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New York State's Smart Growth Public Infrastructure Policy Act of 2010: Implementation through 2014 and Significance for Local Government

**By Heidi Mouillesseaux-Kunzman, David Kay, Eleanor
Andrews, Zoe McAlear, and Russell Glynn**

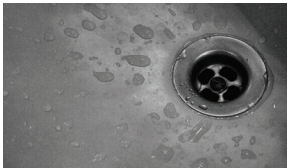
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The Smart Growth Public Infrastructure Policy Act in New York State: Overview



Water and Sewer Infrastructure:

Implementation of the Smart Growth Public Infrastructure Policy Act through the Clean Water and Drinking Water State Revolving Funds



Water and Sewer Infrastructure:

Economic Development Funding and New York's Smart Growth Public Infrastructure Policy Act



Water and Sewer Infrastructure:

Empire State Development, the Western New York Science and Technology Advanced Manufacturing Plant and New York's Smart Growth Public Infrastructure Policy



The Smart Growth Public Infrastructure Policy Act and New York's Local Governments Act

By Heidi Mouillesseaux-Kunzman¹, David Kay¹, Eleanor Andrews², Zoe McAlear³, and Russell Glynn³

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Preface

Smart growth is a response to sprawl that has been increasingly implemented in policy over the past several decades. As an example of this policy innovation, New York State enacted the Smart Growth Public Infrastructure Policy Act of 2010 (SGPIPA). This document collects several related reports on the way that this law has been implemented in the years since its passage. The reports focus on the implications of the law for water and sewer infrastructure, though SGPIPA itself involves infrastructure of all kinds. The reports compiled here provide a) a brief overview of smart growth and SGPIPA, b) a review of the implementation of SGPIPA by key affected state agencies and authorities involved in water and sewer infrastructure approvals; c) a summary of the integration of SGPIPA smart growth criteria into the Consolidated Fund Application for state economic development resources; d) a case study of the smart growth review under SGPIPA of the New York Science & Technology Advanced Manufacturing Plant (STAMP); and e) the results of a survey of New York municipalities about their awareness of SGPIPA, their current and anticipated state support for infrastructure, and SGPIPA's consistency with local policy.

Acknowledgements

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The Smart Growth Public Infrastructure Policy Act in New York State: Overview



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Abstract

This report discusses smart growth and sprawl, the evolution of state level smart growth policy in New York State, and the provisions of the Smart Growth Public Infrastructure Policy Act of 2010 (SGPIPA). The report serves as an introduction to companion reports on a) the implementation of SGPIPA by key affected state agencies and authorities involved in water and sewer infrastructure approvals; b) the integration of SGPIPA smart growth criteria into the Consolidated Fund Application for state economic development resources; c) a case study of the smart growth review under SGPIPA of the New York Science & Technology Advanced Manufacturing Plant (STAMP); and d) the results of a survey of New York municipalities about their awareness of SGPIPA, their current and anticipated state support for infrastructure, and SGPIPA's consistency with local policy.

Summary Points of Interest

- *The Smart Growth Public Infrastructure Policy Act (SGPIPA) was signed into law in 2010 SGPIPA and is the first law in New York to explicitly define Smart Growth criteria. SGPIPA is part of New York's Environmental Conservation Law, and is introduced with language stating that it is intended to "augment the state's environmental policy."*
- *Under SGPIPA, each state infrastructure agency must create an advisory committee to "advise the agency regarding the agencies' policies, programs and projects with regard to their compliance with the state Smart Growth public infrastructure criteria". In cooperation with the committee, the head of that agency must then sign a written Smart Growth Impact Statement (SGIS) attesting that projects meet the "relevant criteria" of the law "to the extent practicable".*
- *SGPIPA affects state agencies and authorities directly. It indirectly influences municipalities or other private and public entities that are requesting financial support from the State insofar as the procedures and priorities of these agencies and authorities have been affected.*

Keywords

Smart Growth, Sprawl, Smart Growth Public Infrastructure Policy Act; Smart Growth Impact Statements; Smart Growth Policy

Introduction

The Smart Growth Public Infrastructure Policy Act (SGPIPA; see NYSECL, 2010) was signed into law in 2010 after years of experimentation and debate in New York State government over how to best put “smart growth” ideals into law. There is no consensus in general use on a precise definition of smart growth, but generally speaking there is broad agreement on central precepts. The term refers to growth associated with planning practices that prioritize the location of development within the fabric of existing urban or small town settlements. Smart growth is intended to enhance the livability of places in which many people already live, and to preserve the character of more sparsely settled landscapes. Smart growth stands in direct opposition to suburban “sprawl” involving scattered growth in low-density (rural) areas or on the low density fringes of cities, villages and other developed areas. Smart growth is celebrated primarily for its goals of preserving open space, reducing infrastructure costs, reducing automobile dependence, and fostering livable communities through the creation of pedestrian oriented mixed use neighborhoods.

The Smart Growth Network, an organization formed in 1996 involving the federal EPA, other government organizations, and non-profits, outlines these 10 principles of smart growth:¹

- Mix land uses
- Take advantage of compact building design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty and critical environmental areas
- Strengthen and direct development towards existing communities
- Provide a variety of transportation choices
- Make development decisions predictable, fair and cost effective
- Encourage community and stakeholder collaboration in development decisions

Smart growth policy had been advocated in New York State by supporters well before 2010². Legislation based on similar principles provided support for historic preservation – investing in existing historic buildings is a “smarter” form of growth than building new structures in suburban locations (OSC, 2004:15). Regional legislation for the Adirondack Park passed in the early 1970’s and was intended to achieve some of these goals, especially open space protection, by channeling development into existing settlements. This legislation attended exclusively to rural northern New York. More pervasive in terms of statewide impact, the State Environmental Quality Review Act (SEQRA) has long required state agencies and local governments to identify and mitigate any “significant environmental impacts” of projects they propose or permit (DEC, 2013), though it was not until 2013 that SEQRA began to address topics explicitly linked to select smart growth principles. It is worth emphasizing in this context that SGPIPA is also part of New York’s Environmental Conservation Law, and is introduced with language stating that it is intended to “augment the state’s environmental policy.”

Planning reforms in the 1990s that were spearheaded by the New York State Legislative Commission on Rural Resources and its Land Use Advisory Committee strengthened local planning and encouraged cooperation among different levels of local government. While avoiding any prominent use of the phrase “Smart Growth,” in 2000, Republican governor George Pataki formed an interagency task force on “Quality

² After a 1999 conference on Smart Growth, the Smart Growth Working Group was created. A diverse coalition of organizations advocating for smart growth policies in New York State, it added structure to the state’s existing network of non governmental smart growth proponents. It was influential in shaping Governor Pataki’s Quality Communities policies in 2000, discussed further below. See <http://ny.audubon.org/smart-growth-working-group>, accessed 10/15/14.

¹ See <http://www.smartgrowth.org/why.php>, accessed 10/15/14.

Communities” to study “community growth... and develop measures to assist those communities in implementing effective land development, preservation, and rehabilitation strategies that promote both economic development and environmental protection” (OSC, 2004, p16). The task force’s report, issued in 2001, outlined principles that defined a “Quality Communities” version of smart growth and recommended:

New York should adopt a set of uniform Quality Communities Principles and the Governor should direct all executive agencies and personnel to utilize them in the implementation of State policies and programs and the allocation and administration of State resources related to the concept of building and sustaining quality communities. (Donahue 2001:12)

A bill that incorporated some of these recommendations was debated in the 2001-2002 legislative session, but did not pass.³ Related legislation was introduced into the state Senate and Assembly in subsequent years. A variety of approaches, definitions, and proposed new relationships were evoked. For example, in the 2005/2006 regular session, S. 2436/A. 4847 among other things called for locally driven smart growth plans to be developed, the establishment of regional smart growth compacts, the establishment of a high level statewide smart growth review board to approve smart growth plans, and state agency conduct that was consistent with specified smart growth principles to the maximum extent practicable. Again, this and related legislation did not pass. Despite the legislative barriers, funding for local and regional planning in particular was distributed throughout the duration of the Quality Communities program.

Smart growth under that name received a boost under the Spitzer administration, which from the transition team forward determined to focus incrementally on laying the groundwork for smart growth policy. Spitzer formed a high level Smart Growth Cabinet that raised the profile of smart growth within state agencies and in general. This period also witnessed the passage of some narrowly focused legislation consistent with selected smart growth principles (Paul Beyer, personal communication, 8/18/14). By the advent of the Cuomo administration, smart growth had been woven into many relevant aspects of the governance agenda, with frequent and explicit references to smart growth in a variety of campaign and policy documents. A decade after Governor Pataki’s Quality Communities initiative, SGPIPA was signed into law in the August just prior to Governor Cuomo’s assumption of office in January 2011.

The bill for SGPIPA was introduced by a Democratic Assembly member and sponsored in the New York State Senate by both Republican and Democratic senators. It passed with very near unanimous support (56 to 2 in the Senate, 138 to 2 in the Assembly) (ESF, 2012). Some state agencies and authorities did not support it, objecting to costs, administrative overload, and a lack of clarity in the definitions (Frascarelli, 2010).

The Smart Growth Public Infrastructure Policy Act (SGPIPA)

The stated purpose of the Smart Growth Public Infrastructure Policy Act (SGPIPA) is as follows:

It is the purpose of this article to augment the state’s environmental policy by declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by sprawl facilitated by the funding or development of new or expanded transportation, sewer and waste water treatment,

³ In early 2002, Governor Pataki also created a Water and Sewer Co-Funding Initiative that was intended to improve the funding process and coordinate between major state and federal water and sewer funding agencies. The interagency MOU establishing this Initiative cites the Quality Communities Interagency Task Force recommendations that call for state agencies to “study community growth in NYS and develop means to assist communities in implementing effective land development, preservation and rehabilitation strategies that promote both economic development and environmental protection.” The rest of the MOU focuses most, however, on implementing additional more general recommendations to review existing funding policies “and to stream line the state funding application process.” (EPA 2003:B8)

water, education, housing and other publicly supported infrastructure inconsistent with Smart Growth public infrastructure criteria.

Following the above discussion, this is not the only possible way to describe smart growth, but it is the one that now governs the decisions of New York State agencies regarding infrastructure decisions.

The SGPIPA lists 10 criteria for evaluating public infrastructure projects that are to be funded by state agencies, requiring that no agency approve or finance a project, “unless, to the extent practicable, it is consistent with the relevant criteria” (see NYECL 2010:np):

- a. To advance projects for the use, maintenance or improvement of existing infrastructure;
- b. To advance projects located in municipal centers;
- c. To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;
- d. To protect, preserve and enhance the state’s resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources;
- e. To foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups;
- f. To provide mobility through transportation choices including improved public transportation and reduced automobile dependency;
- g. To coordinate between state and local government and intermunicipal and regional planning;
- h. To participate in community based planning and collaboration;
- i. To ensure predictability in building and land use codes; and
- j. To promote sustainability by strengthening existing and creating new communities which

reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.

A recent amendment to the law, effective as of March 21, 2015, will add an additional criterion:

- k. to mitigate future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

SGPIPA includes specific procedural guidelines for state agencies: first, each agency must create an advisory committee to “advise the agency regarding the agencies’ policies, programs and projects with regard to their compliance with the state Smart Growth public infrastructure criteria” (SGPIPA 2010:np). In cooperation with the committee, the head of that agency must then sign a written Smart Growth Impact Statement (SGIS) attesting that given projects meet the “relevant criteria” above “to the extent practicable” (SGPIPA 2010:np) or, in a justification statement, detail why meeting the criteria or complying more generally is impracticable. After a project is either approved or justified, it can then be funded.

To be clear, the SGPIPA thus requires state agencies and authorities to ensure that the infrastructure projects they approve for funding comply with smart growth criteria or have a justifiable reason for not doing so. SGPIPA does not directly impact municipalities or other private or public entities that are requesting financial support from those agencies for water and sewer infrastructure projects. That said, the law indirectly impacts municipalities and other private/public entities seeking funding because: (1) state agencies must work with them, as applicants for funding programs, to get the information needed to determine whether or not a project is compliant with SGPIPA criteria or justified for funding despite not being compliant; and (2) the extent to which their projects are compliant with SGPIPA principles may influence their chances for receiving project funding.

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Water and Sewer Infrastructure: Implementation of the Smart Growth Public Infrastructure Policy Act through the Clean Water and Drinking Water State Revolving Funds



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Abstract

This report is intended to familiarize readers with New York's Smart Growth Public Infrastructure Policy Act (SGPIPA) and its implementation by the Environmental Facilities Corporation (EFC) and the Department of Health (DOH). These agencies administer a range of programs; the two most relevant to SGPIPA and sewer and water infrastructure are the Drinking Water State Revolving Fund (DWSRF) and the Clean Water State Revolving Fund (CWSRF). Together these two funds are a primary source of support for the development of public and private sewer and water systems. Overall, it is clear that both DOH and EFC have taken the responsibility of implementing SGPIPA seriously. Relatively few projects require Statements of Justification because meeting SGPIPA criteria is deemed impracticable, typically for human health reasons.

Summary Points of Interest

- *The CWSRF has “provided \$14 billion in low-cost financing” for infrastructure since 1990. The DWSRF has “provided more than \$4.2 billion in low-cost financing including over \$316 million in grants” for drinking water infrastructure since it began in 1996.*
- *Both the DWSRF and CWSRF require applicants to complete and submit a Smart Growth Assessment form. Although the applicant's response to the Smart Growth Assessment form plays no role in scoring the project or its rankings, the information is taken into consideration by respective agency staff as part of the technical review process. It is the intent of the respective agencies that their project reviewers (engineers) work with the project applicants to ensure that a project is well-designed, including the incorporation of Smart Growth principles, to the extent practicable.*
- *The same SGPIPA criteria are used to review both clean water projects (i.e., projects for wastewater treatment) and drinking water projects, though their implications for smart growth can differ. For wastewater, on-site treatment is often the most feasible design alternative and when sewers are needed to replace failing on-site systems, the engineering design can restrict the capacity for additional users. The need for new drinking water systems is mostly driven by contaminated or dry wells. In order to protect public health and to meet the required standards for water supply and fire suppression, water may be distributed from an existing supply or new supply to existing residents in suburban or rural settings which do not meet the criteria for a municipal center.*

Keywords

Smart Growth Infrastructure Policy Act; Smart Growth Impact Statements; Drinking Water State Revolving Fund; DWSRF; Clean Water State Revolving Fund; CWSRF; Department of Health; Environmental Facilities Corporation.

Introduction¹

This report is intended to familiarize readers with how New York's Smart Growth Public Infrastructure Policy Act (SGPIPA) is being implemented by state agencies and authorities that approve funding for sewer and water infrastructure. In this paper, we focus on SGPIPA implementation by the Environmental Facilities Corporation (EFC) and the Department of Health (DOH). These agencies administer a range of programs; the two most relevant to SGPIPA and sewer and water infrastructure – the Drinking Water State Revolving Fund (DWSRF) and the Clean Water State Revolving Fund (CWSRF) – are discussed below. Together these two funds are a primary source of support for the development of public and private sewer and water systems.

The EFC, DOH and State Revolving Funds for Sewer and Water Infrastructure

The New York State Environmental Facilities Corporation (EFC) is a public benefit corporation empowered by NYS law to administer and finance the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) (as required by federal law) and to provide technical assistance for projects led by private and public entities to ensure that they comply with state and federal environmental protection requirements (EFC, 2014a). Chief among its responsibilities is funding and technical assistance for infrastructure projects that protect water quality, improve drinking water infrastructure, and properly manage stormwater (EFC, 2013a).

The mission of the New York State Department of Health (DOH) is to “protect, improve and promote the health, productivity and well-being of all New Yorkers” (DOH, 2012). The DOH plays a key role in maintaining water and sewer infrastructure, to ensure a safe drinking water supply and safely treat sewage and other waste.

As noted in the introduction, these two agencies support the development of sewer and water infrastructure through two programs: the Clean Water State Revolving Fund, which is jointly administered by EFC and the New York State Department of Environmental Conservation (DEC)², and the Drinking Water State Revolving Fund, which is administered jointly by EFC and DOH³. In essence, both agencies address threats to public health and the environment. However, the agencies make a clear distinction between the two types of infrastructure projects supported by these two state revolving funds. Infrastructure projects that help make water available for human consumption are referred to as drinking water projects and are funded through the DWSRF. Infrastructure for sewer and wastewater, on the other hand, are referred to as clean water projects and are funded through the CWSRF. Both revolving funds are able to finance and fund dozens of projects every year through low-interest loans and grant money. The CWSRF has “provided \$14 billion in low-cost financing” for infrastructure since 1990 (EFC, 2014b). The DWSRF has “provided more than \$4.2 billion in low-cost financing including over \$316 million in grants” for drinking water infrastructure since it began in 1996 (EFC 2014d).

² The DEC is the NYS executive agency responsible, under the Federal Clean Water Act and NYS Law, for the administration of the CWSRF (DEC and EPA 2006, p.1). The EFC is a public benefit corporation created under NYS law and “empowered to administer and finance” the CWSRF (EFC 2014g). As such, the DEC and EFC jointly administer the CWSRF program, under a Memorandum of Understanding. (DEC and EPA 2006, p.1)

³ EFC administers the financial aspects of the DWSRF. Complete applications for the DWSRF financing are submitted to EFC, the financing is obtained through EFC, and repayments are made to EFC. DOH manages the technical review for DWSRF projects and regulates the safety and adequacy of drinking water delivered by public water systems in New York State. For the DWSRF, DOH accepts pre-application forms and technical reports; scores, ranks, and lists projects on the IUP, and reviews technical documents for both the pre-application and the complete application. (EFC, 2014d)

¹ We wish to thank and acknowledge Kathryn Macri, Environmental Policy Coordinator and Sandra Allen, Director of Policy and Planning, with the Environmental Facilities Corporation, and Michael Montysko, Design Section Chief, Department of Health for the time they took to help us understand the agencies' implementation of SGPIPA.

SGPIPA Compliance

Before outlining how these two agencies are fulfilling their obligations relative to SGPIPA it is important to note that the way they are doing so has evolved since SGPIPA first passed in 2010. This evolution is reflected in multiple versions of the Smart Growth Assessment form used with both the CWSRF and DWSRF programs and the process for completing them. For example, in the sample reviews we were given by agency staff, one version is the “EFC SRF Smart Growth Project Review Checklist DRAFT REVISION February, 17, 2011; another is the “Smart Growth Assessment” for previously approved DWSRF projects revised October 15, 2012; and another is a “Smart Growth Assessment” for DWSRF projects revised April 2013. On the DWSRF forms, moreover, the EFC is acknowledged for developing the CWSRF form on which the DWSRF form is based, suggesting the agencies have worked together to proactively comply with SGPIPA and integrate related requirements into their programs.

It is also important to note that when the law was first enacted, agency staff completed the information required on the Smart Growth checklist. The more recent assessment forms must be completed by program applicants reflecting the agencies’ intent to increase awareness of SGPIPA among applicants.

Similarly, successive iterations of the DWSRF Final Intended Use Plans (IUPs) chart the adoption and institutionalization of Smart Growth through the SGPIPA. IUPs document how the available funding every year will be distributed based on how individual projects are scored and ranked. Projects’ scores reflect the overall goals of the DWSRF. Changing language and placement of information about SGPIPA requirements detail the evolution of the agencies’ compliance. In 2010, the DWSRF IUP read:

New York State encourages applicants to consider Smart Growth principles in the financing of all infrastructure projects within the State. The DOH and the EFC promote Smart Growth principles for drinking water projects recognizing, however, the limitations placed on funding development and future population growth by DWSRF financed drinking water projects (DOH and EFC, 2010, p2).

In 2011, the IUP read:

On August 30, 2010 the NYS Environmental Conservation Law was amended to include the Smart Growth Public Infrastructure Policy Act. The NYSDOH and the EFC are working to ensure full compliance. Federal rules require that the scoring criteria for the DWSRF program be based primarily on public health priorities. The DWSRF program is in place to assist in the protection of the public health of all New York communities that qualify for financing (DOH and EFC, 2011, p2).

In 2012, the IUP language became even clearer:

On August 30, 2010 the New York State Environmental Conservation Law was amended to add the State Smart Growth Public Infrastructure Policy Act. This law requires that starting September 27th, 2010, any new or expanded public infrastructure project receiving financing from a state infrastructure agency must be consistent with the relevant Smart Growth public infrastructure criteria as they are defined in the law to the extent practicable. DOH will now require, as a part of the engineers report and/or through other DWSRF application materials that may be developed, an analysis of each project with respect to its compliance with the criteria of the Smart Growth law (DOH and EFC, 2012, p2).

In the 2013 and 2014 IUPs, the language became unambiguous and was moved to the front cover: “Projects funded through the DWSRF are subject to... the State Smart Growth Public Infrastructure Policy Act” (DOH and EFC, 2013a, np).

In 2014, the DOH began to require that applicants complete a screening form before they apply for DWSRF funds. This pre-application holds project leaders (such as local elected officials, water authorities, and private contractors) responsible for completing more of the documentation themselves, with the goal of increasing applicants’ awareness and understanding of relevant laws and requirements. The DOH will provide support as necessary and review the documents provided. The DOH may suggest that the applicant make changes to the project to ensure it is more compliant with the SGPIPA criteria and, in turn, more competitive.

For example, in certain circumstances, a suggested change may be to resize the project to serve just the current population (Montysko, personal communication, 2013). This exemplifies how SGPIPA affects municipalities, even though it does not directly apply to them.

