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Integration of Smart Growth into New York State Policy and Programs *July 2015*

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Abstract

New York is rarely if ever situated by planning advocates or detractors, not to mention policy scholars, in the pantheon of states such as Oregon and Maryland that have led the nation in adopting state smart growth policies. During the past decade, however, a cumulatively significant weave of policies and legislation has been drawn through New York's existing institutional fabric to condition state and local land use decision making. The emergent pattern bears a strong and deliberate imprint of smart growth policies and goals, though the smart growth label is still often in small print or

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entirely absent. In this paper, we consider the outlines of this pattern, its overall coherence, and its appropriateness for the diverse State of New York and its almost 1,600 general purpose local governments.

Three Summary Points of Interest

- Though New York is overlooked in most smart growth policy literature, we assert that New York deserves to be grouped with others considered to be smart growth states.
- Each state's social and economic circumstances and land and natural resource bases are unique. State land use planning and policy environments are similarly distinct, with smart growth itself a multidimensional concept with different interpretations and emphases of basic principles that vary by state.
- Within the framework most broadly recognized for smart growth policy nationally, additional measures to strengthen the quality of local comprehensive planning and its consistency with regional and state planning would rank high. In a home rule state, the importance of functional state-local partnerships in planning and implementation cannot be overestimated.

Keywords

Smart Growth Policy; New York State; Smart Growth Public Infrastructure Policy Act (SGPIPA)

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Introduction

New York is rarely if ever situated by planning advocates or detractors, not to mention policy scholars, in the pantheon of states such as Oregon and Maryland that have led the nation in adopting state smart growth policies. A high profile 2009 review of state smart growth policies (Ingram et al. 2009) identified relevant policies in almost half the states of the United States, but was silent about New York. New York has passed no high profile legislation with “smart growth” in its name and only one explicitly labeled “smart growth” law of significance. The State boasts no major statewide political leaders who have hitched their careers publicly to the smart growth star as such, whether it rises or falls.

Moreover, as a steadfast home rule state, the cultural and legal center of gravity in New York tends to reside more comfortably in local rather than state authority, and especially so over the land use planning matters that are central to the concept of smart growth. Not coincidentally, New York does not appear among the group of states that have mandated municipal comprehensive planning or dictated to local governments the content of comprehensive plans. It was only in reforms of the 1990’s that State law articulated contents that a municipal comprehensive plan “may” include. It is telling in this context that the American Planning Association’s formal policy guide on smart growth identifies effective comprehensive planning as “the primary means of implementing policies” that embody smart growth priorities (APA 2012). In light of these observations, the absence of New York from the list of exemplary smart growth state policy leaders seems deserved.

And yet there is a less visible side to this seemingly convincing narrative. Regarding comprehensive planning, despite the absence of a state mandate state law explicitly ranks “the authority and responsibility to undertake [municipal] comprehensive planning” to be “among the most important powers and duties granted by the legislature to a [municipal] government”. The number of municipalities with at least some version of a comprehensive plan has grown to about three-fourths of the State’s cities, towns and villages (Kay 2009).

Importantly, state policy has also evolved. Starting in 2000, during a Republican administration, general smart growth concepts were given a politically visible profile under the all-inclusive programmatic label of “quality communities”. Since then, and especially during the past decade under several Democratic governors, smart growth has advanced on multiple fronts. A gradual, but more persistently intentional and cumulatively significant, weave of policies and legislation has been drawn through New York’s existing institutional fabric to condition state and local land use decision making. The emergent pattern bears a strong and deliberate imprint of smart growth policies and goals, though the smart growth label is still often in small print or entirely absent. In this paper, we consider the outlines of this pattern, its overall coherence, and its appropriateness for the diverse State of New York and its almost 1,600 general purpose local governments.

Background

Like most policies with living histories, state approaches to growth management have matured over time (c.f., DeGrove 2005; Ingram et al. 2009). Timothy Chapin (2012), in his recent review of the evolution of state approaches to growth management draws on earlier work to identify four sequential if not fully distinct phases that have been prominent during the past half century. The first two mostly historic eras he calls the Era of Growth Control and the Era of Comprehensive Planning. Looking to the future, he anticipates the ascendance of a new phase, the Era of Sustainable Development. But the currently dominant phase he calls the Era of Smart Growth, an era characterized by an emphasis on redevelopment of existing population centers, place-making, and policy that assigns pride of place to incentives rather than to regulatory approaches.

We assert that New York is already in the Era of Smart Growth, and has begun to explore the frontiers of the Age of Sustainability. At the least, the State’s policies should be considered along with those of many others considered to be smart growth states. To place New York State’s approach to growth management in context, we first offer a review of the nature of smart growth policy and its influence in other states. We highlight especially observations about the way states

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with a recognized “smart growth policy” tend, in practice, to have policy sets that together create a smart growth whole greater than the sum of the parts.

