

SUFFOLK COUNTY PLANNING FEDERATION

In collaboration with

AMERICAN PLANNING ASSOCIATION

BROOKHAVEN NATIONAL LABORATORY

NEW YORK DEPARTMENT OF STATE

SUFFOLK COUNTY PLANNING COMMISSION

and the

SUFFOLK COUNTY WATER AUTHORITY



Autumn Planning Conference 2012

Brookhaven National Laboratory
Berkner Hall
Upton, NY

Thursday
November 29, 2012

General Sessions 3:00-9:00 p.m.



Resource Manual



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

November 29, 20012

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 18 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 Suffolk County Water Authority, Brookhaven National Laboratory, Suffolk County, New York State, the American Planning Association and various event sponsors. This support is greatly appreciated.

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

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

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

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

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

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

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

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

CONTENTS

Letter from the Suffolk County Planning Federation
Message from Suffolk County Executive Steven Bellone
Introduction

Course Descriptions
Course Certification Key
Sponsors
Guest Lecturers, November 29, 2012

General Session I

Chapter 2: Municipal Regulation of Signs

Chapter 3: "It Takes a Village – Economic Development on Long Island; Small Business and the Department of Energy"

Chapter 4: Out of Sight, Out of Mind - The Challenge of Source Water Protection for Groundwater

General Session II

Chapter 5: Enforcement of Zoning and other Laws

Chapter 6: Why Regional Planning Matters: A Suburban Context

Chapter 7: Recovery and Resiliency: Why Infrastructure Matters

General Session III

Chapter 8: SEQRA Update

Chapter 9: Successful Projects, Directors Roundtable

Chapter 10: Planning and Zoning Case Law



**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 Water Authority, 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

Municipal Regulation of Signs (a) (b) (e)

The regulation of signs isn't just a zoning issue— when regulating signage, municipalities must be careful not to violate free speech. This course reveals what municipalities may and may not regulate in commercial or non-commercial signage and explores how signage can be regulated for community aesthetics. The session also addresses the drafting of a sign control law; the content of local sign control regulations; regulating billboards and other off-premises signs; and eliminating nonconforming or undesirable signs.

"It Takes a Village – Economic Development on Long Island; Small Business and the Department of Energy" (e)

Brookhaven National Laboratory management will discuss the Laboratory's role in transferring research and technology into regional economic development.

Out of Sight, Out of Mind - The Challenge of Source Water Protection for Groundwater (e)

Long Islanders rely on a sole source aquifer system to meet all of their water needs. Because that aquifer system is underground and therefore unseen, most Long Islanders never think about the source of their drinking water. They fail to realize that human activities on the surface can and do have serious negative impacts on groundwater quality. That is why implementing a comprehensive source water protection program in Suffolk County is so critical.

The proposed Suffolk County Water Authority Source Water Protection Program (SWPP) will serve to improve the county's groundwater quality and ensure its protection for years to come. The program will evaluate existing contamination problems and potential future threats to our aquifer system utilizing a vast array of resources; and then partner with local government, business, academia and the civic and environmental communities to execute activities that will resolve these issues. With the assistance of proactive local planning and identified source water protection activities, this program will help guarantee the quality and safety of our drinking water for future generations.

The purpose of the SWPP is to help improve and protect water quality through a series of action items, each targeted at specific activities harmful to groundwater quality. We must address the issue of groundwater protection at its origin: the surface. We will work towards resolving the pollution at its source, rather than remediating it after the fact. All the action items will help reduce or stop contaminants from seeping into our aquifer system. Currently, 14 action items have been proposed to be included in the SWPP.

Enforcement of Zoning and other Laws (a) (b) (e)

Municipalities have various regulations that are an extension of their police power that aren't necessarily enforced by the police—zoning, property maintenance, and noise regulations, for example. This session reviews how these regulations are enforced, with discussion of the relationship between the enforcement officer and the review boards, the effect of an appeal of an enforcement action to the zoning board of appeals, and judicial enforcement of violations.

Why Regional Planning Matters: A Suburban Context (e)

Tom Jost, AICP, LEED AP and Sean Sallie, AICP will be providing an overview of the Nassau County Infill Redevelopment Study being conducted in partnership with the New York – Connecticut Sustainable Communities Consortium. The discussion will place emphasis on the role of the Consortium and the County as a regional planning resource and community development partner. Mr. Jost will provide several examples from around the Northeast of regional and multi-jurisdictional planning collaborations that, due in part to the effective cooperation and coordination, carried community planning initiatives into the implementation phase. The presentation will conclude with some of the preliminary strategies and reforms that have been identified by the Consortium to address the hurdles faced by

INTRODUCTION

communities looking to address sustainability goals such as transit-oriented development, walkability, access to housing and jobs and environmental protection.

Recovery and Resiliency: Why Infrastructure Matters (e)

All disasters are local. Long-term disaster recovery requires resiliency. Join us for a discussion on resiliency for our County - **it isn't just about building "back"; it is building forward and stronger. It is about consciously considering each of the emergency management phases when making day-to-day decisions and determining long-term strategies.**

SEQRA Update (e)

NYS has proposed the first comprehensive update to the SEQRA statute since 1992. Michael Levine, Commissioner of Planning, Town of North Hempstead will discuss the details and how they will affect the manner in which environmental review is conducted on Long Island.

Successful Projects, Directors Roundtable (e)

The Long Island Section of the American Planning Association will bring together Commissioners and Directors of Suffolk County local municipal planning offices to discuss the successful projects in their respective towns and how these projects demonstrate the latest principals of planning including, TOD, TDR and smart growth.

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

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

COURSE CERTIFICATION KEY

This completed course provides the following continuing education credits:

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

CEO = Code Enforcement Officers;

CLE = Attorneys (Continuing Legal Education);

AICP = American Institute of Certified Planners;

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

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

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

SPONSORS

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

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

Suffolk County Department of 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 information to LongIslandSection@nyplanning.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.

Suffolk County Water Authority (SCWA) - is an independent public-benefit corporation operating under the authority of the Public Authorities Law of the State of New York. Serving approximately 1.2 million Suffolk County residents, the Authority, which was founded in 1951, operates without taxing power on a not-for-profit basis. The Authority is the largest groundwater supplier in the country.

GUEST LECTURERS

Eric Alexander, Executive Director, Vision Long Island

Eric Alexander is the Executive Director of Vision Long Island. Eric has nearly twenty years experience in housing, transportation, community development and coordinating successful community projects. Specifically, Eric has been a proponent of Smart Growth planning and mixed use development through advocacy efforts on Federal, State, County levels while working with municipalities to develop and implement smart growth policies, regulations, and projects. All told his efforts at Vision Long Island have resulted in acting as a catalyst for over 40 private and 30 public Smart Growth projects.

Since joining Vision Long Island (formerly Vision Huntington), Eric has been working to overcome NIMBYism and encourage proactive land use planning decisions through the use of community visionings, and other progressive planning techniques. **Eric has led visioning processes, oftentimes called "charrettes", in the following seventeen communities:** Huntington, Mastic/Shirley, Coram/Middle Island, Rocky Point, Farmingdale, Shoreham, Mt. Sinai, Bay Shore, Gordon Heights, Oyster Bay, Kings Park, Yaphank, Mastic Beach, Southampton and Lake Ronkonkoma/W.Farmingville. Each of these projects resulted in a community plan and are all in varying stages of planning and construction. In addition Eric is working on regional planning projects surrounding the Nassau HUB, Long Island 2035, and Brookhaven 2030.

In 2002, Eric organized Long Island's first Smart Growth Awards event and led its first Smart Growth Summit. The Summit, now held annually, had over 800 attendees and helped develop a regional agenda for Smart Growth planning. Over the last twelve years, Eric has made nearly 1,500 individual and group presentations to nearly seventy five Long Island communities.

Eric has been advancing policies and regulations to advance Smart Growth principles through active partnership with the LI Lobby Day Coalition and the LI Business Council. On the State level he served on the **Governor Spitzer's Transition Team** for Smart Growth and serves on the NY Congress for the New Urbanism Executive Committee, the Steering Committee of Empire State Future and the Board of the Tri-State Transportation Campaign. Locally Eric has served on the Town of Huntington Smart Growth Steering Committee, Suffolk County Smart Growth Committee the Suffolk County Commission for Workforce Housing and the Nassau County Next Generation Housing Committee. He is also on the **Advisory Board for Newsday's Green Street LI project and the Board of the Nassau Suffolk Coalition for the Homeless.** **Eric has been listed as one of Long Island's 100 most influential leaders by the Long Island Business News** for three years running. He was honored for sustainable development in 2008 by the Long Island Progressive Coalition, community planning by the American Planning Association NY Chapter in 2008, Nassau Council of Chambers of Commerce in 2005 as their Businessperson of the Year and received the LI Business News 40 under 40 designation in 2003.

Locally Eric is a Northport resident and serves on Long Islanders for Change committee, the Leadership Huntington Council and the Concerned Citizens of Huntington. In addition, he is a volunteer advisor for the Youth Group (YES) of the Ethical Humanist Society of Long Island.

Anthony Aloisio, Director of Planning & Environment, Town of Huntington

Anthony Aloisio received a Bachelor of Urban Studies and Economics from the University of Columbia in 1976. He went on study at the graduate level at the University of Rhode Island, earning a Master of Community Planning in 1978. Anthony began his career in Planning at the City of New Britain, Connecticut as a Planner in 1979. In 1983, he advanced to a Senior Planner for the Town of West Hartford, Connecticut. In 1987, Anthony moved to New York as the Director of Economic Development/Executive Director of the Industrial Development Agency for the Town of Brookhaven. He maintained this post for 9 years before becoming taking his current post as the Director of Planning & Environment for Town of Huntington, New York. Anthony has been an active member of the American Institute of Certified Planners and the American Planning Association since 1984. He is also an Economic Development Professional and a member of the National Development Council since 1994.

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

Glynis is a partner of studio a/b architects. Because of her love of art, Glynis established art sites, a gallery in their Riverhead office, which received accolades from critics. Glynis is a LEED accredited professional with the U.S. Green Building Council and was a member of the national code committee of the USGBC from its inception. A recent architectural project obtained a platinum rating from the USGBC LEED for Homes program. As Chair of the Planning Committee of AIA Peconic, a Chapter of the American Institute of Architects, she convened the symposium, "New Solutions for Decentralized Wastewater Treatment," in 2011 and has pursued decentralized wastewater issues with the newly formed not-for-profit Peconic Green Growth.

Previously, Glynis founded NYC's pedestrian and traffic calming programs, supervised the design and installation of a bicycle network, and, as Chief of Capital Planning, supervised the preliminary designs of street projects. By engaging stakeholders and conducting research, she implemented innovative public policy changes and developed master plans related to alternative transportation city-wide. Glynis has served on advisory committees, such as the Mayoral Pedestrian and Bicycle Advisory Committee, 9A, numerous EDC waterfront projects, ferry terminal design, CR39 Southampton, and the LWRP Southampton plan, as well as being the local coordinator for the Volpe East End Transportation Study.

Glynis worked at museums as an exhibit designer and director of a children's museum before becoming an architect, planner and urban designer. She holds a BA from Smith College and a Masters of Architecture from Yale University. A recipient of a Monbusho Scholarship, she studied architecture at the Tokyo Institute of Technology.

Tullio Bertoli, Planning Commissioner, Town of Brookhaven

Tullio Bertoli is a graduate of the Yale School of Architecture as well as a Fulbright Scholar in Planning. He is APA, AICP, LEED AP and CNU certified. He is currently the Planning Commissioner for the Town of Brookhaven, NY. Overseeing a staff of 100 persons in five divisions, he has introduced multiple code revisions that focus on Growth Management Principles, Form Based Zoning, New Urbanism, Tradition Neighborhood Development and LEED Green Building philosophies. His recent planning efforts include the Carmans River Watershed Protection Plan, the Ronkonkoma HUB TOD, Blight to Light code initiative, The Meadows TND and the Stony Brook Beautification & Safety Plan

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.

Jennifer Casey, Suffolk County Planning Commission

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

INTRODUCTION

Matthew Chartrand, Suffolk County Planning Commission

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

Kyle P. Collins, AICP, Town Planning and Development Administrator.

Mr. Collins is head of the Town's Department of Land Management, which includes the Long Range Planning, Current Planning, Building and Zoning, and Environment Divisions. Mr. Collins has more than 25 years of public and private sector experience in planning, land use, development and environmental protection in New York and New Jersey. Mr. Collins has prepared long range planning studies, zoning regulations, and design guidelines, as well as provided technical expertise on development applications under review by various boards. **The balance of Mr. Collins's** professional planning career has been in private planning and environmental consulting firms, which served both the public and private sectors on Long Island. He has received several planning awards, most recently a Vision Long Island – Smart Growth Award for the Water Mill Station project, as a member of the development team. Mr. Collins 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, he is also a member of the Steering Committee of the Long Island chapter of the American Planning Association.

Dr. Walter G. Copan, Managing Director of the Office of Technology Commercialization and Partnerships at the U.S. Department of Energy's Brookhaven National Laboratory.

In this capacity, he leads the technology transfer programs of the laboratory. Prior to joining BNL, Dr. Copan served as Executive Vice President and Chief Technology Officer for Clean Diesel Technologies, Inc., a company providing sustainable solutions for transportation and distributed power markets (NASDAQ: CDTI). He was previously Principal Licensing Executive at the National Renewable Energy Laboratory (NREL). Prior to joining NREL, Dr. Copan was Managing Director, Technology Transfer and Licensing for The Lubrizol Corporation, responsible for corporate ventures, technology strategy, new business development and licensing. **Previous assignments in Dr. Copan's long career with** Lubrizol include leadership roles in R&D, business unit leadership, new product development, technology and strategy. He received his Ph.D. in physical chemistry, and undergraduate degrees (chemistry and music) from Case Western Reserve University.

Frank DeRubeis, Director of Building & Zoning Department, Town of Smithtown

Frank DeRubeis is a native of New York City who was raised in Cleveland, Ohio. He attended John Carroll University in University Heights, Ohio where he received a Bachelor in Political Science. He then went on to receive a Master of **Political Science from St. Mary's University in San Antonio, Texas. Upon completion, Frank went on to study Politic** Science for an addition two years at the New York School for Social Research in New York City. In early 1973, Frank went to work for the Town of Smithtown as a Planner. In 1974 he joined the Suffolk County Department of Planning as a Planner and later continued with the Suffolk County Department of Transportation. Frank then returned to the Town of Smithtown working in Planning and becoming a Senior Planner. In 1981 he became the Director of Community Development in the Town of Smithtown. In 1985 Frank became the Planning Director for the Town of Smithtown and has maintained his dedication and duties there to the present day. As a Planning Director, Frank plays a critical supervisory role over staff and functions in an advisory role to many town committees, including the Town Board, the

INTRODUCTION

Planning Board, the Board of Site Plan Review and the Board of Zoning Appeals. Additionally, he administers Smithtown's Community Development Block Grant Program and other housing assistance programs. Currently, Frank is overseeing the work on updating Smithtown's Comprehensive Plan.

Christopher Eastman, Land Use Training and Technical Assistance, New York Department of State.

Christopher Eastman is manager of the Land Use Training and Technical Assistance program at the New York Department of State. He received a master's degree in regional planning from the State University of New York at Albany in 2002. The focus of his study included site-value taxation, an alternative approach to property taxation in which land is taxed at a rate greater than the buildings on it in infill areas to provide incentive for development. In addition to having been a planner at the city and county levels, Mr. Eastman has worked for the Preservation League of New York State and on his own, restoring old windows.

Adrienne Esposito, Suffolk County Planning Commission

Adrienne Esposito has been a member of the Commission since 2006 and became Secretary of the Commission in 2008. She is the Executive Director of Citizens Campaign for the Environment (CCE). CCE is a non-profit organization working in NY and CT to protect natural resources and public health. CCE has 6 offices and conducts research, lobbying and public education on diverse environmental campaigns. Such campaigns include groundwater protection, land use planning, coastal water protection, estuary and ocean protection, protection of Great Lakes, toxic waste remediation, pesticides reduction, renewable energy campaigns, energy planning, clean air and public health issues. Previously she was Associate Executive Director of A Citizens Campaign for the Environment. Ms. Esposito holds a BA in Geology and Environmental Science from LI University, CW Post.

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 and fund-raising events throughout Long Island, including the YMCA of Long Island, Friends of Karen, Long Island Museums, and the March of Dimes. John was elected to the Corporate Board of Directors for the YMCA of Long Island in 2009. John Resides in the Town of Smithtown and has two children.

Andy Freleng, Chief Planner, Suffolk County Department of Planning

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

INTRODUCTION

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.

Carrie Meek Gallagher, Chief Sustainability Officer for the Suffolk County Water Authority

Carrie Meek Gallagher is responsible for implementing a sustainability program, including source water protection, water quality improvement, water conservation, energy efficiency, renewable energy, recycling, green buildings and procurement, waste reduction, and environmental education. Prior to becoming Chief Sustainability Officer, she was the **Suffolk County Commissioner of the Department of Environment and Energy, safeguarding the county's natural resources and providing a single centralized office for consideration of issues and activities from the perspective of their impact on the environment.** Previously she also served as Deputy Director of Planning for Suffolk County; the inaugural **director of the Long Island Index, an indicators project that measures the region's progress toward improving the quality of life for all Long Islanders;** headed the Nassau County Economic Development Resource Center under County **Executive Tom Suozzi; and developed Sustainable Long Island's Brownfields Redevelopment program. She holds a B.A.** in Sustainable Development and Latin American Studies from Amherst College, an M.S. in Conservation Biology and Sustainable Development from the University of Maryland at College Park, and an MBA from the Frank G. Zarb School of Business at Hofstra University. Long Island Business News selected her as one of its 40 Rising Stars Under 40, Class of 2003, she is a member of Energeia, Class of 2006 and a LEED AP BD+C. Ms. Gallagher grew up in the Three Village area and currently lives in Stony Brook with her husband Tom, daughter Corrine and son Connor.

David Genaway, Commissioner of Planning, Town of Islip

Dave Genaway is the Commissioner of Planning for the Town of Islip in Suffolk County, New York. Dave is responsible for Comprehensive Planning and land policy analysis, overseeing the land development review process, and ensuring that the Planning Department operates smoothly. Dave also manages the Town's Geographic Information System along with various permit tracking systems and databases. Dave played basketball for the State University of New York at Buffalo from 1989 to 1993 and graduated with a B.S. in Urban Planning and Development. He later graduated with a Master of Urban Planning (MUP) degree from SUNY Buffalo in 1995. Dave gained his first professional experience while working at the Jackson Heights Community Development Corporation located in northern Queens, New York City. The JHCDC, is a non-profit organization involved in Community Development, housing counseling, and economic development. While at the JHCDC, he became the Senior Business Counselor and was instrumental in helping hundreds of new businesses attain critical start-up financing. Dave began work for the Town of Islip in 1997. During his time at Islip, Dave performed many aspects of land development review including: site plan review, Zoning Board of Appeals application analysis, and Zoning administration. Dave also supervises the Town's compliance with both the Governmental Accounting Standards Board (GASB) mandates along with the requirements of the Clean Water Act (EPA Phase II Stormwater management mandates). Today, Dave continues his efforts to modernize and streamline the operation of the Planning Department through the growth of the Town's GIS and through the on-going improvement of various computerized permit tracking systems. Dave is a member of the American Planning Association along with the American Institute of Certified Planners. Dave currently resides in Medford, Long Island with his wife Danielle and their two children Zachary and Madison.

Richard Hanley, Director of Planning, Town of Riverhead

Linda Holmes, Suffolk County Planning Commission

Linda G. Holmes has been a member of the Commission since 2004, representing Shelter Island. She served as Vice Chairman of the Planning Commission from 2006-2008. Ms. Holmes served as a member of the Shelter Island Town Planning Board from 1981-85, and has been active in environmental issues on the East End for 30 years. She is past president of the nation's oldest press club, the New York City-based Society of the Silurians, and is a director of the Overseas Press Club Foundation. She is a Pacific War historian, and has published two books about the Allied POWs in Japanese captivity during World War II. Ms. Holmes is a graduate of Scarsdale schools and Wellesley College. Her mother's family has been on Long Island since 1626.

Hon. Wayne R. Horsely, Suffolk County Legislator 14th District

In 2005, Wayne Horsley was elected to the Suffolk County Legislature. He represents residents of the 14th district in Babylon, Lindenhurst, North Lindenhurst, West Babylon, and the Barrier Beaches. He was appointed Chair of the **County's Economic Development, Higher Education and Energy Committee**. In addition he also serves as the Vice Chair of the Health and Human Services Committee and is a member of the Consumer Protection Committee, Public Safety and Information Committee as well as the Environment, Planning and Agriculture Committee.

Legislator Horsley is Co-Chair of Wi-Fi Long Island; where he has spearheaded a campaign to create a wireless broadband system on Long Island that will allow residents and businesses to connect to the Internet from anywhere across Nassau and Suffolk counties. This service will eventually provide an important economic development tool in attracting new business, improving services to residents and enhancing public safety.

Legislator Horsley is a member of the Rt. 110 Redevelopment Corporation and a former member of the Executive Board. **He continues to be in the forefront in redeveloping the Route 110 corridor as Long Island's premier business center. One of Wayne's major concerns is that businesses are respectful of the environment to ensure Long Island's future as well as its quality of life.**

Wayne Horsley was first elected to public office as a Councilman in the Town of Babylon in 1999. That position brought Mr. Horsley many diverse duties. Wayne was the Chairperson for Economic Development in the Town. One of his longstanding visions was to bring first class hotels to the Town of Babylon. This dream became a reality in June 2007 when the Courtyard Marriott Hotel opened on Rt. 110, Farmingdale. A second hotel in the Marriott division will also open in Farmingdale in December 2007.

Prior to serving on the Town Board, Wayne served the Town's residents as the Chairman of the Zoning Board of Appeals and as the Deputy Director of the Industrial Development Agency. While working at the IDA he recruited countless businesses to the Town and assisted hundreds of new companies with creative financial initiatives.

Wayne spent many years as the Regional Director for Finance of the N.Y.S. Office of Parks. In this position Wayne was responsible for the financial administration of 25 state parks on Long Island. Furthermore, he served as Chairperson of the New York State Committee on State Parks Financing and was Founder of the L.I. State Parks & Parkways Historical Collection.

Legislator Wayne Horsley devotes much of his time to the concerns of all senior and civic groups in the Town as well as to local schools, youth organizations, scouts and volunteer firefighters.

In addition to his professional experience, Wayne maintains a large presence in the local community. Here is a partial listing of affiliations and memberships Wayne has maintained at some point throughout his career.

- President-Babylon Beautification Society
- Member of the Rt. 110 Redevelopment Executive Board of Directors

INTRODUCTION

- Babylon Rotary International-Environment and Program Coordinator
- Trustee-Babylon Village Historical & Preservation Society
- Founder and recipient of the Boy Scouts of America Good Deed Award
- Chair of the Babylon Village Public Sculpture Committee

Dr. Horsley completed his Doctorate Degree in Modern World History at St. John's University in December 2005 and is an adjunct Professor at the Jamaica campus as well as at Farmingdale College. He received a Bachelor of Arts degree from Dakota Wesleyan University, a Master of Public Administration degree from Bernard Baruch College, and a Master of Modern History degree from St. John's University.

Wayne has resided in the Babylon area for more than 45 years. He and his wife Barbara attended Babylon High School together and continue to live in Babylon. They are the proud parents of Scott, Bennett, Jordan, Jacqueline and daughter-in-law Mao. Wayne and Barbara have been blessed with two granddaughters, Luna and Sola.

Thomas C. Jost, LEED AP, AICP, Senior Urban Strategist at Parsons Brinckerhoff

Tom Jost has more than twenty three years of experience delivering complex, multi-disciplinary sustainability projects of international significance. Tom managed the plan for the conversion of Fresh Kills Park, America's largest landfill, into New York City's largest ecological habitat, the "Central Park of the 21st Century." He also managed the design and construction of NYC's High Line, internationally recognized as the new standard for urban open space. Tom has lectured nationally on the topics of sustainable urbanism and sustainable design, including at Columbia, Yale, New Jersey Institute of Technology, City University of New York, Greenbuild, The Institute for Urban Design, the New York City Mayor's Office of Environmental Remediation, The American Planning Association, the American Institute of Architects Committee on the Environment and Planning and Urban Design Committee.

Michael Kaufman, Suffolk County Planning Commission

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

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

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

Michael Kelly, Suffolk County Planning Commission

Michael Francis Kelly, Esq. is the Principal of Kelly Development Corp. focusing on the development of small subdivisions and consulting on various real estate issues for such organizations as The Long Island Housing Partnership, Avalon Bay Communities and the Clare Rose Organization. Mike is also a partner with Sean Rose in Rose and Kelly Development, LLC. Their focus is on redeveloping blighted sites throughout Long Island. Prior to forming his own businesses, Mike was the Vice President of Land Acquisitions for Pulte Homes of Long Island (2003-2008). He also worked for the Prudential Home Mortgage Company, Chase Manhattan Bank and the Law Firm of Meyer, Meyer and Keneally in Smithtown. Mike has over 20 years of diversified real estate industry experience and gained valuable experience working for these companies as well as TiBi Development. Mike is the Treasurer for LIBI and serves on the Board of Directors of the Down Syndrome Advocacy Foundation. He is also a member of the NY State Bar and its Committee on Land Use and Real Estate Legislation, as well as being a licensed real estate broker and a LIBOR

INTRODUCTION

member. He has been honored as the recipient of the Paul S. Miller "With Liberty and Justice for All" award by Touro Law School in 2006 and The Good Neighbor of the Year from The Central Islip Civic Association in 2008. Mike actively participates in the Friendly Sons of St. Patrick Society and the Brehon Law Society, both organizations deeply rooted in his Irish heritage. **Mike is a member of Energia, Long Island's regional leadership program within Molly College.** He is a member of the Business Improvement District for the Village of Patchogue. Mike graduated from Chaminade High School and has a B.S. in Finance from Providence College, an MBA from the University of St. Thomas, Minnesota and a Juris Doctorate from Touro Law School. His wife, Kathleen Feeley, Ph.D., is a world-renowned expert on children with Down Syndrome and Autism and a professor at C.W. Post University. Mike and Kathleen live in Stony Brook and have four children; Thomas, John, Owen – The Big O, and Catherine Mary.

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

Sarah Lansdale, has been an at large member of the Commission since 2005. Ms. Lansdale was selected as Sustainable Long Island's second Executive Director in September 2004. Sarah has a diverse background, bringing experience in, environmental studies, and urban planning to the organization. Sarah has extensive community outreach experience, including two years as a Peace Corps Volunteer in Guatemala. Sarah holds a Masters Degree in Urban Planning from New York University and a Bachelor's of Science in Environmental Studies and Agricultural Economics.

Heather Lanza, Director of Planning, Town of Southold

Heather Lanza is the Planning Director for the Town of Southold. Ms. Lanza received a Master of Science in Conservation Biology from the University of Massachusetts at Amherst and earned her certification as a planner from the American Institute of Certified Planners. Prior to joining the Town of Southold, Ms. Lanza was the Assistant Planning Director in the Town of Brookhaven.

Michael A. Levine, AICP, Commissioner of Planning for the Town of North Hempstead.

In addition to administering the town zoning code, Mr. Levine oversees the review of all commercial and multi-family land use applications requiring discretionary approvals and is responsible for ensuring environmental compliance. Mr. Levine has over twenty-five years experience in the development approval process both as a municipal official and as a consulting engineer. Prior to returning to North Hempstead in 2006, he served for four years as Deputy Director of the Nassau County Planning Commission. Mr. Levine earned a Bachelor of Engineering degree from Hofstra University in 1988 and is accredited by the American Institute of Certified Planners. He holds the elected position of Vice President of Intergovernmental Affairs for the NY Metro Chapter of the American Planning Association and chairs the Chapter Legislative Committee. Mr. Levine has been a speaker and panelist at the national conferences of the American Planning Association and the National Association of Home Builders.

Tom McAdam, Suffolk County Planning Commission

Thomas McAdam has been a member of the Commission since 2007. He holds a Bachelor & Master Degree's in the fields of Accounting, Finance and Government. Mr. McAdam is retired from Suffolk County Government after 30 years in the County Executive's Budget Office. Since 2001, he has been a Licensed Sales Associate with Prudential Douglas Elliman Real Estate. Mr. McAdam has been a Suffolk County resident for 45 years. Mr. McAdam holds accounting degrees from Long Island University and Adelphi University.

Joanne Minieri, Deputy County Executive and Commissioner of Economic Development & Planning

Joanne Minieri, CPA, is the Deputy County Executive and Commissioner for Suffolk County Economic Development and Planning, and is responsible for attracting and retaining business, promoting new industries, fostering transit-oriented development, managing land use, preserving open space and expanding affordable housing options for one of the largest counties in the United States. In her first public sector role, Ms. Minieri is leveraging her private sector **experience to improve Suffolk County's business climate, build consensus and commitment for development projects, and retain and create jobs in the region.**

INTRODUCTION

Under her leadership, the Department of Economic Development and Planning is charged with implementing Innovate Suffolk and Connect Long Island – two initiatives that are central to the vision Ms. Minieri and County Executive Steven Bellone have to drive Suffolk County's transformation as an economic powerhouse. Currently, in the formative stages, Innovate Suffolk will create innovation zones for small companies and graduates of technology business incubators, while Connect Long Island will coordinate land use, transit-oriented development and rapid transit options to further economic expansion.

Ms. Minieri's department administers millions of dollars of funding for land acquisition, community and transit-oriented development, affordable housing, tourism, cultural and film funding, and planning programs. Ms. Minieri oversees responsibility for protection of more than 30,000 acres of the most productive farmland in New York. In addition, she has oversight of the county-owned Frances S. Gabreski Airport, a general aviation airport that includes a 450,000 square foot industrial park.

