehouse/Logistics, 30. Self-Storage, 31. Warehouse/Logistics, 32. Self-Storage, 33. Warehouse/Logistics, 34. Self-Storage, 35. Warehouse/Logistics, 36. Self-Storage, 37. Warehouse/Logistics, 38. Self-Storage, 39. Warehouse/Logistics, 40. Self-Storage, 41. Warehouse/Logistics, 42. Self-Storage, 43. Warehouse/Logistics, 44. Self-Storage, 45. Warehouse/Logistics, 46. Self-Storage, 47. Warehouse/Logistics, 48. Self-Storage, 49. Warehouse/Logistics, 50. Self-Storage, 51. Warehouse/Logistics, 52. Self-Storage, 53. Warehouse/Logistics, 54. Self-Storage, 55. Warehouse/Logistics, 56. Self-Storage, 57. Warehouse/Logistics, 58. Self-Storage, 59. Warehouse/Logistics, 60. Self-Storage, 61. Warehouse/Logistics, 62. Self-Storage, 63. Warehouse/Logistics, 64. Self-Storage, 65. Warehouse/Logistics, 66. Self-Storage, 67. Warehouse/Logistics, 68. Self-Storage, 69. Warehouse/Logistics, 70. Self-Storage, 71. Warehouse/Logistics, 72. Self-Storage, 73. Warehouse/Logistics, 74. Self-Storage, 75. Warehouse/Logistics, 76. Self-Storage, 77. Warehouse/Logistics, 78. Self-Storage, 79. Warehouse/Logistics, 80. Self-Storage, 81. Warehouse/Logistics, 82. Self-Storage, 83. Warehouse/Logistics, 84. Self-Storage, 85. Warehouse/Logistics, 86. Self-Storage, 87. Warehouse/Logistics, 88. Self-Storage, 89. Warehouse/Logistics, 90. Self-Storage, 91. Warehouse/Logistics, 92. Self-Storage, 93. Warehouse/Logistics, 94. Self-Storage, 95. Warehouse/Logistics, 96. Self-Storage, 97. Warehouse/Logistics, 98. Self-Storage, 99. Warehouse/Logistics, 100. Self-Storage.

AgISLAND Overall Site Plan

AgISLAND

AgISLAND putting the "farm" back in "Farmingdale"

Jury Winner: PB World, T. Jost, A. Ford-Wagner, E. Sterling, P. Jonat, E. Hull, W. Wagonlander, M. Cedaroth, M. George, D. Greenblatt, M. Tarrett

Build a Better Burb
an online competition to revitalize Long Island

Sited in the Setback: Increasing Density in Levittown

AgISLAND Overall Site Plan

Sited in the Setback: Increasing Density in Levittown

Jury Winner: Meri Tepper

Build a Better Burb
an online competition to revitalize Long Island

Long Island Index

LONG ISLAND INDICATORS

Re-thinking Accessory Housing: Not Your Granny's Flat

40% increase in population, 100% in 15 years

Levittown Re-imagined

Levittown Today: A Levittown apartment building, a Levittown townhome, a Levittown duplex, a Levittown single-family home. While it's not always obvious, Levittown is a model of sustainable architecture in the face of rising prices.

Levittown at the Tables? Levittown has demonstrated strong performance in many areas, including its ability to provide affordable housing to the community. Levittown's success is a result of its commitment to sustainability and its focus on providing high-quality housing.

These houses have the potential to provide much-needed and affordable housing for Long Island's younger and older populations. As many suburban communities who have embraced zoning codes and model building designs for accessory housing have discovered, this is an idea whose time has come.

And our survey shows that Long Islanders agree: Our zoning needs to catch up.

82% of Long Islanders support the idea of accessory housing in Levittown. 90% of our villages say they will change zoning to allow accessory housing in single-family zones.

Design: Alex Christensen/UrbanScape

Build a Better Burb
an ideas competition to retrofit Long Island

Building C-Burbia design policy to retrofit sprawl with carbon sink landscapes

Jury Winner: Denise Hoffman Brandt, Alexa Hetsell, Bronwyn Gropp

Build a Better Burb
an ideas competition to retrofit Long Island

Building C-Burbia design policy to retrofit sprawl with carbon sink landscapes

Jury Winner: Denise Hoffman Brandt, Alexa Hetsell, Bronwyn Gropp

Build a Better Burb
an ideas competition to retrofit Long Island

LONG DIVISION

Establishing a Regional Strategy to Promote both Growth and Contention

Jury Winner: Kazys Varnelis, William Prince, Leigha Dennis, Momo Araki, Alexis Burson, Kyle Hovenkotter

Build a Better Burb
an ideas competition to retrofit Long Island

LONG DIVISION

Establishing a regional strategy for more sustainable development

Jury Winner: Kazys Varnelis, William Prince, Leigha Dennis, Momo Araki, Alexis Burson, Kyle Hovenkotter

Build a Better Burb
an ideas competition to retrofit Long Island

Upcycling 2.0

bottom-up recombination of traditional suburban building blocks

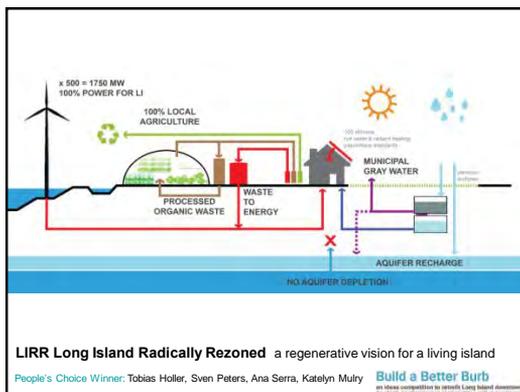
Student Winner: Ryan Lovett, John Simons & Patrick Cobb, Columbia Univ.

Build a Better Burb
an ideas competition to retrofit Long Island

Long Island Index

LIRR Long Island Radically Rezoned a regenerative vision for a living island
 People's Choice Winner: Tobias Holler, Sven Peters, Ana Serra, Katelyn Mulry **Build a Better Burb**
 an ideas competition to rethink Long Island

LIRR Long Island Radically Rezoned a regenerative vision for a living island
 People's Choice Winner: Tobias Holler, Sven Peters, Ana Serra, Katelyn Mulry **Build a Better Burb**
 an ideas competition to rethink Long Island



- regional scale: carbon, water, governance**
- Use **soft infrastructure** for large-scale carbon sequestration
 - Privilege the conservation of **freshwater** aquifers
 - Radically reconceive fractured **governance structures**
- Build a Better Burb**
 an ideas competition to rethink Long Island

- downtown scale: use mix, culture, schools, ag**
- Rethink the "live-work-play" triad
 - Network **cultural institutions** with transit
 - Harness **locational network of schools** and school buses
 - Implement **suburban agriculture**
- Build a Better Burb**
 an ideas competition to rethink Long Island

- lot scale: intergenerationality, cottage industries**
- **New housing for new households** – aging-in-place and intergenerational
 - Reintroduce **cottage industries**
 - Bottom-up financing mechanism of **income pooling** to support community improvements
- Build a Better Burb**
 an ideas competition to rethink Long Island

Long Island Index

RONKONKOMA



POPULATION
40,000*

LAND AREA
6.1 sq miles

MEDIAN HOUSEHOLD INCOME
\$80,000

LIRR RIDERSHIP
14,853 per day

GOVERNANCE
Hamlet, Census Designated Place

COUNTY EXECUTIVE
Steve Bellone

*Includes the population of Ronkonkoma Hamlet and Lake Ronkonkoma Hamlet.

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Q&A with June Williamson, Author of *Designing Suburban Futures: New Models from Build a Better Burb*

By Jocelyn Wenk

June Williamson is associate professor of architecture at The City College of New York's [Spitzer School of Architecture](#). She is coauthor, with Ellen Dunham-Jones, of [Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs](#). Williamson served as the Jury Coordinator for the Long Island Index's 2010 design competition, Build a Better Burb. Ideas from the competition, which challenged entrants to creatively retrofit Long Island's existing downtown areas, provide the foundation for her new book, [Designing Suburban Futures: New Models from Build a Better Burb](#). I spoke with her in summer 2013.

Ellen Dunham-Jones (your *Retrofitting Suburbia* co-author) writes in the Foreword of *Designing Suburban Futures*, "Today, the suburbs are simply not as suburban as we thought they were." Can you comment on this observation as it relates to Long Island?

June Williamson: Long Island has long defined itself as a region that was *not* the city—more specifically, an alternative that was not Queens, not Brooklyn, and certainly not Manhattan. So what, exactly, is it? There are acres of subdivisions built along the Levittown model, lots of shopping malls, and a now-dominant car-dependent lifestyle, sure, but also dozens of strong, historic downtowns, vast industrial areas (though in a weakened state), high levels of socio-economic and racial diversity, lots of new immigrants. In short, the suburbs of Long Island are decidedly not stuck in amber and, increasingly, are a reflection of 21st century America.

In the book, you don't see suburbia as the problem but as the opportunity. What are some of the key problems and opportunities for innovation in suburbia?

Williamson: A key problem is the concept that suburbia is somehow stagnant (in the dystopia narrative) or enduring (in the utopian view) and therefore resistant or immune to change. But it IS changing anyway because of many dynamic urban factors related to energy usage and supply, demographic shifts, new economies, global climate change, aging of buildings and structures, ecological imbalances, etc. And so there is a need to respond: as I write in the book's Introduction, "Change is not only possible, change is necessary."

So what to do? The Long Island Index has long recognized that outmoded practices of the past—parking standards, zoning regulations, permitting processes, and financing mechanisms—are [big obstacles](#) to building resiliency and need to be transformed.

To help achieve transformation, in the book I focus on describing a series of design opportunities or "tactics," derived from careful analysis of the competition schemes. I've organized these tactics by three scales: lot scale (reusing big boxes, bottom-up financing mechanisms); downtown or neighborhood scale (walkable block size, local transit, suburban agriculture); and regional scale (carbon and water systems, efficient governance, new codes and policies).

In the Introduction to *Designing Suburban Futures*, you conclude by expressing hope that the book will be a resource and an inspiration for many other places across the continent and the globe, facing parallel challenges to Long Island. Can you elaborate on why the challenge of retrofitting suburbia on Long Island is relevant to so many other places?

Williamson: Long Island is a prototypical North American suburban region that styles itself as America's "first suburb," making it an appropriate locus for an international ideas/design competition. In many ways, Long Island is a bellwether for the types of challenges that other North American suburban regions may face in coming years, challenges that good design should have a role in redressing, including sea-level rise, race and class inequalities, and designing beyond the car.

To that end, the book includes a useful copy of the original competition design "brief," a model for other communities that might like to sponsor a competition.

Globally, an urbanizing "planet of cities" actually seems to include a lot more rural-to-suburban migration (i.e. low urban density) than popular descriptions suggest. These regions, depending on how closely they follow the North American trajectory of the 20th century, will soon confront similar challenges, perhaps on an accelerated schedule. Close study of the past, present, and future potential of suburban forms in already hyperurbanized regions offers valuable cautionary tales and illuminating lessons.

Why do you think your last book, *Retrofitting Suburbia*, resonated so strongly with readers? How does *Designing Suburban Futures* extend the conversation?

Williamson: I think *Retrofitting Suburbia* resonated because we moved beyond the common "suburbs as dystopia" narrative by presenting numerous case studies of actual changes to suburban land use and form, demonstrating definitively that it can be done. In this way the book and its message is constructive, proactive, and inspiring rather than divisive. *Designing Suburban Futures* extends the conversation by:

- Tackling the resiliency/sustainability question more squarely and communicating a greater sense of urgency about the environmental arguments for suburban change.
- Seeking to move beyond case studies of actually achieved (or achievable) projects to inspire further design research and speculation about second, third, and fourth generation retrofits.
- Inviting designers to participate more fully in the project of designing better suburban futures. The message is that the design solutions have not all already been conceived (though there are many good ones out there – as documented in *Retrofitting Suburbia*). There is ample room for further design research and innovation!
- Providing easily digestible historical and discursive context that is presented in a not overtly polemical way.

[LIRR: Long Island Radically Rezoned](#), which is among the Build a Better Burb competition schemes and examples documented in *Designing Suburban Futures*, was selected as the People's Choice winner. In your view, what made this entry so popular?

Williamson: I think the scheme was popular both because the vision was so sweepingly comprehensive and because there is a constituency, most probably young and relatively silent, that really is interested in doing more than fiddling around the edges of the region's challenges. The scheme, interestingly, takes a number of reasonable planning and design propositions and plays them out to an extreme. Also, the

scheme's team leader, Tobias Holler, is a NYIT architecture professor and so perhaps had a local advantage!

Currently, HOLLER Architecture and collaborators have two much more modest demonstration projects in development on Long Island: "BuckyFarm," a novel, high-efficiency farming structure; and ["Attain This!"](#) the first house in the area designed to passivhaus standards.

Another entry that really stirred up conversation during and after the competition was [Sited in the Setback](#), the design for accessory housing units in Levittown. Why do you think this idea resonated so much with Long Islanders?

Williamson: It's an eminently practical proposition for incremental change that gives homeowners and municipalities much-needed new flexibility in meeting various housing needs. It should be adopted everywhere, immediately!

Can you comment on the possibilities for micro-units (housing units of 300 square feet or less) in the suburbs and on Long Island?

Williamson: Debates about legalizing and incentivizing micro-units to provide new options for one- and two-person households, such as those explored for retrofitting Westbury's Mall at the Source in the Build a Better Burb scheme *Re:Define the Good Life* (p. 111), are taking hold across the country. The historic Westminster Arcade, an 1828 shopping mall in Providence, Rhode Island, has recently been [rehabbed with micro-units](#), and New York City's Department of Housing Preservation and Development (HPD) is building a demonstration project with modular units; the architect and developer were selected through the [adAPT competition](#) in 2012.

What were some of the most surprising ideas that came out of the competition?

Williamson: I was very taken with the innovation of the concepts in [SUBHUB Transit System](#), which proposed to harness the transit potential (for both freight and passengers) in the already-existing network of public elementary schools and yellow buses. The thoroughness of the ecological concepts in [Building C-Burbia](#) was also inspiring. A change in policy and viewpoint about planted land in suburbia—highway verges, medians, tree lawns, public parks, vacant lots—as a soft infrastructural system for carbon sequestration could be transformative.

The Build a Better Burb competition had many student entries, and included a student winner. How can students effectively play a role in shaping the future of the suburbs? (This seems especially critical to Long Island, where we have some of the most well educated young people in the country—many of whom move away from the Island after graduating.)

Williamson: It is crucial to engage students and youth; it is their future that is most at stake. Design students in particular fit into the "creative class" cohort that places desiring revitalization seek to attract. Competitions of various kinds are wonderful for engaging younger people; and frankly, they really don't mind staying up all night working on their proposals! Especially if they feel they have a good shot at having their voices heard.