State Smart Growth Policies in Review

Policy responses to growth pressure have multiple and deep roots at many levels of government. Boulder Colorado’s 1959 water supply “blue line” (Chapin 2012) exemplifies a notable and early postwar local government example. However, the “Quiet Revolution” (Bosselman and Callies 1972) of State involvement in land use control began with Hawaii’s adoption in 1961 of the Hawaiian Land Use Law, and grew to include other states such as Florida, Oregon, and Vermont during the 1970s. During this period New York considered statewide approaches to influencing growth patterns, choosing instead to implement a number of regional experiments. Prominent examples include, for example, the distinctive state planning institutions introduced into the rural regions of the Tug Hill Plateau, the Catskills, and the Adirondacks (Salkin 1993-1994). Nationally, the growth management movement expanded during the 1980s. The phrase “smart growth” took hold during this period after the Center for Rural Massachusetts organized a statewide “Growing Smart” conference. Smart growth terminology and goals achieved new prominence during the 1990s as Maryland’s Governor Glendening received national attention for the smart growth policies that became a signature goal and accomplishment of his administration.

Smart growth came to be the defining theory behind the movement for sustainable growth management. In current literature “smart growth management states” are generally recognized as having a state “mandate”, either required or suggested, for local comprehensive land use planning. Such plans are often based on a series of planning goals or ideals that are established on the state level. As an added layer, some of these programs also have a state or regional level review process to make sure that local plans conform to the state’s guidelines.

In a more particular sense, state growth management strategies vary widely. The Lincoln Institute’s report on “Smart Growth Policies” advises that, “No single

approach is right for all states, and the most successful states use a variety of regulatory controls, market incentives, and institutional policies to achieve their objectives” (Ingram 2009). This conforms to several of the fundamental premises of the American Planning Association’s “Growing Smart” document, summarized most compactly as: “There is no single, ‘one-size-fits-all’ model for planning statutes.” (Meck 2002:xliv). Through evaluations of eight states, four with established statewide smart growth programs (Florida, Maryland, New Jersey, and Oregon) and four without (Colorado, Indiana, Texas, and Virginia), Ingram’s study affirms the conclusion that inherent in the success of an explicit statewide growth management program is its synergistic integration with other programs, policies, and initiatives. Like many policies governing a complex of forces, multifaceted approaches that strategically account for interacting system ecologies work best. Litman (2015:9), citing several supporting studies, concludes that the substantive effects of smart growth strategies tend to manifest less as discrete, isolated impacts and more in ways that are “cumulative and synergetic.” Because the ways in which different states approach smart growth’s multiplicity of integrated policies vary, it can be misleading to draw reductionist conclusions about which specific methods are most effective.

Other research supports the idea that states with mandated local comprehensive plans plus “auxiliary” programs, such as urban growth boundaries or infrastructure concurrency policies that match development approvals to infrastructure capacity, are more effective in influencing land use patterns or urban density. Howell-Moroney (2007), using data between 1964 and 1997, examines nine states that have some kind of state mandate for local comprehensive land use planning. Understanding that there is a wide range of state mandate programs in practice, he divides these into three categories: weak states have non-mandatory programs and little to no review process, moderate states have a strict or mandatory program and a review process, and strong states have a mandatory program, a review process, and an auxiliary program. Howell-Moroney assigns three states to the strong category, including Oregon with its urban growth boundaries, Florida with its infrastructure concurrency, and Washington with both of the aforementioned

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programs.¹ His preeminent conclusion is that only strong growth management states have consistent success in altering their land development patterns. This important point in growth management research emphasizes that it was the suite of integrated programs that led to the initiative's impact on development patterns.

Howell-Moroney's study focused on one variation of integrated policies where one or two clearly defined auxiliary programs are directly related to state mandates for local planning. Many smart growth management states use other integration strategies involving policies that are incorporated into multiple functions of government not always associated with land use planning. Where they reinforce each other, these policies can align their more broadly scoped goals for the ultimate success of statewide smart growth policy. A key example of this is Maryland. Under Governor Glendening, from 1995 to 2003, the state budget was holistically deployed in support of smart growth principles. These principles were operationalized by directing budget expenditures to designated Priority Funding Areas. The smart growth policy goal was to support the concentration of new development within previously developed settlements or landscapes. This was in addition to a mandatory local comprehensive planning program. Besides both of these major programs, Maryland's smart growth efforts were strengthened by the strategic integration of policy across many different agencies and departments, helping to create programs and more finely tuned policies encouraging smart growth in multiple sectors. These programs included using various techniques through the Rural Legacy Act to save green spaces in order to preserve natural resources or for farm production, providing a historic preservation tax credit, reducing barriers (i.e. zoning or building codes) to development in existing developed communities, and Live Near Your Work programs (Millman 2014).