Previously, Ms. Minieri served as President and Chief Operating Officer of Forest City Ratner Companies, one of the largest developers in the New York metropolitan area. During her tenure, Ms. Minieri was responsible for implementing **the company's business plan, and directed the Executive Management team, which devised the company's long-term strategy and evaluated business development opportunities.** Under her management, the company diversified its portfolio with the development of 24 retail centers, ten office buildings, two hotels, and two residential projects. **In addition, Ms. Minieri oversaw all aspects of the company's day-to-day operations, with an emphasis on the development and management of financial strategies, programs and procedures.**

Ms. Minieri was involved in the company's acquisition of the New Jersey NETS franchise. She represented ownership in overseeing the business side of the team and was responsible for managing the company's investment. She also oversaw the pre-development of the Atlantic Yards project, an 8-million square-foot mixed-use development which included a new state-of-the-art sports and entertainment venue, the Barclays Center, which opened in 2012.

Ms. Minieri first joined Forest City Ratner Companies as Chief Financial Officer in 1995; she was promoted to Executive Vice President and Chief Operating Officer in 1998 and to President and Chief Operating Officer in 2007. Previously, she worked for Kenneth Leventhal & Company, where she monitored the development of a number of New York City real estate projects. **Ms. Minieri's experience in the real estate and financial services sectors spans a full range of professional accounting, tax and consulting services, which she has provided for both private and public companies.**

Ms. Minieri is a member of Suffolk County Industrial Development Agency Board. She is a member of numerous professional organizations, including the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants, the Real Estate Board of New York, Urban Land Institute, Women's Forum, Inc. and is on the Board of the Brooklyn Museum, the Brooklyn Children's Museum and NEW (Non-Traditional Employment of Women). Ms. Minieri has received several awards for her accomplishments and leadership. She was honored in 2009 as one of Crain's 50 Most Powerful Women in New York. In 2008, Ms. Minieri was the recipient of the National Italian American Foundation's (NIAF) Special Achievement Award and was honored by the Special Olympics New York at its 9th Annual Real Estate & Construction Gala. She received an Alumni Achievement Award from Hofstra University, as well as a citation from Nassau County Executive Thomas Suozzi after receiving the Women in Housing Development Award from the New York Housing Conference and National Housing Conference. Ms. Minieri has also been honored by the Nontraditional Employment for Women (NEW) organization.

A native of Brooklyn, New York, Joanne Minieri holds a Bachelor of Business Administration degree from Hofstra University.

Paul Mobius, Chairman of the Planning Board, Town of Shelter Island

Paul Mobius grew up in North Bellmore in Nassau County and has lived on Shelter Island since 1962, where he and his wife, Dorothy, raised two sons, Mark and Matt. A graduate of the U.S. Merchant Marine Academy with a degree in marine engineering, he was the recipient of its Superintendent's Cup for Character, marking the beginning of a lifetime of service to his country and his community. Named Shelter Island Lions Club "Citizen of the Year" in 2009, he also received a proclamation making May 30th "Paul Mobius Day" in Suffolk County from Legislator, Ed Romaine, and a citation from the Shelter Island Town, which followed its 2004 recognition of Paul's "long and deep involvement...an outstanding example and inspiration to the public." In addition to having served as the Chairman of the Shelter Island Planning Board, a Shelter Island Justice/Councilman, and six terms on the Town Council where he was Deputy

INTRODUCTION

Supervisor, he has volunteered on many town committees, most recently a special task force to review the Town's Comprehensive Plan. He has also served as director or president of the Shelter Island Chamber of Commerce, president of the Lions Club, as an officer of the local Republican Committee, an elder and trustee of the Presbyterian Church and a member of the Island's Historical Society, Friends of Music and its Community Chorus.

Jefferson Murphee, 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 25 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. He is also 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 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, serving on its Committee on Attorneys in Public Service and the Executive Committee of its Municipal Law Section.

Barbara Roberts, Suffolk County Planning Commission

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

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

Mr. Sallie is a Senior Planner with the Nassau County Planning Commission and the Nassau County Department of Public Works. Mr. Sallie has more than 9 years experience in environmental impact analysis, land use and comprehensive planning, Geographic Information Systems (GIS) and spatial modeling. Mr. Sallie currently oversees the Planning Commission calendar and serves as the Project Manager for the Downtown Bethpage Retail Market & Revitalization Study and the NY-CT Sustainable Communities-funded Nassau County Infill Redevelopment Study. Mr. Sallie has been

INTRODUCTION

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).

Marguerite Wolffsohn, Director of Planning, Town of East Hampton

Marguerite Wolffsohn graduated in 1977 from the SUNY College of Environmental Science and Forestry in Syracuse, NY with a Bachelor of Forest Biology. She later continued studies on the graduate level at Long Island University C.W. Post Campus in Brookville, NY. She obtained a Master of Biology in 1987.

Before working directly in Planning, Marguerite worked as a Museum Curator and Wildlife Biologist for the Theodore Roosevelt Sanctuary Inc, in Oyster Bay, NY where she preserved and cared for wildlife, created exhibits for the public, and devised a 10 year plan for maintaining the property and its environment. In 1987, she began work for the Town of East Hampton Planning Department as a Planner, reviewing Natural Resource Special Permits. Marguerite quickly began to experience all the aspects and working of the Planning Department and was promoted to Assistant Planning Director in 1992. In 2001, Marguerite began serving in her current role as Planning Director for the Town of East Hampton.

Marguerite has authored and co-authored several Planning Department publications on the topics of Open Space for the Town Comprehensive Plan, Town of East Hampton Superblock III Study, Flora and Fauna Component of the Local Waterfront Revitalization Plan and others, as well as a contribution to American Birds.



General Session I
Municipal Regulation of Signs

Legal Memorandum LU02

RESTRICTIONS ON ELECTION SIGNS

Some local governments have attempted to deal with the clutter of election campaign signs by limiting the period in which they may be posted. Typical local regulations specify a period after an election by which such signs must be removed. Some local regulations also limit the posting of such signs to a specified period before a primary or election or the number of such signs that may be posted.

If challenged, such local regulations are likely to be struck down by the courts as an unlawful interference with the right of free expression as guaranteed by the First Amendment to the United States Constitution. The main flaw in a local law or ordinance that applies specifically to election signs is that it imposes restrictions based on the content or message. Local legislation that regulates signs must be content neutral, meaning it must apply equally to all signs, regardless of message. While local governments have greater leeway in regulating commercial signs, restrictions on noncommercial signs, including those that support a candidate, must be limited to time, place and manner of posting, and must adhere to the following criteria:

1. The regulations must be justified without reference to the content of the signs subject to the law (i.e., content neutral);
2. The regulations must be narrowly tailored to serve a significant governmental interest; and
3. The regulations must leave open ample alternative channels for communication of the information.

Clark v. Community for Creative Nonviolence, 468 U.S. 288, 293, 82 L.Ed.2d 221, 227, 104 S.Ct. 3065 (1984).

Applying well established principles of constitutional law, a federal appeals court decided in 1995 that provisions of the municipal sign code of a town in Missouri that specifically regulated political signs were content-based and, therefore, unconstitutional as impermissible restraints on free speech. *Whitton v. City of Gladstone*, Missouri, 54 F.3d 1400 (8th Cir. 1995). The section of the code that limited the time in which political signs may be posted was found to be both content based and constitutionally suspect by granting certain forms of commercial speech a greater degree of protection than noncommercial political speech. For example, the limitations did not apply to "for sale" signs, that fall into the category of "commercial speech."

The justification for the time limitations was to curtail traffic dangers which political signs may pose and to promote esthetic beauty, but the regulation did not apply the restrictions to identical

signs displaying nonpolitical messages. Thus, the regulation "differentiated between speakers for reasons unrelated to the legitimate interests that prompted the regulation." 54 F.3d at 1407, quoting *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir.), cert. denied, 515 U.S. 1103, 115 S.Ct. 2247, 132 L.Ed.2d 255 (1995). The Court in this case applied similar reasoning in striking down provisions of the sign code that prohibited external illumination of political signs and made candidates responsible for violations involving their political signs, including failure to remove within time limits specified in the code.

However, local legislation that prohibited the posting of all signs on public property has been upheld by the courts. *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 808, 80 L.Ed.2d 772, 104 S.Ct. 2118 (1984). Thus, a provision of the zoning code of the Town of Orangetown, New York that prohibited the posting of signs on public property without a permit from the Town Board was upheld as constitutional, even when it was used to prohibit the posting of political signs along public streets. *Abel v. Town of Orangetown*, 724 F.Supp. 232 (S.D. N.Y., 1989). The result would likely have been different if the law only prohibited the posting of political signs.

Local legislation that specifically targets political signs for removal within a specific time period, or that specifically prohibits the posting of campaign signs on public property, is likely to be struck down if challenged in court as an illegal restriction on the constitutional guarantee of freedom of expression.

General Municipal Law §74-c.

Taking of billboards.

1. If any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like outdoor advertising device, which is leased or rented for profit in areas zoned industrial or manufacturing, just compensation for said taking shall be determined in accordance with the provisions of article five of the eminent domain procedure law; provided, however, section five hundred two of such law shall not be applicable in any such proceeding.

2. Unless compensation therefore is provided pursuant to section eighty-eight of the highway law, if any local law, ordinance or resolution adopted by a municipal corporation in the exercise of its police power shall require the removal of any legally erected and maintained billboard or like outdoor advertising device, which is leased or rented for profit, and which is located in an area or zone, other than an industrial or manufacturing zone, the display shall be allowed to remain in existence for the period of time set forth below after giving notice of the removal requirement:

fair market value on date of notice of removal requirement	minimum years allowed
under \$1,999	3
\$2,000 to \$3,999	4
\$4,000 to \$5,999	6
\$6,000 to \$7,999	7
\$8,000 to \$9,999	9
\$10,000 and over	10

If the removal is required sooner than the amortization periods specified herein, such removal by any local law, ordinance or resolution adopted by the municipal corporation shall be with just compensation being paid for such taking and removal determined in accordance with the provisions of article five of the eminent domain procedure law or in accordance with any table of values established by the state department of transportation; provided however section five hundred two of the eminent domain procedure law shall not be applicable to any such proceeding.

Notwithstanding any other law, rule or regulation, all amortization periods under such laws, ordinances or resolutions shall commence not earlier than January first, nineteen hundred ninety.

3. The provisions of this section shall not apply to any city having a population of one million or more.



General Session I

“It Takes a Village – Economic Development on Long Island; Small Business and the Department of Energy”



General Session I

Out of Sight, Out of Mind - The Challenge of Source Water Protection for Groundwater



Out of Sight, Out of Mind: The Challenge of Source Water Protection for Groundwater

Suffolk County Planning Federation

November 29, 2012

Carrie Meek Gallagher
Chief Sustainability Officer



Overview



- Our water comes from a sole source aquifer
- The quality of our water is impacted by our activities on the surface
- SCWA is responsible for supplying fresh, clean water to over 1.2 million Suffolk residents
- SCWA hopes to reduce negative impacts on groundwater through the use of action items tailored for all types of pollutants



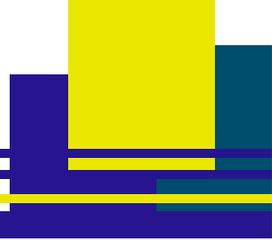
Goals

- Assess current threats to our public supply wells
- Collaborate across sectors
- Legislate to help preserve groundwater quality
- Start at the surface
- Prevent vs. Remediate
- Stop contaminants from seeping into our aquifer system
- Decrease costs for both supplier and consumer



Action Items: Research and Evaluation

1. Recognition of threats within the capture zones of public supply wells
2. Calculate economic impact of implementing a source water protection program
3. Evaluate best management practices for source water protection
4. Assess wastewater treatment plant performance
5. Provide ongoing support of hydrologic and geologic research



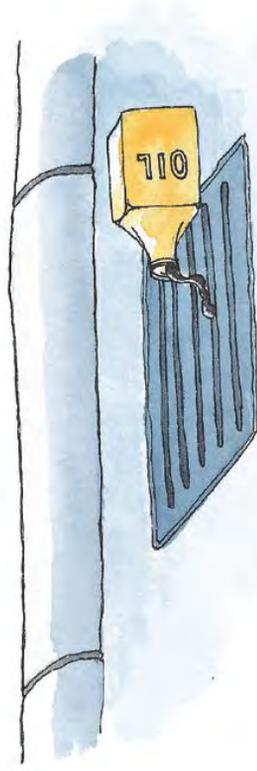
Action Items: Education and Outreach

1. Create “State of the Aquifers” Report
2. Develop Office of Pollution Prevention
3. Suffolk County Groundwater Guardians Chapter
4. Public outreach on the importance of source water protection
5. Educate local decision makers



Action Items: Prevention

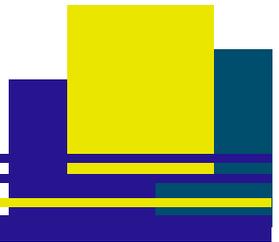
1. Aquifer Protection Commission
2. Agricultural stewardship program
3. Sustainable agriculture rating system
4. Wastewater management council
5. Household chemical evaluation working group
6. Emergency management plan



Recognition of Threats Within Capture Zones of Public Supply Wells

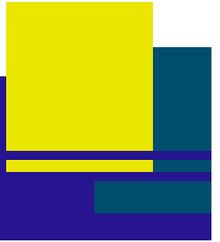


- Source Water Assessment Program (SWAP) map analysis
- Geographic Information Systems (GIS) analysis
- Environmental Data Resources (EDR)
- Laboratory testing results from raw water and home water samples
- Determine recharge zones, possible contaminants, and times of concentration



Calculate Economic Value of Implementing a SWPP

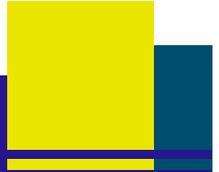
- Determine costs of each action item
- Compare costs to increasing levels of treatment required
- Consider costs of alternative water supply strategies: long aqueducts, desalination, water re-use



Evaluate BMPs for Source Water Protection

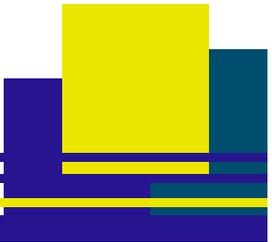


- Update source water assessments
- Land preservation
- Land use planning, zoning and management practices
- Sustainable agricultural practices
- Security measures
- Identification, investigation and cooperative resolution of pollution issues
- Point and non-point source pollution regulatory strategies
- Pollutant source tracking
- Public education
- Technical and financial assistance for source water protection projects



Assess Wastewater Treatment Plant Performance

- Determine which STPs discharge near existing public supply wells
- Prioritize those STPs for performance monitoring and regulatory actions



Provide Ongoing Support of Hydrologic and Geologic Research

- Environmental and hydrologic surveillance
- Long-term groundwater quality and quantity monitoring for trends
- Emerging contaminants
- Nitrate trends
- Geophysical surveys
- Aquifer characterization

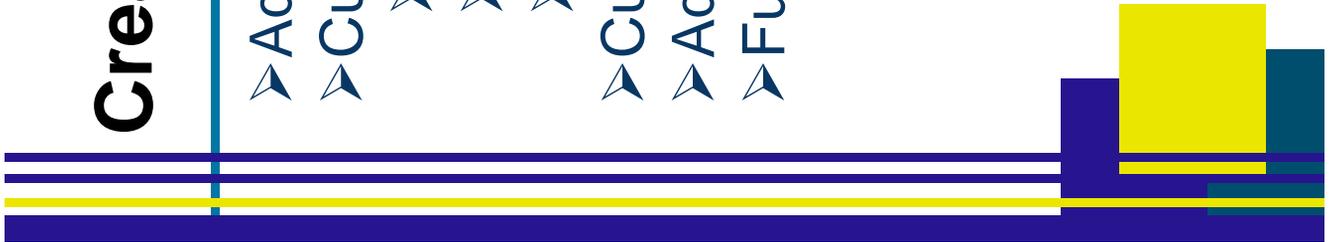
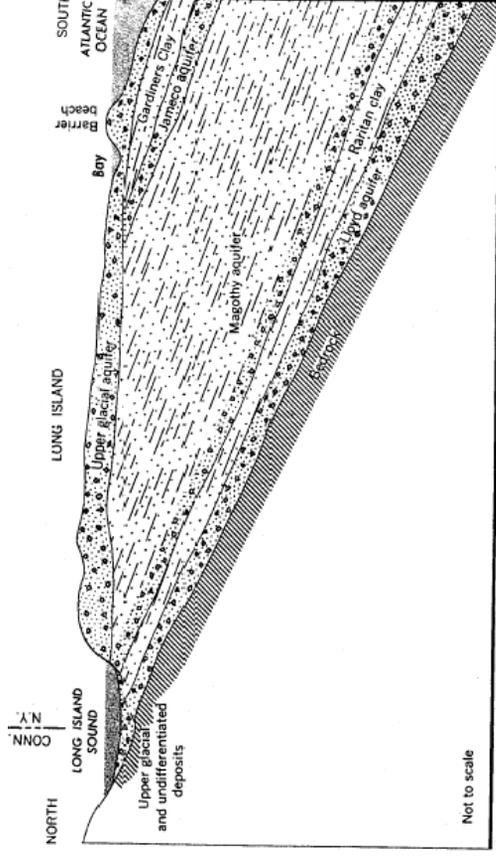


*“You can’t manage what you
don’t measure”*



Create “State of the Aquifers” Report

- Aquifer history/overview
- Current conditions
 - Recharge and depletion rates
 - Groundwater storage capacity
 - Contaminant levels and movement
- Current regulations and management practices
- Aquifer protection strategies
- Future conditions: predictions and models



Develop Office of Pollution Prevention



- Narrowly focused on industries with greatest impact on groundwater quality:
 - Dry cleaners
 - Agriculture
 - Gas stations/automotive repair shops
 - Healthcare
 - Vegetative waste facilities
- Work with local businesses to implement best management practices to protect groundwater



Suffolk County Groundwater Guardians Chapter



Stony Brook
University



THE
Scotts Miracle-Gro
COMPANY

Public Outreach

- Bill inserts
- Annual Reports
- Annual Water Quality Statements
- Media Spots: radio, TV
- Website
- FAQs booklet
- Presentations to community groups
- Schools Program: 80 schools/
11,000 children annually



Educate Local Decision Makers

- Who?
 - Elected officials
 - Local authorities
 - Planning boards and commissions
 - Zoning Boards of Appeal
 - Industrial and community development agencies
 - Local development corporations
- About?
 - SEQRA coordination process
 - Land use and zoning impacts on groundwater
 - Model codes to protect groundwater
- Collaborate with planning federations to integrate into annual training conferences



Your Water.
Your Decision.



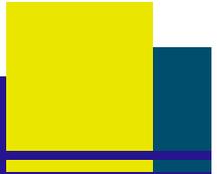
A quick guide for community leaders
committed to safe drinking water.

www.ProtectDrinkingWater.org



Aquifer Protection Commission

- Address regional water quality and quantity issues on a quarterly basis
- Comprised of involved entities from both counties:
 - Public and private water suppliers
 - Departments of public works
 - Departments of health
 - Departments of planning
 - Long Island Regional Planning Council
 - NYSDEC
 - USGS
 - Environmental Community
 - Legislatures
- Propose best management practices, collaborative strategies, new legislation, changes to regulations



Agricultural Stewardship Program

- Targeted at public supply wells on North Fork impacted by agricultural chemicals
- Designed to reduce impacts of pesticides, herbicides, and fertilizers used on farms
- Prevent tomorrow's legacy contaminants
- Complement existing programs



Sustainable Agriculture Rating System

- Certification program for any farmer wishing to embrace sustainable practices:
 - Reduction of chemical use and toxicity
 - Conservation of soil and water resources
 - Protection of wildlife habitat
 - Integrated waste management
 - Energy efficiency
 - Safe and fair labor practices
 - Planning for continuous improvement
- Must be driven by farmers
- Model programs already exist



Eco Apple™ Program



Wastewater Management Council

- Examine wastewater management options to better protect source water:
 - Sewer expansion into unsewered areas
 - Alternative on-site septic systems
 - Decentralized community systems
 - Homeowner awareness program
 - Mandated inspections and pumping of septic systems
 - Regional maintenance contracts for septic systems
 - Operating permits required for septic systems
 - Regional management entities for septic system maintenance and monitoring
- Research advances in wastewater treatment technology to address contaminants of concern other than nitrates
- Subcommittee of the Aquifer Protection Commission



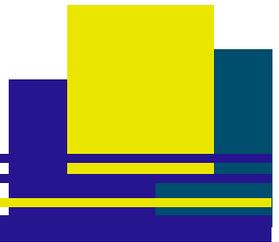
Household Chemical Evaluation Working Group

- Identify possible source water hazards in homes:
 - Cleaners
 - Personal care products
 - Antibacterial products
 - Medications
 - Paints, stains and sealants
 - Pest control products
 - Gas cans
 - Auto repair supplies



- Recommend steps residents can take to minimize those hazards

- Subcommittee of the Aquifer Protection Commission



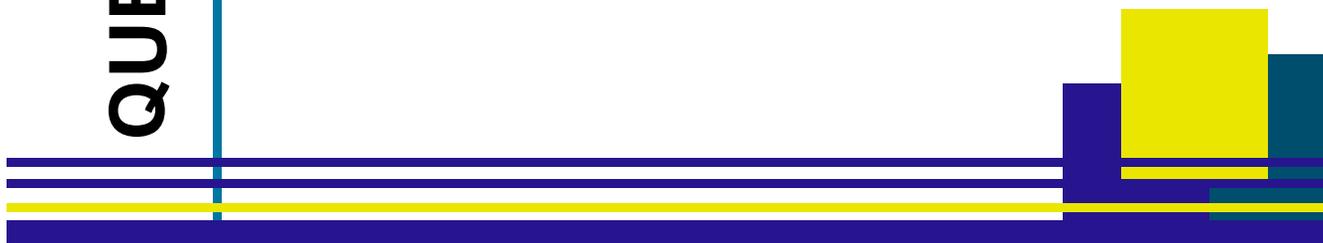
Emergency Management Plan

- Spills, illegal dumping and accidents can result in disastrous contamination of large quantities of groundwater
- Underground storage tanks and bulk chemical storage facilities can leak into the aquifer
- Strong coordination with local enforcement agencies and hazardous materials teams are needed to facilitate speedy cleanups and minimize damage to the source





QUESTIONS?





General Session II

Enforcement of Zoning and other Laws

ENFORCEMENT OF ZONING AND OTHER LOCAL LAWS

New York State Department of State

Topics to be covered

- The enforcement official
- Legal authority
- What is enforced
- Enforcement triggers
- Stays of enforcement
- ZBA role
- Court proceedings
- Penalties and remedies



Municipalities enforce laws and ordinances

<ul style="list-style-type: none"> ■ Zoning enabling statutes <ul style="list-style-type: none"> • Specific authority to regulate land use and design • Need ZBA and Enforcement Officer ■ Various state statutes give municipalities authority to address property maintenance ■ Municipal Home Rule Authority <ul style="list-style-type: none"> • Authority to protect and enhance its physical and visual environment. 	<ul style="list-style-type: none"> ■ Local Laws & Ordinances based on police power must be based on sound governmental objectives <ul style="list-style-type: none"> • Foster the health, safety and welfare • Maintain neighborhood property values ■ Aesthetics is a legitimate purpose for land use regulation
--	--

Enforcement participants

- Municipal Governing Board
 - Clear laws, good enforcement provisions
- Enforcement Official
 - Familiarity with laws
 - Unbiased
 - Approachable
 - Often the only local official resident or local business person may have contact with
- Municipal Attorney
 - Responsive to Enforcement Official

Justices act independently from enforcement "team", but their decision patterns are an important indicator of the seriousness of which zoning enforcement is viewed in the community

Establish position of Zoning Enforcement Officer (ZEO)

- Typically created in local zoning law or ordinance
- Work with Civil Service to identify qualifications
- ZEO, as public officer, must be municipal resident or properly exempted from residency requirement
- No special training required by state

Town Law §138:
Such inspector shall have charge of enforcement of such codes, ordinances, rules and regulations of town and of zoning ordinance of town

Some ZEOs also enforce building code

- NYS Uniform Fire Prevention and Building Code enforced by Code Enforcement Officer (CEO)
- CEOs require special training to be certified; must take continuing education classes
- Appeals of CEO decisions are made to Regional Review Boards
- We are NOT focusing on building code violations in this presentation

Penalties for Violating Uniform Code:
■ Up to \$1000 per day fine and one year of jail time, OR
■ Fines, jail and injunctions. (Executive Law §382)

Sharing code/zoning officers

Two or more municipalities joining together may generate enough work to:

- ▶ Justify a full-time professional who can receive health insurance and retirement credit
- ▶ Add staff to provide broader range of expertise
- ▶ Allow staff to specialize
- ▶ Maintain local control of building permits
- ▶ Employ ZEO who is also certified as building inspector (CEO)
- ▶ A qualified CEO will make your municipal insurance carrier happy!

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

Possible ZEO responsibilities

Administrative

- Acquire, prepare, and distribute forms
- Receive applications
- Maintain records of administrative actions
- Issue or deny permits

Enforcement

- Receive complaints
- Conduct investigations and inspections
- Take necessary enforcement actions

What is enforced?

- Zoning law or ordinance requirements
 - Allowed uses or necessary setbacksZEO may not modify or waive zoning regulations and is limited to enforcing law as written
- Conditions of land use approval
 - Example: Landscaping required by site plan review, or special use permit limitation on number of cars parked overnight at auto repair shop
- Other local laws or ordinances authorized by governing board
 - Example: Flood protection and sign control laws

Other laws CEO might enforce

Variety of laws known generally as "property maintenance laws"

- Municipalities can adopt local laws regulating junk, litter, and other property maintenance issues. For example:
 - Use of cargo containers for storage
 - Shoveling and maintenance of sidewalks
 - Use of outdoor wood burning furnaces
- Municipalities can also adopt Unsafe Building laws

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



A few words about junk laws

The State shares regulation of the location of Junk Cars with municipalities, but enforcement is local by ZEO/CEO

- **General Municipal Law §136** applies to any place of storage or deposit of two or more vehicles (or parts equal in bulk) which are:
 - unregistered, old, or secondhand motor vehicles no longer intended or in condition for legal use on the public highways
- Does NOT apply in a municipality with its own regulations (except limits on proximity to churches, schools, hospitals, etc.)
- Penalties established by law

Property Maintenance Code § 302.8 provides, with some exceptions, "... two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled..."

Does NOT apply to licensed junk yards

Local governments can seek permission to be more restrictive.

True or False?

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

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

What triggers enforcement?

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



Inspection

- Valid Permission is needed to conduct private property inspection not visible from road, adjoining property, or air
- Without permission, search warrant needed

Warrant may not be required if defendant does not have reasonable expectation of privacy in area that is subject of search.

For example:

- Entry upon plaintiff's yard without warrant or consent to abate nuisance.
- Warrantless inspection of backyard from driveway.

Possible Inspection Results

- The activity described is permitted on property
- No evidence of illegal activity found
- It appears that owner will voluntarily eliminate violation in near future
- Normal administrative proceedings have been initiated
- Matter described appears to be controlled by deed restrictions (a private matter). See *Chambers v. Old Stone Hill Associates*, 1 N.Y.3d 424 (2004).

When violations are observed

To act, ZEO notifies owner or tenant of the violation.

Three approaches:

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



Keep a record of contacts, inspections, enforcement actions

Stop Work Order

Violator's options after receiving stop work order:

- Correct violation
- Seek legislative relief (ask governing board to amend applicable law or ordinance)
- Appeal zoning matter ZBA



When ZEO won't act

Town Law § 268:

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

- If town fails to abate violation within 10 days after receiving written notice by resident taxpayer, then any three town taxpayers residing in same zoning district where violation is allegedly occurring may bring action to enjoin the activity.
- Neighbor may act to stop activity if he or she can show "special damages".

Who may Appeal a ZEO's decision?

"Aggrieved Parties" may be:

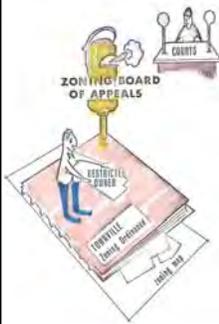
- ▶ Recipient of enforcement action
- ▶ Recipient of permit denial
- ▶ A third-party believing permit improperly issued. To be an eligible third party:
 - They must suffer "special damages" or live close to subject property, or
 - They must be officer of municipality, or represent department, board or bureau thereof

Town Law §267-a(4)

Village Law §7-712-a(4)

General City Law §81-a(4)

Appealing the ZEO's Decision



- ZBA acts as buffer between person aggrieved by decision of ZEO and courts
- If ZBA fails to get majority vote to overturn ZEO's decision, then decision stands.

Timelines for appeals

- ▶ Aggrieved parties must file notice of appeal within **60 Days** after ZEO files decision in his/her office
- ▶ Appeal can be filed by letter or municipal form
- ▶ Copies to ZEO and ZBA
- ▶ For Third Party Appeals, 60 day period commences from the time neighbor knew or should have known that permit was issued.



Types of appeals to ZBA

The Appeal Claims:

- ZEO read or applied law wrong (Interpretation), or
- ZEO read law correctly, but zoning should be varied due to dimensional problem (Area Variance), or
- ZEO read law correctly, but due to hardship, variance should be granted to allow use of property contrary to zoning (Use Variance)

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

Role of ZEO at ZBA hearing

ZEO may be assigned to give testimony at ZBA hearing by providing:

- ▶ Information about their observations of property and actions they took
- ▶ Information about applicable zoning provisions
- ▶ Information about previous variances or special use permits granted for property

Appeals affect enforcement proceedings in Justice Court

An appeal "stays" enforcement proceedings



Example:

- Bob builds garage ZEO believes too close to property line
- ZEO cites Bob for violation with stop work order
- Bob appeals ZEO's action to ZBA.
- ZEO cannot issue another stop work order or go to justice court while appeal continues
- If Bob continues to build while appeal is pending, he does so at his own risk. He may tear it down or move it if he loses appeal.

