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## SEQRA and Infill

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# SEQRA and Infill

By Michael Lewyn

## I. Introduction

The New York State Environmental Quality Review Act (SEQRA) requires state and local governments to issue environmental impact statements addressing significant environmental harm caused by their own actions.<sup>1</sup> Although numerous states have similar statutes, SEQRA is more burdensome in a few respects. For example, while most state environmental review statutes cover only government projects,<sup>2</sup> SEQRA also covers private sector projects requiring government permits.<sup>3</sup> Furthermore, SEQRA requires governments to consider not just the impacts of projects upon the physical environment, but also their socio-economic impacts,<sup>4</sup> unlike some other states' environmental statutes.<sup>5</sup>



This article contends that the stringencies of SEQRA occasionally have harmful environmental consequences because SEQRA can easily be used to delay "infill development"—that is, new housing and commerce in already developed areas such as cities and older suburbs.<sup>6</sup> When this occurs, development shifts from older areas to newer suburbs that tend to be more dependent on automobiles, and thus, produce more pollution.

Part II of this article introduces readers to SEQRA. Part III shows how SEQRA discourages infill development. Part IV explains why this anti-infill bias is environmentally harmful. Finally, Part V suggests possible reforms to SEQRA that might mitigate the law's anti-infill bias.

## II. A Brief Guide to SEQRA

The federal government enacted the National Environmental Policy Act (NEPA) in 1970<sup>7</sup> in order to ensure that federal agencies considered the potential environmental impact of their actions.<sup>8</sup> Under NEPA, the agency proposing the action (known as the "lead agency")<sup>9</sup> will typically<sup>10</sup> begin the environmental review process by preparing an Environmental Assessment (EA), a document which "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement."<sup>11</sup> If, after drafting the EA, the lead agency decides that its actions will create a significant environmental impact, it will create an environmental impact statement (EIS).<sup>12</sup> The EIS must address not only the environmen-

tal impacts of the proposed action, but also any possible alternatives.<sup>13</sup>

New York's "little NEPA" statute, SEQRA, is almost as old as NEPA itself. It was enacted in 1975 and became effective the following year.<sup>14</sup> SEQRA applies not only to state government actions, but also to actions by local governments,<sup>15</sup> including rezoning<sup>16</sup> and other land use-related permits.<sup>17</sup>

Like NEPA, SEQRA creates a multi-step environmental review process. The lead agency begins the process by drafting an environmental assessment form (EAF) to determine whether its proposed action will affect the environment.<sup>18</sup> If the lead agency concludes that environmental impacts from its action are unlikely to be significant, it drafts a "negative declaration" so stating.<sup>19</sup> Otherwise, the agency issues a "positive declaration" declaring that the impacts require an EIS.<sup>20</sup> The agency then prepares a draft EIS and solicits public comments on that document.<sup>21</sup> After receiving public comments on the draft EIS, the agency issues a final EIS,<sup>22</sup> which addresses the adverse impacts of the proposed action<sup>23</sup> and must certify that such impacts will be mitigated where practicable.<sup>24</sup> Citizens may challenge an agency decision (including either an EIS or a decision not to issue an EIS) under SEQRA.<sup>25</sup>

New York's Department of Environmental Conservation (DEC) has enacted regulations implementing SEQRA.<sup>26</sup> These regulations provide that for certain government projects designated as "Type I"<sup>27</sup> actions, a rebuttable presumption exists that the project creates environmental impacts significant enough to require the preparation of a full EIS.<sup>28</sup> Projects designated as Type I actions include all zoning changes affecting twenty-five or more acres.<sup>29</sup> On the other hand, these regulations categorically exclude thirty-seven types of actions, known as Type II actions, from SEQRA scrutiny.<sup>30</sup> Zoning decisions affecting just one house are usually categorized as Type II actions.<sup>31</sup> Government actions that are neither Type I nor Type II actions are labeled as "unlisted actions"<sup>32</sup> and may require an EIS if they create a significant impact.<sup>33</sup> The overwhelming majority of government actions subject to SEQRA are unlisted.<sup>34</sup>

SEQRA does not prohibit all environmentally harmful government action. Instead, SEQRA requires the government to disclose such environmental harm in the EIS<sup>35</sup> and to "minimize adverse environmental effects to the maximum extent practicable."<sup>36</sup> In determining what is "practicable," agencies may balance environmental concerns against other public policies.<sup>37</sup>