The Smart Growth Committee

As noted in the introduction to this report, NYS agencies funding infrastructure are required by SGPIPA to develop a Smart Growth Committee to “advise the agency regarding the agencies’ policies, programs and projects with regard to their compliance with the state Smart Growth public infrastructure criteria” (SGPIPA, 2010, np). Furthermore, in cooperation with the committee, the head of that agency must sign a written Smart Growth Impact Statement (SGIS) attesting that given projects meet the relevant criteria “to the extent practicable” (SGPIPA, 2010, np) or, in a justification statement, detail why meeting the criteria or complying more generally is impracticable. Because the EFC was established by state law to administer the financial aspects of the Clean Water and Drinking Water State Revolving Funds and because it is specifically listed in the SGPIPA as an agency subject to the law, it is the agency required to sign the Smart Growth attestation for both programs. It has created a Smart Growth Committee and works with DOH on DWSRF projects to evaluate particular projects’ compliance with SGPIPA principles.

In the remainder of this report, we focus on the how the EFC and DOH comply with the second core requirement of SGPIPA, the attestation that a project complies with SGPIPA principles. We focus on this aspect of the agencies’ compliance with SGPIPA because it is through the information gleaned for the attestation that municipalities and other program applicants seeking to fund sewer and water infrastructure are impacted by the law in practice. To this end, we describe how the process through which sewer and water infrastructure projects are assessed with respect to compliance with SGPIPA criteria and, in turn, required to comply with those principles to the extent practicable to be eligible to receive funding.

The Smart Growth Assessment

Because the EFC is involved with the administration of both the CWSRF and the DWSRF, it should come as no surprise that the way in which both funding programs have implemented Smart Growth Assessment is essentially the same, with a couple of notable differences. The Smart Growth Assessment process for both programs starts with the program application process, during which the agencies gather the information needed to complete the assessment and ends with the assessment of this information, once a project has been determined eligible for funding in the next financing period. The application process for both programs involves two major steps, which are outlined on the EFC website and summarized below: (1) a shorter pre-application or “Project Listing Form” and (2) a longer, more detailed Financing Application.⁴

The Project Listing Form

Information on the project listing form is used by the agencies (the DOH for the DWSRF and the EFC for the CWSRF) to score and rank the project for funding. DWSRF projects are ranked relative to five criteria: treatment technique violations, sanitary code violations, system reliability and dependability problems, governmental needs and financial needs. CWSRF projects are ranked relative to the Project Priority System (PPS) defined by DEC regulations: 6 NYCRR Part 649 (EFC 2014f, p.C-1):

- The existing source of pollution causing the water quality problem which may be resolved by the project.
- The potential water quality improvement due to the project.
- Consistency with management plans.
- Intergovernmental needs.
- Financial need (municipal projects only).
- Economic need (EFC 2014f, p.C-2).

Once scored, a project is put into the respective agency’s Intended Use Plan (which essentially documents the projects that were submitted for program funding in any given year). If the project

⁴ The DWSRF application process may be accessed online at: <http://www.efc.ny.gov/Default.aspx?tabid=103>. The CWSRF application process may be accessed online at: <http://www.efc.ny.gov/Default.aspx?tabid=111>

is determined to be construction ready in the next financing period, it is placed on the Annual List (formerly known as the Project Readiness List) where it is ranked by its score; projects not yet ready for funding are placed on the Multi-Year List of the IUP. Depending upon the federal funds allocated to the program in that year, those ranked highest are eligible for subsidized funding; those not eligible for subsidized funding are eligible for non-subsidized funding and may be eligible for subsidized funding if the higher ranked projects don't use all of the funds. This ranking process is particularly important for DWSRF projects because the program receives more applications in any given year than it has funds to accommodate. In contrast, in recent years the CWSRF program has been able to fund just about every project that is ready to go (Macri, 2014).

For the CWSRF, the project listing form includes a "State Smart Growth Public Infrastructure Policy Act Acknowledgement" section that states that "CWSRF financings are subject to the State Smart Growth Public Infrastructure Policy Act" and that "as set forth in the Act, EFC is required to determine that each project that includes the construction of new or expanded public infrastructure is consistent with the relevant smart Growth criteria to the extent practicable." As part of completing the project listing form, this section requires an applicant to acknowledge that they "need to demonstrate that projects meet the [CWSRF relevant] criteria in the Smart Growth Assessment" (CWSRF Project Listing Form).

The language used in this section is both important and interesting. It is important in that it puts a program applicant on notice that compliance with smart growth principles to the extent practicable is important and a required consideration in the funding process. It is interesting because it requires an applicant to acknowledge that they need to demonstrate that the project meets the specific (program relevant) smart growth criteria, when the law requires them to meet smart growth criteria only to the extent practicable.

Unlike the CWSRF project listing form, DWSRF Project Listing form does not include a SGPIPA Acknowledgement requirement, nor is there any reference to smart growth within the DWSRF Project Listing form. However the DWSRF Final

IUP includes a copy of the DWSRF Smart Growth Impact Assessment which states that it "must be submitted with all new listings forms" (DOH and EFC, 2014).

Both the DWSRF and CWSRF require applicants to complete and submit a Smart Growth Assessment form along with their Project Listing form.⁵ Guidance for completing this form for CWSRF projects is provided on the EFC website.⁶ For DWSRF projects, this requirement is stated on the cover page that accompanies the DWSRF Listing Form and Smart Growth Assessment Checklist: "The Smart Growth Assessment Checklist must be completed and submitted along with the Listing Form for projects to be added to the IUP." (DOH and EFC 2015, Attachment IV)

Although the applicant's response to the Smart Growth Assessment form plays no role in scoring the project or its rankings on the IUP list, the information is taken into consideration by respective agency staff as part of the technical review process. It is the intent of the respective agencies that their project reviewers (engineers) work with the project applicants to ensure that a project is well-designed, including the incorporation of smart growth principles, to the extent practicable.

The Project Application

Once a project is placed on the CWSRF or DWSRF's Project Readiness List, the applicant may complete the second part of the application process, the Financing Application. The Financing Application essentially provides the EFC with the information they need to determine the amount of funding required to support a project and develop and administer the funding package.

Before the financial package is awarded a project is assessed for compliance with SGPIPA criteria. A Smart Growth Impact assessment is completed by the EFC, documenting the outcome of the Smart Growth assessment. While the final Smart Growth Impact Assessment is completed by the EFC, the DOH completes an initial review of a

⁵ See Appendix.

⁶ See: Clean Water State Revolving Fund Smart Growth Review. <http://www.efc.ny.gov/Default.aspx?tabid=474>
Accessed: 08/01/14.

DWSRF project's compliance with SGPIPA and forwards its assessment on to the EFC which uses that information to complete a final evaluation via the Smart Growth Impact statement. If a project has complied with SGPIPA principles to the extent practicable, and all other financing requirements have been fulfilled, the EFC may then sign a financing agreement with the applicant.

It is noteworthy that by the time a project reaches the stage of being approved for funding, the agencies are very familiar with the project. However, the Smart Growth Assessment forms completed by applicants ensure the information required is complete and formally documented. The forms are also seen as an important tool to help applicants understand the importance of developing infrastructure that is compliant with smart growth principles. Each agency's understanding of the project, particularly with respect to compliance with SGPIPA, speaks to the level of oversight administered by each agency throughout the process and their intent to encourage the inclusion of smart growth principles as early as possible in the project design process (Montysko, 2014).

Differences in the CWSRF and DWSRF Application Process Relative to SGPIPA

In addition to not including a reference to SGPIPA or smart growth in its Project Listing form, the DWSRF makes no immediate reference to either Smart Growth or SGPIPA on the on its website. In contrast, the EFC's obligations under SGPIPA are visibly highlighted on the CWSRF program website, along with the documentation required of program applicants by EFC so that they can comply with those obligations. This may be due to the fact that while the CWSRF can fund projects of a proactive nature, most of DOH's are remedial in nature, that is, they are addressing a threat to public health, such as wastewater overflow. As such, while smart growth principles are important to the agency because its charge is to provide for public health, a project may be funded whether or not it is smart growth compliant, so long as there are no other cost-effective options that will secure public health.

The Smart Growth Assessment Form and Impact Statement

As the crux of SGPIPA implementation on a day-to-day basis, it is helpful to consider the Smart Growth Assessment form and Smart Growth Impact Statement in detail. As described above, the SGPIPA mandates that the state agencies prepare a Smart Growth Impact Statement (SGIS) for every project. For both the CWSRF and DWSRF the SGIS is based on information provided by an applicant in a Smart Growth Assessment form. The EFC and DOH smart growth Assessment form both include a checklist of the Smart Growth criteria named in the SGPIPA, and questions about how those criteria are being implemented. There are five parts to each form, including three "Sections" (an identifying section, including the applicant name, project number - if already listed -, project summary, and project description):

Section 1: Screening Questions

There are three types of screening questions. The first is designed to determine whether or not the project is required to undergo a Smart Growth Assessment and, if so, if one has already been completed before. The first screening questions require the applicant to indicate whether or not the project has been previously approved for financing, and if so, whether the project scope remains substantially the same. If these conditions hold, the project is exempt from further Smart Growth Assessment. Exemption pertains because the project was either reviewed prior to 2010, meaning it is grandfathered from SGPIPA compliance, or it was reviewed after 2010, meaning it has already undergone a SGPIPA compliance assessment. So long as the project is not significantly different, it requires no further review. If it is significantly different, further review is required.

The second type of screening question is designed to assess whether or not the project involves new or expanded infrastructure (e.g., new water mains, a new treatment system or increased capacity in an existing system, or an increase in permitted water withdrawals from existing water sources). If the answer to all of these questions is "no" and the project effectively involves the maintenance or improvement of existing infrastructure, then SGPIPA does not apply. If, on the other hand, new or

expanded infrastructure is involved, the applicant must complete the remainder of the form. The third asks whether or not the project is required by court or administrative order. While projects that are required by court or administrative order are subject to SGPIPA review, knowing that they are required is important to the evaluation and assessment of the degree to which SGPIPA compliance is practicable.

Section 2: Additional Information Needed for Relevant Smart Growth Criteria for [the respective fund's] Project

If responses to the screening questions determine that a project is subject to SGPIPA compliance review (meaning, essentially, that it involves new or expanded infrastructure), the applicant must complete Sections 2 and 3. Section 2 requires that an applicant address its compliance with all other Smart Growth criteria articulated in SGPIPA that the respective agencies deem relevant to their programs. For both the CWSRF and the DWSRF, this includes four criteria:

1. The use or improvement of existing infrastructure
2. Service of a municipal center
3. Community-based planning
4. Sustainable development

From the perspective of the agencies, not all of SGPIPA's other criteria (e.g.: transportation) are relevant to the infrastructure supported through their programs.

Section 3: Additional Information

The additional information requested involves three questions, with the option to respond "yes" or "no" with an explanation for the first two.

1. Does the project include measures that exceed required natural resource protections?
2. Does the project support smart growth planning and design principles?

These two questions provide the agencies with a greater level of detail about the nature of the project relative to SGPIPA compliance and intent to incorporate Smart Growth principles. For example, the CWSRF process requires a State Environmental Quality Review (SEQR), so the question about natural resource protection gets at whether the project goes above and beyond SEQR requirements.

3. Other agencies to which the applicant has applied for funds to support the project. The third question is asked because all agencies which fund infrastructure development must complete a smart growth review prior to the funding the project.

The last section is one that requires the person completing the form to sign it, including their name, title, and date. For the CWSRF this section also includes a statement that the preparer signs off on with his/her signature, indicating that the person is authorized to act on behalf of the applicant and that the information included in the Smart Growth Assessment is true.

Again the DOH and EFC use the information provided in the Smart Growth Assessment form by applicants to determine (1) whether or not a project is subject to SGPIPA; and, if it is (2) whether or not it complies with Smart Growth principles; and (3) if it does not fully comply with smart growth principles, if it has done so to the extent practicable. Only those projects which are deemed to comply with SGPIPA to the extent practicable can be funded. However, both agencies note that by the time a project gets to the point of SGPIPA review, agency staff has worked with them to ensure that smart growth principles have been incorporated to the extent possible.

In the following section, we describe the review process and Smart Growth Impact Statement (SGIS) for both programs, using examples of SGIS provided by EFC and DOH.

Water and sewer infrastructure projects reviewed under SGPIPA

Both the EFC and the DOH provided examples of SGIS in several categories. Some met the SGPIPA smart growth criteria. Some projects were in effect grandfathered in due to the timing of review relative to the adoption of the law. For others, review was deemed unnecessary because they were not "construction of new or expanded public infrastructure or the reconstruction thereof," as stipulated in the text of SGPIPA (2010, np). Finally, the EFC and the DOH provided examples of projects that have been "justified" since the passage

of the SGPIPA in 2010. The basis for each category of examples is described below.

Projects that are not required to undergo a full review for their compliance with smart growth criteria fall into two categories: Those “previously approved” and those that are “not new or expanded”. Projects that were “previously approved” were either awarded approval of financing or funding before the passage of SGPIPA in 2010 (and are grandfathered with respect to the law) or, if approved since the law came into effect, have already undergone a SGPIPA review. In either case, as long as they are not substantially different in scope than when they were first approved, they require no further SGPIPA compliance review. The “not new or expanded” category refers to those projects that do not involve the construction of new or expansion of existing infrastructure. SGPIPA only applies to “new or expanded public infrastructure or the reconstruction thereof” (SIGPIPA, 2010, np).

In brief, meeting the SGPIPA criteria means that a project complies with the SGPIPA criteria deemed relevant to the respective infrastructure funding program (i.e.: CWSRF or DWSRF). As stated above, a project must use or improve on existing infrastructure, serve a municipal area, involve community-based planning, and make use of practices for sustainable development. It is also important that a project coordinate among state, regional, and local government and planning officials, and comply with local building and land use codes. Appropriately, the location of a proposed facility in a municipal center emerges as perhaps the most significant factor in determining whether or not a proposal meets the smart growth criteria. However, municipal center location is only one of the criteria listed in the law. While some criteria (e.g. providing mobility through transportation choices) are deemed irrelevant to typical water and sewer infrastructure decisions by the EFC and DOH, it is not always clear in the reviews that cite municipal center location in the determination if, how, or why the project is consistent with the other relevant criteria.

The most revealing category of funded projects is made up of those projects deemed “justified” – that is, they do not meet the SGPIPA relevant criteria, but are nonetheless being approved for financing or funding. The grounds on which these

projects are justified are explored in detail below. In short, water and sewer projects are typically justified for the urgent protection or promotion of health and/or the environment, meaning that remedying existing conditions which threaten human and environmental health is seen as a higher immediate or short term priority than smart growth compliance.

The numbers of justified projects for both agencies are quite small, on the order of just a few each year. Through the pre-application process described above, EFC personnel work with CWSRF applicants to guide the development of projects, including the incorporation of smart growth principles. As such, the need for justifications is minimized, if not entirely negated, for new projects.

In the following sections, we provide examples of smart growth reviews of CWSRF projects as organized by the category of the final determinations. We have not researched the facts supporting these determinations, and so make no independent critique or endorsement of their soundness.

Clean Water State Revolving Fund (CWSRF) Smart Growth Reviews

CWSRF projects found to be “Previously approved”

The EFC’s CWSRF Smart Growth Project Review Checklist begins by screening projects, asking if the projects have received prior approval and if the scope of the project is “substantially the same as was approved” (2013). Projects that were approved before 2010 do not need to meet SGPIPA criteria. An example of these projects is the **Newtown Creek water pollution control plant upgrade, 2003-2009**. The plant is being upgraded to meet the 1972 federal Clean Water Act, based on a case filed by the Supreme Court of the State of New York – Kings County – in June of 2002.

CWSRF projects found to involve “no new or expanded” infrastructure

Projects that simply involve repair and rehabilitation of existing infrastructure are not covered by SGPIPA, since the Act only covers the “construction of new or expanded public infrastructure or the

reconstruction thereof" (SGPIPA, 2010, np). Neither of the two following projects requires the addition of new or expanded infrastructure with the water treatment systems involved, therefore they have limited or no influence over the potential for new growth and development.

The **Oneida County inflow & infiltration correction project** was required by a consent order by the NYS Department of Environmental Conservation (DEC) because of sewer overflows at a pumping station. Under the proposal the county would repair manholes and rehabilitate sewers within each of the contributing municipalities to reduce the overflows at the pumping station. The financing would also support ongoing inspections and maintenance. Crucially, the Final Draft EFC CWSRF Smart Growth Project Review Checklist notes, "The project will not result in an expansion of the capacity of the treatment system nor addition of new service connections" and further, "any additional phases of this project must be reviewed by the Smart Growth Committee" (EFC CWSRF Project No. C6-6070-08-00, 2011, p1).

Another example of a "not new or expanded" project is the **Owls Head Water Pollution Control Plant improvement project** financed by the New York City Municipal Water Finance Authority in Kings County. This project proposed to replace diesel fuel with natural gas and reduce electricity consumption at the plant by up to 60%. The project is listed in the "Green Project Reserve" because it meets EPA criteria for energy and water conservation. On the Final Draft ERC SRF Smart Growth Project Review Checklist it states that the project "advances or otherwise uses, maintains or improves existing infrastructure" and that the "project does not increase the volume or treatment capacity of the facility or system" (EFC CWSRF Project No. C2-5227-20-00).

CWSRF projects found to "meet SGPIPA criteria"

EFC's SGIS for projects that meet CWSRF relevant SGPIPA criteria indicate, quite simply, that they have been determined to meet the SGPIPA criteria. No justification statement or further explanation is required. An example of a CWSRF project that was determined to be "consistent with the relevant Smart

Growth Criteria" is the **Harbor Brook Combined Sewer Overflow abatement project**. The primary purpose of the project is to protect public health and water quality. The project proposal entails constructing a facility to store stormwater runoff until it can be returned to an existing sewer treatment plant for full treatment. The project is the result of a binding judgment and consent order that required Onondaga County to construct a "gray water" infrastructure project to prevent sewer overflows that were discharging, untreated, into Onondaga Lake. "Gray infrastructure" refers to conventional management practices for stormwater and wastewater treatment (e.g., traditional use of pipes and sewers). Because there is no explanation for the determination, one must surmise the grounds on which this decision is based, but a review of the EFC SRF Smart Growth Checklist for the project (C7-6320-12-01) documents that the project meets SGPIPA requirements on several grounds, as it:

- advances or otherwise uses, maintains or improves existing infrastructure;
- involves new capacity but does so to remedy sewage overflow that is contaminating a lake;
- is located in a municipal center;
- involves the preservation and enhancement of the state's resources;
- fosters mixed land use;
- involved coordination among state, regional, and local planning and governmental officials;
- involved community-based planning and collaboration;
- is consistent with local building and land use codes;
- is specifically required by a court order.

In other words, it meets most of the criteria identified on the instrument used to assess SGPIPA compliance at the time (ERC SRF Smart Growth Checklist February 17, 2011 DRAFT REVISION)

CWSRF projects found to be "justified" despite failure to meet Smart Growth criteria

As described above, the SGPIPA does not require that every project comply with all of the criteria listed; agencies can determine that a project should be funded if it complies with the relevant criteria "to the extent practicable" or that it is impracticable

to comply with the relevant criteria (SGPIPA, 2010, np). To address a project that “does not meet such criteria or [for which] compliance is considered to be impracticable”, SGPIPA requires that the reviewing agency detail why meeting the criteria is impracticable in a statement of justification (2010, np).

The EFC provided five examples (though two are related) of clean water projects “justified” for financing or funding despite not meeting SGPIPA criteria. For these five projects, full compliance with Smart Growth principles was considered “impracticable”: Cayuga County East Bay phase 2 and phase 4, the Lime Lake sewer system, Whispering Oaks Sewer District improvements, and the Caughdenoy sewer improvement project. Together, these are examples of the EFC’s “justified” projects between the passage of SGPIPA and June 2013.

The **Cayuga County East Bay phase 2 and phase 4 projects** near Lake Ontario establish a new sewer district to replace failing individual on-site septic systems, following a consent order by the NYS Department of Environmental Conservation. (Final Draft EFC SRF Smart Growth Project Review Checklist, Project No. C7-6235-02-00, p.1). The EFC’s Smart Growth Advisory Committee determined that while the project does not wholly serve a municipal center, it is “expected to remedy existing threats to human health and the environment by eliminating aging septic systems [and] has been designed in a manner that limits additional connection and capacity” (Statement of Justification for Cayuga County Water and Sewer Authority (Cayuga WSA) C7-6235-02-00 STF/PF/SMRF, np).

Two key grounds for this justification seem to be a) the expectation that the projects will remedy threats to health and b) that it does not include excess capacity for future growth, meaning it is not designed in a way to promote sprawl. These themes are echoed in the other justifications.

Thus, the Committee evaluated the new **Lime Lake sewer system** in the Town of Machias in Cattaraugus County. In this case, existing septic systems were failing, leading to pollution of Lime Lake. The sewer system could be employed to serve this existing residential and commercial development without the need to increase its overall

volume or treatment capacity as a nearby pump station and treatment plant were large enough to accommodate the additional flow. Although there was no consent order requiring action and the project is not located in a municipal center, the EFC’s Smart Growth Advisory Committee determined that the project is expected to “remedy existing threats to human health and the environment by eliminating failing on-site septic systems” (Statement of Justification for Machias (T) C9-6619-01-00, 2011, np). Further, the sewer district extension was determined to be designed in a way that would limit additional flow by using a water main with a “small diameter” (Statement of Justification for Machias (T) C9-6619-01-00, 2011, np).

