Does the SEQRA authorize mitigation fees? (New York State Environmental Quality Review Act)

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I. Introduction

The inadequacy of state and federal funds to meet developing infrastructure needs has left local governments searching for ways to accommodate new growth without raising taxes.(1) Recognizing that new development necessitates capital improvements, municipalities attempt to shift the burden of financing such improvements to developers.(2) New York courts are reluctant to uphold such measures.(3)

In 1989, for example, the New York Court of Appeals, in Albany Area Builders Ass'n v. Town of Guilderland,(4) invalidated the Town of Guilderland's Transportation Impact Fee Law (TIFL)(5) which was enacted in response to the projected growth of the town and the expected impact on the transportation network.(6) An "impact fee" is a payment, generally made prior to the issuance of a permit, which is levied against a developer to pay for its proportionate share of roads, sewers, and other facilities necessitated by the new development.(7) Guilderland deemed its revenue sources "insufficient to fund the necessary ... improvements," and the TIFL was enacted to fill the gap.(8) The Court of Appeals, while expressly not ruling on the validity of impact fees in New York,(9) held the TIFL was implicitly preempted by the Legislature's "uniform scheme to regulate" highway funding, found in New York's Town and Highway Law.(10)

Impact fees are typically enacted to fund municipal improvements like roads,(11) sewers,(12) and water hook ups.(13) Municipalities have traditionally funded such improvements.(14) Increased costs and suburban sprawl, however, have increased the burden on localities.(15) The Guilderland TIFL represented an attempt by a municipality to shift the increased financial burden from the taxpayers to the developers.

While municipalities, such as Guilderland, contend that new development should pay for the improvements it necessitates,(16) the developers argue that such a scheme unfairly burdens the new homeowner.(17) Improvements necessitated by existing development were funded by the municipalities.(18) To require new development to fund these improvements is, in the opinion of the developers, an inequitable burden which will "significantly affect the affordability of new home construction."(19)

The Guilderland decision essentially eliminated the use of impact fees to shift the financial burden of new development to developers. Roads, sewers, and water hook ups, the most common sources of impact fees, are also highly regulated by the state.(20) Thus, under Guilderland, an impact fee enacted to cover such costs is preempted.

The Guilderland decision leaves municipalities with the choices of paying for municipal improvements through increased taxes, halting development, or devising new ways, not preempted by state statute, to mandate developer contributions. The Town of Colonie, which adjoins Guilderland in Albany County, New York, has formulated just such a revenue-generating scheme.

Instead of imposing impact fees, Colonie imposes mitigation fees on new development through its Joint Findings Statement of the Albany Airport Final Generic Impact Statement (Joint Findings Statement).(21) These fees are collected and intended to be applied towards mitigating transportation Costs,(22) as well as water, solid waste, and recreation costs.(23) The application of impact and mitigation fees appears to be the same. Colonie's fees are imposed on developers "to pay for the infrastructure improvements that new development necessitates,"(24) while Guilderland's impact fees were meant to impose on the developer its "fair share cost of improved roadways necessitated by ... new development."(25) The essential difference between the two fees is the claimed grant of authority from the state to impose fees. While Guilderland claims authority to enact the TIFL under New York's Municipal Home Rule Law [Sub-section] 10(1),(26) Colonie claims authority for its fees under the New York State Environmental Quality Review Act (SEQRA).(27) Neither Municipal Home Rule Law, nor SEQRA expressly authorizes the imposition of fees.

Colonie's mitigation fees are based on its Airport Area Final Generic Environmental Impact Statement (FGEIS),(28) which was prepared in response to "development pressures" in the Study Area and in recognition of the "need to develop a comprehensive policy for future growth."(29) The Airport Area FGEIS, based on current and projected development, analyzed "future growth trends, associated impacts, and appropriate mitigation for a 15-year planning period."(30) It identified both existing deficiencies and future adverse impacts expected to result from the projected development.(31)

While developer-based groups are prepared to challenge Colonie's mitigation fees, a plaintiff must first be found.(32) From a challenger's point of view, the "ideal" plaintiff would be "a developer with a project in Colonie ... willing to take the town to court, and ... hope[fully], have the mitigation fees declared illegal."(33) Until that plaintiff is found and the Colonie fees are tested by the judiciary,(34) the question remains whether, in light of the Court of Appeals decision in Guilderland,(35) SEQRA authorizes the collection of mitigation fees for mandated mitigation.

This Comment examines whether mitigation fees may be imposed under SEQRA, using the Town of Colonie Airport Area FGEIS and its Joint Findings Statement as a model. New York case law on a municipality's authority to regulate its growth and to collect fees suggests conflicting outcomes to a mitigation fee challenge. For example, SEQRA regulations, in conjunction with the wide latitude the courts give to municipalities in SEQRA decisions,(36) indicate that such fees may be upheld on a challenge. The Guilderland case and the Court of Appeals's restrictive decision in Long Island Pine Barrens Society, Inc. v. Planning Board,(37) on the other hand, suggest that mitigation fees will be struck down.

This Comment considers the arguments in favor of upholding mitigation fees under SEQRA, but ultimately concludes that such arguments will not be successful because of an alternative approach upheld by the New York Court of Appeals in Golden v. Planning Board of Ramapo.(38) Part II gives an overview of SEQRA and the Airport Area FGEIS.(39) Part III examines the latitude the courts give to municipalities in SEQRA decisions, particularly regarding mitigation measures.(40) Part IV examines a municipality's authority to impose fees, including impact fees, and distinguishes the Town of Guilderland's impact fees from the Town of Colonie's mitigation fees.(41) Part V discusses Ramapo, as well as land use planning in New York, its relationship to SEQRA, and its possible influence on a decision regarding the validity of mitigation fees.(42)

II. An Overview of Seqra(43) and Colonie's Airport Area FGEIS

A. SEQRA

SEQRA was enacted in 1975(44)to "declare a state policy ... which will prevent or eliminate damage to the environment and enhance human and community resources."(45) As described by the New York Court of Appeals, SEQRA is "an attempt to strike a balance between social and economic goals and concerns about the environment."(46) More than merely a procedural statute, SEQRA "imposes ... `action forcing' or `substantive' requirements on state and local decision-makers."(47) It mandates mitigation of adverse environmental impacts by "all practicable means."(48)

Patterned after the National Environmental Policy Act of 1969 (NEPA),(49) SEQRA was enacted to make environmental protection "a concern of every agency."(50) Unlike NEPA, however, SEQRA is not merely procedural; it creates a substantive impact.(51) Prior to undertaking or approving an action, an agency must "certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable."(52)

"Environment" includes not only natural surroundings such as air, water, flora and fauna, but places or objects of historic or aesthetic significance, as well as "existing patterns of population concentration, distribution or growth, [and] existing community or neighborhood character."(53) Thus, an impact on the residential character of a neighborhood,(54) neighborhood aesthetics,(55) and/or traffic(56) must all be considered before an agency may approve a project.

Under the SEQRA process, an agency, upon a request for funding or approval of a project, or upon the formulation of its own action, must first determine the classification of the project.(57) Type II projects(58) are not subject to SEQRA and an agency's responsibilities under the statute are complete upon finding that a project qualifies as Type II.(59) Type I(60) and Unlisted projects(61) require the project sponsor and the lead agency(62) to complete an Environmental Assessment Form (EAF).(63) Should the EAF reveal "the potential for at least one significant adverse environmental impact," the lead agency must require an Environmental Impact Statement (EIS).(64)

The EIS is the "heart of SEQRA" and the statute dictates its preparation both procedurally and substantively.(65) First, the lead agency or project sponsor must prepare or have prepared a Draft Environmental Impact Statement (DEIS).(66) Upon acceptance of the DEIS, the lead agency must file the document and allow at least thirty days for public comment, which may or may not include a public hearing.(67) After public comments have been addressed and considered, and the applicable period of time has elapsed,(68) the lead agency must prepare or have prepared a Final Environmental Impact Statement (FEIS).(69) The FEIS need not be prepared if the proposed action has been withdrawn(70) or, "on the basis of the [DEIS], and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment."(71)

Subsequent to the filing of the FEIS and prior to an agency's approval of a project, the lead agency and any involved agencies must file a written findings statement(72) which includes an evaluation of the environmental impacts disclosed in the EIS, an assessment of those impacts in relation to "social, economic and other considerations,"and "a rationale for the agency's decision."(73)

Substantively, the EIS must include a description of the proposed project which includes a "concise description of the environmental setting of the areas to be affected,"(74) an evaluation of potential adverse environmental impacts,(75) a description of possible mitigation measures,(76) and an evaluation of reasonable, feasible alternatives.(77) Where applicable, the EIS should also include a description of short-term and long-term impacts,(78) adverse environmental impacts which cannot be avoided or mitigated,(79) and any "growth-inducing aspects" of the proposed project.(80)

The "action-forcing"(81) nature of SEQRA is most evident in its substantive requirement that agencies, in the requisite findings statement, "certify that consistent with social, economic and other essential considerations . . . adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.(82) Thus, agencies must mandate mitigation or deny the proposed project.(83)

B. The Town of Colonie's Airport Area FGEIS

SEQRA allows an agency to prepare a generic environmental impact statement (GEIS) where the agency is considering separate actions with common impacts, a sequence of actions, "an entire program or plan having wide application or restricting the range of future ... policies," or prior to implementing a comprehensive land use plan.(84) While the GEIS may be more general than a project specific EIS, it may also incorporate specific projects and/or hypothetical scenarios that are likely to occur.(85) Colonie's Airport Area FGEIS, for example, discusses several hypothetical scenarios based on projected development.(86) It "set[s] forth specific conditions or criteria under which future actions will be undertaken."(87) Future projects which meet the FGEIS criteria may be approved without further SEQRA action.(88) A supplemental environmental impact statement (SEIS) will be required for those that fall outside of the FGEIS scope.(89)

The Albany/Colonie Joint Findings Statement, required prior to any decision on a proposed action,(90) sets forth the decisions of the town and county with respect to the information generated by the Airport Area FGEIS. It addresses the criteria and conditions set forth in the FGEIS and modifies projected actions accordingly.(91) In addition, it evaluates adverse impacts and adopts various mitigation measures, including mitigation fees.