Lifting the stay

□ Stay can be lifted if ZEO certifies to ZBA that Stay would cause imminent peril to life or property.

□ Certificate of imminent peril can only be vacated by restraining order granted by ZBA, or if court re-imposes stay.



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

After the appeal



- If applicant loses appeal, violation should be corrected
- If not corrected, enforcement action proceeds, and violator can be fined or imprisoned.

Getting violator to court

Provide mechanism for getting violator into court:

- Appearance tickets (See Municipal Home Rule Law §19(4))
- Summons
- Arrest warrant

Criminal Proceeding is commenced with filing of accusatory instrument.

Instruments:

- 'Information'
- Complaint and Supporting Depositions

- CPL substitute service now allowed for service of appearance tickets for building code and zoning violations. (Ch. 415 Laws of 2004)
- Possible problem areas with using substitute service in criminal context.
- Does not overcome jurisdictional limitation of appearance tickets (county in which offense was committed or adjoining county). See CPL §150.40(3).

Determine who will prosecute violations

- District Attorney: Primary responsibility for prosecution
[See County Law §700(1)]
- Municipal Attorney: Traditionally delegated responsibility for prosecuting local zoning violations. Municipal Attorney should:
 - ▶ Confirm delegation in writing
 - ▶ Municipal attorney shall file oath of office with county clerk as assistant district attorney
- Enforcement Officer: Occasionally appears in court on behalf of municipality

To which court will you go?

Two types of proceedings:

1. Civil Proceedings
 - State Supreme Court
2. Criminal Proceedings
 - Town Court
 - Village Court
 - District Court (on Long Island)
 - City Court



Classify zoning offense/violation

Cities, towns and villages classify violations as:

- Misdemeanors
- Offenses/Violations
- Infractions

They provide punishment by :

- Civil penalty
- Fine
- Forfeiture [see AG Opinion 2004-14]
- Imprisonment
- Combination of punishments. MHL §10(4)(b).

Potential of Imprisonment
(See AG Opinion 2004-14)

▶ Offense/Violation: 15 days or less imprisonment; no right to jury trial

▶ Misdemeanor: jury trial optional with defendant

If imprisonment for more than 15 days is possible, offense/violation deemed misdemeanor

Penalties provided in Town Law §268

\$350 Fine (Maximum)	1st Offense	Six Months Prison
\$350 - \$700 Fine	2nd Offense	Six Months Prison
\$700 - \$1000 Fine	3rd Offense	Six Months Prison

- Each Week of a continuing violation constitutes separate additional violation
- BEWARE:** Use of §268 exclusively can lead to jury trial
- TIP:** Adopt own fines & prison time in local law

City or village must provide for penalties in local law or ordinance. If not, penalties are determined by classification of offense

Civil penalties

- Civil enforcement primarily takes form of injunction against violator.
- Injunction: court order requiring person to do or refrain from doing particular act.
- Issued by State Supreme Court; City courts may also issue temporary restraining orders and preliminary injunctions (City Court Act §209).

Temporary Restraining Order

- May be issued *ex parte* or out of presence of property owner

Preliminary Injunction

- Purpose is to maintain "status quo" pending final decision on lawsuit.
- Government must show likelihood of success and balancing of equities.

Permanent Injunction

- Issued by State Supreme Court after municipal claim is sustained

Discriminatory enforcement claim

Claimant must show:

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

New York Department of State



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



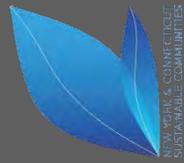
General Session II

Why Regional Planning Matters: A Suburban Context



Suffolk County Planning Federation Fall Conference

Why Regional Planning Matters: A Suburban Context

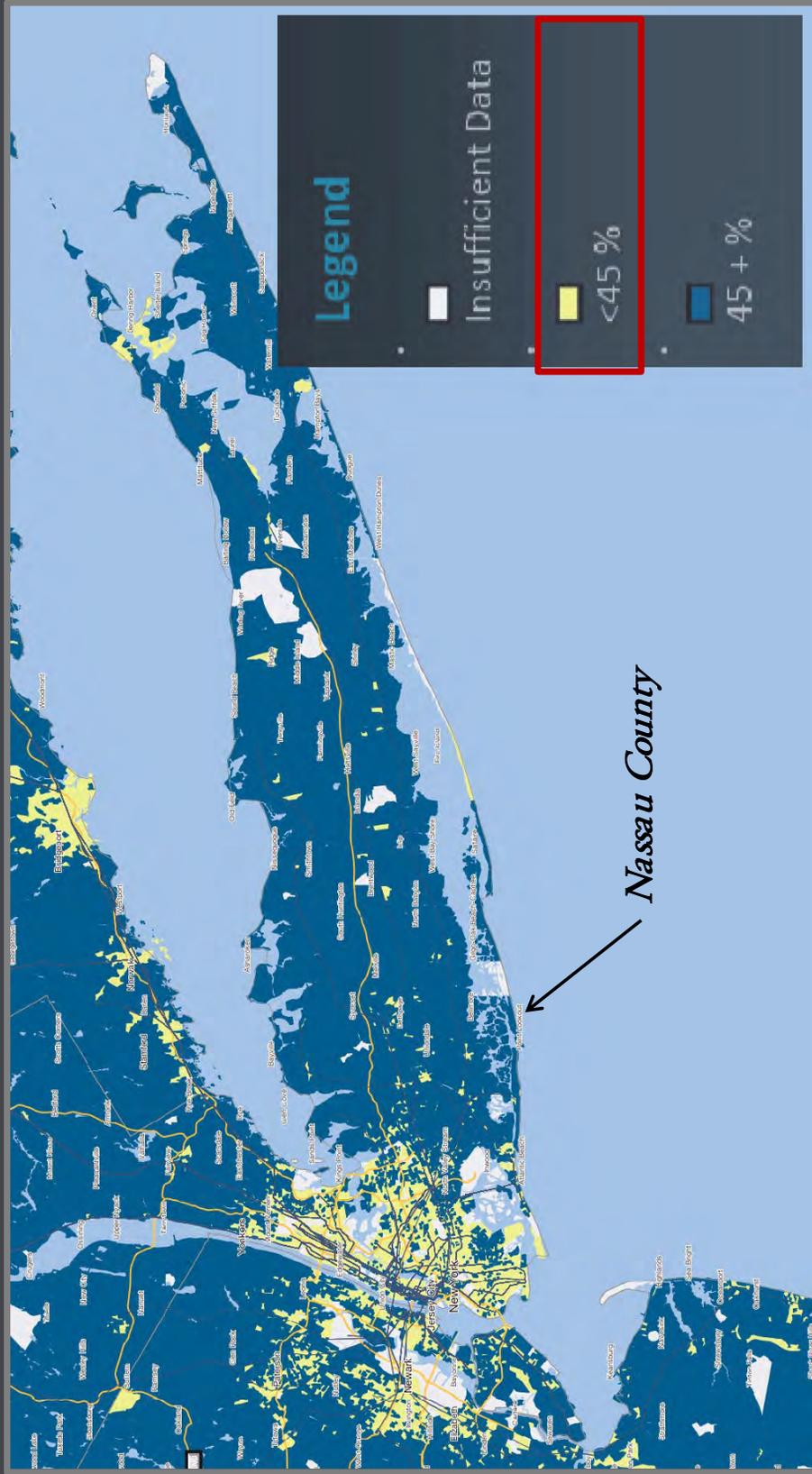


**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

November 29, 2012

Housing & Transportation Costs



Combined Housing and Transportation Costs as a % of Household Income

Source: Center for Neighborhood Technology. H+T Affordability Index

The Initiative

THURSDAY, AUGUST 16, 2012

HUD.GOV
U.S. Department of Housing and Urban Development
Secretary: Shaun Donovan

Connect with HUD
Audiences: Información en Español
Site Map A-Z Index Text A A A Search

HOME PRESS ROOM HOMEOWNER HELP STATE INFO PROGRAM OFFICES TOPIC AREAS ABOUT HUD RESOURCES CONTACT US

HUD > Program Offices > Sustainable Housing Communities > Sustainable Communities Regional Planning Grants

Sustainable Communities Regional Planning Grants

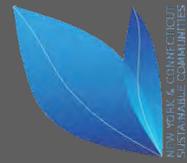
Overview

The Sustainable Communities Regional Planning Grant Program supports metropolitan and multijurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation, and infrastructure investments in a manner that empowers jurisdictions to consider the interdependent challenges of: (1) economic competitiveness and revitalization; (2) social equity, inclusion, and access to opportunity; (3) energy use and climate change; and (4) public health and environmental impact. The Program places a priority on investing in partnerships, including nontraditional partnerships (e.g., arts and culture, recreation, public health, food systems, regional planning agencies and public education entities) that translate the Federal Livability Principles into strategies that direct long-term development and reinvestment, demonstrate a commitment to addressing issues of regional significance, use data to set and monitor progress toward performance goals, and engage stakeholders and residents in meaningful decision-making roles.

The Sustainable Communities Planning Grant Program is being initiated in close coordination with the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA), co-leaders with HUD in the Partnership for Sustainable Communities.

Print Friendly Version

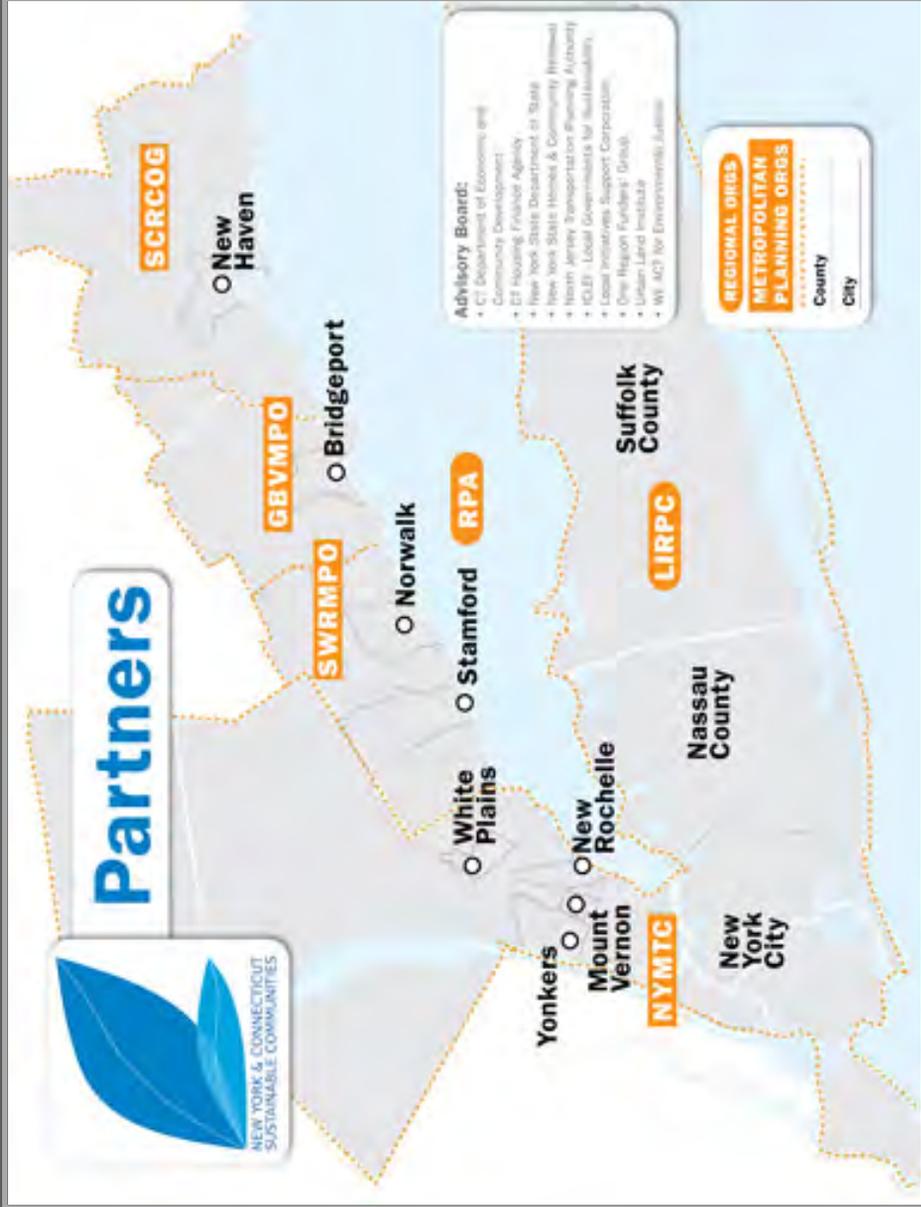
SHARE



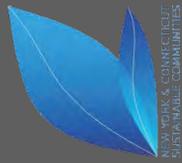
**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

NY-CT Sustainable Communities Consortium



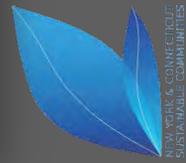
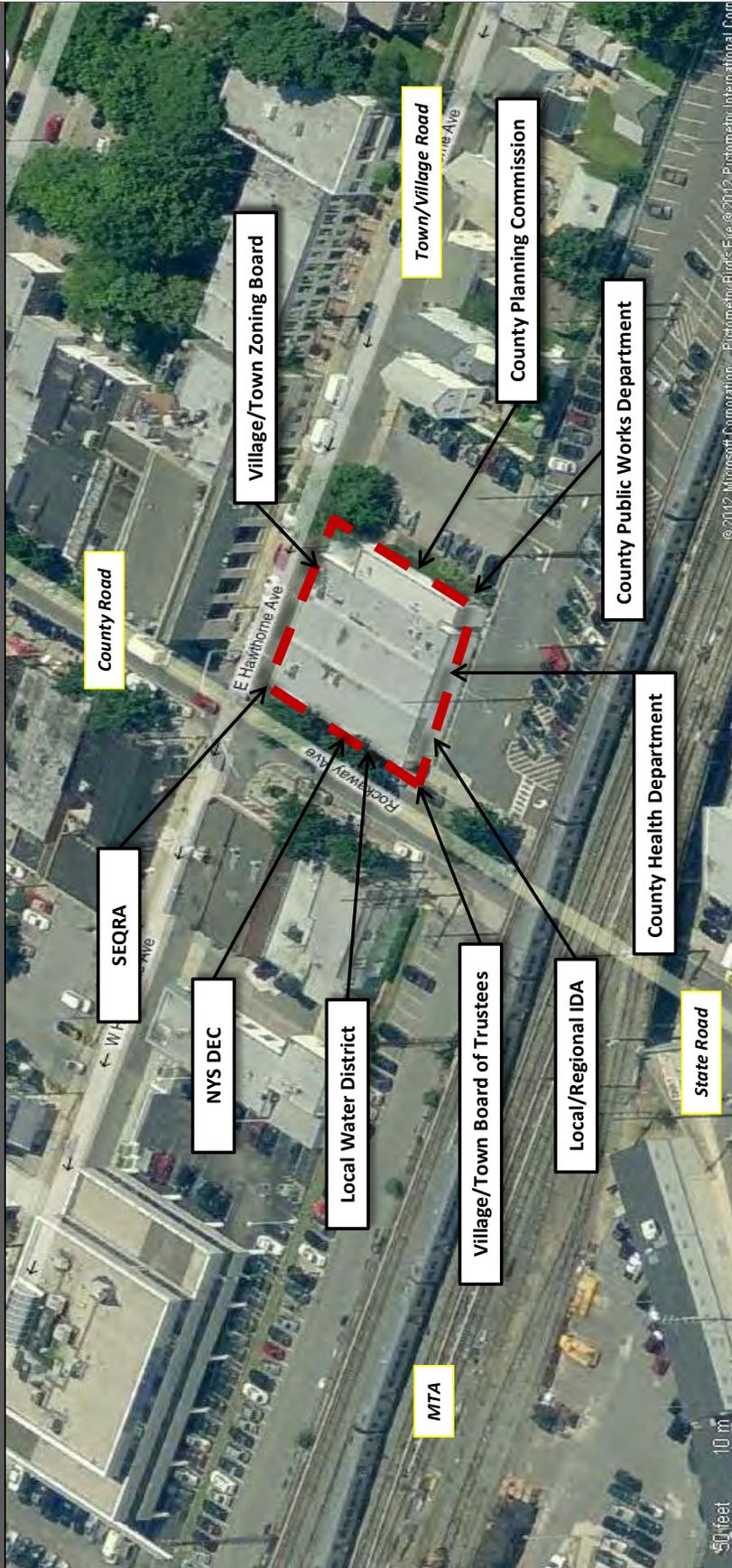
<http://www.sustainablenyct.org/>



**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

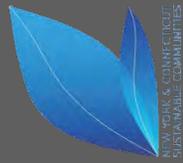
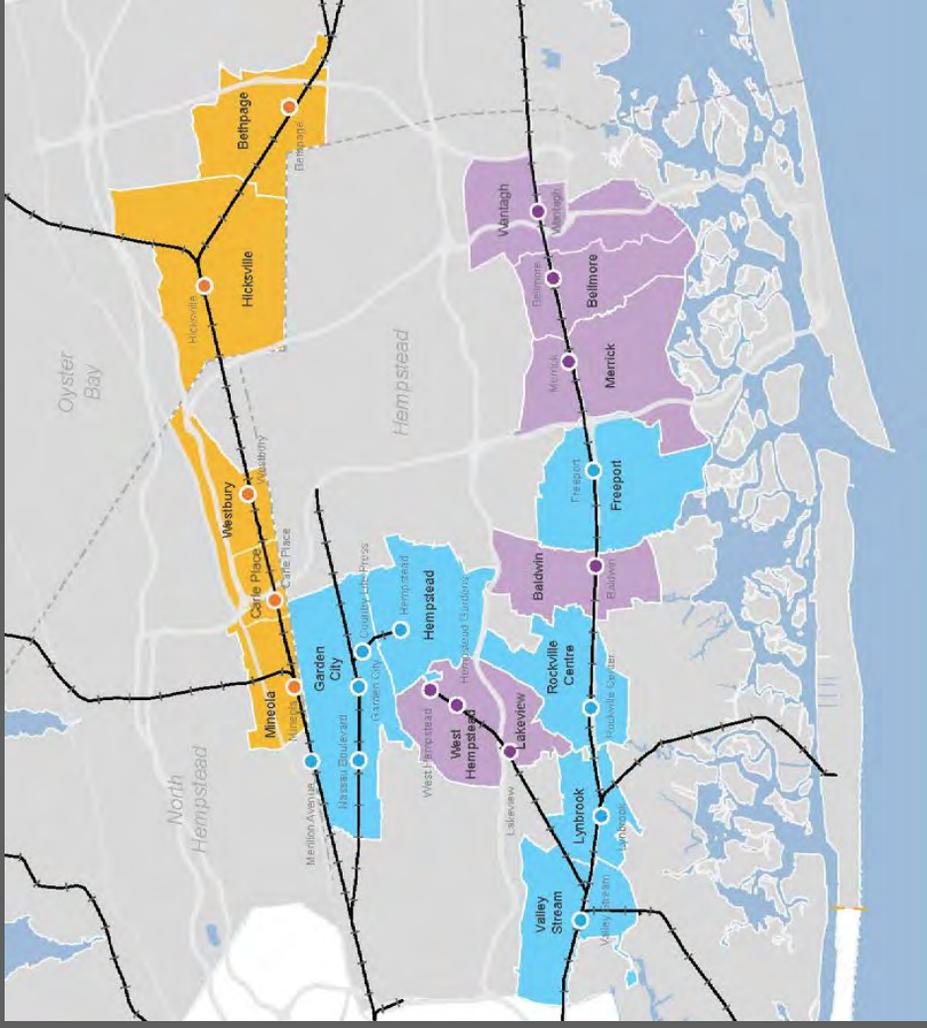
Interagency Coordination



Nassau County Infill Redevelopment Feasibility Study

Station Areas Under Review

- **Phase I**
 - Assessment of Existing Conditions – 21 Station areas
 - Station Area Evaluations
- **Phase II**
 - Pilot Station Area Plans

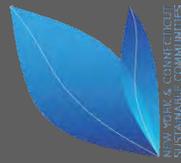


**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

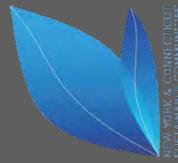
Phase I: Existing Conditions

- Station Area Assessment
 - Land use
 - Zoning
 - Transportation conditions
 - Plans and Studies
- Identify issues and opportunities around your station area
- Synthesize local planning initiatives into a report to major federal agencies



Phase I: Station Area Evaluation

- Determine Transit Supported Development Potential
 - Identify transit supported development preparedness
 - Physical Suitability
 - Public Sector Readiness
 - Developer Interest
 - Leadership In Place
 - Surveys / Public Workshops

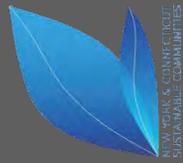


FOR NEW YORK'S SUSTAINABLE COMMUNITIES

Nassau County Infill Redevelopment Feasibility Study

Phase I: Station Area Evaluation (cont.)

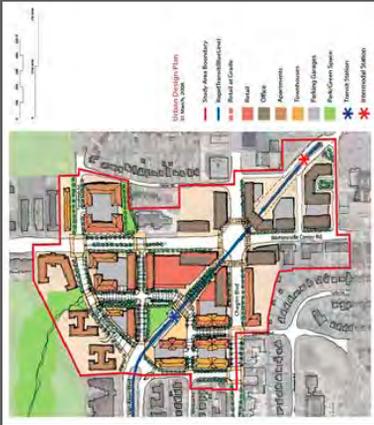
- December, 2012: Report to the NY-CT Sustainable Communities Consortium and federal agencies on local planning efforts and impediments to implementation
- Potential for future federal funding and regulatory relief for projects cited in the report
- Select 3 Station Areas for Pilot Plans



**PARSONS
BRINCKERHOFF**

Phase II: Pilot Station Area Site Plans

- Develop Station Area Plans
- Prepare designs and technical report for 3 pilot stations
 - Sites identified by the community
- Form partnerships with municipality and local organizations



**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

Tysons Corner – Public – Private Partnership

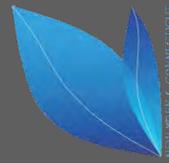
- 13 to 1 jobs to resident ratio
- 40 million sf of parking



Tyson's Corner – Public – Private Partnership

- 4 to 1 jobs to resident ratio
- Multiple transit additions
- Consensus from 56 member steering committee

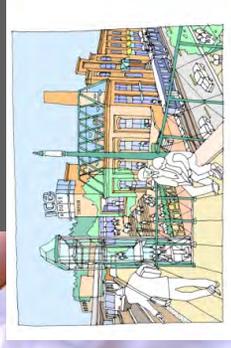
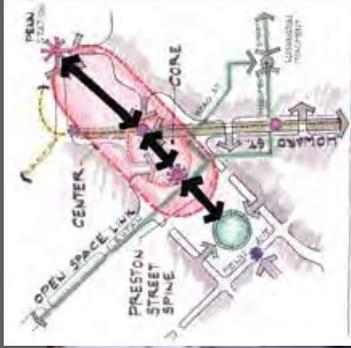
Denver RTD



**PARSONS
BRINCKERHOFF**

Nassau County Infill Redevelopment Feasibility Study

West Baltimore



ARCHITECTS & COMMUNITARIANS
SUSTAINABLE COMMUNITIES

Nassau County Infill Redevelopment Feasibility Study

Thank You

Sean Sallie, AICP

Senior Planner

Nassau County DPW

(516)-571-9342

ssallie@nassaucountyny.gov

Thomas C. Jost, AICP, LEED AP

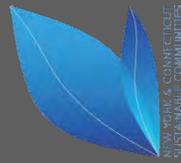
Senior Urban Strategist

Parsons Brinckerhoff

(212)-465-5137

jost@pbworld.com

www.Sustainablenyct.org



**PARSONS
BRINCKERHOFF**

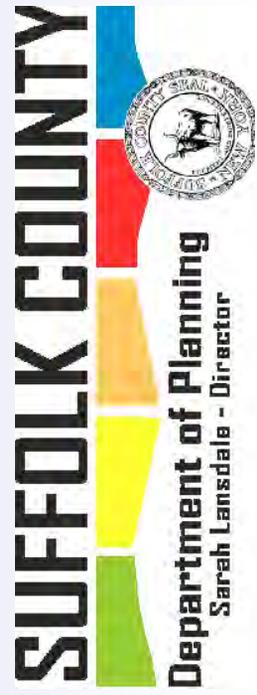
Nassau County Infill Redevelopment Feasibility Study

Suffolk County Planning

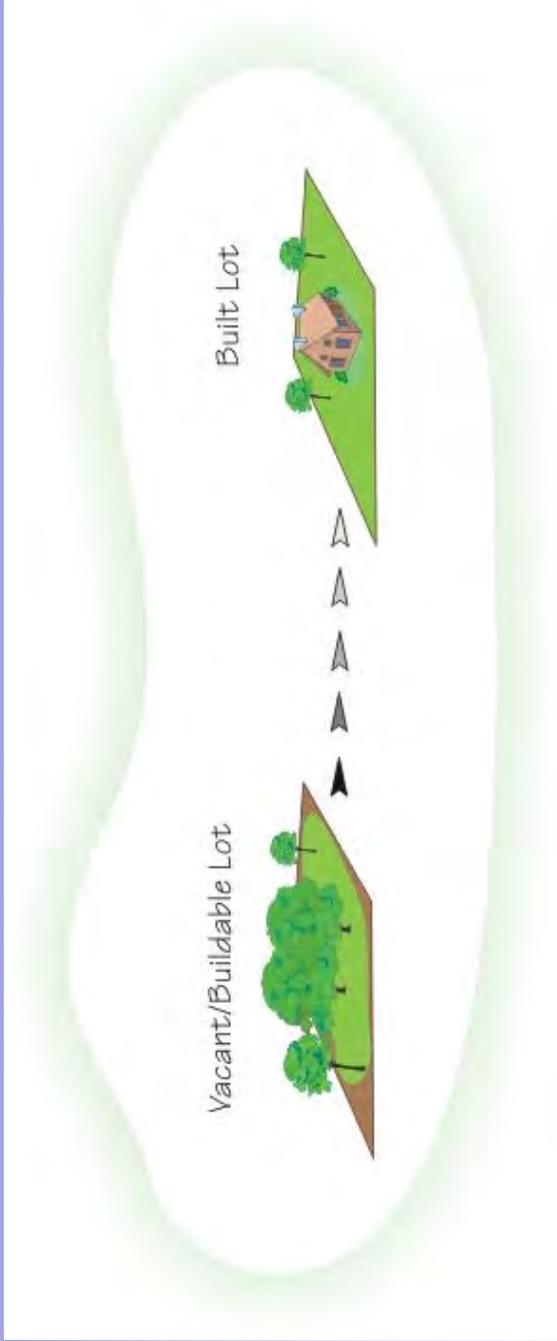
DEVELOPMENT RIGHTS

November 29, 2012

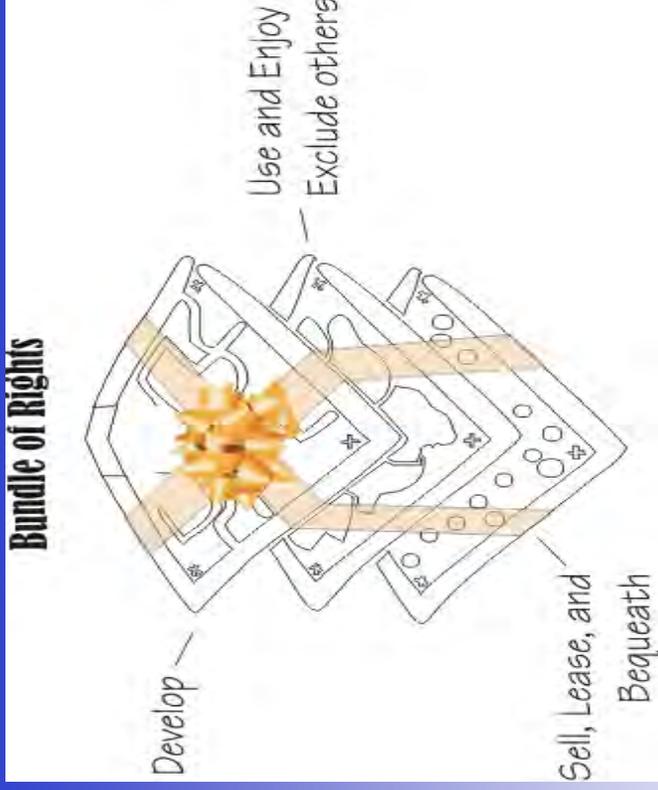
Autumn Planning Conference



The majority of landowners have a rather two-dimensional view of their property. They see it as just a piece of land on which to clear and build on.

