SEQRA AND LOCAL LAND USE DECISION MAKING: THE LESSONS FROM OTHER STATES

AUGUST 1991

Government Law Center
Albany Law School

80 New Scotland Avenue
Albany, NY 12208
www.als.edu

© Copyright 1991 Albany Law School

Government Law Online publications are available at www.governmentlaw.org
SEQRA AND LOCAL LAND USE DECISION MAKING: THE LESSONS FROM OTHER STATES

George F. Carpinello
Director and Professor of Law
Government Law Center

AUGUST 1991

© Copyright 1991 Albany Law School

These materials are copyright by Albany Law School (ALS) on behalf of its Government Law Center or ALS licensors and may not be reproduced in whole or in part in or on any media or used for any purpose without the express, prior written permission of Albany Law School or the licensor. Neither Albany Law School, the Government Law Center or any licensor is engaged in providing legal advice by making these materials available and the materials should, therefore, not be taken as providing legal advice.

All readers or users of these materials are further advised that the statutes, regulations and case law discussed or referred to in these materials are subject to and can change at any time and that these materials may not, in any event, be applicable to a specific situation under consideration. The information provided in these materials is for informational purposes only and is not intended to be, nor should it be considered to be, a substitute for legal advice rendered by a competent licensed attorney or other qualified professional. If you have any questions regarding the application of any information provided in these materials to a particular situation, you should consult a qualified attorney or seek advice from the government entity or agency responsible for administering the law applicable to the particular situation in question.
Acknowledgment

The author wishes to acknowledge the research assistance of Assistant Director Patricia E. Salkin, and law students Reisa G. Brafman, Thomas R. Cline and David H. Greenspoon.

This paper was originally prepared for the Legislative Commission on Rural Resources – Land Use Advisory Committee
Summary of Recommendations

1. The SEQRA regulations should be amended to include a list of actions for which an environmental impact statement is mandatory. In addition, the list of actions for which an environmental impact statement is not needed should be expanded.

2. In any project where an environmental impact statement is required, scoping sessions should be mandatory.

3. Municipalities should be encouraged to receive public input on potential environmental impact prior to the issuance of a determination of significance.

4. New York's various statutes relating to land use should be amended to explicitly accommodate the SEQRA process in their time tables.

5. SEQRA should be amended to expressly provide that the statute of limitations on legal challenges to SEQRA decisions would commence upon the making and filing of the substantive decision by the local government entity or, if no decision is made, upon commencement of work on the project. The applicable statute of limitations for the SEQRA challenge should be the same as that for appeals from the substantive decision.

6. Municipalities should be required to retain, and make readily accessible, environmental impact statements for all projects previously prepared under their jurisdiction. Developers should be encouraged to utilize these prior impact statements insofar as they contain information relevant to their project.

7. Municipalities should be encouraged to undertake a comprehensive monitoring program which would insure that projects are in compliance with the mitigation measures mandated by the local government entity. Projects also should be monitored to determine if the actual impacts were accurately projects. This analysis of the actual impacts should be used to develop standardized design and performance criteria.

8. Local governments should be encouraged to utilize their own environmental consultants to prepare environmental impact statements and the SEQRA regulations should be amended to specifically allow local governments to charge reasonable fees to the developer for the cost of such preparation.

9. SEQRA should be amended to give local governments the authority to delegate supervision of the environmental impact process to a separate environmental quality review board either at the local or county level.
10. Even if municipalities do not undertake the actual impact assessment themselves, the SEQRA regulations should be amended to require developers to hire consultants who will not be eligible to perform the design work on the project.

11. SEQRA should be amended to expressly provide that the lead agency may consider alternative sites whenever it deems such analysis to be appropriate.

12. The SEQRA regulations should be amended to specifically allow the use of conditioned negative declarations in any kind of action.

13. The SEQRA regulations should be amended to specifically provide that when a generic environmental impact statement (GEIS) is prepared in conjunction with the adoption of a comprehensive plan or major rezoning, a proposal which is in compliance with that plan or zoning generally will not require additional environmental review.

14. County planning boards should be encouraged to take a leadership role in the training of local government officials in the intricacies of SEQRA.

15. The SEQRA regulations should be amended to require local governments to complete all SEQRA review within a one-year period absent unusual circumstances.
# Table of Contents

## INTRODUCTION

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. MAKING THE THRESHOLD DETERMINATION OF ENVIRONMENTAL IMPACT EASIER</td>
<td>4</td>
</tr>
<tr>
<td>A. Threshold Determination</td>
<td>4</td>
</tr>
<tr>
<td>B. Classification of Actions</td>
<td>5</td>
</tr>
<tr>
<td>II. LIMITING THE SCOPE OF IMPACT STATEMENTS</td>
<td>8</td>
</tr>
<tr>
<td>A. Size and Content Limitations</td>
<td>8</td>
</tr>
<tr>
<td>B. Scoping</td>
<td>10</td>
</tr>
<tr>
<td>C. Specifically Addressing Public Concern</td>
<td>14</td>
</tr>
<tr>
<td>III. INTEGRATING SEQRA INTO THE LOCAL LAND USE PROCESS</td>
<td>17</td>
</tr>
<tr>
<td>A. Accommodating SEQRA in Regulatory Timetables</td>
<td>17</td>
</tr>
<tr>
<td>B. Explicit Statute of Limitations</td>
<td>19</td>
</tr>
<tr>
<td>C. Utilizing Previously Prepared Impact Statements</td>
<td>23</td>
</tr>
<tr>
<td>D. Monitoring</td>
<td>25</td>
</tr>
<tr>
<td>IV. CREATING USEFUL AND OBJECTIVE IMPACT STATEMENTS</td>
<td>26</td>
</tr>
<tr>
<td>A. An Independent Agency to Conduct the Environmental Review</td>
<td>26</td>
</tr>
<tr>
<td>B. An Independent Consultant</td>
<td>33</td>
</tr>
<tr>
<td>C. A Realistic Evaluation of Alternatives</td>
<td>37</td>
</tr>
<tr>
<td>V. REDUCING THE COST OF SEQRA</td>
<td>38</td>
</tr>
<tr>
<td>A. Conditioned Negative Declarations</td>
<td>38</td>
</tr>
<tr>
<td>B. Greater Use of Generic Environmental Impact Statements</td>
<td>41</td>
</tr>
<tr>
<td>C. Developing Generic Mitigation Standards</td>
<td>43</td>
</tr>
<tr>
<td>D. Time Limitations</td>
<td>44</td>
</tr>
<tr>
<td>E. Expediting SEQRA Litigation</td>
<td>45</td>
</tr>
<tr>
<td>VI. MAKING LOCAL OFFICIALS FAMILIAR WITH SEQRA</td>
<td>46</td>
</tr>
</tbody>
</table>

## CONCLUSION

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>52</td>
</tr>
</tbody>
</table>
APPENDIX

APPENDIX 1: NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT
APPENDIX 2: TRAINING PACKAGES FOR PLANNING COMMISSIONERS
INTRODUCTION

A persistent theme which has emerged from the Land Use Advisory Committee's roundtable discussions has been the difficulty local governments have had in integrating the State Environmental Quality Review Act ("SEQRA") (attached as Appendix I) process into local land use decision-making. Several problems have been identified.

First, the indefiniteness of the statutory standard as to when a project may have a significant impact on the environment has left many local decision-makers uncertain of when to require an Environmental Impact Statement ("EIS"). It has also allowed opponents of projects to use the failure to prepare an EIS as a litigation tool to slow down projects.

Second, the potentially limitless number of issues that could be discussed in the SEQRA process exposes local officials to second-guessing by the dissatisfied parties as to where to draw boundaries of the inquiry. Moreover, it allows developers to sometimes manipulate the process by burying local officials with mountains of information on issues which are tangential to what should be the primary focus of concern. Developers may also create voluminous documents in good faith, believing that an encyclopedic coverage of every conceivable issue will help to ward off potential litigation.¹ Opponents of a project may raise every conceivable issue in an effort to delay, and hopefully kill, the project.
Third, there is great confusion at the local level as to how the SEQRA process is to be integrated into local land use decision-making. Local officials accustomed to approving site plans or granting variances at one or two meetings find it cumbersome to even complete the environmental assessment form in such a short time period. When the requirements of SEQRA are brought to the attention of the local board, its compliance is often pro forma and after-the-fact.

Fourth, the SEQRA process is widely perceived to be a meaningless and expensive exercise. Developers, local government officials and the public often find that the review process neither improves the project nor adequately assesses its impact. Mitigation measures and alternatives are, more often than not, inadequately explored.

Fifth, the SEQRA process can be expensive, both for the local government, in terms of officials’ time which is consumed, and the envisioned cost of the project itself. While the developers must bear the latter costs, they are eventually passed on to the entire community as either increased cost for goods and services or as lost opportunities resulting from failed projects.

Sixth, local officials have not yet acquired a sufficient familiarity with SEQRA. Most planning and zoning board members are part-time volunteers who have no expertise in planning and who are often mystified by the seemingly complex SEQRA
flow charts. Moreover, because they are volunteers, their tenure on such boards is often limited, with fully one third of all memberships turning over each year. Thus, there is insufficient time for members to become familiar and comfortable with SEQRA.

These problems are not unique to New York. Twenty-eight states currently have some form of environmental review requirements.² Fourteen states and the Commonwealth of Puerto Rico have adopted their own environmental policy acts modeled after the National Environmental Policy Act adopted in 1969 (California, Connecticut, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, South Dakota, Virginia, Washington and Wisconsin).³ Four states have chosen to provide for environmental review through executive order (Michigan, New Jersey, Texas and Utah).⁴ Nine states have enacted "specialized" or "limited" EIS requirements (Arizona, Delaware, Georgia, Kentucky, Mississippi, Nebraska, Nevada, New Jersey, Rhode Island).⁵ In addition, a few cities have their own limited environmental impact statement laws (Bowie, Maryland; New York City; Honolulu, Hawaii).⁶ Of the fifteen states that have adopted "little NEPAs," six apply to local government action (California, Hawaii, Minnesota, New York, South Dakota and Washington).⁷

This paper explores how some of these states have handled the highlighted problems and discusses how some of these solutions may be applicable to New York.
I. MAKING THE THRESHOLD DETERMINATION OF ENVIRONMENTAL IMPACT EASIER

The states which have enacted environmental review statutes have adopted a variety of legal standards for determining when a full EIS should be prepared.

A. Threshold Identification

Some states require an EIS for actions "significantly affecting the environment" (examples: Hawaii, Indiana, Maryland, Minnesota, Montana, North Carolina, Washington and Wisconsin). A lower threshold is required in other states, such as California, Connecticut, Massachusetts, South Dakota and New York. These states require EIS statements when the project "may" or "could" have a significant effect. As a practical matter, there is little difference between the standards, since courts in the states with the higher threshold routinely require the preparation of an impact statement when there is a "reasonable probability" of impact or a showing of "potential adverse" effect on the environment. Each of these standards, however, presents the same problem: A lack of determinacy. While lawyers are accustomed to dealing with non-quantitative standards, lay board members are often at a loss in determining where a particular project falls.
B. Classification of Actions

New York's SEQRA regulations provide some guidance to agencies as to when a full environmental impact statement should be prepared. Actions which already have been determined as not having a significant impact on the environment are listed as Type II actions.\(^{11}\) All agencies, including local governments, may adopt their own Type II list, so long as (1) their list is no less protective of the environment than the list promulgated by the SEQRA regulations; (2) the actions on the list will, in no case, have a significant effect on the environment; and (3) no actions identified by the SEQRA regulations as Type I actions are included on the agency's Type II list.\(^ {12}\) Type I actions are actions "that are more likely to require the preparation of an EIS than unlisted actions."\(^ {13}\) Agencies may adopt more expansive Type I lists, but they may not include in their Type I list any actions defined as Type II by the SEQRA regulations.\(^ {14}\) Listing of a project in the Type I category "carries with it the "presumption that [the project] is likely to have a significant impact on the environment and may require an EIS."\(^ {15}\) (emphasis added) Being listed as a Type I action has important procedural implications for a project,\(^ {16}\) but it does not guarantee full environmental review. The non-mandatory nature of the Type I list and the vast array of projects which are "unlisted"—neither Type I nor Type II—create uncertainty for the local official as to when the full impact process should be undertaken. The perceived complexity of the SEQRA process often induces local officials to succumb to the urging of the applicant
to issue a negative declaration even for Type I actions.

Some uncertainty can be eliminated, at the cost of reduced flexibility, by mandating full review for projects over a certain threshold. Minnesota's implementing regulations, for example, provide a nine page list of types of projects which require the preparation of an environmental assessment worksheet and a five page list of projects for which there must be a full environmental impact review.\textsuperscript{17} A detailed standard is provided for each type of project and the standards are tailored to the problems presented by each type of project. The regulations also specify which agency should be the "responsible government unit," or lead agency, for each project on the list. Such a designation eliminates much of the preliminary negotiation and uncertainty which often accompany the designation of a lead agency.

The list also serves to reinforce the broader policy objectives of Minnesota's environmental review process. Water resources are very important to Minnesota. Thus, many projects which might not otherwise be placed on the mandatory list are nonetheless subject to full review if the project involves any riparian frontage.\textsuperscript{18}

The two lists were created because officials in Minnesota found that, without the mandatory list, too many agencies were avoiding the review process. Even today, virtually all the impact statements which are done are for projects within the mandatory category. Very few impact statements have been done for projects in the discretionary
range. In fact, local governments outside of Minneapolis account for only about five impact statements a year.\textsuperscript{19} The number of statements is rising somewhat, however, since recent case law has placed stricter requirements on agencies to examine alternatives to proposed projects.\textsuperscript{20}

Massachusetts has also adopted by regulation a list of thirty-two (32) types of actions which require a full environmental impact review.\textsuperscript{21}

Some states require impact statements for projects which surpass a designated monetary limit. For example, Virginia requires an impact statement for acquisition of land or construction of a project costing $100,000 or more.\textsuperscript{22} In Wisconsin, an EIS is required for projects that will cost more than $25,000 or affect more than 40 acres.\textsuperscript{23} Massachusetts also imposes monetary thresholds for determining when an environmental notification form (ENF) must be filed with the Secretary of Environmental Affairs.\textsuperscript{24} In addition, regulations specify that any project using commonwealth funds or land having a total project cost of $50 million or more must undergo full environmental review.\textsuperscript{25} The virtue of these standards is that they provide a degree of certainty as to which projects are covered by the Act. Like any arbitrary standard, however, they have the potential of allowing small projects with significant impact to escape review.

Some states specifically consider public controversy or concern in determining
significance. For example, Minnesota law provides that if a petition signed by at least 25 individuals along with "material evidence" that the action may have "significant environmental effects" is submitted to the agency before its final decision on a permit, a formal environmental assessment worksheet must be completed for the determination of significance.26 Similarly, the California CEQA Guidelines require that, in close cases, if there is a serious public controversy over the environmental effects of a project, the agency must assume those effects to be significant and must prepare an impact statement. "If the lead agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse," the agency must find it to be adverse. However, the public controversy must relate to the environmental effects, and not merely to the desirability of the project, per se.27

II. LIMITING THE SCOPE OF IMPACT STATEMENTS

Every state which has an environmental review process has faced the problem of voluminous impact statements packed full of highly technical data which fail to come to grips with the basic issues before the agency or which ignore practical and obvious alternatives or mitigation measures.28

A. Size and Content Limitations

In New York, the statements average 50 pages in length and take five to seven
months to prepare.\textsuperscript{29} Many statements, however, are considerably longer and take over
a year to prepare. New York’s regulations state that impact statements "shall be
analytical and not encyclopedic"; "shall be clearly and concisely written in plain
language"; and "should not contain more detail than is appropriate considering the
nature and magnitude of the proposed action."\textsuperscript{30} However, there is no statutory limit
on the maximum number of pages for an EIS.

Washington State’s regulations mandate that statements should be, "simple,
uniform, and as short as practicable . . . "\textsuperscript{31} "The Washington approach is short on
process, long on substance. It is inattentive to high standards of articulation in the
statements, receptive to avoid-the-paperwork and exhaust-proper channels argument."\textsuperscript{32}
Cases suggest that courts are more satisfied with less elaborate analyses and supporting
detail than one might find in a federal EIS because ". . . local decision-making may be
served less by scorched-earth formalities and more by straight talk."\textsuperscript{33} Impact
statements normally should be no more than 75 pages in length, but may be 100 pages
in length for complex projects. Unfortunately, these limits are often evaded through
the addition of lengthy appendices. As a result, most impact statements average 200 to
250 pages.\textsuperscript{34}

North Carolina regulations provide that the EIS should not exceed 50 pages in
length, and should include site location maps. The law further allows for incorporation
by reference "to cut down on the bulk without impeding agency and public reviews of
the action." The Environmental Assessment (EA) is limited to only 40 pages, and the regulations require that it be a "concise document."  

While the state of Minnesota has not put a page limit on the EIS, it, like New York, requires that it be "an analytical rather than encyclopedic document."  

Both the National Environmental Policy Act\textsuperscript{38} regulations and the State of Montana\textsuperscript{39} provide that impact statements should be no more than 150 pages in length unless the project is complex, in which case 300 pages may be necessary. The NEPA regulations also require statements to be "concise, clear and to the point . . . ".\textsuperscript{40} However, the NEPA page limit is rarely observed.\textsuperscript{41}  

The states of Texas, Connecticut and Wisconsin have attempted to bring their impact statements down to a manageable size by requiring each statement to summarize the costs and benefits of a project in both environmental and economic terms.\textsuperscript{42}  

B. Scoping  

The breadth of an EIS can obviously be limited by an efficient "scoping" process. New York's regulations authorize an agency to provide a written scope of the issues that are to be addressed in the draft environmental impact statement (DEIS) within 30
days of the filing of a positive declaration. If the agency chooses not to provide a
written scope, the applicant can submit a draft scope of issues. The scope of the
review can also be established through informal meetings and correspondence.