Recognizing that capital improvements, including transportation and utility improvements, must be made if future development is to occur, the Joint Findings Statement analyzes various methods of funding those improvements.(92) It dismisses the collection of impact fees and excise taxes as not viable ... at this time."(93) Viable funding alternatives include state and federal funds(94) and negotiated developer contributions.(95) The Joint Findings Statement further claims "authority under SEQRA to collect money for development mitigation costs from future projects within the Study Area."(96)

III. SEQRA'S Treatment in the Courts

The New York courts have held agencies to strict compliance with the procedural requirements of SEQRA.(97) As to the substantive requirements, the courts will seek to ensure that the agency has taken a "hard look"'... at areas of environmental concern and made a "`reasoned elaboration'" of its decision.(98) Where strict procedural compliance is not found or where the agency did not take a "hard look," the courts may nullify the agency's approval of the given project.(99) Such nullification may be effected even where the project is underway. For example,in H.O.M.E.S. v. New York State Urban Development Corp.,(100) the Appellate Division, Fourth Department found that the New York State Urban Development Corp. (UDC) had not complied with SEQRA and enjoined construction of a domed stadium at Syracuse University.(101) The court determined that the UDC did not take a "hard look" at the potential traffic and parking impacts the new facility was likely to create.(102) Despite the fact that construction had already begun on the domed stadium, the court found that the UDC's decision to proceed was arbitrary and capricious and ordered an injunction.(103) Although the court stayed the injunction for four months to allow the UDC to comply with SEQRA, the message was clear.(104) As stated in a later case by the Appellate Division, Third Department, "[r]equiring strict compliance by agencies with SEQRA's ... requirements is more than a hollow procedural nicety."(105)

When an agency complies with both the procedural and substantive requirements of SEQRA, it is given appreciable discretion.(106) The New York Court of Appeals noted that "the Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives."(107) Such latitude, however, is tempered with the "rule of reason."(108) So long as the agency makes a reasoned analysis for its decision, it need not identify every environmental impact or mitigation measure.(109) It must base its decision on information sufficient to "intelligently ... assess and weigh the environmental factors, along with social, economic and other relevant considerations."(110)

The "reasonableness test" was established by the Appellate Division, Fourth Department in Town of Henrietta v. Department of Environmental Conservation.(111) In that case, the court addressed the question of whether SEQRA gives agencies the authority to impose conditions on the approval of a given project. Recognizing SEQRA's "mandate [to] every state agency and department" to make decisions in accordance with environmental protection, the court upheld those conditions it found reasonable in light of environmental, technical, and economic considerations.(112) The court further found that although considerations will change case by case, SEQRA requires "a rather finely tuned and systematic balancing analysis in every instance."(113) Subsequent to the decision in Town of Henrietta, the imposition of conditions was incorporated into SEQRA's regulations.(114)

The broad discretion given to agencies to determine whether to approve an action under SEQRA suggests that Colonie's mitigation fees may be upheld. The Airport Area FGEIS is a comprehensive document which details the entire 8500 acre area slated for development in that part of Colonie.(115) It addresses various alternative scenarios, including a "no action

alternative"(116) and adverse impacts related to them.(117) The impacts addressed are specific in nature as related to the alternative scenarios. Therefore, the GEIS, authorized to develop future land use planning, satisfies both the procedural and substantive requirements of SEQRA. Furthermore, because of its generic scope, the Airport Area FGEIS is able to aid decisionmakers in "forecasting future needs."(118)

Recognizing the adverse impacts of future developments disclosed in the Airport Area FGEIS, the Town of Colonie and Albany County, in their Joint Findings Statement, made a reasoned analysis as to future growth. Scenarios in which environmental and economic needs could not be balanced were discarded.(119) Some impacts, however, such as those on transportation, cannot be assessed reasonably against a single developer. The "no growth alternative" was also found unacceptable.(120) The FGEIS, because of its comprehensive scope, allows the town and county to divide an otherwise "unacceptably high cost to developers" among various developers, thereby allowing mitigation of adverse impacts in proportion to a project's likely contribution toward such impacts.(121) Moreover, such a division is not arbitrary and capricious, but based on an analysis of factors revealed in the FGEIS.(122)

Were an analysis of mitigation fees complete upon examining SEQRA and the decisions it has generated, it would appear such fees are authorized, at least in the context of a GEIS, provided the fees are imposed to effectuate the legislative intent to "enhance human and community resources."(123) Unlike a project specific EIS, which considers the effect of a single project, a GEIS enables municipalities, like Colonie, to consider multiple projects within a given area, not unlike comprehensive planning.(124) The broad view afforded by the GEIS allows for the determination and mitigation of adverse environmental effects over a large area and over an extended time period, thereby allowing an equitable distribution of mitigation costs imposed to cover improvements over a likewise large area. Moreover, the mitigation fees would permit municipalities to approve those actions which would otherwise be denied because of adverse environmental consequences. Such fees appear to be a valid "condition"(125) of approval where the imposition of fees is reasonable and allows for mitigation of adverse consequences that would otherwise go unmitigated or result in the denial of projects.

SEQRA, however, does not exist in a vacuum, and other factors, including New York courts' holdings on fees imposed on new development and a municipality's authority to impose fees, must be considered. Mitigation fees are not expressly authorized under SEQRA and, while the courts have given municipalities latitude in SEQRA decisions, they have not been so lenient when municipalities attempt to collect fees from new development.(126)

IV. Impact Fees and the Guilderland decision

In an effort to finance the capital expenditures that new development necessitates, municipalities impose fees through such devices as subdivision exactions,(127) park land dedications,(128) in-lieu of payments,(129) and impact fees. Exactions have been used to finance new development since the 193Os(130) and both park land dedications and in-lieu of fees have been upheld in New York courts.(131) In Kamhi v. Town of Yorktown,(132) for example, the New York Court of Appeals recognized that a municipality has the authority to condition site plan approval on the dedication of land for recreational use, or upon the giving of money to purchase such land. In that case, the court stated that "a town's planning needs with respect to its neighborhood parks and playgrounds are `distinctively' matters of local concern.(133)

A. The Guilderland Decision

Unlike in-lieu of fees or exactions, impact fees have not been met with the approval of the New York judiciary.(134) On the same day it decided Kamhi, the Court of Appeals decided Albany Area Builders Ass'n v. Town of Guilderland(135) in which it invalidated a local impact fee law. The law in Guilderland imposed a transportation impact fee on new development where that development would generate additional traffic.(136) A distinguishing factor between the in-lieu of fee in Kamhi and the impact fee in Guilderland is the "purely local concern"(137) of the parks in Kamhi, and the regional concern of roadways involved in Guilderland. While community parks are "distinctly" local in character, generally beginning and ending within the municipality, there is "no real distinction between the particular needs of any one locality and other parts of the State with respect to the funding of roadway improvements."(138)

A municipality's authority to enact laws, including the imposition of fees, is granted by the state legislature.(139) In both Kamhi and Guilderland, the towns claimed authority for the fees under the supersession provision in [sections] 10 of New York's Municipal Home Rule Law which allows a municipality to enact local laws relating to "property, affairs or government," so long as such a law is not prohibited by the state.(140) In Kamhi, the court found that the in-lieu of fee for the "distinctly" local park land fit within the supersession authority.(141) In Guilderland, however, the court did not reach the supersession authority or the validity of impact fees, but instead invalidated the TIFL on preemption grounds.(142) The court held that the state "evidenced a purpose and design to preempt the subject of roadway funding and occupy the entire field, so as to prohibit additional local regulation."(143)

The Guilderland court stated that Town Law [sections] 102 establishes a system "which delineates how towns are to budget for improvements and repairs to highways."(144) The cited provisions(145) require towns to submit to the budget officer an annual estimate of anticipated revenues and expenditures,(146) detail the information which must be contained in the budget,(147) provide for a public hearing,(148) and revise and adopt a budget.(149) The court's primary concern was

that revenues generated by the TIFL, which were to be deposited in a separate fund, would "escape the budgetary process established to regulate highway funding."(150)

The court did not reach the question of the validity of impact fees because it found the TIFL was preempted by state law.1.51 Impact fee legislation has been challenged in numerous states.(152) Some states hold that local authority to impose such fees is implied through a municipality's police powers.(153) Other states have specific impact fee enabling provisions.(154) The New York Legislature has considered impact fee legislation, but to date has failed to pass an enabling statute.(155) The decision in Guilderland indicates that the courts are not willing to validate impact fees through implied authority when the legislature refuses to give express authority.(156)

