

A SCENARIO ON USING INCENTIVES TO ENCOURAGE CUMULATIVE IMPACT ANALYSIS IN NEW YORK STATE

(And How It Could Relate To Comprehensive Planning and Management of Environmental Resources)

by

Planning Subcommittee
Statewide Working Group on Improving SEQRA Cumulative Impact

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(With acknowledgment to other members of the Statewide Working
Group who have made valuable contributions and critiques)

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July 10, 1998

Click on any of the links below to view.

[Memorandum](#)

[Table of Contents](#)

Memorandum

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MEMORANDUM

TO: John P. Cahill, Commissioner, NYS Department of Environmental
Conservation
Members, NYSDEC's Statewide SEQRA Cumulative Impact Working Group

FROM: Terry H. Martin, Ph.D., Chair Planning Subcommittee Report
Member, Statewide SEQRA CIA Group

DATE: July 10, 1998

SUBJECT: A Scenario on Using Incentives to Encourage Cumulative Impact
Analysis in New York State, Planning Subcommittee Final Report

Members of our planning subcommittee reached agreement on a surprising number of issues that are reflected in our enclosed final report. A true consensus on a preferred implementation strategy, however, has not yet been achieved.

For example, it became apparent that a new "statewide rule" should not be enacted until stakeholders understand how it would be implemented. The underlying intent comes with an amalgam of desires: to minimize future litigation, to be sensitive to procedural and cost burdens that a new statewide rule would create, to offer incentives so that both municipalities and businesses would want to protect the environment in this manner, and finally to re-assure everyone that cumulative impact analysis would not become a costly substitute at local levels for comprehensive planning and resource management.

Our report therefore presents a "scenario" or illustration of one possible implementation strategy. Instead of making a recommendation, this scenario discusses the many interrelated facets of this policy issue. By taking this heuristic pathway, we hope this report will provide a starting point for policy formation on this issue. This approach may also

resolve some, but not all, of the dissenting concerns that have been made by other members of our statewide working group.

There may be other ways to implement a statewide rule and we would encourage their discovery and exploration. After more than two years of discussions by the statewide working group, however, no other alternatives were presented except to do nothing, or to enact new, traditional top-down approaches (e.g., new mandates, new penalties).

I want to thank the members of the planning subcommittee for their support, critiques and comments, which made this report possible. I take full responsibility for any problems or flaws that may show up in this attempt to incorporate everyone's ideas (including my own) into a coherent document.

THM:mep
Enclosure

Table of Contents

A. Using A New Lens to Evaluate Implementation Strategies

B. Understanding the Scope of This Scenario

C. Deciding on Agency Rulemaking or Statutory Amendments

D. Including CIA in SEQRA's Regulatory Scheme

1. CIA Should Integrate Information From Different Venues
2. CIA Should Be Scientifically Based
3. CIA Should Use A Resource Perspective
4. CIA Should Include the Man-Made Resource Base

E. Linking CIA to Planning and Other Venues

1. CIA Should Be A Team Player With Other Venues
2. CIA's Linkages to Planning Should Be Broad-Based

F. Creating Incentives for A Pattern of Success

1. CIA Should Offer Value
2. CIA Should Be Designed to Create Incentives
3. CIA Should Allow for A Variety of Incentives
4. An Illustration in the Implementation of Land Use Plans
5. Other Illustrations

G. Restricting the Adoption and Use of CIA

1. A CIA Rule Should Have Narrow Statewide Objectives
2. CIA Should Be Limited in Its Application

H. Keeping CIA Simple and Easy to Understand

1. [Rural Communities Without Plans](#)
2. [Rural Communities With Plans](#)
3. [Suburban Communities and Urban Edges](#)
4. [Complex Urban Communities](#)

I. Creating Incentives for Special Circumstances

1. [Transitional Communities - Rural, Suburban and Urban](#)
2. [Communities With Overlapping Boundaries - Political and Ecosystem](#)

J. Revising SEQRA Forms (EAF)

1. [Proposed Changes to the Environmental Assessment Form](#)
2. [Determining "Significant Effect"](#)

K. Providing for CIA Funding Alternatives

1. [Municipalities Pay Full Costs \(Option 1\)](#)
2. [Municipalities Require Reimbursements \(Option 2\)](#)
3. [Public Agencies Pay Full Costs \(Option 3\)](#)
4. [All Parties Share Costs \(Option 4\)](#)
5. [Applicants/Developers Pay Full Costs \(Option 5\)](#)

L. Being Responsive to Dissents

M. Using A "Designer" Approach for Policy Purposes

ATTACHMENTS

1. [Tasks for the Three Subcommittees](#)
2. [The Three Final Products of the Statewide Group](#)
3. [List of Existing Venues that May Become Sources for Establishing Cumulative Impact Parameters](#)
4. [Recommended Contents for Proposed Guidance Document](#)

Using A New Lens to Evaluate Implementation Strategies

A. USING A NEW LENS TO EVALUATE IMPLEMENTATION STRATEGIES

Governor George Pataki asked the Statewide Working Group on cumulative impact to consider the philosophy of "critical balance" in its deliberations. (1) Critical balance means that cumulative impact in practice should promote intelligent economic growth with a balance of longer-term environmental protection.

The statewide group has discussed this complex subject extensively. In the Spring of 1997, it organized itself into three smaller subcommittees. Scientific, planning and legal issues needed detailed discussion to clarify how SEQRA cumulative impact could be made more useful and more effective in practice (a summary of subcommittee tasks is presented in Attachment 1).

This is the report of only one subcommittee, on planning issues. The objective of this report is to illustrate one possible implementation strategy, or scenario, on how a statewide SEQRA cumulative impact rule (CIA) could be used in practice. This scenario takes a new, fresh look at this difficult public policy issue. It assumes that a new requirement should not be enacted until stakeholders understand how it would be implemented. We offer the following four criteria as the normative standards that should be used to evaluate alternative implementation strategies:

- Protects the environment. Scientific and land use tools and technology can protect the state's ecosystems, natural resources and urban systems which sustain all life and commerce and have complex linkages to human health, safety and well being.
 - Achieves a "critical balance" in each community. Cumulative impact analysis should be used to mitigate impacts, not stop or delay new development. A statewide rule should therefore protect the environment in a manner that promotes economic objectives by simplifying the process, lowering costs to applicants and developers, adding flexibility, incentives and exemptions for stakeholders, and encouraging them to work together.
 - Designs a strategy on cumulative impact that applies to all regions of the state.
 - Does not create significant problems or litigation for agencies and stakeholders.
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(1) The Statewide Working Group on Improving SEQRA Cumulative Impact consists of 22 original members who were appointed in January 1996 by the Commissioner of the New York State Department of Environmental Conservation (NYSDEC). The statewide group received the Governor's message at its second meeting in Albany, held on February 2, 1996, from a representative of the NYSDEC Commissioner.

Understanding The Scope Of This Scenario

B. UNDERSTANDING THE SCOPE OF THIS SCENARIO

The five members of the planning subcommittee have all contributed their ideas to this planning scenario, which is the third and last product of the Statewide Working Group (these three final products of the Statewide Working Group are described in Attachment 2). The subcommittee acknowledges that other members of the Statewide Working Group have also made valuable contributions and critiques that are reflected in this report. A true consensus on what the ideal implementation strategy should be, however, never materialized. Instead a consensus was achieved by planning subcommittee members, which is the basis of this scenario, that an illustration is needed that shows how a statewide CIA rule could be implemented successfully. The details of how this could be done, however, proved to be very problematic. This subcommittee therefore presents, not a recommendation, but instead a carefully designed scenario of how the proposed cumulative impact rule could work in practice. It presents normative criteria for use in discussing and evaluating alternative implementation strategies. (2)

A major challenge was describing how a cumulative impact assessment tool could solve "critical balance" problems in urban areas without falling into the traditional traps of ignoring rural needs or side-stepping the broader realities of ecosystems. Avoiding these traps requires a highly flexible implementation process that meets the normative criteria of success that are described on page one of this report. A flexible process would apply on a comprehensive, coordinated statewide basis because stressed resources need to be protected for the long term across local boundaries in the context of complex, interacting systems. People should be able to use a cumulative impact assessment tool in rural and suburban areas that are scattered throughout the state, in the larger metropolitan areas of New York State such as New York City, and in communities where complex environmental problems are creating trans-boundary issues.

For purposes of this report, the phrase "cumulative impact thresholds and triggers, as well as specific cumulative impact standards," will be referred to simply as "CIA parameters". Thresholds and triggers refer to cut-off points beyond which cumulative impact analysis will be required and to criteria that determine eligibility for exemptions. Cumulative impact standards refer to scientific findings and land use specifications against which projected

changes can be measured and compared such as, respectively, levels of toxic chemicals or traffic capacities.

The scenario that is presented in this report attempts to show how a CIA requirement could work under all conditions statewide, and at all levels of government, in three ways:

- 1) Through reviews of individual actions and proposed projects.
- 2) At the community level through the adoption of a comprehensive plan with GEIS.
- 3) Through procedures designed for state agencies, and complex cities and suburbs.

This scenario illustrates how the proposed definition and regulation of the main report of the Statewide Working Group could be implemented through these three avenues with the help of a variety of incentives. These three avenues would incorporate cumulative impact thresholds and triggers, as well as specific cumulative impact standards that have been published by a variety of sources in different venues, all aimed at protecting the environment.

(2) This approach is designed for the long term, and is presented in the context of discussions held by the statewide group between January 1996 and June 1998. It is based directly on the written minutes of the special "summation" meeting of all 22 members that was held in Albany on June 24 and 25, 1997, and on telephone calls, faxes and correspondence among the five members of the planning subcommittee and others that occurred between June 1997 and June 1998.

