

Planning Law Hot Button Issues

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The Green Wave

Climate Change and its implications have gone mainstream, impacting almost every aspect of land use planning



"Jeez, this global warming is getting serious!..."



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In the Courts –

Second Circuit has ruled states and land trusts can sue power companies for public nuisance

Connecticut v. American Electric Power, No. 05-5104) (2nd Cir, Sept. 21, 2009),



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Federal Agencies –

EPA issues draft rules on greenhouse gas emissions. Large industrial facilities emitting at least 25,000 tons of GHGs a year must obtain construction and operating permits. These permits must demonstrate the use of best available control technologies and energy efficiency measures to minimize GHG emissions when facilities are constructed or significantly modified



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In Congress –

The Senate is now working on its own version of an energy bill, which includes a cap and trade program to reduce emissions



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There is a general consensus that mankind is responsible for the Climate Change issue . . .





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. . . and, it is respectfully submitted, no one is in a better position to respond than local planners



New SEQRA Requirement?

Guide for Assessing Energy Use and Greenhouse Gas Emissions in an Environmental Impact Statement

- Technically only applies to DEC staff, but can be used by local agencies when energy use or GHG emissions are identified as significant in a positive declaration or, as a result of scoping



New SEQRA Requirement?

“This policy does not create any new requirements under SEQR. It does not establish when the scope of an EIS should include energy use or GHG emissions, nor does it establish a threshold for the determination of significance under SEQR. Instead, the statutory and regulatory rules for making the significance determination (ECL §8-0109; NYCRR §617.7) should continue to be used.”



New SEQRA Requirement?

In reality, review of GHG emissions as part of SEQR will likely be expected, especially in light of Second Circuit case

- USFWS Biological Opinion voided because of failure to consider climate change on water supply



New SEQRA Requirement?

Numerous municipal projects will potentially be covered.

Per the Guidance, examples

- “include methane emissions from wastewater treatment plants”
- “some projects may involve removal of a significant carbon sink through deforestation”



New SEQRA Requirement?

Three Basic Requirements

First, estimate total GHG emissions

“Project proponents should present total projected GHG emissions as the sum of emissions from direct stationary sources, direct mobile sources, indirect stationary sources, indirect mobile sources, and waste generation. In many cases, these five categories (plus methane emissions from landfills, if relevant), will cover all the significant sources of GHG emissions associated with the proposed project.”



New SEQRA Requirement?

Total GHG emissions – examples

- a *qualitative* discussion of the GHG emissions resulting from the construction phase, including the manufacture or transport of the construction materials, should be included in an EIS.



New SEQRA Requirement?

Total GHG emissions – examples

- a *qualitative* discussion of the GHG emissions resulting from the construction phase, including the manufacture or transport of the construction materials, should be included in an EIS.
- Indirect emissions from stationary sources should include emissions generated by off-site energy plants supplying energy used on the site of the proposed project during its operation, such as the off-site production of electricity, heating, or cooling which will be used on-site. Most often this is electricity purchased through a utility.



New SEQRA Requirement?

Total GHG emissions – examples

- In some situations, a proposed project will involve the construction of building space intended for lease to commercial clients. Although the final electricity demand from occupancy will be outside the control of the project proponent, the proponent should quantify as much as practicable the projected emissions (or a range of likely emission levels), and describe those elements of building design or operation that are inside and outside of the project proponent's control.



New SEQRA Requirement?

Total GHG emissions – examples

- Indirect emissions from non-stationary sources include trips generated by vehicles that are associated with the proposed project but are not owned and operated by the project proponent. This would include trips of commuting employees, residents, suppliers/vendors, and customers/users of the project as well as the transportation of waste generated at the site.



New SEQRA Requirement?

Second, Alternative Analysis

- An EIS should include a quantitative comparison to the total annual GHG emissions of the alternatives, where practicable. The proponent should explain which design alternatives were rejected, and the reasons for the rejection of any alternative. Where models do not allow reasonable quantitative analyses of alternatives, the EIS should still provide qualitative comparisons of GHG emissions of various alternatives.
- Quantifying not only the proposal, but the alternatives as well



New SEQRA Requirement?