B. A Municipality's Authority to Impose Fees

Unlike the Guilderland impact fee law or the Kamhi in-lieu of fee,(157) Colonie's mitigation fees are not based on the permissible language of Municipal Home Rule Law,(158) but on the mandatory language of SEQRA.(159) The question is whether SEQRA grants implicit authority to impose fees as conditions to approval. If such authority is implied in the statute, preemption would not be an issue, because the fees would be imposed pursuant to state, rather than local law.(160)

The authority to impose fees does not need to be express in the enabling legislation. In Suffolk County Builders Ass'n, Inc. v. County of Suffolk,(161) for example, the Court of Appeals upheld a statute that imposed regulatory fees upon new development for health permits for water services and sanitary facilities.(162) The court recognized that the power to regulate "subsumes the concomitant power to license and to set fees reasonably related to the cost of licensing.(163) The court further stated that to deny the power to impose fees may leave the locality "without the means to fulfill its statutory imperative."164 The implied authority to impose fees is, of course, subject to "the limitation that the fees charged must be reasonably necessary to the accomplishment of the statutory command."(165)

At first blush, Colonie's mitigation fees appear analogous to the licensing fees in Suffolk County Builders Assn. In each case, the municipality is given the power, indeed the duty, to regulate an activity. SEQRA requires that Colonie, in its capacity as lead agency, certify that adverse environmental impacts are mitigated to the "maximum extent practicable" prior to approving a given project.(166) In certain situations the inability to impose fees would seem to leave Colonie "without the means to fulfill its statutory imperative."(167) Take, for example, a developer, owning commercially zoned property in the Study Area, who wishes to build an office complex. If the roadways in the immediate area are at maximum capacity, the additional office complex will have an adverse impact on the area. That impact may be mitigated by improving the roads. If the town, however, does not have the resources to fund such improvements, it must either deny the project,168 thereby leaving the developer with land it cannot use for its zoned purpose, or violate SEQRA by approving a project which will have recognized adverse impacts on the area.

While a municipality may raise the needed revenue to finance improvements through its taxing authority, there is a limit to what the taxpayer is willing to bear. In the town of Guilderland, for example, after the TIFL was declared invalid, the town voted down a referendum to borrow the funds for highway improvements.(169) Given the choice of financing improvements to accommodate new growth or slowing development, Guilderland residents chose the latter.(170)

The decision to exclude development may leave the municipality open to an exclusionary zoning challenge.(171) However, to defeat such a challenge, the municipality need only show that an ordinance is really designed to accomplish a legitimate public purpose.'"(172) Provided the ordinance is reasonable and has a '"substantial relation to the public health, safety, morals, or general welfare,'" it is protected from constitutional challenge.(173) As the New York Court of Appeals has already upheld the denial of development based on inadequate roads,(174) it is unlikely that the Guilderland ordinance, or one similar, would be struck down as unreasonable or arbitrary.

The fees in Suffolk County Builders Ass'n were regulatory fees designed to fund the expenses incurred in issuing the permit, such as the cost of inspections and processing the applications.(175) Colonie's mitigation fees, however, are not meant to cover the actual costs of the sought after permits, rather they are meant to cover the costs of municipal improvements. As such, it is questionable whether mitigation fees similar to these can be treated as "regulatory." Regulatory fees have been defined as those which are "reasonably necessary to cover the costs of issuance, inspection and enforcement.'"(176) In Colonie, the fees are designed to cover expenses more capital than regulatory in nature. Therefore, an extension of the holding in Suffolk County Builders Ass'n would be required in order to afford mitigation fees the same treatment currently afforded to regulatory fees.

The dictionary between valid and invalid regulatory fees appears to be whether the expenses the fees are intended to cover are discretionary or necessary in order to fulfill the purpose of the enabling statute. Fees which have been upheld include those for publication of notices,(177) engineering and inspection reports"(178) surveying costs,(179) and legal expenses.(180) While engineering reports and surveying do not go directly to the issuance of a permit, they are generally prerequisites to the permit, because the information generated is necessary for the approval process. Similarly, mitigation fees in the above hypothetical would be necessary for approval in order to comply with the SEQRA mandate.

Fees similar to those upheld have been declared invalid by the courts when such fees are determined to be discretionary instead of necessary. The New York Court of Appeals, for example, declared the imposition of legal fees and costs of transcribing the record of the proceedings invalid in Jewish Reconstructionist Synagogue of North Shore, Inc. v. Incorporated Village of Roslyn Harbor.(181) In that case, a religious organization was seeking a special use permit and, under the town ordinance, was charged for the costs incurred by the board in deciding the matter.(182) Because of the special interest generated by the application, the board incurred additional costs, which it then attempted to pass on to the applicant.(183) The court, in striking down the ordinance, noted that the additional costs "did not represent necessary expenditures but rather conveniences to the board for fulfillment of what in the end was its own decision-making responsibility."(184)

Policy considerations as to whether capital expenses should be the sole responsibility of municipalities are inherent in a decision regarding the necessity and validity of mitigation fees to the SEQRA process. Traditionally, the construction and maintenance of public improvements such as roads have been the responsibility of the state or local municipalities.(1865) The expansion of suburban communities, however, has increased the need for, and expense of, such facilities.(186) For example, it is estimated that to expand the Long Island Expressway to meet growth projections it would cost $45 million per mile.(187) State and local coffers are unable to adequately meet these increased obligations and Costs.(188)

Opponents of impact or mitigation fees imposed on new development argue that the fees will drive up the costs of new development, thereby reducing low and moderate income housing.(189) Municipalities, on the other hand, maintain that higher taxes flowing from increased capital expenditures will discourage new development and harm existing community residents, especially those with low or moderate incomes.(190) Ultimately, the courts are then faced with the question of whether the increased burden should be imposed on the community at large or the development that necessitates the burden. Developers argue that it is unfair to impose these costs on new development now, while those same improvements for current residents were paid for by local, state, and federal funds.(191) That argument ignores the reality of a changing world. It may no longer be feasible for local governments to pay for the increasing needs of new development.

If Colonie's mitigation fees are challenged, their validity may rely on whether they are deemed necessary to carry out the legislative intent of SEQRA. Within the stated purpose of the statute is the intent "to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources."(192) In that context, mitigation fees would appear necessary to further the legislative intent where the adverse consequences of a proposed action could be mitigated by capital improvements the municipality does not have sufficient resources to fund. Although neither the statute, its regulations or the legislative history specifically discusses mitigation fees, the Department of Environmental Conservation (DEC) has recognized that "compensation or off-site mitigation should be considered [but] only after all other reasonable methods of avoiding or reducing an impact have been considered."(193)

While it is true that SEQRA gives to the municipality the option of denying approval for a given project, such approval may not be withheld permanently where there is no other reasonable use of the land in question.(194) Because the indefinite denial of a building permit for a commercial structure on commercially zoned land thwarts a developer's "reasonable `investment-backed expectations,'" such denial is arguably a taking.195 In such a case, the denial of a permit under SEQRA would cause a fiscally weak municipality to lose not only tax revenue, but also to pay compensation.(196) Thus, the imposition of fees, which would allow the permit to be granted, would be necessary to carry out the legislative intent to "enhance human and community resources."(197)

While there is an argument for upholding mitigation fees as implicit under SEQRA, that argument relies on the necessity of the fees to the permit process. If there is an alternative to imposing fees, the courts are unlikely to hold them valid. This Comment suggests that mitigation fees are not necessary, because such an alternative exists under the Court of Appeals 1972 decision in Golden v. Planning Board of Ramapo.(198)

V. Land Use Planning and the Ramapo Alternative

A. Golden v. Planning Board of Ramapo and Comprehensive Planning

Local zoning and land use planning have long been recognized as a function of local governments.(199) While the deficiencies in local control of development have been acknowledged,(200) the New York Legislature has yet to institute mandatory statewide regional planning, despite a suggestion as far back as 1972 from the Court of Appeals in Ramapo.(201)

In Ramapo, the Court upheld a local ordinance that denied development until capital improvements to support that development could be made.(202) The town had developed a comprehensive master plan that addressed existing and projected land uses and included projected housing needs and population trends.(203) Pursuant to the plan, the town "adopted a capital program which provide[d] for the location and sequence of additional capital improvements" over an eighteen year period.(204) Based on the master plan and capital improvement program, the town enacted a zoning ordinance under which the applicant of a proposed subdivision permit would have to show the presence of "essential

facilities or services," including adequate roads, public parks, and public sewer facilities, in order to obtain subdivision approval.(205)

Approval of a subdivision application was determined according to a point system, with each specified capital improvement being worth a point value.(206) Developers could "purchase" points to expe dite the permit approval by agreeing to supply the necessary improvements.(207) Although the Ramapo plan potentially denied new development for up to an eighteen year period, the court upheld the zoning ordinance, stating that the town had authority under New York Town Law [Sections] 261 to direct the growth of population for the Purposes indicated [in the statute]."(2080 Noting that a municipality could not indefinitely prohibit development,(209) the court held the eighteen year period, which allowed for the "orderly development of land in conjunction with the needs of the community," was reasonable.(210)

The court also upheld the provision by which a developer could purchase points, holding that the payments or improvements were voluntary.(211) Because the permit application would eventually be granted when the planned capital improvements were in place, such payments were not a condition to approval. Furthermore, the payments were not for expedited approval but for recognized capital improvements which were necessary to support the new development. Ramapo is therefore distinguishable from City of New York v. 17 Vista Associates,(212) in which the Court of Appeals struck down an agreement whereby the developer would pay a predetermined sum for expedited and favorable review.(213) Unlike 17 Vista Associates, the optional payments or improvements in Ramapo were pursuant to a long-range comprehensive plan.