[Deciding On Agency Rulemaking Or Statutory Amendments](#)

C. DECIDING ON AGENCY RULEMAKING OR STATUTORY AMENDMENTS

The planning subcommittee has discussed the merits of seeking regulatory change by agency rulemaking, or alternately, by statutory amendments. There are advantages and disadvantages to either approach. Agency rulemaking has the advantage of keeping CIA very limited and restricted in its application. Its disadvantage is that there may be inadequate statutory authority to rely on rulemaking for cumulative impact assessment. On the other hand, statutory amendment would give CIA a firm legal foundation, as well as

clearer linkages to various types of incentives. The disadvantage is that changes to state statutes may invite more far-reaching, unpredictable changes than agency rulemaking. This scenario would use both options.

In this scenario, the proposed new rule is:

"Cumulative Impact means the effect of an action itself and the effects of other actions, which taken together substantially increase or substantially accelerate an effect on the same aspect(s) of the environment. The lead agency is responsible for determining a reasonable period of time and a reasonable geographic area within which the actions and effects are to be considered."

This addition should be designed to bring about a significant, predictable improvement to existing regulations. For the first time, SEQRA would have a legally enforceable definition of cumulative impacts. This new regulation would be accompanied by revisions to the Environmental Assessment Form (EAF), and by minor supplemental regulations, which clarify how, the proposed definition fits into the context of existing regulations.

Statutory change could be used to establish authority and incentives for CIA purposes.

[Including CIA In SEQRA'S Regulatory Scheme](#)

D. INCLUDING CIA IN SEQRA'S REGULATORY SCHEME

This scenario is based on the following general agreements:

1) CIA Should Integrate Information From Different Venues

In this scenario, cumulative impact analysis or assessment (CIA), would not be eliminated from SEQRA or its regulations. It has a role to play under certain conditions,⁽³⁾ and it is consistent with the intent of SEQRA. To implement this role, CIA should be added to the list of other analytic tools and methodologies that are already available for use in environmental impact studies. As an approach, Environmental Impact Assessment (EIA) is a venue in its own right. These EIA techniques have already taken their place in mainstream planning and development practice. But there are other, alternative venues that need to be considered along with EIA:

- Environmental impact studies (e.g., analysis of alternatives, assessing effects caused by significant actions/projects, and identifying ways to

mitigate potential problems).

- Comprehensive planning (e.g., land use analysis, site plan approval, and zoning are planning venues ideally suited to evaluate the man-made resource base along with natural stressed resources in a long term, sustainable development context).
- Resource management controls (e.g., well head protection, water quality).
- Intermunicipal agreements (e.g., storm water run-off, wetlands).
- Multi-jurisdictional actions (e.g., watersheds, air sheds, river basins).
- Treaties, statutes, regulations (e.g., state conservation laws, federal Clean Air and Water Acts, Great Lakes Basin Clean-up initiative).

(3) For example, in 1997, Elizabeth Thorndike identified the underlying value of cumulative impact as follows: "Cumulative impact assessment is an insurance policy and risk management tool. It is more expensive than no assessment in the short run; but the risk of costly consequences is diminished and a net benefit is likely in most instances, when the cost of the assessment is compared to the cost of after-the-fact correction of problems that could have been avoided."

These venues all seek to solve environmental problems at local, regional, state, federal, or even bi-national levels (a more detailed listing of venues is presented in [Attachment 3](#)). Information on parameters from any of these venues would be referenced in the review of actions and projects on a case-by-case basis, in local plans with a GEIS, or through special procedures for state agencies and for complex cities and suburban areas.

Each venue in its own way often incorporates sound scientific knowledge, new technologies for environmental protection, and solutions to land use problems. Any one of these different venues can therefore become a source of CIA parameters that could be referenced in each cumulative impact analysis at local, county, regional or state level. This most likely would be done by way of a general reference, for example, rather than incorporating detailed information that could change with each amendment at state or federal levels. Flexibility is needed.

Because of this need for flexibility, this scenario does not recommend or envision a multi-layered review process, which would integrate these various levels of activity. (4) It simply points out that such activities are already underway, and are mostly uncoordinated at the present time. In this scenario, the introduction of a new CIA function would offer one way to integrate information from higher levels of government into local planning and EIS

efforts. Incentives, exemptions, and cost sharing would make this approach user friendly in the least burdensome arrangement on a case-by-case basis. In other words, a new CIA function of this type may offer a more efficient and effective substitute for complex multi-level review procedures at regional and state levels. The approach described in this scenario would replace reliance on large regional and state bureaucracies by improving local CIA reviews at the case level in a systems context. This would fit in nicely with devolutionary policies, decentralizing trends and cost-effective strategies.

Why should CIA be added to the venue of environmental impact study? In this scenario, it would be added, first, because serious environmental effects have been known to accumulate beyond the scope of individual actions or projects to the detriment of neighbors, communities and human health, or to spread through aquifers and over broad geographic areas even affecting neighboring states and Canada. Second, the uncoordinated use of existing venues in scattered locations often falls short of what is needed to do the job successfully in an ecosystem context. From a resource perspective, there is very little coordination or integration of information between the venues listed above except for environmental impact studies and comprehensive planning, both venues being designed to integrate information in full disclosure formats. Third, turning to higher levels of government or to technology for answers works sometimes, but not always. It is often not feasible or desirable in practice. As a result, a longer-term systems perspective is often neglected in local decision-making, and sustainable development becomes a lost opportunity.

For these many reasons, this scenario adds cumulative impact analysis to the venue of environmental impact study as a last line of defense for the long-term protection of the state's ecosystems. The objective is to protect the state's land base and its water and air, to ensure the continued well-being of the people of New York State and their descendants. This defense can be provided either by creating CIA parameters, or by incorporating existing CIA parameters (that are required by or borrowed from other venues) into EIS studies of plans, of specific actions and projects, or of special procedures for state agencies and complex urban and suburban areas. A cumulative impact analysis would therefore integrate CIA information from relevant levels of government and from all available venues. A CIA study would not be required in every SEQR review, however, and would have other restrictions that are described later in this report.

To do its job for the long term, and to be consistent with current scientific understanding, SEQR needs the increased capacity of a CIA review process. This increased capacity would be used over time as development rates intensify. This is a key point. In this scenario, the development rate would begin to drive the process instead of requirements from regional or state levels. It would be an especially attractive statewide rule if it were scientifically based, used a resource perspective, recognized man-made resources and technological solutions, and sanctioned a process which encourages people at local levels to work together to solve their own problems.

(4) David Hamling, member of the Statewide Working Group from the New York State Concrete and Aggregate Producers Association, has provided valuable insights into the potentially costly burden on the local economy that would be created by a new, multi-layered review procedure.

2) CIA Should Be Scientifically Based

The underlying phenomena that CIA examines almost always reside in the physical reality of the environment or in the use of the state's land, water and air resources. For this reason, the planning subcommittee kept returning again and again in its discussions to the need to understand sound scientific knowledge, land use analysis, and economic development objectives.

For example, urban systems sustain the activities of a majority of people in New York State, and urban areas contain the greatest intensity of past physical development. Cities such as Buffalo, Rochester, Syracuse, Binghamton, Albany, and those in the New York City metropolitan region reflect the cumulative history of the state. Today they contain the homes, jobs and investments of millions of people. These cities are nested in the state's land base, use the state's water and air, and interconnect by rail, road, utility, water, and air networks and telecommunications grids, which in turn connect their diverse activities to the broader economy and global village. The people who depend on these cities also depend in numerous ways (whether they are aware of it or not) on surrounding suburban and rural areas. The suburbs provide "American Dream" homes and rural ambiance close to urban amenities and jobs for inner city residents (a recent trend). Rural areas provide alternative lifestyles in farms, hamlets and villages, as well as affordable homes, outdoor recreation at ski resorts and lakes, open space vistas, agricultural and timber products, natural gas and gravel products, sources of drinking water, and landfills for urban solid waste. (5)

These lands use systems and related human activities are continuing to evolve (e.g. growth and decline) and spread across rural New York State. All regions are experiencing various ranges and types of cumulative impacts which, if left unchecked, can become problems, such as:

- Contaminated sites, increased groundwater contamination, and dispersed atmospheric particulates and toxics. Approvals for numerous individual projects in rural areas also increase man-made, impervious surfaces (which in turn increase storm water run off within each watershed and concentrate chemicals, salts, heavy metals, and organic compounds in the water column).
- A steady loss of wildlife habitat, and increases in trans-boundary problems such as traffic congestion and storm water run off.
- Loss of significant natural resources, open spaces and rural lifestyles. Contemporary values push this process relentlessly and the cost to taxpayers for new infrastructure in outlying areas accumulates, especially for future

generations.

- Older urban and suburban areas are experiencing, paradoxically it seems, both cumulative traffic, air and water quality problems with increased demands for energy consumption and solid waste disposal on the one hand, and deterioration, outmigration and disinvestment on the other.

Cumulative impact assessment may offer a partial solution to these problems only if the process is designed appropriately and incentives are created to facilitate the process. It is the one technique in the environmental impact study venue that enables decision makers to integrate information on longer-range cumulative issues on a case-by-case basis, by making use of a variety of cumulative impact parameters that are established by a variety of institutions. Its use could focus attention on these issues on a day-to-day basis as events occur unpredictably.

(5) Taken as a whole spatially, rural New York is larger than states such as Ohio, Kentucky, or Virginia. In 1990, New York's rural population exceeded three million people. Approximately 20% of the population continues to expand on more than 80% of the state's total land base. It is the sixth largest rural population of any state in the United States. Rural New York has also been growing at twice the rate of urban areas (New York State Office of Rural Affairs, 1993).