Much of Maryland's success was attributed to their "inside/outside strategy" of combining urban (Preferred Funding Areas) and rural (Rural Legacy Act) initiatives in order to make smart growth effective across the state

and in different environments (Frece 2014). The state's strategy of combining mandated planning, the establishment of Priority Funding Areas tied directly to the state's budget, rural preservation initiatives, and programs for concentrated urban development helped to strengthen their smart growth directives from different sides. Although Governor Glendening had established an Office of Smart Growth to direct the overall program, the integrated actions engaged a wide range of the citizenry, local governments, and various state agencies that might not have previously had a stake in smart growth.

Though not the focus of smart growth research and evaluations, states other than New York have worked on establishing smart growth programs without the context of a statewide mandate for local comprehensive planning. These states add an important aspect to the discussion of the effectiveness of integrated programming, as they demonstrate how a mesh of seemingly unrelated policies has the potential to contribute to an overarching and multifaceted goal like smart growth. Colorado is a signature example of a state that, despite many attempts, has not approved state smart growth legislation. Instead, it relies on a variety of state, regional, local, and public or private initiatives in a more ad hoc style of "bottom-up voluntary planning." Examples of programs on the statewide level include the Colorado Wetlands Partnership, the Colorado Voluntary Clean-up and Redevelopment Act for brownfield reuse, the Greater Outdoors Colorado for open space grants, a low-income housing resource organization, and tax incentives for developers promoting low-income housing. In addition to this, the state has adopted a "toolbox" to help local governments adopt smart growth planning, and has some state funds set aside for assistance (Ingram 2009: 25). Beyond this, most initiatives are taking place on levels below the state government, but even these few programs, and others that support them, demonstrate an interesting example of a combination of programs taking the place of strong state leadership. Colorado's success has been mixed in terms of land consumption and density, but the state does tend to have concentrated urban areas and only small increases in land consumption (Ingram 2009).

¹ Weak states are Georgia, New Jersey, and Vermont; moderate states are Maine, Maryland, and Rhode Island.

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Colorado's moderate accomplishments without a statewide comprehensive planning mandate are not necessarily replicable though, as is evidenced in Michigan's smart growth struggles. Michigan has also had difficulty passing state legislation that makes strong smart growth recommendations, resulting mostly in fragmented and poorly funded policies on the state or other levels that aren't always aimed at smart growth specifically and rarely promote or mandate smart development. Michigan's smart growth policy limitations stem from a variety of sources, fueled in part by its strong home rule and pro-growth traditions and its dominant automobile culture. Other important factors contribute such as the distribution of political control, high poverty and declining industrial base, historic patterns of development, and population trends (Boyle and Mohamed 2014).

Another noteworthy point is that, even in states with broad planning initiatives and wide-ranging policies, states frequently succeed most visibly in advancing a subset, or even just one, of the multiple specific principles of smart growth.² Though many of the diverse principles are complementary and can reinforce each other, it can hardly be surprising that not all can be advanced at an equal pace. Oregon, for example, has embraced a wide range of smart growth ideas in its planning and policy, but its successes have been judged mixed. The Land Use Planning Act of 1973 established 19 land use planning goals that must be implemented in municipal plans and by various agencies. These 19 goals span a wide range of smart growth type issues and were put in place so that conflicting goals could be balanced, but Oregon's focus clearly falls on a couple of key issues. From the beginning, Oregon land use planning made an important connections in linking urbanist goals to farmland and open space preservation goals. This helped to build bipartisan support in a state with a strong stake in natural resource preservation (Minner 2014). Oregon's focus on land use and growth management has continued, partially through the establishment of urban growth boundaries, but includes

increased attention to transportation alternatives and opportunities. These goals are emphasized in state policies and to promote success. On the other hand, Oregon has struggled with the smart growth principle of affordable housing at least in part because it doesn't have as strong an emphasis in this arena of planning (Ingram 2009).

In his earlier report, "Eight State-Sponsored Growth Management Programs: A Comparative Analysis", Dennis Gale describes state growth management laws as, "designed to fill in the gaps between state environmental regulations, regional planning, and scattered and inconsistent local growth management efforts" (Gale 1992: 425). Inherently, growth management programs fill a specific role in state planning efforts, but Gale's notion of gap-filling again presumes that they succeed best when they are integrated with other environmental, economic, and governmental plans that currently exist. Planning efforts on all government levels, and initiatives across sectors of government programming, can work most effectively if they fill in each other's gaps and work towards the same goals.