The New York Legislature has indicated its desire for comprehensive planning.(214) Indeed, a zoning ordinance must be in accordance with a town's comprehensive plan.215 It was not until 1995, however, that the Legislature actually enacted a comprehensive plan statute.(216) Although permissive instead of mandatory,(217) the statute is an indication of the legislative intent for municipalities to engage in long-range comprehensive planning.

The Colonie Airport Area GEIS "shares many of the characteristics embodied in the concept of comprehensive planning."(218) It is not, however a comprehensive plan, but a "tool for charting a course from 'the present to the master plan.'"(219) Unlike a comprehensive plan, which, once adopted, mandates that a town follow certain procedures to amend it,(220) the Airport Area FGEIS does not bind the town to any particular course of action. Because of the discretion a municipality has in utilizing a GEIS, it is unlikely that the judiciary, especially in light of its reluctance to uphold the imposition of fees on new development, will give the same deference to the Airport Area GEIS as it once did to the Town of Ramapo's comprehensive plan.

B. Land Use Planning and SEQRA

The New York courts have been receptive to the Legislature's efforts at promoting broad municipal planning. In Save the Pine Bush, Inc. v. City of Albany,(221) for example, the New York Court of Appeals declared that the city of Albany was mandated, under SEQRA, to consider the cumulative effects of "related" projects, even where there is no "commonality of ownership" between the proposed projects.(222) The court defined related projects as "all part of a plan" designed for a given area.223 In that case, the city of Albany, in recognition of the sensitive ecological area in question, created a Site Plan Review Agency which was authorized to consider applications for development in the area according to specified guidelines.(224) Because of the defined area and specific criteria given to the Site Plan Review Agency, the court held that projects within that area were related.(225)

Five years after Save the Pine Bush, the Court of Appeals limited its definition of "related" projects in Long Island Pine Barrens Society, Inc. v. Planning Board.(226) The petitioners in this case challenged numerous approvals of projects in the ecologically sensitive pine barrens, claiming the approvals violated SEQRA because the cumulative effects were not considered.227 While there were various laws and policies regarding the area at the federal, state, and county level,228 there was no specific governmental plan.(229) This lack of an overall plan for land use in the area was the court's impetus to hold that consideration of the cumulative effects was not mandated because the projects were not "related." The various multi-level laws and policies protecting the area were "simply not a sufficiently unifying ground for tying otherwise unrelated projects together and requiring them to be considered in tandem as `related' proposals."(230)

Subsequent to the Court of Appeals decision in Long Island Pine Barrens, the involved towns, developers, and environmentalists joined forces to create the Long Island Pine Barrens Protection Act (the Act).(231) The Act prohibits development in the most sensitive areas and provides for limited development in the "compatible growth area."(232) Additionally, the Act created the Central Pine Barrens Joint Planning and Policy Commission,(233) which is responsible for creating a comprehensive plan for the area.(234) Thus, in restricting its application of SEQRA, the Court of Appeals provided the impetus for a system which ultimately advanced the legislative intent of the statute "to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources."(235)

The decision in Long Island Pine Barrens represents a restriction of SEQRA's application by the courts.236 While the Court of Appeals had previously given the statute a broad reading, Long Island Pine Barrens indicates that the court will go no further. It is likely that this narrower interpretation of SEQRA would be extended to mitigation fees as well. The ultimate

resolution of the controversy in Long Island Pine Barrens is further incentive for the courts to deny the collection of mitigation fees. Such a holding would force Colonie to come up with alternatives, for example, a long-range, detailed comprehensive plan similar to the one in Ramapo.(237) The legislative desire for both comprehensive planning and consideration of the environment would be satisfied with a comprehensive plan. It would also allow the town to develop as its resources permit.

VI. Conclusion

At first glance there is an apparent contradiction in New York case law between the discretion given by the courts to municipalities in SEQRA actions and the heavy limitations the courts place on a municipality's ability to impose fees upon new development. On one hand, the courts are encouraging, even mandating, municipalities to mitigate adverse environmental effects or deny approval of a given project; on the other hand, they are denying municipalities the ability to finance the capital expenditures necessitated by new development through the imposition of impact fees on such development.

Like impact fees, mitigation fees are not expressly authorized by statute. Mitigation fees, however, have a stronger basis of implied authority because the municipality can rely on the legislative mandate to mitigate under SEQRA, rather than the permissive supersession authority under Municipal Home Rule Law.(238) As with any fees, the rule of reason applies and there must be a rational nexus between the development and the fee. The "reasonableness" standard is reinforced under SEQRA through the Appellate Division, Fourth Department's decision in Town of Henrietta.(239)

However, while mitigation fees may provide a reviewable mechanism for allowing municipalities to fund the capital improvements necessitated by new development, it is unlikely they would be upheld on a challenge. The argument is meritorious that the imposition of mitigation fees, which represent "a drastic restructuring in the method of funding new [development]," should be decided by the legislature.240 Indeed, it was accepted by the Court of Appeals in Guilderland. Furthermore, as noted by the Guilderland petitioners' attorney, a legislatively imposed fee structure allows legislative control.(241) "The courts, on the other hand, lack these controls and cannot put the genie back in the bottle once they approve a new and untested' fee structure.(242)

Furthermore, municipalities have the Ramapo alternative of regulating future growth through the use of a detailed comprehensive plan. In conjunction with a long-range capital plan, Ramapo allows municipalities to match their growth with the financial ability of the municipality to provide the needed capital improvements to support that growth. By denying the authority to collect mitigation fees, the courts may force municipalities to consider such an alternative plan. The ultimate results in Long Island Pine Barrens support such a conclusion.(243)

While mitigation fees would allow for the legislatively desired mitigation of adverse environmental consequences, compelling municipalities to come up with comprehensive land use planning in order to comply with SEQRA will ultimately effectuate the legislative intent for both comprehensive planning and mitigation of adverse consequences. A plan similar to that adopted in Ramapo allows a municipality to control growth, comply with SEQRA, and prevent both exclusionary zoning challenges and unexpected capital expenses. Additionally, in allowing for long-range planning over a wide area, such a plan permits for the determination and mitigation of adverse environmental consequences that may otherwise go undetected.

Although a GEIS also allows for the determination and mitigation of adverse impacts over a large area, it does not bind a municipality to any course of action. It is merely a tool for planning.(244) As such, the courts are more likely to require municipalities to take a further step and commit to a course of action through a comprehensive statutory plan. A comprehensive statutory plan mitigates the lack of control over developer contributions. A municipality which adopts a comprehensive statutory plan is bound by its stated intentions and must follow legislatively prescribed procedures to alter its stated course of action. Therefore, it is unlikely that developer contributions would be used for any purpose other than the improvements for which they are intended.

Despite their differences, mitigation fees are almost identical to impact fees in application. Both are "welcome neighbor" fees assessed to ensure that new development pays its own way. The controversy over imposing fees on new development, where such expenses have traditionally been paid by the state or localities, should be decided by the legislature. Due to the conflicts surrounding such fees, and because the legislative intent of SEQRA may be better served by striking down mitigation fees, New York courts are unlikely to uphold them without clear authority from the Legislature. This is especially likely as the Court of Appeals has already provided an alternative in Ramapo.

(1) See Jayne E. Daly, Transportation and Clean Air: Making the Land Use Connection, 1995 Pace L. Rev. 141, 142-43 (noting that despite state and federal commitments to highway development and maintenance, New York State does not have the funds to accommodate development patterns); see also Andrew Bechard, A Comparison of U.S.-Canadian Excess Condemnation, Expropriation and Property Taking, 9 In Pub. Interest 3, 3 (1989) (noting that a shift toward public policies "de-emphasize[s] ... infrastructure expenditures on the federal, state and municipal level"); Michael G. Sterthous,

Accommodating Growth and Development After Guilderland: Is the New York Legislature About to (Re)Act on Impact Fees?, 8 Pace Envtl. L. Rev. 175, 175 (1990) (concluding that "legislative action at the state level is needed in this area").

(2) See Sterthous, supra note 1, at 176-77 (noting that municipalities have sought various methods to shift the financial burden to new development, including "exactions, special improvement districts, and impact fees").

(3) See, e.g., Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (invalidating town's transportation impact fee law); Coconato v. Town of Esopus, 547 N.Y.S.2d 953 (App. Div. 1989) (invalidating a water district hook up fee); Home Builders Ass'n v. County of Onondaga, 573 N.Y.S.2d 863 (Sup. Ct. 1991) (invalidating sewer connection fees and impact fees).

(4) 546 N.E.2d 920.

(5) See Guilderland, 546 N.E.2d at 921.

(6) See id. at 920-21.