On review, courts may not "weigh the desirability of any action or choose among alternatives"<sup>38</sup> but must

ascertain whether the EIS and the agency's decision was arbitrary, capricious, or otherwise infected by errors of law or procedure.<sup>39</sup> As a practical matter, this means that courts generally uphold agency decisions, especially after an EIS has been filed.<sup>40</sup>

### III. SEQRA and Infill Development

"Infill development" is development that occurs in already developed neighborhoods (often in cities or older suburbs).<sup>41</sup> "Greenfield" development, by contrast, occurs on "pristine, undeveloped land typically located in low density suburban areas."<sup>42</sup> Both types of development often require rezoning or similar legal changes,<sup>43</sup> and are thus subject to SEQRA.<sup>44</sup> But SEQRA's broad definition of "environmental impact" means that urban infill projects will often require an EIS, even if they create no impact upon the physical environment.<sup>45</sup> As will be shown below, greenfield projects are less likely to require an EIS.<sup>46</sup>

#### A. The Environmental Impacts of Infill

SEQRA defines the term "environment" to include not just the physical environment, but "existing patterns of population concentration, distribution or growth, and existing community or neighborhood character."<sup>47</sup> SEQRA's broad definition of the term "environment" suggests that any development that adds a significant amount of residences or businesses to an existing neighborhood will usually require an EIS, since such development affects "existing patterns of population" and "neighborhood character."

The New York Court of Appeals addressed this issue in the 1986 decision of *Chinese Staff & Workers Ass'n v. City of New York* (Chinese Staff I).<sup>48</sup> In that case, a developer proposed to build a high-rise condominium on a vacant lot in New York's Chinatown neighborhood.<sup>49</sup> The city declined to draft an EIS on the ground that the project would have no significant environmental impact.<sup>50</sup>

The court held that as a general matter, SEQRA's definition of "environment" encompasses "existing patterns of population concentration, distribution or growth, and existing community or neighborhood character."<sup>51</sup> Thus, any effect that a project might cause on "population patterns or existing community character...is a relevant concern in an environmental analysis."<sup>52</sup>

Applying this principle, the court found that even though the proposed development itself displaced no residents or businesses,<sup>53</sup> SEQRA nevertheless required the city to consider the risk of "long-term secondary displacement"<sup>54</sup>—that is, the possibility that new construction might make Chinatown more desirable and thus a more expensive place to live, which in turn could lead some current residents to move.<sup>55</sup> Therefore, the court suggested that the proposed new construction (combined with likely construction on other nearby

sites)<sup>56</sup> might lead to such secondary displacement, and that this possibility would require an EIS.

At a minimum, *Chinese Staff I* suggests that whenever new development might make a neighborhood more valuable (thus creating a risk of increased rents), the lead agency must consider this possible impact in deciding whether to draft an EIS. More broadly, *Chinese Staff I* implies that any change in existing "population patterns" is an environmental impact under SEQRA, and therefore (if significant) requires an EIS. Such a rule suggests that any development that significantly increases neighborhood population requires an EIS, because building new housing by definition affects population patterns.

A more recent Appellate Division case supports this interpretation of *Chinese Staff I*. In *Chinese Staff & Workers Ass'n v. Burden* (Chinese Staff II),<sup>57</sup> the city of New York rezoned a Brooklyn neighborhood and declined to draft an EIS.<sup>58</sup> The court upheld the Department of City Planning's decision to not draft an EIS for two reasons: first, the rezoning "decreas[ed], rather than increased, the potential for development by imposing building height limits."<sup>59</sup> Second, because "the [city] projected an increase [of housing stock] of only 75 units, it was [reasonable] to conclude that the rezoning would not have any adverse socioeconomic impacts."<sup>60</sup>

The *Chinese Staff II* court's emphasis on the small number of added housing units and on the decreased potential for development implies that any zoning decision that does add a significant number of new businesses or housing units to a neighborhood is likely to create significant socio-economic impact and would therefore require an EIS under SEQRA.

#### B. Does Greenfield Development Also Require an EIS?

Because significant infill development by definition increases the number of people and businesses in a neighborhood, it is likely to require an EIS under SEQRA. As a practical matter, this may be less true of greenfield development. Infill development occurs in places with neighbors, and where there are neighbors, there is "Not in My Back Yard" (NIMBY)<sup>61</sup> resistance to development.<sup>62</sup> This occurs because residents of an existing neighborhood may suffer any perceived costs from new development (e.g., increased traffic, changes in neighborhood look and feel) while the benefits of new development (such as an increased supply of housing) are citywide or region-wide.<sup>63</sup> Thus, dissatisfied NIMBYs have a strong motive to use SEQRA to delay new development.<sup>64</sup>

By contrast, greenfield development occurs in places with relatively few neighbors. Where there are few neighbors, there are few potential NIMBYs,<sup>65</sup> and thus fewer people likely to demand an EIS or complain that

an existing EIS is inadequate. So, on balance, SEQRA is more likely to affect infill development than greenfield development.