On page 38 of *Designing Suburban Futures*, you write, "We urgently need design professionals and their allies to work in a proactive mode for better, more resilient suburban futures." How serious do you think design professionals are about engaging with the challenges of suburbia?

Williamson: Perhaps not serious enough, yet. There are disciplinary divides to bridge – planners have little regard for the iterative and exploratory process that guides architectural design discourse, while architects resent planning “control” yet seem to prefer to work in center cities where the conditions for new building are most complex. Mark C. Childs, in the useful little book [Urban Composition: Developing Community through Design](#), writes about how different design professionals work at different levels (nested by size, from interiors, to buildings, to streets and districts, to whole cities and regions) and must learn to negotiate productively with the professionals engaged at the levels above and below them. This is necessary to get to the proactive mode that I think is urgently needed. Disregard for one another’s disciplinary limits is not helpful to each doing his or her part in moving the ball forward, towards greater resiliency.

To the criticism that the Build a Better Burb competition schemes don’t seem practical or readily implementable, I answer that each adds valuable and productive “new design DNA” to the mix. In a [review](#), John Hill writes, “I could see any future implementation of these ideas drawing equally from the different schemes, particularly since they tend to focus on either buildings, landscape, or transportation—one scheme's strengths can be combined with another to address the myriad considerations.”

What’s at stake if architects, developers and planners don’t figure out a plan for redesigning suburbia?

Williamson: As I emphasize in both the book’s introduction and its epilogue, suburbia represents an opportunity we can’t afford to squander. It may be that the greatest gains in urban resiliency are to be made in suburbs.

In a conversation with me in the book’s epilogue, Kazys Varnelis, Director of the Network Architecture Lab at Columbia University and one of the Build a Better Burb competition winners, makes the point that “Architects of all stripes need to tackle these questions [of redesigning suburbs, along with center cities] or risk increasing irrelevance at an urban level.”

I heartily agree.

Visit www.buildabetterburb.org for a complete version of the Q&A, with illustrations

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Designing Suburban Futures

New Models From Build a Better Burb

June Williamson

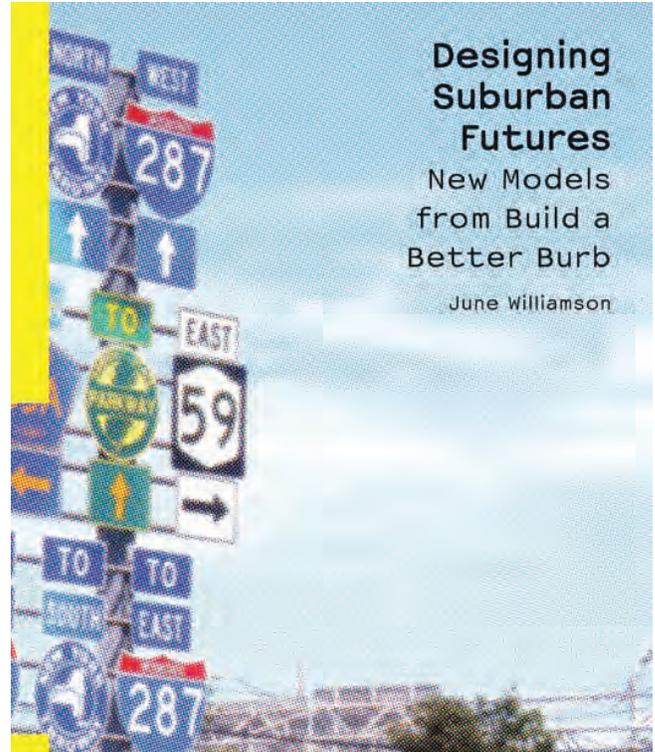
Suburbs deserve a better, more resilient future. June Williamson shows that suburbs aren't destined to remain filled with strip malls and excess parking lots; they can be reinvigorated through inventive design. Drawing on award-winning design ideas for revitalizing Long Island, she offers valuable models not only for U.S. suburbs, but also those emerging elsewhere with global urbanization.

Williamson argues that suburbia has historically been a site of great experimentation and is currently primed for exciting changes. Today, dead malls, aging office parks, and blighted apartment complexes are being retrofitted into walkable, sustainable communities. Williamson shows how to expand this trend, highlighting promising design strategies and tactics.

She provides a broad vision of suburban reform based on the best schemes submitted in Long Island's highly successful "Build a Better Burb" competition. Many of the design ideas and plans operate at a regional scale, tackling systems such as transit, aquifer protection, and power generation. While some seek to fundamentally transform development patterns, others work with existing infrastructure to create mixed-use, shared networks.

Designing Suburban Futures offers concrete but visionary strategies to take the sprawl out of suburbia, creating a vibrant, new suburban form. It will be especially useful for urban designers, architects, landscape architects, land use planners, local policymakers and NGOs, citizen activists, students of urban design, planning, architecture, and landscape architecture.

June Williamson is Associate Professor in the Spitzer School of Architecture at The City College of New York. She is coauthor, with Ellen Dunham-Jones, of *Retrofitting Suburbia*. She lives in New York, New York.



Designing Suburban Futures
New Models from Build a Better Burb
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Designing _____ _____ Suburban _____ Futures

Introduction

Not only is the city an object which is perceived (and perhaps enjoyed) by millions of people of widely diverse class and character, but it is the product of many builders who are constantly modifying the structure for reasons of their own. While it may be stable in general outlines for some time, it is ever changing in detail. Only partial control can be exercised over its growth and form. There is no final result, only a continuous succession of phases.¹

– Kevin Lynch, *The Image of the City* (1960)

Compared to the lifespan and the long history of urban settlements, the postwar suburban extensions appear infant creations, not fully developed and lacking articulation of their physical features. These “supernovas” of urban explosions have certainly drawn social attention, but it appears that the scientific community is waiting for “the dust to settle” (sometimes literally) before talking a closer look at this new phenomenon.²

– Kiril Stanilov, introduction to *Suburban Form: An International Perspective* (2004)

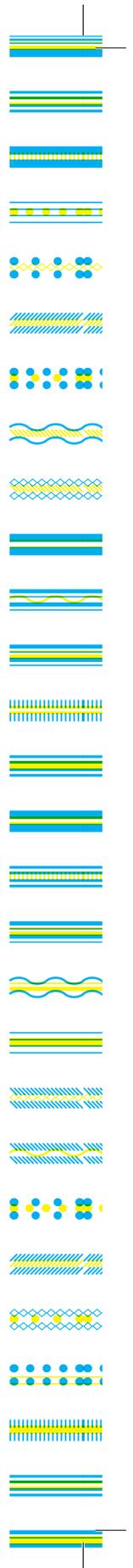
What will *you* do to design a better, more resilient future for suburbs?

I pose this question in all seriousness. As Kevin Lynch notes, cities are constantly being modified by a range of urban actors, resulting in continuous transformations of growth and form. If you, reading this, are an architect, a planner, a politician, a teacher, a student, or simply an interested resident, you are one of these urban actors,

playing a role in the building of our metropolises. But, as Kiril Stanilov suggests, suburbs, particularly the postwar extensions, appear to be “infant creations” and are often excluded from the urban imagination and discourse surrounding cities, sustainability, and urban resilience. However, suburbs are key components – some might say dominant components – of urbanized regions throughout the globe, especially in the land-rich developed nations of North America, and in Europe.

Urban resiliency is the need for urban systems to be reconceived and designed to have improved capacity to withstand disturbances, including climate change, natural disasters, terrorism, and energy insecurity, without breaking down.³ Resilience thinking must be applied vigorously to the explosive suburban “supernovas” Stanilov describes, even as we struggle to understand their basic morphological properties of growth and form. These are concurrent projects. Investments in suburban resiliency will lead to better places to live, places that can provide more security in the face of global climate change and improved physical and emotional health, places that promote mobility and ease of movement within higher-density nodes and corridors, places with better, fresher food, places with more energy choices and resources, greater affordability, and more awareness of the local bioregion and the roles humans play in shaping and stewarding it.⁴

As of their latest censuses, the populations of the United States and Canada are both more than 80 percent urbanized.⁵ But about half of North Americans in these countries live in suburban settings, predominantly in the



types of sprawling urbanism that were dominant in the latter half of the twentieth century, characterized by a low-density settlement form, with separated land uses and overwhelmingly dependent on private automobiles for transportation. Using satellite imagery, census data, and historical maps, researchers affiliated with the Lincoln Institute of Land Policy recently reported a five-fold decline in average tract density in U.S. cities between 1910 and 2000.⁶ This means that as cities grew in population, they spread out at a much faster rate. For example, the Chicago metro area shifted from 19 people per acre in 1945 to fewer than 7 people per acre in 2000.⁷ This choice of settlement form and the lifestyles associated with it have a very high ecological cost: Americans and Canadians make up just about 5 percent of the world's population but by many measures are responsible for a vastly disproportionate amount of greenhouse gas (GHG) emissions.⁸ Several other countries – throughout Europe and Latin America and in Japan – are similarly urbanized, though not quite as sprawling in settlement form and per capita land consumption.

At the beginning of the twenty-first century much of the rest of the world is playing a high-stakes game of development and urbanization catch-up; large populations throughout Asia, especially, but also in Africa are observed to be migrating from rural to urban areas at rapid rates, often without adequate planning.⁹ Per capita GHG emissions are increasing precipitously in many of these regions. Furthermore, these regions contain many places highly susceptible to the weather disruptions anticipated by climate change models, such as drought, severe storms, and coastal flooding, with huge populations at risk.

Well-designed and well-managed urban settlement forms are increasingly understood to hold a key to solutions proffered for managing the twenty-first century's sustainability crises.¹⁰ However, the global urbanization processes now unfolding in countries such as China, India, and Indonesia – which together constitute 40 percent of the current world population of almost seven billion – are in a phase of adding substantially to the strains on the earth's resources and ecological systems. The urbanized areas in these countries are growing faster in land area than in population, indicating that average urban densities are *decreasing* across the globe as aspects of North American settlement forms are adopted across the globe.¹¹ This should be extremely worrisome.

Urban-Suburban Reciprocity

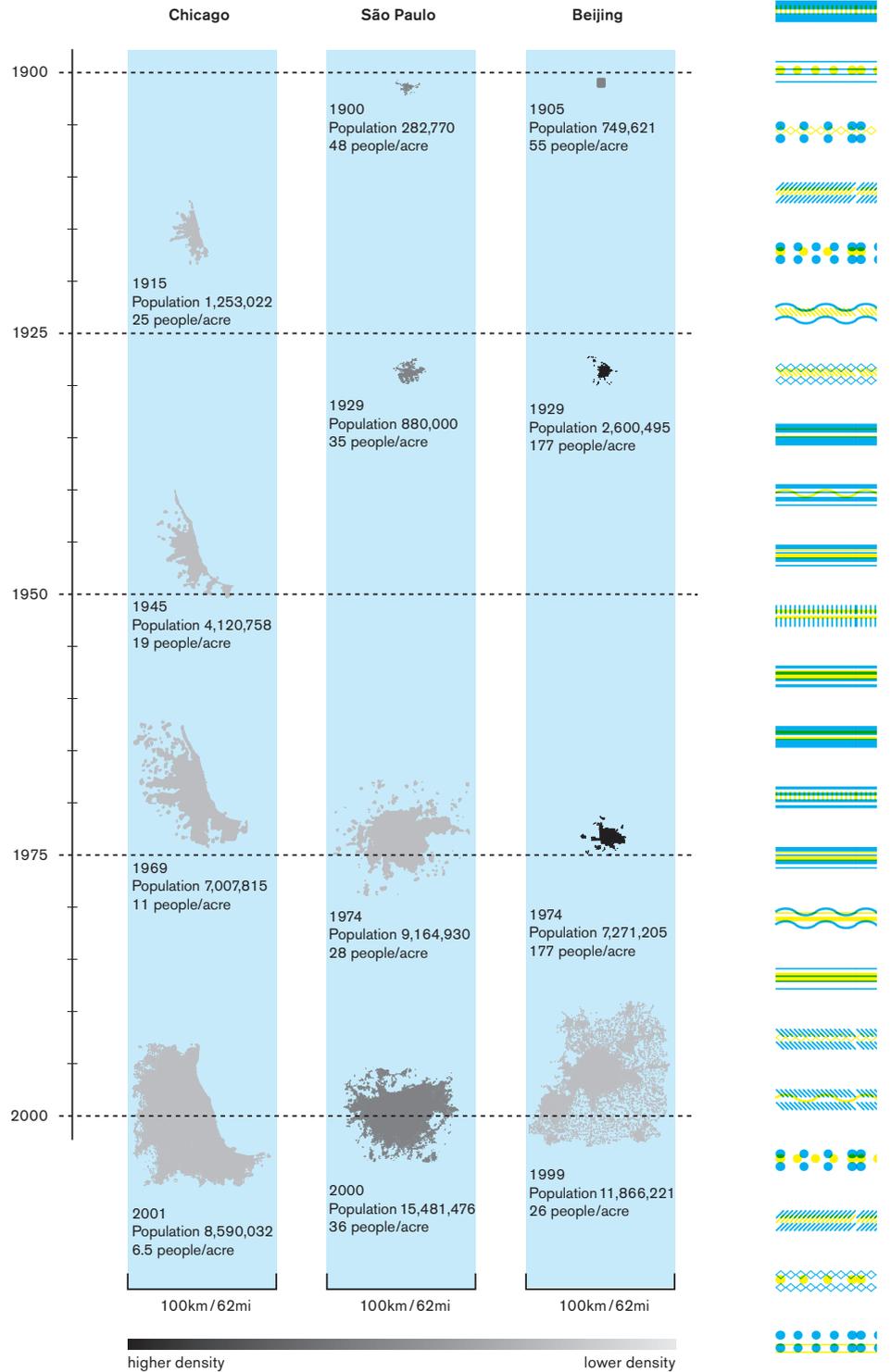
In urban form and development in North America at the beginning of the twenty-first century a reciprocal process

is occurring between North American center cities and their suburbs. Center cities, where about one third of the population currently lives, a percentage that has remained steady for 70 years, are observed to be suburbanizing through the proliferation of standardized development types such as big box chain stores. (However, these stores have adapted to more traditional urban morphologies of smaller blocks and higher street walls by building vertically.) At the same time, urbanized areas located outside these center cities are experiencing increased densification and diversification of nodes and corridors, in the beginnings of a systemic process of suburban retrofitting.¹² In our book *Retrofitting Suburbia*, Ellen Dunham-Jones and I coined the term *incremental metropolitanism* to refer to a polycentric vision that could be advanced by the retrofitting of appropriate sites, both by densifying and diversifying nodes along transit-served corridors and by *de*-densifying other, failed sites for ecological repair.