(7) See Bernard V. Keenan, A Perspective: New York Communities and Impact Fees, 7 Pace Envtl. L. Rev. 329, 331 (1990) (defining an impact fee as "`single payments required to be made by ... developers at the time of development approval and calculated to be the proportionate share of the cost of providing trunk facilities . . . to the development'" (quoting Weschler et al., Politics and Administration of Development Exactions, in Development Exactions 19 (J. Frank & R. Rhodes eds., 1987))).

(8) Guilderland, 546 N.E.2d at 920-21. The transportation impact fee law [hereinafter TIFL] fills the gap by providing that "applicants for building permits who seek to make a change in land use that will generate additional traffic must pay a transportation `impact fee' when the permit is issued." Id.

(9) See id. at 923 (stating that "we need not reach the controversial question ... whether local `impact fees' are permitted").

(10) Id.; see infra notes 43-96 and accompanying text (discussing impact fees and the Guilderland case).

(11) See, e.g., Guilderland, 546 N.E.2d at 920 (invalidating transportation impact fees).

(12) See, e.g., Home Builders Ass'n v. County of Onondaga, 573 N.Y.S.2d 863 (Sup. Ct. 1991) (invalidating sewer connection fees and impact fees).

(13) See, e.g., Coconato v. Town of Esopus, 547 N.Y.S.2d 953 (App. Div. 1989) (invalidating a water district hook up fee).

(14) See Sterthous, supra note 1, at 186 (noting that the aid of state and federal grants have given the impression that services such as roads and sewers should be municipally funded).

(15) See Daly, supra note 1, at 141-42 (describing a development pattern which is "very expensive to maintain").

(16) See Amicus Curiae Brief for the Association of Towns of the State of New York and the New York State Conference of Mayors and Other Municipal Officials at 11-12, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (No. 718-88).

(17) See Reply Brief for Plaintiffs-Respondents in Response to Brief Amici Curiae of the New York Planning Federation et al. at 9, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (No. 718-88).

(18) See id.

(19) Id.

(20) See Guilderland, 546 N.E.2d at 922 (finding TIFL preempted by state law); Coconato v. Town of Esopus, 547 N.Y.S.2d 953, 955 (App. Div. 1989) finding water hook up fee preempted by state law); Home Builders Ass'n v. County of Onondaga, 573 N.Y.S.2d 863, 865 (Sup. Ct. 1991) (finding sewer impact fee preempted by state law).

(21) See Town of Colonie, County of Albany, Joint Statement of Findings, Final Generic Envtl. Impact Statement, Airport Area, Project No: 1912-01, at 36 [hereinafter Joint Findings Statement]; see also infra notes 72-73 (discussing purpose and content of a SEQRA findings statement).

(22) See Joint Findings Statement, supra note 21, at 39.

(23) See id at 37.

(24) William Tuthill, Critics Call Colonie Fees `Tax on Developers,' Cap. Dist. Bus. Rev. (Albany, N.Y.), Oct. 21,1996, at 1.

(25) Guilderland, 546 N.E.2d at 921.

(26) See id. at 921-22; N.Y. Mun. Home Rule Law [Section] 10(1) (McKinney 1994) (providing that "every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government").

(27) See Joint Findings Statement, supra note 21, at 36; see also N.Y. Envtl. Conserv. Law [Sub-sections] 8-0101-0117 (McKinney 1997) (State Environmental Quality Review Act [hereinafter SEQRA]).

(28) See N.Y. Comp. Codes R. & Regs. tit. 6, [Section] 617.10 (1995) (effective Jan. 1, 1996) (generic environmental impact statements); Final Generic Envtl. Impact Statement, Airport Area, Colonie, N.Y. (Mar. 5, 1991) [hereinafter Airport Area FGEIS] (on file with Colonie Town Office); see also infra notes 84-89 and accompanying text (discussing generic environmental impact statements [hereinafter GEIS]); infra notes 65-80 (discussing the procedural and substantive components of an environmental impact statement).

(29) Joint Findings Statement, supra note 21, at 2.

(30) Id.

(31) See id.

(32) See Tuthill, supra note 24, at 1 (noting that although there are groups willing to contribute to a suit challenging the mitigation fees, a plaintiff is difficult to find because "'[m]ost developers just pay the fees so they can get something in the ground'" (quoting Robert Wiebolt, former Executive Vice President of the N.Y. State Builders Assoc., Inc.)).

(33) Id.

(34) One New York trial court, in an unpublished decision, held mitigation fees were not authorized under SEQRA because there is no provision which expressly permits such fees. See Kent Dev., Inc. v. Town of North Castle, No. 022804/87 (Sup. Ct. Westchester County Nov. 4, 1988). But see infra notes 157-65 and accompanying text (noting that the authority to collect fees need not be expressed).

(35) Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920, 923 (N.Y. 1989).

(36) See, e.g., Town of Henrietta v. Department of Envtl. Conservation, 430 N.Y.S.2d 440, 446-47 (App. Div. 1980) (noting the legislative history supports a "broad construction" of SEQRA provisions); see also infra notes 97-113 and accompanying text (discussing the latitude given to municipalities in SEQRA decisions).

(37) 606 N.E.2d 1373 (N.Y. 1992) (restricting the use of the term "related" projects); see infra notes 226-37 (discussing Long Island Pine Barrens).

(38) 285 N.E.2d 291 (N.Y. 1972); see infra notes 199-210 and accompanying text (discussing Ramapo and the court's decision to uphold a zoning ordinance which allowed for the denial of development for up to 18 years).

(39) See infra notes 43-96 and accompanying text (discussing SEQRA, the Airport Area FGEIS, and Joint Findings Statement).

(40) See infra notes 97-126 and accompanying text (discussing SEQRA in the courts).

(41) See infra notes 127-98 and accompanying text (discussing Guilderland and a municipality's authority to collect fees).

(42) See infra notes 199-237 and accompanying text (discussing Ramapo and alternatives to mitigation fees found in land use planning decisions).

(43) The following discussion is a brief overview of the procedural and substantive requirements of SEQRA. For a more in-depth look at the requirements, see N.Y. Envtl. Conserv. Law [Section] 8-0101 (McKinney 1997) (discussing the purpose of SEQRA); N.Y. Comp. Codes R. & Regs. tit. 6, [Sub-section] 617.1-.21 (1995); Michael B. Gerrard et al., Environmental Impact Review in New York [section] 6.01(1) (1996).

(44) See N.Y. Envtl. Conserv. Law [section] 8-0101 to -0117; Philip H. Gitlen, The Substantive Impact of the SEQRA, 46 Alb. L. Rev. 1241, 1241 (1982) (discussing SEQRA's enactment amid fears that it would "open a `floodgate' of litigation and delay important public and private projects").

(45) N.Y. Envtl. Conserv. Law [section] 8-0101.

(46) Jackson v. New York State Urban Dev. Corp., 494 N.E.2d 429, 434 (N.Y. 1986) (discussing the history and goals of SEQRA).

(47) Gitlen, supra note 44, at 1248.

(48) N.Y. Envtl. Conserv. Law [section] 8-0109; see Gerrard et al., supra note 43, [section] 6.01(1) (stating that "SEQRA makes it clear that adverse environmental impacts are to be minimized or avoided").

(49) 42 U.S.C. [Sub-sections] 4321-4361 (1994); see Gitlen, supra note 44, at 1241 (comparing SEQRA to "all of the so-called `little-NEPA' statutes").

(50) Jackson, 494 N.E.2d at 434. "Agency" includes both state and local agencies. See N.Y. Comp. Codes R. & Regs. tit. 6, [section] 617.2(c) (1995).

(51) See Jackson, 494 N.E.2d at 434 (discussing how SEQRA is "not merely a disclosure statute"); Gitlen, supra note 44, at 1248 (stating that SEQRA places more requirements on "decisionmakers than NEPA imposes on their federal counterparts").

(52) N.Y. Comp. Codes R. & Regs. tit. 6, [section] 617. 11(d)(5).

(53) Id. [section] 617.2(l).

(54) See Jackson, 494 N.E.2d at 437 (noting that a FEIS, prepared for the development of high-rises in a residential neighborhood, considered the effect of the high-rises to the neighborhood and identified measures to mitigate the effect that high-rises would have on the neighborhood's character).

(55) See Macchio v. Planning Bd., 578 N.Y.S.2d 355, 358 (Sup. Ct. 1991) (holding the board had authority to condition permit approval upon certain paints or stains on buildings).

(56) See Town of Henrietta v. Department of Envtl. Conservation, 430 N.Y.S.2d 440, 448 (App. Div. 1980) (noting that "site-generated traffic volume" is a concern under SEQRA).

(57) See N.Y. Comp. Codes R. & Regs. tit. 6, [section] 617.6(a)(1)(i).

(58) Type II actions are those deemed not to have a significant impact on the environment and include maintenance or repair, routine activities of educational institutions, and replacement or rehabilitation of a facility in kind on the same site. See id. [section] 617.5.

(59) See id. (describing Type II actions); id. [section] 617.6(a)(1)(i) (noting that an agency has no further responsibility under SEQRA once a Type II determination has been made).

(60) Type I actions are those that carry with them the presumption that the project is likely to have a "significant adverse impact" on the environment. Id. [section] 617.4. Type I projects include construction of residential units that exceed stated thresholds, adoption of a land use plan by a municipality, and zoning changes. See id

(61) "Unlisted action[s] ... [are those] not identified as Type I or Type II." Id. [section] 617.2(ak).