Admittedly, SEQRA does not prevent a municipality from permitting development with significant environmental impact. Because SEQRA allows government agencies to balance environmental impacts against other social considerations, litigants are rarely able to persuade courts to stop a project completely (as opposed to delaying the project by requiring an EIS).<sup>66</sup>

Nevertheless, SEQRA imposes a significant burden upon developers. For a developer, "time is money"<sup>67</sup> because a developer will often be paying interest on a construction loan while its project is being debated, but will be unable to receive money from buyers or renters until the project is actually built.<sup>68</sup> Thus, a developer suffers financially by waiting for the EIS process to wind down—a process which may take years.<sup>69</sup>

#### IV. Why SEQRA's Bias Is Environmentally Harmful

Given that all legislation has a disproportionate impact upon someone, should we care whether SEQRA penalizes infill development?

Already developed areas (especially in central cities) tend to have more mass transit riders (and fewer drivers) than greenfield areas.<sup>70</sup> This is the case because as a neighborhood becomes more developed, it becomes more compact—that is, more people live within walking distance of shops, jobs, public transit, and other neighborhood destinations.<sup>71</sup> By contrast, in areas with lower density, fewer people live within a short walk of a bus or train stop, and transit ridership will therefore be low,<sup>72</sup> which means that transit agencies will be disinclined to serve such areas.<sup>73</sup>

It follows that more greenfield development means more driving, and more driving means more pollution, as one-third of U.S. greenhouse gas emissions come from automobiles.<sup>74</sup> It also follows that because infill development requires less driving, more infill development means less pollution.

Recent studies support this view. A study sponsored by the U.S. Department of Energy suggests that doubled residential density alone reduces household vehicle miles traveled by five to twelve percent.<sup>75</sup> If increased density was accompanied by other pro-transit land use policies and by improved public transit, vehicle miles traveled could be reduced by as much as twenty five percent,<sup>76</sup> causing U.S. greenhouse gas emissions to be reduced by eight to eleven percent.<sup>77</sup>

Similarly, Harvard economist Edward Glaeser and UCLA economist Matthew Kahn recently conducted a study finding that low-density, automobile-oriented places emitted more greenhouse gases from trans-

portation than more pedestrian and transit-oriented places.<sup>78</sup> For example, New York City, the region with the highest use of public transit,<sup>79</sup> emitted only 19,524 pounds of carbon dioxide (a major greenhouse gas,<sup>80</sup> also known as "CO<sub>2</sub>") per household from automobiles and transit users combined,<sup>81</sup> the lowest amount among ten metropolitan areas studied. By contrast, several automobile-oriented, lower-density regions emitted over 25,000 pounds of transportation-related CO<sub>2</sub> per household.<sup>82</sup>

Moreover, suburbs, which tend to be less compact and more automobile-oriented,<sup>83</sup> have significantly higher per-household CO<sub>2</sub> emissions from transportation. For example, New York's suburban households emitted over 3,800 more pounds of transportation-related CO<sub>2</sub> per household than did city residents.<sup>84</sup>

If, as suggested above, infill development reduces driving and thus reduces pollution, and SEQRA discourages infill development, it logically follows that SEQRA actually increases driving and the resulting pollution.

#### V. How to Reform SEQRA to Facilitate Infill

As shown above, SEQRA disproportionately burdens infill development, but infill development in transit and pedestrian-friendly areas is environmentally beneficial. Thus, SEQRA may actually discourage environmentally friendly infill development. Can New York eliminate SEQRA's negative consequences without eliminating SEQRA's more desirable features?