In sum, the foregoing review suggests that it can be difficult to accurately evaluate or even compare the effectiveness of smart growth policy on a statewide level. Each state's social and economic circumstances and land and natural resource bases are unique. State land use planning and policy environments are similarly distinct, with smart growth itself a multidimensional concept with different interpretations and emphases of basic principles that vary by state. Empirical research to establish the influence or effectiveness of smart growth policy thus faces nontrivial obstacles, and important controls need to be established to rule out the effects of other factors such as national development trends, state population, total land area, economic climate, and other government policies that might be confounded with the presumed effects of smart growth management techniques (Bengston 2004). Much research on the topic of effective smart growth policy has been more simply hindered by incomplete data or data taken too close to the initiation of the program to be able to make firm conclusions. Despite, or perhaps to some extent precisely because of these considerations, we argue that New York's approach to

² Specific principles of smart growth are not universally agreed upon, but are almost always agreed to be multidimensional. A benchmark set of basic principles has been adopted by the national Smart Growth Network; see eg. <http://www2.epa.gov/smart-growth/about-smart-growth>

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smart growth policy should not be a priori dismissed or ignored by students of smart growth. The following sections add substance to the skeleton of this contention.

Smart Growth in New York Legislation

According to one of the nation's most astute and prolific land use law and smart growth scholars and advocates, New York has long been a leader in establishing a strong foundation for smart growth policies. Salkin (2002) argues this claim has grown in validity at least since the 1972 *Golden v. Town of Ramapo* decision injected regionalism into local land use law precedents; she claims further that the state has "lead the way" in land use planning and zoning enabling act reform. Salkin ends her turn of the century article noting that future progress in "the uniquely New York style of smart growth" depends clearly on political leadership.

Almost a decade later New York State adopted a signature and unique variant of state smart growth management compared to the approaches discussed above. In 2010, New York State passed the "State Smart Growth Public Infrastructure Policy Act" (SGPIPA).³ SGPIPA attempts to reverse historical patterns of ill-considered, or more often literally unconsidered, state infrastructure subsidies that promote sprawl. The law marked the first time that an explicit definition of smart growth was codified into law in New York, despite numerous prior bipartisan and bicameral attempts to pass state smart growth legislation. However, because the law is focused on state agency infrastructure

decisions, the articulated principles defining smart growth are tailored rather specifically to that context.⁴

An amendment to the State's environmental conservation law, the SGPIPA legislation is limited in its scope of direct influence to the actions of State infrastructure agencies and authorities. Its provisions require these agencies and authorities to explicitly consider smart growth principles before approving or funding new or expanded public infrastructure. SGPIPA lists ten smart growth principles to which agencies must adhere "to the extent practicable" in their approval and funding of infrastructure projects. In conjunction with this new decision making process, the chief executive officer of each agency must create a Smart Growth Advisory Committee that acts as the communicator and advisor for the agency. The agency must also produce a written Smart Growth Impact Statement for each project to demonstrate how it meets the criteria or, alternatively, justify why it cannot meet the criteria (Montgomery and Oppenheimer 2010).

As discussed above, acknowledged smart growth states tend to center their efforts on local comprehensive planning. New York differs significantly from this trend. Although the NYS Department of State has long provided various kinds of comprehensive planning assistance to interested communities, SGPIPA only indirectly affects municipalities. When they choose to submit funding applications for infrastructure projects to State agencies, appropriate local and regional comprehensive or smart growth planning can be expected, as a general rule, to increase the competitiveness of the infrastructure application. In this sense, SGPIPA incentivizes smart growth planning. Nevertheless, though State agencies must now evaluate those projects for their adherence to smart growth criteria, the legislation does not directly require any kind of municipal compliance. Importantly, because SGPIPA rewards but also broadly defers to local planning priorities, the quality of local planning inevitably affects the influence of SGPIPA. Our review of local government smart growth policy suggests that local government attention to select smart growth

³ Five previous Cornell-CaRDI reports focusing on SGPIPA are available online at <https://wri.cals.cornell.edu/grants-funding/hrep/2013-0>. They are: 1. SGPIPA and smart growth in New York State: overview; 2. Implementation of SGPIPA through the CWSRF and DWSRF; 3. Economic development funding and NY's Smart Growth Public Infrastructure Policy Act; 4. SGPIPA and New York's Local Governments; and 5. Empire State Development, the Western New York Science & Technology Advanced Manufacturing Plant and NY's Smart Growth Public Infrastructure Policy Act

⁴ The SGPIPA smart growth criteria are listed in the first report cited in the previous footnote (i.e. Andrews et al. 2014)

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priorities is arguably widespread across many municipalities, but rarely encompasses the full range of integrated policies.⁵