Various dynamics drive suburban retrofitting in North America, and these drivers have only intensified since the 2007 onset of the Great Recession:

- Combating the contribution of GHG emissions to climate change entails reducing the high carbon footprints of suburban dwellers, up to three times higher than those of center city dwellers, due to driving and energy-inefficient detached dwellings.¹³
- Increased acknowledgment of the eventual approach of “peak oil” conditions, coupled with the fluctuating but overall rising price of gasoline at the pump.
- Demographic change in suburbs, primarily because of longer life spans and the aging of the baby boom generation, leading to a smaller and decreasing percentage of households with children. Change is also caused by the proliferation of immigrant gateway suburbs and a pronounced rise in suburban poverty. North American suburbs are much more varied and diverse than generally assumed.¹⁴
- Aging of the physical fabric of the “first suburbs” – the communities built out in the postwar era of mass suburbanization from the 1940s to the 1960s – especially of cheaply built commercial properties. There is an overabundance of “underperforming asphalt” in our over-retailed suburban landscapes, land that could and should be used to reshape North America.¹⁵

Suburbs contain millions of acres of land that is currently vacant or dedicated to asphalt-covered surface parking lots. Much of this paved greyfield land surrounds regional shopping malls, big box stores, and industrial parks, but a significant portion is in older suburban



Twentieth-Century Urbanization Trends.
 As metropolitan populations grew, urban land area tended to expand at a greater rate, often resulting in much lower overall urban population densities. Will twenty-first-century trends follow suit?

Source: Based on data from Angel, S., J. Parent, D. L. Civco, and A. M. Blei, 2012. *Atlas of Urban Expansion*, Cambridge MA: Lincoln Institute of Land Policy.

downtowns, places that languished in the second half of the twentieth century. This downtown asphalt is also, perhaps not surprisingly, often adjacent to transit infrastructure built before the automobile age, such as the Long Island Rail Road, New Jersey Transit, and Metro-North commuter rail systems in the suburbs of New York City.

A Call to Action

Designing Suburban Futures is written as an urgent response to the documented ecological, environmental, social, and economic problems of the dominant types of sprawling suburban form. It is a call to action for robust yet sensitive innovations in architectural, urban, and landscape design to achieve future resiliency in the aging and outdated suburbs of North America. These spread-out regions dwarfing central cities are where the majority of the population works and lives, as confirmed in the United States by the 2000 Census; these are the landscapes that most need transformative attention. Similar challenges confront other postindustrial economies with ecologically and economically stressed and aging peripheral settlements. Globalizing economies in China, India, Brazil, and elsewhere risk repeating the same mistakes as they undergo rapid urbanization; planners, designers, and developers everywhere can learn valuable lessons by examining innovative design responses to North American conditions, such as those produced for the ideas competitions and exhibitions documented and discussed in this volume.

In North America, urban expansion as usual – that is, through real estate growth machines promoting ever more car-dependent, low-density suburbanization, often in high-risk locations – will no longer work in the future, even if one blindly chooses to disregard the high ecological costs. Economically and demographically, the playing field is shifting decisively. As Richard Florida reminds us, “Historically, America’s economic growth has hinged on its ability to create new development patterns, new economic landscapes that simultaneously expand space and intensify our use of it.”¹⁶ Statistical indicators show that North American suburban regions are facing several pressing challenges that could spur innovation and, perhaps, entirely new interpretations of the very concept of economic growth. Some of these challenges are shared in common throughout the continent, and others are particular to the specifics of sociopolitical and economic dynamics and the local bioregion.

For New York’s Long Island region, waterlocked and seemingly built out, the primary challenges are to build affordable housing and provide greater housing choice,

especially for rentals in multiunit buildings; to bring diverse communities together in a shared public realm; to improve equity and access to opportunity for all in a context of fractured governance in which de facto racial and ethnic segregation is stubbornly persistent; to increase transit mobility options and reduce traffic congestion and fossil fuel dependence; to meet the needs of retiring baby boomers who want to age in place; to fight the “brain drain” of younger residents who don’t see a future and leave; to preserve remaining open space and natural resources; and to manage a lengthy, developed coastline at increasing risk from flooding and sea level rise.

Suburban regions across the United States face related challenges. For the Pikes Peak region, around Colorado Springs south of Denver, the indicators suggest some trends that are similar, such as an increase in the median age as longevity increases and young people tend to leave and make their lives elsewhere, and the significant mismatch between household types – increasingly diverse in size and type – and housing options. The housing stock is three quarters single-family detached and mobile homes. Other trends, both troubling and hopeful, are different: Subdivisions are at risk from wildfires, rates of child poverty and homelessness are rising, mass transit service is declining while housing and transportation cost burdens on households are increasing,¹⁷ but the quantity of cycling and pedestrian trails is growing, both for recreation and for commuting to work.¹⁸

Two simple points have been guides to my advocacy work. First, it may be that the greatest gains in urban resiliency are to be made in suburbs. Vast potential exists for transformations both subtle and profound. Second, close study of the past, present, and future potential of suburban forms in already hyperurbanized regions offers valuable cautionary tales and illuminating lessons for currently urbanizing places across the globe.

Build a Better Burb

More than two hundred ideas submitted in 2010 to the Build a Better Burb urban design competition demonstrate the potential for incremental metropolitanism in the eastern suburbs of New York City, on Long Island, home to nearly three million residents. I had the honor to help conceive and organize the competition for the nonprofit Long Island Index, an organization that has undertaken a decade’s worth of indicator studies to track the performance of the region according to several metrics: economy, health, education, environment, governance, and communities.¹⁹ The Index had commissioned a study from the Regional

Plan Association of the amount of vacant land and surface parking lots within a half mile of 156 downtowns and commuter rail stations in the 1,300-square-mile region, comprising Nassau and Suffolk counties.²⁰ They mapped an astonishing 8,300 acres of greyfield opportunity in just these locations, roughly equivalent to the land area of Manhattan south of 50th Street – an astonishingly valuable and productive piece of urban land. Or, to provide a different comparison, these scattered, downtown greyfields are equivalent in area to eighty regional shopping malls.

The competition asked designers to envision bold ideas for this underused land, to propose new uses and forms that might address the many challenges the region is facing as it matures and transitions – one must fervently hope – toward a resilient future. The proposals of two dozen finalists illustrated a range of fascinating, innovative ideas, suggesting several intriguing new directions for suburban futures, such as using under-capacity commuter and school buses for local freight transport, moving office parks to downtowns and converting vacated land to intensive organic farms, intensifying the construction of accessory dwelling units in residential neighborhoods, reintroducing the shop-house typology, sequestering carbon in highway verges and just about everywhere else, protecting freshwater aquifers, chopping up malls and putting housing on top, vastly expanding biking, and figuring out clever bottom-up ways to pay for it all.

This book reports and reflects on the compelling results of the competition as examples for designing better suburban futures. Some of the predominant themes and ideas that emerged from the competition are the critical importance of considering freshwater and carbon systems and the need to robustly reintroduce agriculture to suburban land use regimes, to provide multiple transit alternatives, to reimagine financing, and to provide a plethora of solutions to the pressing need for housing diversity and nodes of increased density to increase urban efficiency and resiliency.

Since the competition's winners were announced in October 2010, the Long Island Index has transformed Build a Better Burb into an ongoing project, supported by a steady stream of new content on a redesigned website and other social media sites. It is a concerted, direct effort to raise awareness in the general public about the documented challenges that suburban region faces and to get productive conversations going about potential solutions through design and planning, engendered by the competition and demonstrated by realized projects – exemplary case studies – from other regions. The goal

is to neutralize, perhaps even convert and engage, the obstructive NIMBY (not-in-my-backyard) mindset.²¹

On the night of October 29, 2012 suburban risk was brought to the fore by the ravages of Hurricane Sandy, a storm that slammed the shores of the northeastern United States. The hurricane, combined with a nor'easter winter storm and a lunar high tide, compounded by sea level rise (measured at roughly 1 foot over the past century in New York City), resulted in an unprecedented storm surge that caused devastating flooding, death and destruction, lengthy power outages, infrastructure disruptions, and gasoline shortages in the heavily suburbanized megaregion. Long Island was hit particularly hard. The full impact of Sandy is yet to be calculated, but it is likely to be transformative.

Designing Suburban Futures

Two parts make up this book: the first part provides the contextual vision for dramatic suburban change and highlights design opportunities and emerging strategies for achieving suburban resilience, and the second part comprehensively presents an exemplar for the vision by reporting on the best schemes submitted in the highly successful Build a Better Burb competition. This book provides an important new resource that I hope will be an inspiration for the many other places across the continent, and the globe, facing parallel challenges to those confronted by America's self-styled "first suburb," Long Island. As goes the suburbs, so go we all.

It is my hope that from reading this book you might get new ideas for what you can do to help design a better, more resilient future for all suburbs, everywhere. Change is not only possible, change is necessary.

Notes

1. Kevin Lynch, *The Image of the City* (Cambridge, MA: MIT Press, 1960), 2.
2. Kiril Stanilov, "Introduction: Postwar Growth and Suburban Development Patterns," in Kiril Stanilov and Brenda Case Scheer, eds., *Suburban Form: An International Perspective* (New York: Routledge, 2004), 4.
3. William E. Rees, co-ordinator of ecological footprint analysis, maintains that to do so, urban development strategies "must abandon efficiency and maximization as primary goals in favor of social equity and ecological stability." William E. Rees, "Thinking Resilience," in Richard Heinberg and Daniel Lerch, eds., *The Post Carbon Reader: Managing the 21st Century Sustainability Crises* (Healdsburg, CA: Watershed Media, 2010), 3–40.



4. Peter Newman, Timothy Beatley, and Heather Boyer, *Resilient Cities: Responding to Peak Oil and Climate Change* (Washington, DC: Island Press, 2009), 11.

5. Number for United States from United States 2010 Census: <http://2010.census.gov/2010census/>. For Canada, Canada 2011 Census: <http://www.statcan.gc.ca>.

6. Shlomo Angel, Jason Parent, Daniel L. Civco, and Alejandro M. Blei, "The Persistent Decline in Urban Densities: Global and Historical Evidence of 'Sprawl,'" Cambridge, MA: Lincoln Institute of Land Policy Working Paper, July 2010.

7. Shlomo Angel, Jason Parent, Daniel L. Civco, and Alejandro M. Blei, *Atlas of Urban Expansion* (Cambridge, MA: Lincoln Institute of Land Policy, 2012). Online at <http://www.lincolninst.edu/subcenters/atlas-urban-expansion/>.

8. In 2012, the U.S. population was estimated to be 313.5 million, Canada's was 34.7 million, and the overall world population was estimated to be 7.012 billion. Estimates from the World Resources Institute show the following rates of greenhouse gas emissions per capita for the year 2000: 23 tonnes in North America, 3.9 in China, and 1.8 in India. See <http://cait.wri.org/>.

9. World Urbanization Prospects, the 2011 Revision, from the United Nations, Department of Economic and Social Affairs, Population Division, Population Estimates and Projections Section, <http://esa.un.org/unpd/wup/index.html>. Though useful for macro comparisons, the UN data must be approached with some caution, as they depend on self-reporting from individual countries on the percentages of their populations that are urban. Definitions vary somewhat from country to country.

10. For example, see Warren Karlenzig, "The Death of Sprawl: Designing Urban Resilience for the Twenty-First-Century Resource and Climate Crisis," in Heinberg and Lerch, 295–313. See also Newman, Beatley, and Boyer, *Resilient Cities*.

11. Angel et al., "The Persistent Decline in Urban Densities."

12. Ellen Dunham-Jones and June Williamson, *Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs*, updated edition (Hoboken, NJ: Wiley, 2011).

13. The rate for carbon dioxide equivalent emissions in New York City was measured at 7.1 metric tons per capita in 2007, less than one third of the national average of 24.5. San Francisco's rate was 11.2. New York City Mayor's Office of Long-Term Planning and Sustainability, "Inventory of New York City Greenhouse Gas Emissions," City of New York, April 2007. Online at http://www.nyc.gov/html/om/pdf/ccp_report041007.pdf.

14. See various reports from the State of Metropolitan America effort at the Brookings Institution. Online at <http://www.brookings.edu/about/programs/metro/stateofmetroamerica>. See also Bernadette Hanlon, John Rennie Short, and Thomas J. Vicino, *Cities and Suburbs: New Metropolitan Realities in the US* (New York: Routledge: 2010).

15. Arthur C. Nelson, *Reshaping Metropolitan America: Development Trends and Opportunities to 2030* (Washington, DC: Island Press, 2013). See also Nelson, "Leadership in a New Era," *Journal of the American Planning Association* 72:4 (Autumn 2006):393–407.

16. Richard Florida, "Foreword," in *Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs*.

17. For more on the effect of transportation cost burdens on households across the United States, see the Center for Neighborhood Technology's online H+T Affordability Index: <http://www.cnt.org/tcd/ht>.

18. I served on an AIA Sustainable Design Assessment Team (SDAT) for the Pikes Peak region in 2011. My section of the final report was heavily influenced by the Quality of Life Indicators for the Pikes Peak Region yearly reports, sponsored by the Pikes Peak United Way, which can be accessed at <http://www.ppunitedway.org/>. The AIA SDAT final report is available at <http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aia092909.pdf>.

19. For background on the Long Island Index, see <http://www.longislandindex.org/>. For ongoing content related to the Build a Better Burb project, including material on the competition, see <http://www.buildabetterburb.org/>.

20. Regional Plan Association, "Places to Grow, an Analysis of the Potential for Transit-Accessible Housing and Jobs in Long Island's Downtown and Station Areas," Long Island Index Report, 2010. Online at <http://www.longislandindex.org/2010.711.0.html>.

21. The Long Island Index's director, Ann Golob, reports findings that there is now general acceptance of the trend of outward migration of young people (aged 18–35) and increased understanding that down-towns are important to redressing the problem. Interview with author, June 7, 2012.