One possible reform might be to enact statutes resembling California's 2008<sup>85</sup> amendments to its own "Little NEPA,"<sup>86</sup> the California Environmental Quality Act (CEQA).<sup>87</sup> In relevant part, these amendments streamline CEQA review for "transit priority projects," defined by the statute as projects that are predominantly residential, providing a minimum density of at least twenty dwelling units per acre, and located within a half mile of major transit service (such as a bus or train with service intervals of no more than fifteen minutes during peak hours).<sup>88</sup>

Under CEQA as amended, government generally<sup>89</sup> reviews such projects as part of a "sustainable communities environmental assessment" (SCEA),<sup>90</sup> which is less onerous than traditional CEQA review.<sup>91</sup> Under an SCEA, a developer need not address potential growth-inducing impacts of a project, nor need it address possible car and truck traffic induced by the project.<sup>92</sup> In addition, the developer need not discuss the pros and cons of a lower-density alternative to the project.<sup>93</sup>

I propose that SEQRA be amended to incorporate (a) CEQA's definition of transit priority projects, and (b) CEQA's provision that developers of such projects need not address environmental impacts related to growth, such as increased population or traffic.<sup>94</sup> Thus, SEQRA

as amended would (as to transit priority projects) overrule New York case law suggesting that urban growth justifies an EIS on the ground that growth of areas well-served by public transit is environmentally helpful rather than environmentally harmful.

A recent law review article criticizes CEQA's streamlining for transit priority projects, arguing that if transit agencies do not increase service as a mitigation measure, transit systems may become overloaded.<sup>95</sup> This argument should not prevent reform, however, because if improved transit must precede density, neither the transit nor the density may ever get built. In an area where density is low and transit ridership is therefore already low,<sup>96</sup> transit opponents and NIMBYs will fight transit by arguing that the density is not present to support transit,<sup>97</sup> and will fight additional density by contending (quite reasonably) that in the absence of transit, more density will only lead to more traffic congestion.<sup>98</sup>

In sum, limiting SEQRA review of transit-friendly development to truly environmental concerns (as opposed to concerns related to population growth) would be an environmentally friendly policy because it would contribute to steering growth to infill sites served by public transit, thus increasing transit ridership and reducing auto-related pollution.

## VI. Conclusion

The purpose of SEQRA is to protect the environment by requiring the government to consider the harmful environmental impacts of its actions. But SEQRA in fact creates its own harmful environmental impacts. Thanks to SEQRA, someone who wants to build houses or apartments in an already developed city or inner suburb must sometimes spend years going through the EIS process. By contrast, greenfield development in rural areas or outer suburbs is less likely to require an EIS or to lead to litigation over the adequacy of an EIS. Thus, SEQRA discourages infill development in New York, and encourages developers to build on greenfield sites. Since greenfield development typically leads to more driving and thus to more pollution, SEQRA may lead to an increase, rather than a decrease, of pollution.

New York can make SEQRA more environmentally friendly by limiting environmental review for compact developments near public transit, thus preserving the benefits of SEQRA without discouraging transit-friendly infill.