SGPIPA might be New York's keystone smart growth achievement and represent the most important usage of explicit smart growth terminology in state legislation. However, in a broader context New York is an important example of a state with a widely integrated, and opportunistically advanced, approach to smart growth policy. SGPIPA is a significant law despite its limits. The limits leave gaps in New York's smart growth policy that have been and are being filled with related policies and programs that reinforce important tenets of the law. The result is a growing blanket of advocacy, policy directives, and state-run programs that contribute to the overall success of SGPIPA by reinforcing its underlying ideals and expanding its effect. This comparatively organic, integrating policy approach makes New York an important example among state smart growth programs. Though we have not attempted a careful comparison, it is at least reasonable to pose as a hypothesis worth testing that the breadth and depth of these interrelated policies and programs is unprecedented.

New York's Smart Growth Policy

The NYS Department of Environmental Conservation's website includes a list of smart growth principles that overlap with but are more generally applicable than the infrastructure-specific principles of SGPIPA. The NYSDEC smart growth principles are not codified in legislation as is the case in the language of SGPIPA. However, they also represent an official statement of New York's smart

growth policies. Because of their broader applicability, they are reproduced here:⁶

- Foster strong, sustainable businesses in community centers - enhance infrastructure in downtowns and villages to attract economic growth and discourage scattered development
- Preserve open space, forests, farmland, natural beauty, and critical environmental areas - keep irreplaceable resources intact to bolster local economies, improve quality of life, and guide growth inward
- Strengthen and direct development towards existing communities - tap into existing infrastructure and neighborhood resources to stop the sprawling urban fringe
- Foster distinctive, attractive communities with a strong sense of place - value development and construction that has distinctive architectural beauty
- Create walkable neighborhoods - build compactly and focus everyday activity along streetscapes designed for pedestrians, bicyclists, transit riders, and automobiles
- Take advantage of green building design - use innovative approaches, proper building placement, and local materials
- Create a range of housing opportunities and choices - build quality housing for people of all income levels with access to jobs, culture and open space
- Encourage community and stakeholder collaboration in development decisions - work together to find creative solutions, increase community understanding and plan and invest in shared spaces
- Mix land uses - locate commercial uses proximate to residential areas and open space
- Make development decisions predictable, fair and cost effective - provide government leadership that creates a fertile environment for innovation
- Provide a variety of transportation choices - reinforce the viability of smart growth with efficient movement between housing, shopping, and jobs
- Foster long term comprehensive planning - plan to reach local, regional and state goals, to target investment, increase local capacity and increase intergovernmental efficiency

Smart growth made explicit in state law

⁶ See <http://www.dec.ny.gov/lands/45970.html>

⁵ See footnote 3 above, report 4: SGPIPA and New York's Local Governments: "Just under one third of the respondents reported that their municipalities had adopted some kind of local policy or law intended to address sprawl, but almost nine out of ten had adopted local measures that were in concordance with one or more of the State's smart growth criteria. However, only two of the State--specified smart growth goals were supported by local policy in over half of the responding municipalities: 1) the protection of natural, agricultural, or historical resources and 2) ensuring that building and land use codes are fair and/or predictable."

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One way in which New York State's policy approach widens the applicability and effect of the Public Infrastructure Policy Act is by including smart growth principles in other legislation, either implicitly or explicitly. This compatible legislation generally focuses on a single principle of smart growth. Though the language is often broad and even vague, codification in other laws adds power and helps to legitimize its presence in SGPIPA legislation.

Based on a simple word search of existing law, "smart growth" appears several times outside of SGPIPA in the Consolidated Laws of New York. However, in none of these contexts does the term engage, at least so far, as much traction as in SGPIPA.

- In Legislative Law §83-a, regarding the legislative commission on critical transportation choices, that commission is authorized to "evaluate the transportation system" in relation to smart growth and many other objectives.
- State Finance Law §54 on per capita state aid for the support of local government stipulates that certain demonstration project grants involving regionalization of service provision may be funded to support "the creation of a regional smart growth compact or program."
- In Energy Law §6-104(h), concerning the state energy plan, it is stated that this plan "shall include...an assessment of the ability of urban planning alternative (sic), including but not limited to smart growth and mass transportation improvements to reduce energy and transportation fuel demand". We discuss the State Energy Plan further below.
- Public Authorities Law §1872, concerning NYSERDA's green residential building program, defines green residential building standards to include those that "promote smart growth". NYSERDA is directed to establish green residential building standards. Building owners who comply with these standards may qualify for "incentive payments".
- Finally, two unconsolidated laws (Urban Development Corporation Act §16-Q, §16-R) authorize spending or other project assistance in support of "smart growth" under certain circumstances

