

PUBLICATION UPDATE

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Environmental Impact Review in New York

Publication 744 Release 24 October 2014

HIGHLIGHTS

2014 Annual Revision Features:

- Updates to Chapter 5, *EIS Contents*, and Chapter 8A, *New York City Environmental Quality Review (CEQR)*, to reflect the most recent edition of the CEQR Technical Manual, which was published by the New York City Mayor’s Office of Environmental Coordination in March 2014.
- Coverage in Chapter 8A, *New York City Environmental Quality Review (CEQR)*, of 2014 amendments to the CEQR Rules, which include, among other things, a list of Type II actions exempt from CEQR review along with prerequisites that must be met for the Type II classification to apply (see §§ 8A.04[1] & 8A.05[1][c]). The amended rules are reprinted in Appendix 5.
- Numerous recent judicial and administrative decisions concerning environmental impact review in New York.

ering a wide range of topics, including:

- *Schaefer v. Legislature of Rockland County*, rejecting a challenge to pedestrian-biking trails where no specific land was identified and claimed environmental harm was speculative.
- *Town of Blooming Grove v. County of Orange*, ruling that a county had improperly segmented its environmental review of a sewer district extension from the review of the mixed-use real estate development for which the extension was required.
- *Town of Woodbury v. County of Orange*, reversing a state supreme court ruling that SEQRA review was required prior to the execution of an agreement by a county and a sewer district in which they agreed to expand the sewer district’s wastewater treatment capacity if and when use of the sewer district’s capacity reached a certain point.

This release brings you new cases cov-

- *Luburic v. Zoning Bd. of Appeals of Village of Irvington*, upholding a planning board's decision, after issuing a conditional negative declaration, that a variance to build a residence should be granted despite the zoning board of appeals' conclusion that there would be adverse environmental impacts.
- *GM Components Holdings, LLC v. Town of Lockport Industrial Development Agency*, concluding that the local industrial development agency was not required to consider the impact of the potential development of a site it had acquired for expansion of an industrial park because there was no identified purchaser or specific plan for development.
- *Saratoga Springs Preservation Foundation v. Boff*, upholding the environmental review for the demolition of a historic house.
- *Frigault v. Town of Richfield Planning Board*, dismissing a claimed Open Meetings Law violation by a town planning board where the board furnished proper notice of its meeting but was obliged to relocate the meeting when public turnout exceeded the hall's seating capacity.
- *Campaign for Buffalo History, Architecture & Culture, Inc. v. Buffalo & Fort Erie Public Bridge Authority*, in which a federal court upheld the agency's determination to segment its review of demolition of buildings from review of possible future plans for expanding a bridge plaza.
- *Develop Don't Destroy (Brooklyn) v. Empire State Development Corp.*, awarding attorney's fees under New York's Equal Access to Justice Act to parties that had successfully challenged an agency's decision not to prepare a supplemental EIS.
- *Entergy Nuclear Indian Point 2, LLC v. New York State Department of State*, upholding a negative declaration for designation of a stretch of the Hudson River adjacent to the Indian Point nuclear power plant as a "Significant Coastal Fish and Wildlife Habitat" over the plant owner's arguments that the environmental review should have taken into account the increased reliance on fossil fuels that would result from the designation's impacts on the plant's operations.
- *South Bronx Unite! v. New York City Industrial Development Agency*, upholding the decision not to prepare a supplemental EIS for the relocation of an online grocery retailer's headquarters and shipping facilities to a site that had been the subject of an EIS for an industrial park land use plan in 1990s.
- A number of decisions dismissing SEQRA challenges on standing grounds because the challengers had alleged injuries that were economic and therefore not cognizable under SEQRA, including harm from increased business competition (*Concerned Citizens of Armonk v. Town Board of Town of North Castle*; *Gasoline Heaven at Commack, Inc. v. Town of Smithtown Town Board*; *Oyster Bay Associates L.P. v. Town of Oyster Bay*); harm to business from more restrictive regulation

(County Oil Co. v. New York City Department of Environmental Protection); harms related to payment of low wages to construction workers at a development project (*Families United for Racial and Economic Equality v. Bloomberg*); and impacts on property values (*Kampa v. Village of Saltaire*).

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Publication 744 Release 24

October 2014

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