## Endnotes

1. N.Y. ENVTL. CONSERV. LAW § 8-0109 (McKinney 2006).
2. See WILLIAM FULTON & PAUL SHIGLEY, GUIDE TO CALIFORNIA PLANNING 156 (3rd ed. 2005) ("most state [environmental review] laws...apply only to public development projects").
3. See Stewart E. Sterk, Environmental Review in the Land Use Process: New York's Experience with SEQRA, 13 CARDOZO L. REV. 2041, 2042-43 (1992); Daniel P. Selmi, *Themes in the Evolution of the State Environmental Policy Acts*, 38 URB. LAW. 949, 956-57 (2006) (contrasting New York approach with "state only" approach of North Carolina and Indiana).
4. See *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y. 2d 359, 366, 502 N.E. 2d 176, 180, 509 N.Y.S. 2d 499, 503 (1986) (SEQRA requires consideration of "social or economic" factors as well as "physical environment").
5. See John Watts, *Reconciling Environmental Protection With the Need for Certainty: Significance Thresholds for CEQA*, 22 ECOLOGY L.Q. 213, 241 n. 170 (1995) ("[a]bout half the states...require consideration of [socio-economic] impacts"); Sterk, *supra* note 3, at 2043 (some "states define the environment to embrace only natural and historical resources").
6. See *infra* Part III.
7. See Anne L. Hanson, *Offshore Drilling in the United States and Norway: a Comparison of Prescriptive and Performance Approaches to Safety and Environmental Regulation*, 23 GEO. INT'L ENVTL. L. REV. 555, 559 (2011).
8. *Id.*
9. See Emily M. Slaten, "We Don't Fish in Their Oil Wells, and They Shouldn't Drill In Our Rivers": Considering Public Opposition Under NEPA and the Highly Controversial Regulatory Factor, 43 IND. L. REV. 1319, 1324 (2010), citing 40 C.F.R. § 1508.16.
10. The agency may also designate certain routine actions as "categorically excluded" from NEPA review. See Slaten, *supra* note 9, at 1325; 40 C.F.R. § 1508.4 ("Categorical Exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency").
11. 40 C.F.R. § 1508.9(a)(1).
12. See 40 C.F.R. § 1502.9(b).
13. 42 U.S.C. § 4332(2) (2013).
14. See *Village of Chestnut Ridge v. Town of Ramapo*, 45 A.D. 3d 74, 85, 841 N.Y.S. 3d 321, 332 (2d Dept. 2007).
15. See Mark A. Chertok and Ashley S. Miller, *Environmental Law: Climate Change Impact Analysis in New York under SEQRA*, 60 SYRACUSE L. REV. 925, 925-26 (2010).
16. *Id.* (SEQRA governs "zoning amendments"); *Neville v. Koch*, 79 N.Y. 2d 416, 426, 583 N.Y.S. 2d 802, 806, 593 N.E. 2d 256, 260 (1992) ("rezoning is an 'action' subject to SEQRA").
17. See Paul D. Selver, *The Public Review Process: Land Use Diligence and Comments on Structuring the Deal to Shift Land Use and Environmental Risks*, 582 PLI/REAL 899, 906-10 (2010) (subdivision approval, variances, and numerous other land use procedures subject to SEQRA).
18. See Edna Sussman et al., *Climate Change Adaptation: Fostering Progress Through Law and Regulation*, 18 N.Y.U. ENVTL. L. J. 55, 79 (2010); Sterk, *supra* note 3, at 2045. Although the lead agency is technically responsible for drafting the EAF, EIS and similar documents, as a practical matter a developer often drafts such documents, which in turn are used by the lead agency. See Carolyn A. Zenk, *New York State Environmental Quality Review Act*, <http://www.linkedin.com/pub/vanessa-puerta/27/58b/b52>.
19. See *Citizens Against Retail Sprawl v. Giza*, 280 A.D. 2d 234, 236, 722 N.Y.S. 2d 645, 648 (4th Dept. 2001), quoting N.Y. COMP. CODES R. & REGS. tit. 6 § 617.2[y] (2000).
20. See N.Y. COMP. CODES R. & REGS. tit. 6 § 617.2(a)(c) (2000). See also *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y. 2d 359, 364, 502 N.E. 2d 176, 179, 509 N.Y.S. 2d 499, 502 (1986) (citations omitted) ("whether an EIS is required... depends on whether an action may or will not have a significant effect on the environment.") If the agency foresees significant environmental impacts but has an enforceable commitment to mitigate those impacts, it may avoid an EIS by creating a