(62) See id. [section] 617.6(b) (stating that when a single agency is involved, it is considered the lead agency, and when multiple agencies are involved, a lead agency must be determined). The lead agency is responsible for notifying other agencies, coordinating the review, and making the determination. See id.

(63) See id. [section] 617.6(a)(iv). An Environmental Assessment Form [hereinafter EAF] is "a form used by an agency to assist it in determining the environmental significance or nonsignificance of actions." Id. [section] 617.2(m). It must describe "the proposed action, its location, its purpose and its potential impacts on the environment." Id. A project sponsor may opt instead to do a Draft Environmental Impact Statement [hereinafter DEIS], in which case the lead agency may waive the EAF. See id. [section] 617.6(a)(4).

(64) Id. [section] 617.7(a)(1). Where adverse impacts are determined not to be significant, an EIS is not required. See id [section] 617.7(a)(2); infra notes 74-80 and accompanying text (discussing the substantive requirements of an EIS).

(65) Jackson v. New York State Urban Dev. Corp., 494 N.E.2d 429, 435 (N.Y. 1986) (describing the required preparation of an EIS for any action that "`may have a significant effect on the environment"' (quoting N.Y. Envtl. Conserv. Law [section] 8-0109(2) (McKinney 1997))).

(66) See id.; N.Y. Comp. Codes R. & Regs. tit. 6, [section] 617.9(a)(1).

(67) See N.Y. Comp. Codes R. & Regs. tit. 6, [section] 617.9(a)(3). After consideration of stated factors which include the public interest in the proposed project, the adequacy of proposed mitigation measures and alternatives, and extent to which a public hearing would aid in the decision, the lead agency decides whether to hold a public hearing. See id. [section] 617.9(a)(4).

(68) See id. [section] 617.9(a)(4)(iii), (a)(5) (stating that filing must occur "no less than 10 calendar days following a public hearing ..." and "within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the [DEIS], whichever occurs later"). "The last date for preparation and filing ... may be extended." Id. [section] 617.9(a)(5)(b)(ii).

(69) See id. [section] 617.9(a)(5).

(70) See id. (section) 617.9(a)(5)(i)(a) (discussing the instances where a final EIS is unnecessary).

(71) Id. [section] 617.9(a)(5)(i)(b). If it is determined that there will be no significant adverse environmental impact, the agency must prepare, file, and publish a negative declaration. See id.

(72) See id. [section] 617.11(a)-(d).

(73) Id. (section) 617.11(d)(1)-(3).

(74) Id. [sections] 617.9(b)(5)(ii).

(75) See id. [sections] 617.9(b)(5)(iii).

(76) See id. [sections] 617.9(b)(5)(iv).

(77) See id. [sections] 617.9(b)(5)(v).

(78) See id. [sections] 617.9(b)(5)(iii)(a).

(79) See id. [sections] 617.9(b)(5)(iii)(b).

(80) Id. [sections] 617.9(b)(5)(iii)(d).

(81) Gitlen, supra note 44, at 1248 (finding SEQRA to be more "action forcing" than NEPA).

(82) N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.11(d)(5).

(83) See Jackson v. New York State Urban Dev. Corp., 494 N.E.2d 429, 435 (N.Y. 1986) ("An agency may not approve an action unless it makes `an explicit finding that ... adverse environmental effects revealed in the [EIS] process will be minimized or avoided."' (quoting N.Y. Envtl. Conserv. Law [sections] 8-0109(8) (McKinney 1997))).

(84) N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.10(a)-(b).

(85) See id. [sections] 617. 10(a).

(86) See Joint Findings Statement, supra note 21, at 3-10 (discussing the long and short-term strategies for planning development in a projected growth area, while mitigating potential impacts associated with land use, zoning, topography, geological conditions, vegetation, wildlife, aquatic ecology, and ground water).

(87) N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.10(c); see Joint Findings Statement, supra note 21, at 3-10 (indicating that future projects will be undertaken if government officials and the parties responsible for the new development agree to jointly fund the venture).

(88) See N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.10(d)(1).

(89) See id. [sections] 617. 10(d)(4).

(90) See id [sections] 617.11(c) (stating that an involved agency may not approve or disapprove an action that has been the subject of a Final Environmental Impact Statement [hereinafter FEIS] until that agency has made a "written findings statement"; see also id. [sections] 617.11(d) (setting forth the requirements of a findings statement); supra note 72 and accompanying text (noting a findings statement is required prior to a project's approval).

(91) See Joint Findings Statement, supra note 21, at 15. For example, the statement recommends that an alternative scenario involving less growth be developed due to the impacts disclosed in the GEIS and the undesirability of proposed mitigation measures. Id.

(92) See id. at 35-36 (discussing various funding methods, including the implementation of SEQRA mitigation costs; developer contributions; local, slate, and federal taxes; utility company capital investments; impact fees; development excise taxes; and Transportation Development Districts [hereinafter TDD's]).

(93) Id. at 35.

(94) See id.

(95) See id. at 36.

(96) Id.

(97) See, e.g., Jackson v. New York State Urban Dev. Corp., 494 N.E.2d 429, 436 (N.Y. 1986) (noting that the courts will ensure that agencies "honor their mandate regarding environmental protection by complying strictly with prescribed procedures").

(98) Id. (discussing the burden placed on an agency in order to insure that the agency complies with the proscribed procedures).

(99) Save the Pine Bush, Inc. v. Planning Bd., 466 N.Y.S.2d 828 (App. Div. 1983) (declaring approval of a project null and void because the agency did not give a "hard look" to cumulative impacts).

(100) 418 N.Y.S.2d 827 (App. Div. 1979).

(101) See id. at 834.

(102) See id. at 832.

(103) See id. at 834.

(104) See id.

(105) Schenectady Chemicals, Inc. v. Flacke, 446 N.Y.S.2d 418, 420 (App. Div. 1981).

(106) See, e.g., Akpan v. Koch, 554 N.e.2d 53, 57-58 (N.Y. 1990) (noting that once a court determines that an agency has complied with both the substantive and procedural requirements of SEQRA, the court must "refrain from substituting its judgment for that of the agency").

(107) Jackson v. New York State Urban Dev. Corp., 494 N.E.2d 429, 436 (N.Y. 1986).

(108) Id.

(109) See id.

(110) Town of Henrietta v. Department of Envtl. Conservation, 430 N.Y.S.2d 440, 446 (App. Div. 1980).

(111) Id. at 447.

(112) Id.

(113) Id.

(114) See N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.11(d)(5) (1995).

(115) See Joint Findings Statement, supra note 21, at 1; Airport Area FGEIS, supra note 28, at I-1-4.

(116) Airport Area FGEIS, supra note 28, at III-20-21. The "no action alternative" would involve no comprehensive plan or cumulative impact assessment, but SEQRA would require each project to be individually assessed. See id.

(117) See id. at III-1-43.

(118) Town of Henrietta v. Department of Envtl. Conservation, 430 N.Y.S.2d 440, 447 (App. Div. 1980) ("Decision-makers are not precluded from forecasting future needs; indeed, they are encouraged to make reasonable forecasts in the preparation of an EIS."); see N.Y. Dep't of Envtl. Conservation, Final Generic Envtl. Impact Statement on the Proposed Amendments to the State Envtl. Quality Review Act (SEQRA) Regulations 81 (1995) [hereinafter DEC FGEIS] (noting that a GEIS allows an agency to "address a wide variety of impacts, including cumulative impacts, at a more conceptual level").

(119) See Joint Findings Statement, supra note 21, at 15 (stating the need for an alternative plan where action would "result in an inequitable and unacceptably high cost to developers or property owners ... [and] functional obsolescence of the existing transportation system").

(120) Id. at 42.

(121) Id. at 15 (stating that "less extensive transportation actions must be considered ... [and] be characterized as being affordable to developers or property owners").

(122) Compare Town of Henrietta, 430 N.Y.S.2d at 448-49 (finding all but one condition authorized because of reasonable review of environmental and economic considerations), with WEOK Broad. Corp. v. Planning Bd., 568 N.Y.S.2d 974 (App. Div. 1991) (holding invalid the denial of approval for a radio transmitter facility because such denial was "unsupported by empirical or experimental data").

(123) N.Y. Envtl. Conserv. Law [sections] 8-0101 (McKinney 1997); see N.Y. Stat. Law [sections] 92 (McKinney 1971) ("[[T]he primary consideration of the courts [in the construction of statutes] is to ascertain and give effect to the intention of the Legislature."); see also Jackson v. New York State Urban Dev. Corp., 494 N.e.2d 429, 439 (N.Y. 1986) (suggesting that a developer may be required to set aside a part of its profits for "housing displaced persons" and upholding that lead agency's decision not to earmark the funds as such, stating that "[d]issatisfaction with an agency's proposed mitigation measures is not redressable by the courts so long as those measures have a rational basis").

(124) See Robert Crespi, Comment, Land Use Law in New York State: Playing "Hide & SEQRA" with the Elusive Comprehensive Plan, 11 Pace Envtl. L. Rev. 835, 867-68 (1994) (noting that generic environmental impact statements have been used in place of comprehensive planning); see also infra notes 127-56 and accompanying text (discussing land use planning and SEQRA).