General Session III
Enforcement of Zoning and Other Local Laws

ENFORCEMENT OF ZONING & OTHER LOCAL LAWS

New York State Department of State

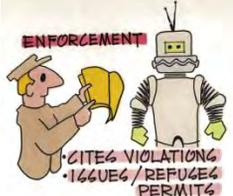
Topics to be covered

- Legal authority
- The enforcement official
- What is enforced
- Enforcement triggers & process
- Stays of enforcement
- Zoning Board of Appeal
- Court proceedings
- Penalties & remedies



Police power

- Legitimate governmental purpose:
 - ▣ Foster health, safety & welfare
 - ▣ Maintain neighborhood property values
 - ▣ Aesthetics
 - Considered a legitimate purpose for land use regulation



Statutory authority

- Enact local laws & ordinances
 - ▣ Regulate land use & design
 - ▣ Protect & enhance the physical & visual environment
- Zoning enabling statutes
 - ▣ With zoning must have:
 - Zoning Board of Appeals (ZBA)
 - Zoning Enforcement Officer (ZEO)
- Municipal Home Rule Authority

Zoning Enforcement Officer (ZEO)

- A ZEO enforces zoning
- A Code Enforcement Officer (CEO) enforces NYS Uniform Fire Prevention & Building Code
- Our focus is on the enforcement of zoning
 - ▣ NOT "Uniform Code" enforcement
- Sometimes one person holds both jobs
 - ▣ Separate powers, duties & responsibilities

Uniform Code & the CEO

Penalties for violating the "Uniform Code"

Up to \$1,000 per day fine & one year of jail time, OR

Fines, jail & injunctions

Executive Law §382

- NYS Uniform Fire Prevention & Building Code
 - ▣ CEO
 - ▣ Special training required
 - Certification
 - Continuing education credits
- Appeals of CEO decisions made to Regional Review Boards
 - ▣ Not Zoning Board of Appeals

Establish ZEO position

- Typically created in the zoning law or ordinance
- ZEO represents the municipality regarding land use regulation & enforcement
- Serves as the primary contact for applicants

Town Law §138

Such inspector shall have charge of such codes, ordinances, rules and regulations of town and of zoning ordinance of the town.

Sharing code & zoning officers

- Multiple municipalities joining together may generate enough work to:
 - Justify a full-time professional
 - Health insurance & retirement credit
 - Add staff to provide broader range of expertise
 - Allow staff to specialize
 - Maintain local control of building permits
 - Employ ZEO who is also certified as CEO
 - Makes municipal insurance carrier happy ☺

When acting under intermunicipal agreement, public officer must meet residency requirements of one participating municipality.

Possible ZEO responsibilities

Administrative

- Acquire, prepare & distribute forms
- Receive applications
- Maintain records of administrative actions
- Make determinations regarding compliance
 - zoning & other land use laws

Enforcement

- Receive complaints
- Conduct investigations & inspections
- Take necessary zoning enforcement actions

What is enforced?

- Zoning law or ordinance requirements
 - ZEO may not modify or waive zoning regulations & is limited to enforcing law as written
- Conditions of land use approval, for example:
 - Landscaping required through site plan review
 - Limit number of cars parked overnight at auto repair shop upon issuance of a Special Use Permit
- Other local laws or ordinances
 - Examples: Flood protection or sign control laws

Other laws CEO might enforce

- Variety of laws generally known as "property maintenance laws"
 - Municipalities can adopt local laws regulating junk, litter, and other property maintenance issues.
 - For example:
 - Use of cargo containers for storage
 - Shovelling & maintenance of sidewalks
 - Unsafe Building laws



The Uniform Fire Prevention & Building Code has a Property Maintenance section

General Municipal Law §136

- Applies to any place of storage or deposit of two or more vehicles which are:
 - unregistered, old, or secondhand motor vehicles no longer intended or in condition for legal use on the public highways
- Does not apply to municipalities with own junk yard regulations
- Must consider proximity to churches, schools, hospitals, public buildings, and places of public gathering
- Penalties established by law

Property Maintenance Code §302.8

- "... two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled..."
 - ▣ NOT apply to licensed junk yards
 - ▣ Local governments can seek permission to be more restrictive

True or False?

False

A ZEO may serve as member of that municipality's ZBA

- The offices are incompatible since ZBA's job is to rule on appeals of ZEO's decisions
- However, ZEO may usually serve on Planning Board without an incompatibility of office occurring

What triggers enforcement?

- Report of Municipal Official
- Citizen Complaint
 - ▣ Establish policies regarding citizen complaints
 - ▣ Are complaints FOIL- able?
 - Yes, but complaint form may be redacted to hide complainant's identity
 - ▣ Develop a follow-up process
- Observation of enforcement officer
 - ▣ Camera with time & date stamp is helpful



Inspection

Valid Permission is needed to conduct private property inspection not visible from road, adjoining property, or air

Without permission, search warrant needed

- Warrant may not be required if defendant does not have reasonable expectation of privacy in area that is subject of search
 - ▣ For example:
 - Entry upon plaintiff's yard without warrant or consent to abate nuisance
 - Warrantless inspection of backyard from driveway

Possible inspection results

- Activity described is permitted on property
- No evidence of illegal activity found
- Owner willing to voluntarily eliminate violation
- Normal administrative proceedings initiated
- Matter described appears to be controlled by deed restrictions; therefore, it is a private matter
 - ▣ Chambers v. Old Stone Hill Associates, 1 N.Y.3d 424 (2004).

When violations are observed

ZEO notifies owner or tenant of the violation

1. Persuasion: telephone, personal contact
2. Letter: notice of violation
3. Corrective action: revocation of permits, issuance of stop work order



Keep record of contacts, inspections, & enforcement actions

Stop Work Order

- Violator's options after receiving stop work order:

- Correct violation
 - Seek legislative relief
 - Ask governing board to amend applicable law or ordinance



- Appeal zoning matter ZBA

When ZEO won't act

Town Law § 268.2:

Resident taxpayers can participate in enforcement of zoning ordinances or laws where town authorities failed or declined to act.

- If town fails to abate violation within 10 days after receiving written notice by resident taxpayer, then any three town taxpayers residing in same zoning district where violation is allegedly occurring may bring action to enjoin the activity

- No similar provision exists for villages or cities

- Or, appeal to the ZBA

Who may appeal ZEO's decision?

- "Aggrieved Parties" may be:

- Recipient of enforcement action
 - Recipient of permit denial
 - Third-party believing permit improperly issued

- To be an eligible third party they must:
 - suffer "special damages" or
 - live close to subject property, or
 - be an officer of municipality, or
 - represent a department, board or bureau of the municipality

- Town Law §267-a(4)
- Village Law §7-712-a(4)
- General City Law §81-a(4)

Appealing the ZEO's Decision



- ZBA acts as buffer between person aggrieved by decision of ZEO & courts

- If ZBA fails to get majority vote to overturn ZEO's decision, then decision stands

Timelines for appeals

- Aggrieved parties must file notice of appeal within 60 Days after ZEO files decision in his/her office

- Appeal can be filed by letter or municipal form
- Copies to ZEO & ZBA

- For Third Party Appeals, 60 day period commences from time neighbor knew or should have known permit was issued



Types of appeals to ZBA

- Interpretation
 - ZEO read or applied law

Not an appeal of the NYS Uniform Fire Prevention & Building Code

- Area Variance

- ZEO read law correctly, but zoning should be varied due to dimensional problem

- Use Variance

- ZEO read law correctly, but due to unnecessary hardship variance should be granted to allow use of property contrary to zoning

Role of ZEO at ZBA hearing

- ZEO may be requested to give testimony at ZBA hearing by providing information about the following:
 - ▣ ZEO's observations of property
 - ▣ actions taken by the ZEO or by the property owner or tenant
 - ▣ applicable zoning provisions
 - ▣ previous variances or special use permits granted for this property & other similarly situated properties.

Automatic Stay Provision

- An appeal stays enforcement proceedings that are underway, for example:
 - ▣ ZEO believes Bob built garage too close to property line
 - ▣ ZEO cites Bob for violation with stop work order
 - ▣ Bob appeals ZEO's action to ZBA
 - ▣ ZEO cannot issue another stop order or go to justice court while appeal continues
 - If Bob continues to build while appeal is pending, he does so at his own risk
 - May have to tear it down or move it if loses on appeal



Lifting the stay

- Stay can be lifted
 - ▣ ZEO certifies to ZBA that stay would cause imminent peril to life or property
- Certificate of imminent peril can only be vacated by restraining order granted by ZBA
 - ▣ or if court re-imposes stay



- ▣ Town Law §267-a(6)
- ▣ Village Law §7-712-a(6)
- ▣ General City Law §81-a(6)

After the appeal

- If applicant loses appeal, violation should be corrected
- If not corrected, enforcement action proceeds
 - ▣ Violator can be fined or imprisoned



Two type of proceedings

Criminal	Civil
<ul style="list-style-type: none"> □ Commence a criminal proceeding □ Fine or penalty □ Incarceration □ Beyond a reasonable doubt 	<ul style="list-style-type: none"> □ Bring suit against another party □ Seek an injunction <ul style="list-style-type: none"> ▣ Court order to "abate" an activity or action □ Preponderance of evidence

Classify offenses of zoning regulations

- All legal wrongdoings are called offenses
 - ▣ Violation:
 - Imprisonment of 15 days or less
 - Fine not to exceed \$250
 - Not a crime
 - No right to jury trial
 - ▣ Misdemeanor:
 - Imprisonment exceeds 15 days, but less than 1 year
 - Is a crime
 - Jury trial optional with defendant

Penalties provided in Town Law §268

Offense	Fine	Sentence
1 st	\$350 Maximum	6 Months
2 nd	\$360-\$700	6 Months
3 rd	\$700-\$1,000	6 Months

Each week a violation continues could constitute separate additional violations

Provide for penalties locally

- The use of Town Law §268 exclusively can lead to jury trial
- Town should adopt own fines & jail time in local law
 - Town Law §135
 - AG Opinion No: 2005-18
 - MHL §10(1)(ii)(4)(b)
- City or village must provide penalties in local law or ordinance
- If not, penalties are determined by classification of offense
 - AG Opinion No: 2004-14
 - MHL §10(1)(ii)(4)(b)

Possible penalties

- Zoning offenses may provide punishment by:
 - Civil penalty
 - Fine
 - Forfeiture
 - AG Opinion 2004-14
 - Imprisonment
 - Combination of punishments
 - MHL §10(1)(ii)(4)(b)

Which courts handle these proceedings?

- Civil
 - State Supreme Court
- Criminal
 - Town Court
 - Village Court
 - District Court
 - Long Island
 - City Court



Injunction

- Usually used for civil enforcement
 - Preliminary Injunction
 - Purpose: maintain "status quo" pending final decision on lawsuit
 - Government must show likelihood of success & balancing of equities
 - Permanent Injunction
 - Issued by State Supreme Court
 - After municipal claim is sustained

Temporary restraining order

- Usually used for civil enforcement
 - Issued by Supreme Court
 - Cannot be issued by Town & Village Courts
 - Emergencies
 - May be issued ex parte
 - Out of presence of property owner
- City courts may also issue temporary restraining orders & preliminary injunctions
 - City Court Act §209

Getting violator to court

- Provide mechanism for getting violator into court:
 - ▣ Appearance tickets
 - Municipal Home Rule Law §10(1)(ii)(4)(a)
 - ▣ In criminal proceedings the ZEO files an accusatory instrument with the court:
 - Information/complaint
 - Written accusation filed with a criminal court
 - Supporting depositions
 - ▣ Summons
 - ▣ Arrest warrant

Getting violator to court

- Substitute service allowed for serving appearance tickets for building code & zoning violations
 - ▣ Civil Practice Laws & Rules §308
- Problems using substitute service in criminal context
 - ▣ Does not overcome jurisdictional limitation of appearance tickets
 - County in which offense was committed or adjoining county
 - Criminal Procedures Law §150.40(3)

Who prosecutes violations

- District Attorney: Primary responsibility
 - ▣ County Law §700(1)
- Municipal Attorney:
 - ▣ Traditionally delegated responsibility
 - ▣ Should confirm delegation in writing
 - ▣ Must file oath of office with county clerk as assistant district attorney
- Enforcement Officer: Occasionally appears in court on behalf of municipality

Discriminatory enforcement claim

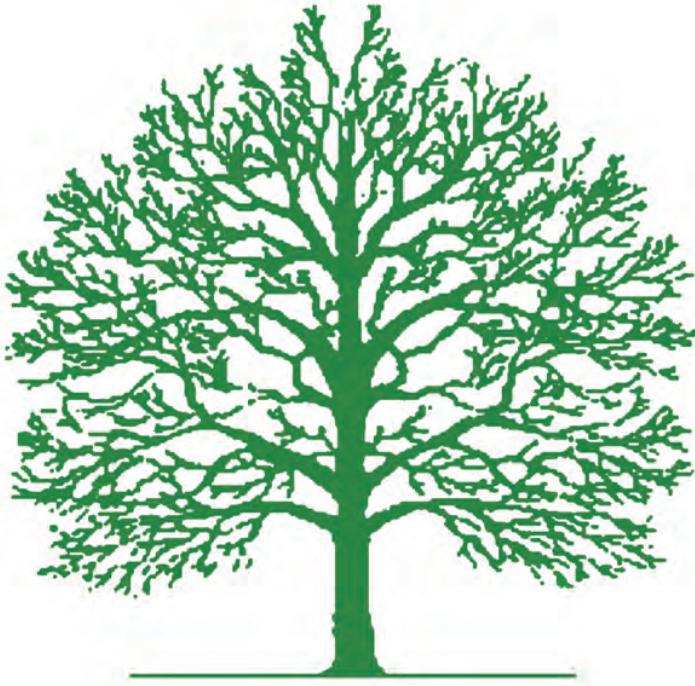
- Claimant must show:
 - ▣ "Unequal hand"
 - Law not applied to others similarly situated
 - ▣ "Evil eye"
 - Selective application of law was deliberately based upon impermissible standard such as race, religion, effort to suppress exercise of constitutional rights or individual malice
- In the Matter of 303 West 42nd Street Corporation v. Klein, 46 N.Y.2d 686 (1979); Bower Associates v. Tn of Pleasant Valley, 2 N.Y.3d 617 (2004)

New York Department of State

(518) 473-3355 Training Unit
 (518) 474-6740 Counsel's Office
 (800) 367-8488 Toll Free

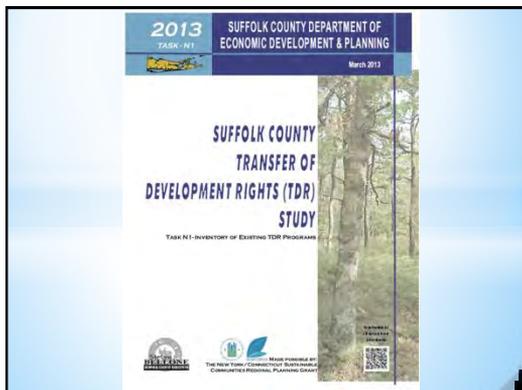


Email: localgov@dos.ny.gov
 Website: www.dos.ny.gov
www.dos.ny.gov/lg/lut/index.html