3) CIA Should Use A Resource Perspective

Cumulative impact should be done from a resource perspective rather than from action or project perspectives. This would enable each community to take a broad point of view and identify which of its resources are stressed and need special protection. In this scenario, only those communities which have officially identified one or more of its resources as being stressed (or which are so identified in comprehensive plans or state regulations) would be able to require CIA for any proposed action or project (except for requirements under federal laws and regulations). The normal SEQR review would continue in this context without CIA. A direct nexus between a proposal and a resource would also need to be established in each case. Furthermore, lead agencies would be empowered to determine the geographic boundaries and the temporal extent of each CIA, thereby allowing CIA to be adapted to different circumstances and regions of the state (an early appeals option would be available to participants in this regard).

4) CIA Should Include the Man-Made Resource Base

In this scenario, the phrase, "stressed resources" is broadened beyond natural systems to include the man-made resource base, such as highways, water and sewer systems, utilities, and historic and cultural features (i.e., "stressed resources" includes natural and man-made systems). In certain circumstances, an existing community itself could become a stressed resource if it faces major encroachments, pressures or pollution. In this scenario, while new development is to be encouraged, ecosystems and existing communities are resources also worth promoting and preserving. This is where new, environmentally safe technologies

can make a significant improvement, which should be encouraged in the CIA process.

New York State is no longer a pristine wilderness. It has extensive "built" environments, expanding land uses, and growing population densities that must be recognized in CIA. The state's environmental conditions also vary considerably from one region to another not only because of the state's geography but also because of increased human activity in different locations, which have different rates of development. This is where environmentalists and developers may find a common interest, although for different reasons: First, the greater the increase in human activity at specific locations, the greater the magnitude and scale of potential environmental problems at those locations and surrounding ecosystems. Second, the greater the magnitude of environmental problems, the greater the cost of new development. It is in everyone's interest, therefore, to prevent, mitigate, or remediate environmental problems.

Long-term trends will continue to provide the context to CIA in the future. People and commerce will continue moving outward into the countryside that surrounds the older urban, suburban and village cores. The older, previously built-up areas will continue to decline unless new incentives are created to attract people and investments. The marketplace drives this process outward, such as door-to-door delivery services, new building technologies, affordable land for new development near transportation arteries, rural vistas and open spaces, outdoor recreation along rivers, mountains and lakes, and business opportunities in tourism and extraction of natural resources. The universal use of motor vehicle technologies and the newly arrived telecommunications revolution are both blending in rural areas, increasing mobility and facilitating this dispersal across the landscape. Demands will continue to increase for more economic development, which will continue creating jobs and urban amenities for a growing population base that is slowly spreading throughout the remnant of rural New York.

The interrelationships described above are complex, constantly changing, and long term in their consequences on the environment. Any approach to the cumulative impact issue should address these interrelationships. Cumulative impact analysis is intricately tied up with a multiplicity of scientific, economic, social, land use and environmental issues. This scenario attempts to work with these dynamics. Any alternative scenario should also work with these dynamics.

[Linking CIA To Planning And Other Venues](#)

E. LINKING CIA TO PLANNING AND OTHER VENUES

Many issues related to comprehensive planning and resource management for the long term came up repeatedly in various meetings of the Statewide Working Group. These issues are inherent to underlying conditions, which create cumulative impact problems in the first

place, and cannot be resolved without considering the role of planning and resource protection and how these relate to the role of environmental impact assessment. (6)

1) CIA Should Be A Team Player With Other Venues

This scenario is designed to create a greater awareness of the long-term trends that are described above. An awareness of these long-term trends can also be accomplished on a day-to-day basis by placing EIS and CIA tools in roles that integrate CIA parameters from the many different venues that are described earlier in this report. In particular, a direct linkage is needed with comprehensive planning and resource management activities.

It is a consensus of the planning subcommittee, however, that CIA should not become a substitute for comprehensive planning and resource management at local levels or for any of the other available venues. In this scenario, an EIS would be designed to make reference to CIA parameters from all appropriate venues. This would focus attention at local levels where the physical and land use consequences of actions and projects tend to be experienced most directly.

Comprehensive planning and resource management techniques, for example, can be used by municipalities and lead agencies to identify stressed resources and CIA parameters for use in local plans and project reviews. When necessary, local parameters can be established. Comprehensive planning and resource management can then be used as a basis for determining whether actions or projects are exempt from CIA requirements, whether an assessment (EAF) is needed to determine if a significant adverse cumulative impact is likely, if a Conditioned Negative Declaration can be justified, or if a full EIS with CIA should be prepared.

2) CIA's Linkages to Planning Should Be Broad-Based

For purposes of this report, the words "comprehensive planning", "plans", and "resource management" are interpreted broadly. In this scenario, many efforts and approaches can be applied to comprehensively analyze potential cumulative effects that may stress natural and man-made resources within a community.

For example, information obtained from different venues may be incorporated within a Generic Environmental Impact Statement (GEIS) for a municipal comprehensive plan, which would describe CIA parameters in its Findings requirement at local levels. This would produce a more clearly defined legal basis at local levels for enforcement.

(6) For example, Jeff Sama originally identified this need for a linkage in a January 22, 1996 letter to the newly formed working group, as follows: "Provide clear distinction and characterization of roles that both SEQR and comprehensive land use planning should play in management of cumulative environmental impacts and identification of legal and technical ingredients necessary to most effectively use both venues in a complimentary fashion". This view is presented again in the a letter from facilitators Elizabeth Thorndike and

David Church on April 17, 1997, as well as in the minutes of the June 1997 "summation" meeting of the statewide group.

Creating Incentives for A Pattern of Success

F. CREATING INCENTIVES FOR A PATTERN OF SUCCESS

1) CIA Should Offer Value

In this scenario, cumulative impact assessment would offer value to those who must comply with SEQRA regulatory requirements. This is based on two well founded desires:

- The subcommittee does not want to hamstring the state's economy and local development with complicated, unproductive and costly regulations.
- The subcommittee wants state regulations to offer incentives, to give the environmental review process a positive dynamic, which is self-appreciating.

2) CIA Should be Designed to Create Incentives

Incentives would simplify the process because public agencies, developers and environmental groups would want to support a CIA requirement if it offered:

- A safe environment.
- A more efficient process.
- Incentives, or benefits, for stakeholders.

In other words, this scenario would design CIA tools to offer benefits whenever these tools are used, for local municipal boards, developers, state and federal agencies, and environmental groups. This is not the case with the present regulatory regime, which offers an ambiguous CIA requirement, without any incentives, that generates high costs, dissatisfaction, litigation, and unpredictability and uncertainty in resource protection.

3) CIA Should Allow for A Variety of Incentives

This scenario includes the following eight types of incentives, although, the search for

additional incentives is to be encouraged (many may require statutory changes):

- Most minor actions and projects should not trigger CIA in the first place. This is why it is important to identify potentially stressed resources, and to use CIA parameters in comprehensive planning. Every proposal that falls below the established thresholds would not trigger CIA requirements. A simple certification procedure that identifies stressed resources may be needed to accomplish this as a distinct step, especially in communities that have no plans or that have outdated plans. If a community or lead agency has not officially identified any stressed resources in its jurisdiction, then it should not be allowed under state statutes to require CIA of any stakeholder (unless it is required by federal laws and regulations). The normal SEQR review process would occur without CIA in this situation.
- The scope of CIA should be very narrow in rural and suburban communities that have no plans, to reduce the costs to applicants and developers. There would be no cost to municipalities. A narrow scope, for example, would look only at unrelated projects that have already been approved, and not include any pending or potential projects.
- A broader ecosystem scope will be desired in many situations where development rates are intensifying. In those instances, a broader CIA scope should be encouraged. This can be done by offering resources for establishing CIA parameters, funding options for CIA itself, and by offering an increased ability to spread the cost of CIA over many applicants, over time and over a variety of funding options. Actions and projects can then be exempted from CIA where they conform with an established comprehensive approach for addressing CIA. (7)
- Complex suburban and urban areas should be offered a greater flexibility to deal with more complex situations such as regional air and water quality problems. The process needs to be flexible, allowing lead agencies that do not have land use planning authorization or jurisdiction, for example, to address cumulative impact through a number of different mechanisms. For larger urban areas with available resources, lead agencies should be empowered to tailor CIA requirements to the type and extent of actions subject to their review.
- CIA's implementation in all communities should be confined to SEQRA's "determination of significance step" (and revising the EAF forms accordingly, which is the leverage point in the process that influences all subsequent analysis in each case).
- Tax breaks should be given to local businesses and other benefits to communities such as grants or priority treatment when they support land use or resource plans that contain CIA parameters. This would be similar to the

approach taken in the state's Economic Development Zone Program (such communities would become, in effect, larger economic development zones with environmental protection requirements).

- A small percentage of certain taxes or user fees should be set aside for use in giving grants for this specialized, local planning and resource management process (especially for communities with older plans). Communities that do not update their plans within a five-year period, for example, would simply be placed in the "without plans" category, for SEQR/CIA purposes.
- Special priority should be given to communities and projects that make use of new technological breakthroughs for environmental protection.

(7) In the experience of planning subcommittee members, many people feel more "comfortable" when impacts are being evaluated and mitigated by the municipality that prepares the EIS. This would be especially relevant with cumulative impacts, since they are so misunderstood and are often the source of extremely sensitive, emotional discussions.

4) An Illustration In The Implementation of Land Use Plans

In this scenario, incentives would be created that benefit those parties who must comply with state SEQR regulations. Land use plans and resource management controls should therefore include CIA parameters at the local level for an entire community. For this to happen, the process needs to offer advantages to those applicants and developers, and to the municipality. One advantage is to exempt all actions and projects from CIA requirements if those actions and projects do not exceed the CIA parameters that are published in local plans.