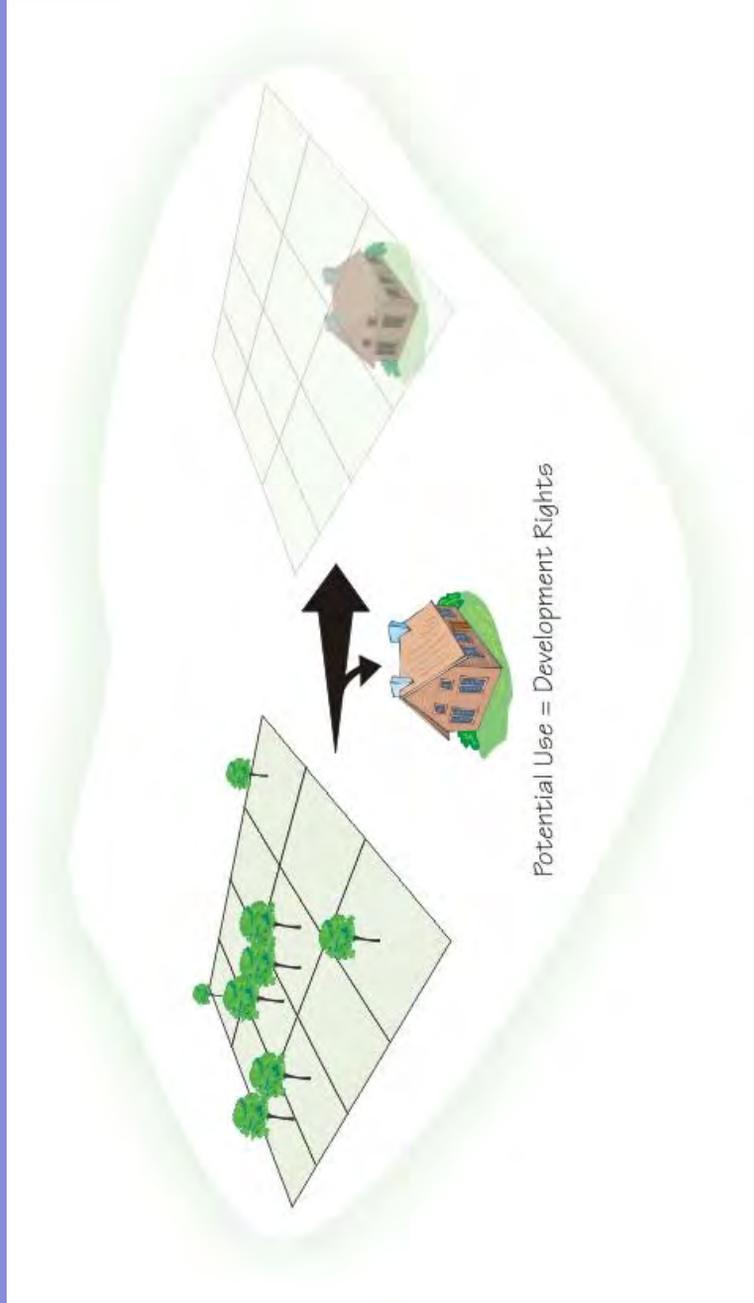


Property owners actually have a “bundle of different rights” with respect to their land. Several rights in the bundle include the ability to use and enjoy, exclude others, sell, lease, bequeath, mine, and also develop. These rights may be limited or regulated through laws enacted by government, such as zoning or environmental regulation.

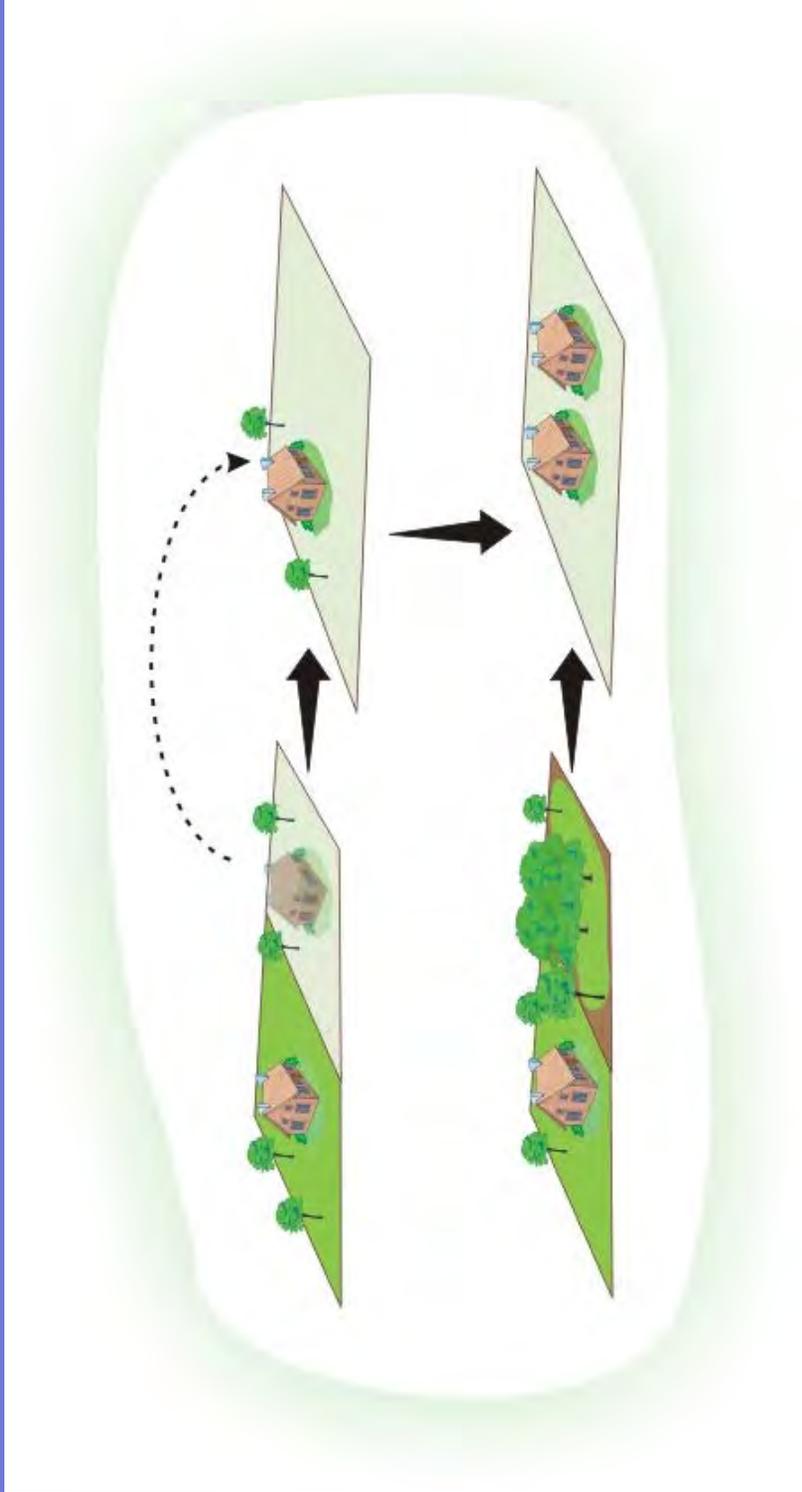


A development right can be defined as the difference between the existing use of the parcel and its potential use as permitted by existing law

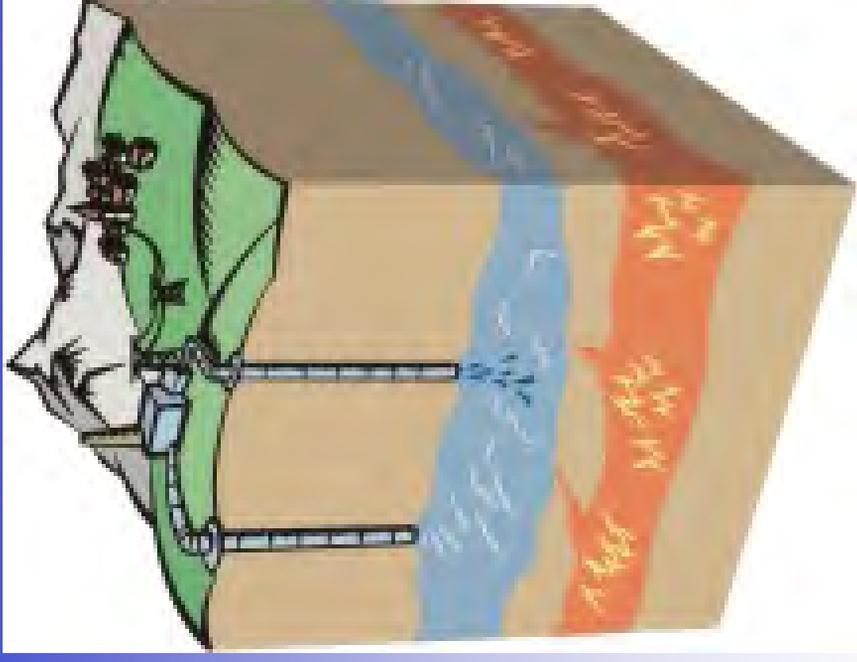
A development right is equal to the unused development potential of a parcel



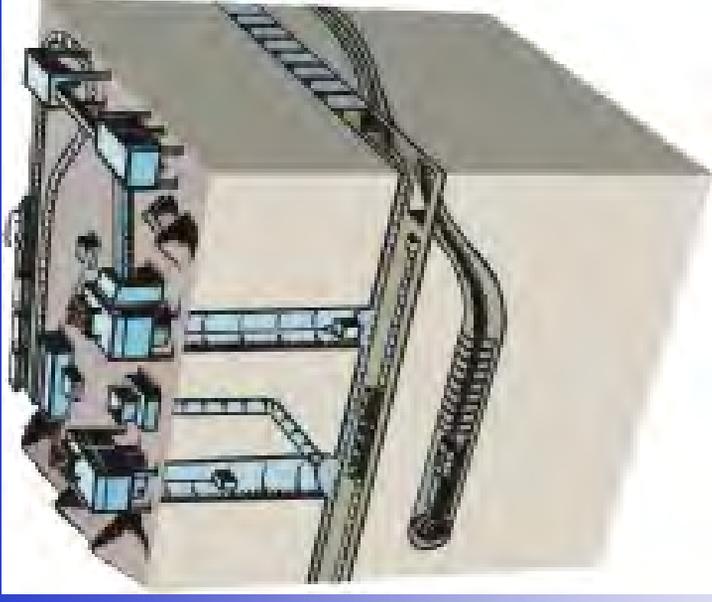
A transferred development right (TDR) is a developed right that has been moved (transferred) from its parent parcel to another



Land ownership was one of the first measures of citizenship in the fledgling United States of America. This Country is the only Country in the world in which the gold, oil, or natural gas, other minerals in the ground and the forests above, belong to the surface owner who owns the land in fee simple.



The concept of development rights can trace its evolution to the mid 1800's where the debate over the separable elements of land (real estate) and land ownership was resolved by the Supreme Court over a mineral and mining rights dispute in the mid-west (*Boggy v, Mercer Mining Co.*)



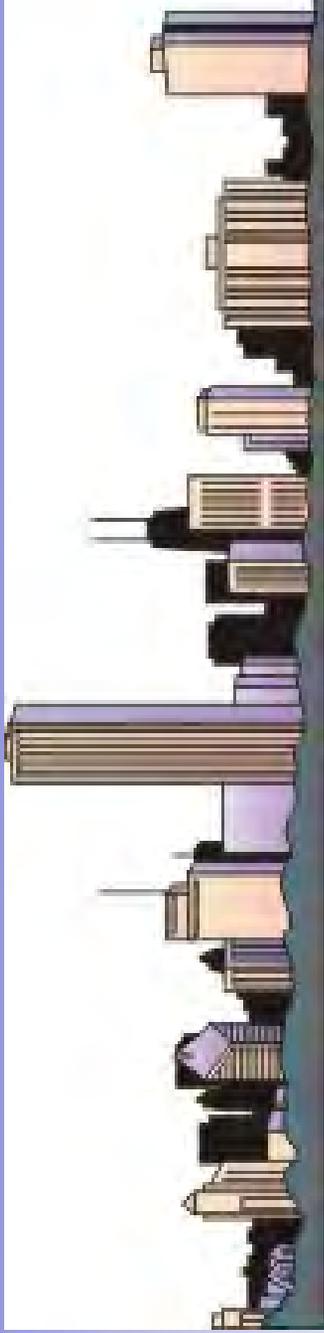
In this case the surface owners' rights to demonstrate and retain title to underlying minerals was challenged by a mining company but affirmed by the court. The "bundle of rights" was beginning to form as a concept with respect to land ownership.

In 1916, New York City enacted the nation's first comprehensive zoning ordinance in reaction to warehouses and factories encroaching on fashionable retail areas of Fifth Avenue and after a series of skyscrapers blocked sunlight from neighboring properties.



Complaints about the unfairness of zoning, since it arguably benefits some landowners and limits others, was resolved in favor of municipalities by a ruling of the U.S. Supreme Court in 1926 (*Village of Euclid Ohio v. Ambler Realty*). In 1968, the city Planning Commission changed the 1916 rules to allow transfers between lots several blocks apart as part of a landmark preservation initiative.

The New York City Landmarks Preservation Law of 1968 is usually cited as the first authentic TDR legislation. The City Council was concerned about development pressure on historic buildings and created a means for owners of historic buildings to sell development rights to developers needing additional density rights in another part of the City.



When Penn Central Transportation Co. Applied for permission to construct a 50-story office tower above Grand Central Station NY (a recently designated historical landmark) the application was denied and the applicants sued. The United States Supreme Court rejected the plaintiff's claim that the law was a "taking" and the Landmarks Preservation TDR Law was upheld..

About a dozen municipalities around the country enacted their own TDR programs in the 1970's. Southampton Town's "old Filed Map" law is one of the oldest local laws utilizing a TDR concept. Statewide enabling proposals were debated in New Jersey, Maryland, and Virginia in that decade as well. Montgomery County, Maryland enacted this nations most notable farmland protection PDR program in 1980. The New Jersey Pinelands Commission employed TDR to preserve ecologically significant pine forest in the 1980's as well.



Closer to home the 1995 Central Pine Barrens Comprehensive Land Use Plan provides growth management through TDR for the preservation of ground water and ecological habitat.

Beneficial uses of development rights:

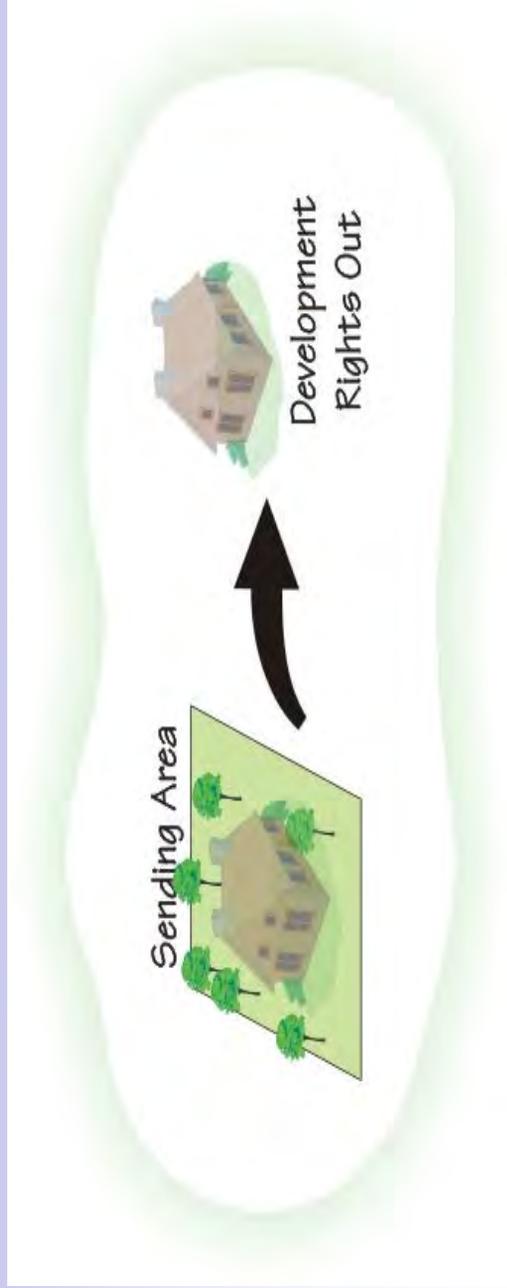
TDR programs intend to “shift” or “transfer” permissible development densities (development rights) from areas where development is less desirable to more appropriate sites.

Beneficial aspects of TDR's:

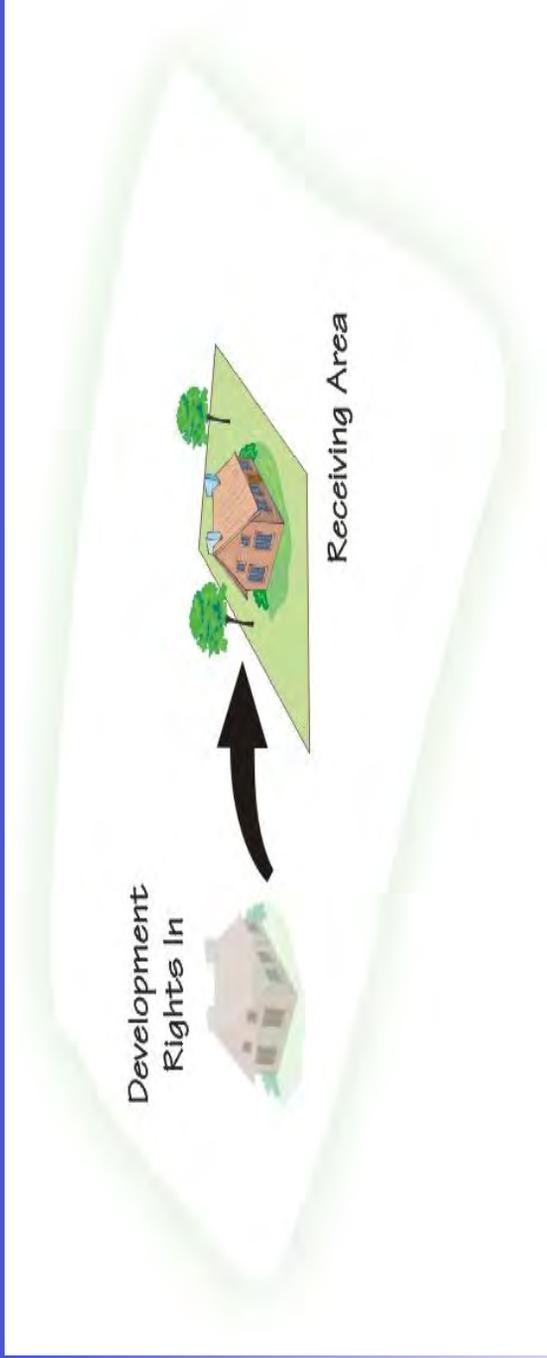
- Provides for protection of sensitive environmental areas
- provides for managed and predictable development, rather than haphazard-like
- are more equitable than strict regulation
- avoids the “takings” issue
- provides private funding for preservation
- are inexpensive relative to strict regulation (due to the avoidance of litigation of takings claims) and purchase of development rights programs.
- Are voluntary in the sense that landowners are never required to sell the development rights
- are more permanent than zoning since TDR uses deed restrictions or conservation easements to sever and extinguish development rights in contrast to zoning which can change over time

Designated Sending Areas

The first step in creating a TDR program is identifying the resource to be protected. The sending area (district) consists of the area or properties sought to be protected from development. As a consequence, these parcels “send” or transfer their development rights to properties in the receiving area



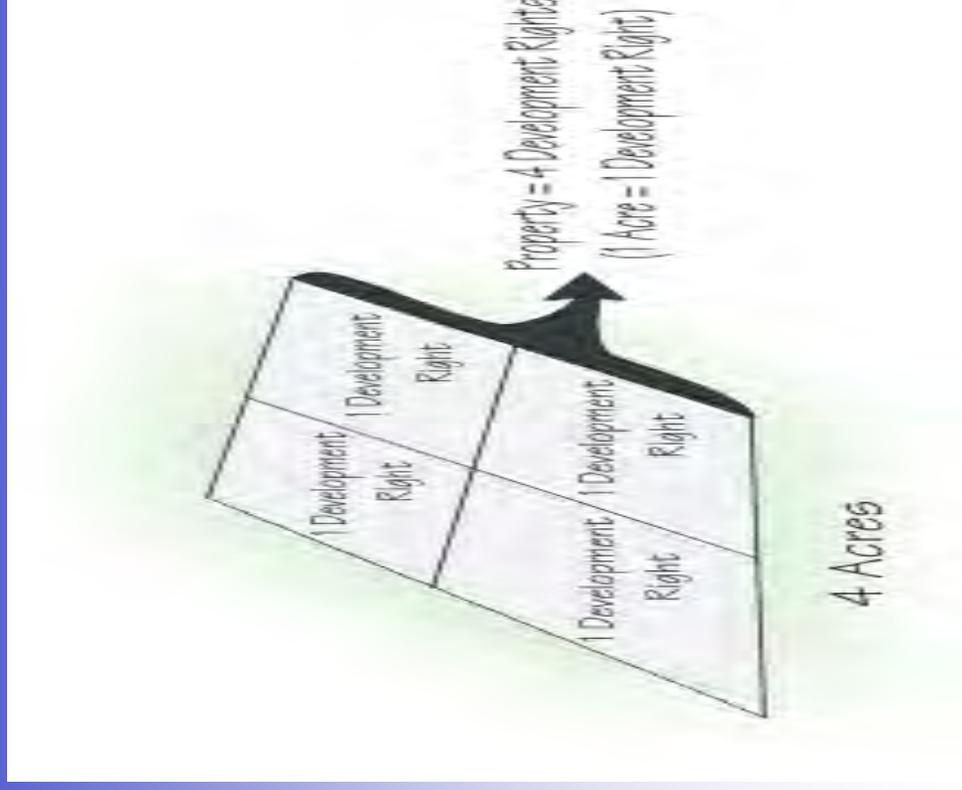
Designated Receiving Areas



The receiving area is located where additional density can be accommodated with a minimum of adverse consequences. They “receive” transferred rights, therefore, allowing development to occur at a density greater than would normally be allowed under the zoning category.

Allocation of Rights

The TDR credits are a legal representation of the abstract development rights that will be severed from the property in the sending area and grafted onto property in the receiving area. The TDR program must clearly identify the amount of development rights that will be available to each parcel of land, the maximum density increase permitted to the developer, and the manner in which development is allowed to occur.



Retirement of Rights (Administration)

There are generally two common methods used to administer the retirement of development rights. One method uses a conservation easement held by a governmental unit and/or private land trust, which limits the development of the land. The second method relies upon a deed restriction that guarantees the land will remain undeveloped and that the development rights have been severed from the property. The TDR credits are traded in the free market, although a TDR “bank” may be established to facilitate exchanges.



TDR Bank

A municipality is not precluded from stepping in and acting as a broker, buying TDR credits for later sale.



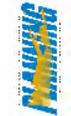
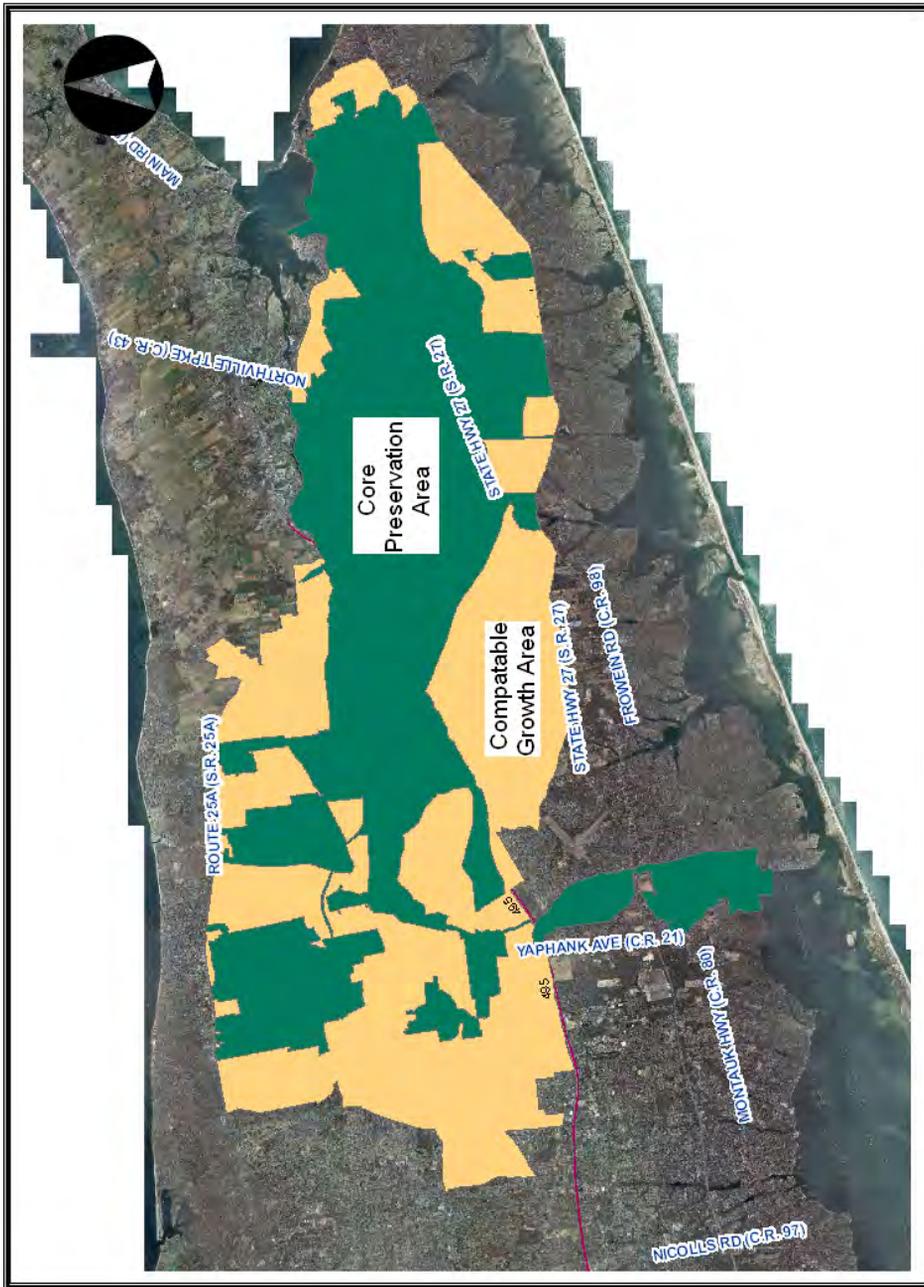
Municipalities can act essentially as a Federal Reserve Bank influencing the price of development rights. Some communities also put conditions on the sale of rights from their bank in order to influence other aspects of development, such as design details or affordable housing requirements. Finally, if the government buys TDR credits without eventually transferring them to a developer, the program can be a tool for restricting growth, similar to the more common “purchase of development rights program”.

Suffolk County Central Pine Barrens Overview

Suffolk County Pine Barren Zones



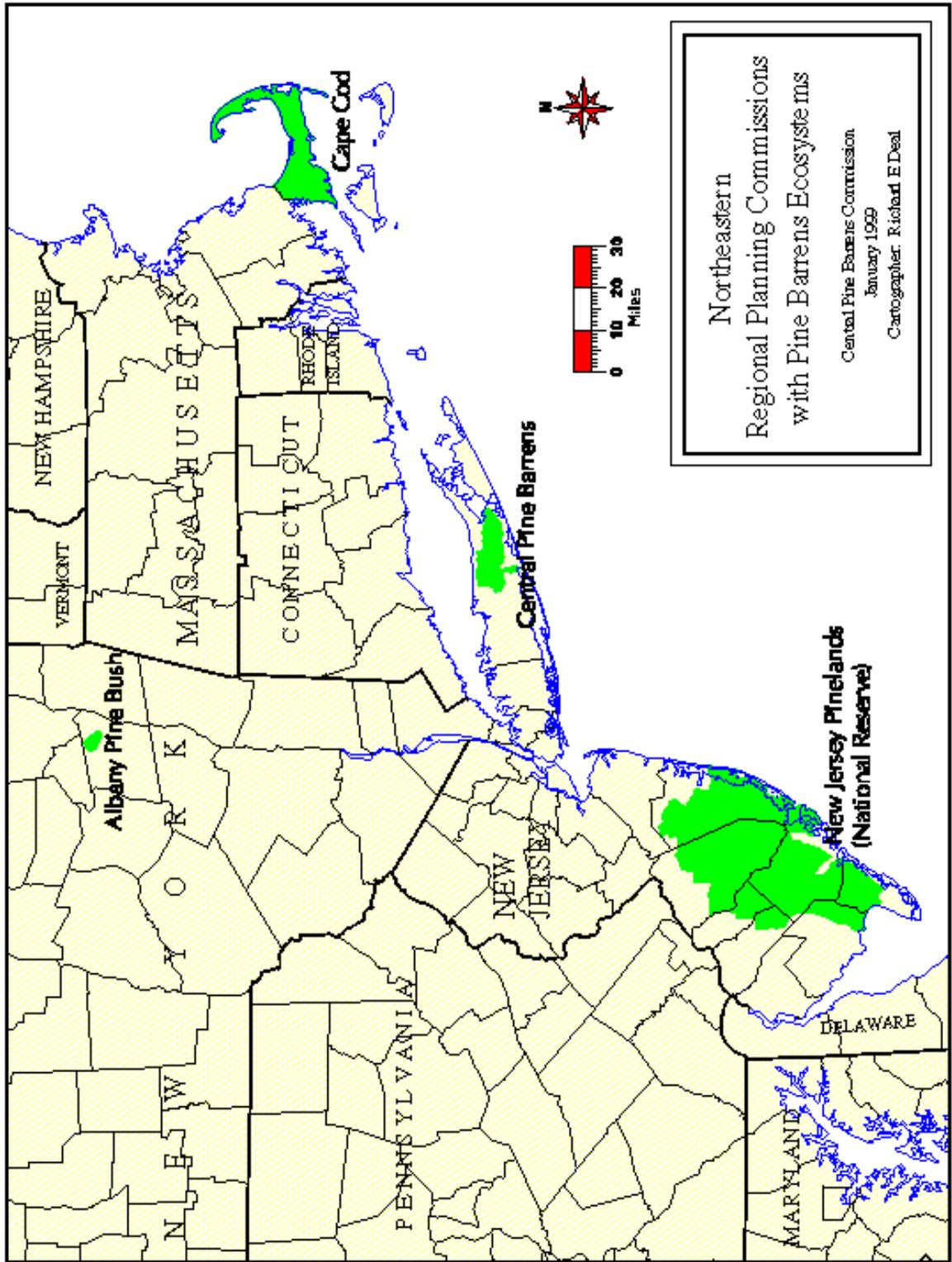
Central Pine Barrens Zone Areas



COPYRIGHT © 2007, COUNTY OF SUFFOLK, NY
 This document is the property of Planning Associates, Inc. and is loaned to the County of Suffolk for the purpose of the Central Pine Barrens Study. It is not to be distributed, copied, or used for any other purpose without the written consent of Planning Associates, Inc. The County of Suffolk is not responsible for any errors or omissions in this document. All rights reserved.