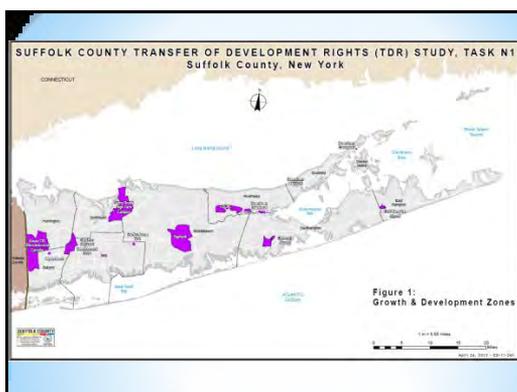
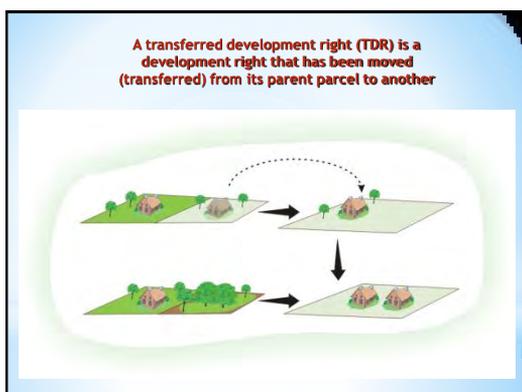
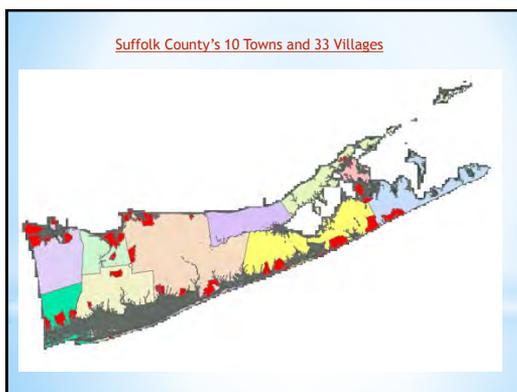
General Session III

New York-Connecticut Sustainable Communities Initiative Projects On Long Island



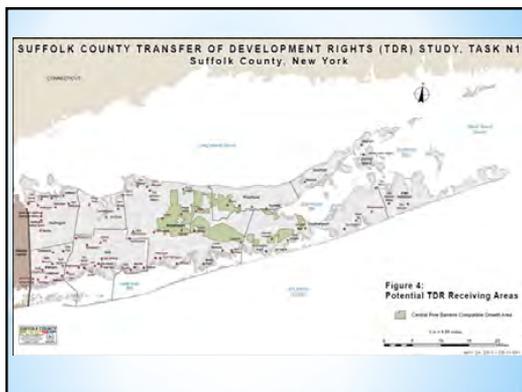
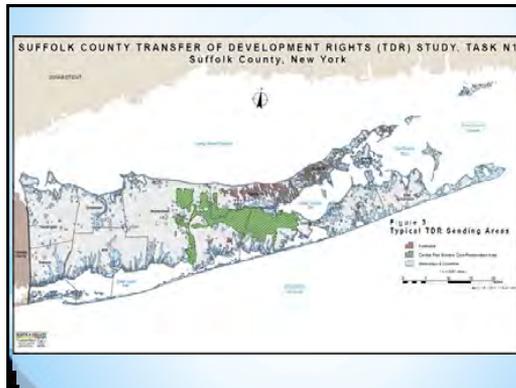
As part of the HUD Sustainable Communities Initiative Suffolk County is preparing a Regional Transfer of Development Rights (TDR) study that examines existing local, county and regional TDR programs and propose recommendations that:

1. Encourages better participation within existing TDR programs
2. Coordinates development right absorption within identified and designated growth zones (receiving areas) in the County while discouraging development in environmentally sensitive areas (sending areas)
3. Develop better coordination and implementation between local use decisions and regional transportation policies



Based on an Inventory of Existing TDR Programs in Suffolk County We Have Found:

- There are a total of 18 TDR programs in Suffolk County of which the County has 3 programs and the Towns have 15
- All the programs balance preservation with the recognition that certain properties will be improved and therefore development rights are channeled into certain nodes of development where infrastructure is available
- All the programs target similar geographic areas for "sending sites" (natural and historic properties and areas) and "receiving sites" (TOD's, downtowns, central business districts and hamlet centers)



Identifiable Benefits:

- Another zoning tool/option for O/S preservation
- Public cost (\$) low
- Rational for economic development in downtowns and transit hubs; Density shifting
- Allows restricted land owners to sell development potential and be whole
- Allows developer to transfer development potential to a project site
- Allows zoning regulation without a takings (Fifth Amendment) claim

Identifiable Problems:

- No pressing demand for TDR use
- Unpredictable if required (how many and process)
- Cost of development right/overall economics of development project
- Small niche as waste water credit (double Article 6 density)
- Zoning credit = variable bonus dependent on locality
- Civic opposition to density

Suffolk County TDR Study Goals:

- Allow economic development through TDR, TOD and CLI
- Make TDR cost effective to development industry
- Predictable in process
- Accessible registry for civic development and preservation interests.

Lessons Learned

- TDR has an intangible value with respect to development projects in Suffolk County
- TDR is not a driving force for channeling development in Suffolk County but one that can "close the deal" between developers, government and interveners
- TDR and TOD are still perceived by the building community as not compatible because cost of infrastructure for redevelopment is too great to absorb TDRs
- Some communities plainly express that they are not interested in being identified as a receiving area in a County-wide program
- The reduction of the total build out of land in a community to protect the natural and cultural features is a stated goal of many municipalities in the County
- Matching buyers to sellers is perceived to be the most helpful municipal endeavor toward TDR use

Outreach:

To date, outreach has consisted of 22 meetings, including individual meetings with town and village officials to enlist their cooperation and learn their priorities, and several small meetings that included civic, environmental, development and business stakeholders. Particular efforts were made to include clergy, youth and persons of color. There was also a county-wide town hall meeting in 2012 and poster session on the project at the 2012 Suffolk County Planning Federation conference.

Thank You

Andrew P. Freleng
Chief Planner
Department of Economic Development and Planning
Suffolk County, NY
Phone - 631-853-5191

NEW YORK & CONNECTICUT SUSTAINABLE COMMUNITIES

A Unique Bi-State Partnership to Improve Jobs, Housing and Transportation

Suffolk County Planning Federation
Autumn Planning Conference
October 17, 2013

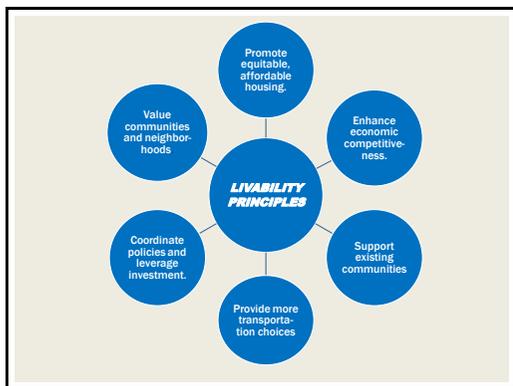


PARTNERSHIP FOR SUSTAINABLE COMMUNITIES



- Coordinating federal place-based programs and initiatives
- \$236 million in Regional Planning and Community Challenge Grants

partnership for **Sustainable Communities**
an interagency partnership HUD • DOT • EPA



WHAT IS THE CONSORTIUM?

- An inter-state, inter-municipal organization formed through an agreement between:
 - Nine cities and two counties,
 - Five regional councils (four of which are MPOs) and
 - One regional non-profit planning organization.

WHY WAS THE CONSORTIUM FORMED?

- The Consortium was formed to undertake a Regional Sustainable Communities Planning Program
- The Consortium received a \$3.5 million competitive grant from the HUD Sustainable Communities Regional Planning Grant Program, along with local contributions.

WHO IS PART OF THE CONSORTIUM?

- Principals members include the following *elected officials*:
 - Mayors of Mount Vernon, New Rochelle, White Plains and Yonkers in New York
 - Deputy Mayor of the City of New York (designated by the Mayor)
 - Mayors of Bridgeport, New Haven, Norwalk and Stamford in Connecticut
 - Nassau and Suffolk County Executives on Long Island

WHO ELSE IS PART OF THE CONSORTIUM?

- Principals also include the Chief Executive Officers or Chairs of the following:
 - New York Metropolitan Transportation Council and Long Island Regional Planning Council in New York
 - South Western and Greater Bridgeport/Valley Metropolitan Planning Organizations; and South Central Council of Governments in Connecticut
 - Regional Plan Association



WHAT IS THE CONSORTIUM EMPOWERED TO DO?

- Through the Consortium memorandum of agreement, the organization is empowered to:
 - Execute the planning program defined in the agreement, using federal and local funding
 - Produce regional and place-based plans, site designs and other recommendations consistent with the planning program

WHAT ISN'T THE CONSORTIUM EMPOWERED TO DO?

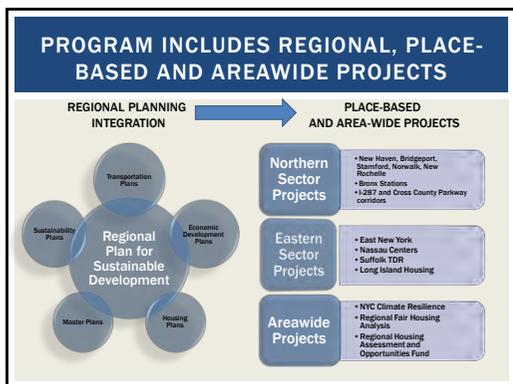
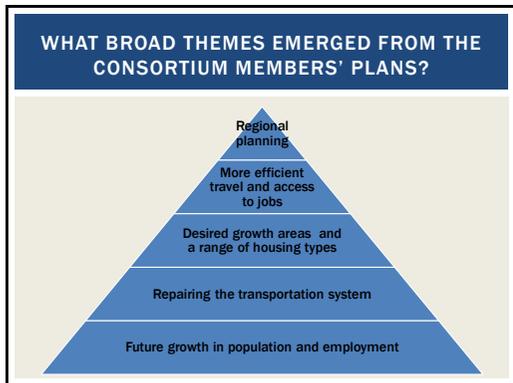
- The Consortium – as an organization – has no authority to implement the results of the planning program
- Implementation responsibility falls to the individual Consortium members working through their chartered legislative, regulatory, policy making or decision-making processes

WHAT IS THE CONSORTIUM'S PLANNING PROGRAM BASED ON?

- The planning program is built on the **required** plans of the Consortium members, including:
 - Regional transportation plans
 - Plans of conservation and development (in Connecticut)
 - County and city master plans, comprehensive plans and housing plans

WHAT ELSE IS THE CONSORTIUM'S PLANNING PROGRAM BASED ON?

- The planning program is also built on the **discretionary** plans of the Consortium members, including:
 - Sustainability and vision plans (such as *PlaNYC* in New York City and the City of Bridgeport's *B Green*)
 - The Regional Plan Association's *Third Regional Plan*
 - Economic development plans at various levels



CONNECTING AREA-WIDE AND PLACE-BASED PROJECTS

THE MTA SYSTEM IS AT THE HEART OF THE INITIATIVE'S RATIONALE AND STRUCTURE:

"Link strategies to develop mixed-income housing, employment and infrastructure in locations connected by the region's two commuter rail networks – the MTA Metro-North Railroad and the MTA Long Island Rail Road"

Projects

NORTHERN SECTOR

Regional Projects:
 • Light Rail
 • Bus Rapid Transit
 • Commuter Rail
 • Metro-North
 • LIRR

Metropolitan
 • LIRR
 • Transportation Corridors
 • Other Rail
 • MTA Assets

Projects

EASTERN SECTOR

Regional Projects:
 • Light Rail
 • Bus Rapid Transit
 • Commuter Rail
 • Metro-North
 • LIRR

Metropolitan
 • LIRR
 • Transportation Corridors
 • Other Rail
 • MTA Assets

SUSTAINABLE COMMUNITIES EAST NEW YORK, BROOKLYN

- Coordinate land use planning with transportation and sustainability objectives in East New York.
- The goal of the plan is to identify opportunities to:
 - Facilitate new housing, including affordable housing, through zoning changes and by better utilizing existing transportation infrastructure;
 - Improve the physical environment to create a more pedestrian- and transit-friendly community;
 - Improve access to job centers through better intermodal transit connections;
 - Improve access to fresh food, retail and cultural services through FRESH and other programs;
 - Improve the area's environmental performance through "green" measures.
- The result of the study will be a shared vision among stakeholders, with recommendations for zoning changes and transportation improvements, and identification of partnerships and opportunities for neighborhood sustainability initiatives.

SUSTAINABLE COMMUNITIES EAST NEW YORK: STUDY AREA

Brooklyn Community District 5
 Brooklyn Community District 16
 Cypress Hills
 East New York
 Brownsville
 City Line

NASSAU INFILL REDEVELOPMENT STUDY

Create opportunities for serving the needs of Nassau's current and future population by:

- Reducing our dependency on the automobile
- Reducing our carbon footprint
- Creating new, high-value jobs and partnerships with expanding health-care, university and high-tech facilities
- Diversifying housing stock and expanding affordable housing

24

21 STATION AREAS : 3 TOD PLANS

- Lynbrook
- Freeport
- Rockville Centre
- Valley Stream
- Baldwin
- Bellmore
- Merrick
- Wantagh
- Garden City
- Lakeview
- West Hempstead
- Hempstead
- Carle Place
- Mineola
- Bethpage
- Hicksville
- Westbury

Suffolk County
Queens (NYC)
Legend
1/2 Mile LIRR Station Buffer
Expanded Study Area

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS STUDY

Suffolk County
Transfer of Development Rights Study

SUFFOLK TDR TASKS

- Inventory of existing Transfer of Development Rights (TDR) programs including program identification and analysis of basic elements
- Complete analysis of all existing programs including available credits, potential sending sites and remaining receiving sites
- Recommendations will also be drafted to encourage better coordination between land use and transportation policies
- Public Outreach

Suffolk County
Transfer of Development Rights Study



Project Goals

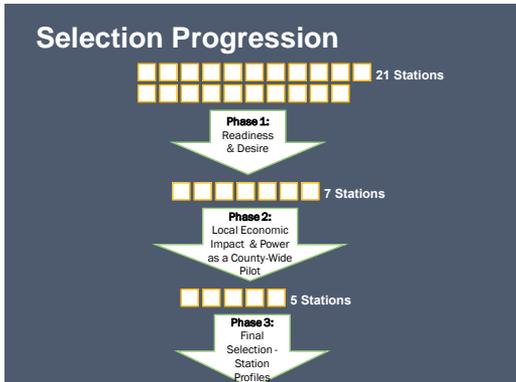
- **ENGAGE** the public
- **IDENTIFY** the station areas most suitable for sustainable development
- **PARTNER** with local municipalities and community stakeholders
- **PILOT** sustainable development throughout Nassau County

Station Areas Under Review

Map showing station areas under review in Nassau County. Legend includes: Station Areas in Study, Station Areas in Study, Nassau County, and Suffolk County.