The following illustration shows how operations and linkages between comprehensive planning and CIA can be improved in communities across the state. This illustration was agreed to by the Statewide Working Group at its meeting on June 24-25, 1997:

"In the event that the community had done a comprehensive plan together with a SEQRA study of the overall plan and zoning was in place based upon said studies, then neither Developer A nor B nor C should have to restudy cumulative impacts of their developments if and to the extent that such impacts have been studied within the comprehensive plan process, including SEQRA analysis. The most that would be required of any of the Developers by way of cumulative impact review might be a Supplemental Environmental Impact Statement, provided the requirements for such

statement in the SEQRA regulations have been met. However, if the development proposals are within the zoning as enacted and as studied in the SEQRA process, there would be no need for any further environmental study by any of the Developers of cumulative impacts that were the subject of prior SEQRA review, unless the lead agency determines that supplemental cumulative impact review is necessary due to changes proposed for the project, newly discovered information, or a change in circumstances related to the project."⁽⁸⁾

In retrospect, the planning subcommittee recommends that the word "zoning" should be broadened to include comprehensive planning, site plan approvals, and resource protection guidelines which incorporate CIA parameters at the local level. This example illustrates how a cumulative impact requirement could allow for exemptions, while at the same time incentives encourage comprehensive, long-range thinking in all communities.

(8) This approach is based on the recommendation that statewide members John Armentano and Terry Martin presented in a 1996 draft report (the underlined portions were added later in a pro-bono consultation with Michael B. Gerrard).

5) Other Illustrations

Alternative illustrations have not been fully developed by the Statewide Working Group. Such alternatives should be developed, perhaps as sequels to the scenario that is presented in this report. Alternative scenarios would serve a very useful, heuristic purpose. ⁽⁹⁾

(9) Annette Barbaccia, member of the Statewide Working Group from the Mayor's office, New York City, for example, has provided valuable information and critiques showing that comprehensive planning, site plan review, and zoning are not the only ways for establishing and implementing CIA. Other examples that can establish CIA parameters are permitted operations, rulemaking and guidance documents under state and federal laws. Lead agencies in urban areas already must depend on case law to develop approaches to address cumulative impact assessments that are based on various types and scales of actions that are subject to their review. Under the current situation in New York State, lead agencies may: a) Identify the environmental resources that may be affected by cumulative impacts created by actions subject to their purview; b) Develop assessment approaches that will identify whether or not an action is likely to result in significant adverse cumulative impacts; and c) Identify mitigation measures that will address the cumulative impact and prescribe that portion of the mitigation that is commensurate with the action's impact.

Restricting the Adoption And Use of CIA

G. RESTRICTING THE ADOPTION AND USE OF CIA

This scenario presents the following caveat: There is a need for cumulative impact assessment in New York State, but its promulgation should be tightly focused and its use restricted to appropriate situations. While discussed elsewhere in this report, these limitations and restrictions are summarized here, and should be continually refined and tightened.

1) A CIA Rule Should Have Narrow Statewide Objectives

- This scenario promulgates a CIA rule at this time that includes a definition of CIA. This rule should be enacted only if a variety of new incentives are created such as are described in this report.
- There should be only one statewide CIA rule instead of many separate approaches and instead of a grab bag of uncoordinated procedures. A new statewide rule should be flexible and easily understood.
- A CIA rule should not be a traditional top-down, mandatory procedure that focuses on violations and penalties. It should be designed instead to encourage economic development objectives (e.g., being affordable and user friendly, with incentives and exemptions that encourage updating and using comprehensive planning appropriately).
- CIA should not become a substitute for comprehensive land use planning or environmental resource management at local levels. It should establish, integrate and coordinate information on CIA parameters from all appropriate venues (e.g., becoming a part of a comprehensive plan through its GEIS and Findings document).
- CIA should not be required in every SEQR review. Minor actions and projects should not trigger CIA in the first place (i.e., by using thresholds and exemptions).

2) CIA Should Be Limited In Its Application

- CIA should be limited to the physical basis of ecosystems, natural resources, and man-made systems. A direct nexus would have to be established between a stressed resource and each specific proposed action or project. It should be confined to a resource perspective rather than endless

action or project perspectives.

- CIA should be limited to the "determination of significance" step of the Environmental Assessment Form (EAF) requirement. This is the leverage point in the process that influences all subsequent analysis in each case. This approach, however, would require some information up front on stressed resources and CIA parameters prior to filling out the EAF. This pre-supposes the existence of relevant information and other accessible venues, and the availability of an early appeal process should this become an abusive burden. One way to further restrict the CIA requirement is to allow Conditioned Negative Declarations in cases where only CIA needs mitigation, instead of requiring complete Environmental Impact Statements.
- If a community or lead agency has not officially identified any stressed resources within its jurisdiction, and none are identified in local, county, regional or state plans and regulations, then under this scenario it should not be allowed to require CIA of any stakeholder unless such requirement is mandated by federal laws and regulations. The normal SEQR review would occur without CIA in this circumstance.
- In communities that have no plans (i.e., no planning with CIA parameters), the scope of CIA should be very narrow in order to limit the cost to applicants and developers, and the cost should not fall on the community or lead agency. This would be similar to the status quo in rural areas. A narrow CIA scope would only study unrelated actions and projects that have already been approved, and not be concerned about studying pending and potential projects (i.e., a narrow CIA scope would not concern itself with a community's future growth potentials). A certification step may be needed in these situations to identify stressed resources similar to, but more streamlined than, the procedure for designating environmentally sensitive areas.
- In communities that do adopt plans with CIA parameters, applicants and developers should be exempted from CIA requirements unless they seek to amend those plans or otherwise exceed a plan's CIA parameters. For example, any action or project that receives a Negative Declaration should not exceed CIA parameters. A community would pay full costs for a much broader scope CIA. Stakeholders would participate voluntarily in payment options, except for when they seek amendments.
- A special incentive should be designed for communities that have older plans, which do not incorporate CIA parameters (e.g., perhaps by initiating a five year phase-in period with grants being made available on a voluntary basis to update old plans). There would be no grandfathering. If an old plan is not updated with CIA parameters, then that community falls into the

"without plans" category for SEQR/CIA purposes.

- The trans-boundary problem in CIA should be addressed through a simple notification procedure on a case-by-case basis rather than creating new, multi-layered bureaucratic procedures. The expectation here is that the Internet and new telecommunications technologies will eventually enable the diversity of fragmented systems in New York State to interact more effectively in the sharing of information. Funding and technical assistance services should be used to bring this to every community, without changing the existing involved agency/lead agency relationships.

Keeping CIA Simple And Easy To Understand

H. KEEPING CIA SIMPLE AND EASY TO UNDERSTAND

This scenario discourages "over-kill". If CIA were to be applied widely without restrictions, everyone would be required to study everything in every case. This may seem logical because human activities have entered upon once pristine environments and altered those environments dramatically. This encroachment is continuing at a steady pace. In any given year this process may seem insignificant, but over decades or centuries it can be significant as has happened in the growth of the New York City region. It is not feasible or desirable, however, for everyone to study everything in every case. A more practical approach is needed that can be applied to undeveloped rural areas as well as to the "mega" urban complex that is slowly growing along the eastern seaboard between New York City and Washington, DC.

Municipalities, lead agencies and stakeholders are therefore given specific capabilities for CIA in four different types of situations: 1) rural communities without plans; 2) rural communities with plans; 3) suburban communities and urban edges; and 4) complex urban communities.

1) Rural Communities Without Plans

- In this scenario, rural communities that have no plans would represent the status quo (i.e., patterned after existing practices). The scope of a CIA review would be narrowly defined to reduce the cost and complexity to individual applicants and developers. A narrow CIA scope would focus on a stressed resource and restrict the extent of other actions or projects that must be studied in the CIA to those unrelated projects that have been approved within the immediate past (e.g., three or five years). The lead

agency in each case would be empowered to establish geographic boundaries and temporal limitations. The scope of CIA reviews in rural communities without plans would therefore not concern itself with the community's future growth potentials.

- To require applicants and developers to do a full scope CIA in this context would in effect be asking them to prepare a community's plan at their own expense. A middle ground is needed. The scope of CIA should be reduced in communities without plans to control costs in an equitable manner, but the full cost would still be paid by individual applicants and developers. There would be little or no cost to the community. This is similar to the status quo in rural areas of New York State.

- In practice, courts will identify a "plan" even if a community has never adopted a plan. Courts look for evidence of planning in meeting minutes and policy documents. The courts, however, seldom identify stressed resources, and fail to assess those resources or provide thresholds and technical information. In this scenario, the needed data and analysis would be found in a comprehensive plan and its GEIS and Findings document, giving the courts more refreshing and robust records.

- In this scenario, if development and environmental problems begin to intensify in a rural community that has no plans, and more thorough analysis or better controls are needed, then the community should be empowered and encouraged (through incentives) to prepare appropriate comprehensive planning and environmental resource management controls. Incentives should be available which encourage all parties to work together in each community where cumulative impact concerns are starting to appear, and to adopt adequate plans with CIA parameters. These incentives are: 1) grants and special treatment would become available to those communities, 2) the scope of CIA would be broadened, 3) local comprehensive plans would provide a basis for exemptions to CIA, 4) a basis would be established for spreading the cost of a broader CIA over a wider cross-section of applicants and developers, over time, and over a broader range of funding options, and 5) the environment would be protected.

2) Rural Communities With Plans

- These incentives in the market place would encourage future investments within planned growth areas, (i.e., rural communities with plans) and could in the long run help retard urban sprawl. Incentives would also encourage rural communities in watersheds that supply water to urban areas to protect those watersheds (e.g., New York City recently went through an extended, expensive legal and political process to protect rural watersheds that the city depends upon for future water supplies). Certain urban areas would have a

new and compelling reason to encourage plans in surrounding, rural watersheds as a low key, long term policy objective.