The **Whispering Oaks Sewer District improvements project** in the Town of Lysander, near the Seneca River, proposed an extension of the sewer district, with a new distribution system. The existing community septic system, according to the justification statement, is “in bad repair and is experiencing frequent failures and sewage breakthrough events which are impacting groundwater and the Seneca River” (Statement of Justification for Lysander (T) C7-6343-01-00 STIFF and SMRF np). Following a Consent Order, the failing system was to be abandoned and new infrastructure provided for collection and conveyance of sewage to a nearby wastewater treatment plant. This project had been listed on the CWSRF Final IUPs at least since 2010, the year SGPIPA was passed. As in the other cases, the project is not located in a municipal area. However, the Smart Growth Advisory Committee states, “The project has been designed in a manner that limits additional connections and capacity” and further, that the project was “expected to remedy the existing threats to human health and the environment by eliminating the community septic system that is in bad repair and causing grey water outbreaks” (Statement of Justification for Lysander (T) C7-6343-01-00 STIFF and SMRF, np).

Finally, the **Caughdenoy sewer improvement project** seeks to replace a community sewer treatment system experiencing seasonal failure with a new pump station and five miles of piping to collect and pump sewage to a nearby wastewater treatment plant. In addition, the project proposed to upgrade an existing pump station and improve

energy efficiency. The upgrade was designed to serve existing residential and commercial parcels currently dependent on on-site septic systems, but was not designed to accommodate new development. It is located in a municipal area, but not specifically required by court order or an administrative consent order. The Smart Growth Review Committee determined:

The area that the sewer district extension serves is not located in a municipal center and thus the project does not meet the municipal center criterion. However because the project is expected to remedy existing threats to human health and the environment by eliminating the sand filter system that is in bad repair and the aging septic systems and the project has been designed in a manner that limits additional connections and capacity, compliance with the relevant criterion for a municipal center of the Act is considered to be impracticable. (Statement of Justification for Hastings (T) C7-6352-05-00 SMRF, np)

To summarize, in total, there are very few CWSRF justification statements. All of them seek to remedy situations harmful to either human or environmental health, and the justifications state that each is explicitly designed in such a way as to limit the acceptance of additional flow in the future. Thus, while the projects do not meet SGPIPA requirements, they take a growth limited approach to the extent practicable relative to the public health and environmental protection missions served by the sponsoring agencies.

Drinking Water State Revolving Fund (DWSRF) Smart Growth reviews

DWSRF projects found to be “Previously approved”

The DWSRF begins by screening projects, asking if the projects have received prior approval and if the scope of the project is “substantially the same as that which was approved” (DOH DWSRF Project No. 17201, 2013, p1). Providing that the project is substantially the same as what was approved prior to the implementation of SGPIPA, the project is not required to meet SGPIPA criteria. An example of a project that was exempted from SGPIPA compliance

review is the **installation of a new storage tank and distribution area in the Village of Ellisburg**. The project proposed to replace private wells of poor quality and quantity, and extend water service from the nearby Village of Mannsville. Because the project was originally financed in 2007, and the funds requested after the SGPIPA enactment would support the completion of the original project, SGPIPA review was not required.

Projects found to involve “no new or expanded” infrastructure

As noted above, SGPIPA is designed, in large part, to prevent state-sponsored sprawl. As such, it covers the “construction of new or expanded public infrastructure or the reconstruction thereof” but not projects that do not add to existing capacity, such as those that only involve the repair and rehabilitation of existing facilities (SGPIPA, 2010, np).

The DOH provided two examples of projects that would not create any new capacity: **the consolidation of three water systems in the Villages of Richburg and Bolivar, and the Town of Bolivar**, and a project to **upgrade the water treatment plant in the City of Rome**. The Richburg/Bolivar project entails improving the water source (a spring in Richburg), rehabilitating storage tanks, laying interconnecting piping, and replacing water mains. The treatment facilities would also be replaced. In Rome, the project was a simple improvement to the filters at the city’s existing water filtration plant.

Projects found to “meet SGPIPA criteria”

The DOH’s Smart Growth Impact Statements for projects that meet SGPIPA criteria, like EFC’s for projects in the same category, do not require any sort of justification or further explanation. Rather they indicate, simply, that they meet the SGPIPA criteria. The following two projects are examples of such projects.

The project to **consolidate the water systems of the Villages of Herrings and Deferiet** proposed to upgrade the system by replacing storage tanks, distribution lines and meters, and to extend service to eight properties with contaminated private wells (DWSRF Project No. 17562). The SGPIPA criteria the project complies with include the following, as it:

- uses existing infrastructure (although water mains were to be expanded, the expansion was

being done to serve existing homes with water sourced from existing wells)

- serves a municipal center (villages that received a “hardship commitment” from the DWSRF, for \$2 million and a \$1.5 million interest-free loan);
- involved public meetings.

A proposal to **install new groundwater sources in the Town of Essex** would allow the existing water treatment plant (treating water from Lake Champlain) to be abandoned or reused. The project also includes a new chlorination plant and an upgrade of the existing distribution system. Reasons cited in the Smart Growth Assessment (DWSRF Project No. 17629) that can be presumed to be the basis for the “meets criteria” determination include the following:

- Although a new treatment facility is being constructed, it is being used to replace an existing filter plant that “fails to provide adequate treatment” and although new wells are being constructed the existing water source is being abandoned and the draw on the new wells is expected to be the same or less than the draw on the original source (p1).
- Likewise, existing mains are being replaced but no new mains are being constructed (p1).
- The project involves the use of existing infrastructure (p2).
- While there has not been a court or consent order, the town has been cited with contamination violations (p2).
- The project serves a municipal center (a mainstreet and downtown area that is also a Local Waterfront Revitalization Program Area), (p2)
- The project has also received DWSRF hardship status, with a \$1 million grant and an approximately \$300,000 interest-free loan (p3).
- Public meetings had been held to “solicit community input” (p3).
- Finally, further development is limited by the location of the town – within the Adirondack Park. As is noted in the SGIS, “[a]ny proposed future growth would be bound by [Adirondack Park Agency] regulations” (p4).

Like the CWSRF projects deemed to meet the SGPIPA criteria these DWSRF examples suggest that projects are deemed to meet criteria so long as they meet core SGPIPA criteria, such as providing

for no new capacity by serving existing residential and business needs.

Projects found to be “justified” despite failure to meet Smart Growth criteria

As described above, the SGPIPA does not require that every project comply with all 10 of the criteria listed; agencies can determine that a project should be funded if it complies with the program’s relevant criteria “to the extent practicable” (SGPIPA, 2010, np). To address projects that do not meet the criteria and for which compliance is “impracticable”, SGPIPA requires that the agencies detail why meeting the criteria is impracticable in a statement of justification. According to the DOH, because the DWSRF is primarily intended for repairing and rebuilding infrastructure (to remedy public health threats), most projects are exempt from SGPIPA review. However, in a few cases, these projects include extensions to existing systems, and because they involve new infrastructure would not be in compliance with SGPIPA, necessitating a justification for funding. The DOH provided two examples of drinking water projects that were not in compliance with SGPIPA but were approved for funding with a justification statement:

A proposal for new water storage and treatment facilities in the Village of Cayuga and the Town of Aurelius, along with a new water transmission main and piping for distribution to connect the Village and the Town to the City of Auburn’s water distribution system, replacing the existing source of Cayuga Lake and decommissioning the failing village-based system. This project would serve the Village of Cayuga, which by DWSRF standards is a “disadvantaged community” (although not technically a hardship/poverty area) and the project “support[s] Smart Growth planning and design principles [because] [e]xisting infrastructure is being replaced and/or rehabilitated” (DOH DWSRF Project No. 16114A and 16114B, 2013, p4). However, because it involves new infrastructure and a new service area within the town, the project does not comply with SGPIPA criteria. Community input was stated to have taken place during the SEQOR review, which “invited all pertinent agencies and therefore their constituencies to comment” (DOH DWSRF Project No. 16114A and 16114B, 2013, p3). The project was justified on the grounds that it

was being sized only for the existing population of the village and town, with minimum-sized mains. Furthermore, from a “public health perspective,” the project was warranted because:

- The Village has serious public health violations including for potential carcinogens and inadequately treated surface water that cannot be corrected with their existing treatment plant.
- The footprint of the land that the Village owns is too small to accommodate the modern plant that would be required to meet standards.
- Rebuilding the existing village plant is unaffordable with a required new intake into the lake to replace the 75-year-old one that suffered a recent break.
- The Village does not have the managerial, technical, or financial capacity to operate and maintain a complex modern filtration/disinfection plant and would not comply with the federal requirements to receive DWSRF financing to correct their serious public health violations.
- The interconnection of the Village to the Town supports DOH’s policy on public water system regionalization and where it is available required by the DWSRF program unless justification supporting the contrary is available.
- The interconnection of the Village to the Town supports the Governor’s and the NYS Comptroller’s shared services initiatives (DWSRF Project No. 16114A and 16114B).

In the other example, a **new distribution system and storage tank** will be built to serve an area in the Town of Louisville with “existing users that rely on private wells of insufficient quality and quantity,” and consolidate some existing public water systems (Smart Growth Assessment DWSRF Project No. 17454, p1). The project proposes to create a new water district, with an additional intake, drawing on water from the Town of Louisville’s water treatment plant, which treats water from the St. Lawrence River. The project is entirely located in two towns, Louisville and Norfolk. It has received a hardship determination, with \$2 million in grant money and a \$7 million no-interest loan. Expanding water to the Louisville homes in particular was a part of the Town’s 2001 comprehensive plan. In response to the Smart Growth Assessment form instructions (3(a)), to “provide a description of the plan to

solicit community input regarding the project,” it is stated that “public meetings have been conducted” (DWSRF Project No. 17454, 2013, p.4). Although it is not clear from the justification statement whether the public meetings were conducted as part of the comprehensive plan development process or in relation to the project itself, according to DOH, there would have had to have been public meetings regarding the project in addition to those specific to the comprehensive plan development process (Montysko 2014). The statement of justification cites a public health threat due to the private wells’ quality (bacterial contamination, iron) and quantity (some wells going dry in the summer), with some residents relying on bottled water. Furthermore, it notes, the project has been sized and located to serve only existing residences and businesses, and that “the new water district consolidates several regulated water supplies in the project area” (New York State Environmental Facilities Corporation State Smart Growth Public Infrastructure Policy Act Statement of Justification for Louisville (T) D0-17454, np).

Discussion

Overall, it is clear that both DOH and EFC, the two most important NYS funders of water and sewer infrastructure projects, have taken the responsibility of implementing SGPIPA quite seriously, especially in relation to some other state infrastructure agencies that have made less effort (Empire State Future, 2014). It is perhaps worth noting that the broad mission of the EFC, with its concerns about environmental protection and sustainable growth, aligns well with the sustainability, environmental and land use planning goals that are a central element of SGPIPA:

Our mission is to provide low-cost capital and expert technical assistance for environmental projects in New York State. Our purpose is to help public and private entities comply with federal and State environmental protection and quality requirements in a cost effective manner that advances sustainable growth. We promote innovative environmental technologies and practices in all of our programs. (EFC, 2014a)

With at least a significant contrast of emphasis, the DOH mission to “protect, improve and promote the health, productivity and well-being of all New Yorkers” (<https://www.health.ny.gov/commissioner/mvv.htm>) points to different priorities, even if these do not inherently conflict with SGPIPA. This difference is manifest in the subset of Smart Growth Impact Statements that highlight the need to provide clean water to consumers as an overriding justification.

As just noted, human health concerns are central to the several statements of justification summarized above. In other words, the priority of human health justifies projects even if they do not meet some of the SGPIPA criteria. This is not strictly an exercise of discretion. In some cases, a court has ordered the project to be undertaken in order that the water supply system comply with legislative standards such as those set by the 1972 federal Clean Water Act. The SGPIPA itself includes the proviso that, “Nothing in this section [which lists Smart Growth criteria] shall contravene any federal law governing the expenditure of disbursement of federal infrastructure funding administered by the state” (SGPIPA, 2010). More generally, public health and safety concerns are at the core of the mandate of the Department of Health, as is to some extent also true for the State building code, and these concerns clearly condition the extent to which strict adherence to the SGPIPA criteria is judged to be “practicable”.

The same criteria (from SGPIPA) are used to review both clean water projects (i.e., projects for wastewater treatment) and drinking water projects, though their implications for smart growth can differ. For wastewater, on-site treatment is often the most feasible design alternative and when sewers are needed to replace failing on-site systems, the engineering design can restrict the capacity for additional users. The need for new drinking water systems is mostly driven by contaminated or dry wells. The public health policy for NYS is to provide safe clean drinking water to all residents. Furthermore, the codes and regulations require additional capacity for fire suppression and redundancy for adequate back-up supply systems. Therefore, in order to protect public health and to meet the required standards for water supply and fire suppression, water may be distributed from an

existing supply or new supply to existing residents in suburban or rural settings which do not meet the criteria for a municipal center.

Water and Sewer Infrastructure and Smart Growth

This observation raises other questions about the relationship between water infrastructure, sewer infrastructure and development. How much might responding to short-term needs for clean water increase the probability over time that public sewerage will also be provided and the costs of development significantly reduced? How effective are decentralized, smaller-scale systems at providing clean water without incentivizing sprawl? More generally, where safe drinking water must be provided, how effective are capacity restrictions, engineering design, or concurrent land use policies as growth controls in practice? Indeed, what exactly is the relationship between water and/or sewer infrastructure and development or sprawl?

There can be complexities in answering these questions in the context of various degrees of development pressure within and outside of existing developed areas. DOH staff observed with regard to one of the fastest-growing counties in the state that has little public water infrastructure, that while on the one hand providing access to public water outside of municipal centers may induce sprawl, -sprawl frequently exists without it. Moreover, public water systems can sometimes serve as a tool for limiting scattered rural sprawl because they do away with the need for the larger lot sizes required for individual wells and septic systems. As such, public water can result in favorable smart growth outcomes such as more compact development, the protection of open spaces and improved quality of life and public health, all at a lower cost than individual wells and septic systems. The outcome in particular cases, of course, depends on existing development patterns and development pressures in relation to local land use controls and zoning (Montysko 2013).

Comprehensive and Community-based Planning

Although not necessarily highlighted in the discussion to this point, SGPIPA is greatly dependent on the quality of local planning. Three of the 10 smart growth criteria articulated in the law explicitly mention municipal or community-based land use planning. The Smart Growth Assessment form for both the CWSRF and DWSRF requires the applicant to “provide a description of the plan to solicit community input regarding the project” and to indicate if a project affects an Environmental Justice Area.” If an environmental justice area is impacted, the applicant must also explain the community will be engaged “in planning for the project” (EFC, 2013b and DOH & EFC, 2013a). As for other criteria in the SGPIPA, it is unclear whether only one of these suffices, or if a certain number must be met. In most justification statements, at least four or five of these different avenues of community-based planning and collaboration are checked off.

This attention given to planning is not least an acknowledgment that in New York—as a home rule state—the locus of control for land use planning is overwhelmingly vested in the state’s municipal governments. Though state-funded infrastructure can in practice work for or against local efforts at sensible land use planning, it is primarily the responsibility of local officials to plan for community well-being by keeping downtowns and municipal centers vibrant, managing sprawl, and attracting people and capital of all kinds. The state’s ten-point formal definition of smart growth is relatively clearly articulated in broad strokes, but it leaves a great deal of room for interpretation. State agencies involved in Smart Growth Impact Statement reviews are unlikely to argue that a locally approved comprehensive plan that designates a given area for more intensive development does not measure up to the state’s generalized standards for smart growth.

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Appendices

Appendix A: CWSRF Project Listing Form – Smart Growth Acknowledgement section

State Smart Growth Public Infrastructure Policy Act Acknowledgement

CWSRF financings are subject to the State Smart Growth Public Infrastructure Policy Act. As set forth in the Act, EFC is required to determine that each project that includes the construction of new or expanded public infrastructure is consistent with the relevant smart growth criteria to the extent practicable. EFC has developed guidance for use by applicants that explains what is required by EFC to make this determination. In addition to information required elsewhere, Applicants will need to demonstrate that projects meet the following criteria in the Smart Growth Assessment:

1. Uses or Improves Existing Infrastructure -supports projects that improve existing infrastructure.
2. Serves a Municipal Center - advances development and re-development of existing centers of activity and land use.
3. Community-Based Planning - encourages projects that result from inclusive, bottom-up, stakeholder-driven planning processes where proper outreach has been conducted, particularly to underserved/under-represented environmental justice communities.
4. Sustainable Development - promotes projects that use existing resources in ways that do not compromise the needs of future generations, including: consideration and adoption, where appropriate, of green infrastructure techniques, decentralized infrastructure techniques and energy efficiency measures.

More information regarding EFC's smart growth review process (including the Act, Guidance for Applicants and Smart Growth Assessment) is available at <http://www.efc.ny.gov/Default.aspx?tabid=474>.

[] Please check this box to acknowledge that you are aware of this requirement and that you are authorized to make this acknowledgement on behalf of the applicant.

Minority and Women's Business-Equal Employment

Appendix B: The NYS CWSRF Smart Growth Assessment form

New York State Environmental Facilities Corporation
625 Broadway Albany, New York 12207-2997
(518) 402-6924 Fax (518) 402-7456

Smart Growth Assessment New York State Clean Water State Revolving Fund (CWSRF)

This form should be completed by the applicant's project engineer or other design professional.⁷ Please refer to EFC's "Smart Growth Guidance."⁸

CWSRF Applicant: CWSRF Project #:

Is project construction complete?
Yes No

Project Description:

Project Summary: Please provide a short project summary of the project in plain language including the location of the area the project serves.

SECTION 1 - SCREENING QUESTIONS

1. Prior Approvals
 - a. Has the project been previously approved for CWSRF financing?
Yes No

If so, what was the CWSRF project number(s) for the prior approval(s)?

⁷ If project construction is complete and the project was not previously financed through the CWSRF, an authorized municipal representative may complete and sign this assessment.

⁸ Available at <http://www.efc.ny.gov/Default.aspx?TabID=76&fid=436>

[Empty box]

- b. If so, is the scope of the project substantially the same as that which was approved?
 Yes No

If the project was previously approved by EFC's Board and the scope of the project has not materially changed, the project is not subject to smart growth review. Skip to signature block.

- 2. New or Expanded Infrastructure
 - a. Does the project add a new wastewater collection or treatment system? (Note: New infrastructure project adds wastewater collection or treatment where none existed previously.)
 Yes No
 - b. Will the project result in an increase of

If the answer is "No" to both "a" and "b," the project is not subject to further smart growth review. Skip to signature block.

the State Pollution Discharge Elimination System (SPDES) permitted flow capacity for an existing treatment system? (Note: An expanded infrastructure project results in an increase of the SPDES permitted flow capacity for the treatment system.)
 Yes No

- 3. Court or Administrative Consent Orders
 - a. Is the project expressly required by a court or administrative consent order?
 Yes No
 - b. Have you previously submitted the order to NYS EFC?
 Yes No If not, please

attach the order to this submittal.

SECTION 2 – ADDITIONAL INFORMATION NEEDED FOR RELEVANT SMART GROWTH CRITERIA FOR CWSRF PROJECTS

EFC has determined that the following smart growth criteria are relevant for CWSRF projects and that projects must meet each of these criteria to the extent practicable:

- 1. Uses or Improves Existing Infrastructure.
 - a. Does the project use or improve existing infrastructure? Please indicate and describe below.
 Yes No

[Empty box]

- 2. Serves a Municipal Center. Projects must serve an area in either a, b or c to the extent practicable.
 - a. Does the project serve an area **limited** to one or more of the following municipal centers? Please select and describe all that apply:
 - i) A City or Incorporated Village.
 Yes No

[Empty box]

- ii) A central business district.
 Yes No

[Empty box]

- iii) A main street.
 Yes No

[Empty box]

- iv) A downtown area.
 Yes No

[Empty box]

- v) A Brownfield Opportunity Area. For more information, go to <http://www.dos.ny.gov> and search for "brownfield".
 Yes No

vi) A downtown area of a Local Waterfront Revitalization Program Area. For more information, go to <http://www.dos.ny.gov> and search for "waterfront revitalization".
 Yes No

vii) An area of transit-oriented development.
 Yes No

viii) An Environmental Justice Area. See <http://www.dec.ny.gov/public/899.html> for more information.
 Yes No

ix) A Hardship/Poverty Area. Note: Projects that primarily serve census tracts and block numbering areas with a poverty rate of at least twenty percent according to the 2000 Census.
 Yes No

b. If the project serves an area located outside of a municipal center, does it serve an area located adjacent to a municipal center which has clearly defined borders, designated for concentrated development in a municipal or regional comprehensive plan and exhibit strong land use, transportation, infrastructure and economic connections to an existing municipal center? If yes, please describe and reference applicable plans.
 Yes No

c. If the project is not located in a municipal center as defined above, is the area designated by a comprehensive plan and identified in zoning ordinance as a future municipal center? If yes, please describe and reference applicable plans.
 Yes No

3. Community- Based Planning
 a. Provide a description of the plan to solicit community input regarding the project.

b. Does the project affect an Environmental Justice Area? See <http://www.dec.ny.gov/public/899.html> for more information.
 Yes No

If yes, how does the applicant propose to engage the community in planning for the project?