Station Selection Process

- **Phase 1: Readiness & Desire**
 - Assessment of existing conditions – 21 Station areas
 - Station area evaluations based on **readiness and desire**
 - Develop station shortlist of 7 station areas
- **Phase 2: Impact & Influence**
 - Local economic impact & opportunity
 - Power as a county-wide project
- **Phase 3: Final Selection**
 - Selection of 3 stations based on Phase I & II
 - Develop station area plans and development feasibility reports



Phase 1: Readiness & Desire

- **Station Area Assessment**
 - Land use
 - Zoning
 - Transportation conditions
 - Recent development projects
 - Plans and Studies
- **Research, Surveys, and Focus Group Meetings**
- **Determine Transit Supported Development Potential**
 - Physical Suitability
 - Public Sector Readiness
 - Developer Interest
 - Leadership In Place
- **Identify issues and opportunities around station areas**
- **Identify community/municipal desire for TSD**

Transit Supported Development sign: "Where do you think the station is in terms of readiness and desire for transit-supported development?"

High desire, low readiness	High desire, high readiness
Low desire, low readiness	Low desire, high readiness

Phase 1 Criteria

Predetermined Criteria	Readiness	Desire
<ul style="list-style-type: none"> • Three different station areas • At least one in an unincorporated area • At least one in an incorporated village • Varying commercial and residential densities and development types • No current or planned TSD 	<ul style="list-style-type: none"> • Physical Suitability • Public Sector Readiness • Developer Interest • Leadership in Place 	<ul style="list-style-type: none"> • Participation at MAG and/or CFG meetings and follow-up with County • Expressed desire for TSD

Phase 1 Results



Phase 2 Impact and Influence

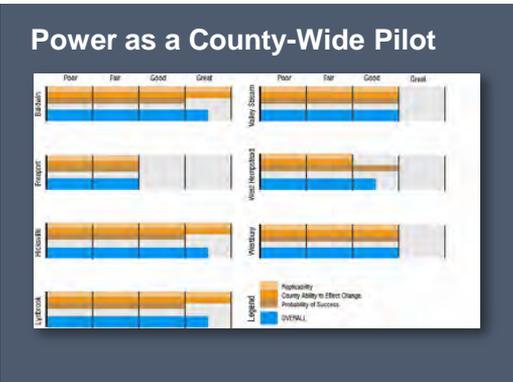
- Evaluate local economic impact for "shortlisted" stations
- Evaluate power of each station as a county-wide project
- Select 3 station areas for further design and analysis

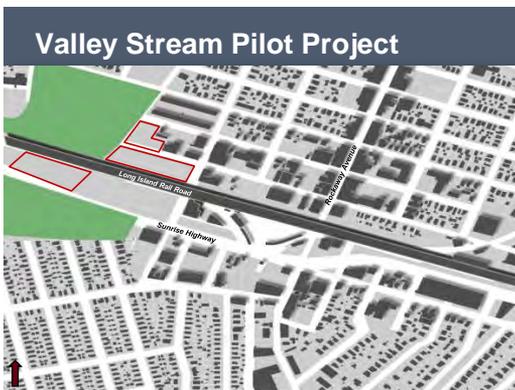
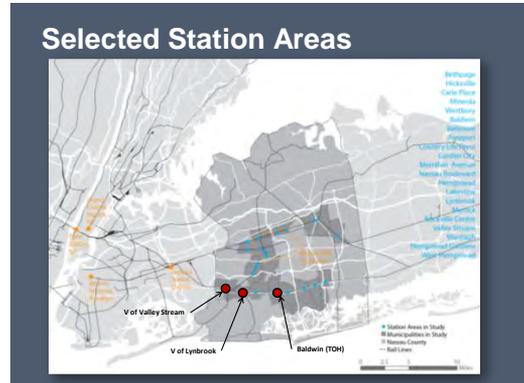
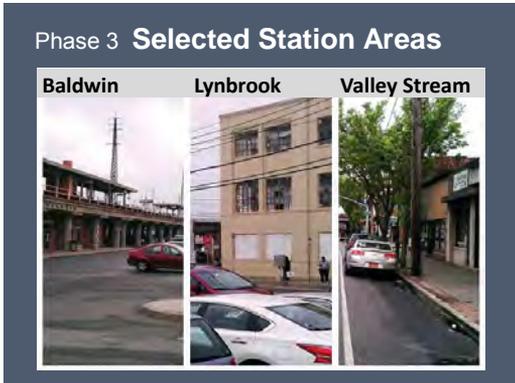
Phase 2.1 Local Economic Impact Criteria

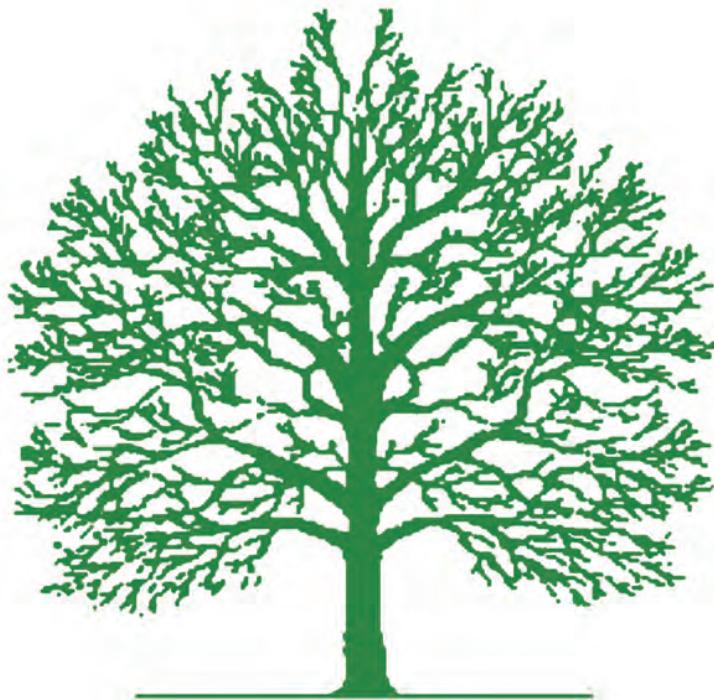
- Site Assembly
- Market Feasibility (Demand)
- Zoning
- Financial Feasibility (Supply)
- Public Infrastructure
- Catalysis
- Municipal Costs/Benefits

Phase 2.2 Power as a County-Wide Pilot

- "Replicability"
 - Does the project provide a replicable process to overcome common barriers?
- County's Ability to Influence
 - Is there a clear role for the county?
- Probability of Success
 - Could the project be implemented quickly?
 - Is there a clear implementation strategy?
- Overall Pilot Potential
 - Poor/Fair/Good/Great







General Session III

Ethics

Ethics and the Professional Planner: An Emphasis on New York State Government Practice

Suffolk County Planning Federation
Autumn Planning Conference 2013
Thursday, October 17, 2013

John W. Pavacic, Executive Director
Central Pine Barrens Joint Planning and Policy Commission

1

Ethics Training: Disclaimer

- The following program will cover some, but not all, provisions of New York State ethics laws, regulations, advisory opinions and policies.
- For additional information on New York State ethics laws, regulations, advisory opinions, policies and guidance documents, please refer to the website of the New York State Joint Commission on Public Ethics (JCOPE) at www.jcope.ny.gov.

2

Life is an Ethical Challenge

- From childhood through our senior years, we are constantly faced with ethical challenges, both great and small
- Childhood
 - seizing someone's else's toy
 - Fighting
 - inclusion in games
 - making friends
 - Fibbing and tattling
 - Teasing
- Adolescence
 - cliques, groups, belonging
 - Appearances
 - bullying (physical, verbal, virtual)
- Adulthood (personal/domestic issues)
 - speeding on a residential street
 - dealing with a missing, older or dying pet
 - cleaning up after a dog
 - responding to a partner's inquiry about their clothing or appearance
 - care of aging parents
- Adulthood (professional)
 - Accepting or offering gifts/Compromising situations
 - Performance pressures
 - Today's program

3

Why Ethics?

- New York State Public Service
 - State and local ethics laws were created to avert conflicts of interest between the duties of government officials and private interests.
 - Ethics training serves to advise those who either serve as a public employee or official or who work with public employees and officials about New York State public ethics laws, regulations and policies.
 - Ethics training should provide an overview of the ethical standards public employees and officials are obligated to uphold and should be designed to help prevent ethics violations before they occur. In regard to the Planning profession, ethics training should strive to guide planners in adhering to the AICP Code of Ethics and Professional Conduct
- The Planning Profession
 - Planning ethics code requires a demonstration of responsibility to the public, clients and the Planning Profession; demonstration of integrity, proficiency, and knowledge and avoidance of conflicts of interest and appearances of conflicts of interest.

4

Ethics in Government

"No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest. This principle must be followed not only in reality but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter."

John F. Kennedy - "Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government." April 27, 1961

5

Public Integrity Reform Act of 2011

- The Public Integrity Reform Act of 2011 ("PIRA") became effective on August 15, 2011 (Chapter 399 of the Laws of 2011).
- PIRA established the Joint Commission on Public Ethics ("JCOPE") which expanded the existing functions and jurisdiction of the former Commission on Public Integrity.



6

State Ethics Jurisdiction



- Executive Branch officers and employees
- Statewide Elected Officials (Governor, Lieutenant Governor, Attorney General, Comptroller)
- Members and employees of the State Legislature
- Candidates for statewide elected office and for the Legislature, and political party chairs as defined in Public Officers Law 73
- Employees of SUNY & CUNY
- Lobbyists, Clients and Public Corporations as defined in Article 1-A of the Legislative Law (the "Lobbying Act")



7

PUBLIC OFFICERS LAW §74 - THE CODE OF ETHICS

The Code of Ethics applies to all Officers and Employees of New York State including:



- State Legislative members and employees
- Officers or employees of any State agency, department, division, board, commission, or any public benefit corporation or public authority at least one of whose members is appointed by the Governor, *including unpaid and per diem officers and members of such entities.*
- Officers or employees of the following specific "closely affiliated corporations": Youth Research Inc., The Research Foundation for Mental Hygiene, Inc., Health Research Inc., The Research Foundation of the State University of New York, and Welfare Research Inc.

8

Independent NY State Agencies Subject to State Ethics Requirements

- Adirondack Park Agency
- Battery Park City Authority
- Council on the Arts
- Central Park Barrens Joint Planning and Policy Commission*
- City University of New York
- Commission on Local Government Efficiency and Competitiveness
- Council on Children and Families
- Crime Victims Board
- Developmental Disabilities Planning Council
- Dormitory Authority
- Empire State Development Corporation
- Energy Research and Development Authority
- Environmental Facilities Corporation
- Geographic Information Systems (GIS) Clearinghouse*
- Governor's Traffic Safety Committee
- Housing Finance Agency/State of NY Mortgage Agency (SONYMA)
- Hudson River Park Trust
- Hudson River Valley Greenway
- Justice Center for the Protection of People with Special Needs
- Metropolitan Transportation Authority (MTA)
- Nassau County Interest Finance Authority*
- NYS Foundation for Science Technology and Innovation
- Office for Aging
- Port Authority of New York and New Jersey
- Racing and Wagering Board
- South Shore Estuary Council*
- State University Construction Fund
- State University of New York (SUNY)*
- Thruway Authority



9

Applicable State Ethics Laws and Regulations

- Public Officers Law §74: Code of Ethics
- Public Officers Law §73: "Business or Professional Activities by State Officers and Employees and Party Officers" - Outside employment and professional activities, restriction on political activities, nepotism, gifts, honorarium, travel, negotiations on future employment, and post employment restrictions.
 
 - Title 19 NYCRR Part 930: Honoraria and Travel
 - Title 19 NYCRR Part 932: Outside Activities
 - Title 19 NYCRR Part 941: Adjudicatory Proceeding Regulations
 - Interim Guidance on Gifts
- Civil Service Law §107: "Prohibition Against Certain Political Activities; Improper Influence"
- Public Officers Law §73-a: Financial Disclosure
 - Title 19 NYCRR Part 935: FDS Exemption
 - Title 19 NYCRR Part 937: Access to Publicly Available Records
 - Title 19 NYCRR Part 941.19: Appeals from denials for FDS redactions and exemptions

10

Topic Overview

- Codes of Ethics
- Outside Activities
- Restrictions on Political Activities
- Nepotism Restrictions
- Gifts
- Honorarium
- Travel Payments for Official Activities
- Negotiation of Future Employment
- Post-employment Restrictions
- Civil Service Law 107
- Financial Disclosure
- JCOPE Overview
- Advice and Guidance
- Investigation and Enforcement

11

New York State Public Officers Law 74 - The Code of Ethics

- The Code of Ethics is intended to prevent the use of an individual's official position or authority for the benefit of themselves or another.
- The Code of Ethics not only addresses actual conflicts of interest, but also the appearance of such conflicts when performing official duties.
- The Code of Ethics embodies the guiding principles of:
 - Impartiality
 - Confidentiality
 - Stewardship of State resources
 - Integrity

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Public Officers Law 74 –The Code of Ethics

The General Rule: Public Officers Law 74(2)

New York State officers and employees and Legislative members and employees shall not...



"have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his (or her) duties in the public interest."

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Similarities to AICP Code of Conduct - B: Rules of Conduct

- Rule # 2 – Do not accept assignment that is illegal or which violates AICP Rules of Conduct.
- Rule # 3 – Do not accept assignment publicly advocating position that conflicts with a position you undertook for a prior client (unless you first undertake certain actions, to address)
- Rule # 4 – Outside employment – Don't take other planning work while disclosing to employer and obtaining permission
- Rule # 5 – (For public official, public employee) - Do not accept any compensation or consideration which may be "perceived as related to ...[your]... public office or employment."
- Rule # 6 – Do not perform work for a client or employer if (besides normal compensation) there is a possibility for direct personal or financial gain to you or family members, unless client or employer first consents.
- Rule # 7 – Do not use confidential information obtained through your professional position for "personal advantage" or for the advantage of a "subsequent client or employer" (with certain exceptions)
- Rule # 8 – (For public official, public employee) - Don't conduct private communications "with planning process participants if the disclosures relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom."
- Rule # 9 – Do not conduct private discussions with decision makers in the planning process "in any manner prohibited by law or by agency rules, procedures, or custom."
- Rule # 13 – Do not "...sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means."
- Rule # 14 – Do not "...use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest."
- Rule # 19 - You must disclose the interests of clients or employers during the planning process and during such participation cannot conceal "...the true interests of ...[a]... client or employer."

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Ethical Standards of Conduct

Public Officers Law 74(3)(a):

No covered person shall accept other employment which will impair his independence of judgment in the exercise of his official duties.

Comparable AICP Rules of Conduct:

2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

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Ethical Standards of Conduct

Public Officers Law 74(3)(a) - Example:

You are a full-time planner employed by the Long Island Rail Road ("LIRR") working on a contract for services on Railway Project X. LIRR has retained the outside firm ACME Co. to work on this project. In your official capacity with LIRR, you review ACME Co.'s work to determine whether ACME Co. has complied with LIRR's contract.

ACME Co. offers you a part-time position as a planning consultant on a completely different project that does not involve Railway Project X, LIRR or its parent agency MTA.

Can you pursue this outside employment?