© 2007 Aerial Photography New York State Office for Technology

4,500 Feet
 0 4,500 Feet



What is special about the “Central” Pine Barrens?

- *1992: NY State Court of Appeals decision started a Legislative process to end 30+ years of land use uncertainty and litigation.*
- *1993: NY State Legislature passed the “Long Island Pine Barrens Protection Act”, protecting the largest, “central” remaining Long Island Pine Barrens region.*
- *Principal goals of the Act:*
 - *Protection of groundwater, surface water, and future drinking water supplies for 1.8 million residents*
 - *Protection of a threatened landscape containing the greatest diversity of rare, threatened and endangered species in NY State.*

Early Fall colors in the upland barrens, Rocky Point vicinity.



What does the Pine Barrens Protection Act do?

- *Creates a five member Commission representing the State, Suffolk County, and the Towns of Brookhaven, Riverhead and Southampton.*
- *Gives the Commission an unusually broad spectrum of responsibilities and powers:*
 - *Comprehensive Plan development & implementation*
 - *Plan enforcement responsibility*
 - *Transfer of development rights authority*
 - *Public lands stewardship responsibility*

The Commission's Purview



Under NY Environmental Conservation Law Article 57, the Commission produced and implements a Comprehensive Land Use Plan.

The Act and the Plan charge the Commission with the combined duties of a state agency, a planning board, and a park commission:

- Land use review, permitting, and enforcement authority in the Central Pine Barrens, along with the local municipalities.
- Establishment and operation of a transferable development rights and conservation easement program.
- Coordination of public lands stewardship and management on a regional basis.

The Commission's stewardship work is advanced by a set of "Councils" and their subcommittees, with responsibility for interorganizational work on their portions of the Plan. Protected Lands Management, Law Enforcement, Fire Management, and Research are the principal topical areas.

Central Pine Barrens Land Use Regulation - Categories & Principles

1. Central Pine Barrens (102,500 acres) =
Core Preservation Area (55,000 acres) +
Compatible Growth Area (CGA) (47,500 acres).
2. Core development is prohibited without a hardship permit from the Commission.
3. CGA development must adhere to land use restrictions in 1995 *Pine Barrens Plan*, otherwise a Commission permit is required.
4. Core property is eligible for “Pine Barrens Credits” - transferable development rights - in exchange for a permanent conservation easement.
5. Certain developed projects are “grandfathered” or “exempt”.



Open fields, pastures, woodlands and both fresh and salt water bodies are found throughout the Core and the CGA.



Pine Barrens Credits – Transferable Development Rights

Receiving Areas & Redemptions

- **Receiving sites (*outside Core*)** are defined by individual towns & certified in PB Plan.
- **“As of right” redemptions** – local Planning Board ministerial review.
- **“Non as of right” redemptions** – discretion of individual Town Board.
- Redemptions may be residential, commercial, industrial, or other. Credits do not carry the sending site’s “zoning”.
- Redemptions possible through County Health Department as septic “credits”.
- Site redemptions are capped to avoid “piling on”.



Photos: Sample of actual Credit redemption sites include commercial intensity increase in wastewater discharge through County Health Dept. (top) or “as of right” maximum 20% increase in density through a Town Planning Board (bottom).

Pine Barrens Credit Certificates are . . .

- *Issued simultaneously with the placement of a conservation easement on the sending property, . . .*

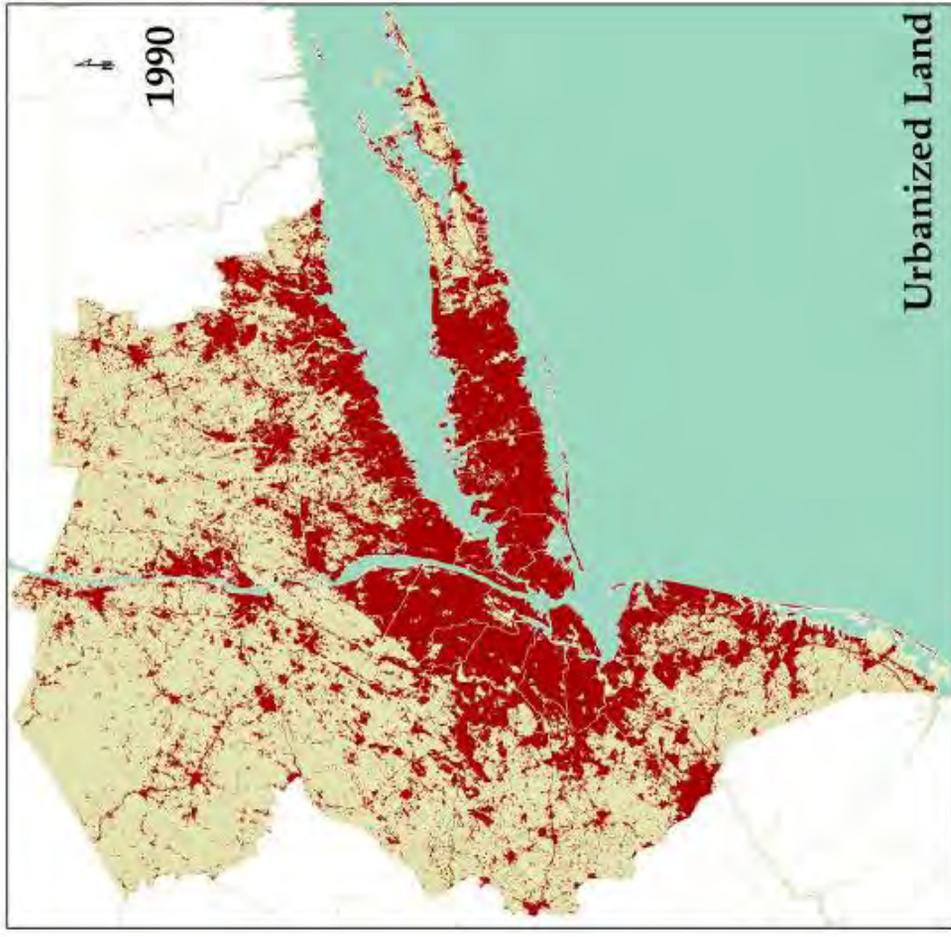
And are also:

- *Issued only by the Clearinghouse*
- *Redeemable*
- *Saleable*
- *Transferable*
- *Serial numbered*
- *Assigned to a specific owner (not bearer documents)*
- *Registered with the Clearinghouse*
- *Tracked by the Clearinghouse*



Suffolk County: Transfer of Development Rights Study

How will
Suffolk County
accommodate growth
in the future while
protecting our drinking
water and open
spaces?



Source: Regional Plan Association

HOW GROWTH IN SUFFOLK COUNTY WAS ACCOMMODATED



1948

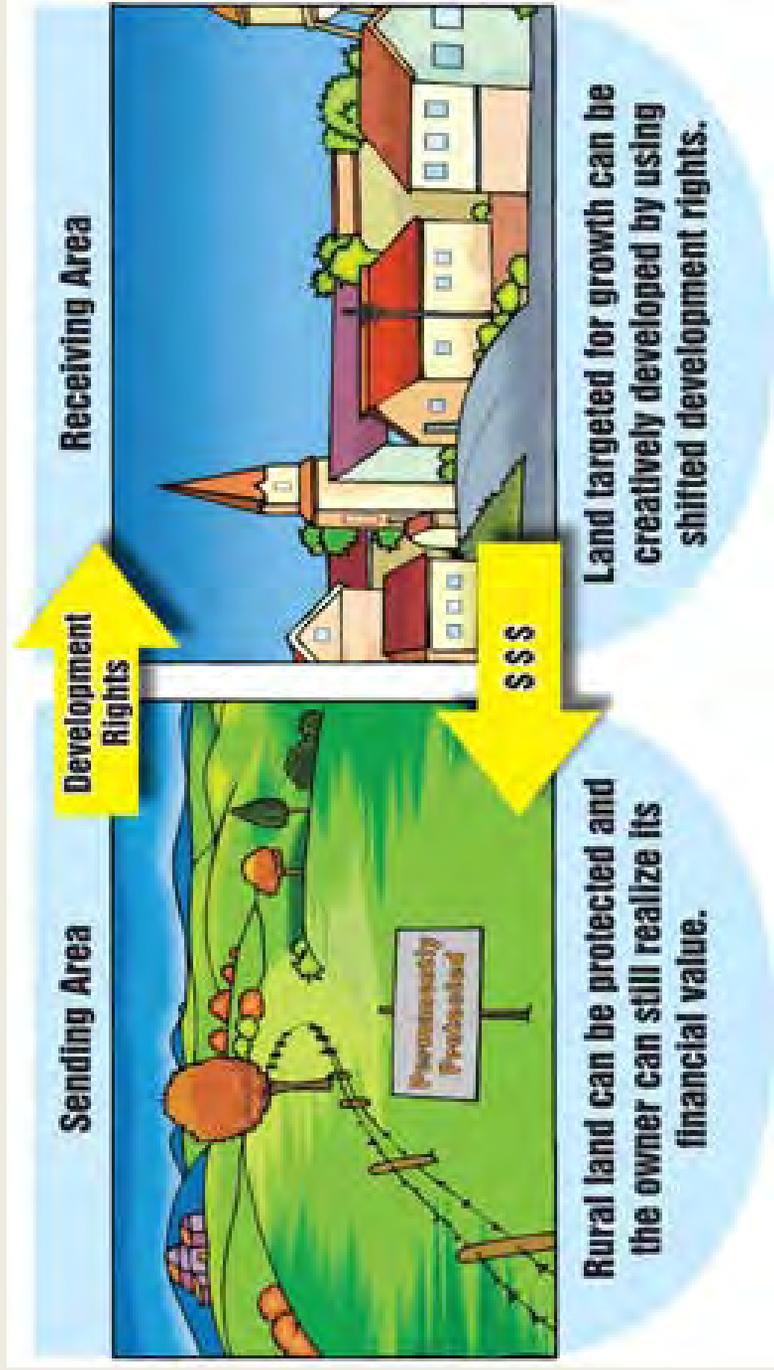


1978

Suffolk County:
Transfer of Development Rights Study



SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS



Suffolk County:
Transfer of Development Rights Study

GOAL

- A more sustainable regional policy framework which promotes the development of workforce and affordable housing, preserves open space, protects natural resources and enhances the region's economic competitiveness through regional cooperation and increased transparency.

Suffolk County:
Transfer of Development Rights Study

OBJECTIVES

- Identification of available sending and receiving rights throughout the region
- Analysis of the success and effectiveness of existing programs
- The development of policies that will help to strengthen existing TDR programs and promote better coordination throughout the region

TASKS

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

Suffolk County:
Transfer of Development Rights Study

ACCOMPLISHMENTS



Suffolk County:
Transfer of Development Rights Study

NEXT STEPS

- Complete analysis of all existing programs including available credits, potential sending sites and remaining receiving sites
- Draft recommendations to encourage better coordination between land use and transportation policies
- Public Outreach- form community advisory committee

Suffolk County:
Transfer of Development Rights Study



General Session II

Recovery and Resiliency: Why Infrastructure Matters



General Session III
SEQRA Update

Notice of Intent to Prepare
Regulatory Impact Statement
Draft Generic Environmental Impact Statement
Regulatory Flexibility Analysis
(RIS/DGEIS/RFA)
For
Amendment of Title 6
New York Code of Rules and Regulations
Part 617
Regulations Governing Implementation of the
State Environmental Quality Review Act
July 11, 2012

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The New York State Department of Environmental Conservation (DEC), 625 Broadway, Albany, New York 12233-1750, is the lead agency for this rulemaking proposal.

Description of the Action

The New York State Department of Environmental Conservation proposes to amend the existing statewide State Environmental Quality Review Act (SEQRA) regulations (6NYCRR Part 617) to streamline the regulatory process without sacrificing meaningful environmental review.

The proposed amendments constitute an unlisted action and include:

- A. Improve the scoping process;
 - 1. Require public scoping of Environmental Impact Statements (EIS);
 - 2. Provide greater continuity between the environmental assessment process, the scope and the draft EIS with respect to content; and
 - 3. Strengthen the regulatory language to encourage targeted EISs.

- B. Clarify and reduce review requirements:
 - 1. Reduce the numeric thresholds in the Type I list for residential subdivisions and parking;
 - 2. Bring the threshold reduction for historic resources in line with other resource based items on the Type I list; and
 - 3. Expand the number of actions not requiring review under SEQRA (Type II list) to encourage development in urban areas vs. development in greenfields and to allow green infrastructure projects.

- C. Improve timeliness of decision making:
 - 1. Provide more guidance regarding the proper means for determining the adequacy of a draft EIS; and
 - 2. Establish a more meaningful timeframe for the completion of a final EIS.

The Department has not identified any significant adverse environmental impacts from the proposed amendments. However, 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.

Scoping

In an effort to provide early public review of the proposed amendments, the Department of Environmental Conservation is conducting a public scoping of issues to be addressed in the draft GEIS. A draft scope has been prepared to facilitate the scoping discussion. A copy of the draft scope is posted on the DEC website at: <http://www.dec.ny.gov/permits/6061.html>

Comments and additional information

Comments related to potential significant adverse environmental impacts and additional alternatives to be addressed in the DGEIS should be sent to: depprmt@gw.dec.state.ny.us . Please include the phrase "Comments on 617 Scope" in the subject line of the e-mail. Comments may also be submitted in writing to:

Division of Environmental Permits & Pollution Prevention
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1750

Additional information regarding the proposed amendments can be obtained by contacting the Division of Environmental Permits & Pollution Prevention at: depprmt@gw.dec.state.ny.us or by calling 518-402-9167.

**Comments on the draft scope
Will be accepted through
August 10, 2012**

DRAFT 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
July 11, 2012

Description of the Action

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the State Environmental Quality Review Act (“SEQR”, Title 6, New York Code of Rules and Regulations (6 NYCRR), Part 617). The principal purpose of the amendments is to streamline the SEQR process without sacrificing meaningful environmental review.

The Department has not identified any significant adverse environmental impacts from the proposed amendments. However, 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.

DEC is conducting this public scoping of the issues to be addressed in the GEIS to allow maximum, early public participation. Comments and suggestions related to the scoping of potential significant adverse environmental impacts and additional alternatives to be considered by DEC should be submitted in writing to the office listed below.

Comments on the draft scope will be accepted through **August 10, 2012**.

Summary of Proposed Amendments to 6NYCRR Part 617

617.2 DEFINITIONS

- Add definition of “Green Infrastructure”
- Add definition of “Minor Subdivision”
- Add definition of “Municipal Center”
- 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
 - Bring the threshold reduction for historic resources [617.4(b)(9)] in line with other resource based items on the Type I list.
- 617.5 TYPE II ACTIONS
- Add new Type II actions to encourage development in urban areas vs. development in greenfields 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 to make minor subdivisions Type II;
 - 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 allow for the electronic filing of EIS's 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.

The following discussion provides the objectives and rationale for the major proposed changes. It also includes pre-draft language. 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 discussion and comment on the preliminary changes

TYPE I LIST

Objectives and Rationale: The Department proposes to:

- (1) 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. This change will bring the review of large subdivision into conformance with current practice. Large subdivisions are frequently the subject of an EIS.
- (2) Add a threshold for parking spaces for communities of less than 150,000 persons. A common and often recommended measurement is 1 parking space per 200 square feet of gross floor area of a building. If you are a community 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.
- (3) 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 many very minor actions being elevated to Type I. Other resource based Type I items such as those addressing agriculture and parkland/open space result in a reduction in the Type I thresholds by 75%. Given the fact that the new Full EAF now requires much more information it would be very onerous and potentially expensive 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.

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;
- 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;
- 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 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 listed 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));

TYPE II LIST

Objective and Rationale: 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 30+ years of 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 in urban areas vs. development in greenfields 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.

Proposed Text Amendment:

- The acquisition, sale, lease, annexation or transfer of any ownership of land to undertake any activity on this list.
- Disposition of land, by auction, where there is no discretion on the part of the disposing agency on the outcome.
- Re-use of a non-residential structure not requiring a change in zoning or a 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.
- 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)].
- In municipalities with adopted subdivision regulations, subdivisions involving 10 acres or less and defined as minor under a town, village or city's adopted subdivision regulations or subdivision of four or fewer lots, whichever is less.
- 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.
- 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 or construction or expansion of a residential structure of 10 units or less 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.

- 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 or construction or expansion of a residential structure of 20 units or less 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;
- 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 or construction or expansion of a residential structure of 40 units or less 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.
- 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 or construction or expansion of a residential structure of 50 units or less 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.
- 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, unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.
- Replacement, rehabilitation or reconstruction of a structure or facility, using green 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.
- Installation of rooftop solar energy arrays on an existing structure that is not listed on the National or State Register of Historic Places or installation of less than 25 megawatts of solar energy arrays on closed sanitary landfills.
- Installation of cellular antennas or repeaters on an existing structure that is not listed on the National or State Register of Historic Places.
- Brownfield site clean-up agreements under Title 14 of ECL Article 27.

SCOPING

Objectives and Rationale: The Department proposes to:

- (1) Require public scoping for all EIS's. 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 EAF's 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 EIS's 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/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.

Proposed 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.

PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

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 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. A draft EIS does not have to be perfect. 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.

Proposed 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.

- (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.

SEQR FEES

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.

Proposed 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.

COMMENT PROCEDURES

Comments on this draft scope will be accepted in writing or by email through **August 10, 2012**. Comments via e-mail should be submitted to: depprmt@gw.dec.state.ny.us . Please insert the phrase "Comments on Part 617 Draft Scope" in the subject line. Alternatively, comments submitted in writing should be sent to:

New York State Department of Environmental Conservation
 Division of Environmental Permits & Pollution Prevention
 625 Broadway
 Albany, New York 12233-1750



SEQRA - Revised Model EAF Forms and DRAFT Workbook

Effective Date for Revised EAFs Extended to April 1, 2013 and Draft Short EAF Workbook Available

The effective date of the new model Environmental Assessment Forms has been postponed from October 1, 2012 until April 1, 2013.

On January 25, 2012, the Department adopted revised model environmental assessment forms (EAFs) (to be published at 6 NYCRR 617.20, appendices A and B) following more than one year of public review and comment. This is the first major update to the forms in decades as the Full EAF has not been substantially revised since 1978 while its sister form, the Short EAF, was last substantially revised in 1987.

The revised model EAFs, which replace the existing ones set out at 6 NYCRR 617.20, appendices A, B, and C, are a general update to the existing forms, and incorporate consideration of areas of environmental concern that have arisen since the existing forms were last promulgated in 1978 and 1987. In addition to substantive changes, the structure of the forms has been updated, to make them easier to use.

Between now and April 1, 2013, the Department expects to introduce various electronic features into the EAFs that have been requested by the public. The Department is also preparing detailed guidance instructions for completing the forms (called the workbooks), and expects to solicit public comment on the workbooks through its website and notice in the Environmental Notice Bulletin once the workbooks are completed in draft.

The revised model EAFs are presented below along with the Department's responses to public comments on the draft forms (which include responses to comments on the Regulatory Impact Statement and flexibility analyses).

Questions or comments on the revised model EAFs may be directed to the attention of Robert Ewing at 518-402-9167 and sent by e-mail to depprmt@gw.dec.state.ny.us. Please include NEW MODEL EAFs in the subject line.

DRAFT Short EAF Workbook

The DRAFT Workbook for the Short Environmental Assessment Form (EAF) has been prepared and is available for public review and comment at a separate, temporary [Draft Workbook website](#) off of DEC's site. A printable PDF version of this DRAFT Workbook is also available on that site. Comments will be accepted as discussed below through 10/22/12.

The DRAFT Short EAF workbook contains information to guide project sponsors and agency reviewers in the preparation and review of a Short EAF. It contains background information on topics and, when completed, will provide built-in-links to spatial data needed to answer the questions in Part 1. The workbook should make it easier and more likely that project sponsors will have access to information

that will allow them to provide an accurately completed Part 1. It will also make it easier for the reviewing agencies to confirm responses and provide guidance on how to determine the size and potential significance of an impact. A similar workbook for the Full EAF is in preparation and will be made available for public review at a later date.

Comments on the DRAFT Short EAF Workbook may be submitted to the DEC by e-mail to depprmt@gw.dec.state.ny.us. Please include DRAFT SEAF Workbook in the subject line. **Comments will be received until October 22, 2012.**

Environmental Assessment Forms

[Short Environmental Assessment Form \(PDF\)](#) (271 KB)

[Full Environmental Assessment Form - Instructions \(PDF\)](#) (226 KB)

[Full Environmental Assessment Form - Part 1 \(PDF\)](#) (351 KB)

[Full Environmental Assessment Form - Part 2 \(PDF\)](#) (383 KB)

[Full Environmental Assessment Form - Part 3 \(PDF\)](#) (243 KB)

Regulatory Documents

[Certificate of Adoption \(PDF\)](#) (45 KB)

[Introduction to Public Comments and Responses \(PDF\)](#) (67 KB)

[Response to Short EAF Comments \(PDF\)](#) (115 KB)

[Response to Full EAF Comments \(PDF\)](#) (211 KB)

[List of Commentators \(PDF\)](#) (41 KB)

For the complete text of State Administrative Procedure Act (SAPA) documents related to the revision of the environmental assessment forms see the February 15, 2012 and November 24, 2010 editions of the New York State Register. The New York State Register is available through the New York State Department of State's website at the following address: <http://www.dos.ny.gov/info/register.htm>. Paste the link into your browser and click on the appropriate year and date to view the original (November 24, 2010) and final documents (February 15, 2012).

November 2010 Draft Model Short and Full Environmental Assessment Forms

- November 2010 Draft [Short Environmental Assessment Form \(PDF\)](#) (52 kB)
- November 2010 Draft [Full Environmental Assessment Form - Instructions \(PDF\)](#) (17 kB)
- November 2010 Draft [Full Environmental Assessment Form - Part 1 \(PDF\)](#) (182 kB)
- November 2010 Draft [Full Environmental Assessment Form - Part 2 \(PDF\)](#) (188 kB)
- November 2010 Draft [Full Environmental Assessment Form - Part 3 \(PDF\)](#) (35 kB)
- [Short Environmental Assessment Form for Rulemaking \(PDF\)](#) (202 kB)
- [Negative Declaration \(PDF\)](#) (266 kB)

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:		Telephone:		
		E-Mail:		
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO	YES
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO	YES
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
b. Consistent with the adopted comprehensive plan?			
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES If No, describe method for providing potable water: _____ _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: _____		Date: _____
Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Not effective until April 1, 2013

- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

617.20
Appendix A
State Environmental Quality Review
Full Environmental Assessment Form

Purpose: The Full Environmental Assessment Form (EAF) provides an orderly and comprehensive means for evaluating the potential environmental significance of a proposed action. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance. The lead agency must use the Full EAF for Type I actions and may use it for Unlisted actions.

The Full EAF consists of three parts and when completed it will serve as the determination of significance:

Part 1 - Is completed by the project sponsor. Part 1 provides basic information including a description of the proposed action, proposed site location and its environmental resources. The information provided in Part 1 is later used by the reviewing agency to complete Parts 2 and 3.

The questions in Part 1 are grouped in sections A-G:

- Section A gathers information that identifies the project sponsor, the proposed action, and the proposed action's location.
- Section B requests information about government approvals or funding.
- Section C requests information about planning, zoning and community services.
- Section D requests information about the proposed action.
- Section E requests information about resources on or adjacent to the proposed site.
- Section F provides the project sponsor the opportunity for supplying additional information including project elements that may avoid or reduce impacts.
- Section G is where the certifying signature of the preparer is provided.

Part 2 - Is completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed action and to determine the potential size of the impact by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. Part 2 is designed to help a reviewer identify any element of a proposed project that may have a potentially significant adverse impact on the environment.

Part 3 - Is completed by the lead agency. Part 2 questions where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact should be explored in a series of written, well reasoned statements in Part 3. The discussion of impacts in Part 3 will serve as the supporting documentation for the determination of significance.

**Full Environmental Assessment Form
Part 1 - Project and Setting**

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Sponsor Information.

Name of Action or Project:		
Project Location (describe, and attach a general location map):		
Brief Description of Proposed Action (include purpose or need):		
Name of Applicant/Sponsor:		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Project Contact (if not same as sponsor; give name and title/role):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:

Not effective until April 1, 2013

B. Government Approvals

B. Government Approvals Funding, or Sponsorship. (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input type="checkbox"/> No		
c. City Council, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No		
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
i. Coastal Resources. <ul style="list-style-type: none"> i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, <ul style="list-style-type: none"> ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No iii. Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No 		

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? Yes No

- **If Yes**, complete sections C, F and G.
- **If No**, proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? Yes No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? Yes No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) Yes No

If Yes, identify the plan(s):

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? Yes No

If Yes, identify the plan(s):

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. Yes No
If Yes, what is the zoning classification(s) including any applicable overlay district?

b. Is the use permitted or allowed by a special or conditional use permit? Yes No

c. Is a zoning change requested as part of the proposed action? Yes No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? _____

b. What police or other public protection forces serve the project site?

c. Which fire protection and emergency medical services serve the project site?

d. What parks serve the project site?

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

b. a. Total acreage of the site of the proposed action? _____ acres

b. Total acreage to be physically disturbed? _____ acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres

c. Is the proposed action an expansion of an existing project or use? Yes No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? Yes No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? Yes No

iii. Number of lots proposed? _____

iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will proposed action be constructed in multiple phases? Yes No

i. If No, anticipated period of construction: _____ months

ii. If Yes:

- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

f. Does the project include new residential uses? Yes No
 If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)? Yes No
 If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? Yes No
 If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source. _____

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) Yes No
 If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____

iv. Will there be onsite dewatering or processing of excavated materials? Yes No
 If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? Yes No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? Yes No
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? Yes No

If Yes, describe: _____

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No

If Yes:

- area of vegetation proposed to be removed _____
- expected acreage of aquatic vegetation remaining after project completion _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____

- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No

If Yes:

i. Total anticipated water usage/demand per day: _____ gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No

If Yes:

- Name of district or service area: _____
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No

If Yes:

i. Total anticipated liquid waste generation per day: _____ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): _____

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No

If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of district: _____
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

• Do existing sewer lines serve the project site? Yes No
 • Will line extension within an existing district be necessary to serve the project? Yes No
 If Yes:
 • Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? Yes No
 If Yes:
 • Applicant/sponsor for new district: _____
 • Date application submitted or anticipated: _____
 • What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? Yes No
 If Yes:
 i. How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or _____ acres (impervious surface)
 _____ Square feet or _____ acres (parcel size)
 ii. Describe types of new point sources. _____

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

 • If to surface waters, identify receiving water bodies or wetlands: _____

 • Will stormwater runoff flow to adjacent properties? Yes No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? Yes No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? Yes No
 If Yes, identify:
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Yes No
 If Yes:
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) Yes No
 ii. In addition to emissions as calculated in the application, the project will generate:
 • _____ Tons/year (metric) of Carbon Dioxide (CO₂)
 • _____ Tons/year (metric) of Nitrous Oxide (N₂O)
 • _____ Tons/year (metric) of Perfluorocarbons (PFCs)
 • _____ Tons/year (metric) of Sulfur Hexafluoride (SF₆)
 • _____ Tons/year (metric) of Carbon Dioxide equivalent of Hydroflorocarbons (HCFS)
 • _____ Tons/year (metric) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? Yes No

If Yes:

i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? Yes No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site? Yes No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____

iii. Will the proposed action require a new, or an upgrade to, an existing substation? Yes No

l. Hours of operation. Answer all items which apply.