4. Sustainable Development.
 a. Were green infrastructure techniques considered in the project design? (Note: Green infrastructure includes green wet weather practices which mimic natural hydrology and use, infiltrate, evaporate or evapotranspire rain near or where it falls. These practices include permeable pavement; bioretention/ bioinfiltration systems including rain gardens; green roofs and walls; stormwater street trees/urban forestry; riparian buffers, floodplains and/or wetlands; stream daylighting; downspout disconnection and rainwater harvesting and reuse.
 Yes No
 b. Were green infrastructure techniques adopted where appropriate? Please provide a description of measures that

were adopted and references to supporting material (for example, page 6 of "title of report") or explain why these measures were not adopted.

Yes No

c. Were decentralized infrastructure techniques considered in the project design?

Yes No

d. Were decentralized infrastructure techniques adopted where appropriate? Please provide a description of measures that were adopted and references to supporting material (for example, page 6 of "title of report") or explain why these measures were not adopted.

Yes No

e. Were energy efficiency measures considered in the project design?

Yes No

f. Were energy efficiency measures adopted where appropriate? Please provide a description of measures that were adopted and references to supporting material (for example, page 6 of "title of report") or explain why these measures were not adopted.

Yes No

SECTION 3 – ADDITIONAL INFORMATION

1. Does the project include measures that exceed required natural resource protection? Please explain below.

Yes No

2. Does the project support smart growth planning and design principles? Please explain below.

Yes No

3. Other State Infrastructure Agencies must also complete a smart growth review prior to approving a project. Please check all agencies from which the applicant is seeking support and/or funding and the type of support or funding, as applicable.

The Department of Environmental Conservation

The Department of Transportation

The Department of Education

The Department of Health

The Department of State

The New York State Housing Finance Agency

The Housing Trust Fund Corporation

The Dormitory Authority

The Thruway Authority

The Port Authority of New York and New Jersey

The Empire State Development Corporation

The Urban Development Corporation

All other New York State Authorities

By entering your name in the box below, you agree that you are authorized to act on behalf of the applicant and that the information contained in this Smart Growth Assessment is true, correct and complete to the best of your knowledge and belief.

(Signature of Project Engineer or Design Professional or Authorized Municipal Representative if construction is complete prior to CWSRF Application)

(Date)

(Name and Title)

(Phone Number)

(Applicant)

Water and Sewer Infrastructure: Economic Development Funding and NY's Smart Growth Public Infrastructure Policy Act



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Abstract

This report is intended to analyze one way in which municipalities may come in contact with the NYS Smart Growth Public Infrastructure Policy Act (SGPIPA) by examining programs administered through the Consolidated Funding Application (CFA) process. The report focuses on CFA funding for sewer and water infrastructure programs. Following a brief description of the CFA process, the report examines the various programs through which CFA funding is available. This report explores how these programs, and the CFA process in general, are facilitating SGPIPA compliance through their application questions and agency documents, finding that agencies incorporate smart growth to varied extents. Overall, the report concludes that there is a significant integration of SGPIPA into the CFA process, at least as pertains to water and sewer infrastructure. The CFA mechanism helps involved agencies comply with their SGPIPA responsibilities and should help municipalities better understand SGPIPA and its effect on their future funding opportunities.

Three Summary Points of Interest

- *The Consolidated Funding Application (CFA) is a process for distributing state funding to support economic development established by Governor Cuomo in 2011. The CFA integrates elements of the State Smart Growth Public Infrastructure Policy Act (SGPIPA) in order to better align the state's goals of economic development and smart growth in its public infrastructure funding decisions.*
- *Sewer and water infrastructure funds are available through various state agencies that use the CFA process. The CFA application now includes smart growth questions, thereby facilitating SGPIPA compliance in the early stages of agency interactions with municipalities and other applicants.*
- *The integration of SGPIPA into the CFA process regarding water and sewer infrastructure will aid in the education of local officials and other fund applicants for a better understanding of SGPIPA and how it will influence state agency decision making.*

Keywords

Smart Growth Public Infrastructure Policy Act (SGPIPA); Consolidated Funding Application (CFA); Sewer and Water Infrastructure; Green Infrastructure; Empire State Development (ESD); Community Development Block Grant (CDBG) Program; Department of Environmental Conservation (DEC); Clean Water State Revolving Fund (CWSRF); Environmental Facilities Corporation (EFC); Green Innovation Grant Program; New York State Energy Research and Development Authority (NYSERDA); Cleaner, Greener Communities Program; Department of State's Local Waterfront Revitalization Program (LWRP); Empire State Future (ESF)

Introduction

This report is one of several intended to familiarize readers with the way New York's Smart Growth Public Infrastructure Policy Act (SGPIPA) is being implemented by State agencies that fund water and sewer infrastructure projects¹. This report focuses on the integration of SGPIPA compliance into the Consolidated Funding Application (CFA) process designed to support economic development. Specifically, we examine sewer and water infrastructure programs administered through the CFA process in 2013.

Projects funded through the CFA are typically those which are part of a larger economic development initiative. Indeed, the CFA as a whole is explicitly promoted as a mechanism for streamlining access to "state economic development resources" by use of a single coordinated application for programs controlled by multiple agencies. The CFA is the gateway for both public and private sector access to economic development resources from more than a dozen state agencies.

SGPIPA applies to state agencies and authorities beyond those that participate in the CFA process. For this and similar reasons, this report does not address every possible avenue for approving the state's water and sewer infrastructure projects and evaluating their SGPIPA compliance. It does, however, discuss a primary avenue through which many local municipalities² access infrastructure funding. It is also a critical point of contact through which municipalities are likely to become familiar with SGPIPA. All municipalities that apply for funds through the CFA process to support local economic development initiatives are required to answer questions related to the SGPIPA as part of the application process.

This brief introduction raises at least two important definitional questions. First, which programs are considered as part of the state's economic development resources? Second, what are counted as water and sewer infrastructure

projects? For the purposes of this report at least, the first question is answered most appropriately by the full list of the programs which can be accessed through the CFA process. These programs can be inspected in detail in the annually released documents known as "Available CFA Resources". These documents for 2013 and 2014 classed the full range of state economic development programs variously under the following labels:

- Community Development
- Direct Assistance to Businesses and Other Organizations
- Energy
- Education/Workforce Development
- Waterfront Revitalization
- Low Cost Financing
- Environmental Improvements (including Sustainability Planning and Implementation).³

With regard to the second question, the SGPIPA does not provide a precise or comprehensive definition of water and sewer infrastructure or even of infrastructure more generally. The law does explicitly include a list of individually named agencies and authorities plus "all other New York authorities", and defines them as "state infrastructure" agencies.⁴

As described in more detail below, to track CFA support for water and sewer infrastructure using state agency categories, we first found that self-described water and sewer infrastructure funding programs were overwhelmingly associated with 5 agencies: the Department of Environmental Conservation (DEC), the Department of State (DOS), the Environmental Facilities Corporation (EFC), Empire State Development (ESD) and Homes and Community Renewal (HCR). We then operationalized a less agency-centered alternative definition based on funded projects. Brief project descriptions for all 2013 CFA awards were reviewed to assess whether funded projects were designed to directly or indirectly influence the need for, or actual provision of, water or sewer services.

The meaning of "direct or indirect influence" may not be self-evident. In common language use,

¹ For all references to SGPIPA, or Environmental Conservation Law, Article 6, see reference NYS ND-d.

² Our interest in smart growth in the context of a "public infrastructure act" narrows our attention primarily to funding programs that support municipal infrastructure, though some of these programs also support infrastructure that is not publicly owned.

³ See references NYS 2013, NYS 2014a and NYS 2014b.

⁴ Some ambiguity exists in the implementation of SGPIPA about which of New York's many locally focused authorities qualify under the law as "state infrastructure agencies".

the phrase water and sewer infrastructure focuses attention on the durable physical hardware (pipes, joints, pumps, buildings, etc.) that directly enables the provision of potable water and sanitary sewer services. For the purposes of this report, we also include “green infrastructure” (e.g., drainage swales, permeable paving) insofar as we can determine that it is designed primarily to divert water from, and therefore substitute for, more traditional water and sewer infrastructure. Also, we do not try to differentiate between separate components of given water and sewer related project awards, such as distinguishing spending on the hardware (like pipes or concrete) as opposed to labor, administration, or engineering.

The Consolidated Funding Application Process: An Overview

In 2011, the Cuomo administration created 10 regional economic development councils and charged these multi-county regions with developing five-year plans to guide their economic development⁵. At the same time, the governor reformed the process for distributing state funding designed to support economic development through the creation of a *Consolidated Funding Application* (CFA). In 2013, the 10 regional plans guided state agencies and the regional councils as they prioritized allocation of approximately \$750 million of state economic development resources through the CFA process.

As a result of the CFA process, instead of having to navigate the varied application requirements of several funding agencies, applicants are required to submit a single application. Within this consolidated application, applicants identify all of the types of funding they seek to fulfill their economic development project goals. Applicant eligibility, across both public and private sector, varies by agency and funding program. Because sewer and water infrastructure is often an integral part of economic development, several programs that support sewer and water infrastructure development are funded through the CFA.

Sewer and Water Infrastructure Funding Distributed through the CFA Process

In 2013, 26 funding programs from 13 state agencies were part of the CFA (NYS 2013). To determine which programs included in the CFA support sewer and water infrastructure development, we took two approaches. First, we conducted a key word search of “2013 CFA Available Resources,” a guide to the funding programs available through the CFA process, using the words: “sewer” and “water”. This yielded a list of possible funding sources. Second, we reviewed the list of all awards made through the CFA process in 2013, looking for individual projects related to water and sewer services. This second approach yielded a list of water and sewer related projects actually selected that year, without prescreening the list by identifying the agency or program that funded them.

First approach

Using the first method, five programs were identified as supporting the development of sewer and water infrastructure⁶. These programs and the types of projects they fund are listed below:

1. Empire State Development (ESD) Grants Funds

Projects funded through ESD grant funds are of three types: Business Investment, Infrastructure Investment, and Economic Development Investment. Sewer and water infrastructure development is covered under the category of “infrastructure investment”. These projects involve capital expenditures for the development of infrastructure, including sewer and water, which “attract[s] new businesses and expand[s] existing businesses, thereby fostering further investment.” As used herein, development of infrastructure includes planning, feasibility analysis, and construction. (NYS 2013:7-8)

⁶ Based on a review of reference NYS (2013).

⁵ See <http://regionalcouncils.ny.gov/>, accessed August 15, 2014.

2. The Community Development Block Grant (CDBG) Program

The NYS CDBG program is described as providing “small communities and counties in New York State with a great opportunity to undertake activities that focus on community development needs such as creating or expanding job opportunities, providing safe affordable housing, and/or addressing local public infrastructure and public facilities issues,” (NYS 2013:39). Four types of projects are funded through the CDBG program: Economic Development, Small Business Assistance, Public Infrastructure, and Public Facilities. Sewer and water infrastructure is included within the public infrastructure category, which consists of but is not limited to the following program activities:

...water source development, storage, and distribution; sanitary sewage collection and treatment; flood control and storm water drainage. Projects may include ancillary public works components such as sidewalks, streets, parking, open space, and publicly-owned utilities (NYS 2013:40).

3. NYS Department of Environmental Conservation / Environmental Facilities Corporation (EFC) Wastewater Infrastructure Engineering Planning Grant

The Wastewater Infrastructure Engineering Planning Grant provides funds to municipalities to help them cover the costs of planning for the development and implementation of projects that address local water quality. Essentially, the completion of these plans is a prerequisite to applying to the Clean Water State Revolving Fund program, a program of the EFC, designed to support the actual construction of infrastructure that addresses water quality.

The ultimate goal of this wastewater infrastructure engineering planning grant program is to assist needy communities to initiate a planning process with a follow-up implementation plan to address local water quality problems. Successful

applicants will use the engineering report when seeking financing through the CWSRF program or other financial means to further pursue the identified solution. (NYS 2013:122)

4. Environmental Facilities Corporation (EFC) Green Innovation Grant Program (NYS 2013:130)

Several categories of projects are funded through the Green Innovation Grant Program (GIGP), all of which are designed to “treat rainwaters as a valuable resource to be harvested and used on site or filtered and allowed to soak back in the ground, recharging our aquifers, rivers and streams”. Because these projects are designed to channel rainwater back to the earth rather than into sewers, they ensure rainwater remains a part of the hydrologic cycle and reduce the pressure put on sewer systems by reducing the quantity of water that is a part of the system inflow. Substituting these kinds of “green” management systems for the more conventional infrastructure that has been used to collect and treat stormwater can help avoid the significant environmental and other problems that arise in some systems when stormwater surges overwhelm traditional sewage treatment facility capacities.

The GIGP funds eight specific kinds of projects that offer alternative green stormwater management options, each of which is appropriate for some circumstances but not others. These are:

- Permeable pavement (e.g., porous asphalt, concrete or pavers)
- Bioretention (e.g., rain gardens or bioswales)
- Green (vegetated, growing) roofs and walls
- Street trees/urban forestry programs designed to manage stormwater
- Construction or restoration of wetlands, floodplains, or riparian buffers
- Stream daylighting (e.g., returning piped/ culverted streams to more natural channels)
- Disconnecting roof runoff downspouts to redirect water out of the sewer system
- Stormwater harvesting and reuse (e.g., rain barrels and cisterns)

5. NYS Energy Research and Development Authority (NYSERDA) Cleaner, Greener Communities Program, Phase II Implementation Grants (NYS 2013:137)

The Cleaner, Greener Communities Program, Phase II Implementation Grants is a “competitive grant program to encourage communities to develop and implement regional sustainable growth strategies” (NYS 2013:137). The program supports three major categories of projects:

1. Streamlined Permitting (“of PV systems and/or Electric Vehicle Supply Equipment (EVSE) stations or zoning and parking ordinances that specifically accommodate EVSE”);
2. Comprehensive Planning; and
3. Capital Expenditures (NYS 2013:138)

The “Capital Expenditures” category is the broadest of the three categories, and the only one possibly funding water and sewer infrastructure. It is intended to support a variety of “large-scale capital projects that support energy efficiency, renewable energy, or carbon mitigation,” “including, but not limited to, land use, transportation, and buildings” (NYS 2013:144). While most types of eligible projects do not directly relate to water and sewer, one does: “Measures that significantly improve the efficiency of water treatment or waste-water treatment facilities” are specifically named, under “Examples of Eligible Projects,” as types of building projects supported by the Cleaner, Greener Communities Program.

To summarize, there were five programs administered through the 2013 Consolidated Funding Application process that could support the development of sewer and water infrastructure as defined within this report. Depending on the program, eligible projects are those which support the design, feasibility assessment, construction, and renovation (for improved energy efficiency) of sewer and water infrastructure.

Second approach

In contrast, with the second method, we classified actual awards as reported in the “REDC 2013 Awards” publication for a single year (NYS REDC 2013). Total awards of just under \$716 million were distributed across the 10 regions. Of those, we

determined that about \$33 million, or 5% by value, could be classified as “water and sewer” related.

Two of the programs listed above stood out in terms of total dollars. The EFC’s Green Innovation Grants program (16 awards) and the ESD’s Capital Grants program (13 awards) each gave out just over \$10 million in water and sewer related funding. As noted already, the EFC Green Innovation grants are primarily intended to intercept runoff with “green infrastructure”, thereby reducing the flows that must be managed and treated by traditional stormwater management infrastructure. The ESD Capital Grants prioritize water and sewer projects that are directly in the service of economic development.

Next in terms of dollar value were the 12 water and sewer related projects funded at a total of just under \$7 million by the NYS Department of Home and Community Renewal’s Community Development Block Grant Programs for Public Infrastructure and Public Facilities. CDBG projects must typically be justified by their ability to benefit persons of low and moderate income. By way of context for these water and sewer projects, Homes and Community Renewal currently allocates about \$40 million of CDBG funds annually in competitive grants to eligible communities (i.e., towns, villages, and cities with less than 50,000 population and counties with unincorporated populations of less than 200,000). Historically, about a quarter of CDBG funding went to water and sewer projects.⁷

By far the largest number of grants (62) were awarded through the Department of Environmental Conservation’s Engineering Planning Grant Program for engineering studies, mostly small grants of \$30,000 to study various kinds of wastewater system upgrades, especially those related to infiltration issues, whereby leakage increases the volumes of wastewater to be treated. As reported above, these grants are one way to support the development of engineering plans that are a necessary preliminary to applications to the EFC’s Clean Water State Revolving Fund.

⁷ See NYS HCR-a(ND) and NYS HCR-b(ND). From the latter source, it can be calculated that between 2001 and 2010, \$354 million were cumulatively awarded through this program. After a peak of nearly \$50 million in total awards in 2006, the highest subsequent total was \$32 million in 2008. Of the \$354 million total, \$34 million were for sewer and \$51 million for water projects.

The Department of State's Local Government Efficiency program, which focuses on promoting the consolidation or sharing of government services and is not found in the water and sewer program funding sources listed above, allocated \$3.2 million across eight projects designed to variously study, plan and implement the regionalization/sharing across municipalities of water and/or sewer services.

Finally, several other agency programs made a very small number of awards for projects that at least arguably influence water and sewer infrastructure: a couple projects supported by the Department of State's Local Waterfront Revitalization fund, and a couple of Empire State Development awards are examples. They were for projects with components that did not fund municipal wastewater treatment directly, but appeared as if they might have had implications, like projects in the Green Innovation Grants program, for the amount and nature of treatment that would be required by existing wastewater management systems. Note, finally, that no water and sewer related awards were made in 2013 under the NYSERDA program listed above.

Having identified the CFA programs which support sewer and water infrastructure development and the types of sewer and water infrastructure development they support, the ways in which agency compliance with SGPIPA is reflected in the CFA process is considered below.

The Consolidated Funding Application (CFA) and SGPIPA Compliance

In addition to the CFA, there are other documents designed to guide potential applicants through the CFA process. As summarized in the Application manual, "These documents provide applicants with information about the application as well as programmatic detail for each resource that is a part of the CFA process" (NYS 2014b:22). Three of these documents, in particular, help to explain the ways that the agencies which fund sewer and water infrastructure development through the CFA process are complying with SGPIPA: Program Application Questions (a series of questions specific

to a particular funding program), Available CFA Resources, and CFA Application Manual. The ways each is used to support agency compliance with SGPIPA is described below.

Program Application Questions

The Consolidated Funding Application is an online form.⁸ To view its entire contents, one is required to register and login as an applicant. However, guides to each program's application questions have been developed to specifically support applicants as they complete the CFA.⁹

A review of the Program Application Questions documents for each of the CFA's five sewer and water infrastructure program reveals that the questionnaire for each program consists of a set of questions common to all funding programs as well as some questions specific to particular funding programs. Notably, all five programs that support sewer and water infrastructure development share a set of 10 identical questions designed to provide the respective agency reviewers with information they need to complete a Smart Growth Impact Assessment as required by SGPIPA. At heart, these questions directly assess a project's compliance with the smart growth principles articulated by the law. As such, the questions provide the agencies with a means to ensure they have the information they need *from project applicants* to conduct any required Smart Growth Impact Assessment (SGIS).

As is illustrated by the Green Innovation Grant example,¹⁰ the questions address the SGPIPA's 10 smart growth principles directly. Following each question is a "help section" that provides additional information about the intent of the question. Furthermore, in addition to the section in each questionnaire dedicated specifically to smart growth, other sections in several of the funding programs address smart growth principles in other contexts. For example, in the Community

⁸ See: <http://nyworks.ny.gov> and CFA FAQs (NYS REDC ND)

⁹ These guides appear to be available online only for the duration of time that the application is available and to change from year to year.

¹⁰ The Appendix includes the 2013 Green Innovation Grant Program's Program Application Questions as one example of the CFA's smart growth questions.

Development Block Grant program, Empire State Development Grant Funds program, and the Cleaner, Greener Communities program, there is a question that addresses public engagement in the development of the project. This suggests that at least some smart growth principles are seen as important in a larger development context, independently of their importance for smart growth. However, it is not self-evident that the responses to these questions are routinely considered by reviewers in the context of agency Smart Growth Assessments.

2013 Available CFA Resources

The CFA Available Resources document also plays a role in supporting the agencies' compliance with SGPIPA. The "document outlines information about each agency's grant programs, including eligibility, scoring, criteria, applicant requirements, and agency contact information" (NYS 2013). While the questions about smart growth are standard across all five funding programs, references to smart growth and the SGPIPA in the 2013 CFA Available Resources document are not. Although smart growth is referenced in all of the program areas, in some it is described in greater detail, while in others it is mentioned briefly. In some it is referenced in a couple of different sections (e.g., eligible projects and selection criteria), while in others it is mentioned in only one section.

Before describing the way smart growth is addressed within the CFA Available Resources document, it is important to provide an overview of how projects are scored through the CFA. Essentially, projects are scored on a 100-point scale, with 20 points allotted by the Regional Economic Development Councils according to the degree to which the project aligns with regional priorities and fits with its respective REDC's Strategic Plan. The state assigns the remaining 80 points according to program-specific criteria. As is implied above, some of the five programs specifically include smart growth as part of the program specific criteria, while others do not.