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Ethical Standards of Conduct

Answer:

No. Accepting this employment would jeopardize your impartiality as an LIRR employee because you would have the discretion to determine whether ACME Co. has met its contractual obligations with LIRR for Railway Project X.

This outside employment creates a public perception that your objectivity in regard to your LIRR duties may be impaired since you are privately benefiting from the consulting relationship with ACME Co.

17

Ethical Standards of Conduct

Public Officers Law 74(3)(b):

No covered person shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

Comparable AICP Rules of Conduct:

7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosures pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, a thorough effort to obtain reexamination of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications "with planning process participants if the disclosures relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom."

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Ethical Standards of Conduct

Public Officers Law 74(3)(b): - Example:

You are an information technology professional for the State Office of Information Technology Services ("ITS"). In addition, you occasionally serve as an expert witness on cyber security. How should you handle yourself?

19

Ethical Standards of Conduct

Answer:

You should be careful not to accept an assignment or give testimony that requires you to disclose confidential information which you have gained by reason of your ITS position.

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Ethical Standards of Conduct

Public Officers Law 74(3)(c):

No covered person shall disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

Comparable AICP Rules of Conduct:

7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except where (1) required by process of law or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.

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Ethical Standards of Conduct

Public Officers Law 74(3)(c) - Example:

You work as a Child Protective Manager for the Office of Children and Family Services ("OCFS") and have access to CONNECTIONS, a confidential database of child abuse and maltreatment investigations throughout NYS.

Your good friend is the non-custodial grandmother of a child who is a victim of child abuse and an OCFS client. Your friend asks if you can access the CONNECTIONS system and provide information them with information regarding their grandchild.

Can you disclose this information?

22

Ethical Standards of Conduct

Answer:

No, disclosure of confidential information to an unauthorized person would be a violation of Public Officers Law 74(3)(c).

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Ethical Standards of Conduct

Public Officers Law 74(3)(d)

No covered person shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

Comparable AICP Rules of Conduct:

2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

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Ethical Standards of Conduct

Public Officers Law 74(3)(d) - Example:

The New York State Joint Commission on Public Ethics determined that a Hearing Officer for the NYS Division of Homes and Community Renewal ("HCR") violated Public Officers Law 74(3)(d) when, identifying himself as an HCR Hearing Officer, he wrote to a municipal agency on behalf of his neighbor on a matter unrelated to HCR or his official position.

By identifying himself as an HCR Hearing Officer, he misused his State position in an attempt to secure favorable treatment by the municipal agency for another person.



25

Ethical Standards of Conduct

Public Officers Law 74(3)(e):

No covered person shall engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

Comparable AICP Rules of Conduct:

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

26

Ethical Standards of Conduct

Public Officers Law 74(3)(e) - Example:

A covered person is an executive at a State agency and will be part of a team evaluating applications for energy efficiency grants. The covered person is also a paid Board member of a corporation that is seeking to apply for one of the grants. In his official capacity at the State agency, can he participate in the evaluation of the corporation's application?



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Ethical Standards of Conduct

Answer:

No. Given his outside activity as a Board member of the corporation, the covered person has at least an indirect financial interest in the awarding of the grant. Thus, his participation in an application decision regarding the corporation could reasonably conflict with the proper discharge of his State agency duties and would be a violation of 74(3)(e).

The covered person must recuse not only from participating in the State agency's evaluation of the corporation's application, but also from assisting the corporation's Board and staff in preparing its application.

In addition, the covered person should not consult with any member of the State agency as to the merits of the corporation's application.

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Ethical Standards of Conduct

Public Officers Law 74(3)(f):

A covered person shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

Comparable AICP Rules of Conduct:

13. We shall not sell, or offer to sell, services by using or implying an ability to influence decisions by improper means.

29

Ethical Standards of Conduct

Public Officers Law 74(3)(g):

A covered person shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

Comparable AICP Rules of Conduct:

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.

30

Ethical Standards of Conduct

Public Officers Law 74(3)(g) - Example:

A State agency will decide whether to locate a new power plant in the State. Should the power plant be approved, the value of the company owning the power plant will greatly increase.

The Chair of the agency has an opportunity to invest in the power plant company prior to the conclusion of the proceeding. Should the Chair invest?



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Ethical Standards of Conduct

Answer:

No. The Chair must not invest in the company because it would create a substantial conflict between his duty as Chair and his personal financial interests.

32

Ethical Standards of Conduct

Public Officers Law 74(3)(h):

A covered person shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Comparable AICP Rules of Conduct:

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

33

Ethical Standards of Conduct

Public Officers Law 74(3)(l):

No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member (or copartner) a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.



In a Nutshell... You are prohibited from providing goods and services of any kind to entities regulated or licensed by your agency.

Comparable AICP Rules of Conduct:

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

34

Public Officers Law §73 - "Business or Professional Activities by State Officers and Employees and Party Officers"

Public Officers Law 73 and Related Subject Matter

- Outside employment and professional activities
- Restrictions on political activities
- Nepotism
- Gifts
- Honorarium
- Travel payments for official activities
- Negotiation of future employment
- Post-employment restrictions
- Reverse two-year bar

35

Public Officers Law 73 and Outside Activities

General Rule

All covered individuals – both Policy Makers and non-Policy Makers - should evaluate the proposed activity in light of Public Officers Law 73 and 74 (Code of Ethics) prior to engaging in any outside activities.

Rules governing outside activities are set forth in implementing regulations Title 19 NYCRR Part 932.

Part 932.3(a) declares:

"No covered individual shall engage in any outside activity which interferes or is in conflict with the proper and effective discharge of such individual's official duties or responsibilities."

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Public Officers Law 73 and Outside Activities

Part 932: Compensation Threshold for Policy Makers

- Approvals required based on annual compensation
- Policy makers receiving outside compensation of more than \$1,000 (but less than \$4,000) require Agency approval. Policy makers receiving outside compensation of more than \$4,000 requires approval of NYS Joint Commission on Public Ethics (JCOPE), as well as the Agency's prior approval.
- Not a policy maker? – Your outside employment is not subject to the above approval procedures in Part 932; however, prior to pursuing any outside employment you should seek advice from your Agency Ethics Officer or JCOPE concerning the propriety of such employment under the applicable ethics laws and regulations.

Comparable AICP Rules of Conduct:

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

Public Officers Law 73 and Outside Activities

Part 932: Restrictions on Political Activities

- Part 932.2(a) – states Policy Makers cannot serve as an officer of any political party or political organization.
- Part 932.2(b) - states Policy Makers cannot serve as a member of any political party committee including political party district leader or member of the national committee of a political party.
- Running for Office - Those designated as Policy Makers are required to obtain both agency and JCOPE approval prior to campaigning.
- Campaigning - No State resources can be used to help campaign for any candidate including: phone calls, photocopying, faxing, e-mails and State time.



Public Officers Law 73 and Outside Activities

Public Officers Law 73(4) – Sale of Goods and Services to State Agencies

"No State Officer or Employee shall sell any goods or services having a value in excess of \$25 to any state agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding."

Comparable AICP Rules of Conduct:

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

Public Officers Law 73 and Outside Activities

Public Officers Law 73(4) - Example:

You are a Department of Labor employee. You also have a seasonal snow plowing business. Is it permissible to provide snow plowing services at a regional office of a NYS Public Benefit Corporation?

This outside activity is permissible if you provide such services pursuant to a contract that was publicly noticed and competitively bid.



Public Officers Law 73 and Outside Activities

Public Officers Law 73(7) – Services to State Agencies

Covered persons are prohibited from rendering services for compensation before any State agency in relation to:

- The purchase, sale, rental or lease of real property, or goods or services;
- Any proceeding relating to rate making;
- The adoption or repeal of any rule or regulation having the force and effect of law;
- The obtaining of grants of money or loans;
- Licensing; or
- Any proceeding relating to a franchise provided for in the public service law.

Comparable AICP Rules of Conduct:

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.

Public Officers Law 73 and Outside Activities

Public Officers Law 73(7) - Example

You are a Department of Transportation ("DOT") engineer. As an outside activity, you perform engineering services as a consultant. A client asks you to design a septic system plan and application that must be submitted to the NYS Department of Environmental Conservation ("DEC") for its review and evaluation in order to issue a wastewater permit to your client.

You may not, for compensation, perform such work and submit the permit application to DEC even though there is no connection between your official duties at DOT and this application before DEC.

Public Officers Law 73 – Nepotism Restrictions

- **73 (14)** - State employees are banned from participating in any decision to hire, promote, discipline or discharge a relative.
- **73 (15)** - State employees are prohibited from awarding contracts to a relative or investing public funds in any security in which a relative has a financial interest.
- **Definition of "Relative" in 73(1)(m)**
Any person living in the same household as the covered individual or any person who is a direct descendant of that covered individual's grandparents or the spouse of such descendant (e.g. sons, daughters, grandchildren, cousins, nieces, nephews, brothers, sisters).

Comparable AICP Rules of Conduct:

5. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

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Public Officers Law 73 - Gifts

- On November 20, 2012, JCOPE issued the Interim Guidance on Gifts to update Advisory Opinion No. 08-01 in light of the amendments enacted by PIRA.
- The Interim Guidance embodies JCOPE's current interpretation of the gift prohibitions and will remain in effect until the new rules are finalized.
- **REGULATORY UPDATE** - JCOPE is in the process of drafting new gift regulations which will change and supersede the Interim Guidance on Gifts.
- The following slides summarize the Interim Guidance on Gifts.



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Public Officers Law 73 – Interim Guidance on Gifts

- **General Rule** - Covered persons cannot accept, receive or solicit "Gifts" from a "Disqualified Source."
- **What is a "Gift?"** - Anything of more than nominal value, in any form, including but not limited to:
 - Money, service, loan, travel, lodging, meals, refreshments, entertainment, forbearance or a promise having a monetary value

Comparable AICP Rules of Conduct:

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

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Public Officers Law 73 – Interim Guidance on Gifts Public Officers Law 73 - Gifts: Disqualified Source

- **A Disqualified Source is a person or entity that:**
 - Is regulated by or appears before you or your agency
 - Has contracts with, or seeks contracts with, you or your agency
 - Is a registered lobbyist or client, or is the spouse or the minor child of a registered lobbyist or client
 - Attempts to influence you or your agency in an official action
 - Is involved in ongoing litigation that is adverse to you or your agency
 - Has received or applied for funds from your agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift



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Public Officers Law 73 – Interim Guidance on Gifts Public Officers Law 73 - Gifts: Acceptable Items

The following items are permissible to accept even from a Disqualified Source:

- Food or beverage valued at \$15 or less*
- Complimentary attendance offered by the sponsor of a Widely Attended Event*
- Tickets to bona fide charitable and political events
- Awards or plaques in recognition of public service
- Honorary degrees
- Promotional items with no resale value
- Discounts available to the general public
- Gifts from those with whom there is a demonstrated familial or personal relationship
- Contributions reportable under the Election Law
- Travel payments for speakers at informational events
- Local travel payments for tours related to one's official activity
- Meals and beverages provided to participants at professional and educational programs
- Gifts for customary occasions

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Public Officers Law 73 – Interim Guidance on Gifts Public Officers Law 73 - Gifts: Additional Considerations

- Food or beverage valued at \$15 or less* per event is permissible
- "Widely attended event": to qualify as, the following conditions must be met:
 - Complimentary admission must be offered by the sponsor of the event and 25 individuals who are not from your Agency attend or are in good faith invited to attend and the event is related to the State officer's or employer's duties or responsibilities.
 - or
 - The event allows such individual to perform a ceremonial function appropriate to his or her position.
- Other Prohibited Gift Recipients - Spouses and Minor Children: Spouses and minor children of individuals who are subject to Public Officers Law 73 cannot solicit, accept, or receive gifts from registered Lobbyists or Clients per Public Officers Law 73(5)(b)
- Interplay of 74 – The Code of Ethics – Always consider the fact that even if the "item or service" is not offered by a Disqualified Source, and is allowed by one of the gift exclusions, you still have to consider all of the circumstances to determine whether your acceptance would create an "appearance" or the public perception of a conflict of interest.

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Public Officers Law 73 – Honorarium

What is an Honorarium?

- A payment offered in exchange for a professional service or activity, such as giving a speech, writing an article, or serving on a panel and a seminar or conference, that is **not part** of the State person's official duties.
- An honorarium includes expenses incurred for travel, lodging, and meals related to the service performed.



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Public Officers Law 73 – Honorarium

- Regulated by Title 19 NYCRR Part 930
- Honoraria must be approved by an individual's Approving Authority
- For a State Officer or Employee, the Approving Authority is the Head of a State Agency or Appointing Authority. For Statewide Elected Officials and State Agency Heads (including Civil Department Heads), the Approving Authority is JCOPE.
- Written requests should be made to the Approving Authority prior to performing the requested service or activity.
- **General Requirements for Approval**
 - Cannot use State resources to prepare for or perform such service or activity
 - Must perform service or activity during non-official, personal time
 - Cannot accept Honoraria from a "Disqualified Source"
 - Must report Honoraria on State Financial Disclosure Form

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Public Officers Law 73 – Honorarium

Comparable AICP Rules of Conduct:

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

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Public Officers Law, Part 930 Regulations – Travel Payments for Official Activities

- **Regulated by 6 NYCRR Part 930**
- A covered person may accept payment from third parties for travel expenses for an activity that is part of, and related to, his or her official position provided certain conditions are met.
- Travel payments for official activities must be approved by the approving authority
 - For a State Officer or Employee, the Approving Authority is the Head of a State Agency or Appointing Authority.
 - For Statewide Elected Officials and State Agency Heads, the Approving Authority is JCOPE.
- **Requests for approval must be made within a reasonable period of time prior to engaging in the official activity**



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Public Officers Law, Part 930 Regulations – Travel Payments for Official Activities

Summary of Part 930 Requirements

- Mode of travel and related expenses must be in accordance with your agency's travel policy
- Cannot accept from a "Disqualified Source"
- Must report travel reimbursement on Financial Disclosure Statement
- If a "payment in lieu of a honorarium" is offered, it must be paid to the general fund of the State or to such fund as is appropriate for an entity not funded through State general fund appropriations



Comparable AICP Rules of Conduct:

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

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Public Officers Law – Negotiation of Future Employment

General Rule on Solicited Offers

- Employees are prohibited from soliciting an employment opportunity with an entity or individual that has a specific matter pending before that employee as per *Advisory Opinion No. 06-01*
- **Requirements**
 - If you are seeking employment with an entity or individual that has a specific matter pending with you, then you may only solicit an employment opportunity with the individual or entity after waiting 30 days from the time either:
 - ❖ the matter before you is closed, or
 - ❖ you have no further involvement with the matter because of recusal or reassignment.

