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Water and Sewer Infrastructure: Empire State Development, the Western New York Science & Technology Advanced Manufacturing Plant and NY's Smart Growth Public Infrastructure Policy Act *October 2014*

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Abstract

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

Three Summary Points of Interest

- The Western New York Science & Technology Advanced Manufacturing Plant (STAMP) in Genesee County is a high profile and large-scale proposal that is subject to a Smart Growth Impact Statement under the New York State Smart

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Growth Public Infrastructure Act of 2010 (SGPIPA). Water and sewer infrastructure are an important project element, but only as one part of a large economic development proposal.

- The Empire State Development Corporation's Smart Growth Impact Statement for the STAMP project "justifies" the plan in accordance with SGPIPA due to STAMP's inability to meet seven out of SGPIPA's ten smart growth criteria, mostly due to its size, location, and infrastructure requirements.
- This project is an important if unusual example for SGPIPA because of the large scale and high profile of the project. It shows a case in which state and regional economic goals are prioritized over smart growth goals, although there is clear attention given to smart growth in the project review and design.

Keywords

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

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Introduction

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

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

Our other reports consider the implementation, broadly speaking, of SGPIPA by State agencies with

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

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

environmental and economic development oriented missions with a primary or major programmatic focus on sewer and water infrastructure. In those reports we sought to understand how SGPIPA criteria compliance is evaluated and how, if at all, the results of the assessment play into whether or not a project is funded. We did this by examining several smart growth assessments conducted by the EFC and DOH for sewer and water infrastructure projects as well as the way that SGPIPA has been integrated into the Consolidated Funding Application process relative to programs that fund sewer and water infrastructure projects.

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

Following an overview of smart growth and the Smart Growth Public Policy Infrastructure Act in New York State, this report describes Empire State Development's Smart Growth impact assessment "tool" and its use for the STAMP project. The report concludes with a brief discussion and summary section.

Empire State Development's Smart Growth Impact Statements

SGPIPA requires each state agency to form a Smart Growth Advisory Committee that is charged with guiding the agency's compliance with SGPIPA requirements. A regular responsibility of the Smart Growth Advisory Committee is the review of infrastructure project proposals the agency intends to approve, undertake, support or finance, and to advise the agency's chief executive officer whether the project complies with the *relevant* SGPIPA smart growth principles *to the extent practicable*. So long as these smart growth principles have been incorporated into the proposed project *to the extent practicable*, the

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agency is justified to approve the project for funding. Determining relevance and practicability requires reasoned judgment. Some SGPIPA principles, for example those involving transportation mobility or predictable land use codes, may have few implications for many routine water and sewer infrastructure investments while being important in other instances.

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

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

municipal centers but nevertheless have these other qualities.

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

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

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

Finally, if the Agency finds that consistency with the State’s Smart Growth Criteria was impracticable (Option 3), a “Statement of Justification” section is added. The grounds on which the impracticability finding is based are articulated in the “Statement of Justification.”

ESD’s Smart Growth Impact Assessment of the STAMP Project
The Western New York Science & Technology Advanced Manufacturing Park

The Western New York Science & Technology Advanced Manufacturing Park (STAMP) is an initiative of the Genesee County Economic Development Center and partners to create a “shovel-ready mega site (1,279 acres)” targeted to “green-technology and advanced manufacturing clean technology, renewable energy, and energy efficiency products” (GCEDC ND; NYS ESD 2012:11). Specifically the site is designed for nanotech-oriented manufacturing (semiconductor, flat panel

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display, solar/PV), advanced manufacturing, and large scale bio-manufacturing projects” (GCEDC ND). The ESD’s Smart Growth Impact Statement further anticipates the creation of more than 9,000 “high-paying technology related onsite jobs”. Promoted by the State as a western companion to Luther Forest, the high-tech manufacturing hub built on a “shovel ready” site in Saratoga County, STAMP is to be located in the Town of Alabama, Genesee County, New York. Though adjacent to a small hamlet, most of the land in question is “currently used for farming and agricultural uses” (NYS ESD 2012:1). The project scope, at “full build-out”

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

As presented in the 2012 Draft Generic Environmental Impact Statement (DGEIS), the STAMP project has a number of site related implications for infrastructure, among them for water and stormwater service. For example, the preliminary stormwater management report suggests that stormwater capture facilities with storage capacity of approximately 130 acre feet would be necessary to manage a 100 year storm event, along with other mitigations. A preliminary water service report notes that the provision of perhaps 3 million gallons per day of water to this rural site at full build out would be “challenging and complex”, involving tens of millions of dollars in capital costs alone (WNYSTAMP ND).

Assessment and Determination re: Smart Growth Criteria Compliance

ESD’s Smart Growth Impact Statement (SGIS), which references the DGEIS, indicates that development of the

STAMP process would require new road, water, sewer, gas and telecommunications infrastructure. Special note is taken of the need to develop access to multiple sources of water and to construct an onsite wastewater treatment plant.

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

- (1) demonstrates coordination among state, regional, and local planning and governmental officials; (criterion 7);
- (2) involve community based planning and collaboration (criterion 8); and
- (3) promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by...encouraging broad based public involvement in the developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.” (criterion 10).

