

SUFFOLK COUNTY PLANNING FEDERATION

In collaboration with

AMERICAN PLANNING ASSOCIATION

NEW YORK DEPARTMENT OF STATE

SUFFOLK COUNTY PLANNING COMMISSION

RAUCH FOUNDATION



**Autumn
Planning Conference
2014**

**Brookhaven National Laboratory
Upton, NY**

**Tuesday, October 21, 2014
General Sessions 3:00-9:00 p.m.**



Resource Manual

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



October 21, 2014

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 20 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:

[Suffolk County Planning Federation](#)

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
John Corral, Planner
Carl Lind, Cartographer
Kate Oheim, Assistant Cartographer
Colleen Badolato, Secretarial Assistant
Christine DeSalvo, Senior Clerk Typist
Michael Selig, GIS Technician II

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: Northeast Solar Research Center (1mw Solar Facility)

BNL is developing a new Northeast Solar Energy Research Center (NSERC) on its campus that will serve as a solar energy research and test facility for the solar industry

Planning and Zoning Case Law (a) (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

Town Planning Directors Roundtable (e)

Topical Land Use and Planning issues are discussed by Long Island's Top Planners

Ann Marie Jones Town of Babylon, Tullio Bertoli Town of Brookhaven, Marguerite Wolffsohn Town of East Hampton, Anthony Aloisio Town of Huntington, Richard Zapolski Town of Islip, Jefferson Murphree Town of Riverhead, Paul Mobius Town of Shelter Island, Town of Smithtown, Kyle Collins Town of Southampton, Heather Lanza Town of Southold.

Nassau County Transit Oriented Development (e)

Cultivating Opportunities for Sustainable Development in Nassau County

Nassau County issued a report, entitled, Cultivating Opportunities for Sustainable Development in March of 2014 as part of the HUD-funded New York –Connecticut Sustainable Communities Planning Grant Program. The Nassau report seeks to foster opportunities across Nassau County and beyond to plan for and implement strategies that create livable and sustainable communities. After a review and assessment of 21 commuter rail station areas, three were chosen to receive a pilot study that will act as examples for how transit supported development and strategic infrastructure improvements can result in benefits to the combined economic, social and environmental sustainability of communities across Nassau County. Station areas in the Village of Lynbrook, Valley Stream and the Hamlet of Baldwin were the three, final areas chosen to receive a transit-supportive development (TSD) pilot study after an exhaustive selection process that consisted of an assessment of infrastructure availability, municipal willingness and community desire, economic feasibility and the potential for replication in other areas of the County. The pilot studies were conducted with the purpose of creating fully developed and fundable strategies for implementing transit-supported development at varying scales.

Financial Analysis of Shared Services (e)

Working cooperatively with neighboring communities can help local governments implement shared solutions to common problems and generate new service delivery capacities. Cooperation enables local governments to reduce the cost of services without compromising the quality of service delivery. This course will examine the benefits of cooperation through case studies and analysis of the financial implications of actual cooperative projects funded by the New York State Department of State's Local Government Efficiency Program

Past Planning Directors and the next Generation of Planners Roundtable

Questions for discussion from the recipients of APA Long Island's Planning Scholarship winners past and present Past Planning Directors and the Next Generation of Planners Roundtable

Lee Koppelman, Stephen Jones, Thomas Isles

Ethics (a) (e)

The public interest requires that municipal officers be of good moral character and integrity. Municipal officers should be protected from unwarranted assault on their integrity. This course will help members of planning boards and zoning boards of appeals determine if a conflict of interest exists in certain municipal transactions. Discussion topics will include Article 18 of the General Municipal Law and its disclosure requirements, common law conflicts, and the legal repercussions that follow.

“Long Island Index” a project by the Rauch Foundation (c)

Enhancing Community Dialogue Valuable tools from the Regional Plan Association and Long Island Index

Planning Commission – Hot Topics (e)

Suffolk County Land Bank , Central Pine Barrens Firewise, Suffolk County Water Quality Initiatives, Suffolk County Renewable Energy Initiatives, Connect LI, Farmland Protection

An introduction to priority land use initiatives in Suffolk County

Inter-municipal Planning (e)

Sharing the cost of a planning project with a neighboring community that shares common problems or goals can ensure a high quality planning project that is useful for all involved communities at a lower cost to taxpayers. Inter-municipal planning projects bring together different stakeholders with unique perspectives, leading to more comprehensive solutions and often a unifying vision. This program provides an overview of the statutory abilities of local communities, case studies from across New York and an opportunity to exchange ideas for planning at an inter-municipal level.

SEQRA (e)

An overview of the SEQRA process with time for questions and answers for case specific scenarios.

An Overview of Funding Sources (e)

Session participants will learn about a variety of County and state funding sources to implement community planning and revitalization projects.

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 **

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 2014 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

Andrew Amakawa, Suffolk County Department of Economic Development & Planning

Andrew Amakawa is a Research Technician at the Suffolk County Department of Economic Development and Planning administering the day-to-day operations of the Suffolk County Farmland Preservation Program and annual enrollment of the Agricultural Districts Program in Suffolk County. Andrew serves as staff to the Suffolk County Farmland Committee and Suffolk County Agricultural & Farmland Protection Board. Andrew's work experience includes zoning and subdivision analysis, grant research, staff support to the Suffolk County Planning Commission, and foil coordination. Andrew was a recipient of the 2013 Arthur Kunz Memorial Scholarship from the American Planning Association Long Island Section. Andrew holds a Bachelor of Arts degree in Urban Studies from Vassar College.

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.

Tullio Bertoli, Planning Commissioner for the Town of Brookhaven

Tullio Bertoli is a graduate of the Yale School of Architecture and was a Fulbright Scholar in Planning at the American Academy in Rome. His professional credentials include APA, AICP and LEED AP. As Planning Commissioner for the Town of Brookhaven, Mr. Bertoli is directly responsible for personnel management and general supervisory oversight of a 100 person staff consisting of four divisions including Planning, Building, Engineering, and Environmental. He is responsible for any and all land use, environmental and planning related matters for a township of approximately 500,000 people and over a composite area of 530 square miles. Some of the initiatives created under his guidance are:

- Carman's River Watershed Protection Plan: Overlay District, TDR program and MF Code revision
- Ronkonkoma HUB Transit Oriented Development with form-based zoning initiative
- Blight to Light (B2L) Overlay Initiative to redevelop blighted properties throughout Town
- Various Hamlet studies including Rte. 25 Study, Medford, Farmingville, Bellport and Ronkonkoma

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- Major Code revisions and amendments to facilitate approvals
- Coram Theater B2L Site Plan: The Meadows TND Village: Silveri Lifestyle Village
- Pine Barrens redemption component code revisions
- Major design revisions of varying projects to Smart Growth principles

Lisa Broughton, Suffolk County Energy Director and Bio/High Technology Development Specialist

Lisa Broughton has served as the Suffolk County Energy Director since 2008. As a lead for the Suffolk County Energy Working Group, composed of energy stakeholders from various County departments, she developed and managed the two largest photovoltaic installations in Suffolk County.

The first was the Solar Carport Project, 12.8 Megawatts of PV carports located at six County parking lots. The second, currently in the design phase, is the installation of 6.8 megawatts of ground mount PV at the County-owned Francis S. Gabreksi Airport in Westhampton, NY. She serves on the Greater Long Island Clean Cities Coalition Board of Directors, and helped secure funding for the County's first two CNG stations and the purchase of CNG vehicles for the County fleet.

As an economic development specialist, Ms. Broughton serves as the advocate for manufacturers and businesses in the emerging fields of clean energy, high-technology and bio-technology. She runs the Suffolk County Inventors and Entrepreneurs Club which helps bring new products to market and supports new business enterprises. She previously served as Economic Development Director for the Town of Huntington.

Ms. Broughton holds a Master's Degree in Public Policy with specialty in Environmental and Energy Policy from Stony Brook University and a Bachelor's Degree in Asian Studies from Albany University. She is a LEED AP in Building, Design & Construction.

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 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.

John Carter, Director of Communications, US Department of Energy Brookhaven Site Office, Brookhaven National Laboratory

John Carter is the director of communications for the U.S. Department of Energy's Brookhaven Site Office at Brookhaven National Laboratory. John has more than 20 years experience in strategic communications and stakeholder relations. Formerly a newspaper reporter and photographer, John has a BS from Southern Illinois University-Carbondale and an MBA from The George Washington University.

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.

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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.

Kyle Collins, AICP, Town Planning and Development Administrator in the Department of Land Management for the Town of Southampton, overseeing the Town's Building, Environmental, and Planning Divisions

Kyle Collins, AICP –Kyle is currently the Town Planning and Development Administrator in the Department of Land Management for the Town of Southampton, overseeing the Town's Building, Environmental, and Planning Divisions. Prior to working for the Town as the Town Planning and Development Administrator, Kyle was a principal in charge of KPC Planning Services, Inc. which provided a broad base of planning and environmental expertise to both private and public sector clients. Work ranged from representing municipalities in the preparation of long range planning studies, zoning regulations, and design guidelines, as well as providing technical expertise on development applications under review by various boards. In addition, provided site planning/subdivision design, and permitting services to the private sector for various development applications. Prior to starting his own consulting business, Kyle was the Planning Director for the Town of Southampton, in charge of both short- and long-range planning divisions. The balance of Kyle's professional planning career has been in private planning and environmental consulting firms, which served both the public and private sectors. Kyle has received several planning awards, most recently a Vision Long Island – Smart Growth Award. Kyle is certified with the American Institute of Certified Planners and is a member of both the American Planning Association and the Congress for The New Urbanism.

Carolyn E. Fahey, Intergovernmental Relations Coordinator Suffolk County Economic Development and Planning

Carolyn has served Suffolk County for over 34 years, the last 21 as the Intergovernmental Relations Coordinator for the Department of Economic Development and Planning. Her responsibilities include working directly with individual businesses to assist in their efforts to locate, grow or expand in Suffolk County. In her current role she represents the department in front of the SC Legislature on various programs and initiatives. Carolyn serves as Chair of the Suffolk County Downtown Revitalization Citizens Advisory Panel and the Suffolk County Industrial/Commercial Incentive Board. In addition, she administers the recently revamped Foreign Trade Zone Program and oversees Francis S. Gabreski Airport, a 1,480 acre general aviation airport and the location of a new 58 acre industrial park.

Mrs. Fahey has a B.S in Business Administration and lives on the beautiful North Fork.

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 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

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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.

David M. Flynn, AICP, Assistant Director of Planning, Town of Smithtown

David Flynn, is the Assistant Town Planning Director for the Town of Smithtown, a post he has held since 1985. In 1977, as an environmental aide, he first started work for the town. Flynn has a BS in Environmental Studies and a Bachelor of Landscape Architecture. Both degrees are from the SUNY College of Environmental Science and Forestry and Syracuse University. He has worked and volunteered for a variety of organizations, including the Long Island Regional Planning Board; the Town of Houlton, Maine; and the Village of Medina, NY. Flynn has been a member of the American Planning Association since 1980 and the American Institute of Certified Planners since 1989. His professional interests include comprehensive planning, zoning, urban design, and environmental planning. Flynn's personal interests include running, model-building, and history.

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

Andy is Chief Planner at the Suffolk County Department of Planning; and Vice Chair of the Central Pine Barrens Credit Clearinghouse. 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.

Doon Gibbs, Laboratory Director, BNL

Doon Gibbs leads Brookhaven National Laboratory, a multi-program lab with 3,000 employees, more than 4,000 facility users, and an annual budget of more than \$700 million. Home to seven Nobel Prizes, Brookhaven has major programs in nuclear and high-energy physics, physics and chemistry of materials, environmental and energy research, nonproliferation, neurosciences and medical imaging, and structural biology.

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Doon Gibbs earned a B.S. in physics and mathematics from the University of Utah in 1977, and an M.S. and Ph.D. in physics from the University of Illinois at Urbana-Champaign, in 1979 and 1982 respectively. He joined Brookhaven in 1983 as an assistant physicist and progressed through the ranks to become a senior physicist in 2000. Gibbs's managerial experience at Brookhaven includes the posts of Group Leader of X-ray Scattering, Associate and Deputy Chair of Physics, Head of Condensed Matter Physics, Interim Director of the Center for Functional Nanomaterials, and Associate Laboratory Director for Basic Energy Sciences. He became Deputy Laboratory Director for Science and Technology in 2007.

Gibbs was honored with the 2003 Advanced Photon Source Arthur H. Compton Award "for pioneering theoretical and experimental work in resonant magnetic x-ray scattering, which has led to many important applications in condensed matter physics." Gibbs was instrumental in overseeing the design and construction of Brookhaven's Center for Functional Nanomaterials, and has played a significant role in advancing other major projects including the National Synchrotron Light Source II and Interdisciplinary Science Building. He has also overseen the growth of Brookhaven's basic energy sciences programs, including chemistry, materials science, nanoscience, and condensed matter physics.

Gibbs is a Fellow of both the American Association for the Advancement of Science and the American Physical Society.

Anthony S. Guardino, Land Use & Municipal, Partner, FarrellFritz

Anthony S. Guardino is a partner in the firm's land use and municipal and environmental practice groups, concentrating in land use, zoning, municipal and environmental law. He regularly appears before municipal boards in connection with a broad range of land use and zoning matters, such as applications for change of zone, variances, special permits, and site plan approval. Mr. Guardino also serves as counsel to several villages in Nassau and Suffolk Counties, providing advice to their Board of Trustees, Planning Board and Zoning Board with respect to matters within their jurisdiction. He also serves as special counsel to a several Long Island towns and villages and to two fire districts.

Mr. Guardino is a regular columnist for the New York Law Journal, writing on zoning and land use planning matters. He contributes often to the firm's Long Island Land Use & Zoning blog. Mr. Guardino is also a frequent lecturer at seminars on land use and zoning law and the State Environmental Quality Review Act (SEQRA), and has participated in programs sponsored by the New York State Bar Association, Nassau County Bar Association and Suffolk County Bar Association, as well as by private providers of continuing education for attorneys, architects, engineers and other professionals. He also participates in the firms' annual training program for zoning board and planning board members.

In 2013, he was appointed to the board of Touro Law's Institute of Land Use & Public Policy.

Prior to joining Farrell Fritz, Mr. Guardino was a land use planner with a New York City-based development consulting firm where he obtained significant knowledge and experience in the areas of land use planning, zoning, and environmental regulation. As a research assistant to Professor James A. Kushner, a leading author and commentator in the area of land use law, Mr. Guardino surveyed the various methods of growth management that have been employed by municipalities and their susceptibility to legal challenge and drafted a chapter of Professor Kushner's legal treatise entitled *Subdivision Law and Growth Management* (Clark Boardman Callaghan, 1992).

Mr. Guardino received his Juris Doctor Degree in 1991 from Southwestern University School of Law in Los Angeles, California, where he was the recipient of the school's Exceptional Achievement Award in Federal Courts and the American Jurisprudence Book Award for academic excellence in the study of Property and Legal Communication Skills. He is a former judicial extern to the Honorable Mildred L. Lillie, a presiding justice of the California Court of Appeals, and interned with the California Attorney General's office.

In addition to his law degree, Mr. Guardino received a Master of Arts Degree in Architecture and Urban Planning from the University of California, Los Angeles, in 1986 and a Bachelor of Arts Degree in 1983 from Pitzer College in Claremont, California, where he majored in Environmental Studies.

Mr. Guardino is admitted to practice before State and Federal courts in New York and New Jersey. His professional affiliations include membership in the Nassau County, Suffolk County, New York State and American Bar Associations, and the American Planning Association. He recently served as a co-chair of the Municipal Law Committee of the Suffolk County Bar Association.

He has an AV Preeminent Martindale-Hubbell Peer Review Rating.

Danielle Hundt, Communications Coordinator, Rauch Foundation

Danielle Hundt is the communications coordinator at the Rauch Foundation, which publishes both the Long Island Index and Build a Better Burb. Prior to joining the Rauch Foundation Danielle spent 6 years managing communications and outreach at Ability Beyond Disability, a nonprofit organization headquartered in Bethel, CT. Danielle graduated with her BA in Political Science from Marist College in 2007 and then with her master's in Public Administration in 2011. Born and raised in Smithtown, she is excited to be living back on Long Island and working towards positive change in the region.

Thomas A. Isles, AICP

Tom Isles was the Director of Planning for Suffolk County from 2001 to 2011. His prior positions included serving as the Deputy Director of Planning for the Cayman Islands and as the Commissioner of Planning and Development for the Town of Islip. Since his retirement from Suffolk County, Mr. Isles has worked as a consultant to the Incorporated Village of Port Jefferson and has served as the Vice Chairman of the Suffolk County Board of Ethics. He is presently employed by Cameron Engineering and Associates and is working on the preparation of Community Reconstruction Plans associated with the NY Rising-Superstorm Sandy recovery program. He is also employed by Hunt, Guillot and Associates (HGA) in the implementation phase of the NY Rising Program. Mr. Isles is a graduate of Rutgers University and Stony Brook University and has been a member of APA and AICP for over thirty years.

Judy Jakobsen, Policy and Planning Manager for the Central Pine Barrens Joint Planning and Policy Commission & the Suffolk County Water Authority

Ms. Jakobsen's background encompasses over 29 years of experience in the environmental field which includes 10 years of experience in various environmental scientist positions held with private environmental consulting firms involved in environmental planning, groundwater investigations and solid waste management and over 19 years of experience with state agencies in positions focused on pollution prevention, legislation, water resource issues, and land use management and planning. She currently works for the Suffolk County Water Authority as the Policy and Planning Manager for the Central Pine Barrens Joint Planning and Policy Commission. Ms. Jakobsen has been involved with the Central Pine Barrens initiative since its inception as an environmental analyst reviewing development projects and land use management plans which later went on to include managing the Commission's Pine Barrens Credit Program. In her current position as the Policy and Planning Manager, Ms. Jakobsen provides oversight of these programs and the other divisions of the Commission along with the day to day operation of the Commission's office. Ms. Jakobsen has a Bachelors of Science Degree in Environmental Science with a concentration in Biology and land use planning from Long Island University at Southampton and a Masters of Science Degree in Environmental Science with concentration in land use management and planning from Long Island University at CW Post.

Ann Marie Jones, Town of Babylon Commissioner of Planning and Development

Ann Marie Jones is the Town of Babylon Commissioner of Planning and Development. With a total population of 211,792 and an average of 3.03 persons living in 69,048 households, Babylon is the most densely populated town in Suffolk County. The Department of Planning and Development is one of the largest in town government and is actively engaged in land use decisions and policies.

Prior to being appointed commissioner, Ms. Jones was the first person to head the Office of Downtown Revitalization and Economic Development in the Town of Babylon. Ms. Jones led a multi disciplinary team dedicated to creating and implementing downtown community vision plans and economic development strategies for hamlets within the town, with a focus on Wyandanch. She secured over five million dollars in grants for downtowns in various communities. In 2005 Babylon received the largest Brownfield Opportunity Area (BOA) grant in Nassau and Suffolk Counties, for the community of Wyandanch.

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Prior to joining the Town of Babylon, Ms. Jones developed affordable housing in the towns of Riverhead, Brookhaven and Southampton as Planning Director for the Long Island Housing Partnership. In the early 1980's she was part of the design and community development team in the Town of Islip that laid the foundation for the current revitalization of downtown Bay Shore. She received her Master's Degree in Planning from Pratt Institute and is a member of the American Planning Association.

Steve Jones AICP

For the past forty years, the scope of responsibilities and accomplishments of Steve Jones A.I.C.P. are remarkable. Directing Town and County Planning Departments, implementing a transformation of an abandoned mental hospital to a College, CEO of a Water Authority serving over a million residents; Steve, as visionary and nuts and bolts practitioner, as author of cutting edge planning studies and as an Executive making those studies a reality, has helped make Suffolk County a national leader in open space, groundwater and environmental preservation.

Starting with his work on the Suffolk County Comprehensive Plan, he Implemented Its Smart Growth principles decades before it became a buzzword. As Deputy and Commissioner for the Town of Islip Department of Planning, Housing and Development 1972 to 1983, the service roads and parking lots he developed in Bay Shore were the foundation for that Downtown's revitalization. He Implemented the transfer of over 600 acres of the Central Islip Psychiatric Hospital to the Town and the New York Institute of Technology. Between 1983 and 1993, as NYIT Vice President for Resource Development, Steve transformed abandoned buildings into a Campus for over 2000 students, which served as a catalyst for the nationally acclaimed redevelopment of the Hospital for mixed use comprising Industry, housing, shopping, offices, a minor league ballpark, Federal and County Courts, and recreation.

As Director of the Suffolk County Planning Department from 1993 to 2000, he was a key player in the creation and preservation of Long Island's 100,000 acre Central Pine Barrens. The Development Rights Transfer Program he developed preserves the County's main supply of drinking water, minimizing taxpayer expense, while promoting appropriate higher density housing and industrial development. As Director, he authored the County's Open Space Plan and its Agricultural Protection Plan, which guides the purchase of what is now over 10,000 acres of farmland. His consolidation of the Planning and Real Estate functions helped target land acquisitions, promoting floodplain protection and affordable housing.

These accomplishments made him a logical choice to be CEO of the Suffolk County Water Authority, the largest provider of drinking water in the nation, from 2000 to 2010. His oversight of its Planning and Operations during his tenure has helped maintain this most vital infrastructure asset. As current Director of the Suffolk County Maritime Museum, He continues to enhance the heritage of Suffolk County.

Steve has served the Long Island planning community in many capacities, as Director of the Suffolk Community Development Corporation and Long Island Transportation Management; Chairman of the Suffolk County Planning Commission; Vice Chairman of the Town of Islip Industrial Development Agency; as one of the founders of the Suffolk County Planning Federation and Long Island Planners; as a charter member of AICP.

The diversity of Steve's awards, from the North Fork Environmental Council, Long Island Neighborhood Network, Save Our Bays, the Peconic Land Trust, for the Central Islip Master Plan, speak to his forty year contribution as a Planning thinker, innovator, and practitioner. He emulates the life of Andrew Heswell Green and is a worthy recipient of this year's Award in his honor.

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

INTRODUCTION

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.

Dr. Lee Koppelman, Professor at Stony Brook University

At age 87, Dr. Lee Koppelman has behind him a lifetime's worth of achievements on Long Island. These achievements include the completion of the federally sponsored comprehensive bi-county master plan developed between 1965 and 1970. Dr. Koppelman infused this study with the triple concept of "corridors, clusters, and centers," which allowed for the "linear" development of Long Island, with residential clusters along the north and south shores and industrial corridors and transport arteries cutting through the middle of the island. Dr. Koppelman's career exemplifies the ideal of the publicly minded citizen, the man of outstanding character dedicated to the public good. The Long Island region's planning "czar" for more than four decades and a Leading Professor of Political Science at Stony Brook University, Dr. Koppelman's achievements are equal in some respects to those of New York's Robert Moses; they include a nationally recognized and widely emulated open space preservation program; a massive farmland preservation program; comprehensive master plans that have sustained Long Island's unprecedented growth, and much more. Whether it be in his role as Executive Director of the Long Island Regional Planning Board, the Suffolk County Planning Director, or as a Leading Professor at Stony Brook University, positions Dr. Koppelman has held for fifty years, he has recast the image of the "public servant" in a unique and inspiring new light. More recently, Dr. Koppelman has led planning committees involved in the Carman's River plan, the plan for the hamlet of Yaphank, and the Brookhaven Town rezoning effort.

Samuel E. Kramer, Suffolk County Planning Commission

Samuel E. Kramer, a member of the Suffolk County Planning Commission from the Town of East Hampton, is an attorney with offices in Manhattan and East Hampton, whose practice includes the representation of businesses, individuals, banks, property owners, Bankruptcy Trustees, secured and unsecured creditors, foreign Nations and States and governmental entities in complex commercial and civil litigation, bankruptcy matters, and appeals. At the present time, Mr. Kramer is representing over 200 individual residents of a large manufactured home park in Suffolk County, on whose behalf he is negotiating the payment of relocation packages in connection with the redevelopment of the park. He is an alumnus of Brooklyn Law School, class of 1982, and New York University College of Business and Public Administration. Previously, Mr. Kramer served on the East Hampton Town Planning Board and was co-chair of the Wainscott Citizens Advisory Committee for 8 years."

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-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.

Heather Lanza, Planning Director for Southold Town

Heather Lanza, AICP, has been involved in planning on Long Island since 1999. Currently Ms. Lanza is the Planning Director for Southold Town where for the past seven years she has worked to make the planning process more efficient and user-friendly, as well as leading the effort to update the Town's Comprehensive Plan. She earned her certification as

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a planner from the American Institute of Certified Planners in 2007, and has a Master's Degree of Science in Conservation Biology from the University of Massachusetts at Amherst.

Sean M. Maguire, AICP Regional Project Manager with the New York State Department of State's Division of Local Government Services

Sean M. Maguire is an experienced planner and presenter, providing technical assistance to local officials on municipal management and land use matters. In the Department's Municipal Management Unit, he assists communities across upstate New York with the state's Local Government Efficiency program, the federal Northern Border Regional Commission and the Governor's Regional Economic Development Councils. Sean supports cooperative approaches to solving public sector challenges in planning, economic development, and management.

Prior to joining the Department of State, Sean was the Senior Economic Development Planner for Albany County's Department of Economic Development, Conservation, and Planning. With Albany County, he administered the Empire Zone program, managed an EPA Brownfield Pilot project and inventory, and served the County Executive's economic development representative to the local Workforce Investment Board. He also served as the acting Senior Planner, providing direct support to the County Planning Board, leading an initiative to improve the efficiency of the County Planning Board by developing a web-based project submission and tracking system. In addition, Sean has worked as a private planning and economic development consultant.

He is a graduate of the University at Albany and holds Masters Degrees in Regional Planning and Public Administration. He specialized in community and economic development, and local government management. Sean holds additional certificates in GIS and Remote Sensing; Urban Policy; and Public Sector Management. Sean is a member of the American Institute of Certified Planners and Pi Alpha Alpha.

At home in the Capital Region, Mr. Maguire is actively involved in the community. He is a fire commissioner and volunteer firefighter for the Westmere Fire District of Guilderland. He serves as a spokesman for the Town of Guilderland Fire Chiefs' Association, providing important information about emergency incidents in the community. He has been an active member of the University at Albany Alumni Association for a number of years. He has been happily married to his wife Amie and is the proud dad to two wonderful children.

Jefferson V. Murphree, AICP, Town of Riverhead Building and Planning Administrator

Jefferson moved to Long Island in 1998 from Reno, Nevada and he is currently employed by the Town of Riverhead as the Building and Planning Administrator. Jefferson has more than 30 years of public and private sector experience in planning, land use, development and environmental protection in California, Nevada, New Jersey and New York.

Before working in Riverhead, Jefferson was employed by the Town of Southampton for more than 13 years as the Planning and Development Administrator. During his career, Jefferson has worked on more than 30 long range plans, including hamlet studies, open space preservation plans, farmland protection studies, groundwater protection strategies and downtown redevelopment plans. Each of these efforts led to a successful conclusion such as the construction of a new mixed-use commercial development in downtown Hampton Bays adjacent to the LIRR train station, adoption of farmland preservation laws and the construction of an organic golf course.

Jefferson has a bachelor's degree in Geography from the University of Miami and a Masters degree in City and Regional Planning from the Edward Bloustein School of Planning and Public Policy – Rutgers. He is a member of the American Planning Association and is nationally certified in planning by the American Institute of Certified Planners, is a New York State Certified Code Enforcement Official and he is a member of the Village of North Haven Planning Board.

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

INTRODUCTION

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.

August Ruckdeschel, Suffolk County Department of Economic Development & Planning, Farmlands Administrator

August Ruckdeschel is a former Long Island vegetable farmer with a B.S. in Business Administration from Washington & Lee University in Lexington, VA and a Master's degree in Public Policy from the University of Colorado in Boulder. After graduation in 2000, August worked for several years as a Research Analyst at Interep Radio Sales before returning to school, where he taught several courses in American Politics at the University of Colorado as a graduate student. During that period, August worked as a consultant for Common Cause Colorado where he helped pass Amendment 41, an amendment to the Colorado Constitution that introduced strict new lobbying reforms. After graduate school, August worked for the Suffolk County Police Department as a Public Relations Specialist and currently works in the Suffolk County Department of Economic Development & Planning as the Farmlands Administrator. August serves on the Suffolk County Farmland Committee and on the Cornell Cooperative Extension Board of Directors and acts as the Chair of both the Suffolk County Food Policy Council and the Suffolk County Aquaculture Leasing Board.

Aly Sabatino, Planner with the Town of Southold

Aly Sabatino has been a Planner with the Town of Southold since 2011. At the Town, her focus is on subdivision applications, where she tries to balance conservation with economic growth. She received her Masters Degree in Environmental Management in 2011 from Hardin Simmons University in Abilene, Texas and finished her undergrad degree in 2009 in both Geology and History from Northeastern University in Boston, Massachusetts.

David Sabatino, Associate Planner, Regional Plan Association

David Sabatino is an associate planner at the Regional Plan Association, working primarily on Long Island projects. Prior to joining RPA, he worked for Sam Schwartz Engineering, as their systems operator at the Joint Transportation Management Center. David is also an entrepreneur, having opened a small business in Valley Stream, NY in 2011. David has a B.A. in History from Marist College and a graduate degree in urban planning from New York University.

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 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).

Samatha Segal, Executive Director of the Suffolk County Board of Ethics

Ms. Segal became the first Executive Director of the Suffolk County Board of Ethics in January 2013. She is an attorney admitted to practice law in New York with a background in Administrative Law. Prior to the Board of Ethics, she served

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in varying levels of government. She was an Administrative Law Judge appointed by the New York State Law Liquor Authority, an Administrative Law Judge appointed by the New York City Environmental Control Board, and as an Administrative Law Judge for the Nassau County Department of Health. Ms. Segal administers the Board's legal initiatives and training program. Ms. Segal's office is located at the Suffolk County Board of Ethics office at 3500 Sunrise Highway in East Islip New York.

Tiffany-Ann Taylor, Neighborhood Aide, Economic Development and Planning

Tiffany joined the Suffolk County Department of Economic Development and Planning in March of 2014 as part of the team primarily tasked with implementing Bus Rapid Transit in Suffolk County as part of the County Executive's "Connect Long Island" initiative.

Prior to joining the department, Ms. Taylor worked in workforce development at SEEDCO, a national non-profit, and subsequently interned for the Metropolitan Transportation Authority, the New York City Office of Emergency Management and the Suffolk County Department of Planning. Ms. Taylor holds a B.A in Government from The College of William & Mary and a M.S in City & Regional Planning from Pratt Institute. Tiffany-Ann Taylor was a recipient of the 2012 Arthur Kunz Memorial Scholarship.

Darnell Tyson, Deputy Commissioner of Suffolk County Department of Public Works

Darnell Tyson brings nearly 20 years of experience in the transportation industry from both the public and private sectors to this current post. Immediately prior to this Mr. Tyson was in the Long Range Bus Planning group of the Operations Planning division at New York City Transit, responsible for the administration of a \$25M capital budget and the inauguration of five BRT corridors, transporting over 100,000 customers a day. Functions included project management and leadership of a team of transportation planners responsible for the design, construction, inauguration and evaluation of the bus-related components of BRT expansion throughout the city. Mr. Tyson served on the selection committees for key BRT components including transit signal priority and branding, managed the consultant preparing the traffic and transportation study to support BRT implementation on Staten Island, and reviewed various transportation studies. Prior to this, Mr. Tyson was a transportation planner for Staten Island, including planning and analysis for the Staten Island local/limited stop bus network transporting 95,000 customers a day, the long-distance commuter express bus network transporting 35,000 customers a day and the Staten Island Railway serving 20,000 customers daily. Mr. Tyson holds a NYS professional engineer's license in Civil Engineering, a master's degree in Transportation Planning and Engineering, and a bachelor's degree in Civil Engineering.

Richard J. Zapolski, P.E., Civil/Site Engineer, Town Commissioner with the Town of Islip's Department of Planning and Engineering

Richard J. Zapolski, P.E. is a Civil/Site Engineer and Town Commissioner with the Town of Islip's Department of Planning and Engineering. Mr. Zapolski was brought on as a professional hire by Supervisor Croci and the Town Board to review and address efficiencies with the Divisions of Planning, Engineering and Building within this Department.

Mr. Zapolski has 24 years of civil/site planning and engineering, and consulting experience serving municipal, commercial, public and private clients in the New York metropolitan area, particularly Nassau and Suffolk Counties. His portfolio includes design projects in residential and commercial land development; national retail development, including the CVS Pharmacy development program; school and university land development including Suffolk Community College, NYIT, and civil/site support to architectural projects at many of Long Island's educational campuses. His expertise is civil/site planning, design and engineering.

He earned a Master's Degree in Civil Engineering from Manhattan College in 1994 and a Bachelor of Science in Civil Engineering from the University of Massachusetts, Amherst, MA in 1990.

Mr. Zapolski is affiliated with many organizations including the American Planning Association, American Society of Civil Engineers, National Society of Professional Engineers, New York State Society of Professional Engineers, American Planning Association, the International Council of Shopping Centers, Design Professionals Coalition of Long Island, and

INTRODUCTION

LEED for New Construction and Major Renovation. He is also the President of the Bayport-Blue Point Youth Lacrosse program with which he has been involved for 17 years, coaches lacrosse for Team 91, and has coached lacrosse for both his 14-year-old twins, Kevin and Kyla.



Mobile Workshop

North East Solar Research Center

Northeast Solar Energy Research Center (NSERC)

A multi-purpose research facility on the BNL campus

Solar PV Array Size and Type

- ~1.0 MW total – Area 1 sized for testing utility-scale inverters
- System voltage level of 1,000V
- Connected to BNL electrical distribution system
- Capability to test multiple panel technologies with crystalline silicon PV modules making up the bulk of the array
- Fixed tilt for bulk of the array with capability to install some modules on trackers for comparative tests
- Re-configurable to simulate different operating scenarios
- Open racks for comparison tests of other PV technologies

BOP Equipment

- Capability for running macro and micro inverters
- Standard inverters available for module testing
- Capability to incorporate storage technologies
- Load simulator to enable disconnecting from the BNL system for test purposes

Research Instrumentation

- Meteorological base station with precision instruments adjacent to the array
- Solar resource instrumentation at multiple locations within the array
- Power quality instrumentation at inverters and grid interconnection
- String-level current and voltage
- High Sample Rates –1 sec data (512 samples per cycle for PQ data)

Solar Energy Research Labs

- Standardized testing of solar system components (Flash data, I-V curves)
- Solar Resource Simulators, Load simulators
- Environmental Chambers – (duplicate environmental conditions for electronics installed on modules)
- Failure Analyses – UL and IEC Test Conditions for Modules and Inverters
- Environmental Research Lab
- Environmental, health and safety aspects of photovoltaic systems
- Life-cycle analyses

Meteorological Services Lab

- On site Met services
- Instrument repair and calibration

Data Acquisition Lab

- Array data collection, QA/QC, archive

Contacts:

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Grid Integration Studies



Smart Inverter Testing



Microgrid Test-bed



Field Testing



High Resolution Field Data



Field Pyrometer



Pyrgometer



Rotating Shadowband Radiometer



Power Quality



Total Sky Imager



Pyrheliometer



Sun Tracker

Northeast Solar Energy Research Center (NSERC)

BNL is developing a new Northeast Solar Energy Research Center (NSERC) on its campus that will serve as a solar energy research and test facility for the solar industry. The NSERC will include laboratories for standardized testing in accordance with industry standards, along with a solar PV research array for field testing existing or innovative new technologies under actual northeastern weather conditions. The NSERC will also include access to unique high-resolution data sets from the 32MW Long Island Solar Farm located at BNL. The vision for NSERC is to provide a facility that is accessible to the industry with capabilities to address the major challenges facing the deployment and integration of sustainable solar energy resources, particularly in the northeastern United States, as a means of ensuring the Nation's future energy security.