- "conditioned negative declaration." N.Y. COMP. CODES R. & REGS. tit. 6 § 617.2(h) (2000). See also Mark A. Chertok & Ashley S. Miller, *Environmental Law: Climate Change Impact Analysis in New York Under SEQRA*, 59 SYRACUSE L. REV. 763, 765 (2009).
21. *Id.* See also Jackson v. New York State Urban Development Corp., 67 N.Y. 2d 400, 415, 494 N.E. 2d 429, 435, 503 N.Y.S. 2d 298, 304 (1986) (describing draft EIS process in more detail).
  22. See Selver, *supra* note 17, at 904.
  23. See Chertok & Miller, *supra* note 15, at 927. In addition, a final EIS must address all comments on the Draft EIS, as well as any project changes, new information, and changes in circumstances since the issuance of the Draft EIS. *Id.*
  24. *Id.* at 927-28.
  25. See Gregory D. Eriksen, *Breaking Wind: Facilitating Wind Energy Development in New York State*, 60 SYRACUSE L. REV. 189, 196 (2009) (challenges to decisions of SEQRA lead agencies usually take form of a petition under Article 78 of the New York Civil Practice Law and Rules); H.H. Warner, LLC v. Rochester Genesee Reg'l Transp. Auth., 87 A.D. 3d 1388, 1390, 930 N.Y.S. 2d 131, 132 (4th Dept. 2011).
  26. See Chertok & Miller, *supra* note 15, at 926 (DEC drafted relevant regulations).
  27. See N.Y. COMP. CODES R. & REGS. tit. 6 § 617.4 (2000).
  28. See Chinese Staff & Workers Ass'n v. Burden, 88 A.D. 3d 429, 932 N.Y.S. 2d 1, 2 (1st Dept. 2011) (presumption rebuttable if lead agency makes "reasoned elaboration" for finding of no significant impact).
  29. See Sterk, *supra* note 3, at 2044-45.
  30. *Id.*, tit. 6 § 617.5[c].
  31. *Id.*, tit. 6 § 617.5[c](1)(2)(9-10)(12) (listing numerous examples); Patricia Salkin, *The Historical Development of SEQRA*, 65 ALBANY L. REV. 323, 340-44 (2001) (listing numerous other examples of Type II actions).
  32. N.Y. COMP. CODES R. & REGS. tit. 6 § 617.2(a)(k) (2000) (defining "unlisted" actions).
  33. *Id.*, tit. 6 § 617.7 (agency must determine significance of environmental impact as to both Type I and unlisted actions).
  34. See Chertok & Miller, *supra* note 15, at 926.
  35. See *supra* note 23 and accompanying text.
  36. Jackson, 67 N.Y. 2d at 415, 494 N.E. 2d at 434, 503 N.Y.S. 2d at 303.
  37. *Id.*
  38. *Id.* at 416, 494 N.E. 2d at 436, 503 N.Y.S. 2d at 305.
  39. *Id.*, 494 N.E. 2d at 435, 503 N.Y.S. 2d at 304 (citation omitted).
  40. See *infra* note 66.
  41. See George Lefcoe, *Finding the Blight That's Right for California Redevelopment Law*, 52 HASTINGS L.J. 991, 1033 (2001) ("infill" is "re-use of developed urban parcels"); Hubble Smith, *Finding the Will to Infill*, L.V. BUS. PRESS, Jan. 16, 2012, at 6, 2012 WLNR 3573525 (infill development, "broadly defined [is] new construction on vacant parcels with utility and infrastructure already in place and surrounded by existing homes and businesses.")
  42. Arne Marie Pippin, *Community Involvement in Brownfield Redevelopment Makes Cents: A Study of Brownfield Redevelopment Initiatives in the United States and Central and Eastern Europe*, 37 GA. J. INT'L AND COMPARATIVE L. 589, 596 (2009).
  43. See Bill Lurz, *Don't Give Up On Developing Land*, HOUSING GIANTS, Nov. 24, 2008, at 7 ("many of the best infill sites will require...rezoning"); *Your Right to Know*, ATLANTA JOURNAL AND CONSTITUTION, MARCH 3, 2005, at 1 ("Usually ...developments require rezoning").