- All communities would benefit in the long run from the approach that this scenario takes, and in the process, the private sector would also have a new and compelling financial reason to support comprehensive planning at local levels in rural communities. The bottom line is, incentives would create a user-friendly process that still protects the environment in the long term. People would be encouraged to work together. (10)
- At the time they adopt a comprehensive plan (e.g., with a GEIS and Findings), municipalities or lead agencies in rural areas would receive the benefits described above, but would pay the full cost of a broader CIA scope. The scope of CIA in each case would be determined as part of the normal scoping process whenever a Positive Declaration and EIS becomes necessary. This should be widely understood as the starting point, not the end point. Alternative funding options should be allowed, such as are described later in this report.
- A community's comprehensive plan would publish CIA parameters, and subsequent cumulative impact assessment reviews would be required only when specific actions or projects exceed or ignore those parameters for stressed resources in the community. (11) For example, all potential developments that are allowed under a community's projected growth build-out would therefore be allowed without any further CIA. Any new proposal that is in keeping with the GEIS and its Findings document would be exempted from further CIA requirements.
- These plans and controls would take community build-out projections into account in a sustainable development context, identify all stressed resources in that community, and present GEIS and Findings documents that spell out CIA parameters. These parameters would be presented within those plans and would become the basis for exempting applicants and developers from CIA requirements so long as their actions and projects conform. Only communities that have completed some form of comprehensive planning approach with CIA parameters would be able to exempt applicants and developers from CIA requirements. It would be contrary to the intent of SEQRA and its regulations to exempt them entirely without plans because to do so would leave no other means available to protect the environment comprehensively.
- Applicants and developers should be exempt from CIA requirements when adequate comprehensive plans exist which clearly define parameters and so long as their actions and projects conform to those parameters (i.e., to the extent that such thresholds, triggers and standards of conformance have been studied within the previous approval process for those comprehensive plans),

and so long as they do not request a significant variance from those plans and parameters.

- When applicants and developers seek to amend a plan, or when their proposals exceed any CIA parameter published in the original plan, then they should address 1) those stressed resources and other significant concerns such as site specific elements that have been identified in the EAF long form, and 2) other CIA projections that are approved by the community or decided by the lead agency. The community's future growth potentials would in effect be amended through the new Supplemental GEIS (i.e., thereby achieving sustainable development objectives with a "critical balance").
- A substantial number of rural communities have older plans already in place but those plans do not have the content on CIA parameters needed to serve the function described in this report. Land use zoning is also traditionally considered as planning, but as with older plans, zoning does not include CIA parameters or assessments even though it may identify environmentally sensitive areas or resources that need protection. (12) Older plans that have been adopted without proper SEQRA review (i.e., which do not present CIA parameters) may need to be updated as is discussed earlier in this report. A five-year "phase-in" period should be established for this purpose. Rural, suburban and urban areas all would use these grants on a voluntary basis to identify stressed resources, to include special parameters for CIA analysis, and to tailor solutions to their respective, changing circumstances.

(10) This approach, if developed, could provide answers to many, but not all, of the dissenting viewpoints that representatives of the broader business community in New York State have expressed to the working group's main report and its proposed definition of cumulative impact.

(11) The plan and its CIA parameters should clearly document and address only those resources that have been identified and supported by the local community as being stressed. The exception would be state and federal laws that identify stressed resources, which would also be included in the CIA. The scope of CIA would be limited to these resources and established CIA parameters.

(12) David Church reported that 60% of towns in New York State have comprehensive plans, but that the vast majority are not in-depth or up-to-date plans. Many communities would update old plans if it were easy to do and there were clear guidelines, if there were new incentives to do so, or if they could rely on other established plans and venues to establish cumulative impact parameters.

3) Suburban Communities and Urban Edges

- Most suburban communities in New York State would be able to apply CIA in the same manner described above for rural communities. Incentives would play an important role. Other suburban areas, however, share circumstances similar to complex urban areas, and flexibility would be needed.
- There is also a need to identify suburban towns that are not rural or complex urban communities. These are the communities most in need of CIA to deal with sprawl, and traffic safety because they often have no zoning. They are not all transitional growth communities and some are involved in a tear down, rebuild pattern. These communities tend to resist land use planning and zoning, but at the same time they tend to seek to implement site plan and subdivision regulations in order to contain or promote growth. There is a widespread belief within these types of communities that it is important to protect what they already have (e.g., rural atmosphere and open spaces with access to urban amenities such as quality schools, health care, and shopping conveniences).
- There are many shades-of-gray in circumstances between urban, suburban and rural areas. Suburban areas in particular have shades of gray from recent mall growth to deteriorating commercial strips along old arterials that have been replaced by nearby expressways, which are surrounded by older residential subdivisions.
- Suburbs are caught in the cross-flow of activities that occur between the state's many cities and the more pristine spaces in rural America. For this reason, it is difficult to design a statewide, one-size-fits-all requirement for CIA issues that would be effective in practice. If a statewide rule is overly stringent, it will not meet many of the diverse needs and circumstances that exist across this large state.
- On the other hand, if a statewide rule presents an ambiguous, broad requirement that is overly flexible without standards, it would resemble the situation that exists today (which has led to dissatisfaction among a wide variety of stakeholders and litigation). Such a diffuse standard cannot be used as a basis for exempting applicants and developers from CIA requirements in any community.
- A middle ground is needed in which any cumulative impact requirement should be designed to encourage comprehensive planning. A community's capacity for more development and human activity within the state's ecosystems should be examined, and that community should then be empowered to use controls and incentives to protect the environment and itself in all significant actions and projects (i.e., including cumulative impacts, which originate from multiple, smaller actions and projects).

- Rapid urbanization in suburban (and rural) areas can present municipal officials with increased uncertainty and complexity that local officials are not prepared to handle effectively. Local land use planning can become a resource to them at this time by resolving uncertainties and unpredictability in growth situations and preventing many problems before they occur. Land use planning, site plan review, zoning and resource management controls can, where these are promulgated, serve a valuable purpose in rapidly growing suburban (and rural) communities by incorporating CIA parameters. Special assistance would be needed to support this planning effort by unleashing the positive dynamics of incentives.

4) Complex Urban Communities

- Major metropolitan areas would be able to apply a CIA requirement in the same manner described above for rural and suburban communities. Incentives would also play a role because they are needed in rural, suburban and urban communities.
- In addition, major metropolitan areas need special attention because of unique and persistent problems such as water and air quality, the complexity and scale of their built environment, the densities of their populations, and paradoxically, outmigration, disinvestment and decline of older urban cores. New York City and other major urban areas, for example, do not rely on only one document called a comprehensive land use plan to deal with this complexity. There are many other ways to achieve cumulative impact assessment approaches in complex urban areas, and these should be encouraged.
- Complex urban areas achieve CIA by using a range of resources, laws, regulations and policies to examine and analyze potential cumulative environmental impacts. City officials have numerous guidance and policy documents, specialized environmental plans, and state and federal regulations to consider. These constantly change and are often administered by different agencies. Any change in the SEQR regulations should recognize this complexity in urban areas and enable each lead agency and municipality to maintain and develop its own cumulative impact assessment approach (which may require dedicating resources to SEQRA purposes). (13)
- This special attention and flexibility could be accomplished in certain cases through Home Rule local laws that can be more stringent than state requirements, or by simply using statutory amendments to exempt larger urban areas from CIA, to let them develop their own special solutions to the cumulative impact problem.

A more clearly defined process could also be established for complex urban areas by

codifying case law and creating stronger incentives. Such changes should encourage economic development in declining urban cores.

(13) Annette Barbaccia has provided valuable information on how New York City has developed its own approach to SEQRA and CIA. It has made a special effort to figure out which ranges and types of cumulative impact issues are of concern, and has developed screens to exempt a number of actions. It only requires applicants to do an analysis that is commensurate with the contribution of their action, and developers are not required to pay the full cost of a cumulative impact analysis. The City has expended more than one million dollars to date developing its own approach and capability for handling all SEQRA reviews, whether or not cumulative impact is involved. When CIA is involved, the city is not solely reliant on land use and may work through a permitted operation. Examples of this could include stationary air quality resources (stack/operational controls related to air quality compliance) or water quality (discharge permits). Some cumulative issues are defined by federal, state and multi-jurisdictional laws, regulations, and agreements. State and federal governments have developed "regions" when considering compliance with the Clear Air Act. New York City shares its region with New Jersey. The New York City region's non-attainment for PM10 and ozone cannot be addressed solely by comprehensive land use planning. For these reasons, New York City must consider other requirements and documents in conducting a cumulative impact assessment.

[Creating Incentives For Special Circumstances](#)

I. CREATING INCENTIVES FOR SPECIAL CIRCUMSTANCES

There are two additional types of circumstances that also need incentives to encourage CIA and comprehensive planning: 1) transitional communities; and 2) communities with overlapping boundaries - political and ecosystem.

In the long term, human activity will increase within the state's ecosystems. Long-range trends and new technologies will continue to extend the impacts of this activity, constantly dispersing and intensifying it across the many ecosystem boundaries of New York State. (14) The constitutional underpinnings of our society guarantee this freedom regardless of its consequences:

- Many older inner cities, suburban strips, and rural village downtowns are declining as people and business continue moving away in search of better opportunities and what they perceive to be more rewarding investments, environments and lifestyles. These older communities often have major investments in infrastructure which require maintenance and repairs, and which often have unused capacities at the same time that new infrastructure is being built in outlying areas to accommodate new growth.
- Some of the older suburban areas and rural villages have already gone

through growth and decline cycles similar to older inner cities. The outmigration of people and businesses and a declining tax base further complicate the situation.