Massachusetts regulations provide the reviewing agency with much greater
control over the scope of impact statements. The environmental assessment process in
that state is supervised entirely by the Executive Office of Environmental Affairs
(Office). The Office makes the determination as to whether an environment impact
review (EIR, analogous to New York's EIS) should be prepared for every project
covered by the Act. (Local government actions are not covered.) Once an
Environmental Notification Form ("ENF") is filed by a state agency or an applicant, the
Office has 30 days to decide whether a full assessment should be done and to
specifically set forth those issues which are to be addressed in the impact statement.
In addition, the Office determines the "form, content, level of detail, and alternatives
required for the EIR and may establish guidelines as to page length and time necessary
for preparation." Although the rigid time requirements and responsibilities often
impose a strain on the Office, its director reports that the process works smoothly and
that impact statements are narrowly focussed to address the issues of greatest
concern.

The Commonwealth of Massachusetts has recognized that the scoping process
can be improved considerably by involving the public in the initial scoping sessions.
Massachusetts regulations direct that The Secretary of Environmental Affairs, upon receiving an ENF, should "normally schedule with the proponent a public consultation session to review the project and discuss potential impacts." In addition, the Secretary must accept written comments from any source during the period before determinations of significance and scope are made.

The State of Washington also actively encourages public participation in the scoping process. Once the lead agency determines that the project has probable significant adverse impacts, it issues and publishes a Determination of Significance and a Scoping Notice. The public is given 21 days to comment on the scoping notice. An agency may also utilize an "expanded scoping process" which allows for public meetings, workshops and even hearings on the issue of scope. Agencies are also encouraged to involve the public informally in a "pre-scoping meeting," prior to the issuance of a Scoping Notice.

The California CEQA regulations also encourage public participation in scoping, although not to the same extent as those of Massachusetts and Washington. They authorize lead agencies to "consult directly with any person or organization it believes will be concerned with the environmental effects of the project." This consultation, which the regulations define as "scoping" can be helpful "in identifying the range of actions, alternatives, mitigation measures and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important."
The New York regulations provide only passing reference to public participation in the scoping process: "At the discretion of the lead agency, other interested agencies and the public may be invited to participate in the scoping process." Although the encouragement is minimal, local governments have the discretion to involve the public in the scoping process and they should take advantage of that opportunity. In any project where an EIS is required, a scoping session should be mandatory. By hearing from project opponents early in the process, the applicant and the reviewing agency can tailor the EIS to respond to their objections. Much needless data can be eliminated by an understanding among the parties as to the issues of concern. The applicant can also constructively use the criticism to modify the project so as to eliminate any significant environmental impact. Moreover, when the public is given a meaningful role in the process, it is more likely to view it as legitimate, rather than as a sterile exercise. Formal hearings at the scoping stage are neither necessary nor desirable. Rather, the public, especially citizen groups which are likely to have concerns about the project, should be encouraged to attend informal workshops which identify major issues, and consider alternatives which may result in early consensus on both the scope of the EIS and on the shape of the project itself.

A program initiated by the Upper Merion Township in Pennsylvania could serve as a model for New York municipalities. When an application is made for development that the Township planning staff believes is likely to be controversial,
they encourage the developer to hold a series of structured face-to-face meetings with concerned members of the community. The meetings are chaired by a trained facilitator from PennACCORD, a not-for-profit organization committed to introducing alternative dispute resolution techniques into the environmental and land use fields. The facilitator tries not only to promote communication between groups but to identify real points of agreement and disagreement. The facilitator then prepares a report of the meeting which is distributed to the Township, the developer and all the residents who attended. Township officials report that these sessions have been quite useful in not only dispelling misinformation about projects but also in achieving true compromises between the developer and the community.57

Informal scoping is becoming a more common practice in New York. Anecdotal evidence indicates, however, that local officials are reluctant to hold wide-ranging scoping sessions because they feel that they must include in the environmental impact statement every issue which is raised at a scoping meeting. Yet, if scoping sessions similar to the mediation model used in Pennsylvania are tried, there might be quicker identification of the truly significant issues which would need to be addressed in an impact statement.

C. Specifically Addressing Public Concerns

The California Guidelines expressly require that public comments received

14
during review of the project must be specifically addressed in an impact statement. If the project is not revised in response to such comments, the agency must give reasons why without resort to "conclusory statements unsupported by factual information."

While the New York SEQRA regulations also require a final impact statement to give a "summary of the substantive comments received" and a response to such comments, often impact statements are perceived by the public to be generally unresponsive to the community’s concerns. The California guidelines, patterned after case law, make it clear that public comments are to be taken seriously and cannot be dismissed in a conclusory fashion. Such an approach aids local decision-makers because it gives them a factual basis on which to address public concerns and helps them make a decision not based on emotion, but on careful factual analysis. Viewed in this light, the SEQRA process becomes a helpful tool rather than an encumbrance.

The SEQRA process can also be made more meaningful if public input is received earlier in the process. Current SEQRA regulations contemplate public involvement after the determination of significance has been made. Where an agency determines that an environmental impact statement should be prepared, the regulations provide for a public comment period and the possibility of a hearing after the completion of the draft environmental impact statement. As already noted, there is only grudging acknowledgement of possible role for the public in the early scoping process. Similarly, when an agency contemplates issuing a conditioned negative
declaration (CND) (see section V. A. below), the regulations require the lead agency to seek public comment only after the CND has been issued.\textsuperscript{62} There are no requirements for public comment before an agency issues a negative declaration.

As noted above (see section II. D.), Massachusetts contemplates public involvement before a determination of significance is made. The Secretary of Environmental Affairs, upon receiving an environmental notification form, is expected to schedule a public consultation session with the applicant to review the project and discuss potential impacts. In addition, the Secretary must accept written comments from any source during the period before determinations of significance and scope are made.

California also encourages public participation at an earlier point in the process. The regulations specifically provide that a lead agency, in making its determination of significance, "shall consider the views held by members of the public in all areas affected."\textsuperscript{63} In addition, public notice and comment is specifically required before a negative declaration can be made final.\textsuperscript{64} Moreover, where a positive determination is made, the lead agency is encouraged to seek public input on the scope of the impact statement before the draft statement is prepared: "Many public agencies have found that early consultation solves many problems that would arise in more serious forms later in the review process."\textsuperscript{65}
While it would probably be unnecessarily burdensome to require elaborate notice and comment periods before negative declarations are issued on every project, lead agencies should nonetheless be encouraged to seek public input prior to making a determination of significance. As the California regulations emphasize, "Determining whether a project may have a significant effect plays a critical role in the CEQA process." Not allowing the public to take part in that step of the process would seem to invite problems down the road.

III. INTEGRATING SEQRA INTO THE LOCAL LAND USE PROCESS.

A. Accommodating SEQRA in Regulatory Timetables

The California legislature adopted as state policy the requirement that, "Local agencies integrate [the environmental review process] with planning and environmental review procedures otherwise required by law or local practice so that all such procedures, to the maximum feasible extent, run concurrently, rather than consecutively." To insure that this happens, the California regulations specifically provide that time limits contained in other laws applying to the granting of permits and licenses are deemed not to commence running until the environmental review process has advanced to the point that it can be completed within the applicable time limits. The
regulations also provide, however, that the agency's decision must be made within one 
year of application or within one 90-day extension of that period upon consent of both 
the agency and applicant. 69

In New York, SEQRA's timetable stands apart from, and seemingly inconsistent 
with, the time deadlines set forth in the City, Town and Village laws for decisions on 
land use applications. For example, certain decisions must be made in thirty or forty-
five days, but a full impact statement cannot possibly be accomplished in that time 
period. The courts have sought to reconcile the apparent conflict by holding that the 
application is not complete, and the time for decision does not run, until SEQRA is 
compiled with. 70 This court-fashioned solution is similar to that explicitly adopted in 
California's regulations. Problems can result from such an ad hoc approach, 71 however, 
and the better solution seems to be the express inclusion of references to SEQRA in 
the local municipal laws.

The legislature should carefully consider how SEQRA should be integrated into 
procedures such as approval of subdivisions, site plans and special use permits. In 
doing so, it should also consider appropriate time limits for SEQRA review in each 
context. (see also Part V.D.)
B. **Explicit Statute of Limitations**

Confusion can also be eliminated by the enactment of an explicit and short statute of limitations for the commencement of Article 78 proceedings challenging SEQRA decisions. The normal statute of limitations for such proceedings is four months. Yet, where shorter statutes of limitations are contained in the City, Town or Village laws for proceedings challenging land use decisions, such as the denial of site plan approval, those shorter limitations have been held to apply. There has also been considerable litigation over when an agency's determination is ripe for individual review: Most planning and zoning statutes contemplate a judicial challenge only after the decision is final, while some courts have held that SEQRA challenges must be brought upon completion of the environmental review process, even if no final substantive decision has been made.

California has solved both problems with provisions requiring the commencement of a legal action within certain stated periods from the date of the specific action challenged. For example, an action challenging an agency's determination as to significance or the adequacy of an impact statement must be commenced within thirty (30) days after the filing of the notice of determination to approve the project. Actions challenging government projects undertaken without any impact determination must be commenced within 180 days of the decision to commence the project or, if no formal decision has been made, within 180 days of commencement. The short, 30-
day statute of limitations is presumably justified by the fact that California has a relatively strict notice and filing requirement. For example, all agencies must advise the public of their intent to either require an impact statement or to issue a negative declaration and must provide an opportunity to comment. Notice of such intention must be made to all interested parties which have previously requested notice and through either a publication in a newspaper of general circulation; posting on the site; or mailing to neighbors and owners. Once a local government makes a determination to approve a project it must file the notice of approval, setting forth whether an impact statement has been required, with the clerk of the county in which the project is located. The clerk must post the notice for one week for public review.

Where the local government has complied with these requirements, the statute of limitations is short. Where the local government has not complied—and no notices have been sent—the longer statute of limitations applies. In every case, however, the agency or local government has made a formal decision to approve a project or has actively commenced work on the project.

In Minnesota, in contrast, all legal challenges to decisions to prepare, or not prepare, an EAF or an EIS must be appealed within 30 days of the publication of the local government’s decision in the EQB Monitor.

The State of Hawaii also provides for a definite statute of limitations for legal
proceedings challenging an agency's actions with regard to environmental review. For any proceeding challenging an agency determination that an impact statement is or is not required for a proposed action, the proceeding must be commenced within 60 days after such a determination.\textsuperscript{81} Similarly, any action challenging a decision on the adequacy of an impact statement must be initiated within 60 days of an agency's decision to accept such a statement.\textsuperscript{82} Where an agency has taken an action without any environmental assessment, a proceeding challenging that action must be commenced within 120 days of an agency's decision to carry out the action or, if no formal decision has been made, within 120 days after the action has started.\textsuperscript{83} Like California, Hawaii provides a relatively short statute for challenges to an agency's procedural compliance with the review act. However, where an agency entirely ignores the act, a relatively longer statute of limitations is provided. Like Minnesota and unlike California, however, legal actions challenging the agency's environmental review, in many cases, must be commenced before a final substantive decision has been made by the agency.

It might be argued that New York should adopt a new statute of limitations which would provide that any Article 78 proceeding brought to challenge a SEQRA determination must be made within a certain number of days of the final SEQRA determination or the final substantive decision, which ever occurs earlier. If, as in most cases, the decisions are made together, there will be no fragmentation of appeals. If the decisions are made separately, then prompt judicial review of the SEQRA issues is
appropriate, prior to any substantive discussions. Where there is a clear requirement for an explicit substantive decision and that decision must come within a relatively short time period, it makes sense to require SEQRA challenges to be made at the same time as challenges to the substantive decision. However, in some cases, determining when the agency has made a final decision may be difficult. The substantive decision may be made through a series of small steps over a period of years,\textsuperscript{44} while the SEQRA determination may be made early on.\textsuperscript{45} In these cases, it seems inappropriate to allow a judicial challenge to the SEQRA determination to wait until the substantive decision is made some period of time later. If the municipality erroneously issued a negative declaration or accepted a defective EIS, that error should be corrected before years of additional planning ensue.

The problem with a separate statute of limitation for SEQRA challenges, however, is that it potentially could fragment judicial review of agency decisions. There could be one statute of limitations applicable to the SEQRA decisions and another statute of limitations applicable to the challenge of a substantive determination.

Moreover, a separate statute of limitations could only apply to SEQRA appeals in those cases where the public received notice of the SEQRA determination. In Type I Actions, for example, the agency must file the negative declaration with DEC and it is published in the Environmental Notice Bulletin.\textsuperscript{46} For other actions, the municipality need only maintain a "readily accessible" file of negative declarations.\textsuperscript{47} Absent
substantive action on the application, the public may be unaware that a negative declaration has been made.

On balance, the best solution appears to be an amendment to SEQRA providing that the statute of limitations for SEQRA appeals would commence to run upon the making and filing of the substantive decision by the government agency or, if no formal decision is made, upon commencement of work on the project. The length of the limitation period should be the same as that applicable to challenges to the substantive decision.

C. Utilizing Previously Prepared Impact Statements

Impact statements can become a more meaningful part of the local land use process if they incorporate data gathered in previous statements and if the reviewing agencies analyze the statements in light of past decisions and any established comprehensive plans.¹⁸ In Washington, local municipalities are under state mandate to develop a comprehensive plan which meets thirteen (13) statutory enunciated goals.¹⁹ Municipalities are being encouraged by the Department of Ecology to prepare an EIS as part of that planning process.²⁰ Subsequent EISs, submitted for specific projects, can then incorporate that information and can be evaluated against the assumptions and predictions made in the earlier EIS. Along these lines, California has sought to limit the amount of duplication in impact statements by mandating the creation of a data
base in which information from past impact statements is stored. In addition, information developed in impact statements covering large geographic areas is expected to be used in impact statements for specific projects within those areas.

The local experience in New York appears to be quite different. Prior impact statements are not made readily available or accessible to project developers. Municipalities rarely shelve statements in a public place for ready access. Rather, developers often must make specific requests—and must know exactly what they are looking for when they do so—and often must pay $.25 per page for voluminous documents. These practices demonstrate that the municipalities are not using statements as an on-going resource and are discouraging developers from doing so. DEC retains copies of all impact statements prepared statewide and can provide copies upon request. The state office, however, does not have the capability to field the number of requests that could be made if municipalities seriously encouraged developers to make greater use of former impact statements. Access to such statements must be provided at the local level.

More fundamentally, the impact statements on various projects should not be shelved, never to see the light of day, after project approval is given. Each EIS should be viewed as part of a mosaic of information which the community accumulates to get a picture of its evolving landscape. The EIS should not only be analyzed in light of an existing comprehensive plan, but the plan should be updated with the information
provided in each EIS.\textsuperscript{93}

D. Monitoring

The EIS should also provide a checklist for agency officials who will monitor the project to insure that the conditions upon which approval was given are being met.\textsuperscript{94} Florida has instituted a monitoring program for its environmental review process. Because the Florida law applies only to large-scale, long-term development, modifications to plans are often required and some form of monitoring is necessary. Developers whose projects come within the scope of the law (developments of regional impact or DRIs), must submit annual reports to the state land planning agency, the affected local government and the regional planning agency. In addition, the regional planning agency is required to monitor the DRIs within its jurisdiction. The state planning agency can administratively enforce the conditions of development orders and the local government must refuse any permits from the developer until it determines that the developer is in full compliance. The Florida monitoring program has had mixed results, but the process is improving and recent amendments to the law demonstrate the state legislature's commitment to make the process work.\textsuperscript{95}

Monitoring can provide additional benefits beyond the specific project being monitored. By monitoring the impact of completed projects, local government officials can develop design and performance standards which can be applied to their projects.
Officials learn what works and what does not. A California study of local government environmental review found that too much time was spent analyzing the potential impacts of each project and not enough time learning about what the impacts of completed projects were. By monitoring such impacts and developing standardized performance criteria, attention can be shifted to analysis of mitigation measures.96

IV. CREATING USEFUL AND OBJECTIVE IMPACT STATEMENTS

Recent criticism leveled at the Minnesota environmental review process is equally applicable to New York:

[E]nvironmental review in Minnesota has failed to become the paramount factor in the decision-making process. Particularly, the process, as it evolved in Minnesota, has failed to generate the reasoned evaluation of alternatives needed to allow selection of the least environmentally harmful path.97

A. An Independent Agency to Conduct the Environmental Review

The impact process nationwide has not fulfilled its potential in part because the environmental review is essentially conducted by the proponent of the project: either the interested agency or a private applicant. The project is defined before the process begins. As a result, the process becomes an effort to justify the decision already
reached. Technical data which is produced often is not designed to seriously study impact or alternatives, but to insure that the recommended action is approved with only minor modifications. Project proponents often simply go through the motions of the impact review, expecting to be challenged in court and accepting it all as part of the game. A more meaningful result can be achieved by placing part or all of the review process in the hands of an independent board or commission which has no direct interest in the project. While that board cannot determine the substantive decision of the involved agency, it can at least free the agency to undertake an honest evaluation of mitigation measures and alternatives.