Business Model

NSERC will be available to the industry

Owned by DOE; Operated by BNL contractor (currently BSA*)
 Open to industry via pre-arranged access agreements
 No UL Certification or interconnect permits required

NSERC will host Sponsored Research

DOE sponsored research via proposals by BSA*
 Collaborative sponsored research via CRADAs**
 Collaborative research via joint proposals

Standardized Agreements will be Used

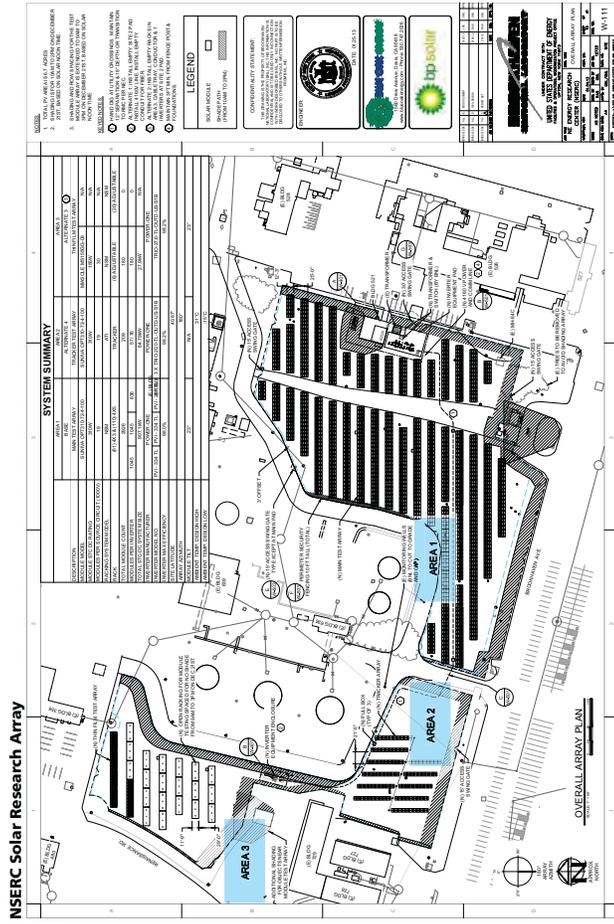
Address data sharing and intellectual property

Several overarching research themes are envisioned for the NSERC, including:

- Grid integration of solar energy resources
- Research and developmental testing of new solar system technologies, including new inverter control technologies, micro-inverters, and other technologies –
- No UL certification or interconnect permits required for field testing**
- Characterization and management of solar energy variability for plants in the Northeast
- Solar resource measurement and forecasting
- Test bed for Smart Grid enabling technologies, including smart grid sensors and micro-grid control schemes

*Brookhaven Science Associates

**Cooperative Research and Development Agreement



- #### Research Areas
- Solar Photovoltaics
 - Grid Integration
 - Smart Grid
 - Energy Storage
 - Smart Inverters
 - Solar forecasting
 - Reliability and Degradation
 - Environmental Sustainability
 - Field Testing

NSERC Mission: Support the expansion of solar power in the Northeast by providing high-quality data, field-testing, analyses, and solar energy expertise to address technical, economic, environmental, and policy issues facing solar power deployment in northeastern climates.

Area 1:
 ~907kw-dc for testing inverters, storage and micro-grids – and provide power to BNL

Area 2:
 ~65kw-dc for testing modules on trackers

Area 3:
 ~150kw-dc for testing new module designs and inverter topologies



General Session I

Case Law

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

PLANNING & ZONING CASE LAW UPDATE

PRESENTED BY:

Natasha E. Phillip, Esq.
October 2014

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CASES

State Preemption of Zoning: Mineral Resources Development

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 discussed the proper construction of Title 27 in relation to the authority of local governments to regulate land use vis-à-vis extractive mining and, in recent months, that body of case law has served as the primary basis for construing local governments' land use authority in relation to oil, gas and solution mining under Title 19, the OGSM Law.¹

The DEC is presently studying the environmental impacts associated with high-volume hydraulic fracturing (hydro-fracking), which is one process that can be used to extract natural gas from shale and other rock formations. In advance of a final environmental study by DEC, some municipalities have taken certain regulatory actions affecting the land under which natural gas may exist, and some such actions have been the subject of litigation.² The Court of Appeals settled an issue related to the use of land for the exploration of natural gas in *Wallach v. Town of Dryden*,³ which upheld the Appellate Division, Third Department (Appellate Court) decisions in *Anschutz Exploration Corporation v. Town of Dryden*⁴ and *Cooperstown Holstein Corporation v. Town of Middlefield*.⁵ Specifically, the Court of Appeals held that towns may ban oil and gas production activities, including hydrofracking, within municipal boundaries through the adoption of local zoning laws, because the supersession clause in the statewide Oil, Gas and Solution Mining Law (OGSML) does not preempt the home rule authority vested in municipalities to regulate land use.

Facts

The Court of Appeals made particular note of these legislative activities of the Town Board of the Town of Dryden, undertaken after natural gas companies began acquiring oil and gas leases from Dryden landowners for the purpose of exploring and developing natural gas resources:

1) The Town Board took the position that such operations fell within the catch-all provisions of the Town's zoning regulations that precluded any uses not specifically allowed.

2) The catch-all provision was clarified, through an amendment to the zoning regulations, to specify that all oil and gas exploration, extraction and storage activities were not permitted. The amendment occurred after the Town Board held a public hearing and reviewed a number of relevant scientific studies.

3) The Town Board identified a purpose statement, in adopting the amendment, declaring that the industrial use of land in the “rural environment of Dryden” for natural gas purposes “would endanger the health, safety and general welfare of the community through the deposit of toxins into the air, soil, water, environment, and in the bodies of residents.

In the *Cooperstown Holstein Corporation* case, the Court of Appeals noted that the Town Board of the Town of Middlefield took the following steps to clarify that the Town’s zoning regulations prohibited the use of land for the exploration of natural gas:

1) In 2011, the Town “undertook a lengthy and detailed review of the issue” and only after “commissioning a study to weigh the impacts that hydrofracking would have on Middlefield and conducting public meetings” did the Town Board then, by a unanimous vote, amended its master plan to adopt a zoning provision classifying a range of heavy industrial uses, including oil, gas and solution mining and drilling, as prohibited uses.

2) The amendment had a clear purpose statement that provided: “the Cooperstown area is known worldwide for its clean air, clean water, farms, forests, hills, trout streams, scenic view sheds, historic sites, quaint village and hamlets, rural lifestyle, recreational activities, sense of history, and history of landscape conservation”. For these reasons, the Town Board concluded that industrialization, such as hydrofracking, would “eliminate many of these features” and “irreversibly overwhelm the rural character of the Town.”

The entities who challenged the Town of Dryden and the Town of Middlefield’s zoning regulations, according to the Court of Appeals, did not dispute that, absent a state legislative directive to the contrary, municipalities ordinarily possessed the home rule authority to restrict the use of land for oil and gas activities in furtherance of local interests. The main claim being made by the entities was that the state legislature has clearly expressed its intent to preempt zoning laws of local governments through the OGSML’s “supersession clause,” which reads:

“The provisions of this article [i.e., the OGSML] 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 real property tax law” (ECL § 23-0303(2) Emphasis added).

The entities position was that this provision should be interpreted broadly to reach zoning laws that restrict, or, as presented in the Towns of Dryden and Middlefield, would prohibit oil and gas activities, including hydrofracking, within municipal boundaries.

Court’s Determination

The Court of Appeals concluded that the scope of section 23-0303 (2) must be construed in light of the decision in *Matter of Frew Run Gravel Prods. v. Town of Carroll*.⁶ That case articulated the following three-part test and analytical framework to determine whether a supersession clause expressly preempts a local zoning law by attempting to discern legislative intent after conducting a review of the: (1) plain language of the supersession clause; (2) statutory scheme as a whole; and (3) relevant legislative history.

The **plain language** of section 23-0303(2) did not support preemption of the Towns of Dryden and Middlefield’s zoning provisions. Section 23-0303(2) should be read as preempting only local laws that purport to regulate the actual operations of oil and gas activities, not zoning ordinances that restrict or prohibit certain land uses within town boundaries. The Court found that the zoning laws in the Towns of Dryden and Middlefield were directed at regulating land use generally and did not attempt to govern the details, procedures or operations of the oil and gas industries. Although the zoning laws will undeniably have an impact on oil and gas enterprises, as in *Frew Run*, “this 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 [oil, gas and solution mining industries] which the Legislature could have envisioned as being within the prohibition of the statute” (*Frew Run*, 71 N.Y.2d at 131).

The Court of Appeals also found it instructive to compare section 23-0303(2) to other statutes that clearly preempt a municipality’s zoning powers. Unlike section 23-0303(2), such provisions often explicitly include zoning in the preemptive language employed by the legislature and they typically included “other statutory safeguards that take into account local considerations that otherwise would have been protected by traditional municipal zoning powers.”. The Court identified three examples:

- 1) ECL § 27-1107, which prohibit municipalities from requiring “any approval, consent,

permit, certificate or other condition including conformity with local zoning or land use laws and ordinances” for the siting of hazardous waste facilities.

Safeguard: ECL § 27-1103(2)(g), which requires the DEC to consider the “impact on the municipality where the facility is to be sited in terms of health, safety, cost and consistency with local planning, zoning or land use laws and ordinances”.

2) Mental Hygiene Law § 41.34 (f), which would render a community residence established pursuant to the section and family care homes to be deemed a family unit, for the purposes of local laws and ordinances.

Safeguard: Mental Hygiene Law § 41.34 (c), which allows municipalities a means of objecting to the placement of community residential facilities.

3) Racing, Pari-Mutuel Wagering and Breeding Law §1366, wherein it provides that notwithstanding “any inconsistent provision of law”, gaming authorized at a location thereunder are deemed as an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.

Safeguard: Racing, Pari-Mutuel Wagering and Breeding Law § 1320 (2), which mandates the consideration of local impacts and community support in the siting of gaming facilities.

The Court of Appeals construed and assessed the role of section 23-0303(2) in relation to the **statutory scheme or framework** as a whole. The Oil, Gas and Solution Mining (OGSM) Law sets forth four purposes⁷ to be advanced by DEC, making it readily apparent that the OGSM Law is concerned with the DEC’s regulation and authority regarding the safety, technical and operational aspects of oil and gas activities across the State. Section 23-0303(2) fits comfortably within this legislative framework since it invalidates local laws that would intrude on the DEC’s regulatory oversight of the industry’s operations, thereby ensuring uniform exploratory and extraction processes related to oil and gas production. The Court concluded that nothing in the various provisions of the OGSM Law indicates that the supersession clause was meant to be broader than required to preempt conflicting local laws directed at the technical operations of the industry.

Similarly, after a review of the history of the predecessor legislation of the OGSM Law and the OGSM Law itself, the Court of Appeals determined that the pertinent passages of the OGSM Law make no mention of zoning at all, much less did the Law evince an intent to take away

local land use powers. Rather, the history of the OGSM Law and its predecessor makes clear that the State Legislature's primary concern was with preventing wasteful oil and gas practices and ensuring that the DEC had the means to regulate the technical operations of the industry.

State Preemption of Zoning: Cemeteries and Crematories

In the case of *Oakwood Cemetery v. Village/Town of Mount Kisco*,⁸ the coterminous Village/Town of Mount Kisco (hereafter the Village) amended its zoning regulations on June 13, 2011 to include the following definition (in relevant part) for "cemetery": "Property used for the interring of the dead. This use shall not include facilities for cremation." The Oakwood Cemetery (hereafter Oakwood), which is a not-for-profit cemetery corporation that has operated a cemetery in the Village since 1883, challenged that definition in court on two main grounds: 1) the newly added narrow definition for "cemetery" in the Village Code is unconstitutional because it is preempted by "cemetery law" found in Article 15 of the Not-For-Profit Corporation Law (NCL), which provides in §1502(d) that "[a] public mausoleum, crematory or columbarium shall be included within the term 'cemetery'"; and, 2) that operation of a crematory is included within Oakwood's prior, nonconforming use of its property as a cemetery.

The sequence of events leading up to the court challenge filed by Oakwood against the Village were germane to the court's ultimate decision to find in favor of the Village. After deciding to offer cremation services in addition to burial services, Oakwood prepared plans to build, on cemetery grounds, a crematory with two cremation units; it then applied for a building permit to build that proposed crematory twice, first in 2008 and then in February 2011; and, twice, the Village building inspector did not grant Oakwood the requested permit. **One important fact:** the building inspector based the February 2011 determination to deny a permit to Oakwood, on the fact that the Village's Board of Trustees was considering a proposed amendment to the Village Code which would, if enacted, affect Oakwood's permit application. However, Oakwood never followed up any of the building inspector's determinations with an appeal to the Village's Zoning Board of Appeals (ZBA).

In upholding the Supreme Court's decision to dismiss Oakwood's action/proceeding against the Village, the Appellate Division, held that the "cemetery law" did not prohibit or preempt⁹ the Village from enacting a definition for "cemetery" in its zoning regulations that was different from NCL §1502(d)'s provision that "[a] public mausoleum, crematory or columbarium

shall be included within the term ‘cemetery’”. Both the Supreme Court and the Appellate Division’s reasoned that the NCL contains no express language preempting, or intent to impliedly preempt, local zoning authority when land is use as a cemetery or crematory, even though, the NCL does indeed govern the operation of corporations which own and manage cemeteries and does indeed declare a general policy concerning such operations.

Finding no express or implied preemption, the Appellate court held that NCL §1502(d) does not invalidate the Village’s more restrictive definition of “cemetery”. The Court drew from the reasoning set forth in the recent case *Matter of Norse Energy Corp. USA v. Town of Dryden* (the Appellate case upheld by *Wallach v. Town of Dryden*).¹⁰ Specifically, the Court reasoned that the NCL is concerned with the management of cemetery corporations, and the definition contained in the NCL addresses the scope of that law. By contrast, the Village Code’s definition of “cemetery,” which excludes crematories, is concerned with land use regulation. Since the differing definitions of “cemetery” are concerned with differing purposes, the two are not in direct conflict.

The Court also dismissed Oakwood’s request for a court declaration that its proposed crematorium constituted a valid prior nonconforming use, because its operation of a crematory is included within its prior, nonconforming use of its property as a cemetery. The Court reasoned that Oakwood failed to plead in its Court filings that it had exhausted its administrative remedies (i.e., appealing the building inspector’s determinations), similarly, Oakwood had failed to establish that the pursuit of those remedies would have been futile.

Zoning Amendments

Zoning amendments enjoy a strong presumption of validity, and the decision of a local governing board to amend the municipality’s zoning legislation should not be disturbed by a court where the amendment is in accordance with a comprehensive plan.¹¹ Further, compliance with the statutory requirements for adoption of zoning legislation will be measured in light of the long-standing principle that one who challenges such a legislative act bears a heavy burden. Therefore, if the validity of the legislative classification for zoning purposes be fairly debatable, the local legislative judgment must be allowed to control.

The case of *Restuccio v. City of Oswego*,¹² involved a challenge to the City of Oswego’s (City) rezoning of property to accommodate the construction of a hotel. Because the plaintiff in

that case failed to establish a clear conflict between the zoning legislation and the comprehensive plan, the zoning classification was upheld by the Court.

The rezoning in issue was consistent with Oswego’s 2020 Vision Plan: the land use classification for the subject hotel property would change to B-1 in an area designated the “Highway Commercial” zone, which would conform more closely to the Comprehensive Plan than the existing R-3 classification. Next, the *Restuccio* plaintiffs did not dispute that a hotel would be an appropriate use within the proposed “Highway Commercial”. Additionally, the City presented evidence that the rezoning application underwent a thorough review, including consideration by its Common Council’s Planning and Development Committee and Planning Board, and the County Planning Department, and that all of those reviews occurred before the Common Council acted on the rezoning petition that was ultimately adopted. Because the rezoning was deemed consistent with the Comprehensive Plan, the Court further concluded that the rezoning did not amount to impermissible spot zoning, and that it was reasonably related to a legitimate governmental purpose, i.e., furtherance of the City’s planned development, and was thus constitutional.

It should be noted that the Court’s conclusions in *Restuccio* was not changed even though the Common Council initially denied the rezoning petition and then, at a subsequent meeting, granted the rezoning petition: according to the Court, a local legislative body which is acting in its legislative capacity, is not bound by the rule that “[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious... and mandates reversal, even if there may otherwise be evidence in the record sufficient to support the determination”. The Court reasoned that the challenged action of the Oswego Common Council was that of a legislative rather than an administrative body, and that no showing of a changed circumstance must be made for a legislative body to change its decision and rezone an area or property.

Zoning Board of Appeals – Ambiguity in Zoning Legislation

Ambiguity arising from a term used in zoning legislation will be resolved in favor of the regulated and against the municipality that enacted the legislation.

In *Albany Basketball & Sports Corp. v. City of Albany*,¹³ the proprietor of the City of Albany’s Washington Avenue Armory – situated within a commercial office zoning district, sought court review of the City Board of Zoning Appeals’ (ZBA) decision that determined, under

the City Code, it was illegal to use the Armory for “musical entertainment” events, particularly those where the audience would be “standing for the entire event.”

Under the City Code, the Armory was considered an “auditorium”. The Armory’s proprietor had held a number of events that concerned and prompted the City’s Division of Buildings and Regulatory Compliance to issue multiple cease and desist orders alleging that, among other things, such events were being held in contravention of the City Code. The Armory proprietor submitted an application to the ZBA, in December 2012, for resolution of the question of which events/uses constituted permitted uses in an “auditorium”.

The word “auditorium” was not defined in the City Code. Therefore, the ZBA applied the following dictionary meanings to “auditorium”: 1) “the area of a concert hall, theatre, school, etc., in which the audience sits”; or 2) “the part of a public building where an audience sits”. Based on either definitions (which came from different dictionaries), in March 2013, the ZBA determined that rave parties, and a nightclub, dance club or other similar events/uses, during which activities the audience stood, were not permitted events to be held in, and valid zoning uses for, the Armory.

The Appellate Division reversed the ZBA’s determination, which was based solely on the Board’s interpretation of the word “auditorium.” The Court reasoned that the ZBA ignored alternative definitions for “auditorium” that were set forth in the same dictionaries the Board used, and those alternate definitions made no reference to an audience sitting: 1) “a building for public gatherings or meetings”; or 2) “a large room or building where people gather to watch a performance, hear a speech, etc.”. In addition, the Court stated that, even if the proprietor proposed a use of the Armory that would be inconsistent with the definitions relied on by the ZBA (where audience sat), such inconsistent uses would be “entirely consistent with the commonly used alternative definitions” in the dictionaries used by the ZBA when interpreting “auditorium”. Therefore, the Court resolved the ambiguity in favor of proprietor and concluded that the ZBA’s “determination that the proposed use was impermissible—based solely upon its limited interpretation of the definition of auditorium as requiring fixed seating, to the exclusion of other commonly accepted definitions—was irrational and unreasonable.”

Zoning Board of Appeals – Standing to Challenge Decision

Standing is established when a party requesting review of an action demonstrates that they would suffer direct injury different from that suffered by the public at large, and that the injury

asserted falls within the zone of interests sought to be promoted or protected by the statutory provision under which the agency has acted.¹⁴ Injury-in-fact may arise from the existence of a presumption established by the allegations demonstrating close proximity to the subject property or, in the absence of such a presumption, the existence of an actual and specific injury”.¹⁵ It was determined by the Appellate Division, Second Department, in the case of *Radow v. Board of Appeals of Town of Hempstead*,¹⁶ that the Supreme Court was correct to dismiss the case filed by property owners Ruth Radow and Seymour Radow for court review of certain determinations rendered by the Board of Appeals of the Town of Hempstead (ZBA), to issue certain zoning variances to beach club owner Atlantic Beach Land Company.

The Court held that the Radows did not have standing to challenge the ZBA determinations, because they failed to satisfy these standing requirements. The Court reasoned that the Radows live 0.69 miles away from the subject beach club, and that the 0.69 mile distance was too far from the beach club to entitle the Radows to a presumption of injury.¹⁷ The Radows’ allegations of injury-in-fact due to overcrowding and congestion were also purely speculative.¹⁸ Finally, the alleged injuries are not specific to the Radows and distinguishable from those suffered by the public at large.¹⁹

Zoning Enforcement

Town of Chatham v. Smith,²⁰ reviewed whether an in-ground swimming pool was constructed in violation of the Zoning Code of the Town of Chatham, Columbia County, and whether the pool should be removed. In that case, a property owner commenced and completed construction of an in-ground swimming pool on her property located in the Town, in 2009. During construction of the pool, the Town’s code enforcement officer (CEO) notified the property owner that she was required to obtain a permit. After receiving a permit application, the property owner was informed by the CEO that the location of the pool did not comply with the applicable setback requirements. A later determination also found that a portion of the pool encroached on neighboring property.

Despite the CEO’s notifications, the property owner continued to construct the pool, and only after completing construction did she apply to the Town Zoning Board of Appeals (ZBA) for an area variance from the setback requirement. The area variance application was denied by the ZBA, and the property owner appealed that denial to the Supreme Court. The Supreme Court dismissed the case, but the property owner neither appealed the dismissal nor removed the

encroachment. Rather, the property owner filed a quiet title action (RPAPL Article 15) seeking a court determination that she had acquired title (by adverse possession) to the portion of the pool that was allegedly encroaching on the neighboring property.

Meanwhile, the Town commenced a separate court action to enforce the Zoning Code. Among other things, the Town requested of the Court that defendant remove the swimming pool. In turn, the property owner requested that the court hold off rendering a determination until her separate quiet title action was decided. The Supreme Court rejected the property owner's request, reasoning that she did not dispute the Town's entitlement to summary judgment. The Appellate Division, upheld the Supreme Court's decision because: 1) her main argument was that the Supreme Court erred by failing to exercise its **discretion** to hold the Town's summary judgment motion in abeyance pending the outcome of the adverse possession action; and 2) even if she is successful in that action, she would still need a variance from the setback requirements.

Conditions

Conditions may be imposed upon the granting of an area variance to preserve the peace, comfort, enjoyment, health, or safety of the surrounding area.²¹ A zoning board of appeals may, where appropriate, impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impact to an area that might result from the grant of a variance or a special permit.²² However, if a zoning board imposes conditions that are unreasonable or improper, a court will annul those conditions.²³

The case of *Obsession Bar and Grill, Inc. v. Zoning Bd. of Appeals of City of Rochester*,²⁴ illustrates this principle. In that case, the Appellate Division, Fourth Department affirmed the amended judgment and order of the Supreme Court, Monroe County, which nullified and voided the condition imposed by the Zoning Board of Appeals of City of Rochester to limit the weekday closing hours of the Obsession Bar and Grill, Inc.

Site Plan

In *Dietrich v. Planning Bd. of Town of West Seneca*,²⁵ the Appellate Division, Fourth Department, sustained, as neither irrational, unreasonable nor inconsistent with the governing land use legislation, the Planning Board's determination that a property owner must submit to site plan

review and approval before constructing an all-terrain vehicle (ATV) track on rural residential property.²⁶

Under the West Seneca Town Code (Code), site plan review and approval is not imposed on uses that fall within the broad category of “permitted accessory residential structures and uses”. The proposed site of the ATV track is zoned R-65A. Permissible uses of the property in an R-65A district would include, among other uses, private garages or off-street parking areas, family swimming pools, greenhouses, and horse stables, as well as “other customary accessory uses”. The ATC track, as proposed, would feature between 6 foot and 8 foot jumps and rumble strips.

Based on the foregoing, the Court agreed with the Planning Board’s determination that the proposed ATV track should be subject to site plan review, because it did not fall within the definition of “other customary accessory uses”.²⁷ Even though a separate provision of the Code expressly permitted limited use of recreational vehicles on private property, the Court remained unpersuaded that the Code permitted ATV tracks without site plan review. The Court reasoned that since no reference was made in any other section of the Code to the construction of ATV tracks with features similar to what was being proposed (i.e., professional racetracks), the Planning Board’s determination should be upheld.²⁸

Next, the Court held that there was substantial evidence to support the Planning Board’s determination that the ATV track would be inconsistent with the residential use of surrounding properties.²⁹ First, the evidence in the record establishes that the track would increase already existing problems, including the noise level in the neighborhood, the number of incidents of physical damage and trespass to neighboring properties, and the potential for neighboring landowners to be held liable for injuries occurring on their properties.

The Court also concluded that there was no need to return the matter to the Planning Board for factual findings, since: “Generally, findings of fact which show the actual grounds of a decision are necessary for an intelligent judicial review of a quasi-judicial or administrative determination”.³⁰ The Planning Board, the Court concluded, had adequately set forth specific findings of fact by indicating that its determination was based on concerns about trespassers and liability, property damage, and noise pollution. Even if the Planning Board did not do so, the Court concluded that remittal to the Planning Board would be unnecessary where, as here, the record as a whole addresses the applicable considerations or otherwise provides a basis for concluding that there was a rational basis for the Planning Board’s determination.³¹

Site Plan Approval – Vested Rights

In New York, the right to develop property pursuant to the standards and requirements of a prior zoning formulation (or the status quo before zoning was initially adopted or amended) does not vest until a permit to develop the subject property has been validly issued by the city, town or village and the landowner undertakes substantial construction and makes substantial expenditures in reliance on that permit. “Neither the issuance of a permit...nor the landowner’s substantial improvements and expenditures, standing alone, will establish the right. The landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless”.³²

The Appellate Court, in *Exeter Bldg. Corp. v. Town of Newburgh*,³³ made clear that a property owner may claim vested rights in reliance on an unconditional final approval of a site plan application; however, because the Newburgh Town Planning Board never granted unconditional approval of the landowners’ site plan, no vested rights were acquired by the landowners to develop certain property under the R-3 zoning classification in effect prior to March 6, 2006. The relevant facts from the *Exeter Bldg. Corp.* case follows.

In June 2007, the Planning Board granted preliminary site plan approval for the landowners’ development, called Madison Green, subject to 18 conditions, 11 of which were required to be met by the landowners before the chairperson of the Planning Board would be authorized to sign the plans. The conditions precedent to the chairperson’s signature were memorialized by the Planning Board in a “Resolution of Approval Site Plan Final” (hereinafter the Resolution) with respect to Madison Green, which the Board passed on December 20, 2007. That Resolution stated, in relevant part, that: “THE PLANNING BOARD RESOLVES to approve this Site Plan as said proposal is depicted on the plans identified above upon the conditions outlined below, and the Chairperson ... is authorized to sign the plans upon satisfaction of those conditions below noted to be conditions precedent to signing.” Because the Madison Green landowners did not fulfill the conditions precedent that were delineated in the Resolution, the Appellate Court concluded that the chairperson was not authorized to sign the site plan. Accordingly, the plaintiffs had no relevant permit and could not establish that they had vested rights to develop Madison Green under the Resolution.

The Appellate Court further stated that the landowners could not have acquired vested rights to develop Madison Green based on their reliance on the limited permits that were issued to

them: None of those permits—which authorized demolition of the single-family house and the water tanks, erection of a sign, and re-grading and clearing—either singly or together could have amounted to the Town’s approval of the Madison Green development. Accordingly, the Madison Green landowners’ expenditures and construction in **reliance on those limited permits could not satisfy the prerequisite for common-law vesting of the right to construct the entire project.** At most, the Court stated that the limited permits authorized the landowners to complete the work described in each limited permit, which, if undertaken, would leave the subject property in a condition amenable to development under the new, more restrictive R–1 zoning regulations.³⁴

Special Use Permit

To deny a special exception permit (also known as a special use or conditional use permit), the denial must be supported by evidence in the record and may not be based solely upon community objections. Under circumstances where evidence supporting the denial exists, deference will be given to the discretion of the reviewing board, and a court would not substitute its own judgment for that of the board’s, even if a contrary conclusion is supported by the record.

In the case of *Green 2009, Inc. v. Weiss*,³⁵ the Appellate Court reviewed and upheld a rehearing determination of the Board of Appeals of the Town of Hempstead, dated August 24, 2011, denying the petitioner’s application for continued operation of a cabaret by special exception permit. The August 24th rehearing determination reversed and vacated the Board’s original determination of June 2, 2010.

During the rehearing, the Hempstead Board of Appeals determined that a March 31, 1997 amendment to the Town of Hempstead Code was applicable to petitioner’s premises, for which a special exception permit to operate a cabaret use had been granted in 1969. The 1997 amendment changed the Code’s definition for cabaret to, in part, “[a]ny room, place or space wherein musical entertainment, singing, dancing in a designated area or other form of amusement or entertainment is permitted in conjunction with the sale or service of food or drink to the public.” By its terms, the 1997 amendment was to “apply to any cabaret use hereafter or previously granted” by the Board of Appeals. The 1997 amendment also provided that the grant of any permit to operate a cabaret by the Board shall be limited to the specific cabaret use applied for and approved by that Board and no other cabaret use.

The Appellate Court also decided this case based on a zoning board of appeals’ authority

under Town Law section 267-a (12), which empowers zoning boards of appeals to rehear their determinations “provided the board finds that the rights vested in persons acting **in good faith** in reliance upon the reheard order, decision or determination will not be prejudiced thereby.” The cabarets owner argued to the Court that the rehearing was improper since he relied (**in good faith**) to his detriment on the previously granted (1969) special exception permit, having expended funds renovating and altering the premises for its proposed use. The Court disagreed, reasoning that the Hempstead Board of Appeals expressly found that the cabaret owner intentionally misled the Board about the intended use of the premises at the initial hearing on the application, and as such, the cabaret owner did not rely on the previously granted special exception permit in good faith. Because the Board’s findings pertaining to the petitioner’s lack of candor and good faith were credibility determinations, and issues of credibility were within the sole province of the Board to resolve, the Court would not disturb them. Moreover, in addition to the objections of members of the community, there was additional evidence presented, which was within the province of the Board to credit, that granting the cabaret owner’s application for a special exception permit would have an adverse impact on neighboring properties.

New York does not recognize the equitable doctrine that would toll the time period within which to develop land, for a period that equals the duration of any lawsuit filed to challenge such development. As a general rule, where a party applies for an extension of a previously-issued special use permit, as authorized in local legislation, the applicant “must be afforded an opportunity to show that circumstances have not changed, and a denial of extension will only be sustained if proof of such circumstances is lacking”. The designated reviewing board would have substantial discretion in dealing with requests for an extension of a durational limitation.

In the case of *Allegany Wind LLC v. Planning Bd. of Town of Allegany*,³⁶ a time-limited special use permit (and site plan approval) was granted for development of a 29-turbine wind farm project in the Town. The special use permit (SUP) would expire on July 11, 2012. The Town extended the SUP deadline until the earlier of one year or 90 days after the conclusion of the lawsuit commenced against the Town by a citizens’ group, Concerned Citizens of Cattaraugus County (CCCC), which opposed the project.

By letter dated August 3, 2012, the project developer advised the Town that it was

considering use of alternate turbine models for the project, and requested a second extension of the special use permit. The request for a second extension was denied by the Planning Board during its October 15, 2012 meeting. The project developer appealed the Planning Board denial of its second request to extend the time within which the Planning Board would act on its SUP approval.

The Court upheld the Planning Board denial of the second request for time extension, primarily because, there was material change in circumstances since the SUP had been issued. When the SUP was granted, the project developer contemplated the use of Nordex N1000 turbines. The Court found “undisputed” that, by the time the developer requested its second extension of the permit, the developer proposed using alternate turbine models and that the developer knew that such a change could result in a determination of “material change in circumstance”. To be sure, based on the record for a meeting conducted by the Town several months before the developer requested its second extension, the developer’s counsel answered in the affirmative when asked whether a change in turbine models would constitute a change in circumstances sufficient to warrant reconsideration of the project by the Town. Specifically, developer’s counsel stated, “Yes, looking at how specific the approvals were with regard to a turbine model, the potential impact may be different based on the characteristics.” The Court further noted that the Town’s consultant concluded that use of the proposed alternate turbines would result in noncompliance with the Town’s noise setback requirements.

The Court also rejected the project developer’s other contention that the expiration date of its special use permit was automatically tolled during the pendency of the lawsuit filed by CCCC. According to the Court, several states do indeed recognize an equitable doctrine that would allow for the tolling of the time period;³⁷ however, New York has not done so and, in any event, this case does not warrant the application of that equitable doctrine. The Court reasoned that the CCCC lawsuit was not the primary reason for developer’s failure to proceed with the project in a timely manner: Certain project representatives acknowledged in several media interviews that the developer did not go forward with construction in large part because it was waiting to find out whether Congress was going to extend the Production Tax Credit for wind energy (which was scheduled to expire at the end of 2012).

Special Use Permit – Over-intensification of Use

A special use (also known as a special exception or conditional use) permit grants

permission for a landowner to use property in a way that is consistent with local zoning legislation, subject to certain requirements that would help that special use harmonize with the surrounding area. A permit to operate a special use is unlike a variance, which gives permission to an owner to use property in a manner inconsistent with a local zoning ordinance.³⁸ The burden of proof on an applicant seeking a special use permit is lighter than that burden carried by an applicant for a zoning variance.

In the case of *Smyles v. Board of Trustees of Inc. Village of Mineola*,³⁹ an applicant before the Board of Trustees of the Village Of Mineola for a special use permit to expand a day care facility, instituted court challenge of the Board's decision to deny that permit. The Appellate Court found that the denial was supported by evidence in the record that the day care facility would not be in the best interests of the health, safety, and welfare of the community. Particularly, the Court highlighted the testimony by experts in traffic and real estate and by neighboring property owners, which set forth that the proposed expansion of the subject day care facility into vacant retail space would result in a dangerous traffic situation, an over-intensification of land use with respect to available parking, and a hazard with respect to the provision of emergency services.

Some members of the Board also used their personal knowledge of the areas to make their determination. The Court found no error, reaffirming the principle that a reviewing Board is entitled to base its decision upon, among other things, its members' personal knowledge and familiarity with the community.⁴⁰

The Court also noted that the Board's alleged failure to comply with the time limitations of Village Law § 7-725-b (6)⁴¹ does not mandate the annulment of its determination.⁴² According to the Court, the appropriate action for an applicant to take when a reviewing Board fails to act within the timeframe set forth in law would be to commence a special proceeding to compel the Board to issue a determination on the application.⁴³ Here, since the Board ultimately issued such a determination, the petitioners' contention in this regard would have been rendered academic.

Subdivision - Deed Restrictions vs. Regulatory Restrictions

In *Butler v. Mathisson*,⁴⁴ the Appellate Division, Second Department, held that the front and rear yard setback lines drawn on a certain subdivision map for property located within the City of Rye (Westchester County) were not deed restrictions that run with the land, but were land use restrictions. The subject property is more specifically located in the City's Forest Harbor

subdivision in an R-3 zoning district, which imposes front yard setbacks of at least 30 feet. The Plaintiffs (Bs) own and reside at 10 Philips Lane, as well as they own 12 Philips Lane. The Defendants (Ms) reside adjacent to the 10 Philips Lane, at 3 Philips Lane. The subject of this dispute is 10 Philips Lane.

The Plaintiffs purchased 12 Philips Lane with the intention of tearing down the existing house on the property and building a new house, proposed with a front yard setback of 44.75 feet. While they were attempting to obtain the various Planning Board approvals required to build, the Defendants commenced this action alleging, in part, that the front and rear yard setback lines drawn on the Forest Harbor subdivision map (approved by the Rye Planning Commission in 1967), included a requirement that **front yard setbacks must be at least 60 feet**. The Defendants argued that the 60 foot setbacks were deed restrictions that ran with the land.

Upon court challenge, the Appellate Division reversed the Supreme Court judgment that the 60 foot front and rear yard setback lines, drawn on the subdivision map, were deed restrictions that ran with the land, and its judgment for a permanent injunction prohibiting the Plaintiffs from performing any construction in violation of those setback lines. The Appellate Court based its decision on the governing rules and applicable policies: 1) the policy of the law is to favor free and unobstructed use of realty; 2) a purchaser takes with notice from the record only of encumbrances in his direct chain of title; 3) in the absence of actual notice before or at the time of his purchase or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to himself or his direct predecessors in title; 4) a purchaser is not normally required to search outside the chain of title; and 5) deed restrictions are strictly construed against those seeking to enforce them and will be enforced only where their existence has been established by clear and convincing proof.

Accordingly, the Court held that the Defendants did not show, but the Plaintiffs did establish by submitting the documents in their chain of title, that there was nothing in the Plaintiffs' chain of title to indicate that the 60 foot rear and front yard setback lines were deed restrictions running with the land.

Endnotes

¹The 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.

² 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.

³ 23 N.Y.3d 728 (June 30, 2014).

⁴ *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.

⁵ 35 Misc.3d 767 (February 24, 2012), affirmed, 106 A.D.3d 1170 (3d Dept. May 2, 2013), leave to appeal granted, 21 N.Y.3d 863 (N.Y. August 29, 2013).

⁶ 71 N.Y.2d 126 (1987).

⁷ The stated purposes of the OGSML are fourfold: (i) "to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste"; (ii) "to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had"; (iii) to protect the "correlative rights of all owners and the rights of all persons including landowners and the general public"; and (iv) to regulate "the underground storage of gas, the solution mining of salt and geothermal, stratigraphic and brine disposal wells" (ECL 23-0301).

⁸ 115 A.D.3d 749, 981 N.Y.S.2d 786, 2014 N.Y. Slip Op. 01616 (2 Dept. 2014).

⁹ The Court determined that Article 15 of the Not-for-Profit Corporation Law did not preempt any attempt at local regulation of cemeteries under the doctrine of "field preemption." That doctrine "applies under any of three different scenarios. First, an express statement in the state statute explicitly avers that it preempts all local laws on the same subject matter. Second, a declaration of state policy evinces the intent of the Legislature to preempt local laws on the same subject matter. And third, the Legislature's enactment of a comprehensive and detailed regulatory scheme in an area in controversy is deemed to demonstrate an intent to preempt local laws" (*Matter of Chwick v. Mulvey*, 81 A.D.3d 161, 169–170, 915 N.Y.S.2d 578 [citations omitted]; see *Vatore v. Commissioner of Consumer Affairs of City of N.Y.*, 83 N.Y.2d 645, 649, 612 N.Y.S.2d 357, 634 N.E.2d 958).

¹⁰ 108 A.D.3d 25, 37–38, 964 N.Y.S.2d 714, *lv. granted* 21 N.Y.3d 863, 2013 WL 4562930.

¹¹ See, e.g. General City Law § 28–a(12)(a); *Asian Ams. for Equality v. Koch*, 72 N.Y.2d 121, 131, 531 N.Y.S.2d 782, 527 N.E.2d 265.