A discussion follows of other significant legislation and policy that support smart growth principles without necessarily referencing smart growth explicitly. Each is a tool that can be and is used by the state to support smart growth goals. (Beyer 2015)

Land Bank Act

The Land Bank Act was signed by Governor Cuomo in 2011 and allows municipalities to apply for and create land banks in their communities. New York State's Empire State Development program says that, "Land banks are not-for-profit corporations created to take control and redevelop vacant or abandoned properties to where they can better serve the public interest." This legislation helps combat the blight caused by vacant, abandoned, and tax-delinquent properties by returning them to a more productive use. These properties, in their current state, represent lost revenue to local governments and present significant safety and social hazards (Empire State Development). Although not explicitly smart growth legislation, the Land Bank Act has the potential to aid municipalities in their efforts to rehabilitate and revitalize their downtowns and municipal centers by allowing them to purchase and redevelop vacant and abandoned properties.

Historic Preservation Tax Credit

New York State's original Historic Tax Credit was approved in 2006 to cover commercial and homeowner properties. Governor Cuomo expanded this legislation in March of 2013, extending the program until December 31, 2019. This tax credit is targeted at owners of "historic income-producing real property, owner occupied homes, and barns" and qualifies them if they choose to rehabilitate their property in preapproved ways. Under this legislation, property owners are eligible for up to a 20 percent federal income tax credit, based on the costs of their rehabilitation (NYS Office of Parks, Recreation, and Historic Preservation). Similarly to the Land Bank Act, this legislation may not be explicit in its connection to smart growth, but it has the potential to aid in rehabilitating and revitalizing downtowns and municipal centers where historic development is present. Preservationists see the expansion of this program as a promising sign of continued state support for restoring

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historic properties and funding rehabilitation initiatives (Garcia 2013). Both the Land Bank Act and the Historic Preservation Tax Credit help to reinforce NYSDEC's and SGPIPA's goals of rebuilding in developed areas and revitalizing historic centers. Each gives more authority and incentives to municipal leaders and property owners, respectively, to reinvest in municipal centers in ways that complement the intention of the SGPIPA legislation.

Complete Streets Act

On August 15th, 2011 Governor Cuomo approved the Complete Streets Act, which requires "state, county, and local agencies to consider the convenience and mobility of all users when developing transportation projects that receive state and federal funding." The Act attempts to balance more fairly the needs of automobile drivers with the needs of people choosing or dependent on other modes of transportation. A Complete Street refers to a roadway that considers all modes of mobility including pedestrians, bicyclists, public transportation riders, and motorists, as well as all ages and abilities, including children, the elderly, and persons with disabilities. This legislation directly intersects with the Public Infrastructure Policy Act's criterion calling for provision of a variety of transportation choices, and similarly can contribute to the general smart growth goals of enhancing walkability and helping to create a sense of place. Specifically, a "complete street" might refer to a roadway featuring sidewalks, lane striping, bicycle lanes, paved shoulders, crosswalks, pedestrian signals, bus pullouts, raised crosswalks, ramps, and/or traffic calming measures. Although it doesn't apply to all transportation projects, since some might not necessitate these allowances, the Complete Streets Act complements important aspects of the SGPIPA legislation. It provides more incentive for the New York State Department of Transportation and other agencies to consider how to maximize the ability of transportation projects to serve the widest range of users (NYSDOT, "Complete Streets").

Tax Increment Financing (TIF)

Tax Increment Financing, by pushing financing capacity forward in time, allows municipalities the ability to fund redevelopment projects without an initial tax impact.

The strength and potential risks of TIF arrangements are based on the expectation that current investment in redevelopment will lead to increases in future municipal revenues. The process begins with local governments determining the current property tax revenue within a "targeted development area" and borrowing money through the sale of tax increment bonds in order to fund public improvements. The sale of the bonds commits the municipality to raising the revenues that will support future payments to the bondholders. The intention is that the improvements in the development area will be financially successful and increase local tax revenue, which can then be used to pay off the original bonds.

New York State TIF legislation has had various restrictions in the past, such as only allowing TIF in blighted areas and excluding school taxes from the tax increment calculation (Nolon 2007). Recently, these restrictions were changed with an amendment to the General Municipal Law that allows municipalities to include anticipated school district property tax revenues in their TIF funding. Because school district property tax revenues are typically greater than those raised by general purpose municipalities, the amendment substantially expands the program's potential as a funding source. This updated legislation (contained within the NYS Fiscal Year 2012-2013 State Budget) "allows municipalities to apply the school portion of real property taxes – with school district approval – to pay for debt service on tax increment financing (TIF) bonds to redevelop blighted areas across New York" (NYS Association of Realtors 2011).