At the state level, a Council on Environmental Quality could supervise the SEQRA process for state agencies and make all determinations as to the adequacy of the review. The office could be relatively small and its cost could easily be recouped by eliminating SEQRA staff at other agencies. At the local level, each municipality could refer such supervision to a local or county-wide environmental quality review board. New York law, however, as interpreted by the courts, requires the agency undertaking the action, or the lead agency if there are more than one involved agency, to supervise the entire SEQRA process and to make all determinations of significance and scope. Indeed, municipalities which have established such boards have found the procedure rejected by the courts. The courts have reasoned that the determination of significance cannot be separated from a review of the merits and that allowing such separation would render SEQRA a "sterile exercise that has little impact on the final
determination of the decisionmaking agency.\textsuperscript{104}

The Massachusetts experience seems to indicate otherwise. When first implemented, the Massachusetts review process was left in the hands of the individual agencies. Yet, the agencies did not take the process seriously. In 1976, the review structure was revised by the legislature. All determinations as to adequacy of impact review were placed in the Office of the Secretary of Environmental Affairs. If the agencies submit \textit{pro forma} impact statements, the Office rejects them and directs a rewrite. Unlike the courts, which are generally reluctant to second-guess substantive analysis,\textsuperscript{105} the Massachusetts Office does not hesitate to find deficiencies in impact statements and to direct that serious evaluation of alternatives and mitigation measures be undertaken. Over time, the agencies have learned that it is easier to comply with the Office directives than to fight them. Moreover, the agencies have begun to mandate the mitigation measures outlined in the impact reports. The agencies have also come to accept the review process as a helpful addition to their analysis and have been able to deflect public criticism from themselves to the Office.\textsuperscript{106} Most importantly, the Massachusetts process has created consistency in the application of the nebulous standards inherent in any environmental review process.

Connecticut's review process is centralized in the Office of Policy and Management. Each agency which proposes an action (local governments and private actions are not covered), must submit its Finding of No Environmental Significance
(FONSI) or Environmental Impact Evaluation (EIE) to the Office for approval. Unlike the process in Massachusetts, initial determinations of significance are made by the agency and the Office simply reviews that determination. Yet, the Office has the authority to reject the agency's decision and to require rewrites or supplements to documents for failure to adequately assess impact, mitigation measures or alternatives. Some agencies have found the review process to be a valuable addition to their substantive decision-making and have used it to float a number of alternative solutions to politically sensitive problems. For those agencies that have not yet taken the review process to heart, the Office has a particularly effective stick. The Office must review all requests for bonding. If the review documents are not in order, the Office can simply advise the Bonding Commission of that fact and bonding approval is held up until there is compliance.\(^{107}\)

The Office of Policy and Management was chosen to supervise the environmental review process because the Department of Environmental Protection is often a proponent of projects and it was deemed to be a conflict of interest to allow DEP to review the adequacy of its own impact analysis. Nonetheless, DEP, as well as the Council on Environmental Quality and the Connecticut Historical Commission review and comment on all documents submitted to the Office.\(^{108}\)

In Michigan, under regulations proposed last year, the state Environmental Review Committee (ERC) would be charged with aiding state agencies in the impact
process. The ERC would order a state agency to prepare an impact statement, assist in preparation of the EIS, could order an agency to revise an impact statement, and would advise the Governor whether or not a specific project should go forward.109 With a change in administrations, however, the state ended its environmental review process.110

Minnesota, which originally had in place a system of central review and abandoned it, is now considering some form of review by the state Environmental Quality Board (EQB) of all impact decisions. EQB staff has recommended, at the least, that the EQB Chair have the authority to remand decisions to lead agencies for further consideration. Another possible option would be to give the EQB or an administrative law judge the authority to reverse such decisions, rather than simply sending them back for reconsideration.111 The staff felt that such oversight was needed because "it is generally agreed by reviewing agencies that without some such check and balance, it is too easy for [lead agencies] to make pro-development, environmentally-insensitive decisions.112

Vermont’s experience demonstrates the efficacy of involving an independent agency in the review process. Vermont does not have an environmental review act similar to New York's. Yet, under its Land Use and Development Act (Act 250), all developments involving 10 acres or more of land must be approved by one of nine District Environmental Commissions. The decisions of the district commissions may be
appealed to a statewide Environmental Board.\textsuperscript{113}

Act 250 review entails a formal hearing, often preceded by an informal scoping conference. The hearing is conducted by the district commission, although all affected local governments and agency landowners are statutory parties and are entitled, along with the applicant, to submit evidence and to cross-examine witnesses. The commission then issues a decision, typically under ten pages, but sometimes in excess of fifty, evaluating the project under ten statutorily defined criteria. Although most projects are approved, there have been some significant denials, such as the 1978 denial of the application for the proposed Pyramid Mall near Burlington.\textsuperscript{114}

There are several aspects of the Act 250 process which provide lessons for New York. First, unlike the typical SEQRA process, the technical data is produced by a variety of parties with often conflicting interests.\textsuperscript{115} Second, the synthesis of the data is made by a relatively objective decision maker, not by either the applicant or the affected local government. Third, the commission considers the interests of the entire region or state, not merely the interests of the municipality in which the project would be located. Because of these factors, a more complete and objective picture naturally emerges.

The Pyramid Mall denial is an illuminating case study. In that instance, the commission rejected the application not only because it found that the project would
cause excessive traffic congestion, burden utilities, and lead to scattered development, but also because it would have a negative economic effect on neighboring Burlington and would denigrate the rural character of the region.\textsuperscript{116}

Local land use decision-making in New York does not balance the interest of neighboring communities and does not require localities to consider the larger regional picture. As a result, impact statements rarely address whether or not the proposed activity is sited in the right community. Giving local governments the option to shift SEQRA obligations to a county environmental quality review board would help to insure that such regional impacts are considered. In addition, concentrating oversight of the review process in one entity would invest that entity with the experience and track record necessary to develop an expertise in SEQRA. New York's counties often have larger and more experienced planning departments, but they currently serve little or no role in most municipal SEQRA reviews. Indeed, even where county input is required by law,\textsuperscript{117} the county is given only "interested" agency status, instead of "involved" agency status. Giving counties the responsibility to determine whether impact statements should be prepared, who should prepare them, and whether the statements are adequate would provide greater consistency in the process. Finally, the county board would be able to undertake a more objective evaluation of the environmental factors since it would have less of a vested interest in the project than a local board might have. The impact analysis would be conducted one step removed from local political and economic pressures. While approval or denial of the project
would still be made by the local board, the decision at least would be made on the basis of a record that considered the regional impacts of the action and the possibility of alternative sites outside of the municipality.

B. An Independent Consultant

Even if SEQRA review remains at the local level, municipalities can undertake meaningful and objective environmental analysis by retaining consultants independent of the applicant, and ideally, independent of the reviewing local body. New York SEQRA regulations mandate that the "lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it." In other words, the lead agency may depend on the applicant to write the draft and final EIS. Such an implication is made explicit elsewhere in regulations, where the lead agency is admonished to "cooperate with applicants who are preparing EIS's by making available to them information contained in their files relevant to the EIS." By giving the applicant control over the evaluation process, the lead agency, especially a local government lacking in resources and expertise, allows the applicant to effectively control the process.

Moreover, there are powerful pressures on the applicant's consultant to prepare an impact statement minimizing the environmental impact. The consultant hired by the applicant is often the consultant hired to do the engineering on the project. That potentially lucrative design contract will evaporate if the applicant does not obtain
approval or if the applicant obtains approval, but becomes disenchanted with the frankness of the consultant's report.

Although some municipalities have found consultants retained by applicants to be more than adequate, case histories involving environmental review processes done elsewhere indicate that independent consultants generally provide a more meaningful analysis and fuller exploration of alternatives than consultants retained by the applicant or a sponsoring agency. Municipalities in the State of Washington are increasingly hiring their own consultants, and the Minnesota Environmental Quality Review Board has recommended to localities that they retain their own consultants.

Lead agencies in New York are empowered to retain independent consultants and to charge the applicant the reasonable cost of those services. However, the caps placed on the fees that local governments can charge are realistic only if the local governments limit their use of consultants to the reviewing of impact statements prepared by developers. Where local governments have actually prepared their own impact statements, such as generic impact statements for large areas of their communities, they have assessed developers a pro rata portion of the cost, often in complete disregard of the limitations set forth in the regulations.

Minnesota has expressly required applicants to pay local governments the "reasonable costs of preparing and distributing" the environmental impact statement.
Included within those costs are the costs to the lead agency of retaining a consultant.\textsuperscript{126} Previous state regulations had placed unreasonably low caps on the total cost that could be assessed.\textsuperscript{127} Those caps, however, have been removed.\textsuperscript{128} In order to insure that the assessed costs are reasonable, the lead agency must present its estimate to the applicant and the applicant may either accept the estimate or ask the state Environmental Quality Board to determine the appropriate cost estimate.\textsuperscript{129}

Wisconsin, which applies its environmental review statute only to state agencies, also expressly provides for payment by the applicant to the lead agency of the costs of preparing an impact statement, without limitation.\textsuperscript{130} Before it commences work, however, the agency must send the applicant notice of its estimate of the cost for the EIS.\textsuperscript{131} The agency may also allow the applicant to prepare the statement.\textsuperscript{132} California law also expressly provides that an applicant may be assessed a "reasonable fee" to recover the estimated costs incurred in preparing a negative declaration or impact statement.\textsuperscript{133}

The federal NEPA regulations mandate independent review by the lead agency. While the agency may accept information from the applicant, and is directed not to duplicate the applicant's work, the agency must "make its own evaluation of the issues and take responsibility for the scope and content of the environmental assessment."\textsuperscript{134} More importantly, the impact statement must be prepared by the agency or a contractor selected by the agency which has certified that it has no financial or other
interest in the project. The regulations go on to specify that the consultant should be selected by a cooperating agency where the lead agency has a conflict of interest.

These regulations were modeled after the procedure adopted by Region IV of the federal Environmental Protection Agency. The Regional Office found it inefficient to hire a consultant to review the work of the applicant’s consultant. As a result, the office developed a voluntary procedure whereby the applicant and the office both choose the consultant, the consultant reports to EPA and provides EPA all background data, and the consultant is paid by the applicant. Additionally, the applicant has no opportunity to review the consultant’s work before it is submitted to EPA.

The result of this process is that the consultant becomes an independent third party, which provides an objective presentation of the relevant facts, unslanted by the biases of either the agency or the applicant. In addition, the review process becomes shorter, since second-guessing of the applicant’s consultant is eliminated.

Environmental consultants, whether retained by the applicant, municipality or an independent entity, can be kept honest through an on-going evaluation process. In Connecticut, the Council on Environmental Quality ("CEQ") has begun to grade environmental impact evaluations. That practice has made both the sponsoring agencies and the consultants sit up and take notice. In Washington, municipalities are developing "approved" lists of consultants. Obviously, municipalities often have a
bias. Thus, the grading or approval of consultants should be done by an independent body such as Connecticut’s CEQ. In any event, through a procedure such as that adopted by EPA’s Region IV, a ranking or grading system would be unnecessary since consultants would recognize that they would not receive new contracts unless they provided a high quality and objective work product.

C. A Realistic Evaluation of Alternatives

Local governments are severely constrained in their environmental analysis of development proposals in their community because generally they cannot consider alternative sites. Case law\textsuperscript{142} and SEQRA regulations\textsuperscript{143} do not require private developers to examine alternative sites which they do not own or control. The basis for this constraint is the obvious fact that the applicant has no interest in developing other sites. From the developer’s perspective, an alternative proposal using someone else’s land is not a viable alternative since the developer does not have control of that land.

While the applicant obviously has no interest in other sites, the municipality which must approve the project and neighboring communities have such an interest. For example, if a community needs a new shopping center, it would obviously be relevant to the decision makers to know that the applicant’s site would cause considerably more traffic congestion than another site. To suggest that the community
should not look at the alternative because it would not benefit the developer only reinforces the prevailing attitude that the environmental review is a developer-directed process.

SEQRA should be amended to expressly provide that the lead agency may consider alternative sites whenever they deem such analysis to be appropriate.

V. REDUCING THE COST OF SEQRA

Much of the cost of SEQRA review and the delay caused by that review can be reduced by adopting some of the suggestions discussed above. For example, hiring an independent consultant, involving the public in the scoping process, and insisting upon concise and focused impact statements would significantly reduce the time and money spent in SEQRA review.

A. Conditioned Negative Declarations

In addition, New York should consider greater use of conditioned negative declaration ("CND"). A CND is a determination of no significance made after the applicant has agreed to modify the project so as to mitigate adverse effects which would have resulted from the project. These declarations were used by some localities prior to the 1987 revision of the SEQRA regulations. The new regulations limit CNDs
to unlisted actions; they may not be used for Type I actions.\textsuperscript{144}

The problem with CNDs is that they provide an easy way for applicants and lead agencies to avoid full impact analysis. Hearings and an impact statement addressing alternatives can be avoided and public participation can be kept to a minimum. The process can become "a kind of backroom bargaining outside the normal glare of EIS procedures."\textsuperscript{145} This problem is not unique to New York. In Minnesota, Environmental Assessment Worksheets have become substitutes for impact statements.\textsuperscript{146} Only a handful of statements are prepared in Minnesota each year.\textsuperscript{147} To counter the trend, Minnesota has significantly expanded its list of projects for which an EIS is mandatory.\textsuperscript{148} The state is also considering expanding the Environmental Assessment Worksheets into mini-impact statements by requiring a discussion of alternatives and mitigation measures.\textsuperscript{149}

Similarly, in Washington State very few impact statements are prepared because of the availability of a "mitigated determination of no significance."\textsuperscript{150} An applicant may request from the lead agency an "early notice" of the agency's intent to make a finding of significance. Upon receipt of such a notice, the applicant is free to modify the project to eliminate those features which could adversely impact the environment. Alternatively, the lead agency could take the initiative and specify mitigation measures.\textsuperscript{151}
A similar procedure is available in California. During the initial stages of an application, the local agency is directed to encourage the applicant to modify the project to qualify for a negative determination.\textsuperscript{152} In fact, in California, conditioned negative declarations have evolved to the point that projects are now cooperatively redesigned to avoid environmental impacts where feasible.\textsuperscript{153} In Santa Barbara, where the procedure was used early on, the conditioned negative declaration no longer exists because the project is redesigned and mitigation measures are incorporated before a determination is formulated.\textsuperscript{154} At the federal level as well, organizers may issue mitigated findings of no significance (FONSI)s.\textsuperscript{155} The result has been a significant drop in the filing of full environmental impact statements.\textsuperscript{156}

Properly utilized, the CND can accomplish the goals of SEQRA and reduce unnecessary paperwork. First, the availability of the CND acts as a powerful incentive to applicants to alter their project to mitigate environmental impact.\textsuperscript{157} The result will be a better project. A full EIS could produce an excellent study of environmental impact, but result in a less desirable project. Although SEQRA mandates that agencies minimize adverse environmental effects to the maximum extent practicable,\textsuperscript{158} obtaining the applicant's consent to make changes is usually a more efficient way to achieve that outcome.

Second, if the public is allowed to participate in the CND process, the major issues of concern may be isolated early on and addressed. Structured mediation
sessions such as those used in Pennsylvania can lead to dramatic alterations in project proposals. (see Section II.B.) Various projects are placed in the Type I category because they are likely to have an impact on the environment. But if those impacts are clearly identified and addressed, the impact process becomes unnecessary. While certain types of projects should always go through a full impact review (and thus should be part of a mandatory list) many of the projects listed as Type I should be able to avoid full review if an honest CND can be produced.

B. Greater use of Generic Environmental Impact Statements

Costs can also be reduced through greater use of generic environmental impact statements (GEIS). Where a municipality is formulating a new comprehensive plan or considering a major rezoning, it should commission a generic statement which will study the effects of that change. Then, when developers seek approval for new projects which are consistent with the plan or the rezoning, the municipality often will not need a new impact statement. At most, it should only require a supplemental statement (SEIS) which discusses the impact of any deviations from the plan.

Recent case law has bolstered the GEIS process. In Neville v. Koch, New York City had rezoned a city block and prepared a GEIS, analyzing four worst-case scenarios. The lower court specifically held that before the developer could get approval for a specific project, even if allowed by the new zoning, the City would have
to undertake a separate "hard look" at the specific project, and if there are possible adverse environmental impacts, require the preparation of an SEIS.\textsuperscript{160}

This conclusion, while not inconsistent with current SEQRA regulation\textsuperscript{161} or the general goals of SEQRA, would have discouraged comprehensive planning and generic impact statements. Communities will undertake the time and cost for such planning if they know that uses specifically permitted by the comprehensive plan can be approved without reopening the entire SEQRA process. Certainly a GEIS cannot analyze every conceivable use that rezoned properties are put to. Yet, the lower court decision implied that, unless every such use is analyzed in a GEIS, any non-analyzed use must trigger a new "hard look." The Appellate Division reversed, finding that the City did not have to address every conceivable eventuality in the GEIS. In this case, the City had sufficiently examined the likely effects of the rezoning. A new "hard look" was unnecessary.

To avoid similar litigation in the future, the SEQRA regulations should be amended to create a presumption that an SEIS will be required only when a proposed use deviates from the plan or where a project has a peculiar impact distinct from other projects in the area and that impact was not analyzed in the GEIS. Where the GEIS could not accurately predict the impact of one or more subsequent uses, the local agency would have the discretion to require an SEIS, even for an allowable use.
California has adopted regulations with regard to residential projects that could serve as a model. When reviewing residential projects which are consistent with a community plan, for which an impact statement was done, local agencies must limit their environmental review to effects which are peculiar to the project and which were not analyzed in the prior impact statement. Project effects cannot be considered peculiar if uniformly applied development policies already deal with these effects. Parking, public access and grading ordinances are examples of such policies.\textsuperscript{162}

A study conducted in the Santa Barbara area of California found that the City's preparation and adoption of a Master Environmental Assessment (MEA) dramatically reduced the time of cost and review for individual projects. Since adoption of the MEA, the number of impact statements has been cut in half.\textsuperscript{163}

C. Developing Generic Mitigation Standards

Project time and cost may be dramatically reduced by developing standard impact/mitigation relationships.\textsuperscript{164} A municipality should develop, based on the monitoring of past projects, a list of standard mitigation measures associated with particular types of projects. The effects of particular uses on traffic and parking demands and the effect of paved areas on water run-off are the types of impacts susceptible to generic evaluation. Once they are developed, the impact statements of specific projects can be reduced in size to study those impacts which are unique to the
specific project.\textsuperscript{165}

D. \textbf{Time Limitations}

Costs can also be reduced by limiting the amount of time spent in preparing environmental impact statements. As noted earlier (see part III A.), the State of California limits municipalities to one year for completing and certifying environmental impact reports. Municipalities are also limited to 105 days for completing negative declarations.\textsuperscript{166} In addition, municipalities are required by ordinance or resolution to establish their own time limits for projects within the one year. They are encouraged to establish different time limits for different types or classes of projects. The ordinances are also required to provide for reasonable extensions of time in the event that "compelling circumstances justify additional time and the project applicant consents thereto."\textsuperscript{167}

Although New York's SEQRA regulations provide for numerous specific time periods throughout the SEQRA process, there is no overall limitation on the amount of time a municipality may take to review a project. Normally, when the developer prepares the environmental impact statement the developer has a strong financial incentive in preparing this statement in a timely manner. If municipalities actually prepare the reports, as recommended earlier in this report, time limitations should be placed in the process to insure that the impact statement is prepared expeditiously.
The SEQRA regulations should be amended to provide that local governments should, absent a finding of unusual circumstances, complete all SEQRA review within a one-year period.