- At the same time, new growth is spreading throughout rural New York. This trend creates demands for building new homes, schools, water and sewer systems, utilities and roads. Many outlying suburban and rural areas are evolving slowly into new urban centers with new suburban edges (e.g., Amherst and Allegany, New York).

These complex, interacting patterns are evolving relentlessly. The need to protect the environment and the state's land, air and water resources is increasing, as it is for protecting established communities where people and businesses have already invested their fortunes and futures (even as new markets and developments by-pass or leap-frog around them). Equally important, new development is needed for the next generation of people who will inherit everything from earlier generations. Public policy should recognize this complexity, and sanction a rational governance system that empowers local communities and stakeholders to solve related problems.

Given the underlying dynamics, an unresolved issue is how to encourage new growth in old areas suffering decline and, at the same time, control the adverse effects of new growth in the open spaces around the older urban areas. Taken as a whole, any public policy initiatives in this area of need will affect everything, including the cost and standard of living. Our state's public policies will determine the long-term sustainability of human life in our diverse watersheds and ecosystems. A major task that this scenario attempts to accomplish is to show how to use valuable information from different venues such as sound scientific knowledge, land use analysis and economic development objectives, in each plan or review process from day to day as events occur unpredictably, whether involving situations of growth, decline, or revitalization. All of these situations affect the environment cumulatively over time.

(14) New York State straddles major North American ecosystems: the Atlantic Ocean coastal zones, the international Great Lakes Basin, and an upper drainage basin for the Mississippi River/Gulf of Mexico. New York State also shares an enormous air shed with the mid-west and northeast of the United States, and all of eastern Canada.

1) Transitional Communities - Rural, Suburban and Urban

- It may be desirable in certain older urban areas which are declining, such as Buffalo and many of the older suburban strips and rural villages in the state, to exempt applicants and developers from CIA requirements as is proposed earlier for communities that have adopted special plans that incorporate GEIS and its Findings.

- If a one-size-fits-all approach to CIA is designed poorly, and is overly flexible or is ambiguous as it is under the current regulatory regime, there may be no basis for exempting anyone from SEQR requirements even for older urban areas that need new economic development.
- On the other hand, an overly strict CIA requirement could create disincentives, and actually discourage new development in older urban areas, suburban fringes and rural villages due to the higher costs of compliance by applicants and developers. (15)
- The status quo under the current regulatory regime offers few incentives that encourage long range planning. Creating stronger regional institutions would add additional layers of bureaucratic procedures, and not solve the complex problem. A new approach is needed, such as is presented in this scenario.
- Variable techniques are needed for transitional communities that are declining (inner cities, suburban edges, and rural villages), or that are rapidly growing (new suburban and rural centers). These dynamic realities need to be recognized, and a combination of incentives is needed for all of these communities which encourage a longer range perspective, and which offer flexible multiple options to meet their special circumstances. This should become one of New York State's highest priorities. (16)
- Variations of Home Rule local law options could be applied all situations. State agencies or legal associations should prepare alternative, up-to-date models for these transitional areas on how Home Rule can be used to improve the SEQR process.

(15) This suggests an opening for incentives that could, if enacted, turn an entire older city, suburban municipality, or rural village into an economic development type of zone with SEQRA/CIA parameters built in, exempting applicants and developers and offering tax breaks and other business incentives for those who operate within those parameters within those jurisdictions. It would be a watershed event if the state enacted this type of incentive.

(16) Transitional types of situations often require local institutions to commit greater financial resources, time, and expertise to both the planning task and the SEQRA task. This poses a problem because many of the outlying rural municipalities are operated by part-time volunteers who have no training or experience in SEQR matters, who have no professional staff support, and whose budgets are too small and inflexible to pay for specialized legal assistance, or for expensive planning and environmental protection techniques.

2) Communities With Overlapping Boundaries - Political and Ecosystem

- Trans-boundary impacts are an enormous issue in New York State. Most communities are located within ecosystems that are bounded by one or more political subdivisions of the state (county, town, village and city). At the same time these ecosystem boundaries cross through all or part of these political jurisdictions. Frequently a watershed boundary, aquifer, or wetlands system cuts through one community (A) and continues into all or part of other counties and municipalities (B, C), and can even involve regional, state and federal jurisdictions (D). The same situation occurs with man-made resources such as highway corridors and flood control systems.
- From an ecosystem perspective, numerous jurisdictions are like scattered dots on a map. What is needed is a process that connects all the dots into desirable patterns of protection at appropriate times in a manner that is appropriate to each community's evolution. Incentives should be created which encourage different jurisdictions to cooperate (e.g., special grants for GIS and electronic transactions over the Internet).
- Environmental impacts (including those that lead to cumulative effects) physically occur at the local level where proposed actions and projects interact with existing ecosystems and communities (A), and continue across borders into other political jurisdictions (B, C, D). What happens in one community (A), therefore, can affect other communities but, under current SEQRA regulations those other jurisdictions, (B, C, D) may have no decision making authority over the proposed action or project and are not therefore an "involved agency". At its "summation" meeting in June 1997, the statewide group was concerned that under current regulations courts cannot recognize additional burdens on neighboring municipalities and on other jurisdictions far removed geographically from the immediate action or project. An equitable process is needed in state regulations which does not put the full cost of assessing these broader, trans-boundary impacts exclusively on A, and that does not entirely exclude B, C and D, from the decision making process.
- In practice, it may not be always possible or desirable to require the highest jurisdictional level of government to address or control a resource that is stressed in a given case. In addition, in political matters not all of the jurisdictions involved may believe that a resource is stressed so the process needs some form of conflict resolution or mediation (other than the courts), especially if these are designed around new incentives.
- At the very minimum, the highest levels of government should take the ecosystems perspective into account and provide data directly (or grants for

other service providers to do so) on trans-boundary resources of known impacts which have been prepared by county, regional, state, federal and bi-national agencies. This information should be provided to local agencies at no cost for inclusion in local planning, resource management, and CIA activities. This type of service could provide baseline data and eliminate the need for local communities to re-study trans-boundary impacts in an endless duplication of effort in numerous local jurisdictions. It would reduce the cost and amount of time spent on local studies and thereby reduce delays in the development process. Society would benefit from this form of technical assistance and related incentives, which could be promoted using new telecommunication technologies.

- In this scenario, the definition of "involved agency" in existing SEQRA regulations would not be changed in an effort to solve trans-boundary issues. In its current form the involved agency/lead agency process appears to be a useful, flexible mechanism that can be adapted to the trans-boundary problem. This can be accomplished by revising the Environmental Assessment Form (EAF) and its notification requirements and by linking it to the Internet. Perhaps some "tighter" forms of relationships between lead, involved and interested agencies should be defined for those instances in which potential cumulative impacts threaten resources that cross-political boundaries. This must be carefully defined so as not to realign responsibilities among the political jurisdictions.

Revising SEQRA Forms (EAF)

J. REVISING SEQRA FORMS (EAF)

Actions and projects that are subject to SEQRA in New York State can be proposed by developers, municipalities and county and state agencies, or can be undertaken directly by a public agency. In either instance the first step into the process is filling out an Environmental Assessment Form (EAF). In this scenario, the planning subcommittee would include a detailed "Guidance Document," to be prepared to provide technical guidance to stakeholders whenever they assess CIA potentials (a suggested list of contents is presented in Attachment 4).

The planning subcommittee recommends that a "long form" Environmental Assessment Form (EAF) be required in all instances where cumulative impacts may be triggered. (17) This is necessary because the EAF short form generates little or no information that can identify stressed resources or be used to make a determination of significance with regard to

CIA.

(17) These practical ideas for utilizing the EAF form and the determination of "significant effect" in this manner were originally proposed by John Armentano in 1997, and were expanded upon in this report by members of the planning subcommittee.

Providing For Funding Alternatives

K. PROVIDING FOR CIA FUNDING ALTERNATIVES

In this scenario, municipalities and lead agencies would be able to make alternative arrangements for paying the cost of CIA and mitigative measures. There are many options and circumstances under which these can be financed (there are two issues here: deciding who pays for CIA, and who pays for implementing the actual, final mitigative measures which may involve different parties). Regardless of who pays, it is nevertheless up to each municipality and lead agency to ensure that CIA is completed where needed, to determine any mitigation measures that would be addressed, and to identify who pays for the mitigation. (18)

In this scenario, funding and payment would be handled in many different, but reasonably appropriate ways depending upon circumstances. These options offer a more equitable process than would exclusive reliance on the market place. Some outcomes would not be equitable if sole reliance were placed on the market place to resolve the issue of who pays for CIA and who pays for mitigation. First, a developer could be asked to study all pending and potential developments in that community. This would be problematic, very expensive, and create lengthy time delays.

Second, innocent third parties could become liable to pay the cost of correcting a problem caused by an unrelated development. (19) Likewise, the full cost of mitigation could fall on the last developer coming through the door, when a complex environmental problem becomes apparent only after this last entity's contribution, but to which all early developments have contributed.

This scenario presents five funding options for paying for CIA and for mitigative measures that may be appropriate to each case.

(18) It should be noted that rural communities enter the SEQR arena on an un-level playing field. Rural communities must meet the same state requirements as urban and suburban communities, but with very little

expertise and staff support, and little if any resources that can be reallocated to this purpose. It is more difficult for rural areas even to apply for grants and technical assistance because of these reduced capabilities. This is a very serious problem in many rural communities.