<p>i. During Construction:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____ 	<p>ii. During Operations:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____
--	---

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe: _____</p> <p>_____</p>	
<p>n. Will the proposed action have outdoor lighting? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>_____</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe: _____</p> <p>_____</p>	
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____</p> <p>_____</p> <p>_____</p>	
<p>p. Will the proposed action include any bulk storage of petroleum (over 1,100 gallons) or chemical products (over 550 gallons)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally describe proposed storage facilities _____</p> <p>_____</p>	
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>ii. Will the proposed action use Integrated Pest Management Practices? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> • Construction: _____ tons per _____ (unit of time) • Operation : _____ tons per _____ (unit of time) <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> • Construction: _____ _____ • Operation: _____ _____ <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> • Construction: _____ _____ • Operation: _____ _____ 	

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No
 If Yes:
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____
 ii. Anticipated rate of disposal/processing:
 • _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
 • _____ Tons/hour, if combustion or thermal treatment
 iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No
 If Yes:
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

 ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

 iii. Specify amount to be handled or generated _____ tons/month
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No
 If Yes: provide name and location of facility: _____

 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.
 i. Check all uses that occur on, adjoining and near the project site.
 Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Aquatic Other (specify): _____
 ii. If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces			
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____ _____			

c. Is the project site presently used by members of the community for public recreation? Yes No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? Yes No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? Yes No
If Yes:
i. Dimensions of the dam and impoundment:

- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? Yes No
If Yes:
i. Has the facility been formally closed? Yes No

- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? Yes No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? Yes No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: Yes No
 Yes – Spills Incidents database Provide DEC ID number(s): _____
 Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
 Neither database
ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? Yes No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

v. Is the project site subject to an institutional control limiting property uses? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> • If yes, DEC site ID number: _____ • Describe the type of institutional control (e.g., deed restriction or easement): _____ • Describe any use limitations: _____ • Describe any engineering controls: _____ • Will the project affect the institutional or engineering controls in place? <input type="checkbox"/> Yes <input type="checkbox"/> No • Explain: _____ _____ _____
E.2. Natural Resources On or Near Project Site
a. What is the average depth to bedrock on the project site? _____ feet
b. Are there bedrock outcroppings on the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%
c. Predominant soil type(s) present on project site: _____ % _____ % _____ %
d. What is the average depth to the water table on the project site? Average: _____ feet
e. Drainage status of project site soils: <input type="checkbox"/> Well Drained: _____ % of Site <input type="checkbox"/> Moderately Well Drained: _____ % of Site <input type="checkbox"/> Poorly Drained _____ % of Site
f. Approximate proportion of proposed action site with slopes: <input type="checkbox"/> 0-10%: _____ % of site <input type="checkbox"/> 10-15%: _____ % of site <input type="checkbox"/> 15% or greater: _____ % of site
g. Are there any unique geologic features on the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe: _____ _____
h. Surface water features. <ul style="list-style-type: none"> i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? <input type="checkbox"/> Yes <input type="checkbox"/> No ii. Do any wetlands or other waterbodies adjoin the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes to either <i>i</i> or <i>ii</i> , continue. If No, skip to E.2.i. <ul style="list-style-type: none"> iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? <input type="checkbox"/> Yes <input type="checkbox"/> No iv. For each identified wetland and waterbody on the project site, provide the following information. <ul style="list-style-type: none"> • Streams: Name _____ Classification _____ • Lakes or Ponds: Name _____ Classification _____ • Wetlands: Name _____ Approximate Size _____ Wetland No. (if regulated by DEC) _____
v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, name of impaired water body/bodies and basis for listing as impaired: _____ _____
i. Is the project site in a designated Floodway? <input type="checkbox"/> Yes <input type="checkbox"/> No
j. Is the project site in the 100 year Floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No
k. Is the project site in the 500 year Floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No
l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <ul style="list-style-type: none"> i. Name of aquifer: _____ ii. Source of information: _____

<p>m. Identify the predominant wildlife species that occupy or use the project site: _____ _____ _____</p>	
<p>n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Describe the habitat/community (composition, function, and basis for designation): _____ _____ <i>ii.</i> Source(s) of description or evaluation: _____ <i>iii.</i> Extent of community/habitat: • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres</p>	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing (endangered or threatened): _____ _____ <i>ii.</i> Nature of use of site by the species (e.g., resident, seasonal, transient): _____ _____</p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing: _____ <i>ii.</i> Nature of use of site by the species (e.g., resident, seasonal, transient): _____ _____</p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, give a brief description of how the proposed action may affect that use: _____ _____</p>	
E.3. Designated Public Resources On or Near Project Site	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>i.</i> If Yes: acreage(s) on project site? _____ <i>ii.</i> Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature <i>ii.</i> Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____ _____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> CEA name: _____ <i>ii.</i> Basis for designation: _____ <i>iii.</i> Designating agency and date: _____</p>	

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes:	
<i>i.</i> Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District	
<i>ii.</i> Name: _____	
<i>iii.</i> Brief description of attributes on which listing is based: _____	
f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/> Yes <input type="checkbox"/> No
g. Have additional archaeological or historic site(s) or resources been identified on the project site?	
If Yes:	
<i>i.</i> Describe possible resource(s): _____	
<i>ii.</i> Basis for identification: _____	
h. Would the project site be visible from any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes:	
<i>i.</i> Identify resource: _____	
<i>ii.</i> Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____	
<i>iii.</i> Distance between project and resource: _____ miles.	
i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes:	
<i>i.</i> Identify the name of the river and its designation: _____	
<i>ii.</i> Is the activity consistent with development restrictions contained in 6NYCRR Part 666?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature _____ Title _____

Not effective until April 1, 2013

Full Environmental Assessment Form
Part 2 - Identification of Potential Project Impacts

Part 2 is to be completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency **and** the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

Tips for completing Part 2:

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer “**Yes**” to a numbered question, please complete all the questions that follow in that section.
- If you answer “**No**” to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box “Moderate to large impact may occur.”
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the “whole action”.
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

1. Impact on Land Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1) <i>If “Yes”, answer questions a - j. If “No”, move on to Section 2.</i>	<input type="checkbox"/> NO	<input type="checkbox"/> YES	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

2. Impact on Geological Features

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

NO

YES

If "Yes", answer questions a - c. If "No", move on to Section 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____ _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

3. Impacts on Surface Water

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

NO

YES

If "Yes", answer questions a - l. If "No", move on to Section 4.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input type="checkbox"/>	<input type="checkbox"/>

I. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
----------------------------------	--	--------------------------	--------------------------

4. Impact on groundwater

The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. NO YES
(See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)
If "Yes", answer questions a - h. If "No", move on to Section 5.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

5. Impact on Flooding

The proposed action may result in development on lands subject to flooding. NO YES
(See Part 1. E.2)
If "Yes", answer questions a - g. If "No", move on to Section 6.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, the dam has failed to meet one or more safety criteria on its most recent inspection.	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
----------------------------------	--	--------------------------	--------------------------

6. Impacts on Air			
The proposed action may include a state regulated air emission source. (See Part 1. D.2.f., D.2.h, D.2.g) <i>If "Yes", answer questions a - f. If "No", move on to Section 7.</i>		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO ₂) ii. More than 3.5 tons/year of nitrous oxide (N ₂ O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF ₆) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochlorofluorocarbons (HCFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any two or more of the thresholds in "a" through "c", above.	D1g, D2k	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

7. Impact on Plants and Animals			
The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.) <i>If "Yes", answer questions a - j. If "No", move on to Section 8.</i>		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

8. Impact on Agricultural Resources
 The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.) NO YES
If "Yes", answer questions a - h. If "No", move on to Section 9.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

9. Impact on Aesthetic Resources
 The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.) NO YES
If "Yes", answer questions a - g. If "No", go to Section 10.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur

a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2 -3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

10. Impact on Historic and Archeological Resources			
The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.)		<input type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - e. If "No", go to Section 11.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on or has been nominated by the NYS Board of Historic Preservation for inclusion on the State or National Register of Historic Places.	E3e	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: _____	E3g	<input type="checkbox"/>	<input type="checkbox"/>
d. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
e. If any of the above (a-d) are answered "Yes", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or	E3e, E3f, E3g, E1a,	<input type="checkbox"/>	<input type="checkbox"/>

integrity.	E1b E3e, E3f, E3g, E3h, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.			

11. Impact on Open Space and Recreation			
The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. (See Part 1. C.2.c, E.1.c., E.2.q.) <i>If "Yes", answer questions a - e. If "No", go to Section 12.</i>		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

12. Impact on Critical Environmental Areas			
The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d) <i>If "Yes", answer questions a - c. If "No", go to Section 13.</i>		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

13. Impact on Transportation			
The proposed action may result in a change to existing transportation systems. (See Part 1. D.2.j) <i>If "Yes", answer questions a - g. If "No", go to Section 14.</i>		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>

b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

14. Impact on Energy
The proposed action may cause an increase in the use of any form of energy. NO YES
(See Part 1. D.2.k)
If "Yes", answer questions a - e. If "No", go to Section 15.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____ _____			

15. Impact on Noise, Odor, and Light
The proposed action may result in an increase in noise, odors, or outdoor lighting. NO YES
(See Part 1. D.2.m., n., and o.)
If "Yes", answer questions a - f. If "No" go to Section 16.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in light shining onto adjoining properties.	D2n	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

16. Impact on Human Health
The proposed action may have an impact on human health from exposure NO YES

to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.) If "Yes", answer questions a - m. If "No", go to Section 17.			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g. easement, deed restriction)	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____ _____			

17. Consistency with Community Plans			
The proposed action is not consistent with adopted land use plans. (See Part 1. C.1, C.2. and C.3.) If "Yes", answer questions a - h. If "No", go to Section 18.		<input type="checkbox"/> NO	<input type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may cause a change in the density of development that is not	C3, D1c,	<input type="checkbox"/>	<input type="checkbox"/>

supported by existing infrastructure or is distant from existing infrastructure.	D1d, D1f, D1d, E1b		
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>
h. Other: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

18. Consistency with Community Character			
The proposed project is inconsistent with the existing community character. (See Part 1. C.2, C.3, D.2, E.3)		<input type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - g. If "No", proceed to Part 3.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

Not effective until April 1, 2019

Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

Not effective until April 1, 2013

Determination of Significance - Type 1 and Unlisted Actions

SEQR Status: Type 1 Unlisted

Identify portions of EAF completed for this Project: Part 1 Part 2 Part 3

SCRF Autumn Planning Conference - 2012

Upon review of the information recorded on this EAF, as noted, plus this additional support information

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the _____ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.d).

C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action:

Name of Lead Agency:

Name of Responsible Officer in Lead Agency:

Title of Responsible Officer:

Signature of Responsible Officer in Lead Agency:

Date:

Signature of Preparer (if different from Responsible Officer)

Date:

For Further Information:

Contact Person:

Address:

Telephone Number:

E-mail:

For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>



General Session III
Successful Projects, Directors Roundtable



General Session III

Planning and Zoning Case Law

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

PLANNING LEGISLATION & CASELAW UPDATE: Fall 2012

PRESENTER:

Natasha Phillip, Esq.

Table of Contents

Legislation	3
Agriculture and Farm Operations	3
Disclosure of Records Discussed at Open Meetings	3
Green Buildings Real Property Tax Exemption	3
Watershed Protection & Stormwater Planning	4
Waterfront Revitalization of Coastal Areas and Inland Waterways	4
Regulations - State	5
State Environmental Quality Review Act	5
Public Service Law, Article X - Major Electric Generating Facilities Siting	5
Cases (Trial Court)	7
Public Trust Doctrine	7
Development of Mineral Resources	9
Cases (Appellate and High Courts)	11
Residency Requirements	11
Stipulation of Settlement	13
Comprehensive Planning: Procedural Compliance	13
Zoning and Conditions	16
Zoning: Uniformity Requirement	18
Prior Precedent	19
Special Facts Exception	21
Special Use Permit	22
Subdivision	22
Site Plan	23
Endnotes	25

Legislation

Agriculture and Farm Operations

Chapter 120 of 2012 amended the Agriculture and Markets Law (AML), pertaining to agricultural districts and assessment. Specifically, the definition of “viable agricultural land” in AML § 301(7) was revised to mean land highly suitable for “a farm operation”¹, a term already defined in law.² AML § 305(1)(a) is also amended to clarify that the agricultural assessment renewal process requires and includes a certification of continuing eligibility: applicants must now certify that there has been no change in farmland eligibility or acreage following initial grant of agricultural assessment approval.

Disclosure of Records Discussed at Open Meetings

A new Section 103(e) has been added to the Open Meetings Law (Public Officers Law Article 7) for the purpose of requiring public bodies to make records that would be the subject of discussion at open meetings (i.e., proposed and amended resolution, law, rule, regulations) available to the public before or at any such scheduled meeting, to the extent that it is practicable for the public body to do so. The public may request that copies of such records be made, and the public body may charge a reasonable fee for any requested copies. If the public body maintains a regularly and routinely updated website, with high speed internet connection, the records subject to disclosure must be posted there, to the extent that it is practicable for the public body to do so.

The law was signed into law on January 3, 2012 and became effective February 2, 2012.³ For additional information about new Section 103(e), you may contact the Committee on Open Government at (518) 474-2518 or visit its website at <http://www.dos.ny.gov/coog/index.html>.

Green Buildings Real Property Tax Exemption

Chapter 188 of 2012 added new section 470 to the Real Property Tax Law, authorizing a municipal corporation to provide a real property tax exemption for construction or improvements done to real property (excluding ordinary maintenance). To be eligible, such construction or improvements must be made to private property after January 1, 2013, in an amount in excess of

\$10,000, and the improvements or construction must meet green building standards (i.e., those promulgated under the Leadership in Energy and Environmental Design Building Rating System [LEED] or other “substantially equivalent standards” for green building certification, as determined by the municipality under local regulation).

The law was signed into law on July 18, 2012. However, because the legislation did not cap the value of the tax exemption that may be granted by a municipal corporation, a chapter amended will be made to allow each participating municipality to set a maximum value for the tax exemption. Additional information about this new law may be directed to the Department of Taxation and Finance, Office of Real Property Tax Services at (518) 591-5232 or <http://www.tax.ny.gov/about/orpts/who.htm>.

Watershed Protection & Stormwater Planning

Enabling statutes, in New York’s Town, County, and General Municipal Laws, empower governing bodies of towns and counties, and to a limited extent, villages and cities, with the authority to create special improvement districts to provide or improve a number of services, including but not limited to: sewage, drainage, lighting, snow removal, business, and public parking.

Chapter 378 of 2012 amends the Town Law to authorize the establishment of watershed protection improvement districts⁴ for the purpose of adopting plans and specifications and taking actions to foster stormwater treatment, wetland construction or other actions. Passage of Chapter 378 should confer adequate state authority for towns to create special improvement districts to finance the costs associated with Municipal Separate Storm Sewer Systems (MS4s) compliance.⁵

Additional information about these changes may be obtained on the website for the Department of Environmental Conservation at http://www.dec.ny.gov/enb/20120905_not0.html.

Waterfront Revitalization of Coastal Areas and Inland Waterways

Chapter 32, Chapter 133, Chapter 147 of 2012 amended Article 42 of the Executive Law, entitled the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, by adding under section 911(4) the Buffalo River, Allegheny River, the Cattaraugus Creek, and the Canadarago Lake as designated Inland Waterways of the State. As an Inland Waterway, any

town, city, or village of the State which has any portion of its boundaries contiguous to the Buffalo River,⁶ Allegheny River, the Cattaraugus Creek, or Canadarago Lake and which desires to revitalize their waterfronts, may choose to participate in the State's optional "Local Government Waterfront Revitalization Programs for Coastal Areas and Inland Waterways" by submitting a waterfront revitalization program to the Secretary of State as provided under section 915 of Article 42. For additional information about this, please contact the Department's Office of Communities & Waterfronts at <http://www.dos.ny.gov/communitieswaterfronts/contact.html> or at (518) 474-6000.

State Regulations

Environmental Quality Review

Revisions have been made to the State Environmental Quality Review (SEQR) Act implementing regulations set forth in Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR Part 617"). The long and short model environmental assessment forms (EAFs) have been revised and will be effective beginning April 1, 2013 (which is a change to the previously scheduled effective date of October 1, 2012). A Draft EAF Workbook to accompany the revised model short EAF was available for review and comment through October 22, 2012. The proposed Workbook is still accessible at www.nyseaf.net. For additional information about these SEQR changes, please visit the DEC website at http://www.dec.ny.gov/enb/20120905_not0.html.

Article X of Public Service Law

In 2011, the Legislature enacted new Article 10 of the Public Service Law (PSL) to ensure that state and local regulatory certification for the construction and operation of major electric generating facilities would be determined in a unified manner.⁷ PSL Article 10 requires certification proceedings to be conducted expeditiously and generally imposes a 12-month deadline on applicable proceedings. The statute mandates a pre-application consultation process to obtain early input from the public regarding proposed facilities, provides for active public involvement, and establishes requirements for intervenor funding to promote local participation in siting cases. In addition, PSL Article 10 establishes a multi-agency entity called the New York State Board on Electric Generation Siting and the Environment (the Siting Board) to streamline

the permitting process and issue **Certificates of Environmental Compatibility and Public Need** authorizing the construction and operation of major electric generating facilities.

The Statute also empowers the Siting Board to promulgate regulations to implement Article 10. Those new regulations are set forth in new Parts 1000 – 1002 of Subpart A, Chapter X of Title 16 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“16 NYCRR Parts 1000 – 1002”).

Part 1000 contains definitions and sections on adoption of Public Service Commission procedures, public involvement, preapplication procedures, procedures regarding the filing, service and notice of applications, water quality and coastal certification procedures, procedures regarding discovery of additional information, documents and evidence, **the fund to assist municipal and local parties in participating in Article 10 proceedings**, amendment and dismissal of applications, acceptance, amendment, revocation, suspension and transfer of certificates and designation of counsel.

Part 1001 contains sections specifying general application requirements and exhibits concerning overview and public involvement, location of facilities, **land use**, electric system effects, wind, natural gas and nuclear power facilities, electric system production modeling, alternatives, consistency with energy planning objectives, preliminary design drawings, construction, real property, cost of facilities, public health and safety, pollution control facilities, air pollutant emissions, safety and security, noise and vibration, cultural resources, geology, seismology and soils, terrestrial ecology and wetlands, water resources and aquatic ecology, **visual impacts**, effects on transportation and communications, socioeconomic effects, environmental justice, site restoration and decommissioning, **state and local laws and ordinances**, other filings, electric, gas, water, wastewater and telecommunications interconnections, electric and magnetic fields, back-up fuel, and applications to modify or build adjacent to existing facilities.⁸

Part 1002 contains general procedures and requirements regarding compliance filings, reporting and inspection. Detailed information to enable construction to proceed consistent with certificates is required after certificates are granted.

The new Article 10 regulations became effective on August 1, 2012. For additional information about these statutory and regulatory changes, you may wish to visit the Public Service Commission website at <http://www.dps.ny.gov/SitingBoard/>.

Cases (Trial Courts):

Public Trust Doctrine –

Under the Public Trust Doctrine, State legislative approval is required before dedicated parkland can be alienated or used for an extended period for non-park purposes. This doctrine has long been held to apply to parks or recreational areas dedicated by a **municipality**. The New York County Supreme Court in the case of *Brooklyn Heights Association v. N.Y.S. Office of Parks Recreation and Historic Preservation*⁹ now holds that the Public Trust Doctrine is applicable to dedicated state parkland as well.

That case concerned the redevelopment of the Fulton Ferry State Park, located in the New York City Borough of Brooklyn. Two historic structures called the Tobacco Warehouse¹⁰ and the Empire Stores were also located within the State Park, and the NYS Office of Parks Recreation and Historic Preservation (Office of Parks) reportedly obtained \$600,000 from three sources to renovate the Tobacco Warehouse. In 2001, a grant under the federal Land and Water Conservation Fund (LWC Fund) was also awarded for improvements to the Tobacco Warehouse by the Fund's administering agency, the National Park Service, with a proviso that the Office of Parks agree to never alienate or permit private development on said land absent written approval of the U.S. Department of the Interior. The State Park areas to benefit from LWC Funds were also mapped (on a "6(f) Map"), designating such areas as parkland developed or improved with federal taxpayers' money for public use.

About six years following the 6(f) mapping some dispute arose as to whether the mapping was a required condition of the LWC Fund grant or done in error. A National Park Service letter, dated December 12, 2008, agreed that the mapping of the Tobacco Warehouse was done in error and revised the mapping accordingly. Between 2009 and 2010, after a declaration by the then Office of Parks Commissioner that the State Park was no longer necessary or useful to the Office's purposes, the Office of General Services (OGS) issued Letters Patent on July 8, 2010 transferring title to the State Park to Brooklyn Bridge Park Development Corporation for redevelopment.

Federal and state law suits were commenced to stop the transfer of the State Park without compliance with the LWC Fund Act and the Public Trust Doctrine. The federal case of *Brooklyn Heights Association v. National Park Service* was filed in the United States Eastern District

Court of New York. On April 8, 2011 that Court granted plaintiff's motion for a preliminary injunction against the transfer. A July 11, 2011 Order then vacated the National Park Service's decision, which removed the mapping and federal protection from the Tobacco Warehouse more than five years after the LWCF grant had closed on the basis that it was mapped in error; remanded the matter for further NPS administrative proceedings; and dissolved the preliminary injunction. The federal Court found that the National Park Service was acting outside of its legal authority under the LWC Fund Act by stating, among other things, that the evidence which pointed to the absence of any mistake by [the Office of Parks] "in the inclusion of the Tobacco Warehouse and Empire Stores on the 6(f) map 'was so one-sided that [plaintiffs] must prevail as a matter of law'." The federal Court did not resolve the issue of whether New York State common law Public Trust Doctrine was applicable and violated.

The New York State Public Trust Doctrine requires State legislative approval before dedicated parkland can be alienated or used for an extended period for non-park purposes. The New York County Supreme Court in this case of *Brooklyn Heights Association v. N.Y.S. Office of Parks Recreation and Historic Preservation* further explained that a parcel of land may constitute a park either expressly, such as by deed or legislative enactment, or by implication, such as by a continuous use of the parcel as a public park. Such an implied dedication may exist "when a municipality's acts and declaration manifest a present, fixed, and unequivocal intent to dedicate." Once land is dedicated to parkland use "the dedication is irrevocable" absent specific legislative approval.

The state Supreme Court also found that there was undisputed evidence before it demonstrating the Tobacco Warehouse was dedicated parkland. For example, the Court stated the Tobacco Warehouse was used for a period of time before it fell into disrepair as outdoor recreation parkland, and it was part of the State Park. The Court further determined that the Office of Parks' original intent to designate the Tobacco Warehouse for public use was "manifestly unambiguous and thus irrevocable absent specific legislative approval"¹¹.

The Court also made clear that the statutes of limitations period in Civil Practice Laws and Rules section 217(1), which establishes a four-month timeframe within which to file suit to challenge an administrative determination, was inapplicable if a violation of the public trust doctrine is alleged: "A municipality's current and ongoing use of dedicated parkland for nonpark purposes without the approval of the State Legislature in violation of the public trust

doctrine is a continuing wrong that the municipality has the ability to control and abate, citing to *Capruso v. Village of Kings Point*, 78 A.D.3d 877 (2010)".

Development of Mineral Resources –

The Department of Environmental Conservation (DEC) administers New York's Mineral Resources Programs under the State legislative authority in the Environmental Conservation Law (ECL). The oil, gas and solution mining industries are specifically regulated under Title 19 of Article 23 of the ECL, and the extractive mining industry under Title 27 of Article 23. Courts in New York have widely considered the proper construction of Title 27 as it relates to the authority of local governments to regulate land use; in recent months, that body of case law has served as the primary basis of determining the extent of local governments' land use authority under Title 19 of Article 23.¹²

The DEC is presently studying the environmental impacts associated with high-volume hydraulic fracturing (hydrofracking), a process used to extract natural gas and other substances from certain rock formations. In the interim some municipalities have taken actions that have been the subject of litigation. Three cases which have considered the legality of municipal actions under Title 19 of Article 23 will be discussed here:

In *Anschutz Exploration Corporation v. Town of Dryden*,¹³ the Town of Dryden amended its zoning regulations to ban all activities related to the "exploration for, and production or storage of, natural gas and petroleum." The Petitioner, which owns gas leases covering approximately 22,200 acres in the Town and had invested some \$5.1 million in activities within the Town, challenged the Town's zoning regulations as preempted under Title 19 of Article 23.

The Court held that in the absence of a clear expression of legislative intent to preempt local control over land use, no Title 19 provision could be read as preempting local zoning authority. In addition to consideration of legislative intent and history, the Court based its decision on the absence of clear expression of preemption in Title 19 of ECL Article 23. According to the Court, when zoning was preempted pursuant to other state statutes such as ECL Article 27, Title 11, which governs the location of industrial hazardous waste facilities, and, the Mental Hygiene Law § 41.34, which governs the location of community residential facilities, included in the statutory text were specific language and clear expression of preemption.

In the next case of *Cooperstown Holstein Corporation v. Town of Middlefield*¹⁴ the Plaintiff sought court judgment declaring the invalidity of Town of Middlefield's zoning law pertaining to gas, oil, or solution drilling or mining and the ban on the same within the Town of Middlefield. Although the Plaintiff argued that the Town's zoning law as preempted under Title 19 of Article 23, the court held that Town's authority to zone as it did was not preempted.

The Court reached its decision after a review of the history, purpose and intent of Title 19. According to the Court, the Legislature enacted Title 19 to authorize one agency, the DEC, to establish state-wide standards as it relates to the manner and method to be employed in oil, gas and solution drilling or mining industries, and to ensure proper state-wide oversight and uniformity with a view towards maximizing utilization of this particular resource while minimizing waste. The court then determined that the state's interests may be harmonized with the home rule of local municipalities when exercising their land use authority to locate where oil, gas and solution drilling or mining operations may occur. In sum, the Court determined that, while the state maintains control over the "how" of such procedures, municipalities maintain control over the "where" such exploration may occur.

The case of *Jeffrey v. Ryan*,¹⁵ decided by the Broome County Supreme Court, invalidated Local Law 11-006 adopted by the City of Binghamton on December 2011. Because the Local Law contained an express condition that its ban on activities related to gas drilling and exploration would expire within 24 months after enactment (on December 2013), unless sooner repealed, the Supreme Court declared the Local Law to be a moratorium, stating that the City of Binghamton effectively placed a two-year time limit on hydraulic fracturing. The local law was then invalidated for failure of the City to meet the requirements of a properly enacted moratorium.

The City argued that Local Law 11-006 was not a zoning law, but rather a regulation adopted pursuant to its police powers to guard against a "dire emergency", and, as such, it did not need to comply with procedural rules applicable to zoning regulations. In rejecting the City's arguments, the Court stated that for the enactment of a police power moratorium to be upheld, the municipality must show its actions were taken:

- 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".¹⁶

The Court next invalidated the City’s Local Law based primarily on the following grounds:

- 1) Failure to provide any evidentiary proof that would provide a justification, based upon the health and safety of the community, for the banning of gas exploration, storage and extraction in the City.
- 2) No explanation was provided on how, if the activities that are banned by Local Law are such a grave threat, that threat will suddenly no longer exist in December 2013 when the law was set to expire.
- 3) The two year “sunset” rendered the City’s claims that the local 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 the City 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.”
- 4) 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 DEC 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.

Cases (Appellate and High Courts):

Residency Requirements—

Public Officers Law §3 (and specific sections of other statutes) require that a person appointed to a local office reside within the locality at the time of their appointment and during their tenure in office. The case of *Ricket v. Mahan*,¹⁷ relates to the Town of Colonie Town Board’s appointment of a nonresident to the Office of Commissioner of Public Works (CPW).

In 2011, the Colonie Town Board passed a local law to appoint a certain nonresident of the Town to a two-year term as CPW. Petitioner, a resident of the Town, initiated a proceeding seeking invalidation of the appointment on the grounds that the Town’s chosen CPW was neither a Town resident nor did he possess the qualifications for the position as established by the Town Board. After the Supreme Court’s dismissed the case, the Third Department reversed, finding

that the relevant local law, as enacted, did not supersede Public Officers Law §3 or Town Law §23.¹⁸ By so doing, the Third Department held that **a person appointed in a Town to the Office of CPW must be a town resident.**

Thereafter, the Colonie Town Board adopted Local Law No. 15 (2011) to provide that the CPW need not be a resident of the Town, but “shall be a resident of the County of Albany” and “no specific license or education is required” for one to hold that position. Using the authority of Local Law No. 15 the Town Board appointed the same nonresident to the office of CPW. Petitioner filed another court proceeding seeking, among other things, annulment of Local Law No. 15 and annulment of the CPW appointment. The Supreme Court found that the Town Board acted within its authority in enacting Local Law No. 15 and in appointing a nonresident to the position of CPW. The Third Department affirmed.

On the issue of residency the Third Department restated the rule governing supersession of state statutes:

A local government “shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government”.¹⁹ The Municipal Home Rule Law defines a “general law” as a “state statute which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages”.²⁰ A “special law” is also defined there as one that “in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages”.²¹ Unlike general laws, there is no requirement that a local law be consistent with a special law and may, in a given circumstance, supersede a special law.²²

The Court further explained that the Legislature has grafted numerous exceptions onto the residency requirement set forth in the Public Officers Law and the Town Law for the purpose of exempting various local offices serving different municipalities from the requirement that the office holder be a resident of the municipality.²³ In relation to each exemption crafted in each statute, in terms of the residency requirement, the statute becomes a special law which can, in a given circumstance, be superseded by a local law enactment.²⁴ In addition, since the Legislature did not further prohibit the Town from superseding the exemptions in these statutes, Local Law No. 15 as adopted by the Colonie Town Board was not passed in violation of law.

Stipulation of Settlement

A so-ordered stipulation partly resolved the case of *Duchmann v. Town of Hamburg*.²⁵ In that case, the Petitioners and certain billboard advertisers executed a perpetual easement that granted the advertisers the “right to service, maintain, improve or replace any outdoor advertising structure” on Petitioner’s property. In 2004, a federal court order and settlement between the Town of Hamburg and the billboard advertisers permitted the placement of up to two billboards measured 14 feet by 48 feet on Petitioners property. In 2010, the billboard advertisers applied to the Town for a permit to convert part of the billboard to a digital display screen. The Petitioners challenged the Town’s 2010 permit grant and asserted several objections, including that they did not consent to the modification, and the billboards exceeded the dimensional requirements set forth in the Town Code.

The Appellate Division affirmed the Supreme Court, which upheld the zoning board of appeals grant of the 2010 permit. The Appellate Court stated that it was not arbitrary and capricious for the zoning board of appeals to conclude that the terms of the perpetual easement executed between the billboard advertisers and the Petitioners provided the necessary written consent of the Petitioners. The Court also stated that the 2004 federal court order and settlement was controlling with respect to whether the billboard at issue could be erected and what its dimensions could be, reasoning that stipulations of settlement are judicially favored and may not be lightly set aside.

Comprehensive Planning: Procedural Compliance —

The procedures to be followed by a special board appointed to develop a comprehensive plan are not advisory, and must be followed as set forth in state statute. Section 272-a (4) of the Town Law, General City Law § 28-a (5), and Village Law § 7-722(4) provide that a special board directed by the respective municipal governing board to prepare a comprehensive plan must make recommendations to the governing board by resolution. The statutes also require any board that prepares a comprehensive plan to hold a public hearing upon (at least) 10 days notice of such hearing published in a newspaper of general circulation in the municipality.²⁶ During that ten days within which notice of hearing is given to the public, the proposed comprehensive plan must be made available for public review at the municipal clerk’s office, as well as at any

other public place like a public library. In the case of *Troy Sand & Gravel Co v. Town of Nassau*,²⁷ the Appellate Division, Third Department, nullified a comprehensive plan adopted by the Town Board of Nassau, because the special board the Nassau Town Board directed to prepare the Town's comprehensive plan, failed to follow these preparation and public hearing procedures during development of the comprehensive plan.