E. Expediting SEQRA Litigation

Concerned over the rising costs incurred as a result of environmental review, the California Legislature amended its environmental review law to expedite the litigation process. First, California law now requires that within twenty days after a legal action is commenced, the responding agency must file a notice with the court setting forth the time and place for a settlement meeting. The meeting must be held within 45 days after commencement of the legal action. The party bringing the action must send a presettlement statement, describing the factual basis for the action and the issues likely to be raised, to all other parties at least five days prior to the meeting. All parties must attend the settlement meeting and make a good faith attempt to settle the litigation. While the settlement procedures are proceeding, the case itself must also proceed expeditiously. If the parties do not settle the case on their own, the court, in its discretion, may assign a judge to conduct further settlement conferences. California has also adopted procedures expediting the filing of the record of the agency proceedings. In addition, petitioners must request a hearing on the merits of a case within 90 days of the filing of the petition. Finally, all cases brought under the California Environmental Quality Act are to be given preference over all other civil
matters and "such actions shall be quickly heard and determined." Appeal procedures are also expedited. The record must be prepared and certified by the clerk of the lower court within 60 days after the request is made and the appellant must file its brief within 30 days after notice of appeal. The respondent must then file its brief within thirty days. The court must schedule the case for the first available argument date.

All evidence seems to indicate that SEQRA cases are heard fairly expeditiously in New York. Because virtually all cases are brought pursuant to Article 78, the cases are quickly heard without significant pretrial activity. Moreover, appeals appear to be proceeding fairly expeditiously since there are not extensive records or testimony to be prepared on appeal. Thus, this report does not make any recommendation to change the litigation system to expedite SEQRA litigation.

VI. MAKING LOCAL OFFICIALS FAMILIAR WITH SEQRA

State officials and private parties routinely involved with SEQRA believe that many of the problems with implementing SEQRA on the local level are the result of inexperience on the part of local officials and a lack of understanding of SEQRA in particular and land use planning in general. Certainly in New York, where there are some 16,000 local planning and zoning board members, most of whom are part-time volunteers, the need for adequate training is great. There is also the need for some
assurance that local decision-makers have some minimal understanding of the requirements of SEQRA.

Yet, according to research staff at the American Planning Association (APA) and the Virginia Cooperative Extension, no state requires education and/or certification for members of the local planning boards and zoning boards of appeal.

In New York, the Department of State provides training programs and materials for planning board and zoning board members. The Office of Local Government Services, the Office charged with producing the materials and coordinating the technical assistance, has been severely hit by budgetary cuts over the past few years, and, as a result, the quantity of programs and materials available has dwindled. The New York Planning Federation, a private not-for-profit planning organization and lobby provides training seminars for planning and zoning board members in various regions of the State. Private organizations in other states provide similar programs. The training packages of local chapters of the American Planning Association have been assembled and are available for borrowing through the APA. Attached as Appendix 2 is a list of available program packages, as well as a detailed description of each.

In addition, New York’s Department of Environmental Conservation (DEC) conducts regular seminars on SEQRA around the state and publishes a SEQR Handbook which takes the reader through the SEQRA process in an easy-to-read
One innovative program in New York is the Local Land Use Training Program sponsored by the Monroe County Planning Council and the Upstate Chapter of the American Planning Association. Completion of the training program signifies that the participant has received basic instruction in the key areas of the land use decision-making process. This program, like the activities of the New York Planning Federation, are not supported with State funding.

Another innovative program is that run by the Tug Hill Commission. This Commission provides advice and training, on a voluntary basis, to interested local governments in the Tug Hill area and has published an innovative Guide to Land Development. The Commission has also been instrumental in the consolidation of local government functions in the land use area and has encouraged the sharing of planning personnel.

County governments can play an important role in local government land use training, especially in the SEQRA area. Counties can bring together the disparate experiences of the various communities within the county on a regular basis and can encourage local officials to share their experiences. In addition, the counties can organize training programs for all the local officials in the county. The cost of such programs can be assessed among all the various participating municipalities and should
not result in any additional cost to the county.

Agencies in several states provide financial and technical assistance to local planning and zoning boards. What follows is a brief synopsis of some of the available programs.

**ARIZONA** - The Arizona Department of Commerce publishes a Planning and Zoning Handbook for use by lay board members and those interested in community planning in Arizona. The text is sold for $20.00, and has comprehensive information including appendices with sample ordinances, by-laws, agendas, etc. There is an accompanying slide or video show.

**CALIFORNIA** - The California Environmental Resources Agency publishes the California EIR Monitor, which until recently provided notice of the availability of environmental documents from throughout the State, expert commentary on both environmental problems encountered in the implementation of CEQA and on judicial decisions. Much of this information is now published by the Office of Planning and Research in a "Land Use Litigation Newsletter." One county official has noted that the EIR Monitor has been the single most valuable statewide publication on environmental activities. Recognizing that many smaller local governments lack both the personnel and the time to develop expertise needed to administer the complex law, they look to the State to provide the leadership. In California, the State published Guidelines to
help accomplish this.

**CONNECTICUT** - The University of Connecticut Extension Service has developed a large packet of materials for local planning and zoning officials, with special emphasis on farmland preservation. The Service also runs a one-day course on planning and zoning and sponsors over 100 workshops on a wide variety of topics.  

**OREGON** - The Oregon State Legislature funded a project by the Bureau of Governmental Research Service at the University of Oregon which includes two 30-minute videotapes, two reference guides, and a collection of 15 case studies.

**VIRGINIA** - The Department of Housing and Community Development assisted in the development of educational materials for the Virginia Certified Planning Commissioners Program and the Certified Zoning Appeals Commissioners Program. The programs are held four times a year in different parts of the state for about 45-50 newly appointed planning commissioners. The cost of the program, which is sponsored by the Cooperative Extension Service at Virginia Tech is $180.00, which is usually reimbursed to the participants from the local municipality. The program is not funded by the State, but the State makes significant in-kind contributions in the form of instructors and duplication/preparation of materials for distribution. The training program is 10 weeks long, and includes 2 days of initial classroom instruction, several weeks of home study including written assignments, field visits (critiques of
other planning boards and ZBAs), and 2 more days of classroom instruction. The program which results in an informal "certification," is endorsed by the State of Virginia, but it is not mandatory. The registration fee includes all instructional materials and meals.177

WASHINGTON - The Department of Ecology conducts annual statewide workshops and publishes an annual State Environmental Policy Act Handbook. The training and publication are required by statute.178 The Code provides that the workshops and Handbook should include, but not be limited to: measures to assist in preparation, processing, and review of environmental documents; relevant court decisions affecting SEPA; legislative changes to SEPA; administrative changes to the SEPA rules; and any other information which will assist in the orderly implementation of the chapter and rules.

WEST VIRGINIA - The Governor's Office of Economic and Community Development awarded a grant to the League of Women Voters of West Virginia and the West Virginia Planning Association to make workshop materials available to local planning commissions. A textbook is included with the workshop materials, designed so that a member of the local planning commission or staff can run the workshop.

One particularly interesting example of public education and training in the environmental review process is the case of the North Area Central Artery Project in
Boston. According to one commentator\textsuperscript{179}, the success of the project is owed to the involvement of local and regional citizens. A public involvement program was started to identify alternatives to be mentioned in the EIS. There was a separately funded citizen participation and technical assistance unit which was responsible for providing public information programs and materials, convening citizen committees and other public involvement mechanisms, working with the project’s technical staff to interpret and respond to citizen’s concerns, and providing technical support and assistance to lay people participating in the process.\textsuperscript{180}

CONCLUSION

SEQRA is not likely to go away, despite the fervent hopes of many local officials. SEQRA was designed, in part, to make the land use decision-making process more democratic and more responsive to environmental concerns. The fact that, in many people’s minds, it has not achieved these purposes should be enough to justify an in-depth review of the process. In response to criticism about SEQRA, some state officials have suggested that the law and the regulations would work fine, if only local officials, developers and the public would use the process in the way it was designed. The fact that these groups are not using the process should in and of itself lead to a re-evaluation of that process.

This report recommends a number of changes in SEQRA practice, regulations
and the statute itself. The two most significant recommendations deal with who should be undertaking the SEQRA analysis. This report recommends that local governments have the authority to delegate supervision of the environmental impact process to a separate environmental quality review board, either at the local or county level. Second, the report recommends that the lead agency, whether it is a local or a county agency, should utilize its own environmental consultant when doing the impact statement and should charge the cost of analysis to the developer. Even if the developer is allowed to undertake the impact analysis, that developer should be required to retain a consultant which has no financial interest in the ultimate project.

Some of the fifteen recommendations would reduce, while others would increase, the workload of local governments. However, all the recommendations are designed to make the process more meaningful and, ultimately, more cost effective.
ENDNOTES


3. Id.

4. Id.

5. Id.


9. Id.

10. Id. at 39-40.


12. § 617.13(b).

13. § 617.12(a).

14. § 617.12(a)(2).

15. § 617.12(a)(1).


17. 4 Minn. Rules § 4410.4300 (1989).

19. Telephone Interview with Gregory Downey, Environmental Review Program Coordinator, Minn. EQRB Program, November 28, 1990.

20. Id. and telephone interview with Gregory Downey on July 24, 1991.


22. Magee, supra note 7 at 117.

23. Id.

24. § 11.27(4)(a)(1), (4) and § 11.27(5)(a)(4) (1987).


29. Magee, supra note 7 at 118.

30. § 617.14(b), (c).


32. Id. at 68.

33. Id. at 50.


41. Ruzow, supra note 1.


43. § 617.7(a).


47. § 11:05(1) (1987).


50. § 15083 (1986).

51. § 15083(a) (1986).

52. § 617.7(b) (1987).


54. Stein-Hudson, How Local and Regional Public Participation Affect the EIS Process in Environmental Impact Assessment at 102.


56


60. § 617.8(c), (d). In addition, the public is afforded an additional period to comment on the final EIS. § 617.9(a).

61. "At the Discretion of the lead agency, other interested agencies and the public may be invited to participate in the scoping process." § 617.7(b).

62. § 617.6 (h)(l)(iv). The agency may rescind the CND and require an impact statement if the comments reveal that the project will nonetheless have significant environmental impact. § 617.6 (h)(2).

63. § 15064(c) (1983).

64. §§ 15072, 15073 (1983).

65. § 15083 (1986).

66. § 15064(a) (1983).


68. § 15111(1986).

69. § 15111(c) (1986).

70. M. Gerrard et al., supra note 16 at 3-175.

71. Id. at 3-175 to 3-177.


73. See generally, M. Gerrard et al., supra note 16 at § 7.02[4][b].

when environmental decision has an "impact" upon the petitioner) and Wing v. Coyne, 129 A.D.2d 213, 517 N.Y.S.2d 576 (3rd Dep't 1987) (statute of limitations begins to run only when the local governments substantive determination is final and binding). See generally, M. Gerrard et. al., supra note 16 at § 7.02[4][6].

75. § 21167(b), (c) (Deering, 1987).
76. § 21167(a) (Deering, 1987).
77. § 21092 (Deering, 1987).
78. Id.
79. § 21152 (Deering, 1987).
80. § 4410.0400(4) (1989).
82. § 343-7(c) (1985).
83. 343-7(a) (1985).
84. See Villella v. Dept. of Transportation, 142 A.D.2d 46, 48, 534 N.Y.S.2d 574, 575 (3d Dep't 1988) ("Deciding when a determination is final in these types of cases is not easy given that they often involve an ongoing planning and approval process where no permit or certificate or approval is required which would normally trigger the SEQRA Statute of Limitations." [citations omitted].
85. Wing v. Coyne, 129 A.D.2d 213, 216, 517 N.Y.S.2d 576, 578 (3d Dep't) ("SEQRA determinations are often preliminary steps in a project's decision-making process . . . .")
86. § 617.10(a)(2)(1987).
89. Wash. Laws of 1990, ch. 17
90. Ritchie interview, supra note 34.
91. § 21003(d) (Deering, 1987).
92. § 21003(e) (Deering, 1987).
93. Ruzow, supra note 1 at 186; Davis, "Do We Exalt Form Over Substance?" in Environmental Impact Assessment, at 205.
94. Pelham, "Is the EIS Relevant After the Decision is Made? The Florida Experience" in Environmental Impact Assessment, at 221.
95. Id.
99. Id. at 124.
100. Susskind, Restoring the Credibility and Enhancing the Usefulness of the EIA Process, 3 Env. Impact Assess. Rev. 6, 7 (1983).
101. cf. Robinson, SEQRA's Siblings: Precedents from Little NEPA's in the Sister States, 46 Albany L. Rev., 1155, 1175 (1982) (recommending the creation of such a council to "facilitate the work of SEQRA").
102. M. Gerrard et al., supra note 16 at 3-44 to 3-55.
103. Id.
104. Id. at 3-45.
105. See Weinberg, Practice Commentaries, Book 17 1/2, McKinney's Cons. Laws., 77-78 (1984); Rodgers, supra note 31 at 42, 50.
106. Foster interview, supra note 46.
108. Id.

111. Staff Memorandum, Minn. Env. Quality Board 11-12 (July 11, 1991).

112. Id. at 12.


114. Berzok, New England Retrospective, supra note 55; Berzok, Pyramid Mall, supra note 113.

115. Berzok, Pyramid Mall, supra note 113 at 190.


117. See Gen. Mun. Law §§ 239-m, 239-n.

118. § 617.14i (1987).

119. § 617.14(b)(1987).

120. Waterhouse, California's Experience in Permitting Project Applicants to Prepare Impact Reports in Environmental Impact Assessment at 110.

121. Berzok, New England Retrospective, supra note 55; Rubin, supra note 56.

122. Ritchie interview, supra note 34.

123. Downey interview, supra note 19.


125. § 4410.6000 (1989).


128. § 4410.6100(2) (1989).


133. § 21089.
134. 40 C.F.R. § 1605.5(a), (b) (1990).
135. 40 C.F.R. § 1506.5(c)(1990).
136. Id.
138. Id.
139. Id.
140. McLellan interview, supra note 107.
141. Ritchie interview, supra note 34.
142. See M. Gerrard et. al., supra note 16 at 5-127 to 5-129.
144. § 617.2(h) (1987).
145. Rodgers, supra note 31 at 44.
146. Herman and Dayton, supra note 97; Downing interview, supra note 19.
147. Herman and Dayton, supra note 97.
148. Id.
149. Staff memorandum, supra note 111 at 8-11.
152. §§ 15006(h); 15063(c)(2) (1986).
153. This was a recommendation of a study undertaken of the operation of California's impact law in the Santa Barbara area. A. Dominski et al., CEOA &
Local Decision-making: A Santa Barbara Case Study 3 (Community Environmental Council, 1985).

154. Id. at 3, 13.


157. Herson, supra note 155.


162. § 15183 (1986).

163. Dominski et. al., supra note 153 at 3, 14.

164. Dominski et. al., supra note 153 at 15.

165. Id.

166. § 21151.5 (1987).

167. Ibid.

168. § 21167.8 (Deering, 1987).

169. § 21167.8 (d) (Deering, 1987).

170. § 211.67.8(f) (Deering, 1987).

171. § 21167.6(a)-(c) (Deering, 1991).

172. § 21167.4 (Deering, 1987).

173. § 21167.1 (Deering, 1987).
174. § 21167.6(d)-(f) (1991).