The specific ways smart growth is addressed within the 2013 CFA Available Resources by each of the five programs that fund sewer and water infrastructure is described below:

1. Empire State Development Grant Funds

The ESD Grant Funds program addresses smart growth under its "Selection Criteria" section, where it lists five general categories of selection criteria:

- Vision and Regional Economic Development Strategies;
- Public/Stakeholders;
- Implementation;
- Leveraged Resources; and
- Performance Measures.

Several indicators are listed under each category, more clearly defining (but not assigning weights to) the criteria used to evaluate the proposal. "The degree to which the project supports the principles of smart growth, energy-efficiency...and sustainable development" is one of five indicators specifically included under the "Performance Measures" category (NYS 2013:10). In addition, although public engagement (smart growth criteria) is implied by the Public/Stakeholder category, the indicators listed under it seem somewhat different than the engagement called for within SGPIPA: "community based planning and collaboration." Rather the criteria most directly related to engagement under the ESD Grant Funds "Public/Stakeholder" category assesses "[w]hether the project has demonstrated support from local government and private sector leaders in the locality and the region where the project will be located" (NYS 2013:9).

2. Community Development Block Grant Program

The CDBG program addresses smart growth under two sections: "Project Eligibility" and "Selection Criteria." Eligible projects funded by the CDBG program fall into four categories (NYS 2013:40):

1. Economic Development;
2. Small Business Assistance;
3. Public Infrastructure; and
4. Public Facilities.

Water and sewer infrastructure is not only included in the Public Infrastructure category, as indicated by the full title of this section (Public Infrastructure (water/sewer/storm water)), it is the primary focus of the infrastructure category. SGPIPA is explicitly

referenced within the eligible projects description:

Eligible projects may include the repair or replacement of existing systems, construction of new systems, or expansion of existing systems into areas previously unserved that are in compliance with the NYS Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010)...(NYS 2013:40).

The law is also referenced in the Selection Criteria section for the Public Infrastructure category. The 80 points of CDBG-program specific criteria are further broken down, with a maximum of 20 points allocated to Municipal Poverty Score and a maximum of 60 points reserved for "Project Assessment." The project assessment includes three subcategories – need, impact, and financial capacity, but without a further *a priori* allocation of the 60 points across them. Impact includes:

...the degree to which the applicant has demonstrated... that the proposed project supports a 'Smart Growth' development strategy in accordance with the New York State Smart Growth Public Infrastructure Act (Chapter 433 of the Laws of 2010) (NYS 2013:45) .

Presumably, flexibility in awarding points means that high scores in all the subcategories are desirable but not always necessary. For example, the "Need" component of the criteria could presumably lead a project to be funded even if it is not in compliance with smart growth principles because it is important for reasons of public health and safety. Need is evaluated in large part on the basis of the

...degree to which the applicant has demonstrated serious public health, welfare or safety conditions as attested by third party documentation (e.g. consent orders, engineering reports, test results) (NYS 2013:45).

Threats to human health and the environment are examples of the grounds on which projects that are not in compliance with smart growth principles have been justified in other programs that fund sewer and water infrastructure (e.g., Department of

Health's Drinking Water State Revolving Fund and the DEC/Environmental Facility Corporation's Clean Water State Revolving Fund)

3. NYS Department of Environmental Conservation / Environmental Facilities Corporation Wastewater Infrastructure Engineering Planning Grant

As noted above, the EFC Wastewater Infrastructure Engineering Planning Grant is one source of funding that supports the development of the engineering report that is required of applicants who seek to fund the construction of wastewater infrastructure through the EFC's CWSRF program. As independent studies, they do not constitute "infrastructure" expenditures in and of themselves under SGPIPA, so the agency is not required to file a Smart Growth Impact Assessment. However, the engineering reports are required to "consider and document" both smart growth and green infrastructure alternatives (NYS EFC ND).

Within the 2013 CFA Available Resources section devoted to this program, smart growth is referenced in the following sections: Key Definitions, Eligible Activities, and Successful Applicant Requirements. **Key Definitions: The Engineering Report.** The section devoted to the engineering report specifically outlines required components of the report, including "Selection of an Alternative" – meaning the type of infrastructure to be developed. The chapter or section of the report presenting the selection of alternatives, which immediately precedes the chapter on the "recommended alternative", must include discussion of three selection criteria: a life cycle analysis, a smart growth analysis, and nonmonetary factors. Although not identified as such, it should be noted that other required parts of the engineering report potentially align closely with smart growth criteria. For example, the engineering report must address "Location", "Community Engagement", "Reasonable Growth" and Sustainability Considerations" (NYS 2013:123). **Eligible Activities.** Similarly, smart growth is explicitly referenced in the section on Eligible Activities and clearly defined (NYS 2013:124):

Smart Growth alternative(s) and green infrastructure alternative(s) must be considered and documented in the engineering report. The following minimum alternatives need to be considered for projects with no existing wastewater infrastructure:

- decentralized systems;
- new sewers and connection to regional wastewater treatment facility; and
- new sewers and a wastewater treatment facility.

The following minimum alternatives need to be considered for projects with existing wastewater infrastructure:

- rebuilding existing wastewater infrastructure; and
- connecting to regional wastewater treatment facility.

Successful Applicant Requirements. The final section of the Wastewater Infrastructure Engineering Planning Grant program area in which smart growth is referenced is under “Successful Applicant Requirements” (NYS 2013:125). “Compliance with the New York State Smart Growth Infrastructure Policy Act of 2010” is one of several requirements that must be documented before the funding agency will enter into a grant agreement to fund the project.

Before leaving the Wastewater Infrastructure Engineering Planning Grant, it is worth noting that the attention given to smart growth in the documentation required in the engineering study does not necessarily translate into priority for funding the studies. Smart growth is in fact not mentioned in the “Selection Criteria,” as with the Community Development Block Grant program.

More significantly, language within the selection criteria clearly indicates that it is the urgency of the problem and need for a study leading to solutions, rather than any preliminary ideas about possible solutions and smart growth, that are most important for funding. In fact, up to 64 of 80 points allocated to the state’s technical evaluation of these projects depend on the “severity of existing water quality impairments” and whether or not the study is required as part of a regulatory process that is already engaged.

This suggests that the greater the degree to which water is impaired, the greater the chances this first important step towards a project designed to correct it will be funded, whether or not the project includes smart growth principles. Insofar as the study itself is merely a preliminary to proposing a specific infrastructure project, and the study must address smart growth issues explicitly, this seems both practical and sensible.

4. Environmental Facilities Corporation - Green Innovation Grant Program

The Green Innovation Grant Program focuses on water – as already noted, its goal is to fund “green” projects that capture and use stormwater where it falls and/or take advantage of natural processes that enable the water to “soak back into the ground”. The program description explicitly mentions smart growth only under a section entitled “Successful Applicant Requirements,” where documentation of “compliance with the Smart Growth Infrastructure Act of 2010” is required before successful applicants can enter into a grant agreement (NYS 2013:134).

At the same time, although “smart growth” is not explicitly mentioned in the program description, the language used to describe the types of projects that will be funded overlaps to some extent with smart growth criteria:

Projects selected for funding go beyond providing a greener solution, they maximize opportunities to leverage the multiple benefits of green infrastructure, which include restoring habitat, protecting against flooding, providing cleaner air, and spurring economic development and community revitalization. At a time when so much of our infrastructure is in need of replacement or repair and communities are struggling to meet competing needs, we need resilient and affordable solutions like green infrastructure that can meet many objectives at once. (NYS 2013:131).

This language seems well aligned with the broadly worded smart growth criterion in SGPIPA: “To protect, preserve and enhance the state’s resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources.” However, it is really

only the allusion to “replacement or repair” that is consistent with some of the most discriminating smart growth criteria like prioritizing repair of existing infrastructure or, perhaps more indirectly, location in municipal centers. Even then, the language then opens up to “resilient and affordable solutions like green infrastructure” rather than prioritizing replacement or repair of existing infrastructure more specifically. The point is that this program is not explicitly about smart growth as such, and while green infrastructure provides in and of itself many benefits, green infrastructure is not inherently classifiable as a form of smart growth.

5. NYSERDA – Cleaner, Greener Communities Program, Phase II Implementation Grants

The Cleaner Greener Communities Program was created to help New York communities develop regional sustainable growth strategies. Phase I of “Cleaner Greener” supported the development of the plans and Phase II is designed to support the implementation of strategies articulated by the plan.

Insofar as smart growth bears a close but not exact relationship to sustainable growth—and in complex ways that are well beyond the scope of this report to summarize¹¹—the Cleaner, Greener Communities program should be expected to be largely but not necessarily fully consistent with smart growth. Accordingly, it is not surprising that “smart growth” is explicitly mentioned in several of the program’s sections, including the introduction, the program description, and in the selection criteria for two of the three categories of funding, including Category 3 that funds water and sewer infrastructure. The context in which it is referenced in each section related to sewer and water infrastructure development is discussed below.

Introduction. The introduction to the Cleaner, Greener Communities Program, Phase II, provides an overview of the program and essentially recognizes the central importance of smart growth in the projects funded by this program:

By integrating smart growth principles into all aspects of project execution, these innovative and exemplary projects will be holistic in nature, exhibit

positive large-scale impacts, and contribute to an improved quality of life in New York. Projects selected under Phase II of CGC will not only save energy and reduce greenhouse gas emissions; they will also make NYS a better place to live, work, and do business (NYS 2013:136).

Program Description. Following the introduction, smart growth is again mentioned in the very next section – the program description. Within the description, smart growth is not only explicitly referenced but essentially operationalized:

This solicitation will fund projects and activities that promote smart growth and sustainable development. Smart growth promotes land use practices such as compact growth, transit-oriented and mixed-use development, pedestrian and bicycle friendly practices, complete streets, and protection of critical land, water, and natural resources (NYS 2013:138).

Selection Criteria. Finally, smart growth is mentioned again under the Selection Criteria section for Category 3 – Capital Expenditures. “Adherence to Smart Growth Principles Applicable to Project Location” is one of several technical review criteria used to evaluate a project. The extent to which the applicant has “demonstrated that the project will produce significant Smart Growth benefits to New York State” is worth 15 of the 80 points allotted in the technical review (NYS 2013:146).

6. Department of State’s Local Waterfront Revitalization Program (LWRP).

As suggested previously, while the LWRP is not specifically designed to support water and sewer infrastructure, it does fund projects that can be significantly related to water and sewer, for example: redevelopment of hamlets, downtowns and urban waterfronts, or implementing watershed

¹¹ Variability in the use of terminology persists, and some in the planning community prefer simplification to “good planning”: “Most of these principles, whether labeled ‘growth management,’ ‘smart growth,’ or ‘sustainable development,’ are undoubtedly viewed by many planners as simple good planning practice. But the level of specificity varies...” (Talen and Knapp, 2003:346)

revitalization plans or community resiliency strategies. In light of this, we note that, “consistency with the Smart Growth Public Infrastructure Policy Act will be [among the] factors used in determining successful grant proposals.” (NYS. 2014a:84).

Summary

We make the following summary observations about the integration of smart growth into the CFA and the water and sewer agencies that disburse infrastructure funding through the CFA:

- Although the respective water and sewer infrastructure agencies emphasize smart growth principles to varying degrees in the overview of their respective programs, each agency has taken steps to comply with SGPIPA through the CFA process by including a section that assesses an applicant’s adherence to smart growth principles through the application questions.
- Within the overviews of the respective programs, smart growth is referenced under several different sections, depending on the program, including: the introduction, program description, key definitions, eligible projects, selection criteria, and successful applicant requirements.
- In some of the programs, smart growth is only mentioned briefly while in others it is explained in greater detail, more fully operationalizing the concept of smart growth.
- The most forceful and direct incentive to applicants to comply with smart growth principles is probably in the extent to which technical review points are explicitly linked to smart growth principles. Despite the attention given to the topic in other ways, the stated allocation of points does not clearly reinforce smart growth as a priority, at least in ways made obvious to applicants.
- One of smart growth’s characteristics in general and in its articulation in SGPIPA is that it has multiple dimensions. Many typically reinforce each other and tend to be highly correlated even without conscious design. However, a given project may comply with some smart growth criteria more than others, or even raise tensions between them. SGPIPA criteria include several

locational characteristics that are relatively easy to document—especially location in existing municipal centers or areas formally identified as priorities for development—but ways to clearly comply with many of the other criteria are less straightforward. In CFA documents, there are many ways in which smart growth in general or individual elements of smart growth are discussed or supported. However, the relevance or significance of each of the distinct SGPIPA smart growth criteria for particular CFA programs is not clearly articulated.

Food for Thought: An Educator’s Perspective

We suspect that the visibility of SGPIPA in the generic process positioned between applicants and state dollars helps significantly raise awareness of smart growth principles and SGPIPA. Because state agencies and authorities rather than applicants are directly responsible for compliance with SGPIPA, the latter do not have as immediate a need for concern with SGPIPA. As documented elsewhere, many local governments remain unaware of the law or its detailed implication for them.

The fundamental purpose of the CFA materials reviewed is to provide guidance to applicants interested in applying for state economic development funding. From one perspective, inclusion of smart growth questions in the CFA simply adds an extra series of questions to which applicants for funding must submit. But clearly, because smart growth is a formal aspect of NYS law and policy, it is important for applicants for funds, not just the administering state agencies, to be made aware of the relevance of the law to specific project proposals.

Moreover, the CFA process also represents a broader educational opportunity as well. Each reference to smart growth and the SGPIPA in CFA support materials has the potential to help applicants understand the principles themselves. The variety of ways in which state agency compliance with the SGPIPA is supported through the CFA process presents an equally diverse array

of ways to educate applicants about smart growth principles, some subtle and some more direct.

The opportunity to educate applicants extends beyond simply increasing awareness that their chances for funding are linked in part to the degree to which their project complies with smart growth principles. Also possible is increasing understanding of why the law was implemented, and in turn, how their communities can benefit from adhering to smart growth principles.

One way to increase this understanding would be to have links to standard smart growth and SGPIPA documents from the references to smart growth throughout each program area within the CFA Available Resources document. Doing so in the selection criteria section, for example, would seemingly encourage participants to be more thoughtful about how to include smart growth principles in the development of their program.

Concluding Observations

This review of the consistency of the SGPIPA with the consolidated funding application process suggests that both of these relatively recent state innovations have been integrated in significant ways, at least from the perspective of our focus on water and sewer infrastructure. The SGPIPA did not mandate any administrative mechanisms that agencies and authorities needed to adopt to integrate the SGPIPA into their funding application processes. Nevertheless, the state has taken significant advantage of the common framework offered by the CFA to incorporate smart growth screening questions into the routine procedures all CFA applicants for economic development funding must follow. This enables efficiencies in implementation of the SGPIPA from the perspective of both the state and the applicants who might otherwise have to deal with SGPIPA reviews and implementation criteria with less consistency. Over time, it should help local officials and project applicants attain a better understanding of the significance and role of SGPIPA in state priorities.

For the SGPIPA to have real-world impact on water and sewer infrastructure funding and approval decisions of state agencies, it must

influence the decision making outcomes of project review and scoring, not only the administrative procedures of the application process on which we have focused. A full review of the impact of SGPIPA would involve project-by-project analyses of the SGPIPA criteria as they were applied to the prioritization, selection and even execution of all submitted and then completed projects.

This kind of comprehensive, evaluative review exceeds the scope of this report and we do not prejudge what it would reveal. Notably however, Empire State Future (ESF), a coalition/membership organization advocating for smart growth in NYS, has taken its own first step towards such an evaluation (Empire State Future ND). According to ESF's criteria, very little of the requested funding for the 10 regions' top projects was in tension with smart growth precepts. For the 2013 regional priority lists, ESF concluded that about half of the proposed funding was aimed at projects embodying smart growth principles, most of the remaining funds supported projects that did not conflict with the principles, and only 13% of the funding was for priority projects that were "questionable" from a smart growth perspective.

Funding for economic development is typically subject to multiple forces and pressures that do not inherently prioritize smart growth. Therefore, the generally approving report by a smart growth advocacy organization about distribution of economic development funding seems particularly significant.

It is important to underscore that ESF reached these conclusions based on the project priority lists adopted by the 10 Regional Economic Development Councils. These lists represent the conclusive step within each region in prioritizing projects for ultimate State funding. But, as described previously, the state funding agency has the greatest ultimate say in project selection even for funding programs involved in the regionalized CFA process. It is worth noting in this context that ESF's two specifically named "questionable" water and sewer projects (involving the consolidation or extension of water and sewer facilities in ways that could "easily lead to unwanted sprawl") were both funded by Empire State Development in the 2013 CFA round.

The power of SGPIPA, as with all laws, depends

not just on the willingness of those responsible to enforce its provisions or to follow “the letter of the law”. Broadly defined laws in particular are unlikely to be successful unless they can both codify and diffuse a socially acceptable norm of expected behavior. To what extent does and will SGPIPA influence the pre-application process of conceiving and shaping projects so that they are in compliance with smart growth principles? Though difficult to document quantitatively, this, perhaps, is where the greatest potential of the integration of SGPIPA into the CFA exists.

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Appendix

Program Questions: Green Innovation Grant Program

Q_1059

Does the proposed project use, maintain, or improve existing infrastructure? Y/N/Not Relevant. Please explain all responses.

- **Optional Question Header:** Smart Growth **Questions:** The NYS Smart Growth Public Infrastructure Policy Act requires that a project meet the relevant smart growth criterion to the extent practicable. Please respond to the questions below regarding smart growth criteria.
- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** If you are maintaining or improving existing infrastructure, please answer “YES”. If you are building new infrastructure, or expanding infrastructure answer “NO” and provide justification that explains the need to build new infrastructure instead of using or improving existing infrastructure.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1060

Is the proposed project located in a municipal center? Y/N/Not Relevant. Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Municipal Centers are areas of concentrated and mixed land use that serve as centers of various activities (civic, commercial, recreational, and residential, among others). Specific examples include Central Business Districts; Brownfield Opportunity Areas (BOAs); Downtowns in Local Waterfront Revitalization Program (LWRP) Areas; Transit-Oriented Development, Environmental Justice Areas and Hardship Areas; in many

instances, an entire city, village or hamlet can be considered a municipal center. This definition can include development “adjacent to municipal centers” and a “future municipal center” – an area planned and zoned to be a municipal center.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1061

Is the proposed project located in a developed area or an area designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan? Y/N/Not Relevant. Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Please explain how your project advances infill development or redevelopment in existing developed areas consistent with an approved plan. Infill development includes redevelopment, rehabilitation and new development between existing buildings on vacant or under-utilized sites.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1062

Will the proposed project protect, preserve and enhance the State’s resources, including

agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources? Y/N/Not Relevant.

Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Beyond simply avoiding or minimizing negative environmental impacts, please indicate the resources that may be impacted by your project and how your project will preserve and enhance these resources.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1063

Will the proposed project foster mixed land uses and compact development, downtown revitalization, Brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups? Y/N/Not Relevant.

Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Please explain how your project advances these objectives and improves the quality of life in your community.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1064

Will the proposed project provide mobility through transportation choices including improved public transportation and reduced automobile dependency? Y/N/Not Relevant.

Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** There are many alternatives to automobile transportation. Please explain how your project provides or complements alternatives to automobile travel such as bikes, pedestrians, public transit, air travel or rail travel.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1065

Will the proposed project involve coordination between state and local government and inter-municipal and regional planning? Y/N/Not Relevant. Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Identify any interaction between the applicant and any municipal and county governments, planning boards, regional planning associations or similar organizations. Document any outreach by the applicant to these organizations regarding the project and any relevant correspondence.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1066

Will the proposed project involve participation in community based planning and collaboration? Y/N/Not Relevant. Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer

- **Help Text:** Please explain how the project results from an inclusive, multi-stakeholder (including traditionally underserved populations) process of community-based planning and collaboration. To assist with your explanation, identify any affected community groups or organizations with an interest in the proposed project and if the planning process involved outreach to citizens and stakeholders at all stages of development of the project.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1067

Will the proposed project ensure predictability in building and land use codes? Y/N/Not Relevant.

Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:**

Provide any additional relevant information.

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Q_1068

Will the proposed project promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate

to sustain its implementation? Y/N/Not Relevant. Please explain all responses.

- **Question Type:** Smart Growth
- **Required:** Yes
- **Answer Type:** Long Answer
- **Help Text:** Please explain how your project promotes sustainability. For example does your project include buildings and plans that seek to minimize consumption of fossil fuels (coal, petroleum), reduce water usage / consumption, and encourage the use of renewable energy (wind, solar, and geo-thermal).

For specific guidance on rail/port, aviation, and other transportation projects please refer to <https://www.nysdot.gov/programs/RegionalEconomicDevelopmentCouncils>

Water and Sewer Infrastructure: Empire State Development, the Western New York Science & Technology Advanced Manufacturing Plant and NY's Smart Growth Public Infrastructure Policy Act



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Abstract

This report analyzes the implementation of New York State's Smart Growth Public Infrastructure Policy Act (SGPIPA) through the specific example of the Western New York Science & Technology Advanced Manufacturing Plant (STAMP) in the Town of Alabama in Genesee County. We focus on the Empire State Development Corporation's Smart Growth Impact Statement (SGIS) for the project. In accordance with the law, the SGIS "justifies" the high-tech manufacturing project given that the Corporation judged the project unable to meet the legislation's Smart Growth Criteria due to its size, location, and infrastructure requirements. In this instance, state and regional economic development goals were prioritized over key smart growth principles; ESD determined that the STAMP project could not be developed so as to be consistent with seven out of SGPIPA's 10 smart growth criteria. At the same time, it is clear that attention was given to the potential to follow SGPIPA's standards and this influenced the project's design. We examine the balance and tensions between the state's economic development and smart growth goals in the context of this unusual and high profile project.