  44. See *supra* note 16 and accompanying text.
  45. See *infra* Part III-A.
  46. See *infra* Part III-B.
  47. N.Y. ENVTL. CONSERV. LAW § 8-0105(6) (McKinney 2013).
  48. 68 N.Y. 2d 359, 502 N.E.2d 176, 509 N.Y.S. 2d 499 (1986).
  49. *Id.* at 362, 502 N.E. 2d at 177, 509 N.Y.S. 2d at 500.
  50. *Id.* at 362, 502 N.E. 2d at 178, 509 N.Y.S. 2d at 501. (More precisely, the city issued a "conditional negative declaration," which means that the project would "not have any significant effect on the environment if certain modifications were adopted by the developer.") *Id.*
  51. *Id.* at 366, 502 N.E. 2d at 180, 509 N.Y.S. 2d at 503 (emphasis added) (citations omitted).
  52. *Id.*
  53. *Id.*, 509 N.E. 2d at 181, 509 N.Y.S. 2d at 504.
  54. *Id.*
  55. *Id.* (using term); see also Diane K. Levy, Jennifer Comey, and Sandra Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 16-SPG J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 238, 240 (2007) ("secondary displacement" occurs when gentrification leads to higher rents, and existing residents cannot remain in neighborhood).
  56. Chinese Staff I, 68 N.Y. 2d at 367, 509 N.E. 2d at 181, 509 N.Y.S. 2d at 504 (noting that numerous nearby sites available for development and that displacement could occur near those sites).
  57. 88 A.D. 3d 425, 932 N.Y.S. 2d 1 (1st Dept. 2011), affirmed, 2012 WL 2399597 (N.Y.).
  58. *Id.* at 427-28, 932 N.Y.S. 2d at 2.
  59. *Id.*
  60. *Id.* at 434, 932 N.Y.S. 2d at 6.
  61. Roderick M. Hills, Jr. & David N. Schleicher, *Balancing the "Zoning Budget"*, 62 CASE W. RES. L. REV. 81, 90 (2012) (using term).
  62. See Greg Greenway, *Getting the Green Light for Senate Bill 375: Public Engagement for Climate-Friendly Land Use in California*, 10 PEPP. DISP. RESOL. L.J. 433, 442 (2010) (NIMBY resistance limits infill development).
  63. *Id.*
  64. See John W. Caffry, *The Substantive Reach of SEQRA: Aesthetics, Findings and Non-Enforcement of SEQRA's Substantive Mandate*, 65 ALB. L. REV. 393, 414 (2002) (persons most likely to be dissatisfied with agency action include "concerned citizens who live near project sites" as well as environmental groups).
  65. Cf. Sarah Townsend, *Ministers to Study New Airport, Planning*, Jan. 28, 2011, at 12 (British officials are building new London airport on a "greenfield" site to "get around the NIMBY problem").
  66. See Caffry, *supra* note 64, at 412 (during 1990s, court challenges to agency SEQRA determination prevailed in 28 percent of the cases where no EIS prepared, and 10 percent of cases where final EIS prepared).
  67. Sterk, *supra* note 3, at 2084.
  68. See Chad Lamer, *Why Government Policies Encourage Urban Sprawl, and the Alternatives Offered by New Urbanism*, 13 KAN. J.L. & PUB. POL'Y 391, 402 (2004).
  69. See PATRICK GALLAGHER, *Reviewing the Environmental Review*, FAIRFAX COUNTY BUSINESS JOURNAL, Sept. 26, 2011 at 19 ("the review process of any development moves ahead at [lead agencies'] discretion, sometimes taking as many as four of five years before a decision is rendered.")
  70. See Thomas Merrill & David M. Schizer, *Energy Policy for an Economic Downturn: A Proposed Petroleum Fuel Price Stabilization Plan*, 27 YALE J. ON REG. 1, 20 (2010) ("alternative