175. Selmi, supra note 58.


179. Stein-Hudson, supra note 54 at 102-105.

180. Id. at 103-4
APPENDIX 1:

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT
<table>
<thead>
<tr>
<th>State</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>AR</td>
<td>A Practical Workshop on City Planning and Zoning</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Arkansas APA Chapter</td>
<td></td>
</tr>
<tr>
<td>AZ</td>
<td>Arizona Planning and Zoning Handbook</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Arizona Department of Commerce</td>
<td></td>
</tr>
<tr>
<td>CA</td>
<td>Merced City Planning Commission Handbook</td>
<td>6</td>
</tr>
<tr>
<td>CA</td>
<td>Planning Commission Handbook</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>League of California Cities</td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td>Florida Planning Commissioner Handbook</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Florida Center for Public Management</td>
<td></td>
</tr>
<tr>
<td>IA</td>
<td>Planning and Zoning Notebook</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Iowa State University Extension, University of Iowa, Iowa APA Chapter</td>
<td></td>
</tr>
<tr>
<td>ID</td>
<td>Local Planning in Idaho: A Primer for Planning and Zoning Commissioners</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Idaho Planning Association</td>
<td></td>
</tr>
<tr>
<td>IN</td>
<td>Reasoning Together: The Planning Commissioner’s Job</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>The Indiana Planning Association</td>
<td></td>
</tr>
<tr>
<td>MI</td>
<td>The Community Planning Process: A Guide for Planning Commissioners in Michigan</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Michigan Society of Planning Officials</td>
<td></td>
</tr>
<tr>
<td>MO/KS</td>
<td>The Planning Commissioners Workshop</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Missouri and Kansas APA Chapters</td>
<td></td>
</tr>
<tr>
<td>NE</td>
<td>Nebraska Planning Institute</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Nebraska APA Chapter</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>Municipal Planning Primer: The Role of the Planning Board</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Westchester Municipal Planning Federation</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>Local Land Use Decision Making</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>The Monroe County Planning Council</td>
<td></td>
</tr>
<tr>
<td>OK</td>
<td>Oklahoma Planning Commissioners’ Workshop</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>Oklahoma APA Chapter</td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td>Oregon Land Use Planning</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>Bureau of Governmental Research and Service, University of Oregon</td>
<td></td>
</tr>
<tr>
<td>TX</td>
<td>A Guide to Urban Planning in Texas Communities</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>The Educational Foundation, Inc.</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Planning and Zoning Administration in Utah Center for Public Affairs and Administration University of Utah</td>
<td>Page</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>UT</td>
<td>Virginia Certified Planning Commissioners' Program Virginia Department of Housing and Community Development, Virginia Cooperative Extension Service at Virginia Tech, Virginia Citizen's Planning Association.</td>
<td>37</td>
</tr>
<tr>
<td>VA</td>
<td>Planning Orientation and Review for Planning Commissioners League of Women Voters of West Virginia, and West Virginia Planning Association</td>
<td>41</td>
</tr>
<tr>
<td>WV</td>
<td>Planning Institute West Virginia Planning Association</td>
<td>43</td>
</tr>
<tr>
<td>WV</td>
<td>Planning Institute West Virginia Planning Association</td>
<td>46</td>
</tr>
</tbody>
</table>
ARKANSAS
A PRACTICAL WORKSHOP ON CITY PLANNING AND ZONING

Type of Package: Two one-day planning commission workshops per year (includes reference manual). One is on general information and the second is on a specific topic (subdivisions or zoning).

Prepared by: APA Arkansas Chapter
Arkansas Municipal League

Contact: Jim Lawson, Planning Director
City of Little Rock
723 W. Markham
Little Rock, AR 72201
phone: 501-371-4790

Each workshop attendee receives a Citizen Planner Manual that is designed for the particular workshop that is being presented. APA has on hand a sample of the Zoning Workshop manual and 1 page outlines of the general planning workshop and the subdivisions workshop. The Manual addresses a variety of planning issues, and is useful for later reference as well as during the workshop. Sometimes, depending on the subject matter to be covered, either of the videotapes Why Plan? or The Role and Responsibility of the Planning Commissioner (available from APA's Planners Bookstore) are shown as part of the workshop. A sample agenda from one workshop follows:

AGENDA

9:00-9:15 a.m. Registration
9:15-9:30 a.m. Introduction
Welcome to Workshop
Agenda for workshop and APA meeting
Purposes of APA and workshop
Technical Assistance
Speakers

9:30-10:00 General Planning Overview
What is Planning?
What are the Tools of Planning?
What are the Roles of the Commission?
What is Zoning?
Terminology of Zoning?
What are site specific zoning classifications?

10:00-10:15 Break
10:15-11:00 Zoning Ordinances and Review
11:00-12:00 p.m. State Laws
Commission Bylaws
Notification requirement
Purposes of Plans
Creation of Commission (Board of Adjustment)
Purposes of Commission
Powers and Duties of Commission
Territorial Jurisdiction
Nonconforming Uses
Taking issues

12:00-1:00
Lunch

1:00-2:00
Transportation/Zoning
Which first, traffic or land use?
Street Plan Network
Access Controls
Traffic Generators
State Highway Dept./local coordination
Return to Grid Network vs. cul-de-sacs

2:00-3:30
Case Studies and Questions
ARIZONA
THE ARIZONA PLANNING AND ZONING HANDBOOK


Prepared by: Arizona Department of Commerce, Community Assistance Program,
Arizona Planning Association
League of Arizona Cities and Towns
Metropolitan Communities

Contact: Peggy Fiandaca
Arizona Department of Commerce
3800 N. Central
Phoenix, AZ 85012
phone: 602-280-1300

The Commerce Community Planning Program is charged with providing planning technical assistance to municipalities, counties, and Indian tribes. The program has a resource library that is available to commissioners statewide, and they conduct specialized workshops and retreats for local commissions.

The Arizona Department of Commerce has developed a second edition of the 1984 Planning and Zoning Handbook (cost $20). The handbook is prepared for use by planning and zoning commissioners, members of boards of adjustments, elected officials, practitioners, developers, and citizens with an interest in community planning in Arizona. Can be used as a model for other states. The contents of the handbook are listed below.

I. Introduction

Purpose
Arizona Technical Assistance Project
Format
Acknowledgments

II. Definition and History of Planning

What is Planning?
Definition of Terms
History of Planning
Purpose of Planning
Six Functions of Planning
What Planning Can and Can't Do

III. Legal Authority

Introduction
Background of Legal Authority
Municipal Planning Authority
Other Sources of Municipal Authority to Control Land Use
County Planning Authority
Other Sources of County Authority to Control Land Use
IV. The Role of the Planning Commission and Commissioners

Introduction
Role of the Planning Commission
Building and Strengthening Lines of Communication
Orientation of New Commissioners
Tools of the Trade for Commissioners
Being an Effective Group Member
Making the Commission More Effective
Due Process of How to be Fair
Code of Conduct

V. The General Plan

Introduction
General Plan Defined
The Plan as a Part of a Process
Legal Authority for the General Plan
General Plan Elements
Legal Authority for Specific Plans
Functions of the Plan
Beginning the Planning Process
Preparing the General Plan
Adopting, Amending and Implementing the General Plan
The County Comprehensive Plan
Adopting and Amending the County Comprehensive Plan
Keeping the Plan Up-to-Date
Steps in the Planning Process
Preparing of Implementation Techniques
Development Agreements
Capital Improvements Programming
Development Fees: Financing Growth
State Trust Lands Planning Process

VI. Zoning Administration

Introduction
Purpose and Objectives of Zoning
Zoning Relationship to the General Plan
Municipal Zoning Authority
Legal Issues
County Zoning Authority
Content of the Zoning Ordinance
Preparing the Zoning Ordinance
Administration of Zoning
Changes to Zoning
Hints for Better Zoning
Describing and Locating the Districts
Land Use and Growth Management Tools
Community Design Review
Redevelopment
Historic Preservation
Footnotes

VII. Subdivision Regulations

Introduction
VIII. Board of Adjustment

Introduction
Municipal Boards of Adjustment
County Boards of Adjustment
Organization
Meetings
Records
Rules of Procedure
Findings and Decision-making
Powers and Duties
Enforcement
Appeal Procedure Before the Board
Appeal to the Courts
Appeal to the Legislative Body
Caution

IX. Open Meeting Law and Community Involvement

Introduction
The Open Meeting Law
Sanctions
Ratification
Public Notice Requirements
The Meeting Agenda
Executive Sessions
Meeting Records
Successful Public Meetings
Community Involvement

X. Appendix

A. Sample Ordinance Creating Planning and Zoning Commission
B-1. Sample Rules of Procedure for Municipal Planning and Zoning Commission
B-2. Sample City Planning and Zoning Commission Bylaws
B-3. Sample Rules of Procedure for Boards of Adjustment
C. Sample Planning Commission Agenda
D. Sample Project Checklist
E-1. Sample Job Descriptions for Planning Staff in Communities under 40,000 population
E-2. Sample Job Descriptions for Planning Staff in Cities over 40,000 Population
F. Recommended Reading
G. Glossary

Slide Show and Video

There is an accompanying slide show (now available in video). Our package contains a script of the show.
CALIFORNIA

MERCED CITY PLANNING COMMISSION HANDBOOK

Type of Package: Handbook for new planning commissioners
Prepared by: Merced City Planning Department
Contact: Planning Director
City of Merced Planning Division
678 W. 18th St.
Merced, CA 95340
phone: 209-385-6858

The Merced City Planning Department has prepared a handbook (revised 8/89) for new planning commissioners. The handbook combines general information about the role of a planning commissioner with specific information about Merced. Communities would have to substitute their own information for the Merced information, but this is an excellent introductory handbook. The following is the table of contents for the handbook.

I. Duties, Rules, and Procedures

<table>
<thead>
<tr>
<th>Duties, Rules, and Procedures</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Planning Commission's Function and Duties</td>
<td>1-1</td>
</tr>
<tr>
<td>Rules of Procedure</td>
<td>1-8</td>
</tr>
<tr>
<td>- Organization and Officers</td>
<td></td>
</tr>
<tr>
<td>A. Organization</td>
<td></td>
</tr>
<tr>
<td>B. Officers</td>
<td></td>
</tr>
<tr>
<td>C. Duties and Powers</td>
<td></td>
</tr>
<tr>
<td>D. Rules of Order</td>
<td></td>
</tr>
<tr>
<td>- Meetings</td>
<td></td>
</tr>
<tr>
<td>A. Public meetings</td>
<td></td>
</tr>
<tr>
<td>B. Regular meetings</td>
<td></td>
</tr>
<tr>
<td>C. Adjourned meetings</td>
<td></td>
</tr>
<tr>
<td>D. Special meetings</td>
<td></td>
</tr>
<tr>
<td>E. Study Sessions/Workshops</td>
<td></td>
</tr>
<tr>
<td>F. Agenda</td>
<td></td>
</tr>
<tr>
<td>G. Order of meetings</td>
<td></td>
</tr>
<tr>
<td>H. Motions</td>
<td></td>
</tr>
<tr>
<td>I. Voting</td>
<td></td>
</tr>
<tr>
<td>- Review and Amendments Procedure</td>
<td></td>
</tr>
<tr>
<td>Selection of Chairperson and Vice-Chairperson</td>
<td>1-16</td>
</tr>
<tr>
<td>Suggested Procedures for Chairing Planning Commission meetings</td>
<td>1-17</td>
</tr>
<tr>
<td>Planning Commission Actions (Final or Recommendation)</td>
<td>1-20</td>
</tr>
</tbody>
</table>

C5103-9/17/90
2. Application Review Checklists

- Considerations When Reviewing Various Agenda Items 2-1
- Zoning Change Checklist 2-3
- Conditional Use Permit Checklist 2-5
- Site Plan, Landscaping and Architecture Review Checklist 2-6
- Residential Zoning—Equivalent Densities 2-11
- Housing Type Ranges (Density/Zoning) 2-12

3. Calendars, Rosters, and Objectives

- Merced City Planning Commission Calendar 3-1
- Planning Commission Meeting Schedule 3-2
- Merced City Planning Commission Membership Roster 3-3
- Merced City Council Membership Roster 3-4
- Merced City Board of Zoning Adjustment Membership Roster 3-5
- Planning Commission Appointments 3-6
- City Manager/Planning Commission/City Council 3-7
- Special Projects for Current Fiscal Year 3-8
- City of Merced Organization Chart 3-9

4. Making Planning Commissions More Effective

- General Do's and Don'ts 4-1
- Skills A Good Planning Commissioner Should Have 4-2
- Fourteen Ways to Build a Better Commission 4-3
- Making Your Planning Commission More Effective 4-4
- Evaluation of Planning Staff Reports 4-5
- How to Improve Your Staff's Reports 4-10
- Educational Materials 4-11
- Planning Commission Evaluation 4-13
- Planning Commission Evaluation Questionnaire 4-14
- Planning Commission Self-Help Exercises 4-15

5. Commonly Asked Questions

- Who Receives Public Hearing Notices and Staff Reports? 5-1
- How are Planning Commission Recommendations Presented to the City Council? 5-2
- How does the Planning Staff Process Development Applications? 5-5
- Is Downzoning Legal and Fair? 5-7
- What are Findings and When are they Required? 5-9
- What should Tentative Subdivision Map Findings Include? 5-10
- How Far can you go with Conditions? 5-11
- What is a Planned Development? 5-14
- What are Conditional Use Permit Standard Conditions? 5-19
- What are Tentative Subdivision Map Standard Conditions? 5-21
- How Much Traffic Does This Project Generate? 5-23

6. Background Information

- Glossary of Planning and Zoning Terms 6-1
- Planning Department List of Abbreviations 6-7
- What Is Planning Policy? 6-11
- Relationship between a City's Planning Area and Sphere of Influence 6-12
This handbook (revised 3/89) describes the tools available to the planning commissioner to carry out his or her responsibility for leading the community to its goal of good planning. It is intended for use by planning commissioners, particularly those newly appointed, and should also prove useful to other officials, developers, and citizens with an interest in the local planning process. The table of contents for the publication follows.

I. Introduction
   Contents
   Legal References
   Format

II. Legal Authority
   The Police Power
   The General Plan
   General Plan Elements
   Effect of a Deficient General Plan
   Consistency
   Procedures for Adoption
   The Housing Project
   Specific Plans
   Zoning
   Source and Scope of Powers
   Limitations on the Zoning Power
   Types of Zoning
   Amendments to Zoning
   Exceptions to Zoning
   Adjusting Local Borders
   LAFCO
   Spheres of Influence
   Annexation
   Prezoning
   Subdivisions
   Processing a Subdivision Map
   Parcel Map Procedures
   Vesting Tentative Maps
   Conditions of Map Approval
   Condominium Conversions
Fees and Dedications
Legal Validity
Opportunities for Dedications
California Environmental Quality Act
Glossary of CEQA Terms
When is an EIR Required?
The EIR Process
Litigation
Rules of Official Conduct
Legal Liability of Public Officials
Conflict of Interest
Miscellaneous Matters
Necessity for Findings
Code Enforcement
The Permit Streamlining Act
Land Use and Redevelopment Law
Government Exemptions and Preemption
Public Hearing
The Brown Act and Planners

III. General Procedures
Administrative Procedures
Applications
Building Codes and Planning
Data Used in Planning
Computers in Planning
Parks and Recreation
Planning Parks
Park Master Plan
Park Land Acquisition
Park Space Guidelines
Facility Development Guidelines
Development Agreements
Background
Legislation
Legal Issues
Procedure
Transportation
Impact of New Development
Mitigation Measures
Parking
Capital Improvements Programming
Energy Planning
Energy Policy
State Laws
Local Ordinances and Regulatory Incentives
Alternative Energy Resources
Cooperative Projects
Information Resources

IV. Policies and Programs
Design Review
Historic Preservation
Strategies
Resources
Growth Management
Redevelopment
Background
Procedure
Fiscal Review
Local Economic Development and Planning
Housing Issues
   Key Policy Issues IV-F 1
   Causes of Housing Problems 2
   Possible Solutions 4

Agricultural Issues IV-G

Planning and Hazardous Materials IV-H
   Sitting 1
   Emergency Response 2
   Planners Check List 2

Open Space Issues IV-I
   Open Space Plan 1
   Dedications and Funding 2

Special Districts IV-J

Schools IV-K

V. Working Relationships
   A. Building a Better Commission V-A
      Conducting Commission Meetings 2
      Planning Commissioner Training 4
      Working with the Private Sector 5
      Using Consultants 5
      Dealing with the Press 6

VI. Appendices
   A. Glossary of Planning and Zoning Terms VI-A
      Terms 1
      Abbreviations 8
      Symbols 11
   B. Learning to Read Plans VI-B
      Contour Lines 1
      Characteristics of Contours 5
      Variations in Slope 6
   C. Model Agenda VI-C
      Agenda 1
      Notes 4
   D. Expediting Commission Meetings VI-D
      Considerations When Reviewing Agenda Items 1
      Zone Change Checklist 2
      Conditional Use Permit Checklist 3
      Site Plan, Landscaping and Architectural Review Checklist 3
      Making Your Planning Commission More Effective 6
   E. Sample Organizational Structure and Responsibilities IV-E
      Rules of Procedure 1
      Selection of Chairperson 5
      Procedures for Chairing Meeting 2
   F. References VI-F
      League of California Cities Library 1
      General Bibliography 3
      Order Form for League Publications on Planning 5

VII. Local Data, Forms, and Policies
FLORIDA

PLANNING COMMISSIONER HANDBOOK

Type of Package: Two-day workshop and five part self-study unit with handbook. APA has handbook on hand.

Prepared by: Florida Center for Public Management

Contact: Woody Price, AICP, Senior Associate
Florida Center for Public Management
Florida State University
118 Woodward
Tallahassee, FL 32306
phone: 904-644-6460

This training program for planning commissioners is intended for all who lack formal education and training in comprehensive planning but who want to be more effective when participating in their community's planning process. Planning commissioners, members of citizen advisory committees, members of other interest groups such as environmental, neighborhood, commerce, education and similar community organizations are obvious examples. Local elected officials and local government managers and supervisors who have a role in the preparation, adoption and implementation of the local comprehensive plan are also candidates for the program.

The Training Program is composed of a two-day workshop and a five-part self-study unit. The workshop introduces the technical information and planning issues which are covered in the self-study unit but does not duplicate the same information. The workshop helps prepare the participant to take on the self-study unit by presenting the background and the bigger picture for many of the planning issues. While the workshop is fast paced and packed with practical and important information for the participant, the bulk of the training program content is in the self-study unit. The handbook that is used includes reference information, notes and worksheets and the self-study training materials.

Planning Commissioner Handbook - Table of Contents:

1. Introduction
2. Summary
3. Workshop: Notes and Materials
4. Requirements: Legal, Procedural, Practical
5. Taking Bearings: Data Gathering and Intergovernmental Relationships
6. Setting Course: Community Participation and Goals
8. Evaluating Results: Discovering How to Do Better
9. Appendix
   a. Statutes and Rules
b. Local Codes, Ordinances, Resolutions and Procedures

c. Department of Community Affairs Policy Statements
   Major issues
   Example comments on local plans

d. Contacts (local, regional, district, state, federal)

e. Sources of additional information
   Publications
   Organizations

f. Glossary
IOWA

PLANNING & ZONING NOTEBOOK

Type of Package: Binder notebook of materials used in 1989 planning commissioner training session.