Three Summary Points of Interest

- *The Western New York Science & Technology Advanced Manufacturing Plant (STAMP) in Genesee County is a high profile and large-scale proposal that is subject to a Smart Growth Impact Statement under the New York State Smart Growth Public Infrastructure Act of 2010 (SGPIPA). Water and sewer infrastructure are an important project element, but only as one part of a large economic development proposal.*
- *The Empire State Development Corporation's Smart Growth Impact Statement for the STAMP project "justifies" the plan in accordance with SGPIPA due to STAMP's inability to meet seven out of SGPIPA's 10 smart growth criteria, mostly due to its size, location, and infrastructure requirements.*
- *This project is an important if unusual example for SGPIPA because of the large scale and high profile of the project. It shows a case in which state and regional economic goals are prioritized over smart growth goals, although there is clear attention given to smart growth in the project review and design.*

Keywords

Smart Growth Infrastructure Policy Act; Western New York Science & Technology Advanced Manufacturing Plant; Empire State Development Corporation; Smart Growth Impact Statements; Genesee County Economic Development Center; Town of Alabama; Water and Stormwater Infrastructure; Smart Growth Criteria; Empire State Development Smart Growth Advisory Committee; Genesee County Smart Growth Plan; SEQRA (New York State Environmental Quality Review Act)

Introduction

This report is one of several intended to familiarize readers with the way New York's Smart Growth Public Infrastructure Policy Act (SGPIPA) is being implemented by state agencies which fund or approve water and sewer infrastructure projects. The report consists of a case study analysis of the Empire State Development (ESD) Corporation's Smart Growth Impact Statement for the Western New York Science & Technology Advanced Manufacturing Park (STAMP). This report is one of several intended to familiarize readers with the way New York's SGPIPA is being implemented by state agencies which fund or approve water and sewer infrastructure projects.¹ The report consists of a case study analysis of ESD's Smart Growth Impact Statement for the Western New York STAMP.²

The STAMP case is not being presented here as "typical" of either SGPIPA implementation or of state-supported water and sewer infrastructure projects. Instead it was selected because of the high profile and large scale of the proposal, the amount of detail that was included in the SGPIPA justification statement filed by ESD, and our ability to use this case to illustrate the complexity of the relationship between water/sewer infrastructure, economic development, and smart growth policy. As will be seen, unlike some other projects in which compliance with most of the state's smart growth principles is an easy stretch because of the inherent character and goals of the project, in the STAMP case there are multiple tensions with smart growth principles due to competing priorities.

Our other reports consider the implementation, broadly speaking, of SGPIPA by state agencies with environmental and economic development oriented missions with a primary or major programmatic focus on sewer and water infrastructure. In those reports we sought to understand how SGPIPA criteria compliance is evaluated and how, if at all, the results of the assessment play into whether or

not a project is funded. We did this by examining several smart growth assessments conducted by the EFC and DOH for sewer and water infrastructure projects as well as the way that SGPIPA has been integrated into the Consolidated Funding Application process relative to programs that fund sewer and water infrastructure projects.

By way of contrast, this case study involves a single project under the purview of the ESD, the state's leading economic development agency. ESD has more grant resources potentially available, by far, than any other agency or authority participating in the state's Regional Economic Development Council awards process. Considering how SGPIPA is being implemented by an agency that funds sewer and water in the context of its economic development mission helps provide a more comprehensive view of the influence of SGPIPA on New York State (NYS).

Following an overview of smart growth and the SGPIPA in NYS, this report describes ESD's Smart Growth Impact Assessment "tool" and its use for the STAMP project. The report concludes with a brief discussion and summary section.

Empire State Development's Smart Growth Impact Statements

SGPIPA requires each state agency to form a Smart Growth Advisory Committee that is charged with guiding the agency's compliance with SGPIPA requirements. A regular responsibility of the Smart Growth Advisory Committee is the review of infrastructure project proposals the agency intends to approve, undertake, support or finance, and to advise the agency's chief executive officer whether the project complies with the relevant SGPIPA smart growth principles to the *extent practicable*. So long as these smart growth principles have been incorporated into the proposed project to the extent practicable, the agency is justified to approve the project for funding. Determining relevance and practicability requires reasoned judgment. Some SGPIPA principles, for example those involving transportation mobility or predictable land use codes, may have few implications for many routine

¹ For all references to SGPIPA, or Environmental Conservation Law, Article 6, see NYS ECL, ND.

² It is important to remember that the findings herein are specific to this case and should not be generalized to other agencies that fund sewer and water infrastructure or to Empire State Development's Smart Growth Impact Assessments for other projects.

water and sewer infrastructure investments while being important in other instances.

To support its Smart Growth Impact Assessment review, ESD uses a Smart Growth Impact Statement (SGIS) form. At the top of the form, the agency describes the Statement as “a tool to assist [the agency’s] Smart Growth Advisory Committee in deliberations to determine whether an ESD-funded project is consistent with the State Smart Growth Public Policy Infrastructure Criteria.” After the introduction to the form, there is a section devoted to identification, including the form completion date, and the project name and number, and a question asking whether or not any other entities have issued an SGIS about the project, with a requirement that if another statement has been issued, it be attached. The *smart growth impact assessment* form for the STAMP project indicates that an SGIS for the project was also prepared by the Genesee County Economic Development Center (NYS ESD 2012).

Next, the form includes a set of 10 questions; one addressing each of the state’s 10 smart growth criteria. Each question provides a multiple choice response option (“yes”, “no” or “not relevant”) for all questions except one (#2), followed by space for a brief explanation. Question 2 focuses on project location and includes a check-off list of characteristics used to determine whether or not a project is located wholly or partially in a “municipal center”. Although not word-for-word, the questions are essentially those that applicants applying to ESD for infrastructure funding through the Consolidated Funding Application (CFA) process are required to complete. The explanation section for Question 2 is also prefaced by instructions to provide information about adjacency and the extent of connectivity to municipal centers, and also whether the site is identified in municipal or regional comprehensive plans for future concentrated development. This is important because SGPIPA stipulates that the municipal centers “shall also include” areas that are not “in” municipal centers but nevertheless have these other qualities.

In addition to the section with the 10 smart growth questions, the agency form includes three other sections: “ESD Smart Growth Advisory Committee Finding,” “Attestation,” and “Statement of Justification.” The “Finding Section” is where the agency indicates that it has reviewed the

information provided and determined one of the following:

1. *The project was developed in general consistency with the relevant Smart Growth Criteria;*
2. *The project was not developed in general consistency with the relevant Smart Growth Criteria; or*
3. *It was impracticable to develop [the] project in a manner consistent with the relevant Smart Growth Criteria* (from ESD’s STAMP project SGIS)

This is followed by an “Attestation” section where the agency head (ESD Chief Executive Officer) or a designee formally attests with a signature to the “finding” regarding the project’s compliance with smart growth criteria.

Finally, if the agency finds that consistency with the state’s smart growth criteria was impracticable (Option 3), a “Statement of Justification” section is added. The grounds on which the impracticability finding is based are articulated in the “Statement of Justification.”

ESD’s Smart Growth Impact Assessment of the STAMP Project

The Western New York Science & Technology Advanced Manufacturing Park

The Western New York Science & Technology Advanced Manufacturing Park (STAMP) is an initiative of the Genesee County Economic Development Center and partners to create a “shovel-ready mega site (1,279 acres)” targeted to “green-technology and advanced manufacturing clean technology, renewable energy, and energy efficiency products” (GCEDC ND; NYS ESD 2012:11). Specifically the site is designed for nanotech-oriented manufacturing (semiconductor, flat panel display, solar/PV), advanced manufacturing, and large scale bio-manufacturing projects” (GCEDC ND). The ESD’s SGIS further anticipates the creation of more than 9,000 “high-paying technology related onsite jobs”. Promoted by the state as a western companion to Luther Forest, the high-tech manufacturing hub built on

a “shovel ready” site in Saratoga County, STAMP is to be located in the Town of Alabama, Genesee County, New York. Though adjacent to a small hamlet, most of the land in question is “currently used for farming and agricultural uses” (NYS ESD 2012:1). The project scope, at “full build-out”:

...will include 6,130,000 square feet of development, including technology manufacturing facilities; flex space and support facilities; office space; retail support uses; a multi-use town hall building site; and a network of open space and trails that meander throughout the Project site (NYS ESD 2012:1).

As presented in the 2012 Draft Generic Environmental Impact Statement (DGEIS), the STAMP project has a number of site-related implications for infrastructure, among them for water and stormwater service. For example, the preliminary stormwater management report suggests that stormwater capture facilities with storage capacity of approximately 130 acre feet would be necessary to manage a 100-year storm event, along with other mitigations. A preliminary water service report notes that the provision of perhaps three million gallons per day of water to this rural site at full build out would be “challenging and complex”, involving tens of millions of dollars in capital costs alone (WNYSTAMP ND).

Assessment and Determination of Smart Growth Criteria Compliance

ESD’s SGIS, which references the DGEIS, indicates that development of the STAMP process would require new road, water, sewer, gas, and telecommunications infrastructure. Special note is taken of the need to develop access to multiple sources of water and to construct an onsite wastewater treatment plant.

For ESD’s smart growth criteria compliance assessment, it was determined that the project complies with three of the 10 smart growth criteria:

1. demonstrates coordination among state, regional, and local planning and governmental officials; (criterion 7);
2. involves community based planning and collaboration (criterion 8); and

3. promotes sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by...encouraging broad based public involvement in the developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.” (criterion 10).

In supporting arguments, the SGIS stated that the project was one which involved “extensive” community engagement, planning, and inter-governmental and agency collaboration. It also mentions several components of the project consistent with the “sustainability” criterion, including buildings designed to meet energy efficient LEED standards to the “maximum extent practicable”, several design and location revisions in response to community input, and “mitigation strategies imposed... as part of the SEQR process”.

The assessment also determined that the project does not meet the SGPIPA’s other seven criteria. For all 10 of the assessment criteria, an explanation of the determination was provided; for almost all of the seven criteria with which the project does not comply, the explanation makes the case that although the project does not fully comply with these criteria, it has been developed in a way that has taken them into consideration in developing the project to the extent practicable, given other goals of the project.

The SGIS offers, often providing examples, that various project impacts have been mitigated in ways that take smart growth principles into consideration:

- Criterion 1: Although new infrastructure is required, this site allowed for it to be coupled with the use of existing infrastructure; other sites would have required more new infrastructure.
- Criterion 2: The project is not located wholly or partially in a municipal center, and will involve conversion of a minimum of 1,000 acres of largely agricultural land. Nevertheless, the STAMP site is immediately adjacent to a municipal center, the Hamlet of Alabama, and the Hamlet is designated as a growth area in the County Smart Growth Plan. In further mitigation, the site is also being designed “to visually integrate into the existing setting”; the portion of the site closest

to the existing adjacent Hamlet of Alabama will include buildings that are similar to the character of that community; that portion of the site closest to agricultural land will involve a “scaled transition to neighboring farmland”; and the “larger technology manufacturing structures” will be clustered together away from either. Apparently due to the scale of development on farmland acreage larger than the Hamlet itself, the noted adjacency to the municipal growth center did not lead to a determination of full compliance with the municipal center criterion.

- Criterion 3: As noted immediately above, although the project is not located in a currently developed area or one designated for infill in an approved planning document, the location is adjacent to a “designated growth area per the Genesee County Smart Growth Plan”. The SGIS also notes that the “Town of Alabama Board is considering an amendment to its Comprehensive Plan to designate the site for the development of STAMP.” That amendment was later approved.
- Criterion 4: Although the project converts to development rather than preserves the state’s resources, specifically including agricultural lands, wetlands, and archeological and historic resources, it (1) ensures that current land use will be maintained until construction of each area is initiated; (2) the site has been designed to impact 9.54 acres of low-to medium quality wetlands and protect 112 acres of high-quality wetlands; and (3) ESD has worked with NYS Office of Parks and Recreation to ensure (with documentation) that the archeological resources are investigated and handled according to policy.
- Criterion 5: Although the project does not foster mixed land uses and compact development, downtown revitalization, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and/or the integration of all income and age groups, it does: (1) provide for light mixed use (large and small scale manufacturing with retail and professional uses); (2) create a public trail network connecting open space and recreational areas, as well as a green space buffer zone to “preserve the visual character”; and (3) help the “Hamlet of Alabama grow and thrive as

a municipal center.”

- Criterion 6: Although the project does not provide mobility through enhanced public transportation choices and reduced automobile dependency in getting workers to the campus, it “has been designed to reduce automobile dependency while workers are present” via walking/biking trails and onsite access to “support services (coffee shops, cleaners, banking, etc.)”.
- Criterion 9: Although the project is not consistent with local building and land use codes, the Town of Alabama has been asked to “create a special Technology Zoning District” with appropriate codes and building permits that “will govern all development on the Project site”.

In sum, based on its “review of the available information,” the ESD Smart Growth Advisory Committee found, “It was impracticable to develop [the STAMP] project in a manner consistent with the relevant Smart Growth Criteria.” A review of the justification statement suggests that three considerations, in particular, were the grounds for the determination of impracticability: the project’s size, location and infrastructure requirements.

According to ESD, the project required a site to be located near the thruway, midway between Rochester and Buffalo, on a large, flat landscape of 1,000 acres and within easy access to existing power, water, and sewer infrastructure, or said infrastructure that could be expanded with “manageable development costs.” ESD concluded that all of these criteria were met on the Town of Alabama site alone, after numerous alternative sites within Genesee County were considered over a 15-18 month time frame. Furthermore, according to the justification, “potential significant adverse impacts” associated with the location of the project were “extensively identified and mitigated with input from the public, through public meetings in both the feasibility/site alternative analysis and GEIS process phases.”

Discussion and Conclusions

The STAMP project directly impacts more than 1,200 acres of mostly agricultural land, including significant acreage of prime farmland soils. STAMP was judged inconsistent with several of what are

arguably the most crucial and distinctive SGPIPA criteria, like locating the project in a developed area or in one designated in (pre) existing planning documents as suitable for development. It seems clear from the ESD's impact assessment that in this instance competing priorities—state and regional economic development goals—carried more weight than the multi-faceted goals of promoting smart growth that are articulated in SGPIPA.

These conclusions are stated forthrightly by the ESD itself in its SGIS; as noted, ESD determined that the STAMP project could not be developed in a manner that is consistent with seven of SGPIPA's 10 smart growth criteria. ESD also emphasized the overarching project goal of attracting green and advanced technology firms, plus the need for a site like the one proposed for STAMP to “keep New York State competitive and attract advanced manufacturing projects”.

In its justification statement, ESD stressed the lack of alternative sites with the necessary size and other characteristics suitable for the envisioned development; in view of SGPIPA criteria ESD emphasized in contrast the STAMP site's access to existing infrastructure resources (e.g., I-90, electric transmission lines, two “redundant municipal water supplies”).

Most of the SGIS discussion focuses on the site itself, and on related impacts to the site and the nearby community and landscape. The cited potential for positive regional employment and development impacts, the acknowledgement that most workers will commute to the site by automobile, the degree of intermunicipal and certain aspects of interagency coordination, and the declared consistency with local and regional plans all are indications of some important attention to issues that go beyond site planning considerations. Nevertheless, there is overall only a weak connection made in the SGIS to the larger impacts that might be associated with development on this scale and employment growth of 9,000.

Most surprisingly in light of smart growth as a response to the historical movement of residents and workers out of urban centers, the SGIS indicates that because there is no housing proposed onsite, the SGPIPA criterion about fostering “diversity and affordability of housing in proximity to places of employment, recreational

and commercial development” is simply “not applicable”. It is curious for a project of this scale and specific ambitions for growth that no mention in the SGIS is made in relation to smart growth of the issues that are addressed typically in final and DGEIS sections on “Potential Growth Inducing and Cumulative Impacts”, though the treatment of these questions even in environmental impact statements themselves is often perfunctory (Kay et al., 2010).

The SGIS provides clear evidence that SGPIPA did not create dramatic restraints or force “major” alterations to this single if significant state decision to fund infrastructure in support of a signature economic development project that contravenes multiple smart growth principles. Worth reiterating in this context is the unusual physical scale and high profile rather than routine nature of the STAMP development – one of only a few sites like it envisioned for New York State. From an economic development perspective, it is clear that much was at stake both substantively and symbolically with this proposal.

The Smart Growth Impact Statement and other documentation indicate that attention was given to the potential to conform to SGPIPA standards, and this attention had influence on select aspects of project design. Indeed, the State's Smart Growth Director has expressed the ambition for the site to “end up being a model for both job creation and sustainable development”, at least in relation to other high tech manufacturing campuses (Hirtzel 2013). According to the county's most recent Smart Growth Plan review, for example, approximately half of the site acreage is to be set aside and protected as conservation areas and open space. Whether or not the STAMP project could or should have been located in a less rural area or altered more dramatically in ways that might have more fully complied with smart growth criteria and still have met ESD's legitimate economic development goals is a question of interest. The state's leading smart growth advocacy organization has made clear their conclusions on this question (Empire State Future 2013). However, this is a question that would require a detailed investigation of the STAMP proposal, an independent review of alternatives, and a series of informed, evaluative judgments that go well beyond the scope of this brief review.

More generally, many advocates of smart growth will presumably see the STAMP project as a stark illustration of the limitations of SGPIPA's ability to promote smart growth by state agencies that have competing agendas and mandates. Many might wish on the basis of this example that SGPIPA had more teeth so that it could act as a stricter controlling mechanism and with greater authority. Advocates of other goals, of course, may be relieved to see that SGPIPA implementation does not close the spigot on state infrastructure spending for economic development priorities even when various central smart growth principles are not supported.

Either way, a close review of the impact statement, coupled with consideration of the intent of SGPIPA, indicates that the modest provisions of the law were being largely observed in the STAMP case.

Concerning intent, SGPIPA bears some similarities to the better institutionalized, broader, and arguably more powerful SEQRA law that established environmental review procedures for most state and local government funded or permitted development projects; SEQRA requires a "hard look" at environmental impacts and mitigation of negative project impacts "to the maximum extent practicable", but does not require that environmental priorities trump all others. The STAMP Smart Growth Impact Assessment exemplifies the similar reality that SGPIPA, like SEQRA, is not designed to compel state agencies to only fund or permit projects that adhere to smart growth or environmental principles. Instead, it seems designed to require that state agencies take smart growth into explicit and formal consideration during their decision making, deliberately weighing the practicality of compliance with each smart growth element, taking advantage of opportunities to comply with smart growth principles, and documenting this evaluative process regardless of the ultimate decision which may be based on other agency priorities.

The endorsement language employed by SGPIPA's legislative sponsors themselves does reflect a range of emphases regarding its intended stringency. As included in the bill jacket,³ the "introducer's memorandum in support of the bill" states forcefully that:

This act would require these state infrastructure agencies (SIA) to fund infrastructure in a manner

that is consistent with smart growth criteria... This bill would require state infrastructure funding to be consistent with smart growth principles, with priority given to existing infrastructure and projects that are consistent with local governments' plans for development."

This clarity is tempered elsewhere in the memo only indirectly, with a nod to the possibility of inconsistency with smart growth insofar as the bill "requires the head of the SIA to confirm in a written Smart Growth Impact statement that the proposed project meets the smart growth criteria, or give reasons as to *why it does not meet the criteria*". In contrast, another sponsor's letter of support in the bill jacket has a much softer interpretation closer to that which appears to have guided the STAMP review:

Smart Growth Public Infrastructure Act seeks to incorporate smart growth principles in the decision-making process by state agencies and authorities for use in siting infrastructure projects.... Ultimately, this legislation is designed to foster positive economic development while protecting the state's environment and natural resources.... [The] Act does not require that infrastructure decisions follow smart growth principles. It simply requires that a smart growth analysis takes place and that written findings be issued. Consideration of anti-sprawl principles is a preferred planning practice. This measure will incorporate such an analysis in government decisions.

In considering the STAMP case alone, some critics of SGPIPA from either a pro or con perspective might further conclude that the law did little more than require the ESD to generate a new layer of rationalization and additional paperwork for a major economic development project that was already destined to proceed on the momentum of its promise of good jobs and rare economic development potential.

However, there is also a more open reading of the impact of SGPIPA possible here. The STAMP project

³ Accessed August 21, 2014, <http://image.iarchives.nysed.gov/images/images/171920.pdf>

documentation suggests that ESD's implementation of the SGPIPA did result in ESD giving explicit, public consideration to smart growth principles in its evaluation of a proposal for infrastructure funding. Without the law, the tradeoffs in state and local goals being made might have not been nearly as explicit, and even given the required SEQRA review, some smart growth considerations might not have been publicly addressed at all. Thus the agency, applicant, public, and others can all make their own judgments about the logic of the funding decision and its implications for competing priorities within the smart growth criteria themselves, not to mention with other priorities altogether. Requiring decisions between competing policy priorities to be justified publicly and on the record has value in a democracy.

It is worth noting further in this discussion that Genesee County was one of the earliest counties to take formal smart growth planning seriously, adopting a Genesee County Smart Growth Plan in 2001 and updating it regularly in the intervening years. The plan arose primarily out of planning concerns about the potential for public water infrastructure extensions to stimulate new (mostly residential) development inconsistent with the county's smart growth goals. The SEQRA review for STAMP documents that both the County Smart Growth and relevant town comprehensive plans have multiple goals. Some are expected to be enhanced by STAMP, but both the county and town plans place a premium on the preservation of agriculture.