modes of transportation, such as walking, bicycling or public transportation, are impossible or inconvenient in suburbs and exurbs"); Michael Lewyn, *Sprawl in Canada and the United States*, 44 URB. LAW. 85, 96-97 (2012) (central cities consistently have more public transit ridership than region as a whole).

71. *Id.* at 111, 119-20.
72. See Pamela Blais, *PERVERSE CITIES* 60-61 (2010) (citing numerous studies).
73. *Id.* at 61 (a "minimum threshold density is needed to support a rudimentary level of transit service (say, about every half hour). As densities increase, so, too, does the economic viability of higher levels of service.")
74. Merrill & Schizer, *supra* note 70, at 17.
75. See TRANSPORTATION RESEARCH BOARD, *DRIVING AND THE BUILT ENVIRONMENT* ii-iii (2009) (describing authors and sponsorship), 2 (describing conclusions), at [http://www.nap.edu/catalog.php?record\\_id=12747#toc](http://www.nap.edu/catalog.php?record_id=12747#toc) ("TRB"); see also ABT ASSOCIATES, *Research on Factors Relating to Density and Climate Change 5* (2010), available at [http://www.nahb.org/fileUpload\\_details.aspx?contentID=139993&fromGSA=1](http://www.nahb.org/fileUpload_details.aspx?contentID=139993&fromGSA=1) (this view supported by "weight of the evidence").
76. TRB, *supra* note 75, at 2-3. See also *id.* at 31-66 (describing relationship between density and vehicle miles traveled in more detail).
77. *Id.* at 4.
78. See Edward L. Glaeser & Matthew Kahn, *The Greenness of Cities*, at 1, at [http://www.hks.harvard.edu/rappaport/downloads/policybriefs/greencities\\_final.pdf](http://www.hks.harvard.edu/rappaport/downloads/policybriefs/greencities_final.pdf) ("low-density development... is associated with far more carbon dioxide emissions than higher-density construction").
79. *Id.* at 5.
80. See *Massachusetts v. EPA*, 549 U.S. 497, 504-05 (2007) (carbon dioxide a major greenhouse gas).
81. See Glaeser & Kahn, *supra* note 78, at 5.
82. *Id.* See also Sierra Club, *Sprawl Report 2001: A Summary*, at <http://www.sierraclub.org/sprawl/report01/summary.asp> (suggesting that most auto-oriented regions have more smog).
83. See Brookings Institution, *Where the Jobs Are: Employer Access to Labor by Transit*, New York-Northern New Jersey-Long Island NY, NJ-PA Metro Area at [http://www.brookings.edu/research/papers/2012/07/11-transit-jobs-tomer/~media/Research/Files/Papers/2012/7/transit%20labor%20tomer/pdf/New\\_York.pdf](http://www.brookings.edu/research/papers/2012/07/11-transit-jobs-tomer/~media/Research/Files/Papers/2012/7/transit%20labor%20tomer/pdf/New_York.pdf) (table showing that in New York City, 58.1 percent of residents can reach typical job in 90 minutes via public transit; only 14.4 percent of suburban jobs equally accessible).
84. See Glaeser & Kahn, *supra* note 78, at 8 (suburbanites emitted 6172 more pounds of automobile-related emissions per household than city residents; however, this gap was partially offset by city residents' generation of 2367 more pounds of public transit-related emissions per household).
85. See John Darakjian, *SB 375: Promise, Compromise, and the New Urban Landscape*, 27 UCLA J. ENV'T. L. & POL'Y 371, 372 (2009) (amendments part of SB 375, enacted in 2008).
86. Katherine M. Baldwin, *NEPA and CEQA: Effective Legal Frameworks for Compelling Consideration of Adaptation to Climate Change*, 82 S. CAL. L. REV. 769, 771 (2009) (CEQA one of the "Little NEPA" statutes).
87. CAL. PUB. RES. CODE § 21000 (West 2013).
88. See CAL. PUB. RES. CODE § 21155 (West 2013).
89. In fact, certain projects are completely exempt from CEQA review. See Darakjian, *supra* note 85, at 393 (citation omitted). However, this section of CEQA is likely to be used quite rarely, because it is limited to projects that provide significant amounts of low-income housing and open space. *Id.*
90. CAL. PUB. RES. CODE § 21155.2(b) (West 2013).
91. See Darakjian, *supra* note 85, at 393 (describing SCEA as "truncated" form of review).
92. See Byron K. Toma, *The Error of Streamlining CEQA for Transit Priority Projects: Why California Transit Agencies May Share the Same Future as Polar Bears*, 18 U. BAL. J. ENVTL. L. 171, 191-92 (2011). In addition, a statute enacted in 2012, S.B. 226, seeks to extend these protections to other infill projects; however, some commentators contend that this statute is quite narrow. Norman F. Carlin & David R. Farrabee, *CEQA Streamlining Legislation: Some Small Steps Toward, But No Giant Leap*, at <http://www.pillsburylaw.com/index.cfm?pageid=34&itemid=40292> (S.B. 226 contains so many limits that "[f]ew projects will pass through the eye of this needle.")
93. See Matthew D. Francois, *An Update on Climate Change Regulations and how the California Model Might be Replicated Elsewhere*, ASPATORE, 2012 WL 1200516, \*5 (environmental impact statement "is not required to reference, describe, or discuss a reduced-density alternative to address the impacts of car and light-duty truck trips generated by the project."). I note that in California, the transit priority project exception to CEQA applies only to projects that include mitigation measures already articulated in prior environmental impact statements, and that are consistent with a regional plan. See Toma, *supra* note 92, at 191 (streamlining allowed only if project "has incorporated all feasible mitigation measures, performance standards, or criteria articulated in the prior applicable [environmental review]" such as review "related to a General Plan"); Annika E. Leerssen, *Smart Growth and Green Building: An Effective Partnership to Significantly Reduce Greenhouse Gas Emissions*, 26 J. ENVTL. L. & LITIG. 287, 309-10 (2011); Darakjian, *supra* note 85, at 387-89 (describing sustainable communities strategy). I do not favor adopting these limits in New York, since they vitiate the benefits of the streamlining I have proposed and because I believe that a transit priority project is environmentally friendly and thus should not require "mitigation measures."
94. It could also be argued that SEQRA be amended to completely exclude socio-economic impacts from the definition of "environment," Sterk, *supra* note 3, at 2085-86 (making proposal). This proposal would effectively extend my proposed reform to all projects. Because this article is primarily about the impact of SEQRA upon areas most likely to be served by public transit, the broader proposal is thus beyond the scope of this article.
95. See Toma, *supra* note 92, at 194 (expressing concern over "time delays and commuter frustration.")
96. See *supra* notes 71-73 and accompanying text.
97. See, e.g., Steve Harrison, *November Ballot Spot Likely: Signatures Clear The Way For Revote on Transit Tax*, CHARLOTTE OBSERVER, June 1, 2007, at 1A (opponents of Charlotte light rail expansion argue that "plan to build additional light-rail lines doesn't make sense for a low-density city such as Charlotte."); Jim Beamgard, *Bus Line Wants to Carry Riders Farther, Faster—A Conversation with Ray Miller*, TAMPA TRIBUNE, August 7, 2005, at 1 (opponents of rail in Tampa "say we'll never have the densities here needed...[so] it really doesn't take cars off the road.")
98. See, e.g., EDITORIAL, *SOUTH FLORIDA SUN-SENTINEL*, MAY 28, 2006, at 4H ("high-density developments will only worsen traffic congestion if mass transit is not available to replace the automobile for significant numbers of people.")

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