Prepared by: Stuart Huntington Planning and Development Specialist

Sponsored by: Iowa State University Extension Service University of Iowa Iowa APA Chapter

Contact: Stuart Huntington Planning and Development Specialist 288 College of Design Ames, Iowa 50011 515-294-8707

This notebook is a compilation of materials that Mr. Huntington used for his 1989 planning commissioner training session. For this session a satellite uplink was used to transmit the 2 1/2 hour evening program to 51 sites. While the information is very Iowa oriented, the format is very good and could serve as a fine example for other states. The following is a breakdown of the chapters included in the notebook.

1. Glossary of common planning and zoning terms

2. Iowa Planning and Zoning legislation:
   A compilation of frequently used Iowa statutes that relate to the physical growth and control of land use development in cities and counties.

3. A guide to common Planning and Zoning procedures
   Zoning checklist
   Why are Planning and Zoning important
   County Zoning in Iowa: An explanation of Chapter 358A of the Iowa Code
   Zoning Administration: Powers, duties, and responsibilities of elected and appointed public officials.

4. Powers of the Board of Adjustment
   Recent court decisions
   Variance Review Guidelines

5. Subdivision Review Manual
   Powers and Responsibilities in Subdivision Plotting
   Addendum to CRD113, Iowa Subdivision Law Explained and Chapter 409 Iowa Code
   Model County Subdivision Ordinance

In addition to these sessions, Mr. Huntington also makes himself available to cities, counties, COGs, and other groups for commissioner training sessions.
IDAHO
Local Planning in Idaho

Type of Package: Primer for planning and zoning commissioners
Companion short course

Prepared by: Idaho Planning Association
The Association of Idaho Cities
The Association of Idaho Counties

Funded by: IPA proceeds from short course
The Association of Idaho Cities
The Association of Idaho Counties

Contact: Lee Nellis, Consultant
Post Office Box 50953
Idaho Falls, ID 83405

The Primer

This primer is designed principally to supply the new planning and zoning commissioner with an introduction to the subject of local planning in Idaho, but seasoned commissioners will also find it a useful review guide. Its subject matter should also be of interest to city council members, county commissioners, and anyone else involved in planning. There is a $5 copy charge to obtain the primer.

Part I: Table of Contents

CHAPTER 1 - THE FUNCTION AND PURPOSE OF LOCAL PLANNING

Historic Context

1

Personal Reasons

1

Environmental Benefits

2

Economic Benefits

2

Private Benefits

2

Social Benefits

2

Costs of Local Planning

2

Cost avoidance

3

PAGE
Subdivision Review
Other approvals
Right-of-way vacations
Other Design Review
Building permits
Sign codes

CHAPTER 5 - DECISIONS, DECISIONS --
THE PLANNING COMMISSION AND DUE PROCESS
Quasi-judicial and Legislative Decisions
Conflicts of Interest
The Role of Staff
Adequate Notice
Public Hearings
  Hearing organization
  Opportunity to be heard
  *Ex Parte* communications
Reasoning and Findings of Fact
Adopting Findings of Fact and Conclusions of Law
Meeting Records
Implementation
Closing

CHAPTER 6 - APPENDIX -
List of Recommended Books and Periodicals

Part II:  *Local Planning Act of 1975 from the Idaho code, 67-6501-67-6536, October 1987.* The code is reproduced for use especially in workshops. Comments on certain cases within the Idaho court system are included to illustrate practical application.

Part III:  *A Sampler of Hearings Procedures and Findings of Fact and Conclusions of Law from Idaho Cities and Counties.* This sampler presents examples of hearings procedures used by different cities and counties in Idaho.

Part IV:  *The language of planning and zoning--a glossary of selected words and phrases.* This glossary defines 93 planning and zoning related terms.
Part V: About variances. A variance application from the city of Ketchum is the final part of the primer.

The Companion Short Course

Following is a condensed version of the practical outline for the Idaho "Short Course" for planning and zoning commissioners. The full outline is based on experience in 15 courses reaching approximately 400 people.

I. Welcome and Introductions (5-10 minutes).

II. Brainstorming: What Are Their Issues? (5-10 minutes).

III. Why Planning? (5-7 minutes).

IV. The Local Planning Act (the length of this section will vary with the number of questions raised, but it will take at least one hour).

V. Additional Questions.

VI. Sales Pitch (no more than 5 minutes).

VII. Conclusion.
INDIANA

REASONING TOGETHER: THE PLANNING COMMISSIONER'S JOB

Type of Package: A video tape workshop (VHS)

Prepared by: The Indiana Planning Association

Contact: Dr. Francis Parker
c/o Department of Urban Planning
Ball State University
Muncie, IN 47306
phone: 317-285-1963

This one-hour and 16 minute workshop is based on selected topics from David Allor's book, The Planning Commissioner's Guide. It is a condensed and edited version of a three-hour workshop presented at Ball State University in 1985. The workshop discusses the unique job of the planning commissioner, and offers tips to improve the quality of decisions made by the planning commission. It is intended for informal viewing by planning commissions and their staffs. The tape may be purchased.

The general sequence of topics follows:

1. Significance of planning - the unique job of the planning commissioner
2. Uses and misuses of information
3. The overall community perspective
4. Establishing reasons and criteria for commission recommendations
5. Uniform treatment of applicants
6. Objectivity in commission decision making
7. Avoiding special privilege and conflicts of interest
8. The public interest
9. Establishing community goals as a basis for commission action

(Discussion break - at 38 minutes)

10. Importance of written staff reports
11. Avoiding ex parte contact with applicants
12. Work with the staff in reviewing applications
13. Importance of established procedures
14. Require applicants to provide background information
15. Following through with enforcing commission actions
16. Performance regulations
MICHELAM

MICHERIAN SOCIETY OF PLANNING OFFICIALS

Type of Package: Publications for planning commissioners

Prepared by: Michigan Society of Planning Officials

Funded by: Michigan Society of Planning Officials

Contact: Helen S. Willis, Executive Director
Michigan Society of Planning Officials
P.O. Box 1217
Rochester, MI 48308-1217
Telephone: 313-651-3339

The Michigan Society of Planning Officials has prepared five publications that can be purchased by communities for their planning commissions. The books stress Michigan laws, but can serve as model publications for other states. The chapter headings for each publication follow.

The Community Planning Process: A Guide for Planning Commissioners in Michigan ($5.00)

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Historical Overview of Community Planning</td>
<td>1</td>
</tr>
<tr>
<td>Community Planning and the Law</td>
<td>5</td>
</tr>
<tr>
<td>The Community Planning Process</td>
<td>9</td>
</tr>
<tr>
<td>Tools to Implement the Comprehensive Master Plan</td>
<td>16</td>
</tr>
<tr>
<td>Key Terms Used in Zoning</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>36</td>
</tr>
</tbody>
</table>

Site Plan Review: A Guidebook for Planning and Zoning Commissions ($11.25)

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Background and Definitions</td>
<td>1</td>
</tr>
<tr>
<td>Procedural Issues</td>
<td>2</td>
</tr>
<tr>
<td>Site Planning Principles</td>
<td>7</td>
</tr>
<tr>
<td>Court Decisions Related to Site Plan Review</td>
<td>19</td>
</tr>
<tr>
<td>Techniques for Getting Better Site Design</td>
<td>29</td>
</tr>
<tr>
<td>Appendices</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>41</td>
</tr>
</tbody>
</table>

Sign Regulation: An Overview of the Issues and Alternatives ($12.00)

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why Regulate Signs?</td>
<td>1</td>
</tr>
<tr>
<td>Legal Considerations</td>
<td>3</td>
</tr>
<tr>
<td>Federal and State Regulation: What's Left for Local Government</td>
<td>9</td>
</tr>
<tr>
<td>Basic Approaches and Principles for Local Sign Controls</td>
<td>16</td>
</tr>
<tr>
<td>Special Cases</td>
<td>23</td>
</tr>
<tr>
<td>Basic Regulatory Options</td>
<td>29</td>
</tr>
<tr>
<td>Adopting New Sign Regulations: Planning and Content Considerations</td>
<td>38</td>
</tr>
<tr>
<td>Ordinance Components</td>
<td>43</td>
</tr>
<tr>
<td>Sign Variances</td>
<td>46</td>
</tr>
<tr>
<td>Closing Thoughts</td>
<td>53</td>
</tr>
<tr>
<td>Footnotes</td>
<td>58</td>
</tr>
</tbody>
</table>
Appendices

Planning Commission Guidelines (1 = $1.00 ea.; 2-12 = .90¢ ea.; 13-24 = .75¢ ea.; 25+ = .60¢ ea.)

By-laws and Rules of Procedures 1
Public Hearings Guidelines 6
Conflicts of Interest: A Personal View 10

Land Division and Access Controls ($12.00)

Introduction i
Land Division and Access Characteristics 1
Why Regulate Land Division and Access 6
Legal Considerations 18
Regulatory Tools 29
Land Division and Access Control Techniques 33
Developing A Land Division and Access Control Program 54
Legislative Reform 66
Appendices 68
MISSOURI/KANSAS
THE PLANNING COMMISSIONERS WORKSHOP

Type of Package: Three one-day workshops on zoning, subdivision regulations, and principles and practices of planning, plus reference guides for each workshop.

Prepared by: Missouri APA Chapter
Kansas APA Chapter
Kansas City Metropolitan Section of APA
Reference guides by students at the Regional and Community Planning Program at Kansas State University

Funded by: Volunteer efforts
Registration fees

Contact: George Garcia
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66216
Telephone: 913-381-5252

Workshop I. Subdivision Regulations

Typical sessions for the subdivision regulation programs are:

- **Subdivision Regulations: A Tool for Guiding Land Development.** This session discussed the overall objectives of subdivision regulations, the proper layout of land and streets, and adequate public improvements. 1-1/2 hours.

- **Slideshow and an introduction to subdivision regulations.** 1 hour.

- **Current Land Development Issues: Lower Costs, Raising the Floodwater, Maintaining the Services.** This session dealt with the current issues of subdivision regulations. It discussed lowering development costs (such as reducing improvement costs), the effects of new subdivisions on adjacent properties (such as increased runoff) and the ability of communities to provide utilities and other services to this growth. One speaker discussed the national issues, while a local speaker discussed the issues in Missouri and Kansas. 3/4 hour.

- **Subdivision Law in Kansas and Missouri: Potentials and Limits.** 1 hour.

- **Lunch:** "Ask the Experts" panel. A typical subdivision proposal was presented for review by the workshop faculty. 1-1/2 hours.

- **Improvement standards: What's a Reasonable Road?** A panel examined the different approaches towards providing public improvements within and around subdivisions. 1-1/2 hours.

- **Concurrent Sessions.** 1-1/4 hours.

A. **Financing Required Improvements: Sharing and Guaranteeing Costs.** This session reviewed alternative payment plans for subdivision improvements and how to guarantee their installation.
B. Deductions and Exactions: Getting Parks and Parkways. This session discussed the provision of streets, easements, parks and public facilities during the subdivision process to assure that the project can be accommodated by the community. The limits of the law and the issue of "reasonableness" were emphasized.

A reference guide for the workshop was put together by students from the Graduate Program in Regional and Community Planning at Kansas State University. The contents include:

1. Overview of Subdivision Regulation
2. Subdivision Speak: Glossary of Development Terminology
3. The Regulatory Process in Kansas and Missouri
4. The Long and Winding Road: Getting a Development Proposal Through the Administrative Maze
5. Some Would Call It Extortion: Methods of Financing Public Investment
6. Robin Hood Revisited: What Are the Limits on Dedications/Exactions?
7. Avoiding Lawsuits and Other Unpleasantries: Legal Issues
8. Where Do I Fit In? The Role of the Planning Commissioner
9. We Don't Care How They Do It in Kansas City: Rural Perspectives
10. Affordable Housing: Can Subdivision Regulation Play a Role?
11. Subdivision Design: Some Guidelines
12. List of References for Subdivision Materials
13. Appendices (procedural flow charts checklists forms)

Page

Workshop II: Better Communities are Planned

Sessions at this workshop were:

• Why Bother Planning Anyway? Taught by a national expert, this session reviewed the reasons communities plan and the legal authority to perform this function. 1-1/2 hours.

• Elements of the Plan--Part I. This session reviewed the components of a planning document: the fact, the goals, the plans, and the methods of implementation. This first part concentrated on the kinds of background information in a plan and their value, and realistic goal setting. 1 hour.

• Elements of a Plan--Part II. This session discussed the establishment of plans and the tools to carry out these plans. 3/4 hour.
• *Luncheon.* A mock planning commission meeting. 1 hour.

• *The Clan of Plans: the Planning Family.* Four speakers from Kansas and Missouri reviewed different types of plans, their applications, and their advantages and disadvantages. Types included comprehensive plans, strategic plans, design plans, neighborhood plans, etc. 1-1/2 hours.

• Concurrent sessions. 1-1/4 hours.

  A. *Citizens Plans: Whose Town is This?* This panel discussed who planning is to serve. It explored the role of planning to protect the city and/or those outside the city, current versus future residents, the landowners or the neighbor, or some combination of these beneficiaries.

  B. *Issues for Small Town and Rural Planning.* The panel discussed how rural and smaller cities are applying planning to address problems of land conversion, water availability, rising farming costs, etc.

  C. *How Planning Makes Cities and Counties Friends.* This panel explored the realities of planning across jurisdictional boundaries. Cooperation and conflict resolution were discussed in relation to such issues as development on the fringe of cities and regional wastewater planning.

A reference guide for this workshop was also prepared by students at Kansas State University. Sections of the Reference Guide include:

- Introduction - Planning: What Is It?
- Role of the Planning Commissioner
- Planning with Goals and Objectives
- The Rational Model for Planning (The Comprehensive Plan)
- Strategic Planning
- The Policy Plan
- The Design Plan
- Community-Based Planning (Neighborhood Plans)
- Capital Improvements Programming
- Agricultural and Rural Issues in Planning
- References for the Planning Commissioner

Workshop III. Zoning

Typical sessions for zoning program are:

• *Zoning for Growth and Development: Paradise Lost? Paradise Found?* This session discussed how commissions and their communities integrate a desirable development climate with attractiveness and livability. 1 hour.

• *Zoning for Aesthetics: What's a Commissioner to Do?* This session discussed the legality of regulating appearance, who determines beauty, how is it enforced, and just how far can a community go. 3/4 hour.

• *The Planning Commission Options: Is Beauty Only Skin Deep?* This session discussed what communities have tried in order to achieve both effective and tolerable development objectives, standards, and programs. 1 hour.

• *Lunch.* "Ask the Experts" panel. 2 hours.
• Local "Experiences: Should White Castles be Beige? This session discussed specific successes and failures in Kansas and Missouri. 3/4 hour.

• Concurrent Sessions. 1-1/4 hours.

A. Signs: Commercial Free Speech or Visual Pollution: An Overview of Sign Graphics As It Relates to Visual Perception in the Community. The session focused on the need for graphic signals in the environment and how that need is fulfilled through design technique and regulatory control.

B. Arriving at Consensus: What Kind of Patchwork Quilt Is it? This session discussed how people work together to build consensus.

The reference guide for the zoning workshop was also prepared by the students at Kansas State University. Sections of the Reference Guide include:

WHAT IS THIS ZONING ANYWAY?
POINTS OF LAW: The Legal Issues
THE EXCEPTIONS: Boards of Adjustment and Appeals
WHO AM I: The Role of the Planning Commissioner
GETTING ALONG: Improving Public Relations
READINGS FOR THE PLANNING COMMISSIONER
SAMPLE BYLAWS
LIMITING LAND USE LIABILITY
Type of Package: Nebraska Planning Institute continuing education program is offered twice a year in different areas of Nebraska. Six hour workshop includes a resource manual.

Prepared by: American Planning Association Nebraska Chapter
              Nebraska Planning and Zoning Association
              The College of Architecture - University of Nebraska

Contact: Nebraska Chapter of the American Planning Association
        phone: 402-472-3592

The primary goal of the Institute's educational program is to assist planning commissioners to acquire knowledge, skills, and techniques necessary for an effective and well-functioning local planning program. Participants complete a prescribed six hour workshop providing an overview of local planning, the legal basis of planning, and the role and responsibilities of the planning commissioner. Upon successful completion of the course, participants receive a certificate in Planning Commission Fundamentals.

The resource manual contains a short course agenda (one page). The rest of the contents are organized to supplement the course. Main areas covered are as follows:

- Welcome & Introductions
- Introduction to Planning
- Tools of Planning
- Legal Foundation of Planning & Zoning
- Powers & Duties of Planning Commission
- Your Job as a Planning Commissioner
NEW YORK
MUNICIPAL PLANNING PRIMER: THE ROLE OF THE PLANNING BOARD

Type of package: Handbook for new planning commissioners.


Contact: Joe Potenza, Executive Director
432 Michaelian Office Building
White Plains, NY 10601
phone: 914-285-4405

This handbook is given to new planning commissioners in Westchester County. While the handbook is written within the guidelines of New York State Law, the principles would apply to other jurisdictions. The table of contents for the handbook is:

| I. Introduction |
| II. Background |
| III. The Role of the Planning Board |
| IV. Planning Board Organization and Procedures |
| V. The Tools of Planning |
| - The Master Plan |
| - The Zoning Ordinance |
| - Land Subdivision Regulations and Plat Approval |
| - Site Plan Review and/or Approval |
| - Official Map |
| - Capital Program |
| - Special Controls |
| - State Environmental Quality Review Act Compliance |
| - Housing and Community Development Funding |
| VI. Relationship with Other Agencies |
| VII. Appendices |
| - Profiles of County, State, Regional and National Agencies |
| - A Glossary of Planning Terms |
| - Suggested Readings |

Page 1

Page 1

Page 2

Page 2

Page 5

Page 5

Page 6

Page 7

Page 10

Page 11

Page 12

Page 12

Page 14

Page 16

Page 17

Page 20

Page 20

Page 33

Page 46
NEW YORK
LOCAL LAND USE DECISION-MAKING

Type of Package: Seven session training program on the importance of planning.