(125) See N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.11(d)(5) (1995) (mandating that the findings statement certify that conditions identified as practicable are imposed to mitigate adverse environmental effects).

(126) See Sterthous, supra note 1, at 175 (noting the "negative response" by the New York Court of Appeals to municipalities' attempts to assign a proportionate amount of the costs to enlarge the infrastructure on new development); see, e.g., Albany Area Builders Ass'n v. Town of Guilderland, 546 N.e.2d 920 (N.Y. 1989) (invalidating town's transportation impact fee); Coconato v. Town of Esopus, 547 N.Y.S.2d 953 (App. Div. 1989) (invalidating town's water hook up fee).

(127) Subdivision exactions are usually a condition to permit approval requiring the developer to dedicate land to the municipality for streets, sidewalks, and utilities. See James Berger, Note, Conscripting Private Resources to Meet Urban Needs: The Statutory and Constitutional Validity of Affordable Housing Impact Fees in New York, 20 Fordham Urb. L.J. 911, 914-15 (1993) (providing a summary for various "municipal burden-sharing devices").

(128) See N.Y. Town Law [sections] 279(4) McKinney Supp. 1997). This section, formerly [sections] 278 and renumbered in 1992, provides that parks, as well as streets and highways, appearing on a filed or recorded plat are deemed dedicated to the public use unless otherwise noted, and if so noted, may still be condemned by a town for such public use. See id.

(129) An in-lieu of payment is one made by a developer for the purpose of acquiring land for park or recreational use and is generally required where a developer does not have sufficient land to dedicate to such a use. See James D. Cole, Local Authority to Supersede State Statutes, 63 N.Y. St. B.J., Sept. Oct. 1991, at 34, 35 (discussing the use of such a fee in the context of examining the decision in Kamhi v. Town of Yorktown); Keenan, supra note 7, at 330; see also Kamhi v. Town of Yorktown, 547 N.e.2d 346, 350-51 (N.Y. 1989) (holding that a town may condition approval of a project on either park land dedication or an in-lieu of fee from new development, but invalidating that town's fees on other grounds).

(130) See Berger, supra note 127, at 914-15 (discussing the change in subdivision exaction from its early use to its more current use).

(131) See, e.g., Jenad, Inc. v. Village of Scarsdale, 218 N.e.2d 673, 674 (N.Y. 1966) (holding "that there is no constitutional or statutory ban against" park land dedications or in-lieu of fees).

(132) 547 N.e.2d at 352 (invalidating Yorktown's statute on other grounds).

(133) Id. at 350 (citing Adler v. Deegan, 167 N.E. 705, 711-12 (N.Y. 1929) (Cardozo, C.J., concurring)).

(134) See Albany Area Builders Ass'n v. Town of Guilderland, 546 N.e.2d 920, 923 (N.Y. 1989) (invalidating transportation impact fee); Home Builders Ass'n v. County of Onondaga, 573 N.Y.S.2d 863, 865 (Sup. Ct. 1991) (invalidating sewer impact fee).

(135) 546 N.e.2d 920. Both cases were decided on Oct. 26, 1989.

(136) See id. at 921 (noting that the amount of the fee was to be determined by a schedule "based on [the] size and use of the proposed development" in order to make the developer pay for the costs of improvements made necessary by the development).

(137) Kamhi, 547 N.e.2d at 349.

(138) Guilderland, 546 N.e.2d at 923; see Daly, supra note 1, at 143 (noting that "transportation systems are regional in nature with roads . . . crossing over municipal boundaries").

(139) See Guilderland, 546 N.e.2d at 921 ("It is a familiar principle that the lawmaking authority of a municipal corporation ... can be exercised only to the extent it has been delegated by the State."); Coconato v. Town of Esopus, 547 N.Y.S.2D 953, 955 (App. Div. 1989) ("If a local government acts beyond the scope of authority granted to it, its acts will be considered unconstitutional.").

(140) N.Y. Mun. Home Rule Law [sections] 10(1)(ii)(d)(3) (McKinney 1994).

(141) See Kamhi, 547 N.e.2d at 351 (noting that "the purpose of the statute will be promoted rather than defeated within this community" by such a result).

(142) See Guilderland, 546 N.e.2d at 923 (concluding that TIFL was preempted by state law).

(143) Id. (relying on Town Law [subsection] 102, 104, 107-09, and Highway Law [sub-section] 141, 271).

(144) Id. at 922.

(145) See supra note 143 (listing the cited provisions).

(146) See N.Y. Town Law [sections] 104(1) (McKinney 1987).

(147) See id. [sections] 107(1).

(148) See id. [sections] 108.

(149) See id. [sections] 109.

(150) Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920, 923 (N.Y. 1989).

(151) See id. (stating that "we need not reach the controversial question . . . whether local `impact fees' are permitted by statute").

(152) See Sterthous, supra note 1, at 177 (noting that impact fee laws have met considerable controversy nationwide). See, e.g., Home Builders Ass'n v. City of Scottsdale, 930 P.2d 993, 994 (Ariz. 1997) (challenging water resource impact fee); Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681, 682 (Minn. 1997) (challenging a "road unit connection charge"); Board of Water Comm'rs v. Mooney, 660 A.2d 1121 (N.H. 1995) (challenging water service impact fee).

(153) See Sterthous, supra note 1, at 177 (comparing different states' decisions regarding impact fees).

(154) See id.; see also Keenan, supra note 7, at 332-33 (noting the "significant" number of impact fee laws which are most popular in fast growing areas).

(155) See Theodore C. Taub, Development Exactions and Impact Fees, C872 ALI-ABA 269, 284 (1993). See, e.g., A. 2337, 220th Leg., Reg. Sess. (N.Y. 1997); A. 3717, 218th Leg., Reg. Sess. (N.Y. 1995).

(156) See Coconato v. Town of Esopus, 547 N.Y.S.2d 953 (App. Div. 1989) invalidating a water district hook up fee); Home Builders Ass'n v. County of Onondaga, 573 N.Y.S.2d 863, 865 (Sup. Ct. 1991) (invalidating sewer connection fees and impact fees).

(157) See supra notes 132-50 (discussing the decisions in Kamhi and Guilderland).

(158) See Mun. Home Rule Law [sections] 10(1)(ii)(d)(3) (McKinney 1994) (stating that a town "is authorized to adopt local laws by this section").

(159) See N.Y. Comp. Codes R. Regs. tit. 6, [sections] 617.11(d)(5) (1995) (stating that a findings statement must "certify that . . . adverse environmental impacts will be avoided or minimized").

(160) See Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920, 922 (N.Y. 1989) (noting that "[w]here the State has preempted the field, a local law regulating the same subject matter" may not stand (emphasis added)).

(161) 389 N.E.2d 133 (N.Y. 1979).

(162) See id.

(163) Id. at 136.

(164) Id.

(165) Jewish Reconstructionist Synagogue of the N. Shore, Inc. v. Incorporated Village, 352 N.E.2d 115, 118 (N.Y. 1976) (adding that such fees should be calculated according to dependable factual studies or statistics).

(166) N.Y. Comp. Codes R. & Regs. tit. 6, [sections] 617.11(d)(5) (1995).

(167) Suffolk County Builders Assn, 389 N.E.2d at 136.

(168) See Pearson Kent Corp. v. Bear, 271 N.E.2d 218, 220 (N.Y. 1971) (upholding the denial of a subdivision plat based on the inadequacy of the surrounding roads to handle the subdivision).

(169) See Sterthous, supra note 1, at 214. Had the referendum passed, the tax per household would have increased from $7 to $45. Id.

(170) See id. (quoting Guilderland Town Supervisor Kevin Moss who noted that "residents don't want to pay for a new road, so we have to cut back on growth").

(171) See, e.g., Suffolk Hous. Servs. v. Town of Brookhaven, 511 N.E.2d 67, 68 (N.Y. 1987) (challenging a town's zoning practices for excluding low and moderate income housing); Berenson v. Town of New Castle, 341 N.E.2d 236, 238 (N.Y. 1975) (challenging a zoning ordinance which excluded multi-family housing).

(172) Berenson, 341 N.E.2d at 240 (quoting Wulfsohn v. Burden, 150 N.E. 120, 122-23 (N.Y. 1925)).

(173) Id. (quoting Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926)).

(174) See Pearson Kent Corp. v. Bear, 271 N.E.2d 218, 220 (N.Y. 1971) (holding that due to an increase in safety hazards on the local roads, the planning commission had authority to deny approval on plats).

(175) See Suffolk County Builders Ass'n v. County of Suffolk, 389 N.E.2d 133, 137 (N.Y. 1979) affirming the imposition of inspection fees for the issuance of permits for water and sanitary services).

(176) Coconato v. Town of Esopus, 547 N.Y.S.2d 953, 956 (App. Div. 1989) (quoting Torsoe Bros. Constr. Corp. v. Board of Trustees, 375 N.Y.S.2d 612, 617 (App. Div. 1975)).

(177) See Jewish Reconstructionist Synagogue of the N. Shore, Inc. v. Incorporated Village of Roslyn Harbor, 352 N.E.2d 115, 119 (N.Y. 1976).

(178) Id.; see Op. State Comptroller, 90-14, at 34 (N.Y. 1990) (unpublished) (stating the belief of the State Comptroller that "engineering, legal and surveying expenses incurred in connection with subdivision review [can be recovered] so long as they are `reasonably necessary' to accomplish the regulatory program").