The Court in *Bergami v. Town Bd. of Town of Rotterdam*²⁸ also invalidated a rezoning done pursuant to a comprehensive plan for failure of the Rotterdam Town Board to follow required procedures—those of the State Environmental Quality Review Act. The Court did not agree, however, with the Petitioner's claim that, during the rezoning process, the Town of Rotterdam engaged in "spot zoning", which occurs when municipal land use policies and changes are made to affect land of only a few without proper concern for the needs or design of the entire community.

The Town Board of Rotterdam, in the *Bergami* case, adopted in 2001 a Comprehensive Plan to include a rezoning of property owned by some of the respondents, including Aladin Properties, LLC (hereinafter collectively referred to as Aladin); the properties were also examined in a 2004 study of area around Exit 25A of the NYS Thruway (hereinafter the Exit 25A Study). The map for the 2004 Exit 25A Study indicated that the land use zoning classifications relative to the Aladin properties would be changed from industrial to professional office residential (hereinafter POR). In 2009, the Rotterdam Town Board amended the Comprehensive Plan to incorporate the Exit 25A Study change for the purpose of, among other things, rezoning the subject property from agricultural to either industrial or light industrial. However, the property remained zoned as agricultural, because the Town Board never took further legislative action to effectuate the rezoning.

In March 2009, Aladin applied to the Town Board for a change of zoning for the subject properties to B-2, a general business zone (the least restrictive of the available business zones in the Town's zoning code). After public hearings before the Town's planning board, in March 2010, the Town Board by resolutions issued a negative declaration of environmental impact pursuant to the State Environmental Quality Review Act and approved the B-2 rezoning requested by Aladin. Petitioners challenged the Town Board actions in court.

The Supreme Court determined not to invalidate the rezoning, and the Appellate Division, Third Department upheld that decision based on two main reasons. First, after

exhaustive study, the 2001 Comprehensive Plan incorporated the results of the Exit 25A study, which identified the area studies as appropriate for commercial and industrial growth and designated that area for future industrial growth. Secondly, the Aladin's properties are located on Route 7, within 500 feet off the on-ramps of an interstate highway at its intersection with the NYS Thruway, directly across from property zoned B-2—containing a truck stop and fast-food restaurants—and surrounded on three sides by business and commercial zones. Although the fourth side adjacent to the Aladin's properties is zoned for agricultural use and includes single family residential parcels, the Court was not persuaded that the Town engaged in spot zoning by impermissibly singling out a small parcel of land for a use classification totally different from that of the surrounding area. According to the Court, the mere fact that the Exit 25A map proposed that the subject properties be zoned POR, but instead rezoned them B-2, does not render the Town Board's determination inconsistent with the overall scheme as evidenced in the amended Comprehensive Plan

Held: The rezoning of the subject property was consistent with the overall land use policies and development plans as enunciated in the comprehensive plan and was adopted for the legitimate governmental purpose of benefitting the community as a whole through economic development.

The *Bergami* Court did however invalidate the rezoning based upon the Rotterdam Town Board's failure to comply with the substantive requirements of SEQRA. According to the Court, the Town Board did not identify the relevant areas of environmental concern, take a hard look at them and make a reasoned elaboration of the basis for its SEQRA determination.²⁹ More specifically, the **notice of determination of no adverse environmental significance** issued by the Town:

1) Did not follow SEQRA regulations set forth in 6 NYCRR 617.7(c): the criteria for determining environmental significance. Although the notice of determination identified relevant areas of environmental concern, it did not make an actual assessment of the potential impact of the proposed zoning changes as it should have. The Town Board completely deferred any consideration of criteria set forth in 6 NYCRR 617.7(c) until the submission of an actual proposed site plan.³⁰

2) Relied extensively on a letter provided to the Town Board by Aladin's engineer;

3) While it referenced (among other things) the Exit 25A study, that study did not comprehensively address the potential environmental issues specifically related to the effects of a B-2 zoning designation of the subject property (i.e., no indication in the record about Petitioners' concerns regarding the potential loss of a "buffer zone" between their residential properties and the commercial and industrial zones along Route 7);

4) It did not identify significant noise or visual impacts resulting from the requested rezoning, even though the Exit 25A study indicated that the traffic generated in a B-2 zone would make it one of the most traveled zones.

5) Despite a general statement in the notice of determination that Aladin's application information was transmitted to all involved agencies and that comments and concerns from those agencies had been addressed, there is no evidence in the record of what those comments and concerns entailed or how they were addressed.

Zoning and Conditions

Generally, zoning provisions, and conditions imposed pursuant thereto, must relate to the property without regard to the person who owns or occupies it.³¹

In *Mead Square Commons, LLC v. Village of Victor*,³² the Plaintiff wanted to lease commercial space within the Village of Victor's Central Business District (CBD) to operate a Subway restaurant. The zoning regulations for that district prohibited the operation of a "formula fast-food restaurant" (FFFR) and defined a FFFR as any establishment required by contract, franchise or other arrangements to offer two or more of the following: (1) Standardized menus, ingredients, food preparation, and/or uniforms; (2) Prepared food in ready-to-consume state; (3) Food sold over the counter in disposable containers and wrappers; (4) Food selected from a limited menu; (5) Food sold for immediate consumption on or off premises; and (6) Where customer pays before eating. The stated purposes for the FFFR provision in the zoning regulations were to maintain the unique village character, the vitality of its commercial districts, and the quality of life of its residents.

The Plaintiff challenged the FFFR provision as unconstitutional, arguing that the provision "is based solely upon the ownership or control of the restaurant owner and not upon the characteristics of the use itself"; and that the provision "excessively regulates the details" of its business operation. The Supreme Court dismissed the court challenge.

On appeal, the Appellate Division, Fourth Department declared the Village zoning provision valid and enforceable. The court noted that the challenged provision or condition does not single out a particular property owner for favorable or unfavorable treatment. There was also no suggestion that the site would revert back to its former classification if a specific corporation did not develop the property, as the Court noted was the case in *Matter of Dexter v. Town Bd. of Town of Gate*.³³ All property owners in the Central Business District, the court further explained are treated the same under the Village's zoning inasmuch as all property owners are prohibited from operating a FFR.

In another case, *Kempisty v. Town of Geddes*,³⁴ conditions imposed on an amended site plan application by the Town of Geddes Town Board were annulled as arbitrary and capricious by the Appellate Division, Fourth Department. The Petitioners in that case were owners of two contiguous parcels of property zoned as "Commercial C: Heavy Commercial District", one parcel was developed and contained various family businesses including a motor vehicle dealership and an automotive repair business, and the second parcel was vacant and undeveloped.

Under the Town Code, uses in a Commercial C zoning district were permitted after site plan review. Because the developed property was used for motor vehicle sales and other services prior to adoption of the then applicable Town Code, the activities conducted were presumably not subject to site plan review. Thus, the Petitioners submitted a site plan review application in order to establish a vehicle and equipment sales and repair facility on the undeveloped property. While review was ongoing however, the Town Board concluded that the site plan review process should include the developed property as well.

The Town Board forwarded the site plan application to the Town Planning Board for review and recommendation. The Planning Board voted to recommend approval, subject to four conditions, and the Town Board subsequently passed a resolution approving the amended site plan subject to 12 conditions. The Petitioners objected, challenging the Town's decisions in court on the basis that the developed parcel was grandfathered and should not be subject to site plan review.

The Supreme Court disagreed, and the Appellate Division affirmed for two reasons: 1) The Town Code required for any expansion or enlargement of a nonconforming use to be done in conformity with applicable zoning provisions; 2) the Petitioners acknowledged the undeveloped

property was purchased in order to expand the motor vehicle sales and repair operation. For these reasons, the Town Board and the Town Planning Board did not abuse their discretion in requiring Petitioners to include both properties in their amended site plan review application.

On the other hand, the Court determined that the Town Board abused its discretion when it imposed six of the 12 conditions, which essentially required the Petitioners to comply with certain special use permit standards, even though uses in a Commercial C zoning district was only subject to site plan review and approval. The Court found it apparent from the record that the long history between the Town Board and the Petitioners regarding the developed property was the real reason the Town Board imposed the six conditions it invalidated. Such conditions, according to the Court, ran afoul to the fundamental principle that conditions imposed on the approval of a site plan must relate only to the use of the property without regard to the person who owns and occupies that property.

Zoning: Uniformity Requirement

New York zoning statutes require local zoning regulations to be “uniform for each class or kind of buildings throughout each district”.³⁵ In *Tupper v. City of Syracuse*,³⁶ the Appellate Division, Fourth Department, invalidated two ordinances holding that they violated the uniformity requirements of General City Law Section 20(24). The two ordinances imposed parking requirements for one and two-family residences that were owned by absentee owners. Such properties were required to have one off-street parking space for each potential bedroom; properties of absentee-owners held or acquired before passage of the ordinances were exempt, but would be required to meet the new requirements if any “material changes” were made.

The Court stated that the uniformity provisions in the Planning and Zoning Enabling Laws are intended to protect against local legislative overreaching by requiring zoning regulations to be passed without reference to the particular owners. The distinction made in the ordinances treated buildings within the same class differently based solely on the status of the property owner (i.e., absentee property owners as opposed to owners who occupy the property). Such a distinction, according to the Court, in other contexts may be constitutionally valid, “but is invalid under the uniformity requirements of the General City Law and City of Syracuse Charter.”

The next ground for invalidation of the two ordinances was that they violated Section 35

of the Second Class City Law, which requires in part that no ordinance may be passed by the common council on the same day in which it is introduced, except by “unanimous consent.”³⁷ The Court stated that the requirement for unanimous consent can have one of two meanings: (1) that the common council must consent to the merits of the ordinance, or (2) consent to the procedure for taking the vote on the same date on which the ordinances were introduced. Because it was undisputed that three of the nine council members voted “nay” to the ordinances, the Court held that the requirement of “unanimous consent” under any interpretation of Section 35 was not met. Accordingly, the City of Syracuse ordinances were invalidated.

Prior Precedent

Local zoning boards of appeals have broad discretion in considering applications for variances, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion. In determining whether to grant an application for an area variance, a zoning board must weigh the benefit to the applicant against the detriment to the health, safety, and welfare of the neighborhood or community if the variance is granted. This inquiry includes statutory considerations of: (1) whether the granting of the area variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties; (2) whether the benefit sought by the applicant can be achieved by some method, feasible to the applicant, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the granting of the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created.

The case of *Davydov v. Mammina*³⁸ reaffirmed the principle that a Zoning Board of Appeals is “entitled to consider the effect its decision would have as precedent”, citing to *Genser v. Board of Zoning and Appeals of Town of North Hempstead*.³⁹ In addition, a determination of an administrative agency, which neither adheres to its prior precedent nor sets forth its reasons for reaching a different result on essentially the same facts, is arbitrary and capricious. According to the *Davydov* Court the hearing evidence established that the prior variances were granted by the Board under circumstances not substantially similar to those of the instant case. Therefore, the decisions in those prior cases did not constitute precedent from which the ZBA was required to explain its departure.

In *Hamptons, LLC d/b/a The Maidstone and Lexington Lounge, LLC v. Zoning Board of Appeals of Incorporated Village of East Hampton*,⁴⁰ the Petitioners (the Hamptons), who operate an historic restaurant and inn as a nonconforming use in a residential district in the Village of East Hampton, claimed that the Village Zoning Board of Appeals (ZBA) and the Village Design Review Board challenges certain conditions imposed by the Boards as invalid.

On August 3, 2009, the Hamptons filed applications for special use permit and site plan review with the ZBA and the Design Review Board, as required under the Village Code. On August 19, 2009, a preliminary hearing before the Design Review Board was conducted and adjourned until September 16, 2009 for submissions of seating plans and additional material by the Hamptons. A September 11, 2009 hearing before the ZBA was twice adjourned, first until September 25, 2009 and then until October 9, 2009.

On October 1, 2009, the Board of Trustees of the Village of East Hampton adopted Local Law No. 10 which amended the Village Zoning Code to prohibit the introduction of outdoor dining as an accessory use in a commercial establishment located in a residential district. Local Law No. 10 also limited the authority of the ZBA and the Design Review Board to approve outdoor dining (such as proposed by the Hamptons) in all residential district on lots used for a pre-existing nonconforming or special permit use. For reasons that weren't made clear, on October 16, 2009 the Board of Trustees adopted a resolution ratifying and re-enacting the Local Law No. 10. Thereafter, the Hamptons' special use permit and site plan review applications before the ZBA and the Design Review Board (Village actors) were discontinued.

Previously, in June 2008, a special permit similar to that applied for by the Hamptons had been issued by the Village to another historic inn known as "1776", which is situated on the same street and in the same residential district as the Hamptons.

After commencing a CPLR Article 78 proceeding to compel the Village actors to schedule a hearing and grant the special use permit, the Supreme Court granted the Hamptons' petition on December 9, 2010 and directed the Village actors to issue the special use permit subject to reasonable conditions consistent with its June 2008 decision relative to 1776. In April 2011, the Hamptons was granted permission to provide outdoor dining subject to compliance with several conditions. Here, the Hamptons challenge several of these conditions as a departure from prior precedent. The challenged conditions include:

- Condition # 2 required chairs and tables be clustered, which Petitioners argued would be in a confined space and cause unreasonably hazardous conditions for patrons and staff.
- Condition #3 required construction of double 6-foot high fencing with sound baffling materials and additional five foot vegetative screening, which the Petitioners argue would be unnecessary and damaging to the premises.

The Hamptons also argued that neither of the above conditions was imposed by the Village actors when issuing the special permit to 1776 and therefore such conditions violate the Court’s prior Judgment. In declaring the conditions null and void the court restated 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.”⁴¹

Special Facts Exception

The substantive facts in the Hamptons case were also the basis for litigation in *Hamptons v. Rickenbach*,⁴² where the Appellate Division, Second Department, upheld the Supreme Court’s determination that the special facts exception applied. Under the special facts exception, a court should apply the zoning provisions in effect at the time the court renders its decision unless there are special facts. In addition, the special facts exception may be applied by a court if the municipality unduly delayed proceedings and acted in bad faith.

According to the Appellate Court, the record reflected that the Hamptons submitted a special use permit application to allow them to offer outdoor dining at the historic inn and restaurant under the law that existed when they applied for such permit. However, the Board of Trustees of the Village of East Hampton **hastily** adopted Local Law No. 10 on October 1, 2009 to amend the Village Zoning Code to prohibit the introduction of outdoor dining as an accessory use in a commercial establishment located in a residential district. Local Law No. 10, the Court further stated, was specifically intended to defeat the Hamptons’ entitlement to the special use permit.

The Court rejected the Village’s assertion that the Hamptons was not entitled to a special use permit as a matter of right by explaining certain features of the special use permit land use

tool (also called a conditional use permit). The Court first underscored that a special use permit is not a variance, “as it does not involve varying the restrictions otherwise imposed by a zoning ordinance but, rather, involves adherence to a zoning ordinance.” The Court continued to say that while the power to grant variances is to be exercised sparingly (e.g., use variances), the issuance of a special use permit is a duty imposed upon a zoning board, “provided all of the standards provided in the ordinance are met.” Finally, the Court restated an explanation provided by the Appellate Division, Third Department about special use permits: “where an applicant has met the standards impose by an ordinance the board is obligated to issue a special use permit”.⁴³

Special Use Permit

Town Law § 274-b(9)⁴⁴ imposes a 30-day statutes of limitations period within which a person aggrieved by a decision of the local body authorized to review a special use permit application may file a Civil Practice Law and Rules (CPLR) Article 78 Proceeding with the Supreme Court. In the two cases of *Royal Management, Inc v. Town of West Seneca*,⁴⁵ and *Young Development, Inc. v. Town of West Seneca*,⁴⁶ where the Town Board retained the authority to review and approve special use permits, it was held that the four-month statutes of limitations period in Civil Practice Laws and Rule § 217 rather than the 30-day period in Town Law § 274-b(9) applies when an aggrieved person seeks judicial review of the governing board’s special use permit decision.

Subdivision

A planning board may not modify a preliminary plat and then disapprove of the layout of a final plat that conforms to the modifications prescribed by the board. In addition, absent new information, a subsequent modification or rejection of a preliminarily approved subdivision layout is an arbitrary and capricious act subject to invalidation.⁴⁷

In *Town of Amherst v. Rockingham Estates*,⁴⁸ Plaintiff commenced a court action for a judgment declaring that the final plat filed by Rockingham Estates, LLC (defendant) in the Erie County Clerk’s Office was null and void. The Supreme Court denied Plaintiff that relief and the Appellate Division, Fourth Department reversed.

According to the Fourth Department, the Plaintiff established—and defendant did not

dispute—that the preliminary plat submitted by defendant and approved by the Town of Amherst Planning Board (Planning Board) included a public sanitary sewer easement. The final plat, however, described the sewer easement as private, rather than public. The Town’s regulations, together with Town Law § 276(4)(b) and (d), which define a preliminary and final plat, support Plaintiff’s contention that a final plat should differ from the preliminary plat, if at all, only by any modifications that were required by the Planning Board at the time of approval of the preliminary plat. Additionally, the Town’s own regulations provided that “[t]he final plat shall conform to the layout shown on the approved preliminary plat plus any recommendations made by the Planning Board.”

In this case, since the final plat did not conform with the preliminary plat—as the material submitted with the preliminary plat depicted a public easement but the final plat depicted a private easement, despite the absence of any Planning Board requirement for such a modification, the Fourth Department held that that the Planning Board approved the final plat in error and as such the final plat must be rescinded.⁴⁹

Site Plan

In *Greencove Associates v. Town Board of North Hempstead*,⁵⁰ a 1999 site plan application approved expansion of a commercial shopping center and imposed certain conditions, such as improvements to a landscaped buffer. (The shopping center was constructed on a parcel of property under a **1979 zoning change** that **conditioned the maintenance of a landscaped buffer** along the area adjacent to a residential neighborhood, which borders Town Path Road.)

In 2010, another site plan application proposed expansion of the shopping center to 10,000 square feet, in the area of the landscaped buffer. Under the 2010 application, it was proposed that the existing landscaped buffer, which measured 22 feet in width, would be reduced by four or five feet in width. The 2010 application was referred to the Nassau County Planning Commission pursuant General Municipal Law § 239-m, and it was recommended that the structure be reduced from 10,000 to 6,800 square feet, allowing the landscaped buffer width of 22 feet to be maintained. The Town Board granted approval to the 2010 site plan application with the modification proposed by the Planning Commission. The owner of the shopping center challenged the condition requiring the 22-foot landscaped buffer be maintained.

The Court found that the Town Board had authority to impose the condition, as it was a reasonable means of assuring that the existing landscaped buffer – which was designed to screen the adjacent residential neighborhood from the effects of the shopping center – would be preserved. The Court further noted that, although the 10,000 foot structure would be dimensionally compliant with the Town Code, the structure could not be constructed without encroaching on the existing buffer.

Endnotes

¹ The former AML § 301(7) defined “viable agricultural land” as “... land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of non-agricultural development.”

² AML § 301(11) defines “farm operation” as: “the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of this section, a “timber operation” as defined in subdivision fourteen of this section, “compost, mulch or other biomass crops” as defined in subdivision sixteen of this section and “commercial equine operation” as defined in subdivision seventeen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.”

³ Chapter 603 of the Laws of 2011, enacted January 3, 2012 and effective February 2, 2012.

⁴ Special improvement districts can be created by a municipality to provide the residents of a defined area with a variety of municipal improvements and services narrowly tailored to meet their particular needs. Improvement districts are departments of municipal governments, not independent corporate entities.

Belinson v. Sewer Dist. No. 16 of the Town of Amherst, 65 A.D.2d 912, 410 N.Y.S.2d 469 (1978).

⁵ The MS4 program has a mix of requirements that comprise the six minimum control measures. There are requirements for municipalities to construct and maintain compliant drainage facilities (Construction Site Stormwater Runoff Control for municipal facilities; Post-Construction Stormwater Management for facilities dedicated to the municipality; and Pollution Prevention/Good Housekeeping for Municipal Facilities). There are requirements for municipalities to exercise regulatory authority over entities within their jurisdictions (Stormwater Runoff Control for non-municipal facilities; Post-Construction Stormwater Management for nonmunicipal facilities; and Illicit Discharge Detection and Elimination). Finally, there are administrative and program development requirements (Public Outreach and Education on Stormwater Impacts and Public Involvement/Participation). In addition, as part of this last category, the municipality must pay for the costs of developing a complying program and reporting to the NYS Department of Environmental Conservation.

⁶ See, <http://www.epa.gov/glnpo/aoc/buffalo.html>, stating that the Buffalo River “flows from the east and discharges into Lake Erie near the head of the Niagara River. The Buffalo River Area of Concern “impact area” extends from the mouth of the Buffalo River to the farthest point upstream at which the backwater condition exists during Lake Erie’s highest monthly average lake level. The impact area is 6.2 miles (10 km) in length. The AOC also includes the entire 1.4-mile (2.3 km) stretch of the City Ship Canal, located adjacent to the river. The AOC impact area is characterized by historically heavy industrial development in the midst of a large municipality. There are three major streams in the watershed that create the AOC “source area”: Cayuga Creek, Buffalo Creek and Cazenovia Creek. Land use in the tributary watersheds primarily consists of residential communities, farmland, wooded areas and parks interspersed with commercial land use. The total drainage area for the Buffalo River watershed is approximately 440 square miles.”

⁷ Chapter 388 of 2011, entitled the Power New York Act of 2011, established a process for the siting of electric generating facilities and repowering projects by enacting a new Article 10 of the Public Service Law (PSL) and making other statutory changes.

Major electric generating facility is defined as any such facility with generating capacity of 25,000 kilowatts or more, including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under PSL Article 7.

⁸ The goal of Part 1001 is to require enough information in applications to allow the board to make the findings and determinations required by PSL Section 168, recognizing that additional information will be provided as the record

of the certification proceeding is developed and also that final construction-type details are unnecessary and costly to provide until after generating facilities are authorized.

⁹ Sup. Ct., N.Y. County, Index No. 1120/11.

¹⁰ The Tobacco Warehouse, situated immediately north of the Brooklyn Bridge, was built in 1860 as a center for tobacco storage and customs inspection. It was placed on the United States National Register of Historic Places in June 1974, and was included in the Fulton Ferry Historic District by the New York City Landmarks Preservation Commission in 1977.

¹¹ Citing to Powell v. City of New York, 85 A.D.3d 429 (2011).

¹²The 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.

¹³ 35 Misc.3d 450 (Sup. Ct. Tompkins County February 21, 2012).

¹⁴ 35 Misc.3d 767 (Sup. Ct. Otsego County February 24, 2012).

¹⁵ 37 Misc.3d 1204(A), 2012 WL 4513348 (Table) (N.Y.Sup. October 2, 2012).

¹⁶ Citing to, Land Use Moratoria, James A Coon Local Government Technical Series, New York State Department of State.

¹⁷ 97 A.D.3d 1062 (3d Dept. 2012); see also, 82 A.D.3d 1565 (3d Dept. 2011).

¹⁸ Public Officers Law § 3(1), as relevant here, provides that an individual may not hold a local civil office who is not “a resident of the political subdivision or municipal corporation of the state for which he (or she) shall be chosen, or within which the electors electing him (or her) reside, or within which his (or her) official functions are required to be exercised.” Similarly, Town Law § 23(1) requires that every town officer “at the time of his (or her) appointment and throughout his (or her) term of office shall be an elector of the town.” “An elector of a town is an individual who may register as a voter therein regardless of whether that person has actually registered” (citing to, Matter of Ricket v. Mahan, 919 N.Y.S.2d 588).

¹⁹ Municipal Home Rule Law § 10; see Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 429 (1989); Matter of Zorn v. Howe, 276 A.D.2d 51, 54–55 (2000).

²⁰ Municipal Home Rule Law § 2(5).

²¹ Municipal Home Rule Law § 2(12).

²² Matter of Gizzo v. Town of Mamaroneck, 36 A.D.3d 162, 165 (2006), lv. denied 8 N.Y.3d 806 (2007); see also Landmark Colony at Oyster Bay v. Board of Supervisors of County of Nassau, 113 A.D.2d 741, 743 (1985).

²³ See, e.g., Public Officers Law § 3(11)-(58); Town Law § 23(2)-(24)).

²⁴ Public Officers Law § 3 (43 (as added by L. 1998, ch. 273)); Town Law § 23(2); Municipal Home Rule Law § 10(1)(i), (ii)(a)(1)).

²⁵ 90 A.D.3d 1642 (4th Dept. December 30, 2011).

²⁶ See, Town Law § 272-a (6)(c); General City Law § 28-a (7)(c); Village Law § 7-722(6)(c).

²⁷ 82 A.D.3d 1377 (3d Dept. 2011), 82 A.D.3d 1377 (3d Dept. 2011), affirming, 18 Misc.3d 1130(A) (Rensselaer County Sup. Ct. 2008)(upholding most of the special use permit/site plan review provisions in Town of Nassau Local Law 2 for 1986 regulates property use rather than mining acting, and as such is not preempted by the Mined Land Recreation Law [Environmental Conservation Law Article 27], but invalidating the “Additional Specific Standards” applicable to special use permit applications for commercial mining as preempted by the MLRL; holding that Troy Sand and Gravel needed to exhaust available administrative remedies before challenging a stop work order issued under the general special use permit/ site plan approval provisions in Local law 2 for 1986); 80 A.D.3d 199 (3d Dept. 2010, December 16) (granting motion to quash Troy Sand and Gravel subpoena duces tecum and ad testificandum issued to Katherine Bader, a Town of Nassau resident over whose land the Town allegedly passed to reach the quarry).

²⁸ 97 A.D.3d 1018 (3d Dept. July 19, 2012).

²⁹ “As a matter of environmental law, rezoning is an ‘action’ subject to SEQRA”. “Furthermore, in determining whether a given action ‘may’ have a significant effect on the environment, the agency should consider reasonably related effects of the action, including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon”.

³⁰ Matter of Defreestville Area Neighborhoods Assn. v. Town Bd. of Town of N. Greenbush, 750 N.Y.S.2d 164 (2002)), where failure of a governing board to take the requisite hard look at the environmental impacts of development of the subject property for commercial use mandates annulment of the negative declaration and the resolution that rezoned the property; see also, 6 NYCRR 617.3(a).

³¹ Matter of Dexter v. Town Bd. of Town of Gates, 36 N.Y.2d 102 (1975); see also, St. Onge v. Donovan, 71 N.Y.2d 507 (1988), where the Court of Appeals made clear that a municipal administrative entity, where appropriate, may impose reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impacts to an area that might result from the grant of a variance of special permit. Such conditions might properly relation to “fences, safety devices, landscaping, screening and access roads relating to period of use, screening, outdoor lighting and noises, and enclosure of buildings and relating to emission of odors, dust, smoke, refuse matter, vibration noise and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area”.

³² 97 A.D.3d 1162 (4th Dept. July 6, 2012).

³³ 36 N.Y.2d 102 (1975).

³⁴ 93 A.D.3d 1167 (4th Dept. March 16, 2012).

³⁵ General City Law § 20(24); Town Law § 262; Village Law § 7-702.

³⁶ 93 A.D.3d 1277 (4th Dept. March 23, 2012).

³⁷ Cities having a population ranging from 50,000 to 250,000 are classified as second class cities and each are generally governed under, individual city charters, and the Second Class Cities Law.

³⁸ 97 A.D.3d 678 (2d Dept. July 11, 2012).

³⁹ 65 A.D.3d 1144 (2d Dept. 2009).

⁴⁰ 98 A.D.3d 738 (2d Dept. August 29, 2012).

⁴¹ See, Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 93, 735 N.Y.S.2d 873, 761 N.E.2d 565 (2001), quoting Knight v. Amelkin, 68 N.Y.2d 975, 977, 510 N.Y.S.2d 550, 503 N.E.2d 106 (1986); see also Matter of Campo Grandchildren Trust v. Colson, 39 A.D.3d 746, 834 N.Y.S.2d 295 (2007); see Matter of Campo Grandchildren Trust v. Colson, 39 A.D.3d at 747, 834 N.Y.S.2d 295; Matter of Corona Realty Holdings, LLC v. Town of N. Hempstead, 32 A.D.3d 393, 395, 820 N.Y.S.2d 102 (2006).

⁴² 98 A.D.3d 736 (2d Dept. August 29, 2012).

⁴³ Citing to Matter of McDonald v. City of Ogdensburg Zoning Board of Appeals, 101 A.D.2d 900 (3d Dept. 1984)

⁴⁴ Similar provisions in General City Law § 27-b(9); Village Law § 7-725-b(9).

⁴⁵ 93 A.D.3d 1338 (4th Dept., March 23, 2012).

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

⁴⁷ Matter of Long Is. Pine Barrens Socy. v. Planning Bd. of Town of Brookhaven, 78 N.Y.2d 608, 612, 578 N.Y.S.2d 466, 585 N.E.2d 778, quoting Matter of Sun Beach Real Estate Dev. Corp. v. Anderson, 98 A.D.2d 367, 373, 469 N.Y.S.2d 964, *affd.* 62 N.Y.2d 965, 479 N.Y.S.2d 341, 468 N.E.2d 296.

⁴⁸ 98 A.D.3d 1241, 2012 N.Y. Slip Op. 06406 (4th Dept. September 28, 2012).

⁴⁹ see Matter of Reiss v. Keator, 150 A.D.2d 939, 941–942, 541 N.Y.S.2d 864; see generally Matter of Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 281–282, 525 N.Y.S.2d 176, 519 N.E.2d 1372, *rearg. denied* 71 N.Y.2d 995, 529 N.Y.S.2d 278, 524 N.E.2d 879, *cert. denied* 488 U.S. 801, 109 S.Ct. 30, 102 L.Ed.2d 9.

⁵⁰ 87 A.D.3d 1066 (2d Dept. 2011, September 20).



General Session
Poster Session

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY

Greetings:

Suffolk County is conducting a regional Transfer of Development Rights (TDR) study with funding from the HUD Sustainable Communities initiative. The purpose of the study is to examine existing local, county and regional TDR programs such as those associated with the Pine Barrens Suffolk County sanitary credits and local Town programs.