Prepared by: Monroe County Planning Council

Endorsed by: Monroe County Planning Council, Genesee/Finger Lakes Section
Monroe County Environmental Management Council
New York Bar Association, Municipal Law Section
American Society of Civil Engineers, Local Chapter
Institute of Traffic Engineers
Monroe County Association of Villages
Monroe County Supervisors Association
Rochester Home Builders Association
New York Planning Federation

Contact: John Lamb, Associate Planner
Monroe County Planning Department
47 South Fitzhugh St., Suite 200
Rochester, NY 14614-2299
Telephone: 716-428-5464

Each year in the fall, the Monroe County Planning Department in cooperation with other groups in the county conducts a course that includes seven sessions (plus a field trip). This training program includes sessions on the importance of planning; duties and responsibilities of municipal boards and officials concerning land use decision-making; litigation affecting the decision-making process; elements of project review; and the State Environmental Quality Review (SEQR) Act.

This seven session program is a basic program. It is designed for new municipal board members and members looking for a refresher course; other municipal officials, staff and attorneys; persons interested in becoming a municipal board member; and anyone else who is interested in the planning and land use decision-making processes.

Participants are encouraged to attend all seven sessions because the material is interrelated. A certificate is awarded upon completion of the course. Videotapes of sessions are being produced. Each session begins at 6:30 p.m. and runs to approx. 9:30 p.m.

Following is a listing of the topics covered in each session outline.

Session I. The Planning Process

Importance of Planning
Developing the Plan
Implementation
Examples

Sessions II and III: Land Use Law

The Power to Regulate
Procedural Limitations and Requirements--Adopting/Amending
Ordinances/Local Laws
The Environmental Review Process--Separate but Integrated
Substantive Limitations and Requirements--Spot Zoning, etc.
Involvement of Other Governmental Entities
Types of Regulations
The Roles of Municipal Boards and Staff
Non-Conforming Uses, Variances, Special Permits
Zoning Board of Appeals Procedure
Plat, Site Plan and Other Approvals
Planning Board Procedure
Enforcement
The Courts and Land Use Law
New Legislation

Sessions IV, V, and VI: Elements of Project Review

Types of Plans and Reviews
Definitions and Terminology
Reading and Interpreting Plans
Use of Technical Studies and Available Information
External Plan Review
Drainage Design, Definitions, and Terminology
Storm Water Management Alternatives
Technical Studies and Drainage Regulations
Erosion Control Measures
Examples of Drainage Facilities
Traffic Considerations in Project Review

Field Trip

Session VII: State Environmental Quality Review (SEQR) Act

History and Overview of SEQR Process
Roles of Responsibilities of Boards
Roles and Responsibilities of Applicants
SEQR in the Courts - recent decisions
Case Study(s): Municipal and Applicant Perspectives
Discussion
OKLAHOMA

OKLAHOMA PLANNING COMMISSIONERS' WORKSHOP

Type of Package: One-day workshops with accompanying handbooks and videotapes.

Prepared by: Oklahoma Chapter - American Planning Association

Sponsored by: American Planning Association Oklahoma Chapter
Oklahoma State University Arts and Sciences Extension

Contact: Cynthia Hoyle
1609 Wildwood Dr.
Stillwater, OK 74075
phone: 405-372-5936

The APA Oklahoma Chapter conducts one-day workshops for planning commissioners. There are two levels--basic and advanced. Each registrant receives a handbook at the workshop. Segments of the workshops have been taped on a two-tape set. The videotape crosses over the basic and advanced courses. Tapes can be rented or purchased. The workshops are geared to Oklahoma statutes, but could be used as guidelines for designing other states' programs.

The tables of contents from the sample handbooks for these workshops are listed below.

Basic Workshop

The Local Planning Commission
The Language of Planning
The Planning Process: A Timeline
Board of Adjustment Powers and Duties 1988
The Legal Aspects of Planning
The Tools of Planning
Planning Commission Meeting Management
Oklahoma State Statutes

Chapter
1
2
3
4
5

Advanced Level Workshop

Public Hearings: How to Make Them Work
Updating the Comprehensive Plan
Updating Subdivision Regulations
Constitutional Rights and Land Use Controls
Oklahoma State Statutes
Oklahoma Planning Law: Key Court Cases
The Language of Planning
The Local Planning Commission
Board of Adjustment Powers and Duties

Chapter
1
2
3
4
5
6
7
8
OREGON LAND USE PLANNING

Type of Package: Two 30-minute videotapes, two reference guides, and a collection of 15 case studies. Materials can be used in large-audience presentations, small workshops, or individual study.

Prepared by: Bureau of Governmental Research and Service
University of Oregon

Funded by: Special allocation from the Oregon Legislature

Contact:
Peter Watt
Bureau of Governmental Research and Service
P.O. Box 3177
Eugene, Oregon 97403-0177
Telephone: 503-346-5232

The Bureau of Governmental Research and Service of the University of Oregon has prepared an extensive reference source for planning commissioners that includes the following materials.

Guide to Local Planning and Development

This is the basic reference manual for Oregon planning commissioners and local elected officials. It has several sections.

Part I: Development of Oregon’s Land Use System. This is an extensive history of how Oregon’s land use system got to where it is now. This section: discusses the reasons for governmental planning and development programs; describes conditions and events that led to enactment of the Oregon state-local land use planning system, and describes the main features of the system.

Part II: Developing and Maintaining the Comprehensive Plan. This part discusses the planning process and the components of the comprehensive plan; describes each of the statewide land use goals and how they are adjusted to the planning process; looks at how plans are implemented through land-use regulation and through various nonregulatory measures; and, presents an overview of the planning activity that continues after the acknowledgement of the comprehensive plan by the Land Conservation and Development Commission (LCDC).

Part III: Land Use Decision-Making Process. This part discusses the special rules the legislature and courts have established for making land-use decisions.

Part IV: Laws Affecting Planning and Development. This part supplements legal references and descriptions in the other three parts and serves as a guide to laws that affect land use planning and development regulation in Oregon.

The Local Planning Digest

This is an overview of Oregon’s land use planning and development system, prepared especially for city and county elected officials and planning commission members. It is a summary of the lengthier, more technical Guide to Local Planning and Development.
Case Studies

There is a collection of 15 case studies which illustrate specific land use decisions made by Oregon cities or counties. The case studies illustrate problems and procedures discussed in the Guide and the Digest. The cases range from three to nine pages in length, and each summarizes the jurisdiction's relevant plans and ordinance procedures and other legal issues, as well as the geographical and procedural facts of each case. The focus is on the decision-making process rather than technical or policy issues that may be involved.

Oregon's Land Use Program

This 30-minute videotape, touches on the rationale for planning, gives an early history of local land use planning in Oregon, and discusses the main features of the Oregon program.

Making Land Use Decisions

This 30-minute videotape presents the major elements of the land use decision-making process. It is divided into six segments: a general introduction, a ministerial land-use decision; a quasi-judicial decision in which several mistakes are made; the appeal of that quasi-judicial decision; a legislative decision; and, a planning commission work session at which plan monitoring and periodical review are discussed. Although the tape is specific to Oregon, it gives much information about specific procedures planning commissions use. Discussion questions for each segment are provided in the Instructors Manual.

The Instructors Manual

This is a 39 page guide which shows how to use the package, suggests training formats, and provides discussion questions.
Texas

A Guide to Urban Planning in Texas Communities

Type of Package: Handbook for new planning and zoning commissioners
Companion short course

Prepared by: The Educational Foundation, Inc. of the Texas Chapter of the
American Planning Association

Contact: Frank Turner, Texas Chapter President
Director of Planning and Transportation
City of Plano
Post Office Box 860358
Plano, TX 75086-0358

The Handbook

This third edition of the Guide to Urban Planning in Texas Communities was
developed to serve as an introductory text and reference resource for planning and
zoning commissioners in Texas. It is furnished without additional charge to all short
course registrants and is also available for purchase from the Education Foundation.
The table of contents from the handbook follows:

1. Introduction to Urban Planning

| Framework of Urban Planning | 1-2 |
| The Urban Planning Process | 1-5 |
| The Scope of Urban Planning | 1-10 |
| Nature and Function of the Planning Commission | 1-15 |
| Responsibilities of the Planning Commission | 1-17 |
| Place of the Planning Commission in the City Government | 1-22 |
| References | 1-28 |
| Handbooks for Planning Commissions | 1-30 |

2. Introduction to the Comprehensive Plan

| Purpose of the Comprehensive Plan | 2-1 |
| Need for a Comprehensive Plan | 2-3 |
| Characteristics of a Comprehensive Plan | 2-7 |
| Procedure for Adoption of the Comprehensive Plan | 2-12 |
| The Role of Participant Groups in the Preparation of the Comprehensive Plan | 2-14 |
| References | 2-17 |

3. Introduction to Capital Improvements Planning

| Financial Planning | 3-1 |
| Capital Improvements Program | 3-4 |
| Development of a Capital Improvements Program | 3-7 |
| Administrative Framework | 3-18 |
| Debt Financing | 3-20 |
| Conclusion | 3-22 |
| References | 3-24 |
| Glossary | 3-25 |
| Sources | 3-34 |
4. **Introduction to Subdivision Regulations**

<table>
<thead>
<tr>
<th>What Subdivision Regulations Mean to Users</th>
<th>4 - 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Basics</td>
<td>4 - 2</td>
</tr>
<tr>
<td>Statutory Foundation</td>
<td>4 - 3</td>
</tr>
<tr>
<td>What It Does and What It Contains</td>
<td>4 - 3</td>
</tr>
<tr>
<td>Process</td>
<td>4 - 4</td>
</tr>
<tr>
<td>Participation in the Review Process</td>
<td>4 - 4</td>
</tr>
<tr>
<td>Relation to the Comprehensive Plan</td>
<td>4 - 7</td>
</tr>
<tr>
<td>Subdivisions Needing Special Treatment</td>
<td>4 - 8</td>
</tr>
<tr>
<td>Contemporary Subdivision</td>
<td>4 - 8</td>
</tr>
<tr>
<td>References</td>
<td>4 - 10</td>
</tr>
<tr>
<td>Appendix: Platting and Recording Subdivisions or Additions</td>
<td>4 - 11</td>
</tr>
</tbody>
</table>

5. **Introduction to Zoning**

<table>
<thead>
<tr>
<th>The Nature of Contemporary American Zoning</th>
<th>5 - 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Purpose of Zoning</td>
<td>5 - 2</td>
</tr>
<tr>
<td>Alternatives to Zoning</td>
<td>5 - 7</td>
</tr>
<tr>
<td>The Fundamental Zoning System</td>
<td>5 - 13</td>
</tr>
<tr>
<td>Variations on the Fundamental Zoning System</td>
<td>5 - 14</td>
</tr>
<tr>
<td>The Statutory Foundation for Zoning</td>
<td>5 - 21</td>
</tr>
<tr>
<td>Public Participants in the Regulatory Process</td>
<td>5 - 23</td>
</tr>
<tr>
<td>Selected Issues in Zoning</td>
<td>5 - 37</td>
</tr>
<tr>
<td>Citations and References</td>
<td>5 - 48</td>
</tr>
</tbody>
</table>

**The Short Course**

The short course sessions are held during the chapter's annual conference. After attending each of the twenty-two sessions a participant qualifies for an attendance certificate. After that they can still register at subsequent short courses and attend whichever combination of short course or chapter conference sessions they prefer. The short course general curriculum follows:

**Level One--for the first-time Short Course participant**

1. Introduction to Planning
2. The Role of a Commissioner
3. An Overview of Land Development Law
4. An Introduction to Zoning
5. An Introduction to Subdivision Regulation
6. Rights-of-Way and Easements
7. Conducting Public Hearings (levels 1 & 2 combined)
8. What Elected Leaders Expect from Commissioners
9. Evaluating Development Proposals
10. Avoiding the Courtroom (levels 1 & 2 combined)

**Level Two--for those with previous Short Course experience**

1. Updating a Comprehensive Plan
2. Thoroughfare Planning
3. Hiring a Planning Consultant
4. Updating a Zoning Ordinance
5. Site Plan Review
6. Planned Unit Developments
7. The Role of Zoning Boards of Adjustment
8. A Developer's Perspective
9. Public Hearing Workshop (levels 1 & 2 combined)
10. Exactions and Impact Fees
11. Relations Between Commission and Staff
12. Avoiding the Courtroom (levels 1 & 2 combined)
Type of Package: Manual—second edition covering a wide array of planning topics. Also, eleven educational programs on topics of interest to planning commissioners. Each program consists of a description of the course, slide presentation, technical manual, and case studies. Groups using a package provide a discussion leader.

Prepared by: Center for Public Affairs and Administration, University of Utah

Contact: Gene Carr
Center for Public Affairs and Administration
1141 Annex Building
University of Utah
Salt Lake City, UT 84112
Telephone: 801-581-6491

The Center for Public Affairs and Administration at the University of Utah offers a variety of services to local governments that are experiencing problems related to sudden growth, change in economic base and public services in their communities. As part of this program, the Center has developed a second edition of its manual. They have also developed 12 educational packages. These packages are breakdowns of chapters of the manual with modifications for classroom situations.

Topics of the packages are:

*The Planning Process and the General Plan
*The Planning Commission
Zoning and the Zoning Ordinance
Special Problems in Zoning
*Subdivision Development and Control
The Board of Adjustment
*Citizen Participation
The Cost of Urban Services
The Capital Improvements Plan
This Problem of Energy
Know Your Community Services
*Planning for Natural Hazards

Each package includes a description of the program, a slide presentation (as of 4/90 they are in the process of converting to videotape), technical manual, and case studies.

*We have five of the technical manuals on hand that are particularly relevant to planning commissioners.

CONTENTS OF MANUAL

Chapter One--Introduction to Planning and the Planning Process

Historical Background
The Evolution of Planning Practice

C5103-9/17/90
A Definition of Planning and the Planning Process
The Rationale for Planning
Some Other Good Reasons for Planning
The Planning Process
Ten Reasons Why Local Governments Should Encourage a Planning Program
What Planning Can Accomplish
But, Planning Cannot Accomplish Everything
The Decision to Plan
Planning Is More Than a Plan
Professional Assistance
Initiating a Planning Program

Chapter Two--Legal Authority for Planning
The Source of Statutory Authority
Municipalities
Counties

Chapter Three--The Planning Commission Organization, Function and Duties
Planning commissions Are Established By Ordinance
Commission Membership
Choosing the Planning Commissioner
Ethics of a Planning Commissioner
The Planning Commission in Relation to the Governing Body
Functional Roles of the Planning Commission
Effective Planning Administration
Conducting the Business of the Planning Commission
Public Relations and Community Education
Professional Staff and Assistance

Chapter Four--The Community General Plan
The General Plan Defined
The General Plan Today
The Importance of the Plan
The Purposes of the General Plan
Steps to Plan Preparation
The Client of the General Plan
Adopting the General Plan
Updating the General Plan
Preserving the Integrity of the Plan and the Planning Process

Chapter Five--Plan Implementation Special Tools
Historic Preservation
Community Redevelopment
Annexation
Enterprise Zones
Capital Improvements Programming

Chapter Six--Zoning: The Basic Tool of Planning Implementation
History and Background
Purposes and Objectives of Zoning
Constitutional Authority
Utah Enabling Legislation
The Importance of Following Statutory Guidelines and Procedures
Chapter Seven--Special Zoning Concepts and Vital Issues

Zoning Concepts
The Planned Unit Development (PUD) 7-2
Overlay or Floating Zones 7-5
Performance Standards & Performance Zoning 7-5
Conditional or Special Uses 7-6
Regulation of Sensitive Lands and Natural Environment 7-8
Community Noise Mitigation 7-13
Transfer of Development Rights (TDR) 7-15
Impact Fees (Exactions) 7-16

Critical Zoning Issues
The "Taking" Issue 7-18
Exclusionary Zoning 7-20
Nonconforming Uses 7-21
Spot Zoning 7-23
Home Occupations and Accessory Uses 7-24
Odor Impact 7-25

Chapter Eight--Zoning Administration and Procedures

Diagnosing an Ailing Ordinance 8-2
The Rules of Zoning 8-4
Duties of the Zoning Administrator 8-5
Zoning Enforcement 8-7
The Zoning Process 8-9
Amending the Zoning Ordinance 8-11
Court Review of Zoning Practices 8-16
Advice to Local Governments 8-17

Chapter Nine--The Board of Adjustment

Purpose and Origin 9-1
Statutory Basis in the Utah Law 9-1
Appointment and Organization 9-2
Powers and duties of the Board of Adjustment 9-2
Procedures of the Board of Adjustment 9-7
Voting Requirements and Disputed Decisions 9-9
Records 9-9
Misuse of the Board of Adjustment 9-9
Summary 9-11

Chapter Ten--Subdivision Regulation

Background 10-1
Applicable State Laws 10-2
Subdivision Regulation and Required Improvements 10-3
Subdivision Design Standards 10-5
Administration of Subdivision Regulations 10-11
APPENDICES

Appendix I  Utah Code--Pertinent Statutes
Appendix II  A Planning Commissioner's Creed
Appendix III Utah Associations of Government (AOGs)
Appendix IV  Guidelines for Consultant Selection
Appendix V  The Citizen Survey
Appendix VI  Samples of Local Regulatory Forms

CREDITS
Type of Package: Classroom instruction of two days; home study based on assigned readings; and, a one-day workshop. Extensive materials used as resource.