Thus, an appendix to the DGEIS for the STAMP project is straightforwardly named "Proposed Amendments to the Oakfield Alabama Comprehensive Plan to Establish the Western New York Science and Technology Advanced Manufacturing Park". This appendix identifies clear inconsistencies of the STAMP project with both the existing county and local plans. It goes on to suggest the revisions the county would have to make to its Smart Growth Plan's designated "Smart Growth development areas" and suggests that the Town Comprehensive Plan "must be formally amended if the project is to proceed."

According to press accounts and the formal 2013 Review of the County Smart Growth Plan, versions

of the amendments at both levels of government were subsequently enacted (Mrozek 2013). The point here is that, at least on the basis of the kind of information that can be gleaned from public secondary sources, the decision to reshuffle or accommodate local smart growth priorities was undertaken by local government in concordance with ESD; the changes did not reflect state economic development priorities alone. Although not a formal policy, it seems unlikely that state agencies under existing law would, in a home rule state, impose significantly more restrictive definitions of smart growth within the loose confines of SGPIPA than are defined by local governments themselves.

Because of the several unique aspects of the STAMP case, it stands out as an instructive example of SGPIPA implementation, but on its own stands apart as a probable outlier. SGPIPA even in this instance required that concerted, public attention be given by ESD to smart growth principles. Insofar as the case helps applicants for other state infrastructure funds understand that their ability to engage in thoughtful and intentional deliberation around the incorporation of smart growth principles might (at least to some degree) impact their eligibility for funding, an awareness lacking in many jurisdictions, the case could even help advance the adoption of smart growth principles in New York State.

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The Smart Growth Public Infrastructure Policy Act and New York's Local Governments



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Abstract

Unlike New York State infrastructure agencies and authorities, local governments are not directly subject to the Smart Growth Public Infrastructure Policy Act. However, because many of them turn to state infrastructure agencies for support with local infrastructure projects, the law can indirectly be important for them. Moreover, while the state can set priorities for infrastructure it funds, the broader goal of enhancing smart growth depends to a significant extent on the eagerness of local governments to align their priorities and authorities in the same direction. Based on responses to a scientifically randomized sample of New York's cities, towns and villages, this report summarizes the awareness and familiarity of municipal leaders with the law and its significance, especially with respect to water and sewer infrastructure. The report also assesses their perspectives on the law and its consistency and overlap with local land use policies and goals.

Summary Points of Interest

- *With or without smart growth, local government investment in infrastructure is widely agreed to be inadequate. The cumulative problems of “deferred investment” in deteriorating infrastructure and the widespread need for greater infrastructure investment are well documented if less well heeded.*
- *Forty-one percent of the responding municipal leaders were aware of the existence of SGPIPA before taking the survey and about 1 in 5 of the respondents overall had the deeper knowledge that SGPIPA could influence state decisions to fund “your municipality’s infrastructure applications”. While this level of awareness is lower than desirable, it is significant for a law that does not directly apply to municipalities. Sixty-one percent of respondents expressed interest in more “general” information about the law, and an additional 11% were interested in SGPIPA’s relation to specific topics including transportation, water and wastewater, and other topics.*
- *Since the passage of SGPIPA, 38% of municipal leaders reported seeking infrastructure funding from the state; among these applications for water and wastewater infrastructure held a prominent place: two-fifths (40%, or 15% of all respondents) had applied for water supply infrastructure and just over half (51%, or 19% of all respondents) for the treatment of wastewater or management of stormwater. Nearly three-quarters of applicants for funding said they did not know whether or not SGPIPA had influenced the success of their application.*
- *Among all respondents, including those who had not been familiar with SGPIPA before receiving the survey, more than half thought it likely they would during the next several years turn to the state for infrastructure financing assistance for water, and an equal number for sewer/wastewater projects. Awareness of SGPIPA was highest among those expecting to apply for funding. Among all respondents, a plurality (36%) felt SGPIPA would make not make a difference for the competitiveness of their funding applications, and more felt it would make success harder (21%) than easier (13%).*
- *Just under one-third of the respondents reported that their municipalities had adopted some kind of local policy or law intended to address sprawl, but almost nine out of 10 had adopted local measures that were in concordance with one or more of the state’s smart growth criteria. However, only two of the state-specified smart growth goals were supported by local policy in over half of the responding municipalities: 1) the protection of natural, agricultural, or historical resources and 2) ensuring that building and land use codes are fair and/or predictable.*

Key Words:

SGPIPA, municipal opinion survey, smart growth policy, local government.

What is the issue?

When New York State (NYS) enacted its first major piece of legislation explicitly designed to address sprawling development patterns through the remedy of “smart growth”, the new law was written to directly influence the behavior of state infrastructure agencies and authorities only. Since the law’s enactment, the affected state entities have been individually engaged with the task of integrating the law’s requirements into their routine protocols and operations.

Local governments are not directly subject to any provision of the law. However, because many of them turn to state infrastructure agencies for support with local infrastructure projects, the law can indirectly be important for them. As state agencies change both their procedures and funding priorities to be better aligned with the law, local municipalities must both absorb and provide new smart growth relevant information in order to apply for state infrastructure support. Moreover, designing proposals to be in harmony with state smart growth principles would, for many municipalities, make their applications more competitive.

Despite its potential significance for municipalities, their familiarity with this state law has not been systematically assessed. Especially because it does not apply to them directly, even rudimentary awareness of the law cannot be taken for granted. How many local governments are aware of the state’s smart growth law, now several years old? What do they know about the law and its consequences? Do they perceive the law as being largely in alignment or conflict with their own local land use policies and goals? These and related questions are addressed in this report.

Background

The NYS Smart Growth Public Infrastructure Policy Act (SGPIPA) was passed with broad legislative support and signed into law in 2010. The legislation was motivated by the shared desire to address the array of economic, environmental, and social problems that are created or exacerbated by sprawling land use development patterns. The law is framed generally in terms of its “fiscal prudence”.

More pointedly, the legislation was designed to minimize the role that the state itself plays in “unnecessarily” subsidizing costly sprawl through its support of new or expanded infrastructure of all kinds. To that end, the heart of the law is a requirement that all state infrastructure agencies file Smart Growth Impact Statements regarding each of their decisions to fund or develop infrastructure. The statements document how infrastructure projects comply with the state’s smart growth principles; significantly, these principles are formally defined in state law for the first time. If compliance is determined to be impracticable, the agency must detail this determination in a “statement of justification.” Thus, while the law does not weight the several and varied smart growth principles over all other considerations, it does require state agencies to take them into account and to publicly document the reasons why compliance with them is impracticable, if this is the case.

Multiple factors influence the pattern of growth and development, and whether it ends up more closely resembling sprawl or smart growth. The location, scale, and design of public infrastructure is one of those influential factors, one that is by definition provided by or otherwise controlled to some degree by the public (i.e., different levels of government). In NYS, however, cities, towns, and villages have been delegated the leading and most powerful regulatory authority for controlling the patterns of land use development within their own boundaries. While the state can set priorities for infrastructure it funds, the broader goal of enhancing smart growth depends to a significant extent on the eagerness of local governments to align their priorities and authorities in the same direction.

With or without smart growth, local government investment in infrastructure is widely agreed to be inadequate. The cumulative problems of “deferred investment” in deteriorating infrastructure and the widespread need for greater infrastructure investment are well documented if less well heeded. The American Society for Civil Engineers’ (ASCE) most recent report on the state of the nation’s infrastructure assigns it an overall grade of D+. It dispenses a worse grade of D to the drinking water and wastewater components of that infrastructure

that are of special interest in this report. The same ASCE source identifies investment needs in NYS over the next 20 years of \$27 billion for drinking water and \$29.7 billion for wastewater (ASCE 2013). The state's own 20-year estimates from just a few years earlier are significantly higher, at \$38.7 billion for water and \$36.2 billion for wastewater, not to mention a \$175.2 billion need for transportation investment (NYSDOT ND; NYSDEC 2008). In 2012, the State Comptroller estimated a large and growing \$89 billion gap in necessary infrastructure funding, drawing a conclusion that is perhaps self-evident: "local government's challenges of maintaining the water, sewer and transportation infrastructure systems that they are responsible for will bring new pressures on their already fragile finances." (NYSOSC 2012:3)

The Comptroller's 2012 report (NYSOSC 2012:13) explains further that New York's local governments raise nearly two-thirds of their overall revenues for capital through debt. For the remaining revenues they are more dependent on the combination of state and federal sources of aid than on local revenue sources. At the same time, with the exception of the one-shot boost in federal aid provided by the American Recovery and Reinvestment Act, which was enacted to minimize the effects of national financial collapse, trends in the real value of federal and state aid have been flat or declining.

These trends illustrate the "challenges" referenced above. They highlight both the importance of local government access to the scarce capital resources of the state as well as the potential importance of achieving any fiscal efficiencies that are part of the promise of smart growth.

Local Government Smart Growth Survey Responses

To better understand the relationship between SGPIPA and local governments, we emailed a link for an online survey to municipal leaders from a randomly selected sample of 171 of New York's cities, towns, and villages (excluding New York City). The sample was stratified by size. Each of the 33 largest of these municipalities by population was selected. An approximately 9% sample of the smaller municipalities was selected.

Usable responses were received from 82 municipalities, or just under half of those contacted, between late November of 2013 and mid-February of 2014. The responses appear generally representative of the state as judged by comparison between the sample and all municipalities of a few universally available key parameters. Characteristics compared in this way included population, municipal type, and full value of the property tax base.

Mayors, supervisors, or their immediate deputies comprised 79% of the respondents. A variety of other municipal officials or employees (clerks, planners, administrators) delegated by the chief elected official responded for the other municipalities. The respondents were mostly experienced in government: 79% had held a local municipal office for five or more years and only 4% had done so for a year or less (see Appendix, Q. 2).

To account for the sample stratification, the following results are all weighted to ensure that the responses from neither large nor small municipalities were given disproportionate influence. The results, in other words, are broadly representative of the state's municipalities (cities, villages, and towns combined) regardless of their size.

Overall Awareness of SGPIPA is Low

One of the baseline goals of the survey was to gauge awareness both of SGPIPA and its underlying smart growth principles among local government leaders. Overall, awareness was low in absolute terms, if promising given the content and timing of the law itself, at least among the leading elected officials and their representatives who responded. To be sure, someone in government other than the respondent could have been more aware of the law. Also, high levels of awareness would be surprising given the fact that that SGPIPA was signed into law relatively recently and is not among the myriad of state laws, regulations, programs, and mandates that apply directly to local government.

That said, only a minority of respondents claimed even general familiarity with SGPIPA, and many among this minority expressed a lack of clarity about some of the law's major implications. The response analysis shows that only about two out

of five of the responding municipal leaders were aware of the existence of the law before taking the survey (see Appendix, Q. 3).

Even among the 41% minority of all respondents who were “aware” of SGPIPA, the extent of familiarity varied. Awareness is typically much easier to achieve and report than is familiarity, as the following data illustrate. None of the 41% of leaders aware of the law claimed to be “very familiar” with it, though 59% of this subgroup said they were “somewhat familiar” (Q. 5). Only a slightly smaller fraction, near half (52%), of the “aware” group, or about one in five of the respondents overall, had the deeper knowledge that SGPIPA could influence state decisions to fund “your municipality’s infrastructure applications” (Q. 4). A similar proportion (56%) said they were “somewhat or very familiar” (only 4% very familiar) with the particular definition of smart growth as articulated in SGPIPA (Q. 6). In sum, familiarity that went deeper than a general awareness of the law was expressed by respondents from roughly a fifth to a quarter of the municipalities in the state.

It is helpful to contrast these results about SGPIPA, a specific and relatively new law, with awareness of smart growth in general. A reasonable expectation might be that more leaders would feel familiar with the general concept than with the specific legislation. This expectation is supported by the survey results. For example, 13% of the respondents said they were “very familiar” with smart growth in general, but even among those aware of SGPIPA, none claimed to be “very familiar” with the law (Q. 13 and 5). Also, only a small fraction (4%) of those aware of the law (and less than 2% of all respondents) were “very familiar” with SGPIPA’s definition of smart growth (Q. 6). Similarly, the 27% of the respondents who said they were not at all familiar with the general concept of smart growth (though another 7% didn’t answer this question and might fairly be added to the 27%) is a much smaller group than the 59% of respondents who were not aware of SGPIPA prior to being contacted (Q. 13 and 3).

One consequence of the lack of information and familiarity with SGPIPA is a widespread interest in getting more information. Just 12% of all respondents were aware of any information that might have been provided to them directly by a state agency or authority alerting them to SGPIPA or any

of the law’s smart growth criteria. Sixty-one percent of respondents expressed interest in more “general” information about the law, and an additional 11% were interested in SGPIPA’s relation to specific topics such as roadway improvements, stormwater management, broadband and public water for underserved areas, strategies for enhancing grant competitiveness consistent with the law, and its applicability to “small rural towns”. Only 19% said they already had adequate information. Whether additional information was of interest or not was unrelated to prior awareness of SGPIPA, nor was there a large difference by municipal type (Q. 25).

Local Government Infrastructure: More than Half Involved in Water or Wastewater Projects

As noted above, because compliance with SGPIPA is the responsibility of state agencies and authorities rather than local governments, the law is relevant to local governments only indirectly, and even then really only insofar as they seek assistance from the state for their infrastructure projects. For this reason, we queried survey recipients about both their recent involvement in various kinds of local infrastructure development, and also whether they anticipated applying to the state’s infrastructure programs in the near future (see next section).

The first question gauged the areas of local infrastructure involvement. The questionnaire asked whether the municipality had “approved, undertaken, financed, or supported” nine named and one “other” categories of infrastructure projects within the previous five years. Respondents from nearly all the municipalities (93%) reported activity in one or more of the categories, and 86% listed activity in one to four categories. As expected, road and bridge projects were by far the most frequently mentioned (72%); over a third of respondents selected road and bridge infrastructure and no other kind. Also quite frequently reported were water supply (45% of all respondents) and sewage and wastewater (39%) infrastructure. Over half (53%) of all respondents reported either water or sewage/wastewater activity, and 30% mentioned both.

Other types of infrastructure selected by a good fraction of respondents included housing (21%), energy (17%) and telecommunications (14%). Less than a tenth of respondents mentioned education, health care, “other transportation” or “other” kinds of infrastructure (see Appendix, Q. 9). Presumably, these measures are reasonably accurate reflections of the prevalence of local infrastructure activity. However, because the question was essentially in a yes/no format for each category, the responses do not distinguish between multiple, large scale, or costly infrastructure investments versus those that might be small or minor.

Local Government Infrastructure: Smart Growth Funding from New York State

The question just discussed focused on types of infrastructure projects in which local governments are involved, but not on funding sources. A second question turned to that issue more directly, though without as much detail on infrastructure type: “Since the State Smart Growth Act was passed in 2010, has your municipality applied for infrastructure funding or approval from any State agency or authority, Regional Economic Development Council (REDC), or Consolidated Fund Application (CFA) process, or the New York State Cleaner, Greener funding program?” In contrast to the roughly nine out of ten respondents who reported supporting at least some kind of local infrastructure project within the previous five years, in response to this question (covering the somewhat shorter time period since SGPIPA had been enacted) only 38% of them said they had sought funding from the state; in addition, 10% didn’t know, 8% didn’t answer, and the residual 44% said they had sought no such funding (see Appendix, Q. 18).

Within the minority group that had sought funding, applications for water and wastewater infrastructure held a prominent place: two-fifths (40%, or 15% of all respondents) of these municipalities had applied for water supply

infrastructure and just over half (51%, or 19% of all respondents) for the treatment of wastewater or management of stormwater (Q. 19 and 20).

Consistency with SGPIPA

Some details were requested in the survey about the relationship between applications to the state for funding and smart growth elements of the applications. Again within the 38% minority group that had sought funding from the state, almost half (48%) answered affirmatively to the question, “To the best of your knowledge, did your municipality take into account any of the Act’s Smart Growth criteria in formulating any of the applications”; 30% didn’t know and only 22% responded no (See Appendix, Q. 21). The small group of applicants answering affirmatively to this question (18%; or 48% of the 38%)¹ was asked which of the long list of specific smart growth criteria defined in SGPIPA were cited as part of any of their municipality’s infrastructure applications to the state.

Four of the criteria were mentioned by more than half of this group: prioritizing existing infrastructure and considering the needs of future generations each were mentioned by 61%, protecting natural, agricultural or historic resources was chosen by 54%, and encouraging community based planning by 53%. Most of the rest of the criteria were cited by somewhere between 30% and 50% of them. The criteria least frequently mentioned by this group were channeling projects to areas designated for development (24%), ensuring that land use codes are fair and predictable (22%), promoting sustainability by reducing greenhouse gas emissions (8%) and improving public transportation (7%) (see Appendix, Q. 22).

Another perspective on the way SGPIPA has mapped onto local infrastructure applications can be gleaned from the responses to the question, “To the best of your knowledge, are your municipality’s current infrastructure applications to state agencies largely consistent with the Act’s Smart Growth criteria?” A very small number (6%) answered no to this question, but we did not ask any follow

¹ The small number of respondents to this question raises an extra note of caution as to the robustness of the numbers reported next.

up questions about the kind of infrastructure involved or why this might be the case (e.g., lack of knowledge about SGPIPA, other over-riding priorities?) A plurality of respondents (38%) were confident that their current applications were consistent with SGPIPA. However, as with more general findings about lack of awareness, an almost equal number (36%) did not know one way or the other. In this case respondents from towns were disproportionately likely to answer that their responses were consistent, while those from villages were disproportionately likely to say they didn't know.

Just 14% of respondents said this question about application consistency didn't apply to their municipalities at all (and an additional 6% didn't answer) (Q. 16). There are various reasons the question might not have seemed applicable, for example respondents who felt the law didn't generally apply to their context or perhaps even more obviously that the municipality had no current infrastructure applications. This latter interpretation of the "doesn't apply" responses might be placed in the context of the 7% who had earlier reported no infrastructure projects of any kind in their municipalities during the preceding five years, though both the time frame (past versus present) and framing of the questions (undertaking infrastructure projects at all versus seeking state funding for them) are different.

Lastly, two other results reflect further an important lack of local clarity about the significance of SGPIPA for the competitiveness of local infrastructure applications to state agencies. When just the applicants for state infrastructure funding were asked, "To the best of your knowledge, has the Act's Smart Growth criteria had any influence on whether or not your applications were approved or funded?", 74% said they did not know (8% said yes, 18% no) (Q. 23). When everyone, regardless of whether they had applied for funds or not, and regardless of what they had known about SGPIPA prior to responding to the survey, was asked near the end of the survey, "Based on what you know about the State Smart Growth Act now, do you think that implementation of the Act will affect your municipality's ability to fund infrastructure projects?" there was a higher level of confidence in answering this question. A significant proportion

(26%) did not respond to the question at all, while 4% said the Act just did not apply to their situation. However a plurality of respondents (36%) felt SGPIPA would not make a difference either way. In addition a larger fraction thought it would make it harder to fund projects (21%) than easier to fund (13%) (Q. 24). Somewhat counter-intuitively, though the robustness of this result is again questionable due to small numbers of respondents in each category, additional comparisons show a tendency for a disproportionately large fraction of town leaders to think SGPIPA made funding easier and for village/city leaders to think it made funding harder.

Local Government Infrastructure: Funding from Local and Regional Authorities

As SGPIPA is being implemented, there remains some lack of clarity about the inclusiveness of the definition of state agencies and authorities that fall under the jurisdiction of the law. Though only a small number of individual major agencies are named in the law, by some counts many hundreds of other agencies and authorities in NYS might also be covered by a broad interpretation of SGPIPA language. Mostly to assess the potential importance of this definitional coverage for SGPIPA, but also to provide a broader view of water and sewer infrastructure funding, we repeated the prior question about applications for infrastructure funding or approval since the passage of SGPIPA. Instead of asking about state funding sources, we asked in this version if there had been applications to any local, county or regional water or sewer authorities. The answer was "yes" from 25% of respondents (see Appendix, Q. 17). We did not assess which local water and sewer authorities or agencies were involved, whether they had adopted protocols to comply with SGPIPA, or whether local governments were applying to state and to local agencies for all or parts of the same or different projects. However, we did find that of the municipalities who had applied to a regional/county/local water or sewer authority, about a third (36%) had also applied to the state for water

infrastructure support while a notably larger fraction (81%) had also applied to the state for support of wastewater or stormwater management infrastructure.

Local Government Infrastructure: The Next Five Years

The question discussed above about state support for actual infrastructure activity during the previous five years was followed up by a matching question about the likelihood that the municipality would seek state financing for infrastructure during the next five years. Over half (54%) thought it likely (somewhat or very) they would turn to the state for infrastructure financing assistance for water projects. The same total of 54% anticipated applying for sewer/wastewater projects, though a smaller proportion responded with “very likely” compared to the response about water projects. Curiously, given the comparatively much larger proportion of respondents involved with transportation infrastructure as reported above, only a slightly larger group of respondents (60%) were expecting to apply to the state for road/bridge financing during this time period (see Appendix, Q. 10). This may well reflect both a sense of need and opportunity, and perhaps scale and local capacity issues too that result in greater self-reliance of municipalities for some of their road infrastructure work. Much lower proportions of the municipal leaders anticipated seeking state assistance for other categories of infrastructure: 21% for energy, 18% for telecommunications, 17% for housing, 10% for “other transportation”, and a few percent here and there for education, healthcare, and miscellaneous other infrastructure categories (Q. 11).