(19) Elizabeth Thorndike summarized this in 1997: "Who pays? Cumulative impact assessment, before undertaking projects that affect the same resource, can be a cost-effective environmental management practice. Assessment is done from the perspective of the resource, not from the perspective of the individual project. Absent such an assessment and mitigating actions, the cost for correction of adverse impacts may be paid for by different parties than the project sponsors."

1) Municipalities Pay Full Costs (Option 1)

One of the most difficult tasks in implementing a statewide CIA requirement would be convincing municipalities and lead agencies to pay for CIA up front. Nevertheless, the options are presented here for discussion purposes. The municipality could elect to pay the cost of the cumulative impact assessment in its entirety if it adopted a comprehensive plan or approach to CIA.

- It could then require individual applicants and developers to include and reflect that assessment in individual SEQR applications for proposed actions and projects.
- Separate arrangements would be needed to pay for actual mitigative measures.

2) Municipalities Require Reimbursements (Option 2)

A municipality could conduct a CIA and then later "recoup" the cost of the CIA in a comprehensive planning effort by:

- Establishing a fee structure after CIA plans are completed. This would not be significantly different than "benefit area fees" in a special improvement district. Applicants and developers would have the "benefit" of the CIA already being completed for their projects, and presuming that a project was within the established parameters of the CIA, could move forward in an expeditious manner.
- This offers a clear benefit in terms of savings on time and development costs, although who pays for actual mitigative measures would need to be determined.

3) Public Agencies Pay Full Costs (Option 3)

There are many circumstances when the applicant is neither a municipality nor a developer. State agencies are often placed into this role:

- In certain cases, when the lead agency is other than a municipality, and it is proposing or implementing an action that is large and directly under its control, that agency may elect to pay for and prepare the cumulative impact assessment rather than the municipality. An example of this may be a major transportation improvement by the New York State Department of Transportation. Their analysis should certainly reflect the cumulative impact concerns of the affected municipalities, but those municipalities may not have yet addressed the cumulative impacts of DOT's improvement proposal in any comprehensive planning document.
- Arrangements would be needed to pay for actual mitigative measures.

4) All Parties Share Costs (Option 4)

There may be circumstances in which it is to the mutual benefit of all parties to share the cost of CIA. For example:

- One example of cost sharing was studied in which applicants/developers got together in addressing and funding a CIA involving a town. A cumulative impact was identified in an EIS prepared by an applicant for a specific project. In this particular project, the Town, along with NYSDOT (the impact was to a State Interchange) went beyond just the cost of conducting the CIA and developed a mitigation formula for a payment-in-lieu (since the applicant in question was only a "piece" of the impact). The payment was placed in a joint Town/DOT account for improvements to the Interchange in order to mitigate the potential impacts.
- Each successive developer/applicant in this actual case in the project area has subsequently voluntarily made contributions to the fund in accordance with the mitigation formula created in the original EIS. The Town has also accessed this account to prepare a Comprehensive Plan for this area of the Town in a GEIS format that addresses cumulative impacts associated with full build-out of the area.
- In still other cases, a municipality (depending upon the size of a proposed project) may elect to jointly prepare a cumulative impact assessment with an applicant, and to share the cost of mitigative measures.

5) Applicants/Developers Pay Full Costs (Option 5)

Municipalities can be completely relieved of all CIA costs in some circumstances:

- Asking an applicant to pay for a separate assessment that identifies the project's contribution and relation to the larger cumulative impact assessment conducted by the municipality. Part 617.13 of the SEQR regulations currently allows a Lead Agency to charge an applicant for the cost of the review or preparation of an EIS. This provision could certainly apply to multiple applicants in a cumulative Impact situation.
- Applicants and Developers could voluntarily "front-end" the funding for a CIA. The municipalities would conduct a broader CIA using this funding source. A variation would be for multiple applicants may pool their resources with the community to pay for a full CIA that places the community in context of surrounding ecosystems.
- Where a comprehensive plan has not been prepared by a municipality, the municipality may ask an applicant to pay for and prepare a cumulative impact assessment that addresses those stressed resources that its project is likely to effect from a cumulative perspective (i.e., under a narrower scope than communities with adequate plans).
- In certain situations, it may be to a developer's advantage simply to pay the full cost of CIA as part of the cost of doing business. An example would be a situation where a developer faces a lengthy time delay. By paying for the CIA directly, entire construction seasons can be gained (i.e., time is money).
- Unresolved issues are reconciling the different time frames of competing developments, and determining who will pay the cost of actual mitigation measures.

These options should be continually refined in statutes so that municipalities and lead agencies can solve cumulative impact problems on their own. Whatever funding arrangements are used, the primary objective in each review case should be to disclose significant adverse cumulative impacts, identify suitable mitigation measures and determine who pays for those mitigation measures.

Being Responsive To Dissents

L. BEING RESPONSIVE TO DISSENTS

As of the final meeting of the Statewide Working Group on June 15, 1998, several members have submitted written dissents to the main report. Last year, for example, Mr. William MacTiernan wrote, "We are like travelers discussing the speed and direction of our trip without considering whether we should be taking the trip at all". He then presented a detailed critique. Other dissents have been made to the proposed definition of cumulative impact, by working group members representing the broader business community in New York State.

These dissents have raised issues, some of which are unresolved, and which are not addressed specifically in the Main Report or in the Scientific and Technical Subcommittee Report (e.g., is there a sufficient statutory basis for agency rulemaking on cumulative impact; is cumulative impact always "significant" or in some cases can the cumulative impact be identified as being insignificant; and, does this new requirement put too many burdens on stakeholders?).

The planning subcommittee offers this scenario as a way of discovering whether or not a "designer" approach to a complex regulatory reform issue can be used to formulate answers to concerns such as those raised by the dissents mentioned above. It is hoped that this scenario will illuminate the ongoing discussions, and stimulate the creation of sequel scenarios that offer better solutions.

Using A 'Designer' Approach For Policy Purposes

M. USING A "DESIGNER" APPROACH FOR POLICY PURPOSES

This scenario has made use of a new "designer" approach to cumulative impact analysis that, if enacted under agency rulemaking or statutory changes would help every community in New York State achieve a "critical balance" between environmental protection and economic development. This designer tool can be used throughout the state, can protect the environment, and can be used cooperatively with other venues such as long-range planning and resource management.

By designing CIA to be flexible and adaptive to special circumstances, and by designing it

to coordinate with incentives that are tied to land use planning, resource management and economic development tools, the whole mesh of state regulations hopefully would become less burdensome and more productive at local levels. Special incentives would help rural and transitional areas especially, and flexibility would help state agencies and the larger suburban and urban areas.

A designer approach may facilitate consensus-building efforts by offering a "win-win-win" strategy. All major stakeholders (public, private and third party) would benefit:

1) In rural communities that have no plans this approach would be narrow, reduce the cost paid by applicants and developers, put no cost on the community, and create incentives for communities, developers and environmental groups to work together and take a longer term perspective whenever development or environmental problems intensify. The development rate would drive the process, not government agencies.

2) In rural and suburban communities that do adopt plans, this approach would offer incentives (i.e., offering grants and priority treatment, spreading the cost of CIA, offering exemptions to stakeholders, and freeing local agencies from pressure to do their long range planning through the back door of the SEQRA process). Incentives would encourage stakeholders to support long range planning efforts and area wide solutions to environmental problems, especially in those communities where overall development pressures are beginning to intensify. Applicants and developers would be required to pay full cost for CIA only when their actions and projects require amendments, which could require in certain cases the preparation of a Supplemental GEIS using the original plans' CIA as a basis of study. The cost of amending a plan's cumulative impact parameters would therefore be paid by those who seek the amendment, thereby not penalizing other stakeholders who are working within the parameters of that community's comprehensive plans.

3) This approach would solve three problems. First, the full cost of doing CIA now often falls on individual applicants and developers and this would be eliminated as a mandatory feature in communities with plans. In special cases, applicants and developers would voluntarily share the cost of CIA with the municipality when it would be to their mutual benefit. Second, land use and environmental resource management considerations are often ignored for a variety of reasons, but the proposed incentives described earlier would encourage applicants and developers to support local comprehensive planning for financial reasons. During a community's comprehensive planning process, the cost of CIA (which can be considerable) can be shifted to the municipality. The cost of mitigation measures would be paid by applicants commensurate to their contribution to the cumulative impact. In turn, the municipality can spread the appropriate cost over many applicants, over a period of years, and over alternative funding options. In this way the

cost does not fall on the back of a single applicant or developer as a requirement. Third, once the new plans are adopted, applicants and developers would be exempted from CIA requirements (unless they seek amendments).

4) In complex, urban communities, this approach would offer a greater flexibility with Home Rule options for designing CIA requirements that are tailor-made to each urban complex, but that are more stringent than statewide requirements, or statutory exemptions based on large population concentrations. Incentives would be available to urban areas as well as to rural and suburban areas.

5) Lead agencies would be empowered to determine the geographic boundaries and temporal extent of CIA on a case-by-case basis. This could become part of the regular scoping process. This approach would adapt CIA to different regions of the state. An early appeals process is proposed to guard against any abuse of this "up front" power in lead agencies. A Conditional Negative Declaration should be allowed also for those cases in which the only mitigation needed pertains to CIA.

6) A simple notification procedure in each review process would alert adjacent communities and governmental units of potential cumulative effects, in cases where stressed resources extend across multiple jurisdictions. Rapid advances in telecommunications technology are expected to increase the effectiveness of this approach. No changes would be made to involved agency/lead agency requirements.

7) Five major funding options would give everyone flexibility in different situations and create new incentives at the same time.

8) With this approach in all communities across the state, with or without plans (rural, suburban, and urban), the CIA process would be scientifically based, would recognize resource perspectives and new, environmentally safe technological breakthroughs, and would offer incentives to stakeholders. The environment and existing communities would be protected from longer term, deleterious cumulative effects caused by continuously expanding human activities. The cost would be reduced in most cases, and new development would be encouraged throughout the state.