¹² 114 A.D.3d 1191, 979 N.Y.S.2d 749, 2014 WL 486797, 2014 N.Y. Slip Op. 00829 (4th Dept. 2014).

¹³ 2014 WL 1316331, 2014 N.Y. Slip Op. 02370 (3d Dept. 2014).

¹⁴ *Citing to Matter of Riverhead PGC, LLC v. Town of Riverhead*, 73 A.D.3d 931, 933, 905 N.Y.S.2d 595; see *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 773–774, 570 N.Y.S.2d 778, 573 N.E.2d 1034.

¹⁵ *Citing to Matter of Powers v. De Groodt*, 43 A.D.3d 509, 513, 841 N.Y.S.2d 163 [citation omitted]; see *Matter of Sun-Brite Car Wash v. Board of Zoning & Appeals of Town of N. Hempstead*, 69 N.Y.2d 406, 414, 515 N.Y.S.2d 418, 508 N.E.2d 130.

¹⁶ 120 A.D.3d 502, 989 N.Y.S.2d 914, 2014 N.Y. Slip Op. 05645 (2 Dept. August 06, 2014).

¹⁷ See *Matter of Riverhead Neighborhood Preserv. Coalition, Inc. v. Town of Riverhead Town Bd.*, 112 A.D.3d 944, 944–945, 977 N.Y.S.2d 382; *Matter of Rediker v. Zoning Bd. of Appeals of Town of Philipstown*, 280 A.D.2d 548, 549, 721 N.Y.S.2d 77.

¹⁸ See *Matter of Powers v. De Groodt*, 43 A.D.3d at 513, 841 N.Y.S.2d 163; *Matter of Long Is. Bus. Aviation Assn., Inc. v. Town of Babylon*, 29 A.D.3d 794, 795, 815 N.Y.S.2d 217.

¹⁹ Citing to *Matter of Harris v. Town Bd. of Town of Riverhead*, 73 A.D.3d 922, 923–924, 905 N.Y.S.2d 598; *Matter of Powers v. De Groodt*, 43 A.D.3d at 513, 841 N.Y.S.2d 163; *Matter of Rediker v. Zoning Bd. of Appeals of Town of Philipstown*, 280 A.D.2d at 550, 721 N.Y.S.2d 77.

²⁰ 119 A.D.3d 1282, 990 N.Y.S.2d 359, 2014 N.Y. Slip Op. 05488 (3 Dept., July 24, 2014).

²¹ *Matter of Gomez v Zoning Bd. of Appeals of Town of Islip*, 293 AD2d 610 (2002); *Matter of Baker v Brownlie*, 270 AD2d 484, 485 (2000).

²² *Matter of St. Onge v Donovan*, 71 NY2d 507, 515-516 (1988), quoting *Matter of Pearson v Shoemaker*, 25 Misc 2d 591, 592 (1960); see *Matter of Martin v Brookhaven Zoning Bd. of Appeals*, 34 AD3d 811, 812 (2006).

²³ *Matter of Martin v Brookhaven Zoning Bd. of Appeals*, 34 AD3d at 812; *Matter of Baker v Brownlie*, 270 AD2d at 485.

²⁴ 118 A.D.3d 1366, 987 N.Y.S.2d 277, 2014 N.Y. Slip Op. 04389 (4 Dept. June 12, 2014).

²⁵ 118 A.D.3d 1419, 988 N.Y.S.2d 760, 2014 N.Y. Slip Op. 04609 (4th Dept. June 20, 2014). The *Dietrich* Court also identified an appropriate framework for the exercise of authority vested in a planning board to approve or deny applications for site development plans:

“In conducting site plan review, the Planning Board is required to set appropriate conditions and safeguards which are in harmony with the general purpose and intent of the Town’s zoning legislation. To this end, a planning board may properly consider criteria such as whether the proposed project is consistent with the use of surrounding properties, whether it would bring about a noticeable change in the visual character of the area, and whether the change would be irreversible (*Citing to Matter of Valentine v. McLaughlin*, 87 A.D.3d 1155, 1157, 930 N.Y.S.2d 51, lv. denied 18 N.Y.3d 804, 2012 WL 87025 citing Town Law § 274–a(2)(a))”.

²⁶ Citing to *Matter of Emmerling v. Town of Richmond Zoning Bd. of Appeals*, 67 A.D.3d 1467, 1467, 888 N.Y.S.2d 703; see *Matter of New York Botanical Garden v. Bd. of Stds. & Appeals of City of N.Y.*, 91 N.Y.2d 413, 419, 671 N.Y.S.2d 423, 694 N.E.2d 424.

²⁷ Citing to *Matter of Granger Group v. Town of Taghkanic*, 77 A.D.3d 1137, 1138, 909 N.Y.S.2d 556, lv. denied 16 N.Y.3d 781, 919 N.Y.S.2d 505, 944 N.E.2d 1144.

²⁸ Please see the case of *Matter of Spinella v. Town of Paris Zoning Bd. of Appeals*, 191 Misc.2d 807, 809, 744 N.Y.S.2d 310, for a different holding on whether the use of ATVs constitutes a customary accessory use of rural property.

²⁹ Citing to *Valentine v. McLaughlin*, 87 A.D.3d 115, 1157.

³⁰ Citing to *Matter of Livingston Parkway Assn., Inc. v. Town of Amherst Zoning Bd. of Appeals*, 114 A.D.3d 1219, 1219–1220, 980 N.Y.S.2d 206.

³¹ Citing to *Matter of Paloma Homes, Inc. v. Petrone*, 10 A.D.3d 612, 614, 781 N.Y.S.2d 675; *Matter of Fischer v. Markowitz*, 166 A.D.2d 444, 445, 560 N.Y.S.2d 496.

³² See, *Town of Orangetown v. Magee*, 88 N.Y.2d 41 (N.Y. 1996).

³³ 114 A.D.3d 774, 980 N.Y.S.2d 154, 2014 N.Y. Slip Op. 00996 (2d Dept. 2014).

³⁴ Please note that the Appellate Court held that vested rights had been acquired by the landowners even though, from the 2002 initial submission of the landowners' application for Madison Green approval until the Resolution was approved, the plaintiffs had incurred \$358,999.73 in engineering and review costs. In addition, from the Planning Board's approval of the Resolution in December 2007, to the expiration of the Town Law section 265-a three-year exemption period in January 2009, the plaintiffs incurred \$46,581.73 in engineering and review costs, and \$135,199.24 in construction costs, for a total cost during that period of \$181,780.97.

³⁵ 114 A.D.3d 788, 980 N.Y.S.2d 510 (2d Dept. 2014).

³⁶ 115 A.D.3d 1268, 982 N.Y.S.2d 278, 2014 N.Y. Slip Op. 01944 (4th Dept. 2014).

³⁷ See 3 Rathkopf, *Zoning and Planning* § 58:24 [4th ed].

³⁸ *Matter of Retail Prop. Trust v. Board of Zoning Appeals of Town of Hempstead*, 98 N.Y.2d 190, 195 (N.Y. 2002).

³⁹ 120 A.D.3d 822, 992 N.Y.S.2d 83, 2014 N.Y. Slip Op. 05991 (N.Y.A.D. 2 Dept., 2014).

⁴⁰ *Matter of Russia House at Kings Point, Inc. v. Zoning Bd. of Appeals of Vil. of Kings Point*, 67 A.D.3d 1019, 892 N.Y.S.2d 104; *Matter of Thirty W. Park Corp. v. Zoning Bd. of Appeals of City of Long Beach*, 43 A.D.3d 1068, 843 N.Y.S.2d 106.

⁴¹ Public hearing and decision on special use permits. The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the village at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the village clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. See also, Town Law section 274-b(6); General City Law section 27-b(6).

⁴² *Matter of Frank v. Zoning Bd. of Town of Yorktown*, 82 A.D.3d 764, 917 N.Y.S.2d 697; cf. *Matter of Barsic v. Young*, 22 A.D.3d 488, 490, 801 N.Y.S.2d 829.

⁴³ *Matter of Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 89 A.D.3d 1178, 932 N.Y.S.2d 564; *Nyack Hosp. v. Village of Nyack Planning Bd.*, 231 A.D.2d 617, 647 N.Y.S.2d 799.

⁴⁴ 114 A.D.3d 894, 981 N.Y.S.2d 441, 2014 N.Y. Slip Op. 01289 (2d Dept. 2014).



General Session I

Town Planning Directors Roundtable

Roundtable for Planning Directors

DRAFT Questions:

What are the most pressing planning issues your Town is facing? How is your Planning Department responding?

Later this month marks the two-year anniversary of Sandy, how has your Planning Department or Town responded?

Tell us about your department's accomplishments over the past two years. In two years, what do you anticipate will be the status of the projects you are working on?

How can the County Economic Development and Planning help your local Town facilitate projects?



General Session I

Nassau County Transit Oriented Development - Cultivating Opportunities for Sustainable Development in Nassau County

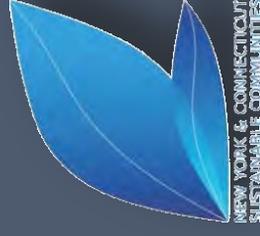


Nassau County Cultivating Opportunities for Sustainable Development

Nassau County Infill Redevelopment Feasibility Study

2014 Suffolk County Planning Federation Fall Conference

October 21, 2014



Bethpage
Hicksville
Carle Place
Mineola
Westbury
Baldwin

Bellmore

Freeport

Country Life Press

Garden City

Merrillon Avenue

Nassau Boulevard

Hempstead

Lakeview

Lynbrook

Merrick

Rockville Centre

Valley Stream

Wantagh

Hempstead Gardens

West Hempstead

Grand Central Station, NY

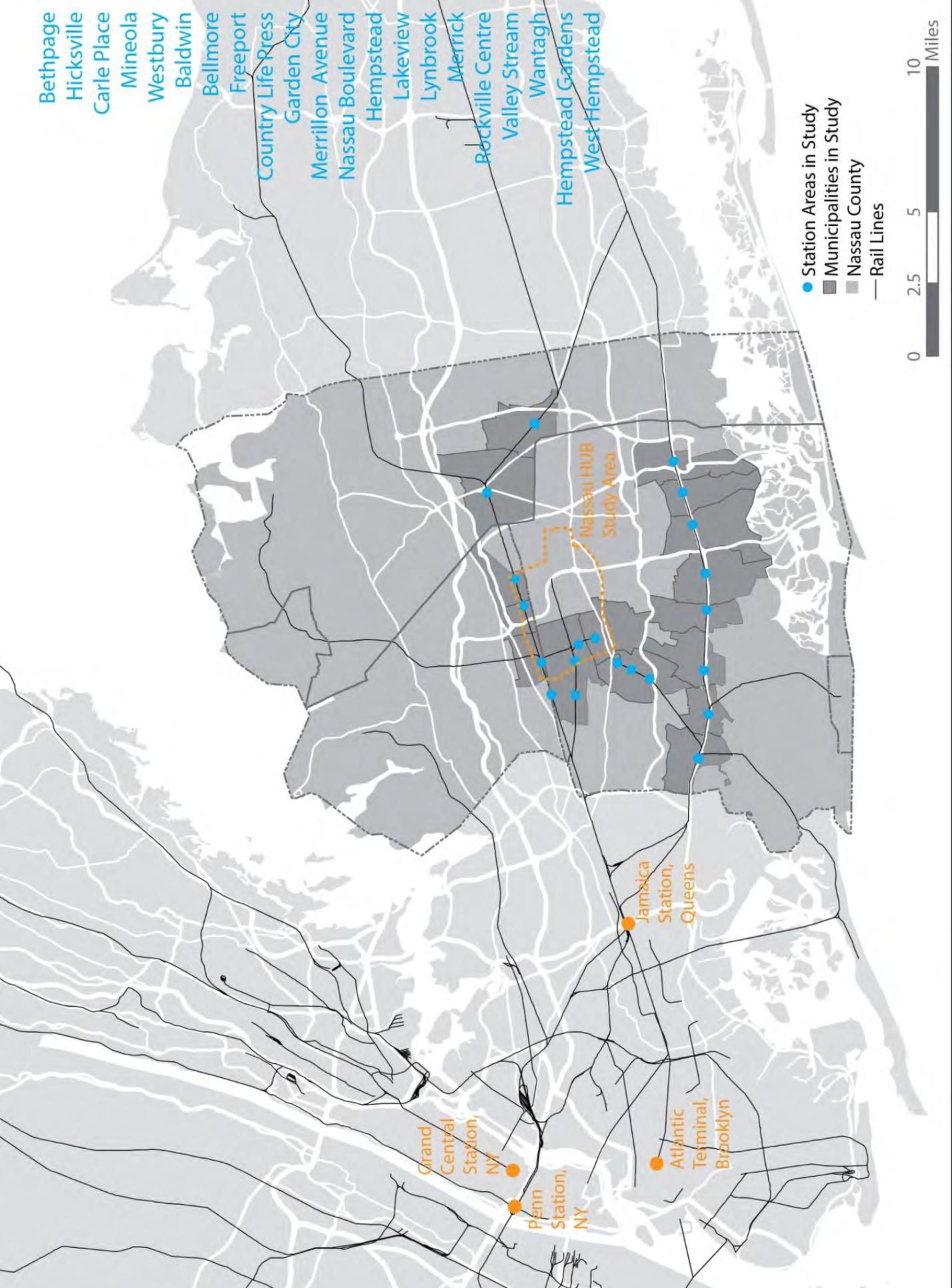
Penn Station, NY

Jamaica Station, Queens

Atlantic Terminal, Brooklyn

Nassau HUB Study Area

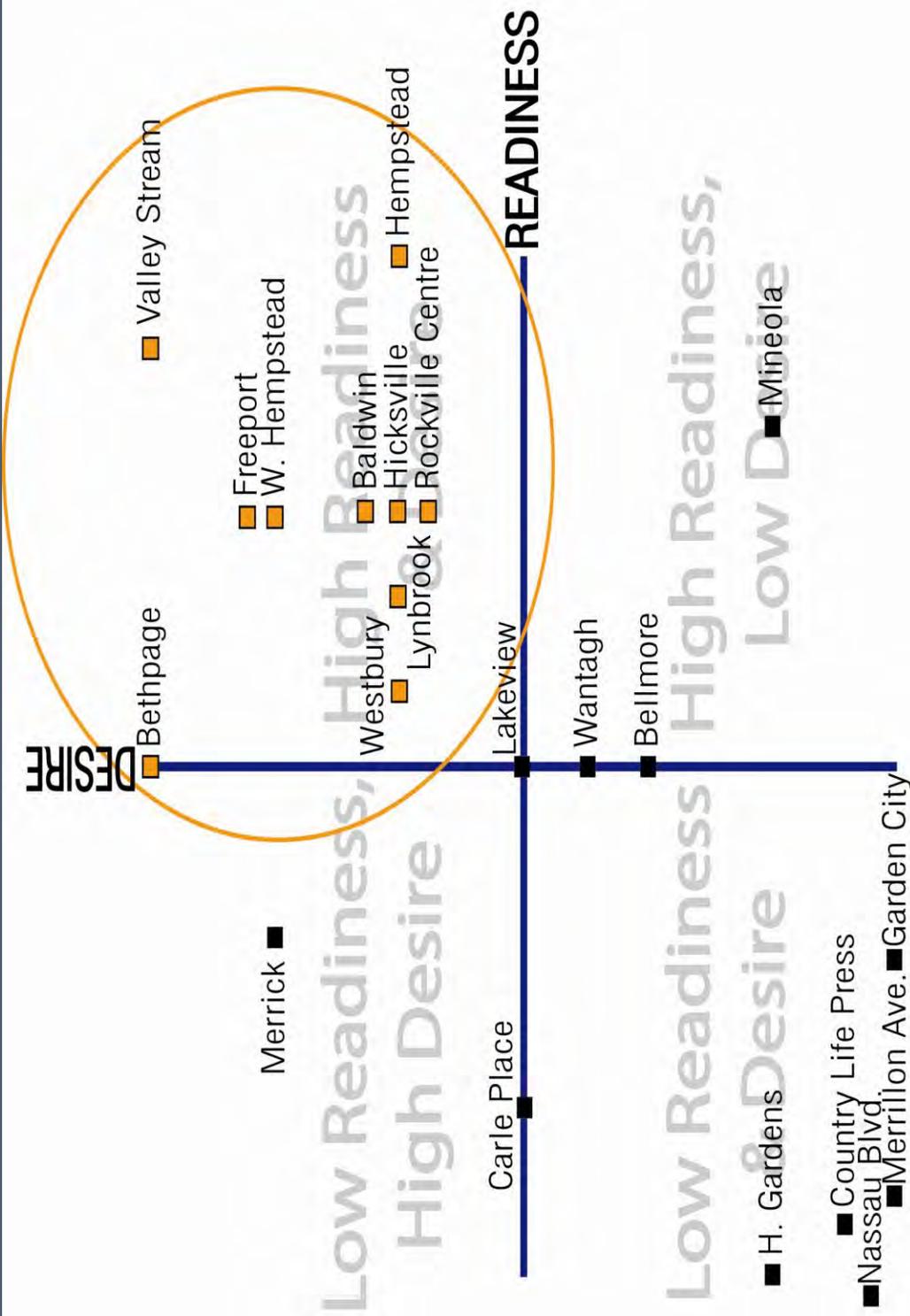
- Station Areas in Study
- Municipalities in Study
- Nassau County
- Rail Lines



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

Selection Progression



Station Profiles

Freepoint Station • Village of Freepoint Incorporated: Babylon Branch.

The Village of Freepoint has one LIRR station, located on Sunrise Highway near the central business district. The station averaged 1,236 west-bound morning commuters in 2006, much less than neighboring stations Baldwin (2,744) to the west and Merrick (3,381) to the east. These ridership numbers are surprising given Freepoint's large population, which numbered 42,860 residents in 2010, much greater than Baldwin's 24,033 or Merrick's 22,097. These numbers speak to Freepoint's strong potential to expand on the Village's already active commercial base with the addition of ISD, possibly by introducing mixed-use development or a hotel. Land use around the station area is already diverse, making any such development well in line with the character of the community. The Freepoint Station track, running parallel to Sunrise Highway, is incorporated into the larger-street grid.



Freepoint's station area and surroundings are an active commercial base and main street.

by the large "old bank building" site between the station area and Sunrise Highway, which is currently in litigation.

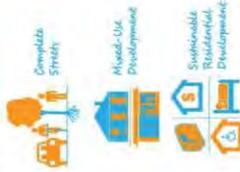
The community of Freepoint is anxious to see their station area realize its full potential as a high density commercial destination along Nassau County's south shore. While barriers exist, such as the Village's existing zoning laws, Freepoint has the readiness and desire to successfully implement sustainable development that acts as a pilot project for the rest of the County.

Recent/ongoing plans & studies

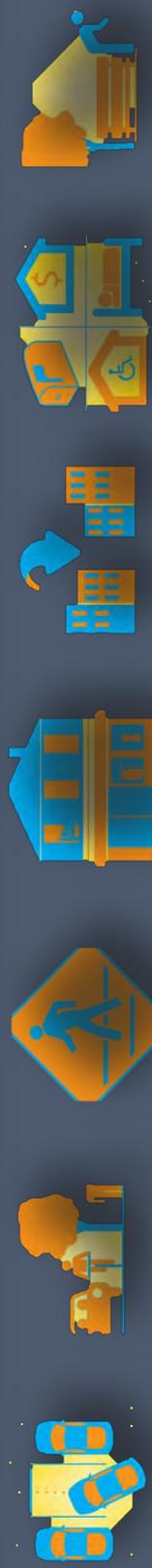
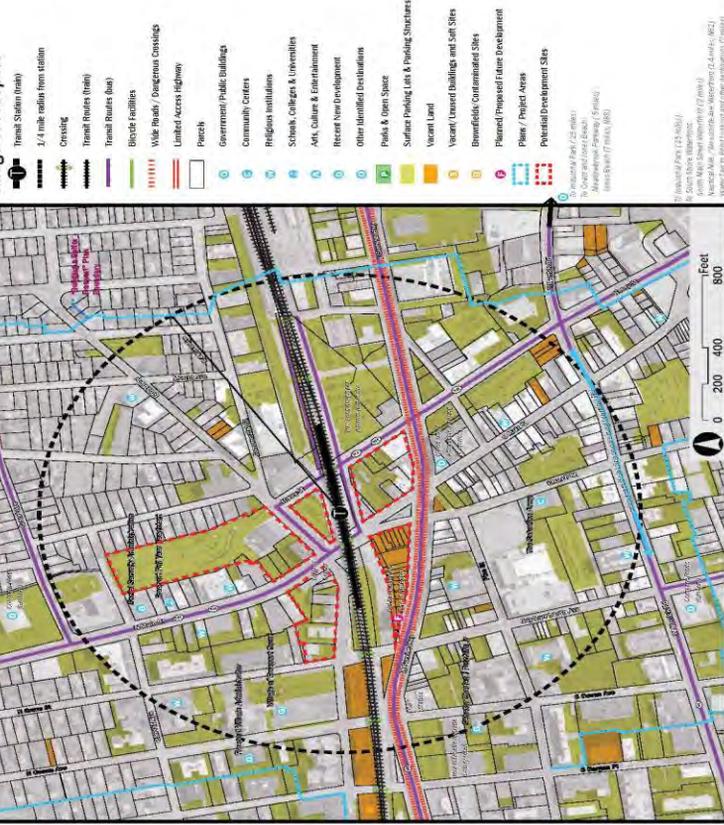
- Building a better Freepoint: The Master Plan for the North Main Street Corridor and Station Area of the Village of Freepoint, 2012

	POOR	FAIR	GOOD	GREAT
community design				
physical suitability				
public sector readiness				
developer interest				
leadership in place				
overall				

Potential projects



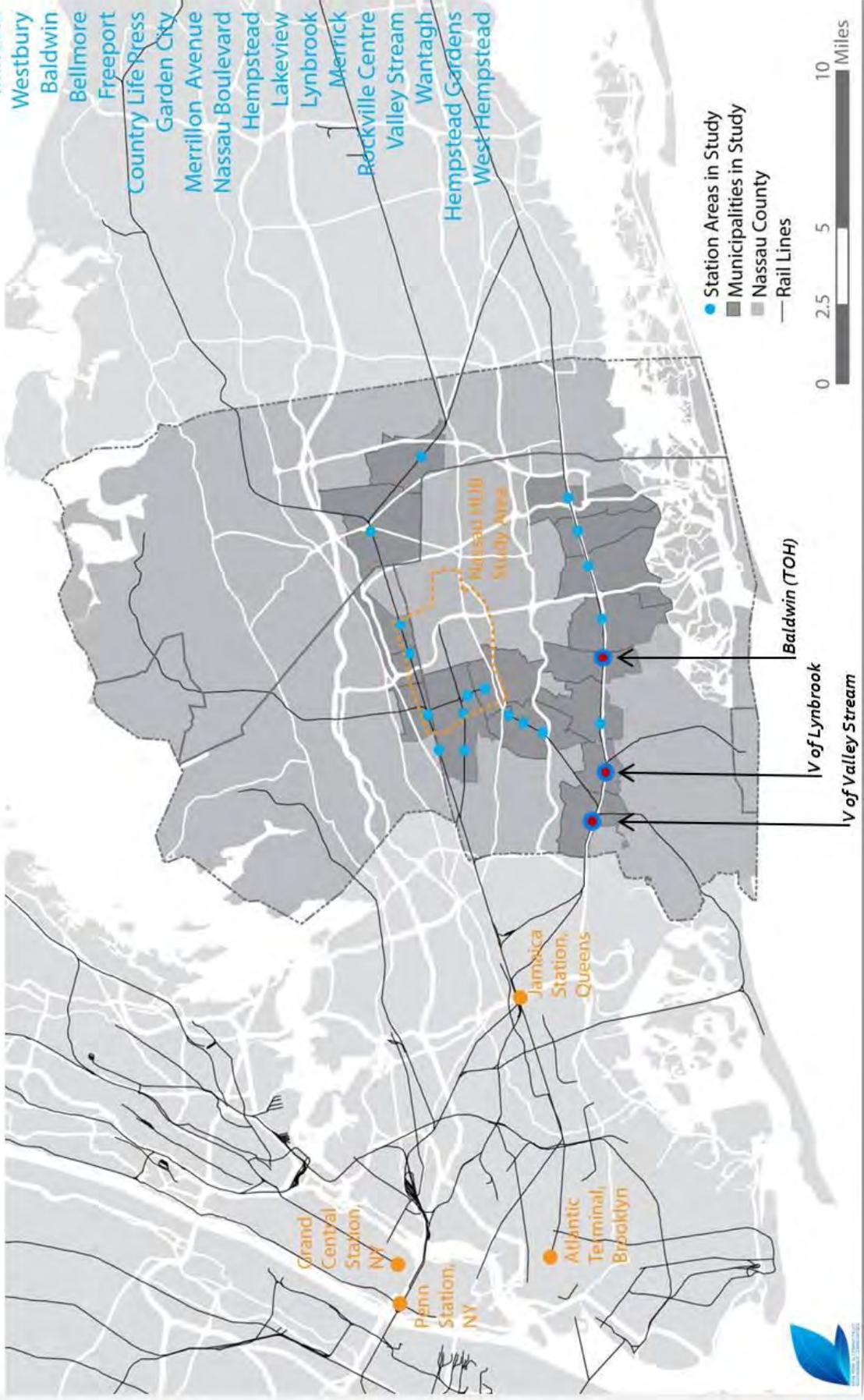
Freepoint Station Village of Freepoint



Nassau County Infill Redevelopment Feasibility Study

Selected Station Areas

Bethpage
 Hicksville
 Carle Place
 Mineola
 Westbury
 Baldwin
 Bellmore
 Freeport
 Country Life Press
 Garden City
 Merrillon Avenue
 Nassau Boulevard
 Hempstead
 Lakeview
 Lynbrook
 Merrick
 Rockville Centre
 Valley Stream
 Wantagh
 Hempstead Gardens
 West Hempstead

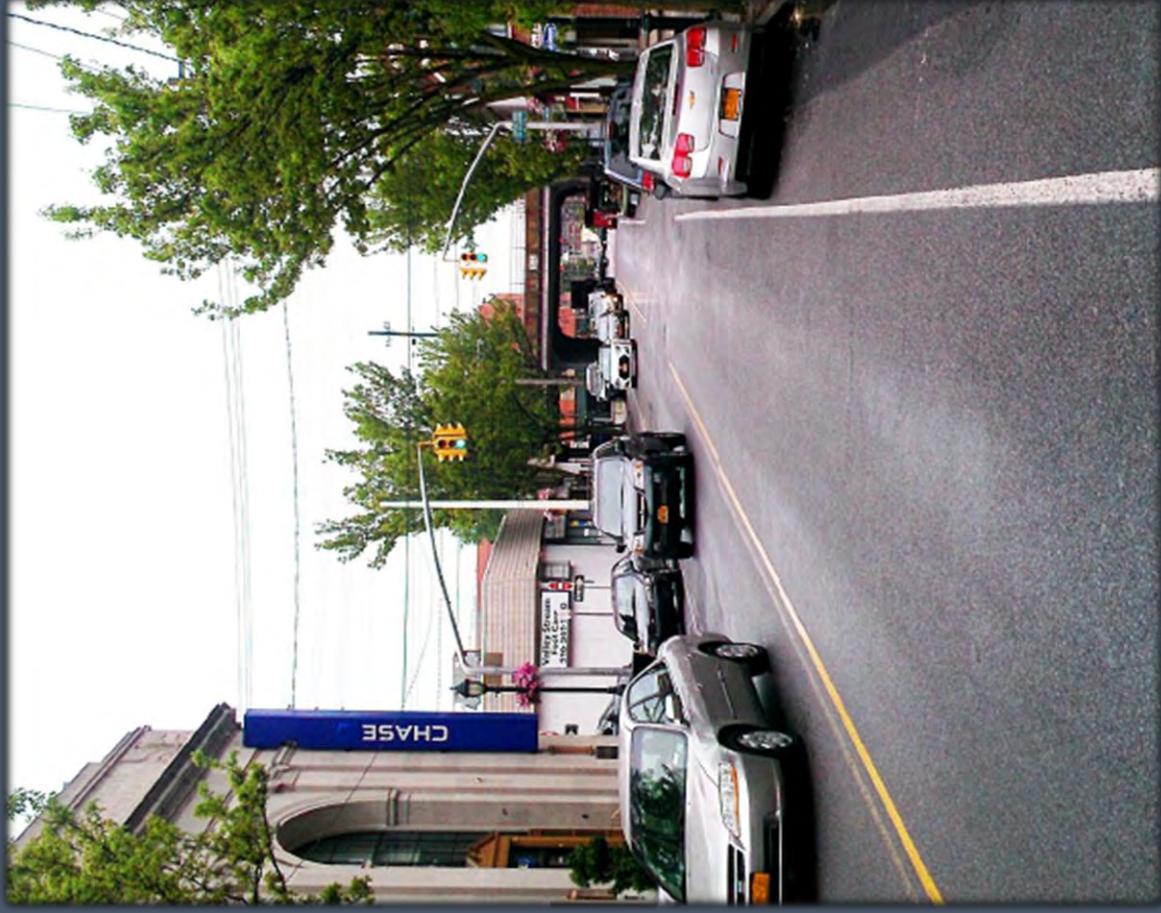


Valley Stream

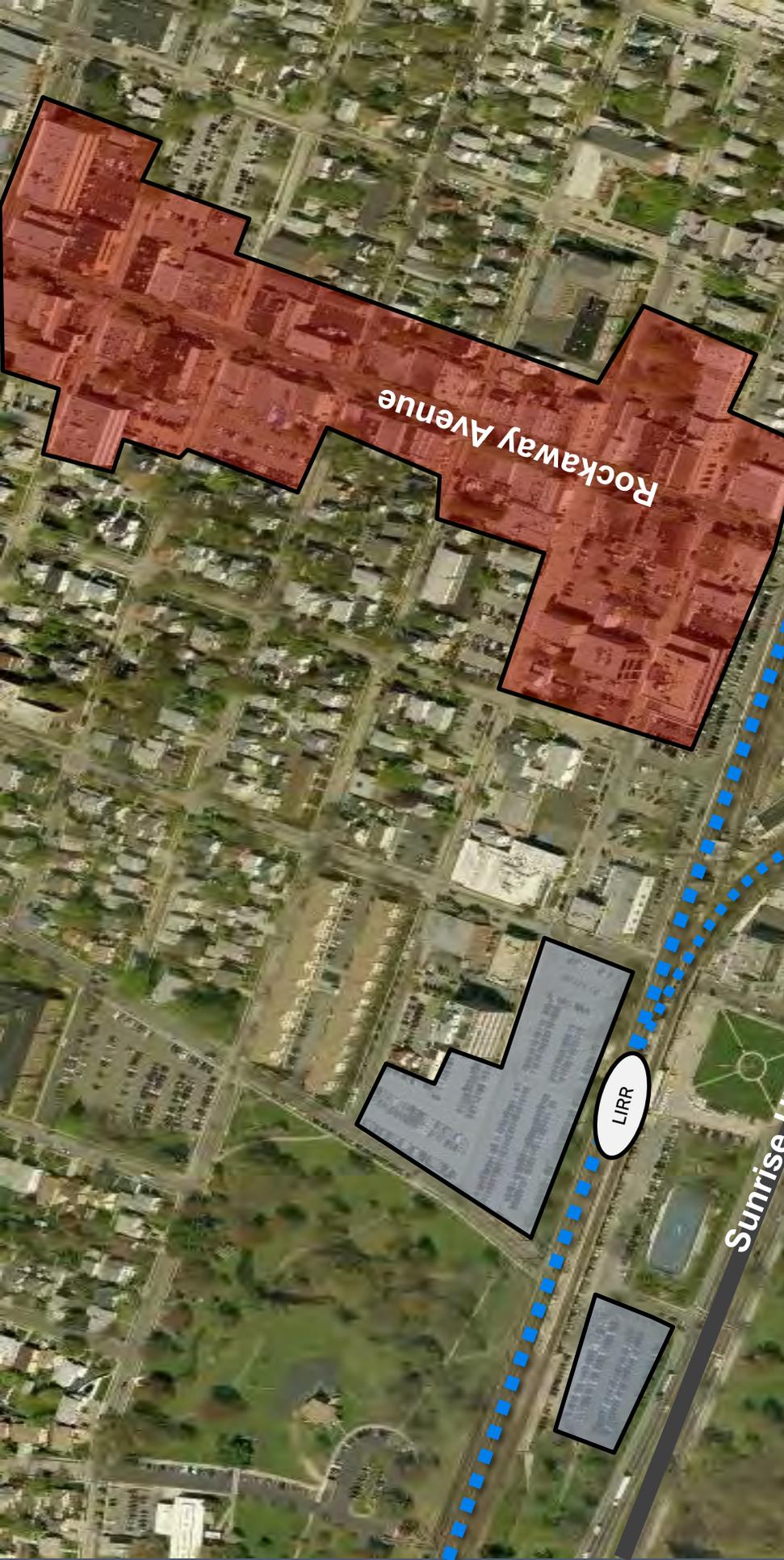
Realizing Transit-Supported Development



The Valley Stream community and Village leaders seek to revitalize the Downtown by encouraging residential and mixed-use development



- 1. Provide** new housing options to strengthen the Downtown.
- 2. Capitalize** on increased LIRR service stemming from East Side Access.
- 3. Leverage Village proximity** to JFK Airport and Long Island beaches.
- 4. Improve pedestrian safety** across Sunrise Hwy and LIRR station area.



1% of Valley Stream's 651 multifamily units within 1/4 mile of station

Most multifamily developments between 25-75 years old

4% of village population lives within LIRR Station Area (1/4 mile)

Redevelopment focus sites selected by Valley Stream are adjacent to the LIRR and a short walk from Village Green Park and the Rockaway Avenue commercial corridor.



SITE A

113 Parking Stalls

SITE B

258 Parking Stalls

SITE C

128 Parking Stalls

Development Scenario 1



Development Scenario Components

	Use	Total SF / Units (Floor)
Site A	Residential	155,600 SF (2-5) 155 Units
Site B	Retail	49,200 SF (1st)
	Structured Parking	645 Spaces (372 commuter / 273 program)

Additional Development Opportunity

Site C	Surface Parking	128 Spaces (128 commuter)
--------	-----------------	------------------------------

Development Scenario 2

Development Scenario Components

	Use	Total SF / Units (Floor)
Site A	Residential	131,600 SF (2-5) 130 Units
	Retail	5,000 SF (1st)
	Surface Parking	90 Spaces (0 commuter / 90 program)
Site B	Retail	19,800 SF (1st)
	Residential	178,000 SF (2-5) 178 Units
	Structured Parking	690 Spaces (372 commuter / 318 program)

Additional Development Opportunity

Site C	Surface Parking	128 Spaces (128 commuter)
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To move forward with redevelopment, Nassau County and its team have identified three next steps for Valley Stream.

Identify incentive programs and sources of discount financing to attract developer interest (structured parking).