TIF bonds help to secure funds for redevelopment in "blighted areas which threaten the economic and social well-being of the people of the state" in many New York communities (Young 2012-2013). This redevelopment financing strategy can have smart growth appeal as it, for example, encourages rehabilitation of blighted areas surrounding schools, which are often found in urban areas and historic neighborhoods that are in need of revitalization. By providing an alternative financing mechanism for local governments looking to revitalize blighted areas, TIF can be seen as an important component in increasing the promotion of smart growth development.

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Smart growth and resilience: the Community Risk and Resiliency Act (CRRA)

Smart growth has been explicitly referenced in state legislation that responds to the risks of storm and weather related damage. The relationship between smart growth principles and storm recovery is complicated in practice. This is perhaps exemplified best at the national level by the recent history of the overwhelming passage of the Biggert–Waters Flood Insurance Reform Act of 2012, which was intended to reduce or eliminate public insurance subsidies for properties in at-risk locations. However, this legislation was followed quickly by the delay of its implementation with passage of the Homeowner Flood Insurance Affordability Act (FEMA, Flood Insurance Reform; Wikipedia, Homeowner Flood Insurance Affordability Act). Even before consideration of any connections to smart growth, the question of the rights to, location of, and payment for reconstruction evokes acutely sensitive political issues.

The NYS Community Risk and Resiliency Act was signed into law by Governor Cuomo in September of 2014 in response to the destruction of major storm events. In addressing the future effects of climate change, sea level rise, and severe weather, CRRA strengthened the connection between resiliency and smart growth. The resiliency framework, which assumes the need to prepare for “inevitable changes of a warming world”, incorporates the logic of both climate change mitigation and adaptation into state law. (Cuomo 2014; Beyer 2015)

The law amended the Environmental Conservation Law, the Agriculture and Markets Law, and the Public Health Law, all in relation to “the consideration of future climate risk including sea level rise projections and other weather-related data; and in relation to requiring the preparation of model local zoning laws relating to climate risk” (Savino 2014). The law, like SGPIPA, focuses on the actions of State agencies, requiring them to take into account climate risks during many kinds of permitting, funding and regulatory decisions. It also directs the appropriate state agencies to adopt official projections for sea level rise and to prepare model local laws to help communities incorporate measures related to physical climate risks into local laws, as well as

provide guidance on the implementation of the Act. (Cuomo 2014)

The aspect of the law that most explicitly connects to smart growth is its stipulation that an 11th criterion be added to the Smart Growth Public Infrastructure Policy Act requiring resiliency and climate risk analysis to be considered with each infrastructure proposal. This codifies the State’s policy of treating resiliency and smart growth as directly related and having mutually reinforcing goals.

A broader weave of smart growth and resilience policies

Long Island Smart Growth Resilience Partnership

While recovery, resilience and smart growth principles do not necessarily fit hand in glove in all instances, there are many ways in which these principles can, do and should reinforce each other. FEMA, for example, has recently highlighted as a potential national model the work of the ad hoc Long Island Smart Growth Resilience Partnership involving a voluntary collaboration of stakeholders and agencies at multiple levels of government. The Partnership is an offshoot of Governor Cuomo’s NY Rising Community Reconstruction community resiliency plans (discussed further below). Of significance for the relationship between reconstruction and smart growth, the Partnership has been supported and loosely facilitated by the NYS Smart Growth Director. Partnering federal agencies include FEMA and EPA; state agencies include the NYS Department of State (DOS), Department of Environmental Conservation (DEC) and the Metropolitan Transportation Authority (MTA); and local partners include the Suffolk and Nassau County (Long Island) planning departments.

Federal participation emanates from a unique inter-agency agreement between EPA and FEMA to work together to reinforce both smart growth and resiliency in an integrated fashion after Hurricane Sandy. State participation began after Hurricane Irene and Tropical Storm Lee with Governor Cuomo’s Long term Community Recovery Initiative, in which the NYS DOS offered close to \$1 million in smart growth funds for post-disaster planning.

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Siegel and Kieber (2014) discuss the Partnership's effort to respond to the need to rebuild in light of the objective to support "resilience, smart growth and equitable development." FEMA (2015) describes both the key goals and methods:

One of the primary goals of the partnership is to encourage economically, environmentally and socially sustainable development in low-risk areas away from flood zones and along transit corridors in Nassau and Suffolk counties. Through this unique partnership, FEMA is successfully coordinating with other agencies in leveraging collective resources and expertise to help Long Island communities engage in a more resilient, sustainable and equitable recovery.