Prepared by: Virginia Department of Housing and Community Development
Virginia Cooperative Extension Service, Virginia Tech
Virginia Citizen's Planning Association

Funded by: Virginia Department of Housing and Community Development

Contact: Shea Hollifield/John Knight
Office of Local Development Programs
Virginia Department of Housing and Community Development
205 N. 4th Street
Telephone: 804-786-4966

The Virginia Certified Planning Commissioners program is held twice a year for about 45-50 commissioners. The program is designed to give newly appointed planning commissioners technical information, and interpersonal and leadership skills.

It is a 3-part course that includes classroom instruction held each fall, 10 units of home study based on assigned readings from selected texts and handouts, and a one day workshop held in a location convenient to the majority of participants. The cost is $125 per person.

Part 1. Classroom Instruction

The first classroom instruction is a two day program for planning commissioners. This program concentrates on technical information. Sessions vary but typical topics include:

- Introduction to Planning. 2-1/2 hours.
- Powers and Duties of the Planning Commission. 2 hours.
- The Job of the Planning Commissioner. 1-3/4 hours.
- Legal Foundations of Planning and Zoning. 1-3/4 hours.
- The Tools of Planning. 2 hours.

There is usually an opening session, a luncheon session and opportunities for interaction among participants.
Part 2. Self Study

The second component of the certification program involves the completion of 9 self study lessons based on assigned texts. Participants mail completed lessons to Virginia Tech for approval. The assigned texts include:

Community Planning Series - Department of Housing and Community Development

*Volume I: Introduction to the Planning Process.* 8 pages. What is planning, what does the state law require, what is the planning commission?

*Volume II: The Local Planning Commission.* 24 pages. Roles and Responsibilities of the planning commission.


*Volume IV: Zoning.* 40 pages. Describes relationship between planning and zoning and analyzes the process of preparing, adopting, and administering a zoning ordinance.

Board of Zoning Appeals - Powers and Duties. Department of Housing and Community Development.

*Virginia Local Planning Legislation.* Title 15.1, Chapter 11 Code of Virginia, 1950 (as amended).


Part 3. One Day Workshop

The program ends with a one day workshop that provides commissioners with interpersonal and leadership skills. Typical topics include:

- Why Commission Meetings Can Fail
- Group Dynamics
- Retaining Individuality While Achieving Group Consensus
- Communications Skills: Dealing With the Public
- Learning About Your Leadership and Decision Making Style

A videotape and guidebook called *Critical Incidents in Citizen Participation* was used as part of this program. The videotape depicts situations pertinent to the understanding and resolution of problems or conflicts that occur among individuals. The tapes are viewed and a trainer leads a discussion following each vignette. There are also many group dynamic exercises in this section.
WEST VIRGINIA

PLANNING ORIENTATION AND REVIEW FOR PLANNING COMMISSIONERS

Type of Package: Workshop session with extensive reference materials. The basic text is Planning Orientation and Review for Planning Commissioners. It is intended that a member of the planning commission or staff will run the workshop.

Prepared by: League of Women Voters of West Virginia
              West Virginia Planning Association

Funded by: Grant from Governor's Office of Economic and Community Development

Contact: Charles MacQueen
         Post Office Box 669
         Charleston, WV 25323
         Telephone: 304-357-0566

The planning commissioner training package was sent to each local planning commission in West Virginia. The purpose of the orientation is to acquaint new planning commissioners with the reasons for planning, the role of the planning commissioner/planning commission, and the mechanisms involved in the planning process. The orientation is also intended as a review for current planning commissioners.

There is a suggested outline for the workshop, but communities are encouraged to change the program to meet their needs.

The suggested outline is:

I. Introduction--15 minutes
   A. Purpose of Orientation
   B. History of Planning
      A general overview of the history of planning in this country, followed by the history of planning in West Virginia.
   C. Legal Basis for Planning
      Outlines the legal basis for planning in West Virginia.

II. Local Focus--20 minutes
   A. Your Role as a Planning Commissioner
      General Information, not specific to West Virginia.
   B. The Planning Commission and the Planning Process
      General Information, not specific to West Virginia.
   C. Other Local Points That Should be Covered
      Zoning ordinances, subdivision regulations, etc. This is the place to give the local information.
III. The State and Regional Planning Framework--25 minutes.

A. Regional Planing and Development Council
   1. Structure
   2. Regional and local coordination of activities
   3. Interrelationship with state via the Governor's Office of Economic and Community Development (GOECD). Specific to West Virginia.

B. State Planning
   1. Structure and function of GOECD
   2. State planning activities--housing, land use, development planning, etc.
   3. Federal programs administered at the state level. Specific to West Virginia.

IV. Federal Impact on Planning--20 minutes.
    Specific to West Virginia.

The publication, Planning: Orientation and Review for Planning Commissioners, is the main text for the orientation. The contents of this publication are:

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Suggested Orientation Outline</td>
<td>3</td>
</tr>
<tr>
<td>Brief History of Planning</td>
<td>4</td>
</tr>
<tr>
<td>History of Planning in West Virginia</td>
<td>9</td>
</tr>
<tr>
<td>Legal Basis for Planning</td>
<td>11</td>
</tr>
<tr>
<td>The Planning Commission</td>
<td>12</td>
</tr>
<tr>
<td>Your Role as a Planning Commissioner</td>
<td>15</td>
</tr>
<tr>
<td>Suggested Orientation Charts</td>
<td>19</td>
</tr>
<tr>
<td>Regional and State Planning Framework, Suggested Topics</td>
<td>24</td>
</tr>
<tr>
<td>Federal Impact on Planning, Suggested Topics</td>
<td>25</td>
</tr>
<tr>
<td>Sources Consulted</td>
<td>26</td>
</tr>
<tr>
<td>Additional Publications and Information Sources</td>
<td>28</td>
</tr>
</tbody>
</table>

Other publications included in the kit are

- "Your Role as a City or County Planning Commissioner," by Tom Roberts, of Roberts and Eichler Associates, Inc. This 40-page booklet is a general overview of the role of the city or county planning commissioner. It is not specific to any state.

- There is an annotated bibliography of land use information in West Virginia. This is produced by the Cooperative Extension Service of the West Virginia University.

- "The Basic Steps of Planning," by Ken Young. This is a 24-page booklet about the basics of planning.

- A notice about "The Region--In Change." This is a 29-minute documentary which examines change and the impact of change in the people and environment of the Southern Highlands Region.

- "County Government in West Virginia." Prepared by the Cooperative Extension Service of West Virginia University.

- "Regional Planning and Development Act." The act of the West Virginia Legislature.

- "Information on Conducting Public Hearings." This is produced by the Cooperative Extension Service of West Virginia University. This document has many tips about public hearing in general, and some that are specific to West Virginia law.

- "Legal Basis for County and Municipal Planning in West Virginia." West Virginia code--chapter 8, article 24.
WEST VIRGINIA

PLANNING INSTITUTE

Type of Package  Binder notebook of materials used for 1990 institute at Canaan Valley Resort Park.

Prepared by:  West Virginia Planning Association, a chapter of the American Planning Association

Contact:  West Virginia Planning Association
P.O. Box 669
Charleston, WV 25323
(or) Charles McQueen 304-768-2196

The "Planning Institute" is a 2-day training seminar for planning commissioners, local community development officials, local elected officials and their less experienced staff personnel. It is co-sponsored by the Governor's Office of Community and Industrial Development, The C & P Telephone Company of West Virginia, the Monongahela Power Company and the West Virginia Planning Association.

The "Institute" is conducted in a concentrated classroom atmosphere beginning Saturday at 1:00 p.m. and concluding Sunday afternoon. The small tuition cost covers one night's lodging, one lunch and all course materials.

APA has a 3-ring binder on hand that contains the course materials for the 1990 seminar. Following is a brief list of those materials.

1. Seminar schedule (includes times and instructors)
2. 199 roster of students
4. 3-page handout entitled "The Legal Basis of Planning"
5. Articles 24 and 25 of the West Virginia Code.
6. Organizational chart and explanation of notes within city government.
7. 39-page booklet "Your Role as a City or County Planning Commissioner" by Thomas H. Roberts.
8. A series of handouts covering Planning, Zoning, Capital Improvement Programming, West Virginia Open Governmental Proceedings Act, and "How to Conduct a Meeting."
9. 28-page booklet "Public Hearings" by the West Virginia University Cooperative Extension Service.
10. Implementation and Local Economic Development Planning" by Mark J. James (handout to accompany presentation.)

11. 74-page "Citizen Participation Handbook" by the Mountaineers for Rural Progress.


13. Evaluation form for participants at seminar.
APPENDIX 2:

TRAINING PACKAGES FOR
PLANNING COMMISSIONERS
§ 8–0101. Purpose

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.

§ 8–0103. Legislative findings and declaration

The legislature finds and declares that:

1. The maintenance of a quality environment for the people of this state that at all times is healthful and pleasing to the senses and intellect of man now and in the future is a matter of statewide concern.

2. Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

3. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

4. Enhancement of human and community resources depends on a quality physical environment.

5. The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.

6. It is the intent of the legislature that to the fullest extent possible the policies, statutes, regulations, and ordinances of the state and its political subdivisions should be interpreted and administered in accordance with the policies set forth in this article. However, the provisions of this article do not change the jurisdiction between or among state agencies and public corporations.

7. It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.
8. It is the intent of the legislature that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

9. It is the intent of the legislature that all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage.

(Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 1.)

§ 8–0105. Definitions

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. “State agency” means any state department, agency, board, public benefit corporation, public authority or commission.

2. “Local agency” means any local agency, board, district, commission or governing body, including any city, county, and other political subdivision of the state.

3. “Agency” means any state or local agency.

4. “Actions” include:

   (i) projects or activities directly undertaken by any agency; or projects or activities supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies;

   (ii) policy, regulations, and procedure-making.

5. “Actions” do not include:

   (i) enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;
(ii) official acts of a ministerial nature, involving no exercise of discretion;

(iii) maintenance or repair involving no substantial changes in existing structure or facility.

6. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

7. "Environmental impact statement" means a detailed statement setting forth the matters specified in section 8–0109 of this article. It includes any comments on a draft environmental statement which are received pursuant to section 8–0109 of this article, and the agency's response to such comments, to the extent that such comments raise issues not adequately resolved in the draft environmental statement.

8. "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 8–0109 of this article.

(Added L.1975, c. 612, § 1; amended L.1976, c. 228, § 1. L.1977, c. 252, § 2.)

§ 8–0107. Agency implementation

All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this article, and shall recommend or effect such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this article. They shall carry out its terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review.

(Added L.1975, c. 612, § 1.)
§ 8–0109. Preparation of environmental impact statement

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(a) a description of the proposed action and its environmental setting;

(b) the environmental impact of the proposed action including short-term and long-term effects;

(c) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(d) alternatives to the proposed action;

(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(f) mitigation measures proposed to minimize the environmental impact;

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant; and

(i) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8–0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed
action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

3. An agency may require an applicant to submit an environmental report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of an environmental impact statement.

4. As early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination whether an environmental impact statement need be prepared for the action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.

If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about
proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113.

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

Notwithstanding the specified time periods established by this article, an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of paragraph four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.
6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner and made available to the public prior to acting on the proposal which is the subject of the environmental impact statement.

7. a. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

b. Such rules and regulations shall require the applicant to reimburse the conservation fund, as established pursuant to subdivision (a) of section eighty-three of the state finance law, in order to recover all costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement by employees of the department, whose salary and expenses are paid, in whole or in part, from the conservation fund.

8. When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

(Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 3)
§ 8-0111. Coordination of reporting; limitations; lead agency

1. State and federal reports coordinated. Where an agency as herein defined directly or indirectly participates in the preparation of or prepares a statement or submits material relating to a statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969,1 whether by itself or by another person or firm, compliance with this article shall be coordinated with and made in conjunction with federal requirements in a single environmental reporting procedure.

2. Federal report. Where the agency does not participate, as above defined, in the preparation of the federal environmental impact statement or in preparation or submission of materials relating thereto, no further report under this article is required and the federal environmental impact statement, duly prepared, shall suffice for the purpose of this article.

3. State and local coordination. Necessary compliance by state or local agencies with the requirements of this article shall be coordinated in accordance with section 8-0107 and with other requirements of law in the interests of expedited proceedings and prompt review.

4. Effective date of coordinated reporting. The requirements of the section with regard to coordinated preparation of federal and state impact materials and reporting shall not apply to statements prepared and filed prior to the effective date of this article.2

5. Exclusions. The requirements of subdivision two of section 8-0109 of this article shall not apply to:

(a) Actions undertaken or approved prior to the effective date of this article,2 except:

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

(b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven and eight of the public service law; or
(c) Actions subject to the class A or class B regional project jurisdiction of the Adirondack park agency or a local government pursuant to section eight hundred seven, eight hundred eight or eight hundred nine of the executive law, except class B regional projects subject to review by local government pursuant to section eight hundred seven of the executive law located within the Lake George park as defined by subdivision one of section 43-0103 of this chapter.

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the determination of whether the action may have a significant effect on the environment shall be made by the lead agency having principal responsibility for carrying out or approving such action and such agency shall prepare, or cause to be prepared by contract or otherwise, the environmental impact statement for the action if such a statement is required by this article. In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.

(Added L.1975, c. 612, § 1; amended L.1977, c. 252, § 4; L.1981, c. 119, § 1.)

1 42 U.S.C.A. § 4321 et seq.
2 This Article took effect Sept. 1, 1976.
§ 8–0113. Rules and regulations

1. After consultation with the other agencies subject to the provisions of this article, including state agencies and representatives of local governments and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred and twenty days after the effective date of this section.1

2. The rules and regulations adopted by the commissioner specifically shall include:

(a) Definition of terms used in this article;

(b) Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect;

(c) Identification on the basis of such criteria of:

(i) Actions or classes of actions that are likely to require preparation of environmental impact statements;

(ii) Actions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this article. In adopting the rules and regulations, the commissioner shall make a finding that each action or class of actions identified does not have a significant effect on the environment;

(d) Typical associated environmental effects, and methods for assessing such effects, of actions determined to be likely to require preparation of environmental impact statements;

(e) Categorization of actions which are or may be primarily of statewide, regional, or local concern, with provisions for technical assistance including the preparation or review of environmental impact statements, if requested, in connection with environmental impact review by local agencies.

(f) Provision for the filing and circulation of draft environmental impact statements pursuant to subdivision four of section 8–0109, and environmental impact statements pursuant to subdivision six of section 8–0109;

(g) Scope, content, filing and availability of findings required to be made pursuant to subdivision eight of section 8–0109;
(h) Form and content of and level of detail required for an environmental impact statement; and

(i) Procedures for obtaining comments on draft environmental impact statements, holding hearings, providing public notice of agency decisions with respect to preparation of a draft environmental statement; and for such other matters as may be needed to assure effective participation by the public and efficient and expeditious administration of the article.

(j) Procedure for providing applicants with estimates, when requested, of the costs expected to be charged them pursuant to subdivision seven of section 8–0109 of this article.

(k) Appeals procedure for the settlement of disputed costs charged by state agencies to applicants pursuant to subdivision seven of section 8–0109 of this article. Such appeal procedure shall not interfere or cause delay in the determination of environmental significance or prohibit an action from being undertaken.

(3) A model assessment form to be used during the initial review to assist an agency in its responsibilities under this article.

3. Within the time periods specified in section 8–0117 of this article the agencies subject to this article shall, after public hearing, adopt and publish such additional procedures as may be necessary for the implementation by them of this article consistent with the rules and regulations adopted by the commissioner.

(a) Existing agency environmental procedures may be incorporated in and integrated with the procedures adopted under this article, and variance in form alone shall constitute no objection thereto. Such individual agency procedures shall be no less protective of environmental values, public participation, and agency and judicial review than the procedures herein mandated.

(b) Such agency procedures shall provide for interagency working relationships in cases where actions typically involve more than one agency, liaison with the public, and such other procedures as may be required to effect the efficient and expeditious administration of this article.

(Added L.1975, c. 612, § 1; amended L.1976, c. 228, § 2; L.1977, c. 252, §§ 5, 6.)

1 This section took effect Sept. 1, 1976.

§ 8–0115. Severability

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Added L.1975, c. 612, § 1.)
§ 8–0117. Phased implementation

1. With respect to the actions directly undertaken by any state agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8–0109 of this article shall take effect on the first day of September, nineteen hundred seventy-six.

2. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8–0113 of this article directly undertaken by any local agency, whether or not such actions are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more state agency; and all other actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8–0113 of this article supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more state agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8–0109 of this article shall take effect on the first day of June, nineteen hundred seventy-seven.

3. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8–0113 of this article supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more local agency; and with respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8–0113 of this article involving the issuance to a person of a lease, permit, certificate or other entitlement for use or permission to act by one or more state or local agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8–0109 of this article shall take effect on the first day of September, nineteen hundred seventy-seven.

4. With respect to all other actions not included in subdivision two or three of this section which are subject to this article, the
requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of November, nineteen hundred seventy-eight.

5. Agencies subject to this article shall adopt and publish the additional necessary procedures described in subdivision three of section 8-0113 of this article, as follows:

(a) With respect to actions included within subdivision one of this section, no later than August 1, 1976.

(b) With respect to actions included within subdivision two of this section, no later than April 1, 1977.

(c) With respect to actions included within subdivision three of this section, no later than July 1, 1977.

(d) With respect to actions included within subdivision four of this section, no later than November 1, 1978.

Any agency which has not adopted and published the additional necessary procedures described in subdivisions two and three of section 8-0113 of this article according to the dates set forth in this section shall utilize those procedures found in Part 617 of title six (environmental conservation) of the official compilation of the codes, rules and regulations of the state of New York for purposes of implementing this article until such time as such agency has adopted and published its own procedures.

(Added L.1976, c. 228, § 3; amended L.1977, c. 252, §§ 7, 8; L.1978, c. 460, §§ 1, 2.)