(179) See Op. State Comptroller, 90-14, at 34 (N.Y. 1990) (unpublished). Opinion No. 90-14 was issued by the New York State Comptroller in response to the inquiry: [Whether a town may be reimbursed by a developer for the costs of an engineer, attorney and land surveyor engaged . . . as independent contractors to perform services in connection with subdivision review and approval. In the alternative, . . . whether the planning board may require a developer to pay these fees directly to the surveyor, engineer or attorney in lieu of reimbursing the town. Id. at 32. The Comptroller notes that the courts have found implied authority for such fees in some circumstances and cites Jewish Reconstructionist Synagogue among others. See id. Further, the opinion summarizes that it is the Comptroller's opinion that if reasonably necessary, "a town may require a developer to reimburse the planning board for certain expenses incurred in connection with an application before the board. The town cannot, however, require the developer to pay directly independent contractors hired by the town." Id. at 35.

(180) See id. at 34.

(181) 352 N.E.2d at 119.

(182) See id. at 116.

(183) See id.

(184) Id. at 119.

(185) See Sterthous, supra note 1, at 186 (noting that the aid of state and federal grants have given the impression that services such as roads and sewers should be municipally funded).

(186) See Daly, supra note 1, at 141-42 (discussing the fact that road improvements have created more development that results in even more traffic and greater expense).

(187) See id. at 142.

(188) See id. at 143 (noting that the New York Department of Transportation does not have the funds to accommodate current development patterns).

(189) See, e.g., Reply Brief for Plaintiffs-Respondents in Response to Brief Amici Curiae of the New York Planning Federation et al. at 8-13, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (No.718-88) (arguing that the Town of Guilderland's impact fee is not a tax, but rather a regulatory development fee).

(190) See, e.g., Amicus Curiae Brief for the Association of Towns of the State of New York and the New York State Conference of Mayors and Other Municipal Officials at 24-25, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (No. 718-88) (noting that higher taxes will especially hurt low and moderate income households).

(191) See, e.g., Reply Brief for Plaintiffs-Respondents in Response to Brief Amici Curiae of the New York Planning Federation et al. at 8-13, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (arguing that a development tax places a burden on a few to benefit all, while a property tax puts a burden for road construction on all who will benefit from it).

(192) N.Y. Envtl. Conserv. Law [sections] 0101 (McKinney 1997).

(193) DEC FGEIS, supra note 118, at 11.

(194) See Golden v. Planning Bd. of Ramapo, 285 N.E.2d 291, 303 (N.Y. 1972) (noting that permanent restrictions on all reasonable uses of land constitutes a taking).

(195) Gazza v. New York Dep't of Envtl. Conservation, 679 N.E.2d 1035, 1042 (N.Y. 1997) (quoting Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 124 (1978)).

(196) See id. at 1038-39 (noting that if an unconstitutional taking is found, then compensation is required (citing De St. Aubin v. Flacke, 496 N.E.2d 879, 881 (N.Y. 1986)).

(197) N.Y. Envtl. Conserv. Law [sections] 8-0101 (McKinney 1997).

(198) 285 N.E.2d 291.

(199) See, e.g., Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 396 (1926) (upholding the constitutionality of local zoning ordinances); see also Patricia E. Salkin, Regional Planning in New York State: A State Rich in National Models, Yet Weak in Overall Statewide Planning Coordination, 13 Pace L. Rev. 505, 505 (1993) (noting that the country's tradition has been for land use planning to be in the hands of the local, rather than the state or federal, governments).

(200) See, e.g., Ramapo, 285 N.E.2d at 299-300 (discussing the problems with the "antiquated notion which deigns that the regulation of land use and development is uniquely a function of local government").

(211) See Salkin, supra note 199, at 519-22 (noting various legislative proposals which "would have provided for significant regional planning").

(202) See Ramapo, 285 N.E.2d at 294-96.

(203) See id. at 296.

(204) Id. at 294-95.

(205) Id. at 295.

(206) See id. at 296.

(207) See id.

(208) Id. at 297.

(209) See id. at 303.

(210) Id.

(211) See id. at 296.

(212) 642 N.E.2d 606 (N.Y. 1994). (213) See id.

(214) See N.Y. Gen. Mun. Law [Sections] 119-u (McKinney 1986 & Supp. 1997) (authorizing intermunicipal comprehensive planning); id. [Sections] 239-1 (requiring "certain classes of zoning" to be reviewed by a county planning agency).

(215) See N.Y. Town Law [Sections] 263 (McKinney 1987 & Supp. 1997) (stating that 'regulations shall be made in accordance with a comprehensive plan").

(216) See id. [Sections] 272-a. A comprehensive plan is defined as written or graphic materials which "identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town." Id. [Sections] 272-a(2)(a).

(217) See id. [Sections] 272-a(3) (providing a "comprehensive plan may include" and listing suggested contents (emphasis added)).

(218) C respi, supra note 124, at 856 (discussing the difference between comprehensive planning and the GEIS).

(219) Id. (quoting Robert Lambe, Generic Environment Impact Statements: Municipal Master Plans of the 1990's?, 55 Plan. News, No. 3, 1, 4 (1991)).

(220) See N.Y. Town Law [Sections] 272-a (denoting the legislative requirements governing town comprehensive plans).

(221) 512 N.E.2d 526 (N.Y. 1987).

(222) Id. at 531 (holding that the city's "failure to consider the potential cumulative impact of other pending projects ... constituted a violation of its obligations pursuant to SEQRA").

(223) Id. (citing Chinese Staff & Workers Ass'n v. City of New York, 502 N.E.2d 176, 176 (N.Y. 1986)).

(224) See id. at 530.

(225) See id. at 531.

(226) 606 N.E.2d 1373 (N.Y. 1992).

(227) See id. at 1377.

(228) See id. at 1376. Federal involvement in the Long Island Pine Barrens included the EPA's designation of the area as a "sole source aquifer" and, under the Clean Water Act, the Long Island Regional Planning Board's release of a waste treatment plan. See id. The New York State Legislature amended both the Environmental Conservation and Public Health Laws to allow for a special review of proposals for the area, disallowed new landfill sites in the area under the Landfill Law, and enacted the Sole Source Aquifer Special Groundwater Protection Areas Law, which specifically includes the Pine Barrens. See id. In addition, DEC issued a report, the Long Island Ground Water Management Plan, which calls for protection of the natural resource. See id.

(229) See id. (noting the state has considered the adoption of a "comprehensive management plan to govern development within the designated areas").

(230) Id. at 1378.

(231) See Michael R. Jung, The Pine Barrens: A New Model of Land Use Control for New York, 3 Buff. Envtl. L.J. 37, 56 (1995) (discussing the developers,' environmentalists,' and government officials' failure to decide "whether local zoning should be subordinate to a regional plan; who would implement the planning process; [and] which of the developers' proposed projects would be grandfathered in").

(232) Id. at 59.

(233) See id. at 58.

(234) See id. at 60 (indicating that in addition to creating a comprehensive plan for the area, the commission is empowered to purchase conservation easements, and also permit[] owners of a property in the core preservation area to transfer their developmental rights to `receiving zones").

(235) N.Y. Envtl. Conserv. Law [Sections] 8-0101 (McKinney 1997).

(236) See Jung, supra note 231, at 43 (discussing how the Court of Appeals action in Long Island Pine Barrens restricted the application of SEQRA after the court had previously broadened the construction in Save the Pine Bush).

(237) See supra notes 199-210 and accompanying text (discussing the Ramapo plan).

(238) Compare N.Y. Envtl. Conserv. Law [Sections] 8-0109(l) (stating agencies "shall act and choose alternatives which ... minimize or avoid adverse environmental effects"), with N.Y. Mun. Home Rule Law [Sections] 10(l)(ii) (McKinney 1994) (stating that a town is authorized 'to adopt and amend local laws ... relating to the property, affairs or government of the town').

(239) Town of Henrietta v. Department of Envtl. Conservation, 430 N.Y.S.2D 440 (App. Div. 1980); see supra notes 111-14 and accompanying text (discussing the decision in Town of Henrietta and its requirement that conditions to a permit must be reasonable).

(240) Reply Brief for Plaintiffs-Respondents in Response to Brief Amici Curiae of the New York Planning Federation et al. at 10, Albany Area Builders Ass'n v. Town of Guilderland, 546 N.E.2d 920 (N.Y. 1989) (No. 718-88) (noting that specific action by the New York State Legislature can radically alter the present methods of municipal finances).

(241) See Letter from James T. Potter, DeGraff, Foy, Holt-Harris & Kunz, LLP, attorneys for Albany Area Builder's Ass'n, to Kelly Munkwitz, the Author 2 (May 28, 1997) (on file with author) (indicating that the State "Legislature is in a superior position to establish policy because it can study ... funding mechanisms on the economic health of a state").

(242) Id.

(243) See Long Island Pine Barrens Society, Inc. v. Planning Bd., 606 N.E.2d 1373 (N.Y. 1992); supra notes (228-32 (discussing the ultimate results of the Long Island Pine Barrens decision).

(244) See Crespi, supra note 124, at 857 (noting that a GEIS is not a substitute for a comprehensive plan).

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