A positive sign for awareness of smart growth exists in the finding of a clear relationship between the probability of applying for state water or sewer funding in the future and awareness of SGPIPA. Of those very likely to apply for these categories of infrastructure support, more than half (54% water/60% sewer) knew of SGPIPA already. In contrast, among those not at all likely to apply for water or sewer infrastructure funding, familiarity

with SGPIPA was very much less (18% water/24% sewer). A similar pattern is evident in the relation between those very likely to apply and the somewhat lower overall awareness that SGPIPA could influence application competitiveness. In other words, greater familiarity was concentrated among those for whom the law was likely to have the most importance.

Local Anti-Sprawl Policies

As suggested in some of our introductory remarks, policies tend to work best when the different levels of government are working together rather than in tension. To begin to assess this with respect to SGPIPA, we asked respondents about the extent to which smart growth concepts had been incorporated into local municipal law. Just under one third of the respondents (32%) reported that their municipalities had adopted some kind of policy or law intended to address sprawl (See Appendix, Q. 12). Presumably reflecting the historical location of most growth pressures, respondents from towns were disproportionately likely to have adopted such policies, and those from villages and cities disproportionately less likely.

The specific content or aspects of the law or policy were not specified in this initial question. Instead, responses were triggered solely with the reference to “sprawl”. To probe into this issue more thoroughly, we also asked respondents whether they had put any local policies into place that dealt with 18 distinct policy elements of smart growth that are explicitly mentioned in SGPIPA’s formal list of smart growth criteria. In other words, we asked about local adoption of each of these policy elements separately, assuming they would not automatically come to the respondent’s mind with a generic prompt of the terms “sprawl” or “smart growth”. Even though two-thirds of respondents had said they had not adopted any generic anti-sprawl measures as noted above, because of the broad range and number of the policy goals in SGPIPA, a number of which were common before being associated with the label smart growth, it was a little surprising to see that even 10% of respondents would choose, “our local policies do not address any of the above issues” (Q. 14).

Several smart growth criteria are directly related to prioritizing development in particular places: to encourage projects near municipal centers, to revitalize downtown spaces, and to channel projects to areas designated for development. A third of respondents declared their municipalities had a local policy addressing each of these. This figure is approximately the same proportion, within a percentage point or two, of those who had said they had adopted anti-sprawl policies. Some other distinctive goals of smart growth were said to be supported by local policies in about a quarter of the responding municipalities: prioritizing the use of existing infrastructure (23%), encouraging mixed land use (27%), and increasing the diversity or affordability of housing (24%) (Q. 14).

The protection of natural, agricultural, or historical resources was one of only two smart growth goals supported by local policy in over half (55%) of the cities, villages and towns responding to the survey. The second smart growth goal adopted locally by over half of the responding communities (54%) was to ensure that building and land use codes are fair and/or predictable. The high percentages for these goals clearly exceed the third of respondents who said they had adopted anti-sprawl policies. Although true of all the goals to some extent, these two elements of smart growth are presumably considered important by many respondents for reasons that go beyond any direct or conscious relationship they may have to sprawl or smart growth. Another goal that seems likely to stretch well beyond its association with smart growth, the beautification of public spaces, was a policy in place in 34% of the municipalities (Q. 14).

Two other smart growth goals are similar to the fair/predictable goal in that they have strong procedural aspects and are more like hallmarks of good planning in general than characteristics peculiar to smart growth. Of these, local policy designed to promote coordination between state, local, and regional governments was noted by 41% of respondents and encouraging community-based planning, public participation, or collaborative decision making in 36% (Q. 14). Given the significance of these goals to planning overall, the fact that these numbers did not register higher on the scale deserves closer attention.

Significantly, relatively few respondents said they had implemented any local policies to address the transportation aspects of smart growth, even though these are often considered among its key strategic goals, in part because of the tight relationship between land use patterns and the viability of various transportation options ranging from walking to public transit. For example, only 16% of respondents confirmed the existence of policies intended to reduce automobile dependency. An even smaller fraction (10%) mentioned policies to improve public transportation (Q. 14). It is of course possible though not certain that different language with related intent not mentioned explicitly in SGPIPA, for example “promoting walkability”, would have elicited somewhat higher numbers.

Responses about several of SGPIPA’s more specialized or less traditional policy goals also deserve mention. The redevelopment of brownfields, a local policy reported to be in place in 15% of the municipalities, is a relatively specialized policy, though it has received a great deal of attention from the state and federal governments and is very important in many locations with a prior history of development and contamination.

Next, New York amplified the standard national articulations of smart growth goals in SGPIPA with some explicit uses of the term “sustainability”. The first such sustainability goal, in place in almost a quarter of the responding municipalities (23%), is “to promote sustainability by considering the needs of future generations.” While standard planning almost by definition looks to the future, the longer term viewpoint of explicitly considering the needs of future generations is a much less common guidepost, if a central sustainability concept. The second goal, “to promote sustainability by reducing greenhouse gas emissions”, was noted as a locally adopted policy or law by just 13% of respondents (Q. 14). This might be compared with the fraction of New York’s cities, towns and villages that have adopted the state’s related “Climate Smart Communities” pledge, which is perhaps the most obvious policy that might come to mind in responding to this question. At 8%,² that proportion

² See DEC’s list of 122 (not including counties) at <http://www.dec.ny.gov/energy/56876.html>, accessed August 5, 2014.

is less than but similar to the 13% in our survey who noted the adoption of any kind of local greenhouse gas emission policy that came to mind.

Notice that the frequency with which this group of all respondents selected SGPIPA goals is not a simple mirror image of the frequencies reported above with which the smaller group of recent applicants for state funding had ranked them. For example, ensuring fair/predictable land use codes was among the most common of locally adopted smart growth policies, and among the less frequently cited in state infrastructure applications. Similarly, ensuring the needs of future generations was among the less often mentioned of locally adopted policies, but among the most often cited in the applications (Q. 14 and 22).

After all the survey recipients had reviewed these SGPIPA goals/criteria and stated whether policies in support of these goals were already in place locally, the questionnaire continued by asking if the SGPIPA smart growth criteria were, collectively, “useful guidelines for developing infrastructure projects in your municipality?” Just over two fifths of the respondents (42%), or almost the same proportion who said they were aware of SGPIPA initially, responded “mostly yes”, with only 14% saying “mostly no” and the substantial remainder with no expressed opinion. A few comments from those responding “mostly no” suggested that the goals were irrelevant to their concerns (“our town doesn’t have these issues”) or that even if the issues were relevant, they preferred local responses over state-driven policy (e.g. “Localities are perfectly able to make these decisions on our own without state involvement.”) (Q. 15). It is interesting to observe that essentially the same fraction of respondents said “mostly no” whether they had prior awareness of SGPIPA (14%) or not (16%). In contrast, 62% of those with prior awareness thought the guidelines mostly useful whereas only 35% with no prior awareness thought them mostly useful. This indicates that greater awareness and familiarity with SGPIPA is associated with a greater support of the law’s smart growth goals as being useful, but the direction of cause and effect is not certain.

Conclusions

Our results suggest first and foremost that local government is interested in and has a need for more information about SGPIPA and its relevance for them. Especially given its recent provenance and lack of direct applicability to local government, levels of awareness of the law are promising. However, deeper knowledge of SGPIPA and its implications are still limited. A related issue of state-local coordination and communication is raised by response to questions about local smart growth policy. On the one hand, nine out of 10 municipalities had adopted local measures that were in concordance with one or more of the State’s smart growth criteria. However, this result sets the bar at a low level. It is contrasted with the fact that only two among the suite of State-specified smart growth goals were independently supported by local policy in more than half of responding municipalities.

In NYS most powers over land use controls and hence development are vested with local government. Centralized control over sprawl or promotion of smart growth has inherent limits. SGPIPA directly affects only the role of state infrastructure agencies and authorities; it is designed only to minimize state infrastructure funding that promotes sprawl without articulation of a compelling justification. SGPIPA can have a clear and significant impact on sprawl/smart growth insofar as it changes state infrastructure funding priorities.

But SGPIPA is limited in authority because it does not directly apply to municipalities or project applicants. The law has no relevance for municipalities or developers that do not foresee applying to state infrastructure agencies or authorities. Our results suggest that even leaders in municipalities that have applied may remain unaware how the state’s smart growth criteria can influence their chances for funding. This is not least because the relationship between project competitiveness and the state’s smart growth criteria is not fully articulated. Also, SGPIPA explicitly endorses “concentrated infill development in a municipally approved comprehensive land use plan”. This underscores the importance for SGPIPA implementation of local comprehensive

plans, only some of which endorse smart growth principles on their own. Finally, note that another smart growth criterion of the SGPIPA law is “to coordinate between state and local government and intermunicipal and regional planning”. Ultimately, this reflects an understanding that smart growth policy cannot succeed in New York unless state and local government policies reinforce each other.

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Appendix: Survey Results

1. **“Before taking the survey, would you like to read a summary of the State Smart Growth Act?”**

Possible Responses	Percent
Yes	36
No, I'll just take the survey now	64

All survey participants should have answered this question.

2. **“How long (cumulatively) have you held any public office in this municipality?”**

Possible Responses	Percent
Less than one year	4
One to five years	17
Five to 10 year	37
More than 10 years	42

All survey participants should have answered this question.

3. **“Before today, were you aware of the State Smart Growth Act?”**

Possible Responses	Percent
Yes	41
No	58
Didn't Answer	1

All survey participants should have answered this question.

4. **“Before today, were you aware that some state agencies or authorities might apply the State Smart Growth Act to assess the strength of your municipality's infrastructure applications?”**

Possible Responses	Percent
Yes	52
No	45
Didn't Answer	3

Only survey participants who answered, “yes” in question 3 were directed to respond. Those who answered “no” or didn't answer were directed to skip to question 9.

5. **“On the scale below, please rate how familiar you are personally with the State Smart Growth Act?”**

Possible Responses	Percent
Not at all familiar	14
Somewhat unfamiliar	27
Somewhat familiar	59
Very familiar	0

Only survey participants who answered, “yes” in question 3 were directed to respond.

6. **“The State Smart Growth Act includes specific criteria that define Smart Growth. Using the same scale, how familiar are you with the Act's definition of Smart Growth?”**

Possible Responses	Percent
Not at all familiar	8
Somewhat unfamiliar	24
Somewhat familiar	52
Very familiar	4
Didn't answer	12

Only survey participants who answered, “yes” in question 3 and then anything except, “not at all familiar” in question 5 were directed to respond. Those who answered “not at all familiar” were directed to skip to question 7.

7. **“Has any State agency or authority provided you with information about the State Smart Growth Act or any of the Smart Growth criteria?”**

Possible Responses	Percent
Yes	28
No	62
Didn't Answer	10

Only survey participants who answered, “yes” in question 3 were directed to respond.

8. “Did the information conveyed by the state agency or authority include information about how the State Smart Growth Act might affect your municipality’s applications for infrastructure projects?”

Possible Responses	Percent
Yes	74
No	0
I don’t know	26

Only survey participants who answered, “yes” in question 3 and then answered, “yes” in question 7 were directed to respond.

9. “Has your municipality approved, undertaken, financed, OR supported any of the following types of infrastructure projects during the past five years? (Please check all that apply.)”

Type of infrastructure project	Percent responding “yes”
Water supply infrastructure	45
Sewage and wastewater treatment	39
Roads and bridges	72
Housing infrastructure	21
Education infrastructure	6
Health care infrastructure	6
Telecommunications/ information technology/ broadband infrastructure	14
Energy infrastructure	17
Other transportation infrastructure	10
Other infrastructure projects (please describe)	10 (culverts, drainage control/ flooding mitigation, hydroelectric generation, installed water meters, park facilities, repaired a bridge, sewer repair, sidewalks, sidewalks and public works facilities, storm water and fire house renovation)
I don’t know	3

All survey participants should have answered this question.

10. “On the scale below, how likely is it that your municipality will seek state financing for any water, sewer, or road infrastructure projects during the next five years?”

a. Water supply infrastructure projects

Possible Responses	Percent
Not at all likely	25
Somewhat unlikely	3
Somewhat likely	15
Very likely	39
I don’t know	3
Didn’t answer	15

b. Sewer and/or wastewater treatment infrastructure projects

Possible Responses	Percent
Not at all likely	24
Somewhat unlikely	9
Somewhat likely	24
Very likely	30
I don’t know	1
Didn’t answer	12

c. Road or bridges infrastructure projects

Possible Responses	Percent
Not at all likely	10
Somewhat unlikely	15
Somewhat likely	25
Very likely	35
I don’t know	3
Didn’t answer	12

All survey participants should have answered all parts of this question.

11. "Is it likely that your municipality will seek State financing for any of the following types of infrastructure projects during the next five years? (Check all that apply.)"

Type of infrastructure project	Percent saying "Yes, likely"
Housing	17
Education	3
Health care	4
Telecommunications/ information technology/ broadband	18
Energy	21
Other transportation	10
Other (please describe)	9 (drainage/flooding, greenway trail and park improvements, highway, repaving of village street, replacement bridges, road paving, solid waste management, town hall wastewater treatment)
I don't know	26

All survey participants should have answered this question.

12. "Has your municipality adopted any kind of policies or local laws intended to address the type of growth and development known as "sprawl"?"

Potential Responses	Percent
Yes	32
No	59
I don't know	6
Didn't answer	3

All survey participants should have answered this question.

13. "Using the scale below, how familiar are you personally with the general concept of 'Smart Growth'?"

Potential Responses	Percent
Not at all familiar	27
Somewhat unfamiliar	22
Somewhat familiar	31
Very familiar	13
Didn't answer	7

All survey participants should have answered this question.

14. "The State Smart Growth Act establishes Smart Growth criteria on infrastructure projects, as listed below. Does your municipality have any local policies already in place intended to address any of the listed goals? (Check all that apply.)"

Smart Growth Criteria	Percent saying "Yes"
To prioritize the use of existing infrastructure	23
To encourage projects near municipal centers	34
To channel projects to areas designated for development	35
To protect natural, agricultural, or historical resources	55
To encourage mixed land use	27
To revitalize downtown spaces	33
To increase the diversity or affordability of housing	24
To redevelop brownfields	15
To beautify public spaces	34
To improve public transportation	10
To reduce automobile dependency	16
To promote coordination between state, local, and regional governments	41
To encourage community-based planning, public participation, or collaborative decision making	36
To ensure that building and land use codes are fair and/or predictable	54
To promote sustainability by reducing greenhouse gas emissions	13
To promote sustainability by considering the needs of future generations	23
I don't know	7
Our local policies do not address any of the above issues	10

All survey participants should have answered this question.

15. "From your perspective, are the Act's Smart Growth criteria (as listed in the previous question) useful guidelines for developing infrastructure projects in your municipality?"

Possible Responses	Percent
Mostly yes	42
Mostly no	14
I don't know/no opinion	36
Didn't answer	8

All survey participants should have answered this question, but only those who responded. "Mostly no" were prompted to answer the second part below.

a. "Why not?"

"Another state mandate. Interferes with our own planning."
"Localities are perfectly able to make these decisions on our own without State involvement."
"More geared to more concentrated population areas."
"Our community is older homes, they do not meet the newer building codes. Our infrastructure is old and we can't get funding from the EFC, been on it for over 20 years, we moved up the list when the county was hit with a consent order from DEC only to be cut out by the county. We are 99% built out."
"Our town doesn't have these issues."
"We are a small rural town with no business center, limited infrastructure, and limited area for future infrastructure due to terrain, distance from an urban area, and in which the terrain limits development."
"We are a small village in a rural area."
"We are a very small and rural area with less than 300 permanent homes and maybe 150 seasonal. We don't at this time see new development at a pace we have to worry about."
"We are so small that we already try to do this."

16. "To the best of your knowledge, are your municipality's current infrastructure applications to State agencies largely consistent with the Act's Smart Growth criteria?"

Potential Responses	Percent
Yes	38
No	6
I don't know	36
Not applicable	14
Didn't answer	6

All survey participants should have answered this question.

17. "Since the State Smart Growth Act was passed in 2010, has your municipality applied for infrastructure funding or approval from any local (county or regional, for example) water and sewer authority?"

Potential Responses	Percent
Yes	25
No	42
No such authority exists in my area	18
I don't know	8
Didn't answer	7

All survey participants should have answered this question.

18. "Since the State Smart Growth Act was passed in 2010, has your municipality applied for infrastructure funding or approval from any State agency or authority, Regional Economic Development Council (REDC) or Consolidated Fund Application (CFA) process, or the New York State Cleaner Greener funding program?"

Potential Responses	Percent
Yes	38
No	44
I don't know	10
Didn't answer	8

All survey participants should have answered this question.

19. "Of these applications to the State, did any involve water supply infrastructure?"

Potential Responses	Percent
Yes	40
No	53
I don't know	7

Only survey participants who answered, "yes" in question 18 were directed to respond. All others were directed to question 24.

20. "Of these applications to the State, did any involve infrastructure for treatment of wastewater or management of storm water?"

Potential Responses	Percent
Yes	51
No	42
I don't know	7

Only survey participants who answered, "yes" in question 18 were directed to respond.

21. "To the best of your knowledge, did your municipality take into account any of the Act's Smart Growth criteria in formulating any of the State applications?"

Potential Responses	Percent
Yes	48
No	22
I don't know	30

Only survey participants who answered, "yes" in question 18 were directed to respond.

22. "Please indicate which of the following criteria were cited as part of ANY of your municipality's infrastructure applications to the State since the State Smart Growth Act was adopted in 2010 (choose all that apply)."

Smart Growth Criteria	Percent saying "Yes"
To prioritize the use of existing infrastructure	61
To encourage projects near municipal centers	39
To channel projects to areas designed for development	22
To protect natural, agricultural, or historical resources	56
To encourage mixed land use	33
To revitalize downtown spaces	39
To increase the diversity or affordability of housing	39
To redevelop brownfields	33
To beautify public spaces	39
To improve public transportation	6
To reduce automobile dependency	17
To promote coordination between state, local, and regional governments	39
To encourage community-based planning, public participation, or collaborative decision making	56
To ensure that building and land use codes are fair and/or predictable	22
To promote sustainability by reducing greenhouse gas emissions	6
To promote sustainability by considering the needs of future generations	61
I don't know	22
Our infrastructure applications have not explicitly cited any of the above issues	0

Only survey participants who answered, "yes" in question 21 (and 18) were directed to respond.

23. "To the best of your knowledge, has the Act's Smart Growth criteria had any influence on whether or not your applications were approved or funded?"

Potential Responses	Percent
Yes	8
No	18
I don't know	74

Only survey participants who answered, "yes" in question 18 were directed to respond.

24. "Based on what you know about the State Smart Growth Act now, do you think that implementation of the Act will affect your municipality's ability to fund infrastructure projects?"

Potential Responses	Percent
Easier to fund	13
Harder to fund	21
Makes no funding difference	36
Does not apply to my municipality	4
Didn't answer	26

All survey participants should have answered this question.

25. "Would more information about the State Smart Growth Act be useful to you?"

Potential Responses	Percent
No, I already have adequate information	19
Yes, more general information would be useful	61
Yes, information about specific aspects of the law would be useful	11
Didn't answer	9

All survey participants should have answered this question, but only those who chose the third option were directed to the second part below.

a. "Please specify what kind of information would be helpful to you."

"Available information on roadway improvements and storm water management."
"Broadband and public water to underserved areas of the town."
"Using language consistent with the Smart Growth mission may enhance grant opportunities."
"Whatever applies to small rural towns."

26. "How familiar are you with the new SEQRA forms?"

Potential Responses	Percent
Not at all familiar	19
Somewhat unfamiliar	21
Somewhat familiar	35
Very familiar	17
Didn't answer	8

All survey participants should have answered this question.

27. "If you would like to read more information on the new SEQRA forms now, please click Yes below."

Potential Responses	Percent
Yes	19
No	70
Didn't answer	11

All survey participants should have answered this question.

28. "Have you ever tried to use the new EAF Mapper tool (including today)?"

Potential Responses	Percent
No, and I am not likely to try it	33
No, but I am interested in using it	44
Yes	13
Didn't answer	10

All survey participants should have answered this question.

29. "Please select the response that BEST describes your current opinion of the EAF Mapper."

Potential Responses	Percent
Very helpful	65
Needs minor improvements	24
Needs major improvements	0
Not helpful	11

Only survey participants who answered, "yes" in question 28 were directed to answer this question. All others were directed to the final comment box in question 30.

30. "If you have any comments on the new SEQRA forms OR the EAF Mapper, please include them here."

"I think that they are an unnecessary burden on applicants and staff. D.E.C. must be realistic and recognize the fact that we cannot totally eliminate mankind's impact on the environment. Environmental protection is very important, but the pendulum has swung too far and we are having to jump through too many hoops with minimal benefit. I have to admit that some of these programs ARE showing possible if not probable connection to the U.N. agenda 21. The very idea that the word "SUSTAINABLILITY" seems to mean whatever it's user wants it to is troubling enough, but now we have started to actually see it defined as "social justice" which to me is nonsensical, but more and more people are embracing this definition. What a load of crap."

"Maybe you could add a topographical map to this too."

"Members of the Planning Board and ZBA are probably more familiar with the new SEQRA regulations."

All survey participants should have answered this question.