Your input would be invaluable to this initiative. Please feel free to take a moment to review the material and provide us your thoughts on the comment cards.

What is TDR?

Transfer of Development Rights (TDR) is a zoning tool that prevents development in one area and allows that potential development to be “Transferred” to another development parcel.

History:

- 1968 NYC Landmark Preservation Law
- Islip and Southampton TDR legislation in ‘70’s
- Now 14 local and 3 regional TDR programs in Suffolk County
- All programs target similar preservation areas
- All programs target similar development areas

Benefits:

- Another zoning tool for preservation of land
- Allows government to preserve land without “taking” litigation

- Allows government to preserve land without public dollars
- Allows land owners to become whole by selling development potential
- Allows speculators to purchase density
- Provides Rational for economic development in downtowns and transit hubs

Problems with TDR:

- No often used
- Small niche for use
- No pressing demand
- TDR cost
- Unpredictable process if required
- Civic opposition to density

Goals:

- Allow economic development through TDR for TOD and BRT
- Predictable in process
- Cost effective to speculators

Input:

- Your thoughts count
- Is TDR fair?
- Would you accept higher commercial and residential density near your train station/downtown for more parkland in your neighborhood?
- How can the unpredictability of TDR use be eliminated?



SUFFOLK COUNTY GOVERNMENT

Long Island, New York

Select Language ▼

Home

Government

Online Services

How Do I?

Business

Visitors

Community

Public Safety

You Are Here: Departments > Planning > Special Projects > HUD Sustainable Communities Grant

Planning

▣ Divisions

▣ Boards

▣ Information

▣ Special Projects

▣ Comprehensive Plan

▣ HUD Sustainable
Communities Grant

▣ SC Planning Federation

▣ Calendar

▣ Upcoming Events!

HUD Sustainable Communities in the NY-CT Metropolitan Region

<http://www.sustainablenyct.org>

<http://www.facebook.com/SustainableNYCT>

An unprecedented bi-state collaboration of cities, counties and regional planning organizations has come together to form the New York-Connecticut Sustainable Communities Consortium. The Consortium was awarded a Sustainable Communities Regional Planning Grant by the U.S. Department of Housing and Urban Development (HUD), a competitive national program designed to integrate housing, economic development, transportation and environmental planning in metropolitan regions. This summary describes what the Consortium is and what it plans to do.

Challenge: The New York - Connecticut region, which includes New York City, Long Island, the lower Hudson Valley, and the coastal region of Connecticut stretching from Stamford to New Haven, faces a unique set of opportunities and challenges as it strives to meet sustainability goals. By most measures, this is the most economically productive, energy efficient and transit oriented metropolitan area in the United States. With more than 14 million people and nearly \$800 billion in economic output, the region includes a diverse set of living choices that spans the densest urban core in the nation and a network of smaller cities and suburban communities.

At the same time, these assets come with a set of challenges that are as large and complex as the region itself. In the wake of the global financial crisis, the region needs to continue to adapt to an increasingly competitive international economy. It needs to maintain and upgrade the extraordinary but expensive infrastructure that allows this dense agglomeration to function, particularly its expansive transit network. To improve equity as well as efficiency, the region needs to improve housing affordability and access to economic opportunity for low-income households. And like other regions, it is only beginning to grapple with the enormous challenge of building resilience to the effects of climate change, a particular concern for this coastal region.

The Consortium: The New York-Connecticut Sustainable Communities Consortium was formed to meet these challenges and guide the region's transportation, housing, economic and other investment decisions. Included in the consortium are the nine largest cities within its planning area, two suburban Long Island counties, four metropolitan planning organizations, and two regional planning entities.

- City of New York
- City of New Haven
- City of Bridgeport
- City of Norwalk
- City of Stamford
- City of Yonkers
- City of White Plains
- City of New Rochelle
- City of Mount Vernon
- Nassau County
- Suffolk County
- New York Metropolitan Transportation Council (NYMTC)
- South Western Regional Metropolitan Planning Organization (SWRMPO)
- Greater Bridgeport/Valley Metropolitan Planning Organization (GBVMPO)
- South Central Regional Council of Governments (SCRCOG)
- Long Island Regional Planning Council (LIRPC)

Contact Us

Sarah Lansdale

Director

Address:

H. Lee Dennison Bldg - 4th Fl
100 Veterans Memorial Hwy
P.O. Box 6100
Hauppauge, NY 11788-0099

Phone: 631-853-5191

Fax: 631-853-4044

E-mail:

planning@suffolkcountyny.gov

- Regional Plan Association (RPA)

What is the Sustainable Communities Regional Planning Grant Program? The U.S. Department of Housing and Urban Development Sustainable Communities Regional Planning Grant Program is a centerpiece of the Interagency Partnership for Sustainable Communities, an initiative jointly implemented by HUD, the US Department of Transportation (DOT), and the US Environmental Protection Agency (EPA). The Partnership is committed to advancing six overarching Livability Principles as a framework to help American families gain better access to affordable housing, more transportation options and lower transportation costs, while protecting the environment and reducing our energy dependence.

The Sustainable Communities Regional Planning Grant Program will support metropolitan and multi-jurisdictional planning efforts that integrate housing, land use, economic and workforce development, transportation and infrastructure investments in a manner that empowers jurisdictions to consider the interdependent challenges of these issues specific to their region. The anticipated outcomes of the grant program will be a generation of regional plans that address these integrated issues and illustrate how federal resources will be aligned to mirror local and regional strategies for achieving inclusive, sustainable communities. Scoring well on the Sustainable Communities Regional Grant Program would qualify the region for additional federal funding in the future.

Goals: Working together, the Consortium will develop livable communities and growth centers around existing and planned transit to enhance affordable housing efforts, reduce congestion, improve the environment and continue to expand economic opportunities.

Specifically, the Consortium will integrate and enhance existing sustainability plans, filling in gaps and more closely aligning them with the six Livability Principles defined by the federal Partnership for Sustainable Communities:

- Provide more transportation choices
- Promote equitable, affordable housing
- Enhance economic competitiveness
- Support existing communities
- Coordinate policies and leverage investment

Value communities and neighborhoods

- Link strategies, on a metropolitan scale, to develop mixed income housing, employment and infrastructure in locations connected by the region's two commuter rail networks - the MTA Metro-North Railroad and the MTA Long Island Rail Road
- Support project planning at the local level to engage residents and stakeholders in developing implementation strategies.

Public Engagement: The Consortium will coordinate stakeholder outreach and engagement processes with existing sustainability and regional planning efforts. In addition, the Consortium will establish specific structures to engage residents and other government and non-governmental entities in the process.

An Advisory Board of state agencies and regional nongovernmental organizations and subregional committees will work closely with the Consortium members to ensure there is meaningful participation by a wide group of constituencies from throughout the region, including community interests, advocacy organizations, civic organizations and local municipal interests. Initial members of the Advisory Board include:

- Five state agencies: Connecticut Housing Finance Agency; Connecticut Department of Economic and Community Development; New York State Department of State, representing the Governor's Smart Growth Cabinet; nyhomes/NYS Department of Housing and Community Revitalization; and the Empire State Development Corporation.
- Five non-governmental organizations that serve both the New York and Connecticut portions of the Consortium planning area and that are nationally-recognized leaders in housing and community development, business and real estate development, the environment and climate change, and social and environmental justice: Local Initiatives Support Corporation (LISC); Urban Land Institute (ULI), International Council for Local Environmental Initiatives (ICLEI)/ ICLEI Local Governments for Sustainability; WE ACT for Environmental Justice; and One Region Fund, a partnership of private funders in New York, New Jersey and Connecticut. Subregional committees and working groups will be created for Metro-North and LIRR service areas to relate Consortium activities to local issues and plans. Each working group will select a chair to serve on the advisory board. Specific projects will also include participation by local stakeholders.

Projects and Activities: By structuring its activities around economic rather than political geography, the Consortium will facilitate dialogue, information sharing and relationships among new configurations of citizens and

stakeholders. In some cases, economies of scale will be achieved. Already the Consortium is paying dividends: by jointly discussing and connecting program plans, some project designs have already been improved and joint contracting is being examined as a way to reduce program costs. Formalization of this collaboration - the Consortium itself - will allow these benefits and relationships to build.

Specific project objectives to be achieved with a Sustainable Communities Regional Plan Grant include the following:

- Develop regional strategies and a Housing Incentive Fund to integrate affordable housing and transit oriented development strategies.
- Launch a strategic planning process to build resilience to the effects of climate change in New York City, with applications for other parts of the region.
- Develop a network of transit-oriented development projects along the Metro-North system and I-287 corridor, including projects at key nodes in New Haven, Bridgeport, Norwalk, Stamford, New Rochelle and the Bronx.
- Advance four projects that will help integrate housing, transportation and environmental policies along the Long Island Rail Road network: development of a workforce housing strategy for Long Island, a regional transfer of development rights study in Suffolk County, a feasibility study for a major transit-oriented development project in Bethpage in Nassau County, and an interdisciplinary neighborhood planning initiative for East New York, Brooklyn.

Suffolk County Transfer of Development Rights (TDR) Study

Timeline: May 2011 – May 2013

Description: Suffolk County will lead the development and implementation of a Regional Transfer of Development Rights (TDR) study and program that would examine existing local, county and regional TDR programs such as those associated with the Pine Barrens, Suffolk County sanitary credits and local Town programs with particular focus on the five Regional Growth Centers identified in the County's "A Review of Selected Growth and Development Areas" Study. Selected study areas would include, but not be limited to the Route 110 Office-Industrial Corridor, the Sagtikos Regional Development Zone, the Stony Brook High Tech Campus, Yaphank and the Town of Riverhead.

The proposed TDR study would analyze the various programs that exist throughout the county in order to assess the viability and effectiveness of these programs which currently operate independently. Better coordination of the various programs that are currently operating would improve their effectiveness and better promote development where it is warranted in downtowns, designated growth zones and transit hubs while at the same time better preserving open space and the protection of the region's natural resources.

Goal: A more sustainable regional policy framework which promotes the development of workforce and affordable housing, preserves open space, protects natural resources and enhances the region's economic competitiveness through regional cooperation and increased transparency.

Objectives:

- Identification of available sending and receiving rights throughout the region
- Analysis of the success and effectiveness of existing programs
- The development of policies that will help to strengthen existing TDR programs and promote better coordination throughout the region

Responsibility: Suffolk County

Major Activities:

- N.1. Inventory of existing Transfer of Development Rights (TDR) programs including program identification and analysis of basic elements: There are currently several Transfer of Development Rights (TDR) programs in effect within the region, including county, regional and town programs. In order to implement the program an inventory of existing conditions is essential. Specific tasks will include:
 - N1.a. Review of the zoning codes for each of the ten towns of Suffolk county 31
 - N.1.b. Identification of all TDR programs including County TDR programs.
 - N.1.c. Analysis of purpose and intent of existing programs (water quality protection, downtown revitalization, workforce housing...etc) and identification of the geographic location of all sending and receiving areas.
- N.2. Complete analysis of all existing programs including available credits, potential sending sites and remaining receiving sites: The ratio of receiving sites to sending sites is critically important in order to insure that the various programs are legally defensible and operationally viable. The assessment of existing TDR programs would include a detailed analysis of existing sending and receiving sites and credits retired to date. Specific tasks will include:

- N.2.a. Analysis of the ratio of sending to receiving sites, and the percentage of credits used to date in comparison to the total number of available credits
- N.2.b. Identification of potential overlap between programs.
- N.3. Recommendations will also be drafted to encourage better coordination between land use and transportation policies:
 - N.3.a. Identification of specific measures needed to encourage greater participation within existing TDR programs
 - N.3.b. Development of specific strategies for coordinating credit absorption within designated growth zones while discouraging development in environmentally sensitive areas and water protection zones.
 - N.3.c. Identify and document lessons learned and best practices for consideration by the consortium at its scheduled Steering Committee meetings, including implications for the Program and Execution Plan for Sustainable Development
- N.4. Public Outreach: Both the design and implementation of an effective policy will require the participation of several key stakeholders, particularly towns, villages, property owners, affordable housing advocates, community groups, and environmental and farm protection organizations. An advisory committee will be established to provide that participation, and public meetings will be held at key junctures at both the county and town level. Specific tasks will include:
 - N.4.a. Establishment of a community advisory committee to monitor study milestones and to provide input into policy development.
 - N.4.b. Establishment of a website in order to distribute information concerning the study
 - N.4.c. Community meetings at both the Town and County level

Products/Outcomes: The final products will include a complete inventory of existing TDR programs and a report of recommendations for a county-wide strategy that would include coordination and enhancement of existing programs and policies to insure that credits are adequate and used effectively. Anticipated outcomes include the containment of suburban sprawl through the preservation of remaining open spaces and the promotion of development patterns that direct growth to where it is warranted – in close proximity to transportation hubs, downtowns, designated growth zones and infrastructure. This approach should have applications throughout the New York-Connecticut region, particularly in developing areas where transit oriented development goals must specifically address the need to protect water quality and environmentally sensitive land.

For more information contact: Andrew P. Freleng Chief Planner (631) 853-5190.



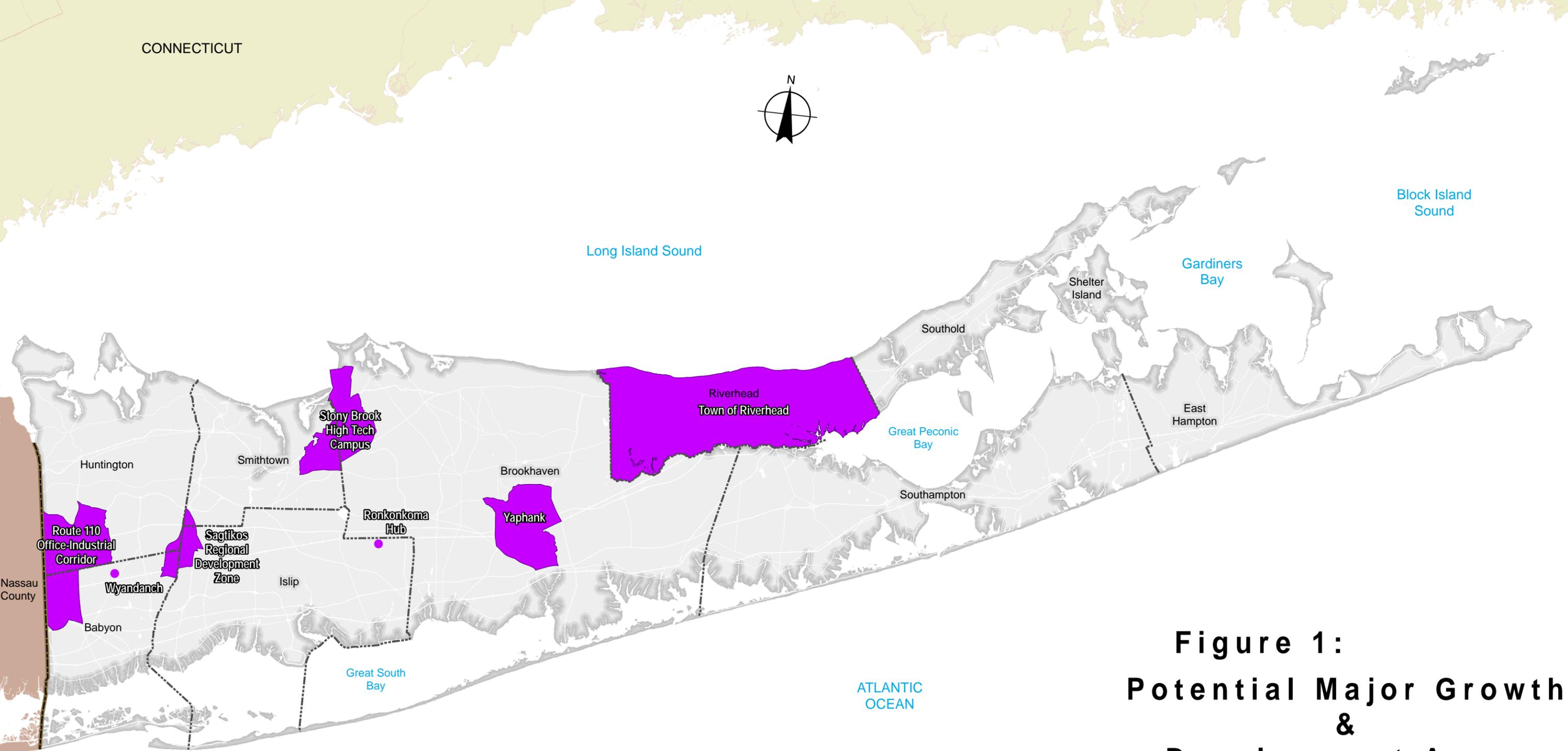
Addresses:

H. Lee Dennison Bldg
 100 Veterans Memorial Hwy
 P.O. Box 6100
 Hauppauge, NY 11788
 Phone: (631) 853-5593

Riverhead County Center
 County Road 51
 Riverhead, NY 11901
 Phone: (631) 852-1400

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

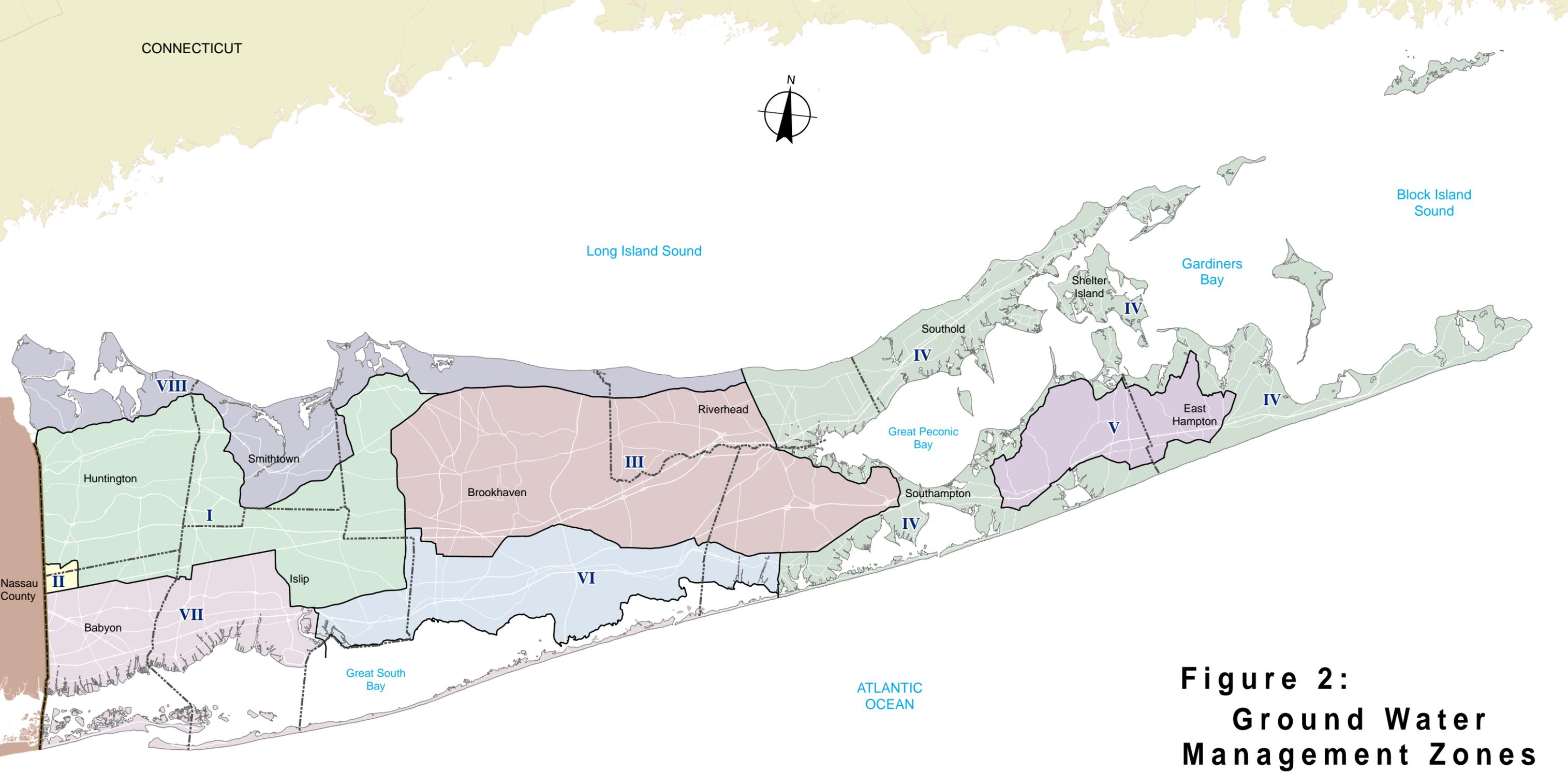
Suffolk County, New York



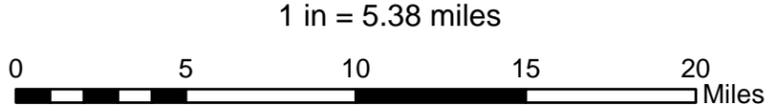
**Figure 1:
Potential Major Growth
&
Development Areas**

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

Suffolk County, New York



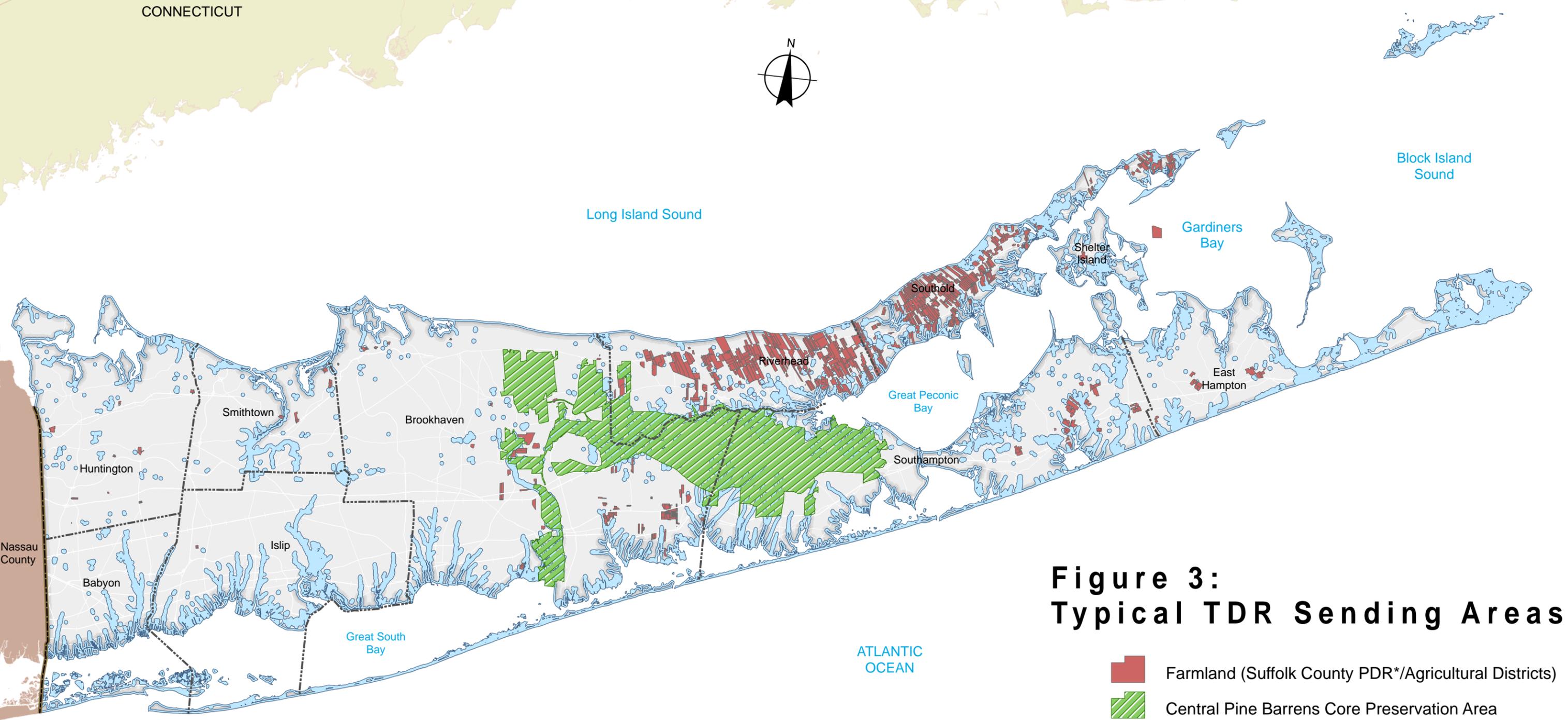
**Figure 2:
Ground Water
Management Zones**



Source: Suffolk County Department of Health Services (SCDHS) Groundwater Management Zones. Refer to SCDHS for official Article 6 map.

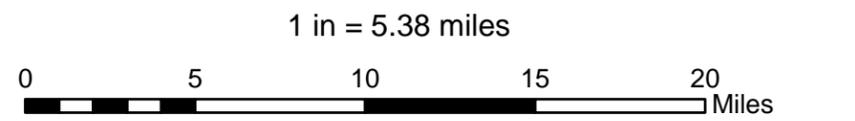
SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

Suffolk County, New York



**Figure 3:
Typical TDR Sending Areas**

-  Farmland (Suffolk County PDR*/Agricultural Districts)
-  Central Pine Barrens Core Preservation Area
-  Areas within 500' of Waterways & Coastline



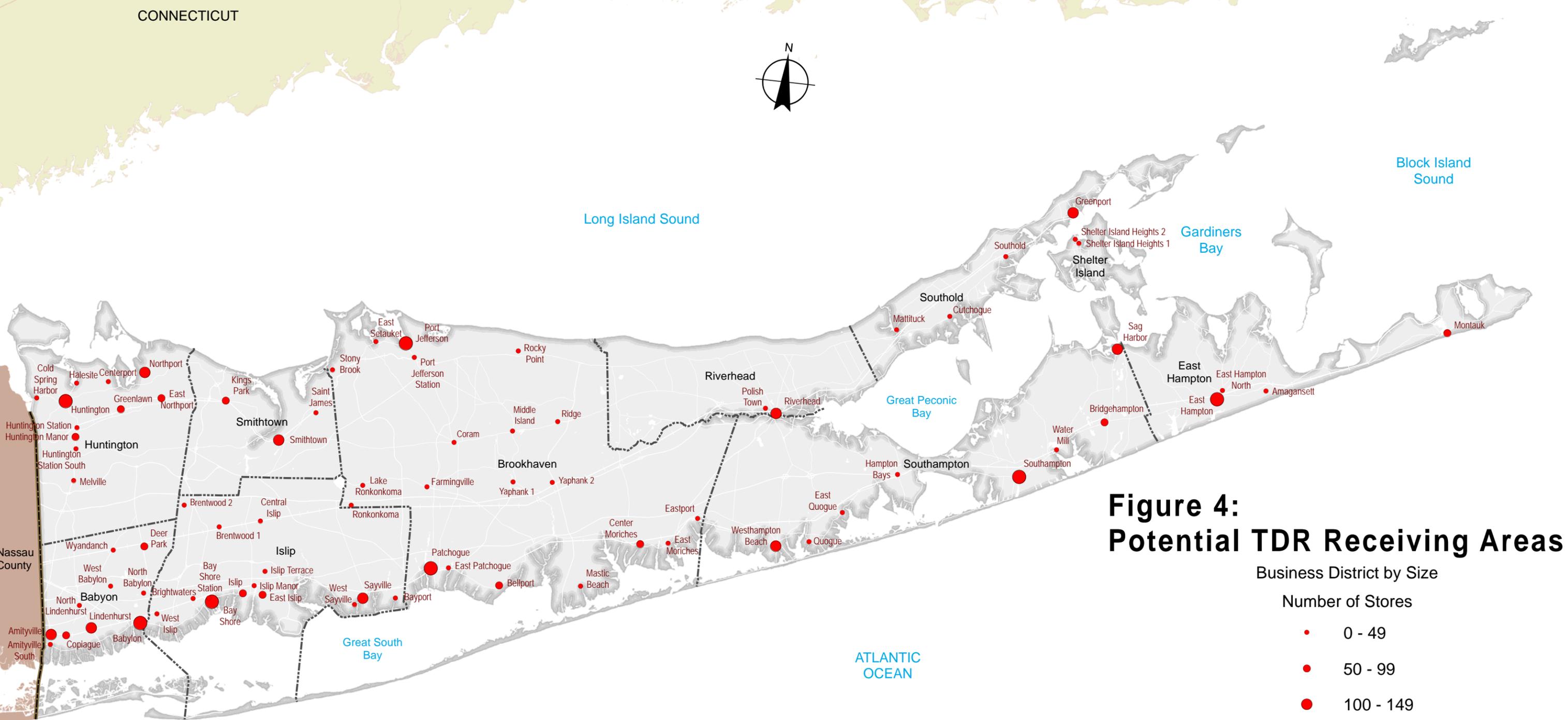
Real Property Taxmap parcel linework used with permission of Suffolk County Real Property Tax Service Agency (R.P.T.S.A.). This rendering is a DRAFT MAP in that 1) the data displayed is an interagency or intra agency work* produced for the purpose of identifying and correcting data. It is not a final agency determination. It is not statistical or factual compilation of data. In some cases correct data has been left out and questionable or inaccurate data has been exaggerated to help identify errors. In short, this is a DRAFT MAP produced in an effort to aid in the correction of data and is not held out as being complete or accurate in any way.

*exempted from (F.O.I.L.) the provisions of the Freedom of Information Law (Public Officers Law Article 6 Section 84-90) by section 87.2.g

* PDR - Purchase of Development Rights

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

Suffolk County, New York



**Figure 4:
Potential TDR Receiving Areas**

Business District by Size

Number of Stores

- 0 - 49
- 50 - 99
- 100 - 149
- 150+

1 in = 5.36 miles