Third, Mitigation Measures

The EIS should also include a review and assessment of mitigation measures applicable to the proposed action, including calculations of the projected reduction in GHG emissions that would result from each mitigation measure. Where practicable, the EIS should also include a quantification of reductions in GHG emissions that would result from mitigation measures that were considered and rejected (i.e., not incorporated into the proposed action.) Where models do not allow reasonable quantitative analyses, the EIS should still provide qualitative comparisons of GHG emissions of various measures.



New SEQRA Requirement?

Third, Mitigation Measures

Best part of the Guidance is the
comprehensive list of mitigation
measures



New SEQRA Requirement?

- *Building Design and Operation Measures*
 - Design an energy efficient building envelop to reduce cooling/heating requirements
 - Install high-efficiency HVAC systems
 - Construct green roofs
 - Eliminate or reduce use of refrigerants in HVAC systems
 - Use high-albedo roofing materials
 - Maximize interior daylighting
 - Reduce energy demand using peak shaving or load shifting strategies
 - Incorporate window glazing to optimize daylighting, heat loss and solar heat gain
 - Incorporate super insulation to minimize heat loss



New SEQRA Requirement?

- *Site Selection and Design Measures*
 - Provide access to public transportation
 - Minimize energy use through building orientation
 - Select brownfields or greyfields for redevelopment to minimize vegetation/forest loss
 - Incorporate mixed-use design to promote short commutes for employment and shopping
 - Provide permanent protection for open space on the project site
 - Manage forested areas for carbon sequestration
 - Select site with potential for carbon sequestration (for large CO₂ generators)
 - Conserve and restore natural areas on-site
 - Use low impact development for stormwater design
 - Design water efficient landscaping



New SEQRA Requirement?

- What about other Climate Change issues?
 - Sea Level Rise on Ocean or lake front properties
 - Water supplies for water intensive industries (electronics, power production, mining)



Marcellus Shale

Draft


Supplemental Generic
Environmental Impact Statement

for horizontal drilling and high-volume hydraulic fracturing to develop the Marcellus Shale released this week.



Marcellus Shale

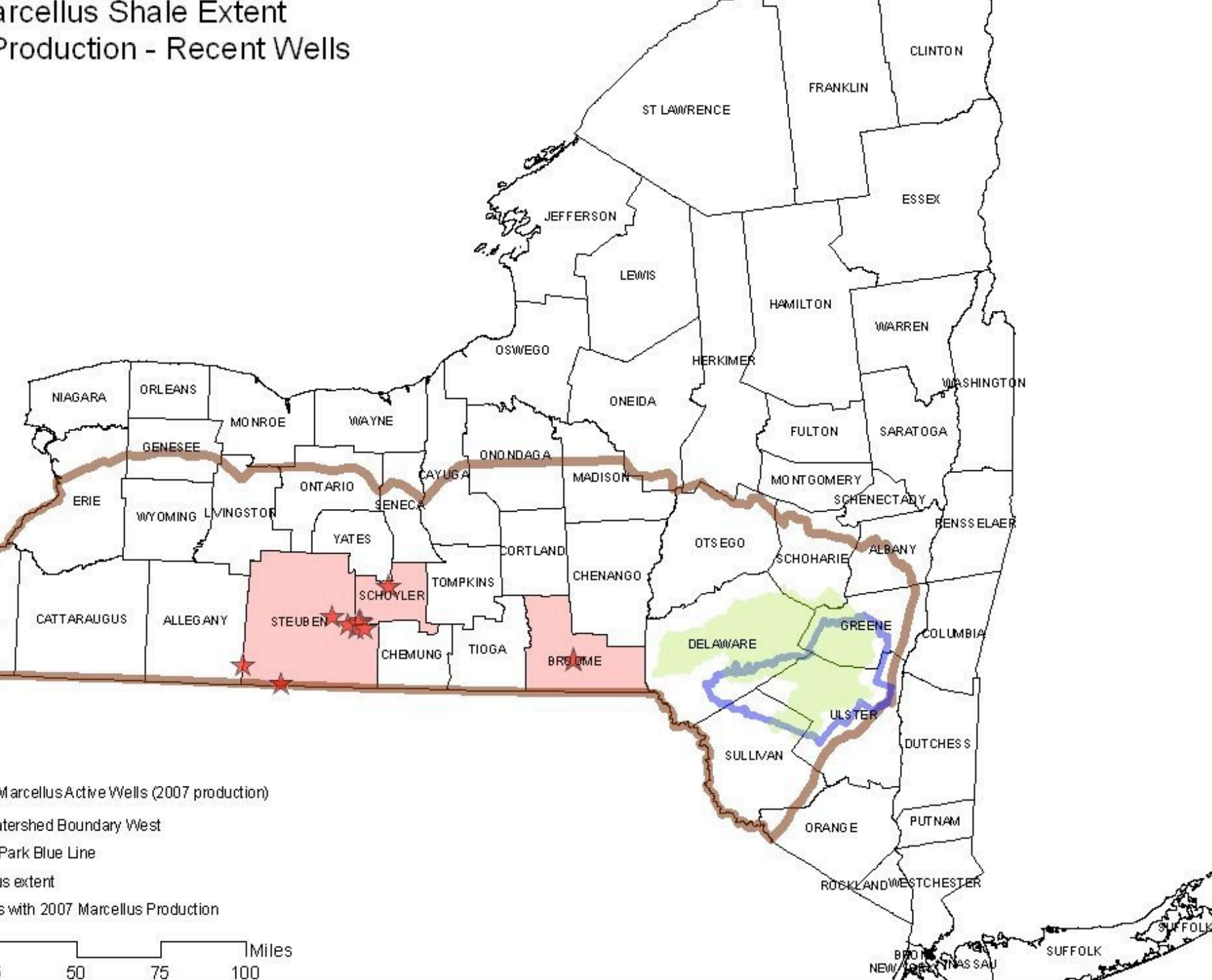
“Geologists estimate that the entire Marcellus Shale formation contains between 168 trillion to 516 trillion cubic feet of natural gas throughout its entire extent. It is not yet known how much gas will be commercially recoverable from the Marcellus in New York. To put this into context, New York State uses about 1.1 trillion cubic feet of natural gas a year.” - DEC