The planning subcommittee presents the preceding scenario for purposes of public policy formation, with the hope that some broad-based consensus will eventually be formed with regard to cumulative impact analysis. We need this consensus in the long run. After all, our descendants will need a clean environment and a workable system of governance. Without this wisdom, crisis management and high cost solutions will be the long-term answer. All approaches to implementing cumulative impact analysis should be evaluated using the four criteria of success that are presented on the first page of this report. This first

scenario also offers opportunities for resolving many of the issues that have been raised by dissents to the main report.

In summary, this first scenario gives us:

- A starting point to evaluate alternative implementation strategies.
- The normative criteria that can be used to develop alternative, sequel scenarios.

Let the discussions begin.

First Attachment To Planning Subcommittee Reports

TASKS FOR THE THREE SUBCOMMITTEES

The three subcommittee's tasks are described in some detail by facilitators Elizabeth Thorndike and David Church in their letter to the statewide group dated April 17, 1997. These tasks were presented and refined at the statewide meeting that was held in Albany in June 1997 and is reported in the minutes of that meeting. A summary of tasks follows:

1. Scientific/Technical Subcommittee

- Identify indicators of resource loss, stress, etc., warranting attention to cumulative impact management.
- Address geographic and time boundaries for assessing and managing impacts.
- Identify technical ingredients necessary to use SEQRA and comprehensive planning in a complimentary manner.

2. Planning Subcommittee*

- Identify options for assigning responsibilities for Cumulative Impact Assessment and Management: mandatory vs. discretionary; project sponsor vs. agency evaluation.
- Identify necessary changes in institutional relationships.
- Distinguish and characterize roles of SEORA and comprehensive planning

in management of cumulative impacts.

3. Legal Subcommittee (this evolved into the Main Report Subcommittee)

- Identify legal constraints for identification, evaluation, management and mitigation of cumulative impacts and how to address constraints.
- Identify options for assigning responsibilities for Cumulative Impact Assessment and Management: mandatory vs. discretionary; project sponsor vs. agency evaluation.
- Identify legal ingredients necessary to use SEQRA and comprehensive planning in a complimentary manner.

*This planning subcommittee report attempts to accomplish the tasks listed here, although in a scenario format because of the many interrelated, problematic issues that are involved with cumulative impact analysis. It is hoped that this approach will establish a foundation for evaluating alternative implementation strategies (e.g., using the four criteria of success that are presented in the planning subcommittee report on page one).

Second Attachment To Planning Subcommittee Reports

THE THREE FINAL PRODUCTS OF THE STATEWIDE GROUP

1) Main Report of Statewide Working Group (16 pages), by primary author John Armentano, based on two years of discussion of the Statewide Working Group in meetings held in Albany, with assistance from Ray Curran and Terry Martin. This Main Report evolved out of the subcommittee on legal issues. It presents a proposed statewide rule and definition of CIA with hypothetical examples. It accepts the scientific validity of CIA in a general manner, and recommends that it be linked to comprehensive planning and incentives to facilitate the implementation process. This Main Report discusses the famous Pine Barrens case, and recommends that lead agencies be given discretion to define geographic and temporal limits in each CIA case, as a way to make the rule flexible and adaptable to all regions of the state.

2) The Scientific and Technical Subcommittee Report (10 pages), by Ray Curran (Chair), Tracy Clothier and Ethan Carr. The Scientific and Technical Subcommittee Report identifies the scientific basis of the main report's definition of cumulative impact. It concludes, from a scientific perspective, that the phenomenon of cumulative impact is

widely accepted as a real environmental problem. It also acknowledges that CIA of many related but independent actions remains problematic. It points out that science is still evolving in the literature on this topic. This report discusses the need to look at indicators of resource loss, define which resources are stressed, and establish geographic and time boundaries for assessing and managing cumulative impacts. It recommends that CIA should be coordinated with comprehensive planning processes.

3) The Planning Subcommittee Report (25 pages), by Terry Martin (Chair), Ann Clarke, Jeff Kassner, Mildred Whalen, and Robert Wieboldt. The Planning Subcommittee Report states that a true consensus was not reached on a preferred implementation strategy, and a recommendation on cumulative impact is not made. Instead, it presents a scenario to illustrate for policy formation purposes, one way in which a statewide SEQRA/CIA rule could be implemented by linking cumulative impact analysis to comprehensive planning and resource management through incentives and exemptions. This scenario discusses interrelated issues and encourages a balance between protecting the environment and promoting economic development, as an alternative to relying on future crisis management solutions.

[Third Attachment To Planning Subcommittee Reports](#)

DIFFERENT, EXISTING VENUES THAT MAY BECOME SOURCES FOR ESTABLISHING CUMULATIVE IMPACT PARAMETERS

Alternative venues exist at all levels of government. A more thorough inventory of these many venues should be developed by NYSDEC. The following list is a starting point for further study, not an end point:

- SEQRA environmental reviews at local, county, regional and state levels.
- Long-range comprehensive plans at local, county, regional and state levels (e.g., land use plans, traffic circulation plans, environmental resource plans). CIA parameters from other venues can be incorporated into these plans at the time of plan adoption through a GEIS and its Findings document, giving them a legal basis for enforcement at local levels. This would also alert the broader community and developers so everyone knows in advance when CIA would be required. This new practice would perform a useful coordination service by integrating CIA information from different venues, especially information taken from local, county and area wide plans.
- Environmental studies, technical inventories, and resource management plans by county, state and federal agencies (e.g., specialized documents on

wetlands, watersheds, non-point source run-off, air and water quality regions and standards, and plans for using environmentally safe technologies). Resource management controls and area wide plans can be administered by water quality boards, soil and water conservation districts, regional planning boards, and state environmental agencies and health departments.

- Agency policy and technical guidance documents at county, state and federal levels (e.g., SEQRA Handbook, and other specialized documents concerning conditions in ecosystems, watersheds, wetlands or other environmentally sensitive areas such as aquifer recharge areas or flood zones).
- State and federal laws, regulations and consent orders (e.g., permitted operations for water quality discharge permits, and air quality compliance standards for different "regions"). These various sources can establish new CIA parameters and can be administered by various agencies other than a municipality or lead agency in a particular case. This can overlap with urban growth controls. The larger urban and suburban areas of the state tend to have more direct relationships and concerns at this level than do the smaller rural areas.
- International treaties and other multi-jurisdictional laws, regulations and agreements (e.g., controlling trans-boundary problems, which can range from local intermunicipal agreements on environmentally sensitive areas to international agreements on sources and loadings and bio-accumulation of toxic chemicals in the water column). These sources are being developed under Great Lakes Treaties by the USEPA and Environment Canada for the Great Lakes. These efforts are expected to take effect in the coming decade along the entire coastal areas of New York State along Lake Erie, the Niagara River, Lake Ontario, and the upper reaches of the St. Lawrence River basin.

[Fourth Attachment To Planning Subcommittee Reports](#)

RECOMMENDED CONTENTS FOR PROPOSED GUIDANCE DOCUMENT

A Guidance Document should be published so that the intent and range of effects of the proposed cumulative impact regulation can be better understood by municipalities and other stakeholders. Municipalities and lead agencies need to be advised on how to develop comprehensive cumulative impact approaches that meet their particular needs. Such a Guidance Document should include, but not be limited to, the following content:

a) List of exemptions and circumstances in which CIA is not required.

b) List of limitations and restrictions on the use of CIA.

c) List of options for early appeal of lead agency decisions.

d) Guidelines on how to identify resources that need protection:

- Certification procedure for identifying "stressed" resources in a community (giving examples of stressed resources that might be "candidates" for cumulative impact analysis).
- Identify thresholds and triggers, and specific cumulative impact standards (i.e., CIA parameters) that are relevant to different types of resources, and show how these can be used to 1) identify cumulative impacts that are significant; 2) determine whether or not a proposal should be exempted; and 3) measure to what extent a proposal may be contributing to a cumulative impact phenomenon.

e) Instructions on how to conduct cumulative impact analysis:

- Understanding the proposed cumulative impact definition that is included in the proposed regulatory change.
- Levels of analysis that should be included in a cumulative impact assessment.
- Guidance to lead agencies as to details and scope of work to be included in a typical cumulative impact assessment, including time frames and geographic boundaries that need to be decided in actual cases.

f) Linkages to comprehensive planning and resource management:

- Differences in types of lead agencies in New York State.
- Incentives for utilizing cumulative impact tools.
- Incorporating cumulative impact analysis into the preparation of land use plans and other environmental resource protection measures (e.g., utilizing GEIS and Findings).
- How to establish a comprehensive approach for addressing cumulative impact issues that incorporate venues other than

land use and resource management controls.

- Discussion of what happens when development exceeds thresholds and other standards that are presented in state and federal regulations, consent orders, or in existing land use plans, resource management documents, permitted operations, zoning, rulemaking, and policy guidance documents.

g) Stakeholders involvement in conducting cumulative impact assessment:

- Lead agencies, involved agencies, and interested agencies.
- Applicants and proponents of development.
- Communities and types of political jurisdictions:
- Affected areas.
- Municipalities or parties having jurisdiction over affected resources.
- Public concerns and involvement.

h) How to fund CIA (the analysis):

- Stakeholder, Lead Agency and Municipal Responsibilities.
- How to arrange for funding options.
- How to create incentives.

i) How to fund mitigative measures (the corrective actions):

- Stakeholder, Lead Agency and Municipal Responsibilities.
- How to arrange for funding options.
- How to create incentives.

j) Examples, which clarify the differences between segmentation and cumulative impact assessment (NOTE: there is still confusion in this area).