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

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

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

- Criterion 1: Although new infrastructure is required, this site allowed for it to be coupled with the use of existing infrastructure; other sites would have required more new infrastructure.
- Criterion 2: The project is not located wholly or partially in a municipal center, and will involve conversion of a minimum of 1,000 acres of largely agriculture land. Nevertheless, the STAMP site is immediately adjacent to a municipal center, the Hamlet of Alabama, and the Hamlet is designated as a growth area in the County Smart Growth Plan. In further mitigation, the site is also being designed “to visually integrate into the existing setting”; the portion of the site closest to the existing adjacent Hamlet of Alabama will include buildings that are similar to the character of that community; that portion of the site closest to agricultural land will involve a “scaled transition to neighboring farmland”; and the “larger technology manufacturing structures” will be clustered together away from either. Apparently due to the scale of development on farmland acreage larger than the Hamlet itself, the noted adjacency to the municipal growth center did not lead to a determination of full compliance with the municipal center criterion.
- Criterion 3: As noted immediately above, although the project is not located in a currently developed area or one designated for infill in an approved planning document, the location is adjacent to a “designated growth area per the Genesee County Smart Growth Plan”. The SGIS also notes that the “Town of Alabama Board is considering an amendment to its Comprehensive Plan to designate the site for the development of STAMP.” That amendment was later approved.
- Criterion 4: Although the project converts to development rather than preserves the State’s resources, specifically including agricultural lands, wetlands, and archeological and historic resources, it (1) ensures that current land use will be maintained until construction of each area is initiated; (2) the site has been designed to impact 9.54 acres of low-to medium quality wetlands and protect 112 acres of high-quality wetlands; and (3) ESD has worked with NYS Office of Parks and Recreation to ensure (with documentation) that the archeological resources are investigated and handled according to policy.
- Criterion 5: Although the project does not foster mixed land uses and compact development, downtown revitalization, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and/or the integration of all income and age groups, it does: (1) provide for light mixed use (large and small scale manufacturing with retail and professional uses); (2) create a public trail network connecting open space and recreational areas, as well as a green space buffer zone to “preserve the visual character”; and (3) help the “Hamlet of Alabama grow and thrive as a municipal center.”
- Criterion 6: Although the project does not provide mobility through enhanced public transportation choices and reduced automobile dependency in getting workers to the campus, it “has been designed to reduce automobile dependency while workers are present” via walking/biking trails and onsite access to “support services (coffee shops, cleaners, banking, etc.)”.
- Criterion 9: Although the project isn’t consistent with local building and land use codes, the Town of Alabama has been asked to “create a special Technology Zoning District” with appropriate codes and building permits that “will govern all development on the Project site”.

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

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determination of impracticability: the project's size, location and infrastructure requirements.

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

Discussion and Conclusions

The STAMP project directly impacts more than 1,200 acres of mostly agricultural land, including significant acreage of prime farmland soils. STAMP was judged inconsistent with several of what are arguably the most crucial and distinctive SGPIPA criteria, like locating the project in a developed area or in one designated in (pre) existing planning documents as suitable for development. It seems clear from the ESD's impact assessment that in this instance competing priorities – state and regional economic development goals – carried more weight than the multi-faceted goals of promoting smart growth that are articulated in SGPIPA.

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

In its justification statement, ESD stressed the lack of alternative sites with the necessary size and other

characteristics suitable for the envisioned development; in view of SGPIPA criteria ESD emphasized in contrast the STAMP site's access to existing infrastructure resources (e.g., I-90, electric transmission lines, two "redundant municipal water supplies").

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

Most surprisingly in light of smart growth as a response to the historical movement of residents and workers out of urban centers, the SGIS indicates that because there is no housing proposed onsite, the SGPIPA criterion about fostering "diversity and affordability of housing in proximity to places of employment, recreational and commercial development" is simply "not applicable". It is curious too for a project of this scale and specific ambitions for growth that no mention in the SGIS is made in relation to smart growth of the issues that are addressed typically in final and draft GEIS sections on "Potential Growth Inducing and Cumulative Impacts", though the treatment of these questions even in environmental impact statements themselves is often perfunctory (Kay et al., 2010).

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

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stake both substantively and symbolically with this proposal.

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

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

Concerning intent, SGPIPA bears some similarities to the better institutionalized, broader, and arguably more

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

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

This act would require these state infrastructure agencies (SIA) to fund infrastructure in a manner that is consistent with smart growth criteria... This bill would require state infrastructure funding to be consistent with smart growth principles, with priority given to existing infrastructure and projects that are consistent with local governments' plans for development."

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

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

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interpretation closer to that which appears to have guided the STAMP review:

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

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

However, there is also a more open reading of the impact of SGPIPA possible here. The STAMP project documentation suggests that ESD's implementation of the SGPIPA did result in ESD giving explicit, public consideration to smart growth principles in its evaluation of a proposal for infrastructure funding. Without the law, the tradeoffs in state and local goals being made might have not been nearly as explicit, and even given the required SEQRA review, some smart growth considerations might not have been publicly addressed at all. Thus the agency, applicant, public and others can all make their own judgments about the logic of the funding decision and its implications for competing priorities within the smart growth criteria themselves, not to mention with other priorities altogether. Requiring decisions between competing

policy priorities to be justified publicly and on the record has value in a democracy.

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

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

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

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

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