Marcellus Shale – Why important?

“In Pennsylvania, where Marcellus Shale development is underway, Penn State found that the Marcellus gas industry generated \$2.3 billion in total value, added more than 29,000 jobs, and \$240 million in state and local taxes in 2008. With a substantially higher pace of development expected in 2009, economic output will top \$3.8 billion, state and local tax revenues will be more than \$400 million, and total job creation will exceed 48,000” - DEC Draft SGEIS

Marcellus Shale Extent Production - Recent Wells





Marcellus Shale

“Drillers would be required to disclose the chemical fluids used for each well. Buffer zones would be created around reservoirs and aqueducts in the watershed. Wells drilled within a 1,000-foot corridor of underground tunnels that carry drinking water to New York City would require special approval, and in some cases, state inspectors would have to be present during some phases of operations.”- NYT



Marcellus Shale

Aspects of high-volume hydraulic fracturing reviewed in this Draft include the potential impacts of (1) water withdrawals, (2) transportation of water to the site, (3) the use of additives in the water to enhance the hydraulic fracturing process,



Marcellus Shale

(4) space and facilities required at the well site to ensure proper handling of water and additives, (5) removal of spent fracturing fluid from the well site and its ultimate disposition and (6) potential impacts at well sites where multiple wells will be drilled during a three-year period.



Digital Signs

Major Federal study (AASHTO) has confirmed digital signs have a major distracting effect on drivers

Not surprising, since advertising is supposed to catch your attention

This DBB is Shown from a Distance of Six Miles





Digital Signs

Courts have upheld statutes that completely ban or limit digital signs



Digital Signs

AASHTO Recommendations

- Keyed to 'distraction' element
 - Distractions greater than 2 seconds accepted as dangerous
 - Limit text/images
 - No sequential messages
 - Instant transition
 - 5000 ft separation
 - No interactive components/phone numbers, etc



Digital Signs

- AASHTO Recommends

- Only one DBB visible to a driver at a time
- Proximity to traffic control devices and signs avoided



Digital Signs

- AASHTO Recommends

“Strictly from the perspective of driver safety, agencies might want to consider restrictions for on-premise sign operations at least as rigorous as those for billboards, as well as restrictions on size, height, proximity to the right-of-way, and angular placement with regard to the oncoming driver’s line of sight. Of all of the guidelines proposed in this report for DBBs, there may well be an equal or greater need to consider similar controls for on-premise signs.”



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