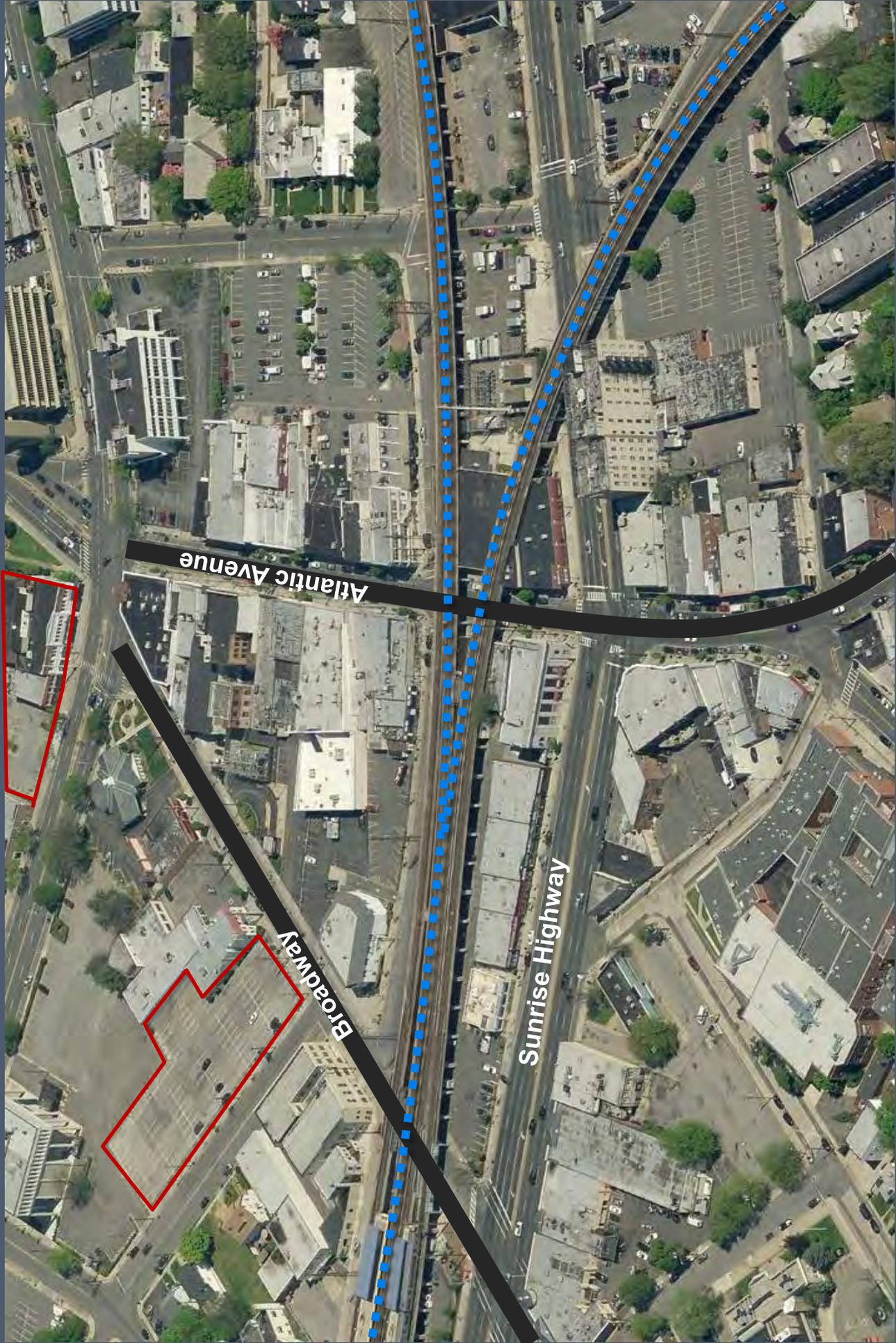


Lynbrook

Reimagining a Longstanding Downtown



Lynbrook Pilot Project



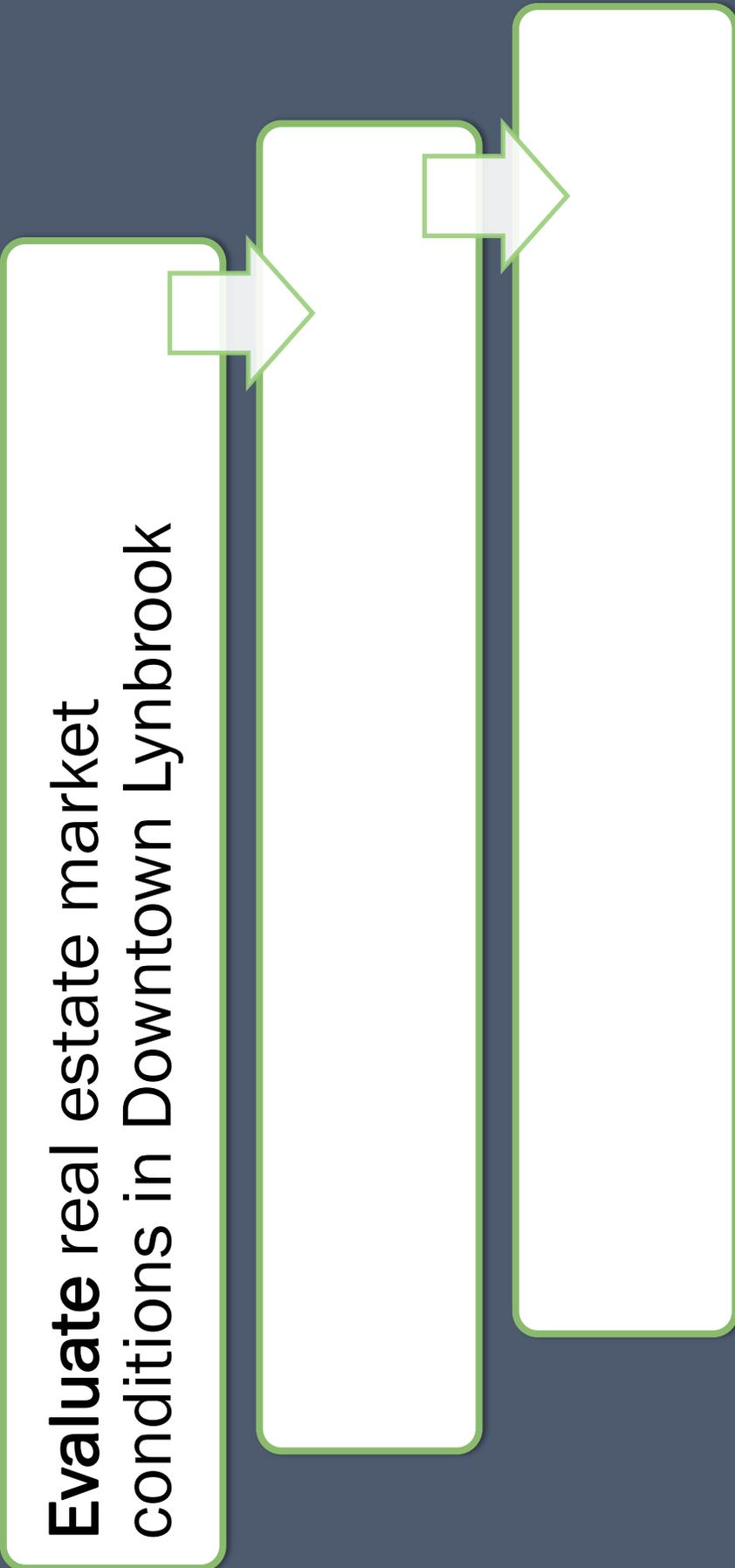
Atlantic Avenue

Broadway

Sunrise Highway

Local market analysis and public policy recommendations to facilitate Lynbrook's revitalization and ensure success of catalytic projects.

Evaluate real estate market conditions in Downtown Lynbrook



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graph LR; A[Evaluate real estate market conditions in Downtown Lynbrook] --> B[ ]; B --> C[ ]
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Real estate market conditions in Downtown Lynbrook show strength for Retail, lagging demand for Office, and limited activity or supply for Residential.



Retail: 318,000 SF (36% of Village)

Rent in Downtown Lynbrook higher than Village and County average (\$27/sf vs. \$23/sf and \$25/sf, respectively)

Office: 498,000 SF (60% of Village)

Higher vacancy rate than Nassau County average

Multifamily: limited supply

Most recent construction built in 1962

Nassau County and its team identified three strategies that the Village can implement to guide further development in Downtown Lynbrook.

**Define
a unique identity**

for downtown Lynbrook

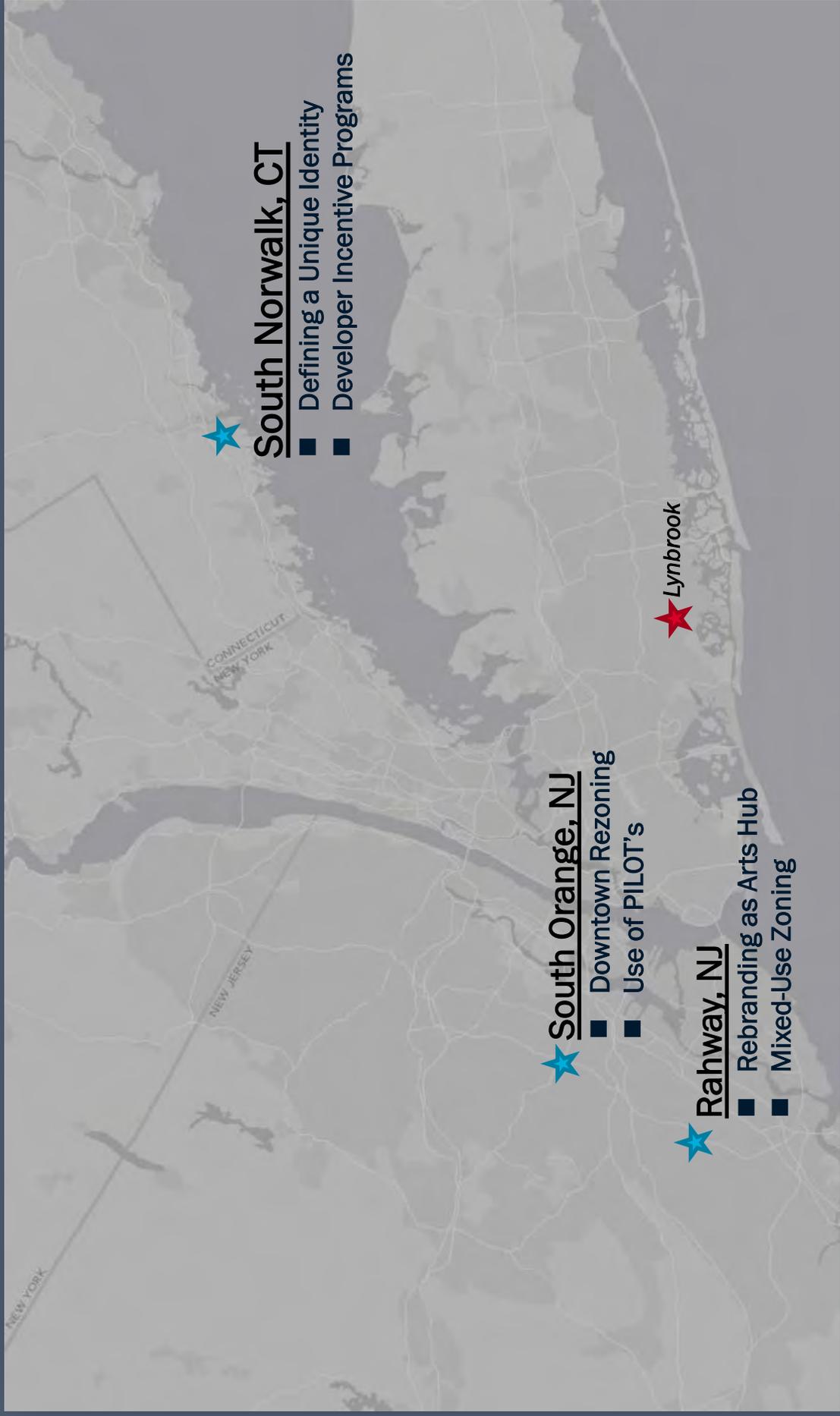
**Explore
housing options**

to add vibrancy to retail

**Offer
incentive programs**

to attract developers

Three regional case studies used to support recommended strategies for consideration by Lynbrook Village officials and the community.



Nassau County and its team suggest three next steps for Lynbrook to consider.

Commission a branding study for Downtown Lynbrook.



Baldwin

Complete Streets, Strong Downtown



Opportunities for Complete Streets

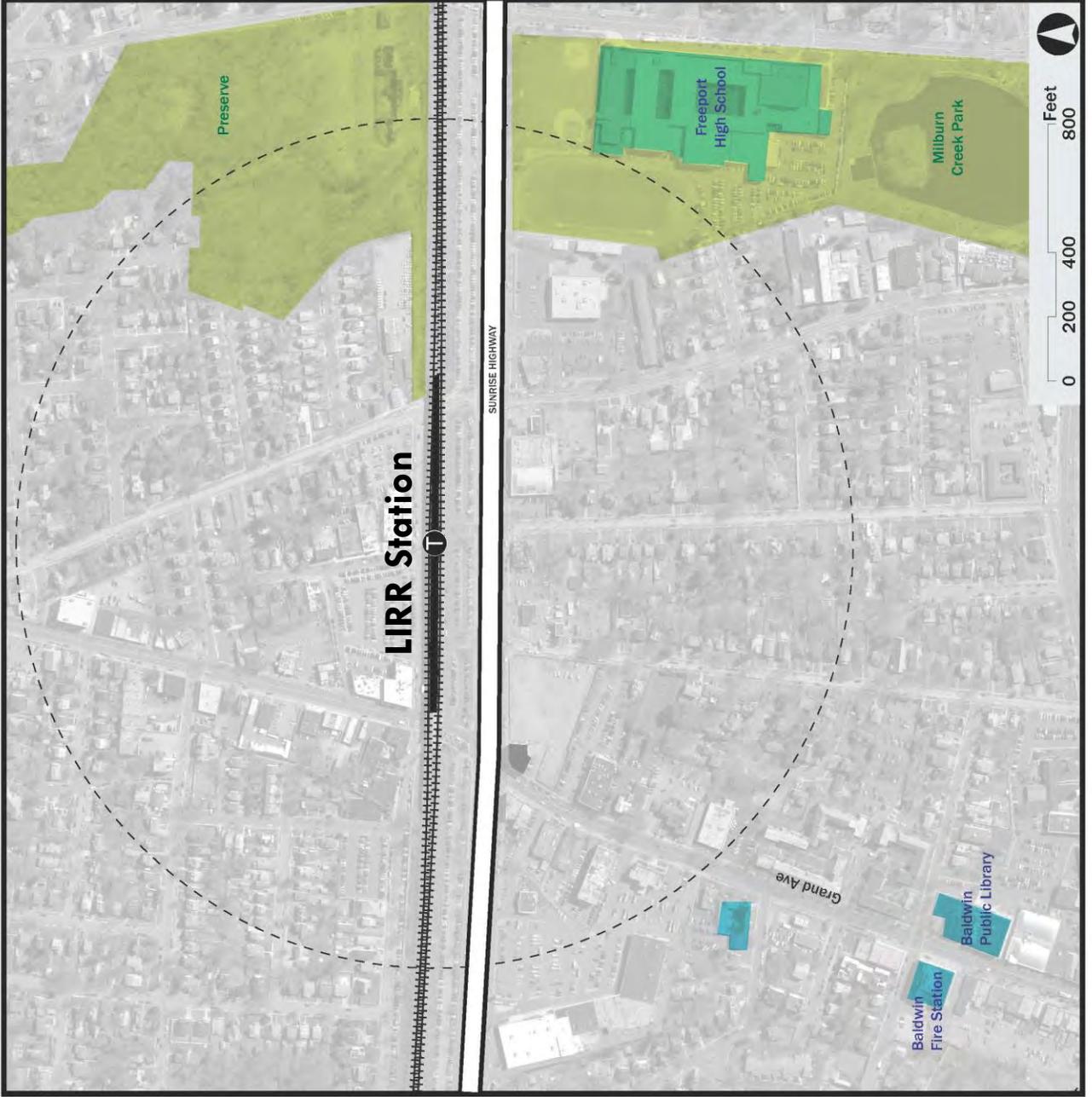


Grand Avenue

- Strong desire and readiness on the Part of the local civics
- Transit connection to NYC and improved walkability within the Hamlet
- Several soft sites and adopted *Urban Renewal Area* along Grand Avenue.
- Coordinate with the on-going NY Rising Community Reconstruction Program and Community Development Block Grant – Disaster Recovery (CDBG-DR) funding.

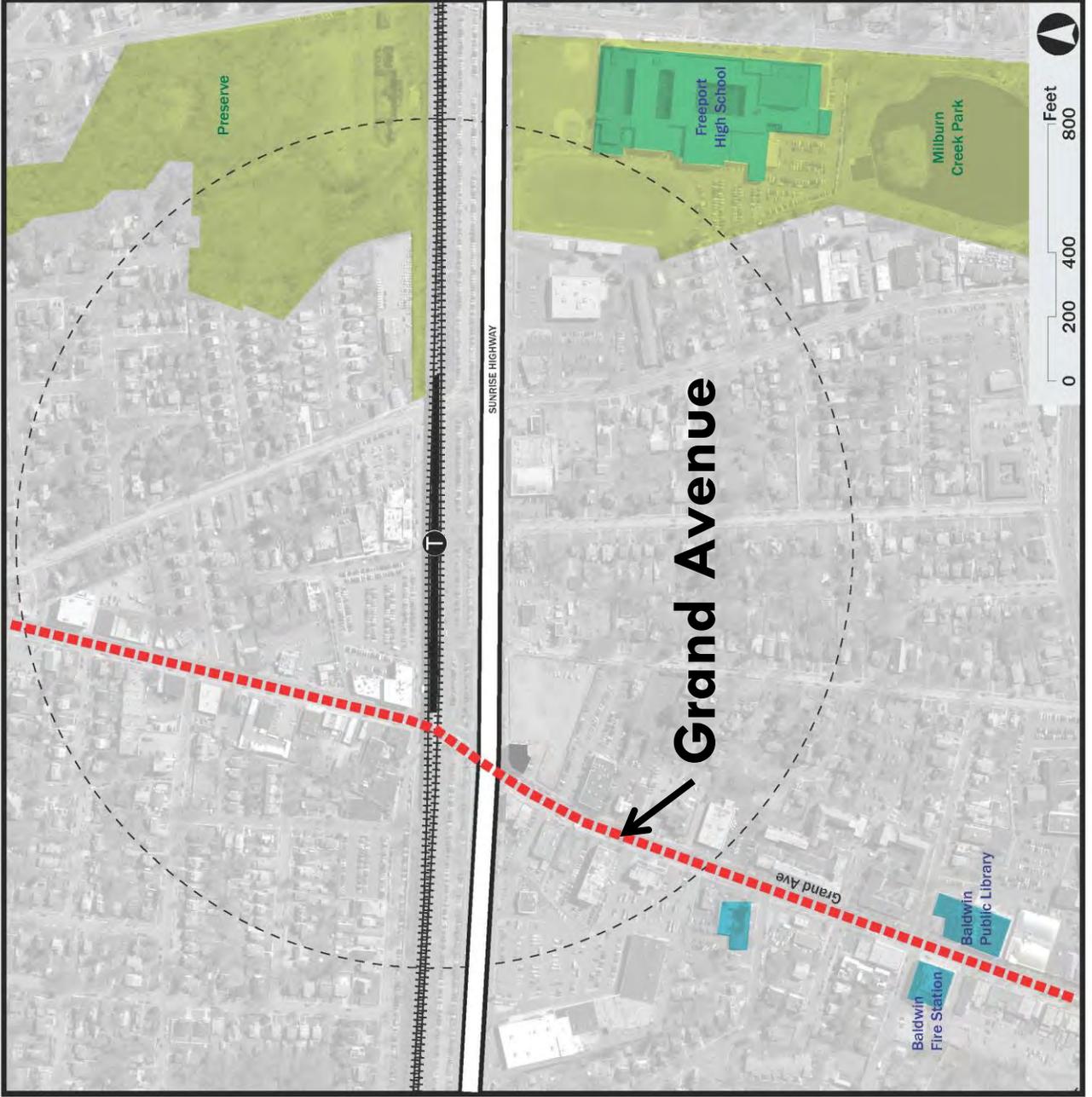
Baldwin Station Town of Hempstead

-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
 -  Crossing
 -  Potential Development Sites
 -  Key Commercial Corridors
 -  Barriers to Movement
 -  Priority Pedestrian Improvement Locations
 -  Major Intersection
- Pertinent Land Use
-  Commercial/Retail
 -  Civic



Baldwin Station Town of Hempstead

-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
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 -  Potential Development Sites
 -  Key Commercial Corridors
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 -  Major Intersection
- Pertinent Land Use**
-  Commercial/Retail
 -  Civic



Baldwin Station Town of Hempstead

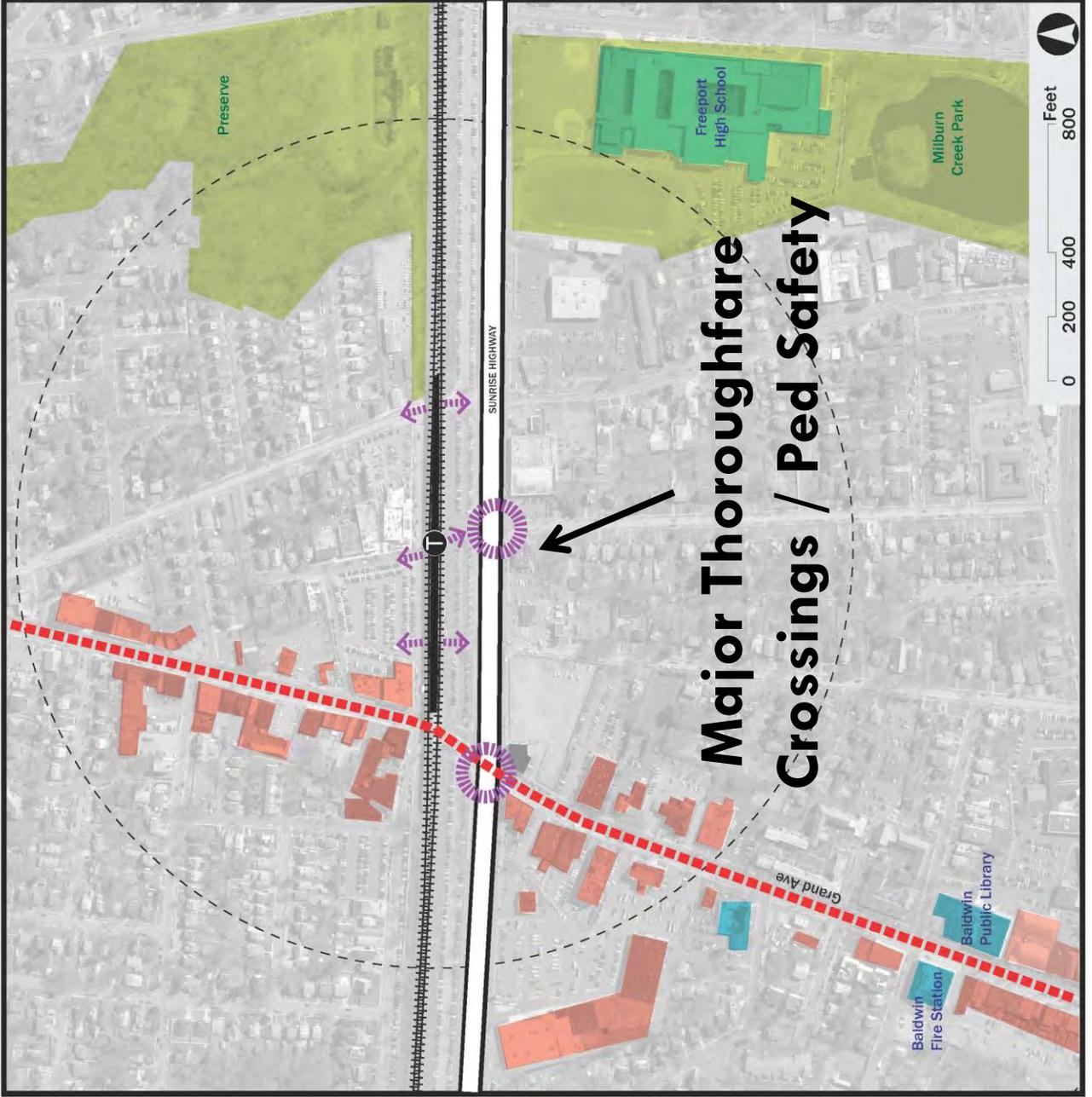
-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
 -  Crossing
 -  Potential Development Sites
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 -  Barriers to Movement
 -  Priority Pedestrian Improvement Locations
 -  Major Intersection
- Pertinent Land Use
-  Commercial/Retail
 -  Civic



Central Business District

Baldwin Station Town of Hempstead

-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
 -  Crossing
 -  Potential Development Sites
 -  Key Commercial Corridors
 -  Barriers to Movement
 -  Priority Pedestrian Improvement Locations
 -  Major Intersection
- Pertinent Land Use**
-  Commercial/Retail
 -  Civic



**Major Thoroughfare
Crossings / Ped Safety**

Baldwin Station Town of Hempstead

-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
 -  Crossing
 -  Potential Development Sites
 -  Key Commercial Corridors
 -  Barriers to Movement
 -  Priority Pedestrian Improvement Locations
 -  Major Intersection
- Pertinent Land Use**
-  Commercial/Retail
 -  Civic

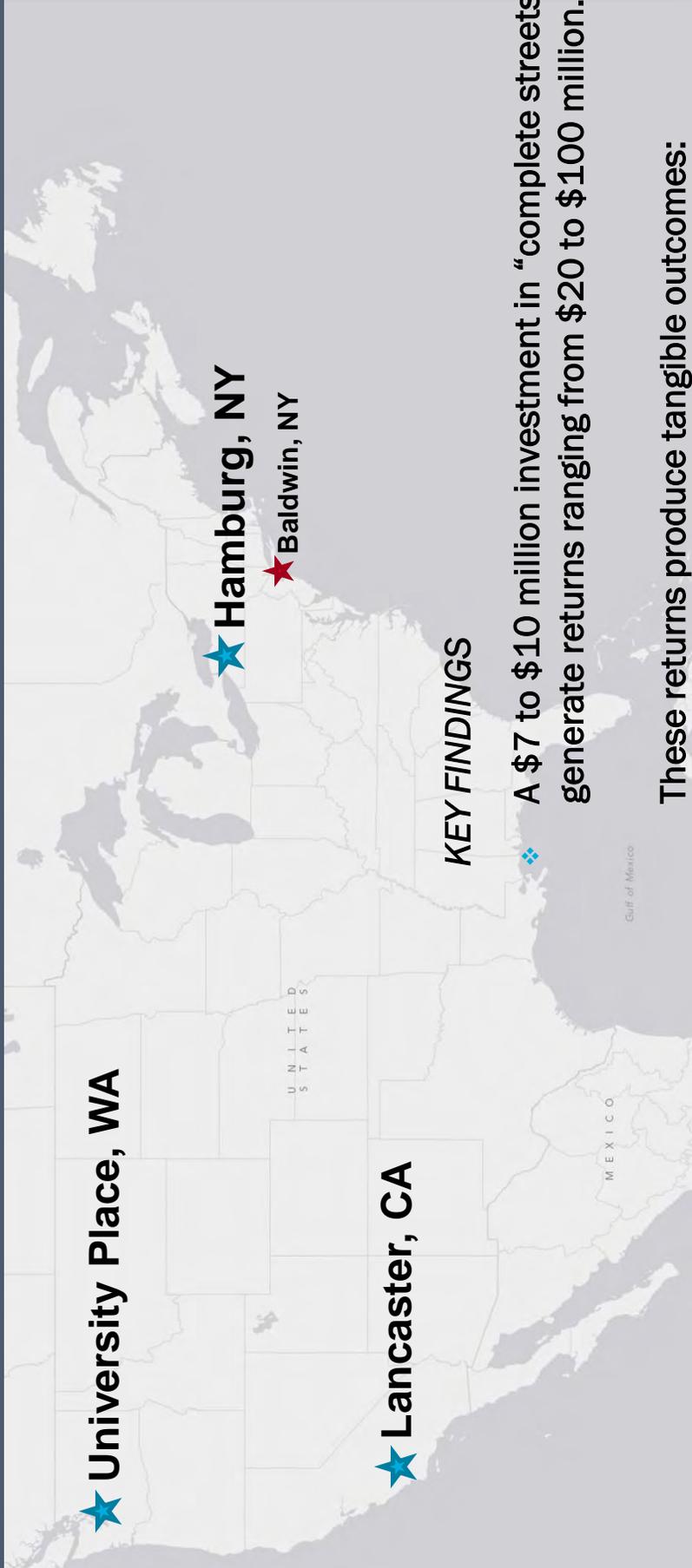


Baldwin Station Town of Hempstead

-  Transit Station (train)
 -  1/4 mile radius from station
 -  Transit Routes (train)
 -  Crossing
 -  Potential Development Sites
 -  Key Commercial Corridors
 -  Barriers to Movement
 -  Priority Pedestrian Improvement Locations
 -  Major Intersection
- Pertinent Land Use**
-  Commercial/Retail
 -  Civic



Case studies demonstrated the positive and quantifiable economic benefits of “complete streets” to a community.



KEY FINDINGS

❖ A \$7 to \$10 million investment in “complete streets” can generate returns ranging from \$20 to \$100 million.

These returns produce tangible outcomes:

- ✓ Creation of new jobs
- ✓ Reduction in retail vacancies
- ✓ Attraction of new businesses

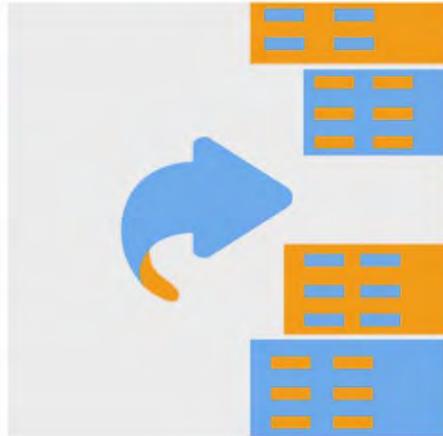
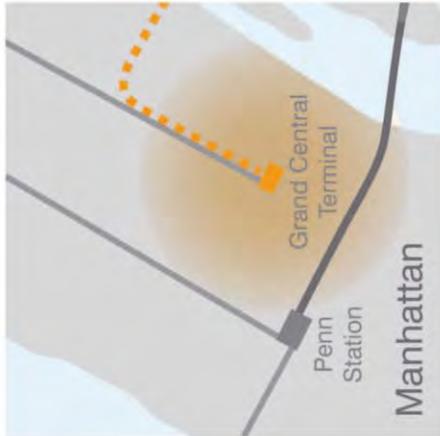
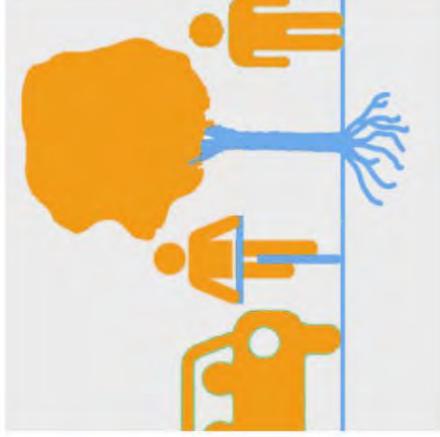
Small-scale projects can catalyze large-scale



Next Steps.....

- **Grand Avenue Complete Streets Traffic Study**
 - **Nassau County** hired traffic engineering consultants to conduct traffic study
 - Study expected to commence next month
 - Components of Complete Streets will be considered and vetted with the community
 - Existing/Project Traffic Volumes and Parking Issues will be analyzed
 - Components of Complete Streets will be considered and vetted with the community
- **Community Vision**
 - Study Work with community stakeholders, municipal officials and not-for-profits on land use plan for Downtown Baldwin

Cultivating Opportunities FOR SUSTAINABLE Development



Nassau County

Infill Redevelopment Feasibility Report



PARSONS
BRINCKERHOFF

CONSTRUCTION TECHNOLOGY

Thank You

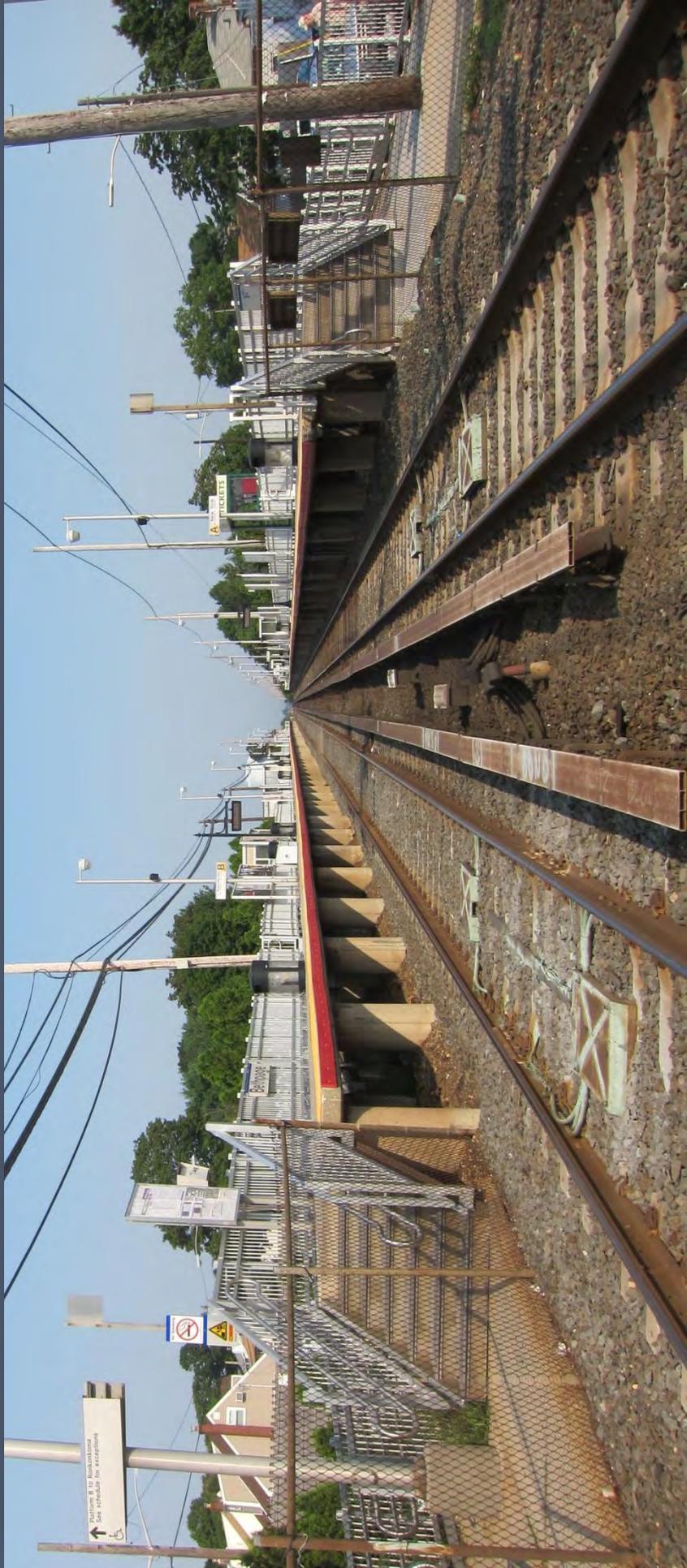
Sean E. Sallie, AICP, Planning Supervisor

Nassau County Department of Public Works

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WWW.NASSAUCOUNTYNY.GOV/AGENCIES/PLANNING/INDEX.HTML





General Session I

Financial Analysis of Shared Services

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ANDREW M. CUOMO, GOVERNOR



DEPARTMENT OF STATE
CESARA PERALES, SECRETARY OF STATE



Financial Analysis of Shared Services

Suffolk County Planning Federation



NEW YORK STATE
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Summary

- Maximizing cost efficiencies
- Leveraging local assets
- Collaborating and partnering
- Planning for long-term sustainability
- Capitalizing on opportunities



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Presentation Overview

- Review of Key Financial Metrics
- Financial Planning
- Consolidation and Shared Services
- Examples



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Key Financial Metrics

- Tax Base
- Tax Levy
- Tax Impact
- Tax Cap
- 5. Tax Rate

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Tax Base

- Full Value of Taxable Assessed Property
- Full Value = Taxable Assessed Value ÷ Equalization Rate

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Tax Levy

- Annual amount of revenue raised through property taxes
- Difference between appropriations and non-property tax revenues

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Tax Impact

- Change in Tax Levy anticipated from shared services
- Tax Impact = $\text{Cost Savings} \div \text{Tax Levy} \times 100$
(expressed as a percentage of tax levy)

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Tax Cap

- Maximum permissible annual increase in the Tax Levy without an override
- 2% or the annual rate of inflation, whichever is less (currently 1.66%)

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Financial Planning

Shared Services and Long-Term Financial Planning

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Case Study

Tax Metric	County	City
Tax Base	\$25,000,000,000	\$700,000,000
Tax Levy	\$75,000,000	\$6,300,000
Tax Rate	\$3.00	\$9.00

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City Budget Pressures

- Revenues
 - Declining federal and state aid
 - Flat sales and use tax
- Expenditures
 - Expenses increasing at faster rate than revenues (esp. employee benefits)

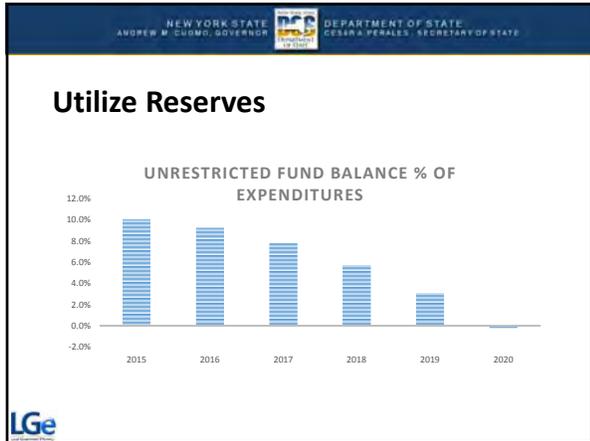
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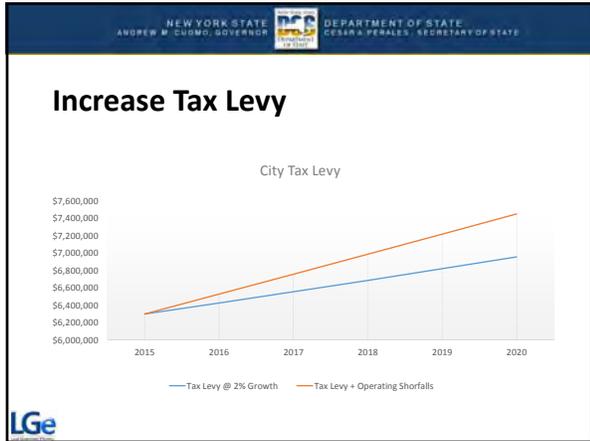
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City Budget