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Public Officers Law – Negotiation of Future Employment

General Rule on Unsolicited Offers

- **Requirements**
 - If you receive an unsolicited job offer from an entity or individual that has a specific pending matter before you, you cannot pursue employment with that entity or individual unless:
 - ❖ you recuse yourself from the matter and any further official contact with the entity or individual,
 - and
 - ❖ wait 30 days from such recusal to enter into any future employment discussions with the entity or individual.

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Public Officers Law – Negotiation of Future Employment

- **Duty to Notify** - Whether an offer is solicited or unsolicited, you must promptly notify your supervisors and ethics officer of the job offer whether or not you intend to pursue the job offer.
- **Potential Violations** - Depending on the circumstances, failure to follow this guidance could result in a violation of the gift prohibition and/or The Code of Ethics.

Comparable AICP Rules of Conduct:

3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause serious detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

- Post-employment restrictions apply to **all** State Officers and Employees subject to Public Officers Law 73.
- Please note that the post-employment restrictions apply to part-time and seasonal employees. These restrictions apply equally whether a person is hired for one day, for the summer or full-time for 30 years.
- **Types of Restrictions**
 - **Two-year bar**
 - **Lifetime bar**



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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Two-Year Bar: 73(8)(a)(i)

Former State Officers and Employees are prohibited from:

- Appearing or practicing, regardless of whether one is compensated or not, before his or her former agency, (“appear/practice clause”)
- and
- Receiving compensation on behalf of a client in relation to a matter before his or her former agency, without appearing before former agency. (“backroom services clause”)
- Former State officers and employees are subject to this restriction for the two-year period immediately following separation from State service.

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Two-Year Bar

- Examples of Appearing or Practicing:
 - Representing a client in a hearing or other proceeding before the former agency.
 - Writing, preparing, or submitting an application to the former agency for grants or RFPs.
 - E-mails, phone calls, and meetings on and off site with a former agency that are considered attempts to influence the former agency.
- Example of Backroom Services
 - Receiving compensation for a work product that will be reviewed by the former agency, even if the agency does not know the former employee was involved.

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Reverse Two-Year Bar

To ensure that State officers and employees do not use their State positions for the benefit of themselves or others JCOPE has interpreted the Public Officers Law as containing a “reverse two-year bar” that requires State officers and employees to recuse themselves from matters involving their former private sector employers for two years after entering State service (per **Advisory Opinion No. 07-04**).

Example:

Prior to commencing State service, you were a manager at Provider X, which is a private organization regulated by the Office of Mental Health (“OMH”). In May 2013 you became an OMH employee whose duties and responsibilities include reviewing and evaluating OMH audits of regulated entities such as Provider X. Is it permissible for you, in your capacity as an OMH employee, to review and evaluate audits of your former private employer Provider X?

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Answer:

No, not until May 2015. For two years, you should recuse yourself from all matters that pertain to your former private sector employer. Because your current OMH position enables you to exercise substantial discretion in matters pertaining to Provider X, there may be a perception that you could use your State position to “secure unwarranted privileges or exemptions” for your former employer, or raise suspicion that you may be engaged in acts that violate the public trust.

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Lifetime Bar – 73(8)(a)(ii)

- The lifetime bar prohibits a former State Officer or Employee from providing services regardless of compensation and from rendering services for compensation, in relation to any case, proceeding, application or transaction with respect to which the former employee was directly concerned and in which he or she personally participated or which was under his or her active consideration while in State service.
- Determined on a case-by-case basis
- Applies to a former employee who was directly involved in a specific case, proceeding, application or transaction
- May apply to a former high-level manager who supervised employees who were directly involved in a specific case, proceeding, application or transaction (Any future involvement in the specific case, proceeding, application or transaction is prohibited regardless of compensation, if the specific matter is before any State agency.)
- In any other circumstance or venue, such as before a Federal Agency or a court of law, you may only perform ~~uncompensated services~~ in relation to such matter.



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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Exceptions

- Government-to-Government**
Accepting a position as an employee of a Federal, state, or local government entity. Exception does not apply to independent contractors retained by such government entities.
- Continuity of Care for Health Care Professionals**
Former State-employed health care professionals may treat patients and clients at the State facility which formerly employed the health care professional.
- Public Officers Law 73(8-b) Certificate of Exemption**

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Comparable AICP Rules of Conduct:

- We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

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Public Officers Law 73(8)(a) – Post-Employment Restrictions

Public Officers Law 73(8-b) Certificate of Exemption

- Pursuant to Public Officers Law 73(8-b), JCOPE is authorized to grant exemptions to both revolving door provisions of the Public Officers Law to permit an agency to contract with a former employee for services.
- JCOPE can issue a Certificate of Exemption where “the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost.”

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Civil Service Law 107 (“Little Hatch Act”) - Political Activity in the Workplace

- The term “political activity” means doing something in active support of or in opposition to a political party, a candidate for partisan political office (e.g., President, senator, representative, state or local legislature or office), or a partisan political group.
- Civil Service Law 107 prohibits certain political activity in the workplace.
- JCOPE has the jurisdiction to enforce these restrictions over those individuals subject to Public Officers Law 73.



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Civil Service Law 107 ("Little Hatch Act") - Political Activity in the Workplace

Prohibitions

- State Officers and Employees may not be questioned, directly or indirectly, about their political affiliation as a condition of employment.
- A potential employee cannot be asked about their political party affiliation, whether or not that applicant made any political contributions or how that applicant voted.
- No person can use his or her official State position to coerce, intimidate or influence other State Officers or Employees for any political purpose, action or contribution, or interfere with any election.
- State offices may not be used for soliciting or collecting any political contributions.
- No State Officer or Employee shall corruptly use or promise to use any official authority or influence in exchange for political action on another's part.

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Civil Service Law 107 ("Little Hatch Act") - Political Activity in the Workplace

Examples of political activity that would violate Civil Service Law 107 if done while on duty or using NYS property include:

- circulating a candidate's nominating petition within your office;
- using the computer in your office after work to produce a brochure in support of a candidate's campaign;
- sending e-mail invitations to campaign events to friends within the agency; and
- using New York State Internet connections to forward e-mail messages received from a partisan campaign or someone supporting a partisan candidate.

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Civil Service Law 107 ("Little Hatch Act") - Political Activity in the Workplace

Comparable AICP Rules of Conduct:

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

20. We shall not unlawfully discriminate against another person.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

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Public Officers Law 73-a Financial Disclosure

Overview

- Section 73-a of the Public Officers Law requires certain State persons to file an annual Financial Disclosure Statement ("FDS").
- The purpose of the FDS is to provide transparency in order to aid in the prevention of corruption, favoritism, undue influence and abuses of official position.
- An FDS is a publicly available record containing information about the financial holdings and professional associations of filers and their spouses.
- FDSs for Statewide Elected Officials, and Legislators, are posted on JCOPE's website. Copies of FDSs for all other State officers and employees, are made publicly available upon request.
- **Rules Governing access to FDS's and other publicly available records are set forth in Title 19 NYCRR Part 937**




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Public Officers Law 73-a Financial Disclosure

Comparable AICP Rules of Conduct:

3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer; and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.

4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.

5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.

6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.

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Public Officers Law 73-a Financial Disclosure

Who is required to file?

- Officers, members, directors and employees of any State agency, public authority, public benefit corporation, commission, or legislative employees who:
 - Are designated by their appointing authority as a Policy Maker
 - Receive annual compensation in excess of the job rate of a SG-24 CSEA equivalent (\$88,256 in 2011). *Part-time employees whose annual full-time salary exceeds \$88,256 (but whose actual compensation is less) are required to file an FDS.*
 - The four Statewide elected officials, Legislators, and candidates for those offices
 - Political party chairpersons for State committees and county committees with a population over 300,000



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Public Officers Law 73-a Financial Disclosure

- Financial Disclosure Statements are publicly available records
- Redaction - JCOPE can review requests from filers wishing to:
 - Redact specific information from the copy made publicly available (per **Executive Law 94(9)(h))**)
 - Not answer specific questions on the FDS regarding a spouse or minor child (per **Executive Law 94(9)(j))**)
 - These requests are granted in limited circumstances. The procedures for appealing a denial of such request are set forth in Title 19 NYCRR Part 941.19
- Privacy Concerns – What you should know
 - JCOPE automatically redacts the name of any minor child from the copy of the FDS that is made publicly available.
 - Home addresses are redacted from publicly available copies.



Public Officers Law 73-a Financial Disclosure

Applications can be filed for Exemptions from filing an FDS in its entirety

- JCOPE may exempt only non-Policy Makers provided the applicant's duties do not involve the negotiation, authorization or approval of contracts, financial agreements, sales, grants, adoption or repeal of rules and regulations and other related matters. :
- Such an exemption may be requested by an individual or by an agency on behalf of a class of individuals in the same position.
- Exemption procedure is set forth in Title 19 NYCRR Part 935

Extensions

- You may request an extension of time to file an FDS on the basis of justifiable cause or undue hardship.
- Procedures for requesting an extension are set forth in Title 19 NYCRR Part 936.

Joint Commission on Public Ethics (JCOPE)

Core Functions of JCOPE

- Ethics oversight through financial disclosure for Executive and Legislative Branch Officers and Employees
- Lobbying oversight through Lobbyist and Client reporting
- Training and Education
- Advice and Guidance
- Investigating possible violations of: the Lobbying Act by lobbyists and clients, the Public Officers Law by Executive and Legislative Branch employees and violations of Civil Service Law 107 ("Little Hatch Act") by Executive Branch employees
- Enforcement, including adjudication, of applicable violations by Executive Branch employees and Lobbyists and Clients

Joint Commission on Public Ethics (JCOPE)

Comparable AICP Structure:

- AICP Ethics Officer
- AICP Ethics Committee
- Provides guidance, advice and training, investigates alleged code violations and conducts enforcement

Joint Commission on Public Ethics (JCOPE)

Advice and Guidance

- Anyone who falls under the jurisdiction of the Joint Commission on Public Ethics should contact JCOPE if they have questions or concerns about how ethics laws and regulations apply to their individual circumstances.
- JCOPE issues 2 types of Advisory Opinions, Informal and Formal

Informal Advisory Opinion

Confidential

Issued by JCOPE staff based on precedent

Formal Advisory Opinion

Public Document

Issued by JCOPE Commissioners

Joint Commission on Public Ethics (JCOPE)

Seeking Advice or Guidance?

For Legal Guidance Contact the Attorney of the Day:

Via E-mail at: lsael@jcope.ny.gov
 Via Phone at: (518) 408-3976

For General Questions or Questions on Training:

Via E-mail at: education@jcope.ny.gov
 Via Phone at: (518) 408-3976

Joint Commission on Public Ethics (JCOPE)

Comparable AICP Process:

- AICP Ethics Officer receives ethics inquiries and issues advisory opinions known as Informal Advice and Formal Advice.

Informal Advice

Informal advice not written
Not binding on AICP

Formal Advice

Issued in written form
Binding on AICP.

- Published Formal Advisory Rulings - AICP Ethics Committee issues to provide interpretation of the AICP Code. Either converts Formal Advice issued by the Ethics Officer into a Formal Advisory Ruling or issues and publishes its own.

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Local Government Ethics Requirements

- In early 1990s State Legislature enacted ethics laws comparable to those affecting State officials, agencies and entities
- New York State General Municipal Law Article 18 entitled "Conflicts of Interest of Municipal Officers and Employees."
- Every City, County, Town and Village government and School District and Fire District were required to enact and establish their own ethics laws and regulations based on GML Article 18
- GML Article 18 addresses conflicts of interest and established a Code of Ethics.
- GML Article 18 imposed the filing of financial disclosure statements.
- Allows for establishment of local boards of ethics.

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Investigations and Enforcement

Investigation and Enforcement Overview

- State Government ethics violations are investigated by JCOPE.
- If JCOPE is going to commence an investigation, the subject will receive notice and an opportunity to be heard.
- All communications and records related to such an investigation are confidential unless and until JCOPE issues a Substantial Basis Investigation Report, which sets forth facts and legal analysis demonstrating there is a substantial basis to conclude that an ethics violation has occurred.
- Issuance of Substantial Basis Investigation Report starts formal hearing process.
- Hearing conducted by independent hearing officer in accordance with JCOPE's adjudicatory proceeding regulations set forth in Title 19 NYCRR Part 941.
- Hearing officer makes recommendation to JCOPE concerning facts and penalty.
- JCOPE may adopt in whole or in part, the hearing officer's findings of fact and penalty recommendation, or may reverse, remand or dismiss the case based on the record produced at the hearing.



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Investigations and Enforcement

Civil Penalty Amounts

Public Officers Law 73*, 73-a, and Civil Service Law 107 Violations (Violations Involving "Business or Professional Activities by State Officers and Employees and Party Officers")

- Civil penalty of up to \$40,000 plus the value of any gift, compensation or benefit received may be imposed.
- *For certain violations of Public Officers Law 73, JCOPE may, in lieu of or in addition to such civil penalties, refer the matter to the appropriate prosecutor (Class A misdemeanor)

Public Officers Law 74(3)(a-e), 74(3)(g) and 74(3)(g)(i) Violations (Violations of The Code of Ethics)

- Civil penalty of up to \$10,000 plus the value of any gift, compensation or benefit received may be imposed.

Public Officers Law Violations of 74(3)(f) and 74(3)(h) (Violations of The Code of Ethics)

- Officers and employees should always consider their conduct in light of these standards. Violations of 74(3)(f) and (h) carry no monetary civil penalty under the Public Officers Law; however violators are still subject to his or her agency's disciplinary action.

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Investigations and Enforcement

Public Officers Law 73-a – Financial Disclosure Violations

- If you fail to file a statement or if you file a deficient statement, JCOPE will notify you.
- If you fail to comply, JCOPE will send you and your appointing authority a notice of delinquency that advises you of fees and penalties. Notices of delinquency are made publicly available on the Commission's website.
- If you fail to file the financial disclosure statement, you may be subject to a civil penalty up to \$40,000 after a hearing.
- In lieu of a civil penalty or in addition to such penalty, JCOPE may refer a violation to the appropriate prosecutor for criminal prosecution as a misdemeanor offense.

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Investigations and Enforcement

Comparable AICP Process:

- AICP Ethics Officer receives ethics inquiries and issues advisory opinions known as Informal Advice and Formal Advice.
- AICP ethics violations (charges of misconduct) investigated by AICP Ethics Officer.
- Ethics Officer notifies Respondent and oversees process of response to charges.
- Ethics Officer serves as "Investigator/Prosecutor," determines if investigation warranted and assigns investigator.
- Dismissal of charges or Issuance of Complaint
- If needed, hearing conducted by assigned "Hearing Official"
- AICP Ethics Committee decides the case.

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Thank You and Good Evening

Questions?

Contact: John W. Pavacic, Executive Director
Central Pine Barrens Joint Planning and Policy Commission

Phone: (631) 288-1079
E-mail: jpavacic@pb.state.ny.us

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