General Fund	Actual				Budgeted	Avg. Ann. Increase
	2011	2012	2013	2014	2015	
Revenues						
Real Property Taxes	5,900,000	6,000,000	6,100,000	6,200,000	6,300,000	2%
Sales and Use Tax	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	0%
State Aid	3,800,000	3,700,000	3,600,000	3,500,000	3,400,000	-3%
Total Revenues and Other Sources	\$14,700,000	\$14,700,000	\$14,700,000	\$14,700,000	\$14,700,000	0%
Expenditures						
General Government	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	0%
Public Safety	6,600,000	6,600,000	6,600,000	6,600,000	6,600,000	0%
Transportation	1,400,000	1,400,000	1,400,000	1,400,000	1,400,000	0%
Employee Benefits	3,800,000	3,900,000	4,000,000	4,100,000	4,200,000	3%
Total Expenditures and Other Uses	\$14,300,000	\$14,400,000	\$14,500,000	\$14,600,000	\$14,700,000	1%
Surplus (Deficit)	\$400,000	\$300,000	\$200,000	\$100,000	\$0	

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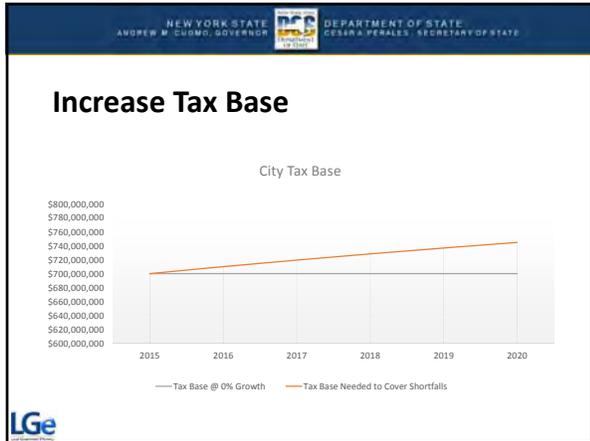
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Increase Tax Base

- Economic development produces additional tax revenues
- Increase in Tax Levy can offset operating shortfalls
- Revenues from new development are exempt from Tax Cap

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- ## Limitations
- Increasing Tax Levy
 - May exceed Tax Cap, forcing an override
 - Reduces economic competitiveness
 - Increasing Tax Base
 - May not be feasible given historic growth rate
 - Requires investment of scarce funds
- LGe

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- ## Expenditures – Cut Costs
- Reduce Staff
 - Impacts on service delivery
 - Negative effect on employee morale
 - Scale Back or Eliminate Services
 - Voter backlash
 - Negative cycle of disinvestment
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Shared Services

Shared Services and Long-Term Financial Planning



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Shared Services

- A municipality takes over or jointly provides a function or service
- Leverages economies of scale to provide service more efficiently
- Usually done on a contract basis through an Intermunicipal Agreement (IMA)



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Case Study



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Emergency Dispatch Consolidation

- City and County consolidate police, fire and emergency dispatch services
- City closes dispatch center and transfers employees to County
- City now contracts with County for dispatch services

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City Cost Savings

Budget Code	Before Consolidation	After Consolidation	Fiscal Impact
A3020.1 Public Safety Comm. Systems, Personal Services	\$225,000	\$0	(\$225,000)
A3020.4 Public Safety Comm. Systems, Contr. Expenses	\$0	\$90,000	\$90,000
A9015.8 Police & Firemen Retirement, Employee Benefits	\$67,500	\$0	(\$67,500)
Total	\$292,500	\$90,000	(\$202,500)

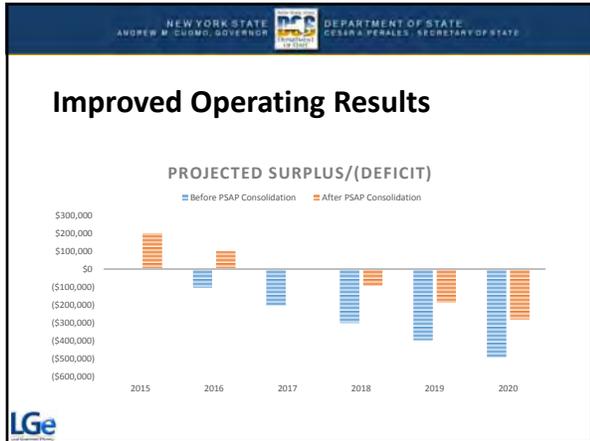
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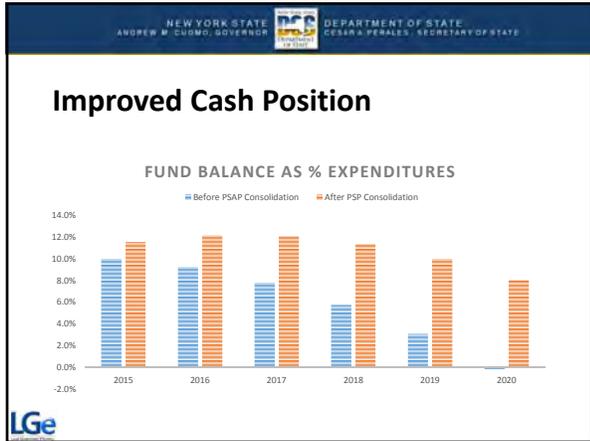
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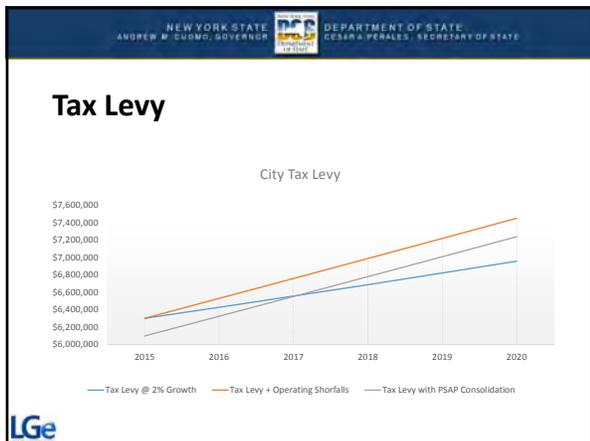
Tax Impact

- Tax Impact = $\text{Cost Savings} \div \text{Tax Levy} \times 100$
 $= (\$202,500) \div \$6,300,000 \times 100$
 $= (3.21\%)$
- Positive Tax Impact because Tax Levy is reduced

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- ## Local Government Benefits
- Employees transferred to County; no layoffs
 - Tax Cap not reached for another 2 years – buys time to implement other Shared Services
 - Reduced pressure to expand Tax Base
 - Improved coordination and emergency response times
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County Fiscal Impact

Budget Code	Before Consolidation	After Consolidation	Fiscal Impact
A2210 - IMA for Consolidated 911	\$0	(\$90,000)	(\$90,000)
A3020.1 - Public Safety Comm. Systems, Personal Services	\$1,000,000	\$1,225,000	\$225,000
A9015.8 - Police & Firemen Retirement, Employee Benefits	300,000	367,500	\$67,500
Total	\$1,300,000	\$1,502,500	\$202,500

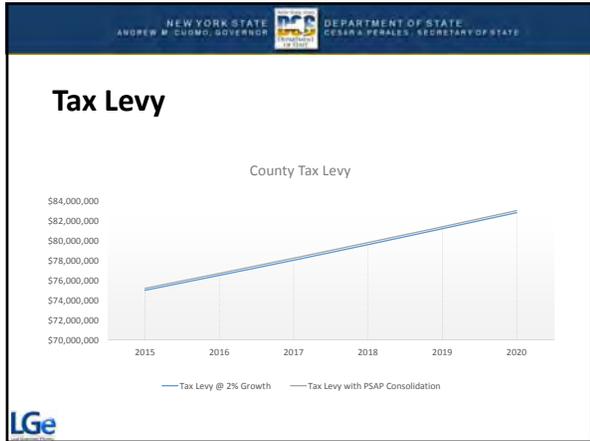
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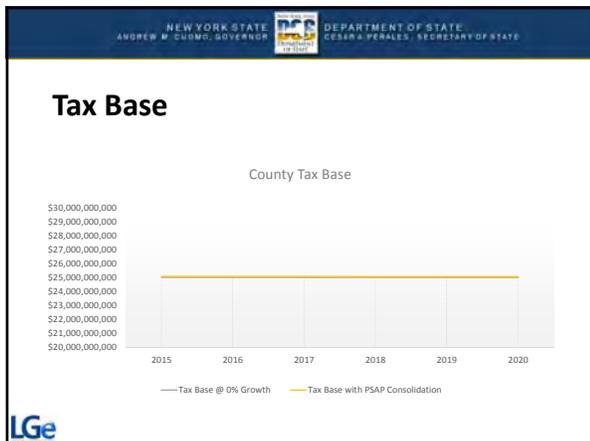
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County Tax Impact

- Tax Impact = $\text{Cost Savings} \div \text{Tax Levy} \times 100$
 = $\$202,500 \div \$75,000,000 \times 100$
 = 0.27%
- Negative Tax Impact because Tax Levy increases

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Examples

Shared Services and Long-Term Financial Planning



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Consolidation & Shared Services

- City of Batavia and Village of Le Roy
- Dispatch consolidation
- Goal of unified countywide system
- Better ability to share information and deploy emergency services




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City of Batavia

Expenditures	2012	2011	2010	2009	2008
Public Safety Administration	-	-	58,849	329,283	189,518
A30204 Public Safety Comm Sys, Contr Expend	-	-	58,849	26,363	1,327
A30202 Public Safety Comm Sys, Equip & Cap Outlay	-	-	-	194,393	-
A30201 Public Safety Comm Sys, Pers Serv	-	-	-	108,527	188,191

Source: Office of the State Comptroller Open Book New York



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Village of Le Roy

Expenditures	2012	2011	2010	2009	2008
Public Safety Administration	3,865	33,300	201,828	178,369	171,651
A30204 Public Safety Comm Sys, Contr Expend	3,865	33,174	145,698	5,170	4,334
A30202 Public Safety Comm Sys, Equip & Cap Outlay	-	126	-	-	1,582
A30201 Public Safety Comm Sys, Pers Serv	-	-	56,130	173,199	165,735

Source: Office of the State Comptroller Open Book New York

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Genesee County

Expenditures	2012	2011	2010	2009	2008
Public Safety Administration	1,490,662	1,563,774	1,650,720	1,806,329	1,251,069
A30204 Public Safety Comm Sys, Contr Expend	400,448	479,654	529,263	744,160	388,897
A30202 Public Safety Comm Sys, Equip & Cap Outlay	-	-	24,194	5,440	10,873
A30201 Public Safety Comm Sys, Pers Serv	1,090,214	1,084,120	1,097,263	1,056,729	851,299

Source: Office of the State Comptroller Open Book New York

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Shared Services

- Town and Village of Saugerties
 - Consolidated police departments
 - No loss of coverage or service
 - Savings for both Town and Village taxpayers



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Program Eligibility

<p>Local Government</p> <ul style="list-style-type: none"> • Towns, villages, cities, counties, • School districts, BOCES and certain libraries • Special districts, fire districts 	<p>Expenses</p> <ul style="list-style-type: none"> • Contractual • Capital, Construction and Equipment • Transitional Personnel
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Local Government Efficiency Funding

<p>Planning</p> <ul style="list-style-type: none"> • \$12,500 per municipality • \$100,000 per project • 50% State Funds/50% Local Fund 	<p>Implementation</p> <ul style="list-style-type: none"> • \$200,000 per municipality • \$1,000,000 per project • 90% State Funds/10% Local Fund
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Citizens' Reorganization and Empowerment Grant

- Consolidation or dissolution of a local government entity in accordance with Article 17-A of the General Municipal Law
- Re-Organization Study/Plan
- Expedited Re-Organization Assistance
- Re-Organization Implementation



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Citizens' Reorganization and Empowerment Grant

- Non-Competitive
- \$100,000 Maximum Per Project
 - \$50,000 maximum for a study and/or plan
 - \$25,000 in expedited funds for petitioned local governments
 - \$50,000 maximum for implementation of a municipal re-organization



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LGE Technical Assistance

- Sharing of other municipal experiences
- Completed projects
- Case studies
- Publications
- Technical assistance



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Division of Local Government Services
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Breakout Session

Past Planning Directors and the next Generation of Planners Roundtable



General Session II
Ethics

Exploring Standards of Ethical Conduct for Members of Planning Boards and Zoning Boards of Appeals: Article 18 of the GML & the Common Law

New York State Department of State
Secretary of State
New York
2008
(updated 2014)

Overview



- Ethics Generally
 - Defining Ethics
 - Guidance – Primary Sources
- Article 18 of the General Municipal Law
 - Pinpointing Potential Conflicts
 - Disclosure Requirements
 - Public Official Actions Subject to Legal Code/Laws
- Common Law Conflicts
- Results of Interested Contracts
- Municipal Checklist

Defining Ethics



- Conduct or Behavior
 - Bad Faith
 - Ex Parte Conversations
- Morals or Values
 - Community Standards
- Conflicts of Interest
 - Financial/Contractual
 - Familial/Nepotism

Searching for Guidance



- Article 18 of the General Municipal Law
 - Local Code of Ethics
 - Local Board of Ethics
- Other State Statutes
- Case Law/ Common Law
- Opinions of New York State Attorney General and New York State Comptroller

4

General Municipal Law

Article 18

5

Purpose

- To protect the public from municipal contracts influenced by avaricious officers;
- To protect innocent public officers from unwarranted assaults on their integrity;
- Mandates that each community adopt an appropriate code of ethics to supplement Article 18.

6

The Reach of Article 18



Gen. Mun. Law
§800 - 813

Regulates conflicts of interest by prohibiting municipal officers and employees from having an interest in any contract with the municipality over which the officer or employee would have control.

7

*How to Identify a
Potential Conflict of
Interest:*

*General Municipal Law
Article 18*

8

Is there a "contract"?

Any claim, account or demand against or agreement with a municipality, express or implied.



9

Considered a "contract"

- Settlement of a lawsuit against the municipality.
 - NYS Comptroller Opinion Nos. 81-295; 77-214.
 - Note: A person in litigation against a municipality over a contract claim is not thereby disqualified from running for elected office. 1975 N.Y. Atty. Gen. Op. No. 272.
- An application for a permit
 - People v. Pinto, 88 Misc.2d 303 (Mt. Vernon City Ct. 1979);
 - But see, Freidhaber v. Town Bd. of Town of Sheldon, 851 N.Y.S.2d 58 (N.Y. Sup. 2007)(questioning People v. Pinto).

10

Not a "contract"

- An application for a zoning variance
 - Op. N.Y. Comp. 83-114; 91-98; 97-112
 - Friedhaber v. Town Bd. of Town of Sheldon, 851 N.Y.S.2d 58 (citing N.Y. Op. (Inf.) Atty. Gen. 74-106; Op. N.Y. Comp 83-114 and stating that resolutions of the ZBA relating to variances were not within the definitions of contract as referred to in GML §800(2)).
- An application to a planning board
 - Op. N.Y. Comp. Nos. 91-48 and 97-12
- An application for subdivision approval
 - Op. N.Y. Comp. 88-68
- An intermunicipal agreement
 - Op. N.Y. Comp. 01-14

11

Does an "interest" exist?



Gen. Mun. Law. §800(3)

- Pecuniary or material benefit, direct or indirect, accruing to an officer or employee of a municipality.
- If you are an officer or employee of a municipality, you will be deemed to have an interest in a contract that is between your municipality and certain other individuals or entities.

12

GML §800(3): Interest Exceptions

- An employment contract that is between the municipality and your spouse, minor children or dependents
- Contracts between the municipality and your adult children
- Contracts between the municipality and a corporation of which you are neither:
 - A director,
 - An employee, nor
 - An owner of less than 5% of the outstanding stock.

Do you have "control" over the contract...?

- Power or duty to:
 - Negotiate, prepare, authorize or approve the contract or authorize or approve payment under the contract, or
 - Audit bills or claims under the contract, or
 - Appoint an officer or employee who has any of the powers or duties set forth above? *Gen. Mun. Law. §801.*

GML §801 Exception

- The payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment once the holding of such position(s) is not prohibited.

Penalties for Violating GML §801

- “Any contract willfully entered into by or with a municipality in which there is an interest prohibited by [Article 18] shall be null, void and wholly unenforceable.” *Gen. Mun. Law §804.*
- “Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of [Article 18] shall be guilty of a misdemeanor.” *Gen. Mun. Law §805.*

16

Other Prohibited Acts:

*General Municipal Law
Section 805-a*

17

Gifts

- Solicitation or receipt of any gift either, directly or indirectly, under circumstances in which it could reasonably be inferred that the gift was intended to influence the solicitor or receiver or the gift could reasonably be expected to influence that solicitor or receiver in the performance of his or her official duties or was intended as a reward for official action.
- *Tuxedo Land Trust, Inc. v. Town of Tuxedo*, 34 Misc.3d 1235(A) (Orange Cty Sup. Ct. 2012)(holding that there is no statutory provision pursuant to which a private person has standing to enforce the mandate of GML §805-a(1)(a)).

Gen. Mun. Law. §805-a(1)(a)

18

Disclosure of Confidential Information

- You may not disclose any confidential information acquired during the course of performing official duties, or
- Use such confidential information to further personal interests.
- Penalties will follow if violated. *Gen. Mun. Law 805-a(2)*.

Compensation for Services:
GML §805-a(1)(c)

- You may not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which you:
 - Are an officer, member, or employee, or
 - Have jurisdiction over the municipal agency, or
 - Have the power to appoint any member, officer or employee of the municipal agency.

Compensation for Services:
GML §805-a(1)(d)

- You may not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of your municipality, whereby your compensation is to be dependent or contingent on action by your agency with respect to the matter.

GML 805-a Prohibited Actions: Examples



- A licensed architect who sits on a zoning board should not represent an applicant before the local building department (NYS AG Op. No. 94-51);
- The chair of the planning board, who is employed by a real estate company that would receive business if a subdivision application is approved, should not participate in the consideration of that application (NYS AG Op. No. 86-54);
- A town planning board member, who is also a geologist in the private sector, may not be compensated or enter into an agreement to be compensated for soil borings on a project before the planning board (NYS AG Op. No. 95-14).
- **Note:** Prohibitions under Section 805-a must be evaluated on a case-by-case basis.

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Disclosure Provisions:

General Municipal Law Article 18

23

Disclosure of Interests: Generally



Gen. Mun. Law, §803

- When a municipal officer or employee (or his or her spouse) has an interest in any actual or proposed contract with the municipality of which he or she is an officer or employee, he or she shall publicly disclose such interest in writing to (his or her immediate supervisor and to) the governing body as soon as he or she has knowledge of such actual or prospective interest.

A violation of Gen. Mun. Law 803 is a misdemeanor under Section 805.

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GML §802 Exceptions: Disclosure Required

- The designation of a newspaper for publication of notices;
- The acquisition of real property or an interest therein, through condemnation proceedings according to law;
- A contract with a membership corporation or other voluntary non-profit corporation or association;
- Contracts entered into prior to becoming an officer or employee.

25

GML §802 Exceptions: No Disclosure Required

- A contract for the payment of reasonable rental of a room or rooms owned or leased by an officer or employee for official duties;
- A contract for the furnishing of public utility services when the rates or charges are fixed and regulated by the PSC;
- A contract for the payment of reasonable rental of a room or rooms owned or leased by an officer or employee for official duties;
- A contract for less than \$750 per fiscal year (cumulative).

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Disclosure: Planning & Zoning

Applicants making petitions, or requests for variances, amendments, changes of zoning, plat approvals, plat exemptions or official map exemptions, licenses or permits relating to a municipality's planning and zoning regulations must disclose known certain interests.



Gen. Mun. Law: §09

27

Disclosure: P & Z (cont)

- The existence of certain familial relationships give rise to an interest that may require disclosure.
- In Nassau County, exceptions shall also apply to a party officer.
- Knowing and intentional violation of this section is a misdemeanor, a criminal remedy. *Gen. Mun. Law Section 809(5)*.

28

Code of Ethics



Gen. Mun. Law, §806

- Each county, city, town, village, school district and fire district **must** adopt a code of ethics
- It may not be less restrictive than the provisions of Article 18, but can be stricter.
 - Must be consistent with provisions in your local codes

29

Board of Ethics

- Renders advisory opinions to officers and employees of the municipality;
- Receives and investigates complaints filed by citizens;
- Consists of at least three members;
- Must review and administer the financial disclosure law for the municipality;
- May receive filings of annual statements of financial disclosure;
- Optional Board.

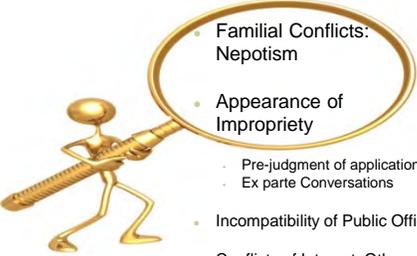
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Conflicts of Interests:

The Common Law

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Overview



- **Familial Conflicts: Nepotism**
- **Appearance of Impropriety**
 - Pre-judgment of application
 - Ex parte Conversations
- **Incompatibility of Public Offices**
- **Conflicts of Interest: Other Considerations**

32

Familial Conflicts: Nepotism

- State law does not prohibit persons from serving in the same governmental unit because they are related by consanguinity.
- Remember: Employment contracts between a municipality and certain family members of an officer or employee of that municipality is excluded from Section 800(3) of Article 18, definition of "interest". The family members are:
 - **Spouse, or**
 - **Minor child(ren), or**
 - **Dependent(s).**

33

Nepotism (cont)

- Public officers still have the responsibility to exercise their official duties solely in the public interest. N.Y. Op. (Inf.) Atty. Gen. 96-17.
- Appearance of impropriety may control whether a family member ought to be disqualified from a specific deliberation.
- Other state statutes may be violated in cases involving preference based on family relationships.
 - People v. Haywood, 201 A.D.2d 871(4th Dept. 1994) (where in a prosecution pursuant to Penal Law Section 195.00(1) the court concluded that the defendant's actions violated the Town's Code of Ethics where the defendant Water Utilities Sup. permitted his son to use a hydraulic pallet cart owned by the Town at the son's place of business for 3 1/2 years.)

34

Familial Relationships

- A planning board is not necessarily infected with an alleged conflict of interest based upon a claim that a competitor applicant was locally favored because the competitor was represented by the spouse of a council member, even where that council member-spouse made the motion to adopt the zoning code amendments favorable to the competitor. Masi Management, Inc. v Town of Ogden, 691 N.Y.S.2d 706 (Sup. Ct. Monroe Cty. 1999).



35

Familial Relationships (cont)

- Absent a prohibition in a local code of ethics, it has been suggested that it is not a conflict of interest for a person to be appointed to the planning board of a town where his/her parent currently serves as a member of the town zoning board of appeals. 1993 N.Y. Op. (Inf.) Atty. Gen. 37.
 - As a general rule, family members should recuse themselves from participating in matters affecting compensation and employment.

36

Appearance of Impropriety: Prejudgment

- In outward opposition or support of a project currently before a reviewing board.
- It suggests that the member is:
 - Bias - Unable to act impartially and keep an open mind;
 - Favoritism - Special consideration to one point of view over another.
- Distinguished from philosophical approach or personal opinions based on education and experience. 1988 N.Y. Op. (Inf.) Atty. Gen. 59.
- Schweichler v. Village of Caledonia, 45 A.D.3d 1281 (4th Dept. 2007) (planning board prejudged rezoning application by signing a petition in favor of the rezoning and related project).

37

Ex Parte Communication

- Communication with the reviewing board outside the presence of all sides to a matter.
- Ex-parte communication presents legal concerns if the information gathered ex-parte is excluded from the record.
 - Rule of thumb: Immediately place on the record the substance of what was discussed, and
 - Be and make available to any interested side to a matter.

38

Compatibility of Office:

*Statutes
and
The Common Law*

39

General Rule

In the absence of a constitutional or statutory provision which prohibits dual office holding, one person may hold two offices simultaneously unless they are incompatible.



40

Statutory Incompatibility

- **Planning Boards**
 - Town Law § 271(3) – Member of town board ineligible for membership on town's planning board
 - Village Law § 7-718(3) – Member of board of trustees ineligible for membership on village's planning board.
 - General City Law § 27(3) – Member of city legislative body ineligible for membership on city's planning board.
- **Zoning Boards of Appeals**
 - Town Law §267(3) – Member of the town board ineligible for membership on town's zoning board of appeals.
 - Village Law § 7-712(3) – Member of board of trustees ineligible for membership on village's zoning board of appeals.
 - General City Law § 81(2) – Member of city legislative body ineligible for membership on city's zoning board of appeals.

41

Other Statutory Incompatibility

- County Law §411 - prohibits a county judge, family court judge, surrogate, district attorney, sheriff, county clerk or any other elective county officer from holding at the same time any other elective county or town office or the position of city supervisor;
- Village Law §3-300(3) - prohibits the holding of an elective and an appointive village office;
- Town Law §20(4) – prohibits holding more than one elective town office; and
- General City Law §3 – prohibits any member of the common council of the city from holding certain other paid city offices.
- An Article on this topic that might be helpful:
Non-Article 18 Conflicts of Interest Restrictions Governing Counties, Cities, Towns, and Villages Under New York State Law by Mark Davies located at: http://www.nyc.gov/html/conflicts/downloads/pdf2/municipal_ethics_laws_ny_state/ethics-muni-winter06.pdf

42

No Statutory Incompatibility

- County Planning Boards:
 - GML §239-c(2)(c).
- Regional Planning Boards:
 - GML §239-h(3)(c).

←—————→
A member of either a county planning board or a Regional Planning Board shall excuse himself or herself from any deliberation or vote relating to a matter or proposal before such board which is or has been the subject of a proposal, application or vote before the municipal board of which he or she is a member.

43

Common Law Incompatibility

- Incompatibility – When two offices or positions are “squarely at odds with one another,” (O’Malley v. Macejka, 44 N.Y.2d 530, 534 (N.Y. 1978)), i.e., if one is subordinate to the other or if there is an inherent inconsistency in the duties of the two positions (People ex rel. Ryan v. Green, 58 N.Y. 295 (1874)).

44

Conflicts of Interest: Other Considerations

- Zagoreos v. Conklin, 109 A.D.2d 281 (2d Dept. 1985), although no specific provision of Article 18 was violated, perceived conflicts of interest under the common law existed and accordingly the vote by the ZBA was rightly set aside.
- Tuxedo v. Town Bd. of Town of Tuxedo, 69 A.D.2d 320 (2d Dept. 1979), an officer of an advertising firm could not vote on a zoning application submitted by a subsidiary of one of his firm’s clients despite the absence of any interest specifically forbidden by the provisions of Article 18.

45

Results of Interested Contracts

- **Violations of Section 801:**
 - Section 804 - Contracts void;
 - Section 805 - Knowing and willful violation a misdemeanor.
- **Violations of Section 805-a**
 - Section 805-a(2) - Knowing and intentional violations may result in fines, suspension, or removal from office or employment.
- **Common Law Violations**
 - Recusal
 - Contracts void

Appoint alternate members in the case of conflicts of interest.

46

Municipal Check List

*Designed by the Government
Law Center of Albany Law
School*

47

The Municipal Checklist

- Have you reviewed a copy of the state ethics law, Article 18, in the last year?
- Have you reviewed a copy of the local ethics law in the last year?
- Does your business relate in any way to issues which may come before the Board on which you sit?
- Could your business potentially benefit or be harmed by a decision of the board on which you serve?

48

The Municipal Checklist (cont)

- Are you or a member of your immediate family licensed or engaged in any of the following professions which may cause you, your firm or family member to appear before the board on which you serve:
 - Architect
 - Attorney
 - Builder, Developer
 - Engineer
 - Land Surveyor
 - Mortgage Broker/Agent
 - Realtor
 - Subcontractor for Work on New Construction/ Remodeling
 - Title Insurance Company

49

The Municipal Checklist (cont)

- Do you hold investments in real estate within the municipality on whose board you serve?
- Do you have stock or any other type of ownership interest (including a silent limited partnership) in any company or organization which may appear before the board on which you serve?
- Are you related to or in business or professional relationship with, another municipal official on a different board or in an office where either position may review the decisions of the other?

50

The Municipal Checklist (cont)

- Are you comfortable and conversant with the municipal/board policies on conflicts of interest, recusal from deliberations, and recusal from voting?
- Do you know where to go to get answers to ethical questions in a timely fashion?



51

The Bottom Line:

Avoid the Headlines



52

Collaboration

Designed for members of planning boards and zoning boards of appeals by the Department of State in collaboration with Patricia E. Salkin, Dean of Touro Law/ Jacob D. Fuchsberg Law Center and formerly of the Albany Law School Government Law Center, and Mark Davies of the New York City Conflicts of Interest Board.

Resources

- Various publications by Mark Davies including "Working Rules on Ethics for Zoning Boards of Appeals: Ethics Checklist for Zoning Board Members," located at http://www.nyc.gov/html/conflicts/downloads/pdf2/municipal_ethics_laws_ny_state/working_rules_ethics_zoning_bds_appls.pdf.
- Various publications by Patricia E. Salkin, Raymond & Eita Smith Distinguished Professor of Law and Associate Dean and Director of the Government Law Center of Albany Law School including "Conflicts of Interest and Other Legal Ethical Considerations for Planners and Lawyers," located at <http://ssrn.com/author=83276>.

53



Contacting the Department of State:

(518) 474-6740 - Legal
(518) 473-3355 - Local Gov.
(800) 367-8488 - Toll Free
localgov@dos.ny.gov
www.dos.ny.gov



54



General Session II

“Long Island Index” a project by the RauchFoundation

3 states
31 counties
783 towns
and cities
23 million
residents





Fourth Regional Plan Goals

- to create **communities** that are dynamic, livable and resilient;
- expand the region's economic **prosperity** in an equitable and sustainable way;
- and **reform** the financial, institutional and regulatory structures necessary to implement smart planning decisions

Fourth Plan Committee & Working Groups



Listening to the Region

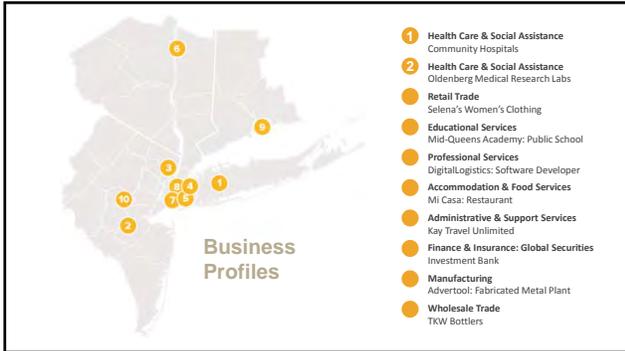
- Survey
- Focus Groups
- Individual and Business Profiles



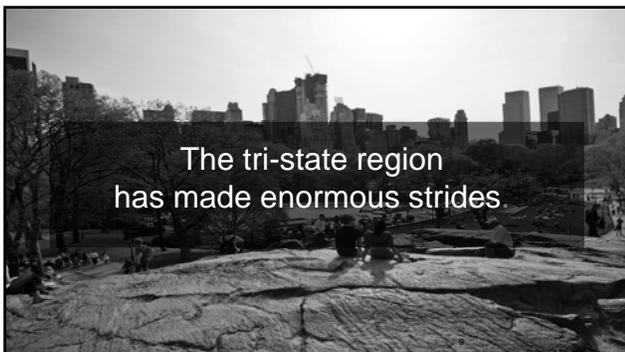
Individual Profiles

- Place of residence
- Gender
- Age
- Ethnicity
- Place of birth
- Educational attainment
- Household income
- Children in household
- Rent or own
- Employment industry
- Place of employment
- Commute mode
- Commute time

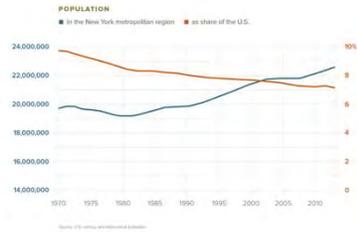




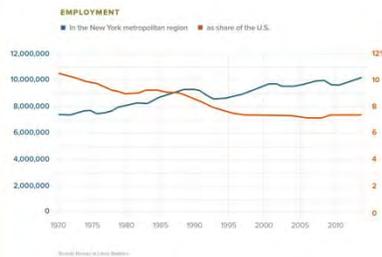




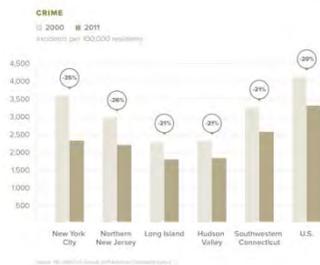
The region has gained 2.3 million residents in the last 20 years...



...and more than 1.5 million jobs while growing as fast as the U.S. as a whole.



Crime has dropped dramatically in all parts of the region.



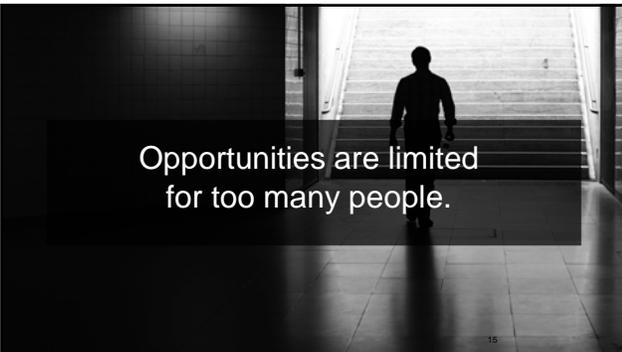
Access to Jobs



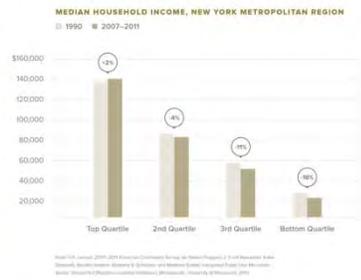
Access to Workforce



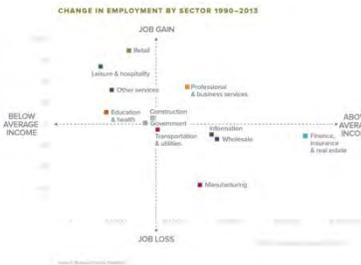
Opportunities are limited for too many people.



Median incomes, adjusted for inflation, have dropped since 1990 for more than three-quarters of the region's households

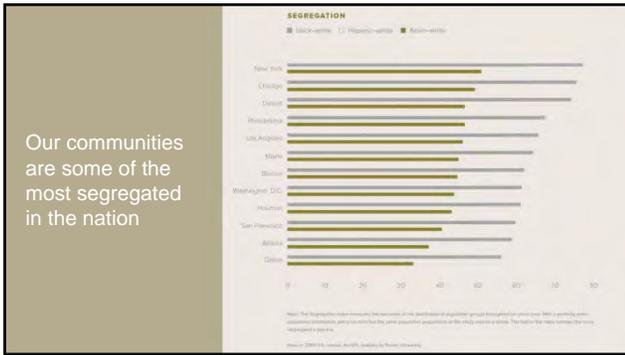


Job gains have been concentrated in low-wage industries

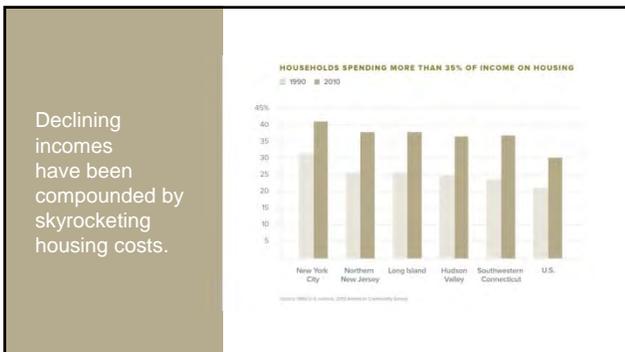


Access to education and other opportunities shaped by income, race and geography





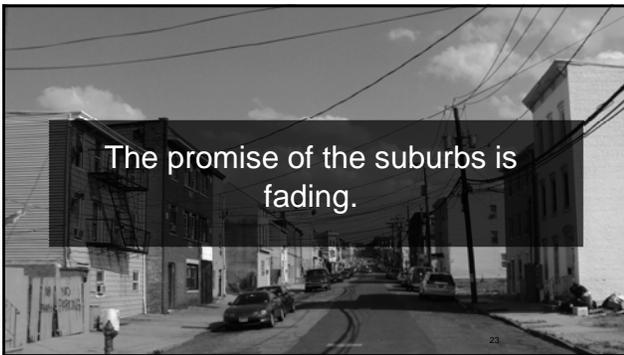




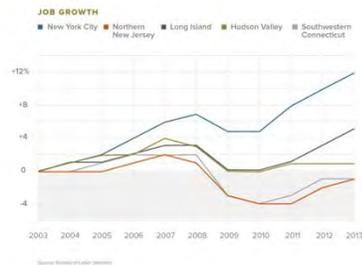
Discretionary Income



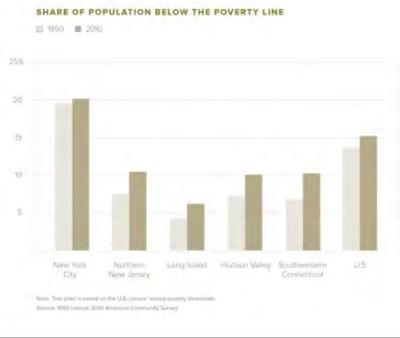
The promise of the suburbs is fading.



Job growth has been much weaker in the suburbs and older cities outside of New York City.



Poverty has increased fastest outside of New York City.



Walkability

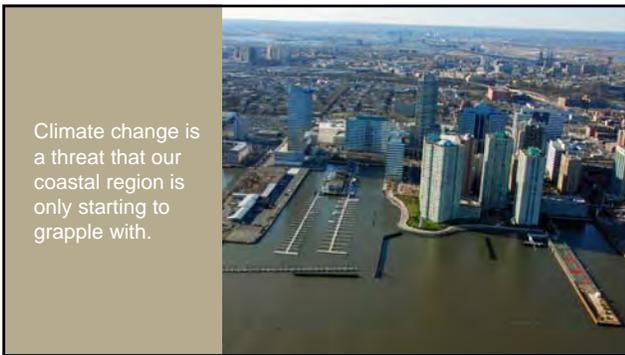


New York City residents are more positive about the future than other residents of the region.

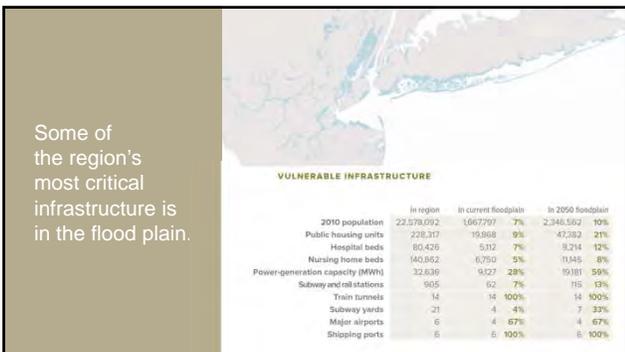




The region is increasingly vulnerable to disasters.



Climate change is a threat that our coastal region is only starting to grapple with.



Some of the region's most critical infrastructure is in the flood plain.



Both the cost and time it takes to build new infrastructure is increasing...

MAJOR INFRASTRUCTURE PROJECTS

Project	Construction cost estimates			Completion date estimates		
	initial	current	difference	early	current	difference
East Side Access (IRT to Grand Central)	\$6.3 billion (as of 2006)	\$10.7 billion	+70%	2013	2022	+9 years
Second Avenue Subway (from 34th St to 96th St)	\$4.3 billion (as of 2007)	\$5.7 billion	+33%	2014	2016	+2 years
Access to the Region's Core (New location across the Hudson River)	\$73 billion (as of 2007)	\$111 billion	+52%	2017	unclear	unclear
Fulton Center (improving subway facilities)	\$750 million (as of 2006)	\$1.4 billion	+87%	2007	2014	+7 years
Croton Water Filtration Plant (upgrades to water system)	\$992 million (as of 2003)	\$3.2 billion	+223%	2011	2016	+5 years

Source: Federal Transit Administration; Metropolitan Transportation Authority; U.S. Government Accountability Office; New York City DOT; Metropolitan Research Office; New York City Council; American Society of Landscape Architects; New York City Department of Environmental Protection

...while the tenure for leaders at public authorities has become shorter.

CEO TENURE

The number of governmental jurisdictions creates inefficiencies and make it difficult to reach decisions.



- 1 Region
- 3 States
- 31 Counties
- 783 Municipalities
- 703 School districts
- 175 Housing authorities
- 459 Fire districts
- 157 Business improvement districts
- 36 Sewer districts (data not available for NYS)



THE
FOURTH
REGIONAL
PLAN

Explore at www.rpa.org/fourth-plan



General Session II

Planning Commission – Hot Topics

The State of the Suffolk County Agriculture Industry

A snapshot of the Suffolk County agriculture industry. This report summarizes the expressed attitudes and challenges identified by 143 agricultural producers who completed an agricultural survey in 2013 as part of the County's efforts to develop an Agriculture and Farmland Protection Plan.



Survey Distribution & Collection

- Approximately 200 copies of the survey were distributed via handout at the registration desk at the 32nd Annual LI Agricultural Forum held in Riverhead Thurs.-Fri., January 10-11, 2013.
- Approximately 50 copies were distributed via handout during the Long Island Greenhouse and Floricultural Conference on January 22, 2013, also held in Riverhead.
- Approximately 100 copies were distributed via handout during the Horticultural Conference held in Ronkonkoma on January 25, 2013.
- On February 7, 2013, the Peconic Land Trust put the Agricultural Producer Survey online on their website. PLT promoted the survey through press releases and through a combined email and mailing outreach effort.
- Long Island Farm Bureau pushed the survey through their email distribution list.
- Cornell Cooperative Extension promoted survey through the March 2013 *Agricultural News* update and mailed hard copies of the survey to approximately 350 agricultural producers.
- Promoted through Suffolk County Department of Economic Development & Planning social media (Facebook & Twitter).
- Surveys are filled out and collected: in-person at Agricultural Forums, through the mail to the Peconic Land Trust, or via online survey at Peconic Land Trust website.

Data Collection: Geographic Coverage

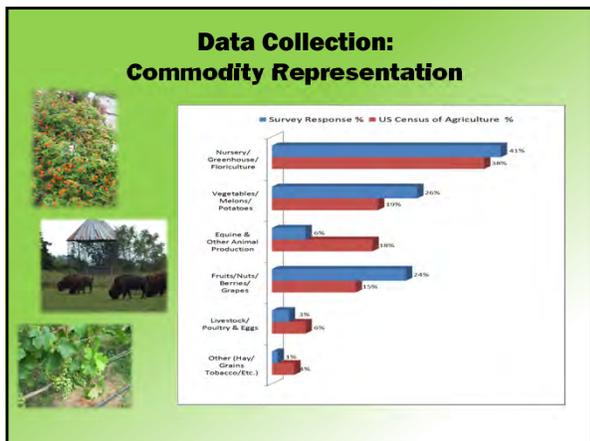
TOWN	# of Responses
Babylon	0
Brookhaven	31
East Hampton	4
Huntington	13
Islip	6
Riverhead	44
Shelter Island	1
Smithtown	3
Southampton	19
Southold	45

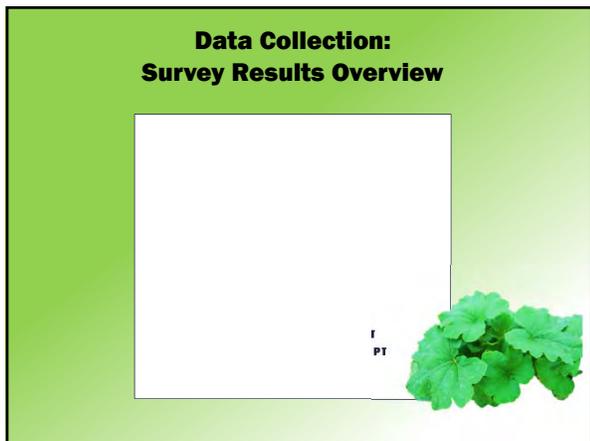
1996 Agriculture & Farmland Protection Plan
Percentage of Farmland Acreage by Town

Riverhead = 38.3%
Southold = 21.3%
Southampton = 18.7%
Brookhaven = 14.0%



Many agricultural producers have farms in multiple towns.

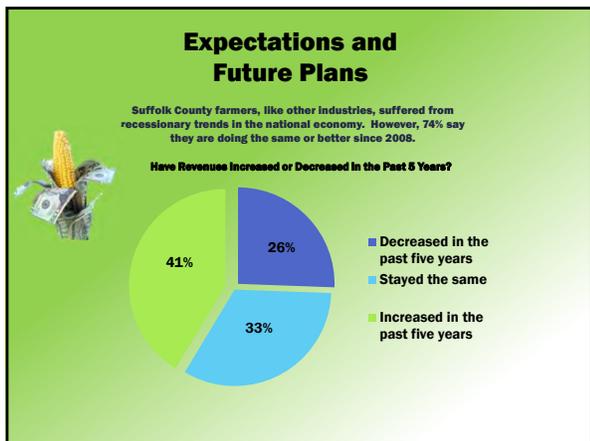




Agricultural Tourism

An increasing percentage of Suffolk County farmers are engaged in agricultural tourism activities. 44% of survey respondents operated a farmstand or tasting room. 64% engaged in agricultural tourism of some kind. Amongst those farmers offering agricultural tourism (78 total respondents)...

Agritourism Activity	# of Respondents
"U-Pick" Operation	27
Seasonal Activities	24
On-site Tours	23
Fresh Baked Produce	22
Tasting Rooms	17
Hayrides	13
Animal Displays	12
Corn Mazes	9
Other	4

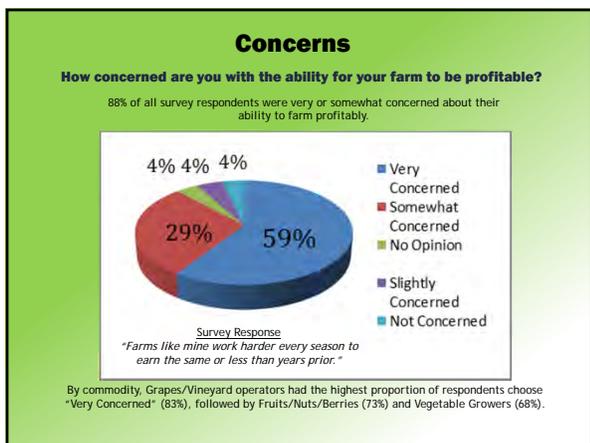


Expectations and Future Plans

The following table offers a snapshot of Suffolk County farmers' plans in the next year, 5 years, and 10 years. The numbers in the table reflect the number of respondents intending to:

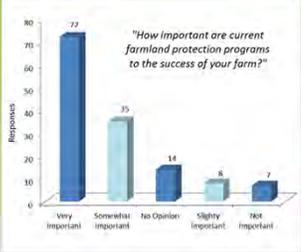
	Within 1 Year	Within 5 Years	10 Years or More
Increase Your Farming Operation	24	38	1
Decrease Your Farming Operation	8	16	5

3 to 1 *2 to 1*



Farmland Protection Programs

Survey respondents were asked to evaluate the importance of farmland protection programs to the success of their personal farm operations. 79% of survey respondents said farmland protection plans were "Very" or "Somewhat" important to the success of their farm.



Response	Percentage
Very important	73%
Somewhat important	35%
No Opinion	14%
Slightly important	8%
Not important	7%

Suffolk County Agricultural Strengths

- Rich agricultural soils and a temperate climate
- Access to the world's most lucrative markets (NYC, Hamptons, Tri-state)
- Slow-food, local-food, and organic trends in food consumption culture
- The public is supportive and invested in agricultural sustainability
- Academic, non-profit and government agencies invested in continued agricultural success
- New opportunities in tourism, value-added production, and direct marketing
- Suffolk farmers are economically efficient: \$6,666/acre vs \$753(NY)
- Diversity of crops and commodities. Diversity helps Suffolk "weather storms" just as a diverse stock portfolio
- An acknowledgment and understanding that agriculture is changing and government policies need to react to those changes:
 - Chapter 8

What Next?

The Suffolk County Department of Economic Development & Planning has just concluded five focus groups held across Suffolk County to solicit information and suggestions to develop a new Agriculture and Farmland Protection Plan. The plan is due August 2015 and must include a list of *actionable* steps to be taken to address existing agricultural problems and challenges.

The department will *continue* to reach out to farmers, researchers, elected officials, planning commissions, and advocacy groups (agricultural, social, historical, and environmental) as we update this plan.

If you have any feedback or suggestions, please contact me at:
 August Ruckdeschel - august_ruckdeschel@suffolkcountyny.gov
 Or 631-853-4714

"More land than development rights were already sold on needs to be made available for farming. Neighboring landowners are reluctant to sell their land to allow willing farmers to utilize land. Land from farm income especially with weather being so unpredictable." "New neighbors do not accept the existing fabric of the neighborhood."

"While many people like the idea of farmers, when they want to buy local, close to home, they find it difficult to access. The current political climate is putting Long Island wine that is 'Grown in Suffolk County' on a list of products that are more difficult to access. The current political climate is putting Long Island wine that is 'Grown in Suffolk County' on a list of products that are more difficult to access. The current political climate is putting Long Island wine that is 'Grown in Suffolk County' on a list of products that are more difficult to access."

"The issue is the inevitable money to borrow is a major concern for farmers who are already in debt. The issue is the inevitable money to borrow is a major concern for farmers who are already in debt. The issue is the inevitable money to borrow is a major concern for farmers who are already in debt."

CONNECT LONG ISLAND
A Regional Transportation and Development Plan

SUFFOLK COUNTY, NEW YORK



Darnell Tyson, Deputy Commissioner

Department of Public Works, Suffolk County

OBSTACLES FACING LONG ISLAND

- Brain drain
- Lack of quality affordable housing
- Lack of high paying jobs
- High volume of traffic

A solution...

CONNECT LONG ISLAND

SUFFOLK COUNTY, NEW YORK



• Transit Oriented Developments (TODs)

• Supportive Transit Investments

• North-South Transit Connections

TRANSIT ORIENTED DEVELOPMENTS

Heartland

Republic TOD

Ronkonkoma Hub

Wyandanch Rising

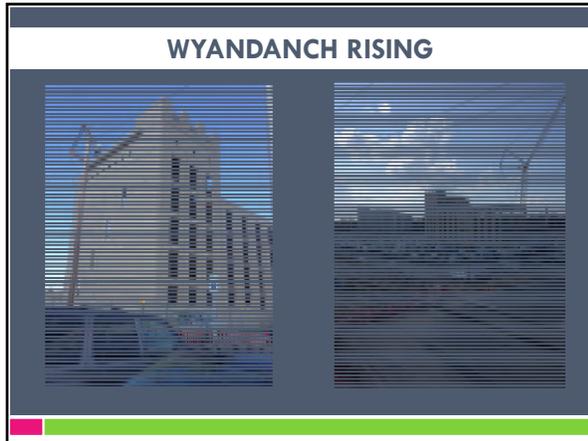
WYANDANCH RISING

A

B

C

WYANDANCH RISING



SUPPORTIVE TRANSIT INVESTMENTS

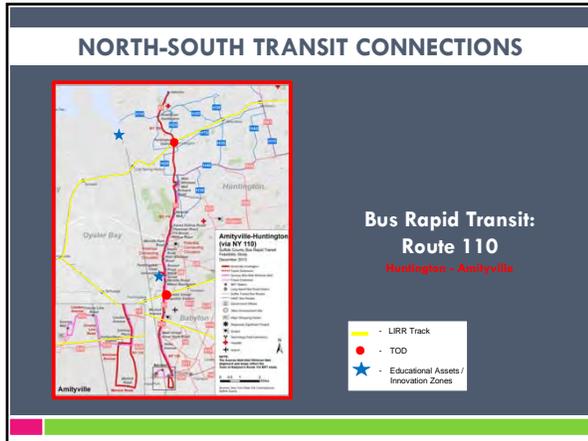
- 7 Key Projects
- \$12.5 Million In Grant Funds
- Increased N-S Connectivity

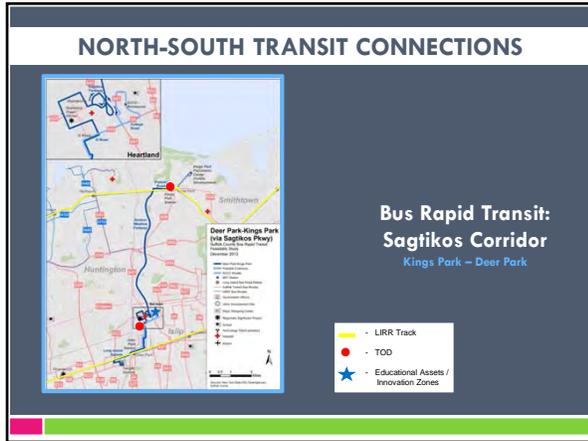
NORTH – SOUTH TRANSIT CONNECTIONS

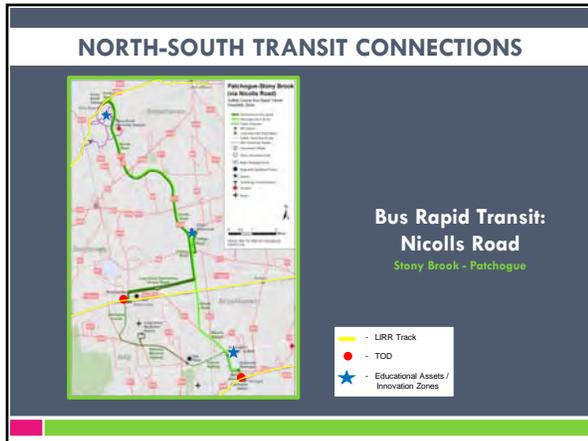
Figure ES-4: Proposed BRT Corridors

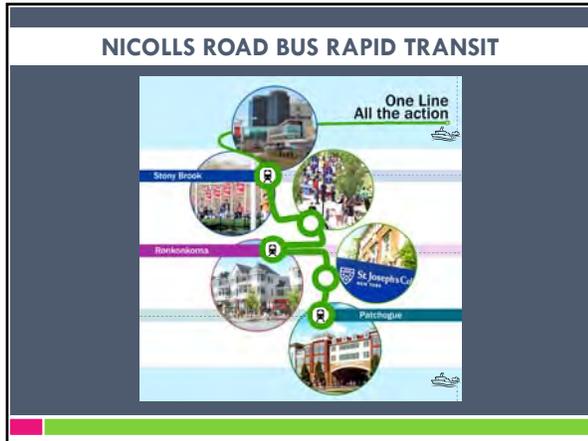
Table ES-2: Proposed BRT Corridors

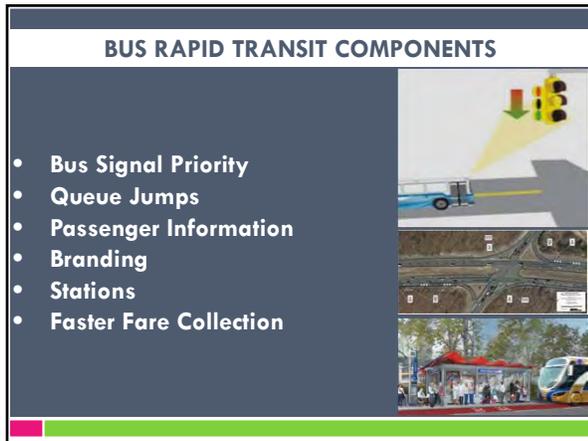
Corridor	From	To	Key Assets Connected	Route Length (miles)	Number of Stations
Amityville-Huntington (via RT Route 118)	Amityville Village	Hanalei	Amityville Village, Proposed LIRR Republic Station, BARTY Farmington, Huntington Village	16	40
Patrickson Slony Brook (via Route 104)	Patrickson Village	Slony Brook Village	Slony Brook Elementary, Slony Brook Community Hall, Slony Brook LIRR, SOCC, Rappaport LIRR, LIRR, Patrickson Village	15	13
Deer Park Kings Park (via Sagittas Parkway)	Deer Park LIRR	Overlook Kings Park	Proposed expanded Deer Island, Overlook Kings Park, Nonesuch State Park	17	14

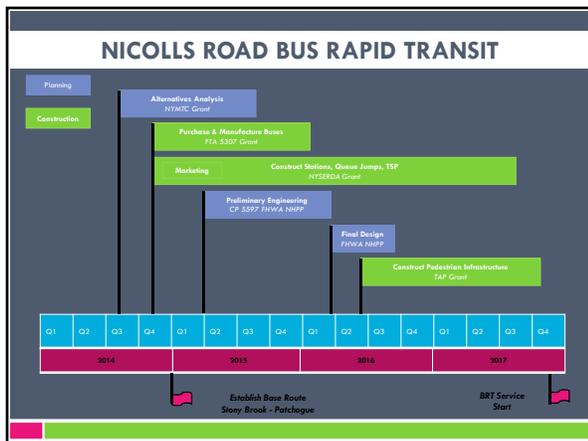


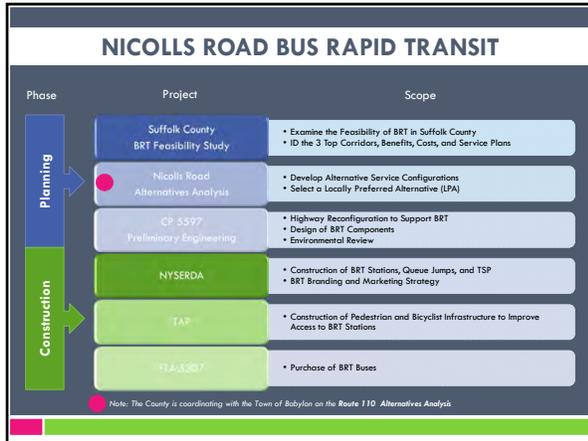














Suffolk County Energy Program

Lisa Broughton
Energy Director – Suffolk County
October 24, 2014

Suffolk County Government

- Annual operating budget of \$2.6 billion
- Approximately 9,000 employees
- No Zoning or Planning Powers (Towns hold those in New York State). County property not subject to local zoning.
- 26 Departments
- Energy Team composed of 6 employees from 4 Departments

Clean Energy Revenue Generation Projects

PV Carport Project – enXco/Capital Dynamics



Energy Oriented Revenue Generation Projects

PV Carport Project – enXco/Capital Dynamics

- Utility – led (Long Island Power Authority) process for 50 MW Solar RFP 2008
- LIPA Selected enXco for 15 MW Distributed Solar Project & BP Solar for 35 MW Solar Farm
- enXco selected Suffolk County to lease County Owned Parking Lots for Carports
- 12.8 MW on six county parking lots



Energy Oriented Revenue Generation Projects

SunEdison PV Array – Gabreski Airport



Energy Oriented Revenue Generation Projects

SunEdison PV Array – Gabreski Airport

- Next Project: 6.8 MW at County-Owned Airport
- Suffolk Completes Assessment of Land Holdings
 - LIPA offers 2nd Feed-In-Tariff allowing large scale PV
 - Suffolk issues RFP for Solar PV. 125 Downloads, 13 Proposals, Selected SunEdison
 - SunEdison/Suffolk County successful at FIT auction for Airport project
 - Clearing price 0.1688/kWh
 - 20 year lease - subject to FAA approval

7

Partnering with Industry

Nextek DC-DC Coupling Project

- Demonstration Project with Nextek, BNL, PSEG-LI
- Will evaluate efficiency increase of DC-DC Coupling vs. a standard PV installation. Connected to standard lighting circuits.
- PSEG-LI will evaluate to determine rebate potential for this & future direct coupling projects.
- BNL to provide technical expertise in analyzing data from monitoring points in system.

10

Suffolk County: Summing It Up

Total Energy Savings (Annual):

- Electric Savings 17,000,000 kilowatt hours
- Fuel Savings 152,457 mmBtu
- Energy Cost Savings \$4,800,000

Carbon Footprint Reduction (Annual):

- CO₂ – 43,667,469 lbs. (from all energy projects)

11

CONTACT INFO:

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SUFFOLK COUNTY
DEPT. OF ECONOMIC DEVELOPMENT &
PLANNING
631-853-4805
Lisaann.broughton@suffolkcountyny.gov

Presentation for the Suffolk County Planning Federation
October 21, 2014

“Why Do Some Homes Survive a Wildfire While Others are Destroyed?”
Planning safer communities through Firewise and the Firewise Communities Program

1. Brushfires in Suffolk County - why we should be concerned.
 - a. Fire History and Occurrence
 - b. Fire adapted ecosystems
 - c. What is the Wildland Urban Interface?
 - d. Communities at Risk
 - i. The Central Pine Barrens Area
2. The Central Pine Barrens Commission and Its Role in Wildfire Prevention & Education
 - a. The Long Island Pine Barrens Protection Act - NYS Environmental Conservation Law Article 57
 - b. Brief Overview of the Commission
 - i. Mission and responsibilities
 - ii. The Commission’s Wildfire Response & Strategy after the 1995 and the 2012 Wildfires – Multipronged Approach
3. Planning Safer Communities
 - a. Why do some homes survive a wildfire while others are destroyed?
 - i. USDA Forest Service and US Department of the Interior Research and the National Fire Protection Association (NFPA)
 - ii. Firewise and Firewise Communities Program
 - iii. Community Wildfire Protection Plans
 - iv. Resources Available
 - b. The Central Pine Barrens Commission’s initiatives
 - i. Community Outreach
 - ii. International Code Council Wildland Urban Interface Code
 - iii. Community Wildfire Protection Plans
4. Wrap Up and Questions

“Why Do Some Homes Survive a Wildfire While Others are Destroyed?”
Planning safer communities through Firewise and the Firewise Communities Program

Over 800 brush fires typically occur every year during the spring and summer in Suffolk County. Several significant brush fires have already occurred this past spring. Local newspaper coverage showed photographs that demonstrated that, in a number of cases, these fires burned perilously close to neighborhood homes before they were extinguished by the local fire departments. In 1995, the Rocky Point and Sunrise Fires burned over 5,000 acres and continued to burn intensely for several days. These wildfires resulted in extensive evacuations, loss and damage to property, the closure of major transportation routes in the area and significant economic impacts to local businesses, tourism and residents. In April of 2012, the Crescent Bow wildfires occurred in the Ridge and Manorville areas and burned over 1,200 acres with similar results.

Wildfire is a natural process in the fire-adapted Pine Barrens and the close proximity of communities, particularly in the Central Pine Barrens Area, to large wooded or natural areas puts these communities at a greater risk to damage to and loss of their properties due to a wildfire. The Central Pine Barrens Area has been identified by the NY Firewise Council as the greatest Community at Risk in New York State to experience loss or damage from wildfire due to the flammable characteristics of its vegetation, its population density, extensive wildland urban interface area (where the built environment is adjacent to large wooded or natural areas), fire history and other factors. This risk can be particularly exacerbated during a wildfire because firefighters may lack the resources to defend every home that is being threatened during a wildfire.

Since the late 1980's, the extensive and costly property and natural resource losses along with the increasing threat to public safety from catastrophic wildfires was found to be not just a problem that occurred out west, rather it was a national problem. The USDA Forest Service and the US Department of the Interior partnered with the National Fire Protection Association (NFPA) to develop various program initiatives to address the wildfire problem in wildland urban interface areas. Extensive research to identify why some homes survive while others are completely destroyed during a wildfire was performed based on fire science and human behavior which led this partnership to develop Firewise principals and the Firewise Communities Program. Firewise and the Firewise Communities program provide measures that homeowners who live in these wildland urban interface areas can implement before a fire occurs which will significantly improve the ability of their home to survive a wildfire or brushfire.¹ There are nearly 1,000 areas formally designated as Firewise Communities across the United States.

The Central Pine Barrens Commission (“the Commission”) has been working closely with the New York Firewise Council, NFPA, and the International Code Council to develop strategies to address this issue of wildfire in the Central Pine Barrens area through a number of initiatives and outreach to communities located in the wildland urban interface area which include presentations to local civic groups, examining how these Firewise measures can be incorporated locally into the project review and planning process, and partnering with public landowners to develop plans and mitigating measures to reduce wildfire risk to communities located within these wildland interface areas.

This presentation will discuss the brushfire problem in Suffolk County with a focus on the Central Pine Barrens area and will explain how programs such as Firewise and Firewise Communities can empower local homeowners living in wildland urban interface areas to take measures on their own before a fire occurs that will significantly improve the ability of their home to withstand a wildfire, how this program can be expanded to provide greater protection on the community level, and how public land management and land use planning can reduce the threat and intensity of wildfires in communities at risk.

1 | Based on “Firewise at NFPA: A Brief History,” available at firewise.org

Suffolk County Landbank

October 2014
Update



Land Bank Board Directors:
Hon. Steven Bellone, Suffolk County Executive
Hon. Tom Citani, Suffolk County Legislator, District 10
Hon. DuWayne Gregory, Presiding Officer - SC Legislature, Suffolk County Legislator, District 15
Jeanne Minieri, Deputy County Executive and Commissioner SC Economic Development & Planning
Jill Rosen-Nikoloff, Director of Real Property Acquisition & Management, SC Economic Development & Planning
Hon. Anna Thrusse-Holt, Supervisor, Town of Southampton & President, SC Town Supervisors Assn.

President:
Sarah Lansdale, Director of Planning, SC Economic Development & Planning



{ 1 }

{ 2 }

{ 3 }

What is a land bank and its benefit?

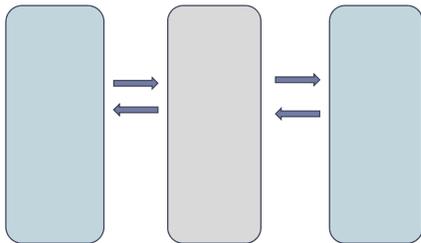
Article 16 of the NYS Not-for-Profit Corporation Law, signed into law by Governor Cuomo in July 2011, allows for the creation of 10 land banks in New York State

A land bank	Benefits
<ul style="list-style-type: none">• Is a type C not-for-profit corporation under NYS law• Is based upon the County's role as a Foreclosing Governmental Unit (FGU)• Can adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business• Is required to make available for public review and inspection a complete inventory of all liens received	<ul style="list-style-type: none">• Land bank provides the mechanism for Suffolk County to sell the tax liens to bidders for less than the tax lien amount and keeps the County out of the chain of title <p>resulting in</p> <ul style="list-style-type: none">• Increase surrounding property values• Stabilize the tax base• Improve quality of life for neighborhood residents• Drive economic value for the County

{ 4 }

Land Bank Structure

SCLBC operates as a non-profit but relies on the resources and personnel of Suffolk County government as well as third party support as needed.



{ 5 }

Suffolk County Landbank Corporation (SCLBC) Accomplishments

In February of 2013, Suffolk County was approved by NYS ESD to form one of only ten designated Land Banks statewide. Since then, the Suffolk County Landbank Corporation (SCLBC) undertook a number of necessary and required steps to begin operations, including:

- Incorporated as a NYS Non-Profit C-Corporation
- Approved as 501 (C) (3) tax exempt entity
- Appointed a seven (7) person Board of Directors
- Appointed SCLBC Officers
- Held quarterly public Board meetings beginning June 2013
- Established by-laws, corporate policies, and a memorandum of understanding (MOU) between the SCLBC and Suffolk County
- Identified and gathered inter-agency data on properties for Landbank consideration
- Coordinated efforts with the Suffolk County Treasurer's Office (SCTO) to inform tax delinquent property owners of potential action
- Applied for and awarded grant funding to support its operation (EPA and NYS OAG)
- 19 tax delinquent parcels have now undergone Phase I site assessments

{ 6 }

Parcel Summary – As of 2014 Q3

A coordinated effort with the Suffolk County Treasurer's office to notify owners of delinquent properties yielded \$2.37 million in back tax payments in its first year.

Landbank Parcels	No. of Parcels	(\$ in 100s) Outstanding Tax Liens
Total	129	36.76
In various payment status	65	4.81
Currently Eligible for Landbank		
Superfund	24	18.90
Non Superfund	40	13.05

{ 7 }

Next Steps:

- Progress Phase I and Phase II process
- Identify properties for possible 3rd party sale
- Pursue additional funding options

{ 8 }

Visit Our Website!



{ 9 }

**RECLAIMING OUR WATER INITIATIVE:
TARGETING THE NITROGEN POLLUTION CRISIS &
RESTORING COASTAL RESILIENCY**



SUFFOLK COUNTY EXECUTIVE STEVE BELLONE



SUFFOLK COUNTY PLANNING FEDERATION
OCTOBER 21, 2014

SUFFOLK COUNTY'S WATER QUALITY CRISIS



Suffolk County Comprehensive Water Resources Management Plan Findings:

- Dramatic Decline in Health of Ground and Surface Waters
- Negative Trends in Quality of Drinking Water
- Pollution has caused harmful Algal Blooms, Brown Tide
- Impacts include nitrification, impaired water bodies, impaired rivers, closed beaches and devastation of shellfish industry

In aftermath of Superstorm Sandy, it is clear that this significant decline in water quality is a major threat to our region.

2

Why the Fuss?



- ~1.5 million people, >900 sq miles/600,000 acres
 - Mostly unsewered (~74% 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
 - Shellfish impacts
 - Mounting evidence showing linkages to harmful algal blooms
 - **COASTAL RESILIENCY**
 - Wetlands, eelgrass

NYS DEPT. OF ENVIRONMENTAL CONSERVATION



Given the nexus between nitrogen enrichment, the long-term sustainability of salt marshes along the south shore of Long Island, and the ability of the marshes to provide protection against coastal flooding, **New York State should consider supporting an array of programs to reduce nitrogen loadings into Long Island's south shore embayments**, including Jamaica Bay. Actions to restore marshes so as to increase coastal resiliency may be unsuccessful unless accompanied by actions to reduce overall nitrogen loadings. Projects that have the potential to remove significant concentrations of nitrogen (e.g., upgrading of the Bay Park Wastewater Treatment Plant with an ocean outfall, expanded use of the Bergen Point wastewater treatment plant with a repaired ocean outfall, the extension of sewers to cover densely populated areas of southern Suffolk County, etc.) could be an appropriate focus of disaster recovery and coastal resiliency efforts.

Nitrogen Pollution and Adverse Impacts on Resilient Tidal Marshlands
NYS DEC Technical Briefing – April 22, 2014

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GOVERNOR CUOMO'S NYS 2100 COMMISSION REPORT



➤ Governor Cuomo's recently released New York State 2100 Commission report defines the challenges facing Suffolk County and New York State:

1. Protect coastal communities;
2. Reduce inland vulnerability to extreme weather events;
3. Strengthen wastewater infrastructure.



➤ Researchers support the report and have concluded that coastal vegetation (wetlands, marshlands and the sea grass that surrounds it) serves as a natural defense system against storm surges and waves along coastal regions, reducing wave height by 80% over short distances. Waves lose energy as they travel through vegetation.

8

COLLAPSE OF FISHING INDUSTRY, ECONOMIC IMPACT



Hard clam landings (bushels) in Great South Bay

New York Bay Scallop Landings - Commercial -

A few decades ago, half the clams eaten in this country came from Great South Bay.

However, in the past 38 years, the hard clam harvest in Great South Bay has fallen by more than 93% from its peak of over 750,00 bushels in 1976 to record lows, resulting in a loss of more than 6,000 jobs.

In 1976 the price received by fisherman (ex-vessel price) for the clams commercially harvested from the Great South Bay totaled \$16.9 million, however at modern day prices the same harvest would yield approximately \$63.5 million, estimated by the New York State Department of Environmental Conservation.

9

TOURISM ECONOMY

- Long Island is the second most popular tourist destination in New York State after New York City.
- Coastal related tourism in New York State was \$12.2 billion in 2007.
- According to the Trust for Public Land, tourism is one of Long Island's largest industries; producing revenues of \$4.7 billion a year, with approximately 28% of visitors – 5.1 million a year – coming for the purpose of visiting parks, such as beaches. These visitors spend \$615 million annually in the local economy and generate \$27.3 million in sales tax.
- Overall, tourism on Long Island (Nassau and Suffolk) supports more than 70,000 jobs or 5.9 percent of all jobs on Long Island and is responsible for generating \$19.7 billion in economic impact on Long Island in 2010. National Ocean Economics Program, 2009

Source: Trust for Public Land, "The Economic Benefits and Fiscal Impact of Parks and Open Space in Nassau and Suffolk Counties, New York," 2010 accessed at <http://cloud.tpl.org/pubs/cpe-nassau-county-park-benefits.pdf>

COASTAL VEGETATION LOSS IN GREAT SOUTH BAY

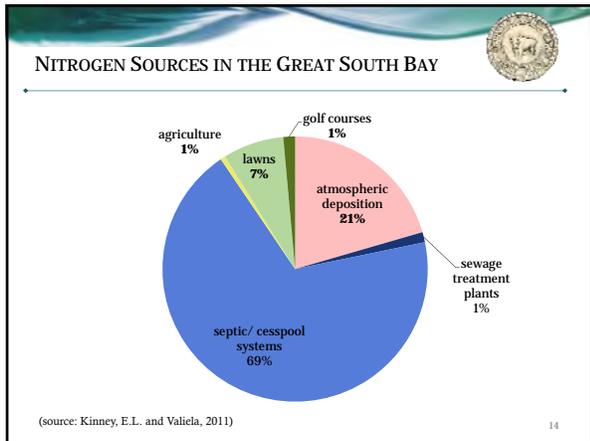
- In Suffolk County, losses of healthy salt marsh have accelerated in recent decades. The NYS DEC estimates that there was an 18-36% loss in tidal wetlands in the Great South Bay between 1974 and 2001. As the only South Shore bay with major riverine input, Great South Bay's living resources have been significantly affected by diminished tributary water quality.
- This loss comes on top of a 1973 summary of wetland loss by the Regional Marine Resources Council of the Nassau-Suffolk Regional Planning Board which found that by 1971, Suffolk County had already lost 38% of the wetlands which were present in the County as of 1954.

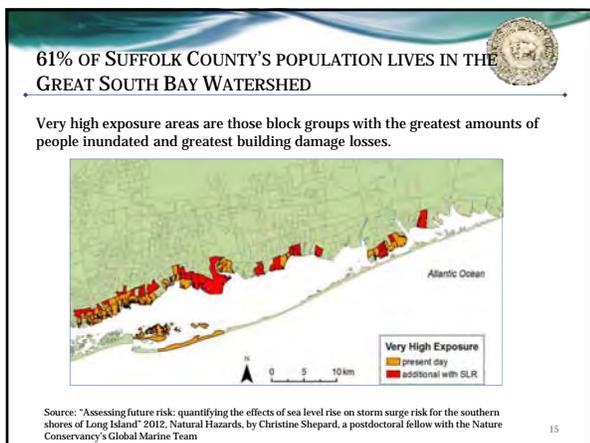
Distribution of Coastal Vegetation: 1930



Estimated distribution of regrass beds in the South Shore Estuary in 1930 courtesy of Cornell Cooperative Extension of Suffolk County.







360,000 UNSEWERED HOMES IN SUFFOLK COUNTY

SUFFOLK COUNTY, NEW YORK

POSSIBLE AREAS FOR ADVANCED WASTEWATER TREATMENT

- The National Environmental Services Center's historic reference information indicates that Suffolk County leads the State and Tri-State region in the number of individual septic systems, followed by Dutchess County [51,480] and Ulster County [41,927]

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PRIORITIES

Suffolk County has identified three funding priorities for addressing the decline in water quality and the restoration of our coastal wetlands:

- Fortify our existing wastewater infrastructure:
 - ✓ Suffolk County's largest sewage treatment plant, Bergen Point, was close to being compromised during Superstore Sandy. Serving 80,000 households, it is a critical facility.
 - ✓ Suffolk County has requested \$242 million to replace the plant's ocean outfall pipe that runs beneath the Great South Bay. Request currently before FEMA.
- Sewer targeted areas:
 - ✓ Removing 1,390 pounds of nitrogen discharged each day into major tributaries which flow directly into the Great South Bay, will prevent further decline of critical coastal vegetation and provide the foundation to restore estuary and bay marshlands.
 - ✓ Suffolk County has identified four priority sub-regions to target:
 - Carlis River
 - Forge River
 - Connetquot River
 - Patchogue River
- Pilot alternative/innovative on-site wastewater treatment systems:
 - ✓ Initiate projects for the installation of community-scale innovative/alternative wastewater treatment systems for clusters of 50-100 homes.
 - ✓ Initiate project to assist homeowners with improved on-site systems.

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ACTIONS TAKEN: 2014 STATE OF THE COUNTY

18

ACTIONS TAKEN: MULTI-STATE SEPTIC TOUR

COUNTY OF SUFFOLK
BRYAN BOLLINE
SUFFOLK COUNTY EXECUTIVE

REPORT ISSUED BY SUFFOLK COUNTY
DEPARTMENTS OF ECONOMIC DEVELOPMENT & PLANNING, HEALTH SERVICES
AND PUBLIC WORKS

**Advanced Wastewater &
Transfer of Development Rights
Tour Summary**
April 29, 2014

19

ACTIONS TAKEN: COMMUNITY OUTREACH

20

ACTIONS TAKEN: IBM SMARTER CITIES CHALLENGE

21

ACTIONS TAKEN: EDUCATION 

crapSHOOT Film Contest:
"Because We Can't Gamble With Our Water Quality"



September 22nd Screening at
the Huntington Cinema Arts
Centre

presented by
SUFFOLK COUNTY EXECUTIVE STEVE BELLONE
& THE SUFFOLK COUNTY OFFICE OF FILM AND CULTURAL AFFAIRS

22

ACTIONS TAKEN: SEPTIC DEMONSTRATION PROGRAM 



23

ACTIONS TAKEN: FUNDING SECURED 

- HMGP
- DOI NFWF "Enhancing coastal resiliency with integrated salt marsh management along the south shore of Long Island, New York." \$1.3 MM awarded

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FINAL THOUGHT 

“Clean water should be the birthright of every Long Islander and it’s time we tackle this crisis together and Reclaim our Water.”

-Steve Bellone, Suffolk County Executive
2014 State of the County

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General Session III

Inter-municipal Planning

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Intermunicipal Planning

Suffolk County Planning Federation



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Overview

- Need for Intermunicipal Planning
- Intermunicipal Planning Basics
- Intermunicipal Partnerships
- Developing a Partnership
- Intermunicipal Agreements
- Local Government Efficiency Program



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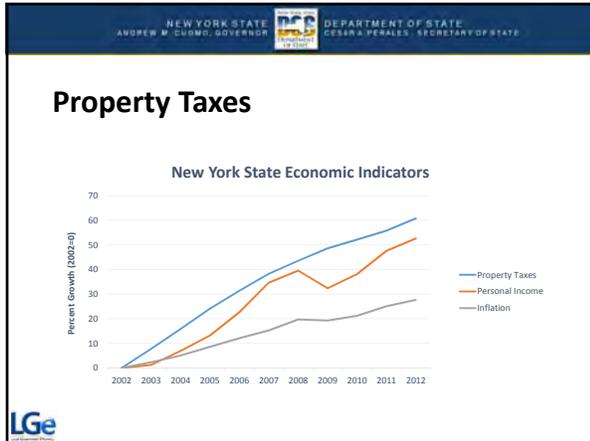


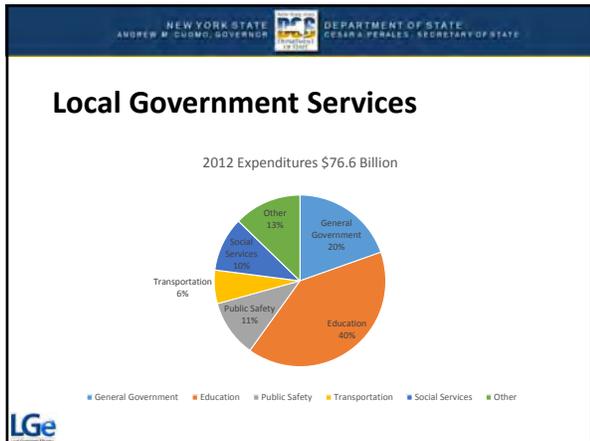
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Need for Intermunicipal Planning

Intermunicipal Planning







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Government at a Crossroads

- Public spending is under the microscope and the pressure to cut back is intense (NYS Property Tax Cap)
- Government organizations must strive to meet the implications of debt and loss of revenue sources
- Current service delivery is often redundant, inefficient and non-standardized
- Municipal responsibilities are becoming increasingly complex and demanding

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Why Cooperate?

- To contribute to the efficiency and effectiveness of government
- To achieve cost reductions based on economies of scale and better leverage
- To eliminate or minimize duplication of services
- To share resources or specialized skills
- To improve service through timeliness, quality and cost management
- To develop a model that results in a cost effective platform that is based on best practices, yet is accountable to the people
- To focus on services that can be better provided through sharing or consolidating

Resource
Cost

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Business Case for Cooperation

Perception of quality service/value → Public support → Greater resources → Improved service → Perception of quality service/value

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Adapted from the Capitol Region Council of Governments, CT

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Intermunicipal Planning Basics

Intermunicipal Planning

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What is Intermunicipal Planning?

- Intermunicipal planning is the joint effort of two or more municipalities to address a common issue.
- Tompkins County, Vital Communities Toolbox




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Why Intermunicipal Planning?

- Efficiency and Competitiveness
- Global Versus Local Economy
- Allocation of Costs and Resources
- Demographic Changes
- Environmental Considerations



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Applications of Intermunicipal Planning

- Comprehensive Plan
- Waterfront Revitalization Plan
- Watershed Management Plan
- Economic Development Plan
- Corridor Management Plan
- Open Space/Recreation Plan
- Zoning Law/Ordinance Update



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Statutory Authorization

NYS Constitution

- Article IX: Joint performance of functions and services

General Municipal Law

- Article 5G - Municipal Cooperation
- §119-u - Intermunicipal cooperation in comprehensive planning & land use regulation

Town Law §284
 Village Law §7-741
 City Law §20-g



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Legal Authority

New York State Constitution

- Article IX, Section 1(c)
- Local governments shall have power to agree, with one or more other governments to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately.

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Legal Authority

General Municipal Law

- Article 5-G
- municipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project.

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Intermunicipal Partnerships

Intermunicipal Planning



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State Support

State policies encourage intermunicipal partnerships many areas, including:

- Enforcement of the uniform code
- Local records management
- Local waterfront revitalization programs
- Water supply and waste water disposal.
- Solid waste management and resource recovery



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State Programs

NYS Department of State

- Smart Growth, Local Government Efficiency, LWRPs

Hudson River Valley Greenway

- Communities Council and Regional Planning Compact

NYS Department of Transportation

- Land Use & Transportation Smart Planning

NYS Department of Environmental Conservation

- Hudson River Estuary, Watershed Protection



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Town and Village of Livonia

- Rural Town/Built Village
- Joint Planning Board
- Joint Zoning Board of Appeals
- Joint Comp Plan (2nd)
- Single School District
- Town/Village Water Operated by County
- Sheriff with Substations
- Town-Wide Court
- Ambulance District
- Fire District Consolidation




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Around New York State...

Zoning, Planning, Code Enforcement

- Town and Village of Liberty Comprehensive Plan (2007)
- Town of Union, Villages of Endicott and Johnson City
- Town & Village of Schoharie Land Use Law (2001)

Economic Development

- Towns of Evans, Eden, Brandt, North Collins, Villages of Angola, North Collins and Farnham



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Northern Dutchess Alliance

- Regional cooperation and economic development
- Public process leading to goal, idea and policy implementation
- Clinton, Hyde Park, Milan, Pleasant Valley, Red Hook/Tivoli, Rhinebeck, Stanford, Bard College, Dutchess Land Conservancy, Omega Institute, Scenic Hudson, and Winnakee Land Trust.




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Regional Planning

County-wide Planning

- Tompkins County: Vital Communities
- Westchester County: Patterns for Westchester
- Lewis County Comprehensive Plan
- Albany County: Agricultural and Farmland Protection Plan

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Developing Partnerships

Intermunicipal Planning

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Partnership Basics

- Partner(s)
- Benefits and liabilities
- What will happen if it doesn't work
- Start small
- Involve elected officials
- Communicate
- Written document

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Challenges...



- Getting along...
- Concerns about local control...
- Concern about community identity...
- Concerns that local issues will not be heard or will be overshadowed by concerns of other communities

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Why Projects Fail

- Costs prohibitive/funding insufficient
- Lack buy-in from all stakeholders
- Organized opposition
- Lack of Information
- Time factors
- Environmental factors

Getting Started

- Hold joint meetings with members of the governing boards
- Establish a foundation - find your common ground
 - What are you already sharing?
 - What do you have in common?
- Determine what you want to accomplish



A significant factor in sharing a planning project is TRUST!

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Form an Advisory Committee

- Involve key stakeholders and a good mix of people
 - Establish roles
 - 7 to 9 members
 - Smaller subcommittees or advisory groups for specific tasks.
- Members might include:
 - People directly affected
 - Local leaders, both formal or informal
 - People with special influence on decisions or access to information
 - People with special skills
 - Highly interested people

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Consider Hiring a Consultant

- When to hire
 - Neutral to Controversial Issues
- Role of the Consultant
 - Extra hands
 - Expert & Collaborator
- Selecting a Consultant
 - Expectations
 - How much can you afford?
 - Review other work
 - Meet and interview

Statutory Authority

- General Municipal Law Article 5-A §103, 104-b
 - Professional services are not subject to competitive bidding
 - Non-bid procurements require that alternative proposals or quotations be secured in writing or by verbal quotation
 - Formal selection procedures

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Get to Know Your Partners

- Introductions
- Phone trees
- Field trips and tours
- Brainstorming
- Share a meal
- Establish Ground Rules
- Listen & show respect
- Everyone has an equal voice
- There are no stupid questions
- Give credit!

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Hold Successful Meetings

- Time & place
- Room arrangement
- Comfortable room
- Stick to agenda
- Take meeting notes



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Consensus Building

- To build consensus, participants should :
 - Raise issues
 - Seek to understand each other's views
 - Be willing to compromise to develop an agreed upon resolution
- When dealing with differing views and values:
 - Make sure all points of view are heard
 - Take your time
 - Everyone may not agree
 - The outcome is worth it

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Involve the Public

- Website Posting
- Informational Presentations
- Open Houses
- Invitational events
- Workshops
- Public Hearings
- Permissive Referendum
- Other Outreach Methods
- Stakeholder interviews
- Opinion surveys
- Open houses



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Formalize Your Partnership

- Determine your goals
- Identify your partners
- Identify the project coordinator
- Consider professional assistance
- Determine cost sharing
- Create an IMA or MOU
- Adopt the agreement

- Remember...
 - Positive relationships are crucial
 - Put the past behind you



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Intermunicipal Agreements

Memorandum of Understanding (MOU)

- Between two or more parties to work together on an agreed-upon goal or objective
- Typically not binding

Intermunicipal Agreement (IMA)

- Between two or more parties to work together on an agreed-upon project or outcome
- Typically binding

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Why create an IMA?

- To protect you and your community in case of litigation.
- To clearly state the tasks and arrangements between the partners.
- To eliminate misunderstanding and promote fairness.
- To facilitate changing the arrangement.
- To promote continuity when personnel or elected officials change.

LGe

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Content

- Nature of the Agreement
- Joint Agency
- Scope of Service
- Personnel
- Service Charges
- Liabilities of the Parties
- Contract Term, Amendment and Termination

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Local Government Efficiency Program

Intermunicipal Planning

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Local Government Efficiency Program Goals

- Implement Governor Cuomo’s and Secretary of State Perales’s directives to:
 - Reduce Property Taxes
 - Improve Efficiencies in Service Delivery
 - Regionalize Development Benefits
 - Implement Smart Growth Objectives
 - Optimize Energy Efficiency Opportunities
 - Efficient Deployment of State Resources

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Local Government Efficiency (LGe) Program



- Improve service delivery
- Increase competitiveness
- Reduce local costs
- Coordinate solutions
- Focus resources

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

LGE Assistance



Objective information for voters and officials to evaluate and consider

Government Reorganization

Service Efficiencies

Help communities find new competitive advantages

Identify options to reduce local costs

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LGE Technical Assistance

- Sharing of other municipal experiences
- Completed projects
- Case studies
- Publications
- Technical assistance

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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Government Reorganization

- Village of Seneca Falls
- Dissolved in 2011
- Largest dissolution in New York State
- Village residents saw a 48% reduction in tax rate



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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Government Reorganization

- Wyoming County
- Creation of Water Resources Agency
- Long-range planning
- Centralized leak detection and water testing services
- Bulk purchasing



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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Government Reorganization

- Hamlin-Morton-Walker Fire District
- Three-way merger
- Costly new regulations and standards demand greater efficiency
- Enhanced coordination and interoperability



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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Shared Services

- City of Batavia and Village of Le Roy
- Dispatch consolidation
- Goal of unified countywide system
- Better ability to share information and deploy emergency services



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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

Shared Services

- Town and Village of Saugerties
 - Consolidated police departments
 - No loss of coverage or service
 - Savings for both Town and Village taxpayers



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DEPARTMENT OF STATE CESARA PERALES, SECRETARY OF STATE

New York State Department of State
Division of Local Government Services
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LGe



General Session III

SEQRA



**STATE ENVIRONMENTAL QUALITY REVIEW:
Procedure and Practice**

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October 21, 2014



Statutory and Regulatory Authority

- Statutory Authority: Environmental Conservation Law (ECL), Article 8
- Implementing Regulations: 6 NYCRR Part 617

Additional Guidance

- Court Decisions

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 1



Intent and Purpose

- **Intent:** That agencies of State and local government. . .
 - Conduct their affairs with an awareness that they are **stewards of the environment** and have an obligation to protect the environment
 - Incorporate a **suitable balance of social, economic and environmental factors** into their planning and decision-making processes – not just environmental factors
- **Purpose:** To incorporate the consideration of environmental factors into the existing planning, review and decision-making processes **at the earliest possible time.**

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 2

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Key Definitions

- “Actions”
 - Projects or physical activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - Are directly undertaken by an agency; or
 - Involve funding by an agency; or
 - Require a new or modified approval by an agency
 - Agency planning and policy-making activities that may commit the agency to a definite course of future decisions
 - Adoption of local laws, resolutions and procedures that may affect the environment

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 3

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BECAUSE SUCCESS MATTERS

Key Definitions

- “Agency”
 - Means a state or local agency
 - Only agencies with discretionary authority to issue an approval are required to comply with SEQR.
 - There are two types of agencies:
 - Interested Agency: One having jurisdiction to fund, approve or directly undertake a project
 - The lead agency is the involved agency that is principally responsible to fund, approve or directly undertake a project
 - Involved Agency: One that does not have jurisdiction to fund, approve or directly undertake a project, but still wishes to participate in the process because of some particular interest or expertise

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 4

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BECAUSE SUCCESS MATTERS

Key Definitions

- “Approval”
 - Means a **discretionary** decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.
- “Funding”
 - Means any financial support given by an agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance for a proposed project

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BECAUSE SUCCESS MATTERS

Key Definitions

- “Direct Action”
 - Means an action planned and proposed for implementation by an agency itself, such as capital projects, the enactment of local laws, adoption of policy-making documents, etc.
- “Environment”
 - Means the physical conditions that may be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources having agricultural, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

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BECAUSE SUCCESS MATTERS

Agency Actions Subject to SEQR

- State Agencies: All departments, agencies, boards, public benefit corporations, public authorities, and commissions, unless specifically exempted from SEQR
- Local Agencies: Includes local legislative bodies, planning boards, zoning boards, county health departments, school, water and fire districts, IDA's, etc.

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Agency Actions Not Subject to SEQR

- Actions undertaken by the following are not subject to SEQR because they are not classified as “agencies”
 - Office of the Governor
 - State Legislature
 - Courts
- Legislature also carved out specific decisions by the following agencies:
 - Adirondack Park Agency
 - Public Service Commission
- Agency decisions that are advisory in nature

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Some Basic Rules Under SEQR

- No agency can make a final decision until it has complied with SEQR
- Lead agency must make every effort to involve the applicant, other agencies and the public in the process
- Agencies must carry out SEQR with minimum procedural and administrative delays
- Time periods can be extended by mutual agreement between the lead agency and the applicant

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BECAUSE SUCCESS MATTERS

Segmentation

- SEQR requires that each agency consider the environmental impacts of the entire action – *i.e.*, all phases or activities.
- Segmentation is the division of the environmental review of an action such that various activities are addressed as though they were unrelated activities
- Segmentation is disfavored by SEQR, but may be warranted in limited circumstances

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 10

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Segmentation

Determining whether activities are sufficiently related . . .

- Purpose: Is there a common purpose?
- Timing: Will actions be completed at about the same time?
- Location: Is there a common geographic location?
- Impacts: Do the activities create significant cumulative impacts?
- Ownership: Are different segments under same ownership and control?
- Planning: Is a given segment identified as a component of an overall plan?
- Utility: Are the segments functionally dependent on each other?
- Inducement: Does approval commit the agency to approve other phases?

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 11

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Enforcement: Who are the “SEQR Police?”

- SEQR is self-enforcing: Each agency is independently responsible for ensuring that its own decisions are consistent with the requirements of SEQR.
- NYSDEC does not have any authority to review the implementation of SEQR by other agencies.
- Agency actions that fail to comply with SEQR may be challenged in Court by an individual or organization that can demonstrate that they will be harmed by the improper review

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Classification of Actions

- There are three (3) types of actions under SEQR:
 - Type I Actions: Certain actions that carry a presumption that they are likely to have a significant impact on the environment and may require an environmental impact statement (EIS)
 - Type II Actions: Certain actions not subject to SEQR review because that have been determined not to have a significant impact on the environment or are exempt from SEQR review
 - Unlisted Actions: All actions not on either the Type I or Type II lists

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Determining the Applicability of SEQR

- As soon as an agency receives an application or proposes to undertake an action, it must:
 1. Determine if the action is subject to SEQR;
 2. Determine if the action involves other agencies;
 3. Make a preliminary classification of the action as either Type I or Unlisted

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Environmental Assessment Form (EAF)

- What is an EAF?
 - A form used by an agency to assist it in determining significance or non-significance of actions.
 - An EAF must contain enough information to:
 - Describe the proposed action and
 - Its location
 - Its purpose
 - Its potential impacts on the environment

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Environmental Assessment Form (EAF)

- For **Type I actions** a Full EAF must be prepared.
 - The project sponsor is responsible for preparing Part 1
 - The Lead Agency is responsible for preparing Part 2 and Part 3, if needed.
- For **Unlisted actions** a Short EAF is generally used to determine significance. However, a lead agency may require a Full EAF for an Unlisted action if it determines that a Short EAF will not provide sufficient information on which to base its determination of significance.
- Revised Model EAFs became effective on October 1, 2012
- A Draft EIS (DEIS) may be submitted in lieu of an EAF.

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Coordinated vs. Uncoordinated Review

- **Coordinated review - all involved agencies cooperate in one integrated SEQR review**
 - Required for all Type I actions and Unlisted actions that require an EIS
 - Determination of significance made of lead agency is binding on all other involved agencies
- **Uncoordinated review - each involved agency reviews the impacts of a proposed action independently, issues a negative declaration and makes its final decision**
 - Permitted for Unlisted actions (that do not require an EIS)
 - Until a final decision has been made, an agency's Neg Dec can be superseded by a Pos Dec of another agency.

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Establishing Lead Agency

- A lead agency is typically the involved agency principally responsible for funding, undertaking or approving a project
- For coordinated review, the agency receiving an application must transmit the application and Part 1 of the EAF to all involved agencies and advise them that a lead agency must be established within 30 days thereafter.
- If no lead agency can be agreed upon, the applicant or any involved agency may request that a lead agency be designated by the DEC Commissioner
- Co-lead agencies are permissible

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Initial Lead Agency Responsibilities

- For actions involving only one involved agency, the agency must make its determination of significance within 20 days of receiving the application, EAF and other info need to make its decision, *whichever is later*.
- For actions subject to coordinated review, the lead agency must make its determination of significance within 20 days of its establishment as lead agency or of its receipt of all information needed to make its decision, *whichever is later*, and must prepare, file and publish its determination.

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Determining Significance

The most critical step in the SEQR process because it dictates the nature and scope of the environmental review relating to a project

- To determine significance, the lead agency must:
 - Consider the entire action and any cumulative impacts from other pending actions
 - Review the EAF to identify the relevant areas of environmental concern
 - Thoroughly analyze the relevant areas of environmental concern to determine if the action will have a significant adverse environmental impact
 - Set forth the determination of significance in a written form containing a reasoned elaboration for the determination

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Positive Declaration vs. Negative Declaration

- Negative Declaration ("Neg Dec") - a written determination by a lead agency indicating that the action will not result in any significant adverse environmental impacts and containing a "reasoned elaboration" for that determination
 - Simply stating that there are no significant impacts is insufficient
 - A Neg Dec ends the SEQR process
- Positive Declaration ("Pos Dec") - a written statement prepared by the lead agency indicating that the action may have a significant adverse impact on the environment and that an EIS will be required.

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Environmental Impact Statements (EIS)

- An EIS is a document that impartially analyzes the full range of potential significant adverse environmental impacts of an action and how those impacts can be avoided or minimized.
- Its purpose is to provide a means by which agencies, project sponsors and the public can systematically consider significant adverse environmental impacts and balance them against social and economic considerations, evaluate alternatives and discuss mitigation measures.
- May take the form of a DEIS, Final EIS (FEIS), Generic EIS (GEIS) or Supplemental EIS (SEIS)

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Scoping

The process which helps outline the topics and analyses of potential environmental impacts of an action to be addressed in a DEIS.

Its purpose is to narrow issues and ensure that the DEIS will be a concise, accurate and complete document that focuses only on relevant environmental issues

Scoping helps ensure public participation in the EIS development process and helps the project sponsor avoid studying irrelevant impacts or issues and submitting a deficient DEIS

However . . . scoping is not required under SEQR

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Scoping Process

Scoping may be initiated by the applicant or by the lead agency

Process begins when applicant submits draft scope to the lead agency.

The lead agency must promptly provide a copy of the draft scope to all involved agencies, interested agencies and the public who have expressed interest in writing.

The lead agency must then provide an opportunity for public participation in the review of the draft scope.

Within 60 days after receiving the draft scope, the lead agency must prepare and distribute the final written scope – otherwise, Applicant can submit a DEIS based on the draft scope

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Contents of a DEIS

All DEIS's must contain:

- A cover sheet
- Table of contents and summary of the DEIS
- Concise description of the proposed action
- Concise description of the environmental setting
- A statement and evaluation of the potential significant environmental impacts and a reasonable likelihood of occurrence
- A description of mitigation measures
- A description and evaluation of the range of reasonable alternatives
- A list of the underlying studies, reports and other information considered in preparing the EIS

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DEIS Procedures

Upon submission of a DEIS for review, the lead agency has 45 days to determine whether to accept the DEIS as adequate with respect to scope and content for the purpose of commencing public review.

The minimum public comment period on a DEIS is 30 days, which commences upon the filing and circulation of a notice of completion

The lead agency may hold a public hearing on the DEIS, but is not required to do so.

If a public hearing is held, then the public has no less than 10 days following the public hearing to submit comments

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FEIS Procedures

Within 45 days after the public hearing or 60 days after the filing of the DEIS, the lead agency must either adopt a Neg Dec or prepare or cause to be prepared an FEIS.

An FEIS must consist of the DEIS, copies or a summary of all relevant substantive comments received and the LA's responses to those comments.

Unlike the DEIS, the lead agency is responsible for the adequacy and accuracy of the FEIS.

Once completed, the FEIS must prepare, file and publish a notice of completion and file copies.

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Decision-Making and Findings

Following completion of the FEIS, the lead agency must afford all agencies and the public at least 10 days in which to consider the FEIS before it issues its Findings.

The lead agencies' Findings and its decision on an action must be made within 30 days after the filing of the FEIS.

No involved agency may make a final decision until written Findings have been adopted.

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Written Findings

A written Findings must:

- Consider the relevant environmental impacts, facts and conclusions disclosed in the FEIS
- Weigh and balance relevant environmental impacts with social, economic and other considerations.
- Provide a rationale for the agency's decision
- Certify that the requirements of SEQR have been met; and
- Certify that the action is one that avoids or minimizes adverse impacts to the maximum extent practicable, and that any such impacts will be avoided or minimized by imposing the identified mitigation measures as conditions.

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Filing, Distribution and Posting of Documents

A Type I Neg Dec, Pos Dec, Notice of Completion of an EIS, an EIS, Notice of Hearing and Findings must be filed with:

- The chief executive office of the municipality where the project will be located.
- The Lead agency
- All involved agencies
- Any person who has requested a copy; and
- The Applicant

- An Unlisted action Neg Dec only needs to be filed with the lead agency

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Filing, Distribution and Posting of Documents

All SEQR documents and notices must be maintained in files that are readily accessible to the public.

If sufficient copies of the EIS are not available for the public, the lead agency must provide an additional copy to the local public library

A copy of the EIS must be sent to the NYSDEC

Notice of a Type 1 Neg Dec, Pos Dec and completion of an EIS must be published in the Environmental Notice Bulletin ("ENB")

An EIS must also be posted on a publicly-accessible website and remain there for a period of 1 year after final approvals have been granted

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Proposed Amendments to SEQR

- Revision of Type I Actions
- Revision of Type II Actions
- Scoping
- Preparation and Content of Environmental Impact Statements
- Document Preparation, Filing, Publication and Distribution
- Fees and Costs

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 32



Recent SEQR Court Decisions

- Standing
- Statute of Limitations
- Ripeness/Finality
- Segmentation
- Substantive Compliance
- Procedural Compliance

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice

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Standing

General Rule:

Plaintiff must show that it will suffer a direct environmental harm or injury that is in some way different from that of the public at large and that the alleged injury falls within the zone of interest to be protected or promoted by SEQR. See, *Society of Plastics Indus. v. County of Suffolk*.

There is a presumption of unique harm or injury if plaintiff can demonstrate that he or she resides in close proximity to a proposed project.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice

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Save the Pine Bush, Inc. v. Council of the City of Albany

13 N.Y.3d 297 (2009)

FACTS

- City of Albany rezoned a 3.6-acre parcel to allow for a hotel use following a comprehensive SEQR review.
- Parcel was located near an area protected by the Albany Pine Bush Preserve, including an area known as Butterfly Hill.
- Butterfly Hill is habitat to the endangered Karner Blue Butterfly.
- Petitioner, a not-for-profit organization dedicated to the preservation of the Pine Bush Preserve, commenced an Article 78 proceeding challenging the rezoning on SEQR grounds.
- Petitioner's members did not reside in close proximity to the Pine Bush
- However, they alleged that they repeatedly "use the Pine Bush for recreation and to study and enjoy the unique habitat found there."

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice

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BECAUSE SUCCESS MATTERS

Save the Pine Bush, Inc. v. Council of the City of Albany
13 N.Y.3d 297 (2009)

- Court ruled that a person who can prove that he or she uses and enjoys a natural resource more than most other members of the public has standing under SEQR to challenge government action that threatens that resource.
- Court found that it was undisputed that petitioner's members frequently visited and enjoyed the Pine Bush for recreation and wildlife study more so than members of the general public.
- Petitioner's members were much more likely to suffer injury from a threat to wildlife in the Pine Bush than the owners and occupants of the nearby properties that were developed with commercial uses.
- However, the Court cautioned that standing is not automatic, nor can it be met by perfunctory allegations of environmental harm.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 36

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Peconic Baykeeper, Inc. v. Trustees of the Town of Southampton
2010 NY Slip Op 30182U (Sup. Ct., Suffolk Co. 2010)

FACTS

- The Town Trustees approved the expansion of an existing small marina and restaurant to allow for additional boat slips and the construction or reconstruction of bulkheads, catwalks, docks, pilings, etc. in Shinnecock Bay.
- Petitioner, a not-for-profit organization whose mission is to protect and improve the aquatic ecosystems of the Peconic and South Shore estuary systems of Long Island, and whose members live in Southampton and use its waters and beaches for a variety of purposes, commenced an Article 78 proceeding claiming non-compliance with SEQR.
- The President of the organization alleged that he regularly uses Shinnecock Bay in the immediate vicinity of the existing marina for fishing, swimming and nature study.
- Another member of the organization, who was also a commercial bayman who fished and clammed in areas near the existing marina, submitted an affidavit claiming that the proposed marina expansion will result in pollution of the waters which will adversely affect his livelihood and enjoyment of the area.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 37

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Peconic Baykeeper, Inc. v. Trustees of the Town of Southampton
2010 NY Slip Op 30182U (Sup. Ct., Suffolk Co. 2010)

- Court ruled that petitioner had standing because, like in *Save the Pine Bush*, the petitioner's members alleged that they enjoyed repeated use of the area in issue, that the threatened harm to the environment was real, and would affect them differently than the public at large.
- However, unlike in *Save the Pine Bush*, the Court applied the three-part test for organization standing, which is:
 - (1) at least one of the organization's members must have standing to sue;
 - (2) the interests asserted by the organization must be germane to its purposes, so that it is the appropriate representative of those interests; and
 - (3) the claim asserted or the relief requested must not require the participation of the individual members of the organization.
- The Court found that: (1) the recreational, aesthetic and environmental interests asserted by the organization's President are within the zone of interest the SEQR seeks to protect; (2) the interests asserted are germane to the organization's purpose, so that petitioner is the appropriate representative of those interests; and (3) neither the claim asserted nor relief requested required the participation of any individual member of the organization.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 38



Statute of Limitations

General Rule:

An Article 78 proceeding alleging SEQR claims must be commenced within 4 months after the determination to be reviewed becomes final and binding, which is when the decision-maker arrives at a definitive position on an issue that inflicts actual, concrete injury upon the petitioner that cannot be prevented or mitigated by further administrative action.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 39



Stop-The-Barge v. Cahill
1 N.Y.3d 218 (2003)

FACTS

- NYC Energy, LLC, sought approval to obtain permits to install a power generator on a floating barge in the waters surrounding Brooklyn.
- After several project modifications, the NYCDEP issued a conditioned negative declaration which became final on February 18, 2000.
- NYC Energy then applied to the NYSDEC for an air permit, which was issued on December 18, 2000.
- On February 20, 2001 – 1 year after the CND became final, and 2 months after the air permit was issued - petitioners commenced an Article 78 proceeding challenging the DEP's issuance of the CND and the DEC's issuance of the air permit.
- The DEP and NYC Energy moved to dismiss the proceeding on the basis that it was time-barred by the 4-month statute of limitations, and the motion was granted.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 40



Stop-The-Barge v. Cahill
1 N.Y.3d 218 (2003)

- On appeal, the Court of Appeals upheld the granting of the motion and dismissal of the action as time-barred.
- According to the Court, the 4-month limitations period began to run when the CND became final on February 18, 2000, because at that point the SEQR review ended and became final for purposes of judicial review.
- The Court held that an agency action is final when: (1) the decision-maker arrives at a "definitive position on the issue that inflicts an actual, concrete injury" and (2) the injury cannot be prevented by further administrative action that might render the disputed issue moot or academic.
- Here, the Court found that the issuance of the CND resulted in actual concrete injury to the petitioners because the CND gave the developer the ability to proceed without the need to prepare an environmental impact statement.
- This case created considerable confusion because it suggested that the 4-month limitations period for SEQR challenges began to run upon the conclusion of the SEQR process, which was contrary to the Court's prior decision in *Save the Pine Bush v. Albany*, 70 N.Y.2d 193 (1987).

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 41

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Ripeness/Finality

General Rule:

Same as for accrual of statute of limitations.

In an Article 78 proceeding, a SEQR issue is ripe for judicial review when "the decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury that cannot be prevented or mitigated by further administrative action."

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 42

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Patel v. Board of Trustees of Village of Muttontown
115 A.D.3d 862 (2nd Dept. 2014)

FACTS

- Jewish Congregation of Brookville applied to the Village Board for a special permit and site plan approval to construct a synagogue.
- Village Board issued a Pos. Dec. and after completion of an EIS, it adopted a Findings Statement to end the SEQR process.
- Before the Village Board processed the special permit or site plan applications, a neighbor challenged the SEQR process.
- The Village Board and Jewish Congregation moved to dismiss on the basis that the SEQR challenge was not ripe for review.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 43

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Patel v. Board of Trustees of Village of Muttontown
115 A.D.3d 862 (2nd Dept. 2014)

- On appeals, the Court granted the motions to dismiss.
- It concluded that the Village Board's action was not "final," because it had not yet arrived at a definitive position that inflicts "an actual, concrete injury" on the Petitioner.
- The Court reasoned that because the Village Board had not yet processed or decided the special use permit and site plan applications, which the Petitioner could oppose, and which the Village Board might ultimately deny, the SEQR challenge was not ripe for review.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 44

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Segmentation

General Rules:

Actions commonly consist of a set of activities or steps, and the entire set of activities must be considered the "action."

Considering only a part or segment of an action is disfavored because it is contrary to the intent of SEQR.

Dangers of Segmentation:

- A decision made on the first segment of an action may be practically determinative of the second part; and
- A potentially significant action can be broken up into two or more components that, individually, might have less of an impact or might even fall below the threshold for review.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 45

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Segmentation

- Although generally disfavored, segmentation is actually permissible under SEQR.
- Permissible only where an agency affirmatively determines that segmentation is warranted under the circumstances, provided that the agency:
 - (1) clearly states its reasons for segmenting the review; and
 - (2) demonstrates that a segmented review will be no less protective of the environment.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 46

 **FARRELLFRITZ**
BECAUSE SUCCESS MATTERS

Town of Blooming Grove v. County of Orange

103 A.D.3d 655 (2nd Dept. 2013)
Improper Segmentation

FACTS

- Orange County entered into contract to sell 258 acres of property in the Towns of Blooming Grove and Chester to a developer who agreed to construct residential, commercial and retail uses on the site
- The contract was contingent on the County guaranteeing adequate sewer capacity.
- The Towns, as co-lead agencies, determined the project to be a Type I action and issued a Pos. Dec. and a final scope.
- When the Towns could not guarantee adequate sewer capacity for the project, the County Legislature began to consider extending a nearby County sewer district to the site, and performed its own SEQR review on the proposed extension that ended with a Neg. Dec.
- After the County Legislature approved the district extension, the Towns sued alleging impermissible segmentation

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 47


Town of Blooming Grove v. County of Orange
103 A.D.3d 655 (2nd Dept. 2013)

- The Court agreed that under the circumstances, the County improperly segmented its review of the County sewer district extension from the review of the impacts from the rest of the development project.
- It found that the development project and the sewer extension were part of an integrated and cumulative development plan, sharing a common purpose.
- Finally, the Court noted that because the Towns have already issued a Pos. Dec. as part its coordinated SEQR review, the County was prohibited from issuing its own determination of significance.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 48


East End Property Company # 1, LLC v. Kessel
46 A.D.3d 817 (2nd Dept. 2007)
Proper Segmentation
FACTS

- LIPA authorized its Chairman to enter into a power purchase agreement and other related agreements with Cathness Long Island, LLC, which proposed a 350-megawatt generator on a 15-acre parcel in Brookhaven.
- The generator would be fueled by the Iroquois Pipeline Extension that was being proposed at the same time.
- LIPA conducted a comprehensive SEQR review, which culminated in a Findings Statement that was issued prior to LIPA taking any action.
- The Findings Statement did not include an analysis of the environmental impacts of the pipeline extension.
- The Petitioners brought suit claiming that LIPA improperly segmented its SEQR review.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 49


East End Property Company # 1, LLC v. Kessel
46 A.D.3d 817 (2nd Dept. 2007)

- The Court found that the Town Board did not improperly segment its SEQR review.
- Although the LIPA action and the natural gas pipeline extension were clearly part of an integrated and cumulative development plan, the activities were properly segmented.
- Iroquois was a "natural gas company" engaged in interstate transmission of natural gas via interstate gas pipelines and, as such, its actions fall within the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"), which preempts all state regulations, including SEQR.
- Under the National Environmental Policy Act ("NEPA"), FERC is required to undertake its own environmental analysis.
- Thus, LIPA had properly explained the reasons for the segmented review and why doing so would be no less protective of the environment.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 50



SEQR Compliance

Substantive Compliance:
General Rule:
 SEQRA's substantive mandate requires the reviewing agency to: (1) identify "the relevant areas of environmental concern," (2) take a "hard look" at them, and (3) make a "reasoned elaboration" of the basis for its determination.

Procedural Compliance:
General Rule:
 SEQR requires strict compliance with the environmental review procedures set forth in the statute and regulations. However, some Courts have been tolerant of procedural defects so long as the core principles of SEQR are not compromised.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 51



Save the Pine Bush, Inc. v. Council of the City of Albany 13 N.Y.3d 297 (2009)

Substantive Compliance

- Petitioner claimed that that City of Albany failed to take a hard look at the environmental impacts from the proposed rezoning and construction of a hotel near the Pine Bush Preserve.
- Specifically, petitioner claimed that, although the City of Albany investigated the impact that the proposed actions would have on the Kameer Blue butterfly, it failed in its duty by not investigating the project's impact on certain other plant and animal species.
- In ruling that the City took the requisite "hard look," the Court of Appeals noted that SEQR did not require the City to investigate every conceivable environmental problem.
- Instead, the City can, within reasonable limits, use its discretion in selecting which ones are relevant.
- The fact that the City concerned itself with the ecology of the Pine Bush, and focused on the species that was generally considered of most importance, the Kameer Blue butterfly, was deemed to be a sufficient hard look for purposes of SEQR compliance.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 52



Troy Sand & Gravel Company, Inc. v. Town of Nassau 82 A.D.3d 1377 (3rd Dept. 2011)

Procedural Compliance

- After a series of moratoria and a long deliberative legislative process, Town Board enacted a local law banning extractive mining.
- A mining company sued alleging that the Town Board violated SEQR by failing to provide a "reasoned elaboration" for its negative declaration.
- Supreme Court granted the petition, and the Town Board appealed.
- Appellate Division affirmed upon a finding that the record did not contain a "formal" reasoned elaboration for the Board's determination.
- Instead, the only express reasoning for the negative declaration was set forth in the pre-printed, full environmental assessment form, where the Town Board merely checked a box indicating that the project will not have a significant impact on the environment, and that a negative declaration will be prepared.
- Court concluded that the Town's extensive legislative process was not a substitute for strict compliance with SEQRA's reasoned elaboration requirement.

STATE ENVIRONMENTAL QUALITY REVIEW: Procedure and Practice 53

**FINAL SCOPE
for the
Generic Environmental Impact Statement (GEIS)
on the
Proposed Amendments
to the
State Environmental Quality Review Act (SEQRA)**

6 NYCRR - Part 617

**PREPARED BY THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL PERMITS & POLLUTION PREVENTION
November 28, 2012**

1.0 Description of the Action & Environmental Setting

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the State Environmental Quality Review Act (“SEQR”, Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York . The principal purpose of the amendments is to improve and streamline the SEQR process without sacrificing meaningful environmental review. The changes being proposed are modest in nature, not intended to change the basic structure of an environmental review, build on the changes made to the environmental assessment forms and are within the authority of the DEC to implement without seeking additional legislative action. SEQR applies to all state and local agencies in New York State when they are making a discretionary decision to undertake, fund or approve an action.

DEC has proposed changes to the SEQR regulations, which it does not expect to have a significant impact on the environment. However, given the importance of the SEQR regulations in general in all areas of environmental impact review, DEC has chosen to use a generic environmental impact statement (GEIS) as the means to discuss the objectives and the rationale for the proposed amendments, present alternative measures which are under consideration and provide the maximum opportunity for public participation.

2.0 Summary of Proposed Amendments to 6 NYCRR Part 617

617.2 DEFINITIONS

- Add definition of “Green Infrastructure”
- Add definition of Minor Subdivision”
- Add definition of “Municipal Center”
- Add Definition of “Replacement in Kind”
- Add definition of “Substantially Contiguous”

- Revise definitions of:
 - “Negative Declaration”
 - “Positive Declaration”

617.4 TYPE I ACTIONS

- Reduce number of residential units in items 617.4(b)(5)(iii), (iv) & (v);
- Reduce number of parking slots for municipalities with a population under 150,000; and
- Reduce the threshold reduction for historic resources [617.4(b)(9)] in line with other resource based items on the Type I list and add eligible resources.

617.5 TYPE II ACTIONS

- Add new Type II actions to encourage development on previously disturbed sites in municipal centers and to encourage green infrastructure projects;
- Add new Type II actions to encourage the installation of solar energy arrays;
- Add new Type II action that allows for the sale, lease or transfer of property for a Type II action;
- Add new Type II action for minor or small scale subdivisions;
- Add a new Type II actions to make the disposition of land by auction a Type II action; and
- Add a new Type II action to encourage the renovation and reuse of existing structures.

617.8 SCOPING

- Make scoping mandatory;
- Provide greater continuity between the environmental assessment process, the final written scope and the draft environmental impact statement (EIS) with respect to content;
- Strengthen the regulatory language to encourage targeted EISs;
- Clarify that issues raised after the completion of the final written scope cannot be the basis for the rejection of the draft EIS as inadequate.

617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

- Add language to require that adequacy review of a resubmitted draft must be based on the written list of deficiencies; and
- Revise the timeline for the completion of the FEIS.

617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION

- Add language to encourage the electronic filing of EISs with DEC.

617.13 FEES AND COSTS

- Add language to require that a lead agency provide the project sponsor with an estimate of review cost, if requested; and
- Add language to require that a lead agency provide the project sponsor with a copy of invoices or statements for work done by a consultant, if requested.

3.0 Discussion of Proposed Changes and Alternatives

The following discussion provides the objectives and rationale for the major proposed changes and the alternatives under consideration. It also includes preliminary express terms. The pre-draft text amendments show proposed language deletions as bracketed ([XXXX]) and new language as underlined (XXXX). This language is being provided to stimulate consideration and comment on the preliminary changes

3.1 Type I List

3.1.1 Preliminary Text Amendment:

- 617.4(b)(5)(iii) in a city, town or village having a population of [less than]150,000 persons or less, [250] 200 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 150,000 persons but less than 1,000,000, [1,000]500 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 1,000,000, [2,500] 1000 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;

Objectives and Rationale: The Department proposes to reduce some of the thresholds for residential subdivisions. Experience has shown that the thresholds for some of the Type I items for residential construction are rarely triggered because they were set too high in 1978. There is scant information in the 1978 draft and final EIS that demonstrates any basis for the selection of the thresholds other than the numbers in a rural and urban area should be different. The proposed change will bring the review of large subdivision into conformance with current practice. Large subdivisions are frequently the subject of an EIS and by nature when proposed on new sites often have one or more potentially significant impacts on the environment due to the need for the expansion of infrastructure such as water, sewer and roads needed to serve the new development.

Alternatives: The “no action” alternative would retain the current numbers which were established in 1978. There is no substantive record supporting the numbers that were selected in 1978. Other suggested alternatives include reducing the number or threshold to a lower number of lots that would trigger Type I classification.

3.1.2 Preliminary Text Amendment:

- 617.4(b)(6)(iii) in a city, town or village having a population of 150,000 persons or less, parking for 500 vehicles;
- 617.4(b)(6)(iv) in a city, town or village having a population of 150,000 persons or more, parking for 1000 vehicles;

Objectives and Rationale: The Department proposes to add a threshold for parking spaces for communities of less than 150,000 persons. A common and often recommended measurement is one parking space per 200 square feet of gross floor area of a building. For communities of less than 150,000 persons the applicable Type I threshold for the construction of commercial or industrial facilities is 100,000 square feet of gross floor area. This equates to 500 parking spaces.

Alternatives: The “no action” alternative would retain the current Type I threshold at 1000 vehicles for all municipalities without regard to size. Other suggested alternatives include reducing the number of parking spaces for all communities to 500 or less vehicles.

3.1.3 Preliminary Text Amendment:

- 617.4(b)(9) any Unlisted action that exceeds 25 percent of any threshold in this section [(unless the action is designed for the preservation of the facility or site)] occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National or State Register of Historic Places, or that has been [proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is] determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));

Objectives and Rationale: The Department proposes to bring the threshold reduction for historic resources in line with other resource based items on the Type I list. On the existing Type I list any Unlisted action, regardless of size, that occurs wholly or partially within or substantially contiguous to a historic resource is automatically elevated to a Type I action. This results in very minor actions being elevated to Type I. Other resource based Type I items such as those addressing agriculture and parkland or open space result in a reduction in the Type I thresholds by 75%. Given the fact that the new Full EAF, which will be effective on April 1, 2013, requires much more information on historic resources it would be unduly onerous for a project sponsor to have to complete a Full EAF for a relatively minor activity. Also, the new Short EAF now contains a question regarding the presence of historic resources so the substance of the issue will not escape attention. This change does not change the substantive requirements of a SEQR review. This listing has been expanded to include properties that have been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation eligible for listing. This change would make SEQR consistent with both State and Federal Historic Preservation legislation.

Alternatives: The “no action” alternative would retain the current Type I item. Other suggested alternatives include the following: exclude projects that are subject to review under Section 106 of the National Historic Preservation Act of 1966 or 1409 of the State Historic Preservation Act and delete the entire listing but require that when a listed property may be impacted by a project that the determination of significance must include an evaluation of the potential for impact to the attributes that are the basis for the listing.

3.2 Type II List

The Department proposes to broaden the list of actions that will not require review under SEQRA. This will allow agencies to focus their time and resources on those projects likely to have significant adverse impacts on the environment. The additions to the Type II list are based on discussions that DEC has conducted with representatives from state agencies, environmental organizations, business and the experience of staff in the Division of Environmental Permits.

A second and more important reason for many of the proposed additions to the Type II list is to try and encourage environmentally compatible development. Many of the additions attempt to encourage development on previously disturbed sites in municipal centers with supporting infrastructure and encourage green infrastructure projects and solar energy development. Others proposed items will remove obstacles encountered by municipalities when developing affordable housing in cooperation with not-for-profit organizations. The overall goal is to provide a regulatory incentive for project sponsors to further the State's policy of sustainable development.

3.2.1 Preliminary Text Amendment:

- The acquisition, sale, lease, annexation or transfer of any ownership of land to undertake any activity on this list.

Objectives and Rationale: One of the basic concepts of SEQRA is the "whole action". Having the land transaction of a proposed activity subject to review under SEQRA when the activity itself is listed as a Type II action violates this concept. This quirk has also resulted in affordable housing projects like those sponsored by not-for-profit agencies being subjected to SEQRA review for the transfer of land from the municipality to the not-for-profit when the activity involved the construction of a one, two or three family residence which is a Type II action. Adding this item to the Type II list will remove a potential stumbling block to the construction of affordable housing and clarify.

Alternatives: The "no action" alternative would remove this item from the Type II list. Other suggested alternatives include adding acquisition of land by fee or easement for public open space or passive recreation.

3.2.2 Preliminary Text Amendment:

- Disposition of land, by auction, where there is no discretion on the part of the disposing agency on the outcome.

Objectives and Rationale: A municipality or a state agency may acquire land through foreclosure or other means where the land reverts to the agency due to a failure of the owner to remain current on property taxes. State law requires that the municipality or agency dispose of this land through a public action to the highest qualified bidder. The municipality or agency has no discretion but to abide by the results of the auction. Currently, agencies are required to perform a SEQRA review since the sale, lease or other transfer of greater than 100 acres is a Type I action and amounts under 100 acres are classified as Unlisted actions. The environmental assessments under these circumstances are fairly meaningless since the agency has no idea of what the ultimate use of the property will be by the new owner at the time of the auction. The

only guide the agency can use is zoning or the lack of zoning. In addition, the subsequent development of the property will generally result in an environmental review if the proposed action requires a discretionary permit or approval from a state or local agency

Alternatives: The “no action” alternative would remove this item from the Type II list and continue to require a SEQR review prior to the disposition of land by auction. Other suggested alternatives: expand this proposed listing to allow for disposition of land by any means as a Type II action, limit the item by including the phrase “unless such action meets or exceeds the criteria found in 617.4(b)(4) of this Part.”

3.2.3 Preliminary Text Amendment:

- In a city, town or village with an adopted zoning law or ordinance, reuse of a commercial or residential structure not requiring a change in zoning or use variance unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8), (9), (10), and (11) of this Part.

Objectives and Rationale: The built environment of New York State contains many structures that are currently vacant. For example, the City of Albany has recently determined that there are 809 vacant buildings in the city. These vacant structures, if not properly maintained, contribute to urban blight and are an under used resource. Many of these structures could be reused for housing or commercial development rather than developing a greenfield site. Since these properties generally have existing infrastructure the suite of potential environmental issues is very limited and are routinely handled under the existing local land use reviews. Returning a vacant residential or commercial structure to a productive use can reduce blight, improve the vitality and live-ability of a neighborhood and return structures to the tax role.

Alternatives: The “no action” alternative would remove this item from the Type II list and continue to require a SEQR review prior to the proposed reuse of a vacant or abandoned structure. Other suggested alternatives: Expand this provision to apply to all structures including industrial uses.

3.2.4 Preliminary Text Amendment:

- Lot line adjustments and area variances not involving a change in allowable density [replacing existing items 12 and 13 in 6 NYCRR 617.5(c)].

Objectives and Rationale: Individual setback and lot line variances and area variances for single, two- or three- family homes are currently Type II actions. This proposed revision would expand the applicability to all types of structures so long as the proposed lot line adjustment or area variance does not change the allowable density. These types of variances are subject to the review and approval of zoning boards which are required under state law to consider environmental factors in their decision to either issue or deny the requested relief.

Alternatives: The “no action” alternative would remove this item from the Type II list and continue the current situation which would restrict area variance to only one-, two- and three-family residences.

3.2.5 Preliminary Text Amendment:

- In cities, towns and villages with adopted subdivision regulations, subdivisions defined as minor under the municipality's adopted subdivision regulations, or subdivision of four or fewer lots, whichever is less, involves ten acres or less, and provided the subdivision does not involve the construction of new roads, water or sewer infrastructure, and was not part of a larger tract subdivided within the previous 12 months.

Objectives and Rationale: The municipal enabling laws for subdivision plat review (e.g., Town Law §276) authorize municipalities to define subdivisions as major or minor. Minor subdivisions, as defined in many municipal subdivision regulations, usually consist of four or fewer lots or two lots. The municipal enabling laws provide a sufficient grant of authority to municipalities to consider the typical and expected environmental impacts of minor subdivisions. Under such circumstances and the ability of municipalities to condition or deny approvals along with the additional caveats for numbers of acres, connection to utilities, and no construction of new roads, provides assures that such actions would not have a significant effect on the environment.

Alternatives: The “no action” alternative would remove this item from the Type II list and continue to require a SEQR review for minor subdivisions. An alternative would be to disallow the small or minor subdivision Type II when there are sensitive environmental features on the site (e.g., designated critical environmental areas or other identifiable resources). Other alternatives would be to make the Type II item less restrictive by removing one or more of the conditions, e.g., 1) removal of the restriction on establishment of new roads since the restriction may impede context sensitive design for small subdivisions, or 2) removal of the restriction on acres.

3.2.6 Preliminary Text Amendment:

- The recommendation of a county or regional planning entity made following referral of an action pursuant to General Municipal Law, sections 239-m or 239-n.

Objectives and Rationale: This is one of the most frequently asked questions by town and county planners. Since these reviews under 239-m & n are not binding and can be overturned by a majority plus one vote by the municipality they have been interpreted as not triggering SEQR.

Alternatives: The “no action” alternative would remove this item from the Type II list.

3.2.7 Proposed Text Amendment:

- On a previously disturbed site in the municipal center of a city, town or village having a population of less than 20,000, with adopted zoning regulations, construction or expansion of a residential or commercial structure or facility involving less than 8,000 square feet of gross floor area where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new public roads.

- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 20,000 but less than 50,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 10,000 square feet of gross floor area where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new public roads;
- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 50,000 but less than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 20,000 square feet of gross floor area where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.
- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 40,000 square feet of gross floor area where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.

Objectives and Rationale: Building a structure on a previously disturbed lot with existing road, sewer and water infrastructure substantially reduces the number and severity of potential impacts that must be considered in an environmental review. The four proposed Type II actions that allow for a sliding scale of development depending on population levels are intended to serve as an incentive for development on previously disturbed sites within existing municipal centers. Development of sites that have been previously disturbed and that have existing infrastructure result in less environmental impact than developing undisturbed greenfield sites and these impacts can be readily addressed through the land use review process. Also, the notion that development should be encouraged and funneled into existing sites in municipal centers with existing infrastructure that supports such development, has become part of the State's public policy.

Alternatives: The "no action" alternative would remove these items from the Type II list. Other suggested alternatives include changing the population numbers and the amount of allowed development for each item and the addition of more environmental conditions under which the development would not be allowed such as prohibiting use of this item when the project includes demolition or if site is located substantially contiguous to a designated or eligible historic structure or district.

3.2.8 Preliminary Text Amendment:

- Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading of buildings to meet building, energy, or fire codes, or to incorporate green building infrastructure techniques, unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.

Objectives and Rationale: The inclusion of upgrades of existing building to meet new energy codes is consistent with the current intent of the item. Also, the current item on replacement, rehabilitation or reconstruction is limited to “in kind” construction. This allows for some limited deviations from the existing structure but could be interpreted to preclude the use of green infrastructure in place of the existing more conventional development techniques. Installation of green roofs or other green infrastructure techniques can substantially improve energy efficiency and reduce generation of runoff. The addition of the specific Type I thresholds provides additional clarity for the application of this item and places limits on the size of the replacement, rehabilitation or reconstruction that could be undertaken as a Type II action.

Alternatives: The “no action” alternative would return the item to its current wording in the regulation. Another alternative would be to not include the provision regarding green building infrastructure techniques.

3.2.9 Preliminary Text Amendment:

- Installation of rooftop solar energy arrays on an existing structure that is not listed on the National or State Register of Historic Places or determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places, or installation of less than 25 megawatts of solar energy arrays on closed sanitary landfills.

Objectives and Rationale: The installation of solar energy arrays can substantially reduce energy costs and the generation of greenhouse gases. The rooftops of many commercial and industrial facilities are already home to a myriad of heating ventilation and air conditioning (HVAC) equipment. This is just another type of HVAC system. This provision would not allow installation on designated historic structures. The redevelopment of a closed sanitary landfill as a solar energy site would return a currently under used site to a productive use. Many closed sanitary landfills currently generate energy from the combustion of methane gas and have the necessary infrastructure in place to connect to the electrical grid.

Alternatives: The “no action” alternative would remove this item from the Type II list. Other suggested alternatives: delete the restriction for designated historic properties, place a limit on the size of roof top installations and reduce the size of an installation on closed sanitary landfills.

3.2.10 Preliminary Text Amendment:

- Installation of cellular antennas or repeaters on an existing structure that is not listed on the National or State Register of Historic Places or determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.

Objectives and Rationale: The current Type II item [617.5(c)(7)] that precludes the installation of radio communication and microwave transmission facilities as a Type II action has generated a substantial number of questions on the SEQR classification for installation of antennas and repeaters on existing structures. These antenna and repeaters can in many locations be installed on existing buildings and preclude the construction of a new tower.

Alternatives: The “no action” alternative would remove this item from the Type II list and continue to require a SEQR review prior to the installation of cellular antennas and repeaters on existing structures. Other suggested alternatives include: adding the phrase “structure or district” to the proposed listing to prohibit the applicability of this item in a designated historic district, prohibit the installation of cellular antennas or repeaters within 500 feet of a designated historic structure or district and require that all cellular antennas and repeaters that are located within 500 feet of a historic structure or district be camouflaged to reduce visibility.

3.2.11 Preliminary Text Amendment:

- Brownfield site clean-up agreements under Title 14 of ECL Article 27.

Objectives and Rationale: This item would clarify that the development and implementation of a brownfield clean-up agreement is a Type II action. The DEC has considered these types of agreements and clean-ups as civil or criminal enforcement proceedings [617.5(c)(29)]. As more agencies start to enter into these agreements it will clarify the correct SEQR classification for these activities.

Alternatives: The “no action” alternative would remove this item from the Type II list.

3.3 Scoping

3.3.1 Preliminary Text Amendment:

- 617.8(a) - The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or [non] not significant. Scoping should result in EISs that are only focused on relevant, significant, adverse impacts. Scoping is [not] required for all EISs [. Scoping] and may be initiated by the lead agency or the project sponsor.
- 617.8(f)(2) - the potentially significant adverse impacts identified both in Part III of the environmental assessment form [positive declaration] and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;
- 617.8(f)(7) - A brief description of the prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review[.] and the reason(s) why those issues were not included in the final written scope.
- 617.8(h) - The project sponsor may incorporate information submitted consistent with subdivision 617.8(g) of this section into the draft EIS at its discretion. Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS. Information submitted following the completion of the final scope and

not included by the project sponsor in the draft EIS cannot be the basis for the rejection of a draft EIS as inadequate.

Objectives and Rationale: The Department proposes to:

- (1) Require public scoping for all EISs. Currently scoping is not mandatory but all parties have come to accept the importance of public scoping as a tool to focus an EIS on the truly substantive and significant issues. Seeking public input early in the EIS process helps to ensure that all of the substantive issues are identified prior to the preparation of the draft EIS.
- (2) Place more emphasis on using the EAF as the first step in scoping. The revised EAFs are much more comprehensive than the previous versions. This should allow the lead agency to assess, in a thorough fashion, all of the potential impacts and to establish a basis for determining those issues that need additional scrutiny in an EIS and issues that do not require any further analysis and can be excluded from the EIS scope. Scoping can then be used to determine the depth and type of assessment that will be required in the draft EIS.
- (3) Provide clearer language on the ability to target an EIS. All parties agree that many EISs are currently filled with information that does not factor into the decision. This is driven by the defensive approach agencies and project sponsors take in developing the EIS record. In pursuit of the “bullet proof EIS” the tendency is to include the information even though the environmental assessment has already concluded that the issue is not substantive or significant.
- (4) Provide better guidance on the basis for accepting or rejecting a draft EIS for adequacy. The current regulations give to the project sponsor the responsibility for accepting or deferring issues following the preparation of the final written scope. A lead agency cannot reject a draft EIS as inadequate if the project sponsor has decided to defer an issue and treat it as a comment on the draft EIS. Language would be added to clarify that the decision of the project sponsor cannot serve as the basis for the rejection of a draft EIS as not adequate to start the public review process.

Alternatives: The “no action” alternative would result in scoping remaining an optional procedure. Other suggested alternatives: provide the lead agency with the authority to include “late items” after the preparation of the final scope and require that scoping must include a public meeting.

3.4 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

3.4.1 Preliminary Text Amendment:

- 617.9(a)(2) The lead agency will use the final written scope[,if any,] and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made [in accordance with the standards in this section] within 45 days of receipt of the draft EIS. Adequacy means a draft EIS that meets the requirements of the final written scope and section 617.9(b) of this Part.

- (i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.
 - (ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review.
- 617.9(a)(5) - Except as provided in subparagraph (iii) of this paragraph, the lead agency must prepare or cause to be prepared and must file a final EIS, within [45 calendar days after the close of any hearing or within 60] 180 calendar days after the lead agency's acceptance of the draft EIS[, whichever occurs later].
 - [(i) No final EIS need be prepared if:
 - (a) the proposed action has been withdrawn or;
 - (b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance with section 617.12 of this Part.]
 - (i) If the Final EIS is not prepared and filed within the 180 day period, the EIS shall be deemed complete on the basis of the draft EIS, public comment and the response to comments prepared and submitted by the project sponsor to the lead agency. The response to comments must be submitted to the lead agency a minimum of 60 days prior to the required filing date of the final EIS or this provision does not take effect.
 - (ii) The lead and all involved agencies must make their findings and can issue a decision based on that record together with any other application documents that are before the agency.
 - [(a) if it is determined that additional time is necessary to prepare the statement adequately; or
 - (b) if problems with the proposed action requiring material reconsideration or modification have been identified.]
 - (iii) No final EIS need be prepared if:
 - (a) the proposed action has been withdrawn or;
 - (b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance section 617.12 of this Part.

Objectives and Rationale: The Department proposes to add language to require that the adequacy review of a resubmitted draft must be based on the written list of deficiencies and revise the timeline for the completion of the FEIS.

Determining the adequacy of a draft EIS, which is the province of the lead agency, is a challenging step of the EIS process. If the document has been rejected as not adequate, the lead agency must provide a written list of the identified deficiencies that the project sponsor needs to correct. When the document is re-submitted the second review must be based on the list of

deficiencies that were identified in the first round of review. This is an issue of fairness and will lead to a more efficient process. The goal is to provide a document that is adequate to start the public review.

The current language regarding the timeframe for the preparation of the final EIS is unrealistic. It requires that the final EIS be prepared within 45 days after the close of any hearing or within 60 days of the filing of the draft EIS. Rarely, if ever, are these timeframes met. The Department proposes to extend this timeframe and provide certainty for when the EIS process will end.

Currently in SEQR any timeframe may be extended by mutual agreement between a project sponsor and the lead agency [See 617.3(i)]. So for large complex projects where the lead agency and the applicant agree that additional time is necessary to prepare the final EIS there is already a provision that would allow the six month clock to be extended. This provision would also not apply to direct actions of an agency.

Alternatives: The “no action” alternative would result in no change to the current language on determining adequacy and the timeframe for preparation of a final EIS. Other suggested alternatives are as follows: Require that the submitted draft EIS be determined complete if it contains all items listed in the final scope and require default acceptance of the submitted draft EIS if the lead agency exceeds the time provided for acceptance; require the applicant to submit a demand letter before the default acceptance is triggered; or add language that would create a narrow exception to the final timeframe where an action is subject to a trial-like adjudicatory hearing which by law becomes part of the record.

3.5 SEQR Fees

3.5.1 Preliminary Text Amendment:

617.13(e) [Where an applicant chooses not to prepare a draft EIS, t] The lead agency shall provide the applicant, upon request, with an estimate of the costs for preparing or reviewing the draft EIS calculated on the total value of the project for which funding or approval is sought. The applicant shall also be entitled, upon request to, copies of invoices or statements for work prepared by a consultant.

Objective and rationale: The Department proposes to clarify existing fee assessment authority by amending language to provide project sponsors with the ability to request an estimate of the costs for reviewing the EIS and a copy of any invoices or statement of work done by any consultant for the lead agency. This is primarily an issue of fairness and disclosure. A project sponsor should have the right to receive an estimate of the lead agency’s costs for the review of the EIS along with written documentation to support such fees. Currently, the lead agency must provide an estimate to the project sponsor when they take on the responsibility for the preparation of the EIS.

Alternatives: The “no action” alternative would remove this item from the Fees section. Other suggested alternatives: require that a fee be collected for all EIS and the EIS be prepared by a third party hired by the lead agency.

4.0 Issues Not Included in the Final Scope

A total of 37 comments letters were received during the public comment period that expired on August 10, 2012. The following is a brief discussion of the major issues that were considered for inclusion in the final scope of the regulatory changes but were dismissed from further consideration in this rule making.

4.1 Allow Conditioned Negative Declarations to be used for Type I Actions

This issue has been debated since the changes to SEQR made in 1987 that recognized the use of conditioned negative declarations (CND) and allowed them to be used for actions classified as Unlisted. It was rejected in 1987, reconsidered and rejected again in 1995. There are three primary concerns regarding the expansion of CNDs to Type I actions. First, Type I actions are presumed, to require the preparation of an EIS. Second, as it stands, the CND process adds an arguably unnecessary level of procedural complication to SEQR and the DEC does not favor carrying it over to Type I actions (which are by definition often the most environmentally significant types of actions). Third, the DEC questions whether it has the statutory authority for expanding the use of CNDs to Type I actions. The 1995 Final Generic EIS on the changes to SEQR has a complete discussion of this issue.

http://www.dec.ny.gov/docs/permits_ej_operations_pdf/finalgeis.pdf

4.2 Establish a Board or Council to Review SEQR Decisions

This issue has been raised by many parties over the years. It would establish an independent board or council that could, on request, review disputes and issue opinions on the proper implementation of SEQR. The make-up of the body, whether the determination was advisory or mandatory and identifying what parties could seek a review are elements that would have to be established. This issue has been rejected because it is outside of the scope of this regulatory action. Establishing a board or council that could issue a binding decision would require legislation and a change to Article 8 of the Environmental Conservation Law.

4.3 DEC Should Develop a Best Practice Manual

The suggestion has been raised that DEC should prepare a “Best Practices Manual” to establish the recommended or required practices that should be applied for issues that are frequently involved in the environmental review of an activity. This issue would not require a regulatory change so long as the practices were not required to be used by agencies. The suggestion has great appeal. DEC has, for many years, made available a SEQR Handbook to help SEQR practitioners’ with the process questions. A workbook to help users prepare and review the revised EAF forms is in preparation but it will not contain standard methodologies for the conduct of a traffic study, air analysis, wetland survey, etc. New York City (NYC) has taken this approach for activities that are subject to environmental review under the City Environmental Quality Review Act (CEQRA) and this manual is a great source of information. Preparing a best practice manual to cover even the most common environmental issues that could be fairly applied to the varied environments in New York State would be an expensive task which is currently beyond the fiscal capabilities of the DEC.

4.4 Rely on a Licensed Professional to Attest to the Accuracy of the Review

The issue was raised that the regulations should allow or require a lead agency to rely on the expertise of licensed professionals in the resolution of issues during an environmental review. If a licensed professional is willing to attest to the completeness and accuracy of an environmental impact review by affixing his or her stamp on the plan/assessment, that issue should not be the subject of additional scrutiny or debate by the lead agency or interveners. Making this change would significantly undermine the powers of the lead agency and much of the fact-finding that is part of the SEQR process. Although a licensed professional may have arrived at a conclusion there is no guarantee that the selected approach is the most environmentally compatible approach or that the professional is in fact correct or objective. Allowing other experts and the public the opportunity to review and offer comment is a healthy process. Obviously, the conclusions of a licensed professional should carry significant weight in the resolution of an issue. But, it should not be the only determining factor. Giving deference in this fashion would require legislation and a change to Article 8 of the Environmental Conservation Law.



General Session III

An Overview of Funding Sources

Suffolk County Planning Commission
October 21, 2014
Brookhaven National Lab

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Suffolk County Programs

Downtown Revitalization Program
JumpStart Suffolk
Industrial/Commercial Incentive Program
Foreign Trade Zone

2

Suffolk County Economic Development & Planning

Downtown Revitalization Program

3

**Suffolk County
Downtown Revitalization Program**

- ❖ Established in 1998 along with Downtown Revitalization Panel
- ❖ Panel members represent each Legislative District, Planning Division and County Executive Representative.
- ❖ Program's intent is to fund projects that will positively impact the economic viability of our downtowns and central business districts;

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**Downtown Revitalization
Program Guidelines**

❖ **Eligibility:**
The project must be located in or adjacent to a downtown area and located on municipally owned property. A downtown is that portion of a community that contains, did contain or is striving to create the traditional "main street" business core of a community. Concentrated retail and service activity usually dominated the downtown area, but office, residential and institutional uses are also present. In a downtown, buildings are separately owned but are closely clustered together and are sited close to the street, not set back from the street. A sidewalk is all that separates most downtown buildings from the public street. Downtown development is pedestrian oriented. On-street parking is often supplemented by off-street parking located behind the stores and in municipal parking lots.

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**Downtown Revitalization
Program Guidelines**

- ❖ Community group partnering with local municipality
- ❖ Project must be capital in nature
- ❖ \$8.2m awarded to date
- ❖ Competitive Program
- ❖ Projects are reviewed by the Downtown Revitalization Panel

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Downtown Revitalization Program Guidelines

❖ Projects are ranked via a merit based scoring process:

Criteria	Point Value
1. Provides Economic Benefits	0-20 Points
2. Project is in or adjacent to a Downtown	0-20 Points
3. Leverage of Additional Funds* (Sliding Scale)	0-20 Points
4. The Project is part of a Downtown Improvement Plan	0-20 Points
5. Reasonable Expectation of Completion within contract term	0-20 Points
TOTAL	100 POINTS

Percent of Leveraged Funds	*SLIDING SCALE	Point Value
50% and higher		20
45-49%		18
40-44%		15
35-39%		12
30-34%		10
25-29%		7
20-24%		5
15-19%		3
11-15%		2
1-10%		1

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Downtown Projects Funded and Next Round

❖ Examples of Projects funded:

- Public Restrooms - Westhampton Village, Greenport Village
- Street lighting and brick sidewalks - various communities
- Alleyways - Huntington, Patchogue Village
- Cultural/Tourism booth, Northport Village

❖ Next Round - Spring of 2015 \$500,000 allocated.

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Suffolk County Economic Development & Planning

JUMPSTART SUFFOLK

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JumpStart Suffolk

- ❖ Jumpstart Suffolk is part of County Executive Bellone's comprehensive economic development strategy.
- ❖ A source of revenue for Suffolk County to quickly support various economic development projects that are shovel ready or are in the planning stages.
- ❖ This is funding for economic development projects including those which encourage job creation, mixed use housing, enhance public transportation and provide vibrant attractions.

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JumpStart Suffolk

- ❖ **Examples of criteria that would be used to support economic projects from this project include:**
 - A long term benefit and growth to Suffolk County;
 - Supports infrastructure improvements;
 - Has an environmental sustainable component;
 - Is connected to a transportation component;
 - Has a mixed use and housing diversity component;
 - Creates a Place of Interest;
- ❖ **Projects funded to date:**
 - Wyandanch Rising
 - Ronkonkoma Hub
- ❖ **Funding goes to the local municipal partner.**

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Suffolk County Economic Development & Planning

INDUSTRIAL/COMMERCIAL INCENTIVE PROGRAM

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Industrial/Commercial Incentive Program

- ❖ **Targeted** industries in **Targeted** areas.
- ❖ Industries and areas were determined by local municipality, town or village based upon their unique Master Plans.
- ❖ Incentive offers property tax abatement for capital improvements over \$50,000.

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What exactly is abated?

"The exemption from taxation and special ad valorem levies from each town, village, and school district located within the target area shall apply, unless such town or village, by local law or such school district, by resolution, opts out of the exemption."

..."except for special ad valorem levies for fire district, fire protection district and fire alarm district purposes..."

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Abatement schedule.

Increased assessment phased in as follows:

50
40
30
20
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**ICIP – Who Implements?
How to Apply?**

- ❖ **Who Implements the Incentives Derived from the Plan?**
The local municipality (town/village) implements the specific tax incentive program. Once the Plan is adopted, Suffolk County will promote the program to create public awareness.
- ❖ **How Does a Business Owner Apply for the ICIP?**
The Town and Village assessors are the contact persons to determine eligibility and to file for the benefits associated with the ICIP.

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**Suffolk County Economic
Development & Planning**

FOREIGN TRADE ZONE

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Foreign Trade Zone #52

- ❖ **What is the Foreign-Trade Zone?**
 - ❖ A foreign-trade zone is a designed location in the United States where companies can delay or reduce duty payments on foreign merchandise, as well as other savings.
 - ❖ A site which has been granted zone status may not be used for zone activity until the site has been separately approved for FTZ activation by local U.S. Customs and Border Protection (CBP) officials, and the zone activity remains under the supervision of CBP.
 - ❖ FTZ sites and facilities remain within the jurisdiction of local, state or federal governments or agencies.

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What are the benefits?

- ❖ **Duty Exemptions.** No duties on or quota charges on re-exports.
- ❖ **Duty Deferral.** Customs duties and federal excise tax deferred on imports.
- ❖ **Inverted Tariff.** In situations where zone production results in a finished product that has a lower duty rate than the rates on foreign inputs (inverted tariff), the finished products may be entered at the duty rate that applies to its conditions as it leaves the zone (requires prior authorization).
- ❖ **Logistical Benefits.** Companies using FTZ procedures may have access to streamlined customs procedures (e.g. “weekly entry” or “direct delivery”).

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What merchandise and activity can take place?

- ❖ Any merchandise that is not prohibited from entry into the territory of the U.S. may be admitted to a zone.
- ❖ If applicable, import licenses or permits from other government agencies may still be required to bring the merchandise into the zone.
- ❖ Merchandise in a zone may be assembled, exhibited, cleaned, manipulated, manufactured, mixed, processed, relabeled, repackaged, repaired, salvaged, sampled, stored, tested, displayed and destroyed.
- ❖ Production activity that results in a change of the tariff classification.

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Type of Zones

- ❖ **Magnet Zones** - located at ports or industrial parks. Suffolk County’s Magnet Site is adjacent to LI MacArthur Airport. Magnet Zones are for multiple zone users. Land and space are currently available at this site.
- ❖ **Usage Driven Sites** - designation for a specific company at their current location. Designation is based upon use of property.

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Map of Foreign Trade Zone #52



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