The Partnership's strategies for building local capacity for long-term resiliency planning include incorporating good science, data, planning tools and public outreach training into community planning. Toward those goals, the Partnership is focusing on several emerging topics in smart growth and resiliency. These include ecosystem valuation (monetary); health impact assessments (HIAs) in land use planning, policies and projects; state-of-the-art community outreach and participation; and training in scenario planning software, particularly CommunityViz. (Beyer 2015)

New York Rising Community Reconstruction Program

Announced in April of 2013 and launched in July of the same year, the New York Rising program was established to provide rebuilding and revitalization assistance for communities that had been damaged by Hurricanes Sandy and Irene and Tropical Storm Lee. An initial allocation of funding was designed to allow communities to write plans for reconstruction. A local Planning Committee headed the design of each plan with technical assistance and support given by the State. These plans "assessed storm damages and current risk, identified community needs and opportunities, and developed recovery and resiliency strategies" (NY Rising, "Community Reconstruction Plans"). Additional funding was designed to help implement these plans, and continued government support was intended to help communities in finding other federal, state, local, and nonprofit funding

sources in order to supplement New York Rising funding.

The goals of this program are to: "empower the State's most impacted communities with the technical expertise needed to develop thorough and implementable reconstruction plans to build physically, socially, and economically resilient and sustainable communities so as to rebuild New York's communities in a way that will mitigate against future risks and build increased resilience" (NY Rising, "Frequently Asked Questions"). From the State's point of view, this new theme of resiliency is closely tied to smart growth. As made explicit by incorporation of climate concerns into SGPIPA's smart growth criteria through the Community Risk and Resiliency Act (see next section), both strategies of development can be used to plan in current communities for sustainable futures that include the capacity to better manage natural disasters and climate change.

A Selection of Other State Policies, Programs and Agency Efforts Supporting Smart Growth

Beyond the previously discussed elements of State legislation, there are additional State programs, policies and routine implementation efforts that incorporate smart growth principles into specific actions, or influence organizational goals, in ways that are significant and still evolving. This careful integration and consideration of smart growth throughout many relevant aspects of state governance is an important characteristic of New York's overall policy.

Smart Growth Cabinet Executive Order/Smart Growth Director

In December 2007, Governor Spitzer signed an Executive Order creating a Smart Growth Cabinet. The Cabinet consisted of twelve state agencies that impact land use and development through their spending, oversight and program operations. Supported by a Smart Growth Director, the Cabinet developed a working definition of smart growth (Smart Growth America 2015; NYS Office for the Aging 2012:II.1.c):

Smart Growth is sensible, planned, efficient growth that integrates economic development

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and job creation with community quality-of-life by preserving and enhancing the built and natural environments and creating livable, socio-economically equitable communities and regions. Smart Growth encourages growth in developed areas with existing infrastructure to sustain it, particularly municipal centers, downtowns (“Main Streets”), urban cores, hamlets, historic districts and older first-tier suburbs.

A detailed list of smart growth tools used by the Cabinet remains closely aligned with those promoted by state agencies nearly a decade later.⁷

The Cabinet’s mission was two-fold: to incorporate the principles of smart growth into all relevant state plans, policies and programs that affect land use and development outcomes; and to create a policy agenda for promoting and incentivizing smart growth. The position of Smart Growth Director was created to coordinate the inter-agency operations of the Cabinet. (Beyer 2015). The Smart Growth Director sits at the State Office of Planning and Development within the NYS Department of State. The Director has greater ability to influence than to dictate smart growth policy and its implementation throughout government in NYS. However, to no small extent, the substance of this paper reflects how this influence has been effectively deployed within the context of a generally supportive administration.

⁷ Compare “mixed land uses; compact, conservation-oriented development; strategic farmland and open space preservation; historic preservation; brownfield clean-up and re-development; vacant property re-use; regional and inter-municipal land use and transportation planning; revitalization of existing developed areas; “green” buildings and infrastructure; varied transportation and mobility choices, including walking, biking and public transit; age-, income- and ethnically-integrated communities; targeted investments in affordable housing; transit-oriented development; collaborative, public, inclusive and stakeholder-driven planning processes; transfer of development rights; accessible and well-planned public spaces; and well-maintained parks.” (Beyer 2015) with NYS Office for the Aging 2012:II.1.c or the NYSDEC’s current description of Smart Growth at <http://www.dec.ny.gov/lands/45970.html>

Cleaner Greener Communities Program

Initiated by Governor Cuomo and funded by NYSERDA (New York State Energy Research and Development Authority), the Cleaner Greener Communities Program aims to promote sustainable and smart growth practices in every New York region. Using New York’s ten Economic Development regions as divisions, each region was given funding (nearly \$10 million) to develop a Regional Sustainability Plan. Following this, Phase II of the program uses NYSERDA funds to support the implementation of large-scale, high profile projects that are featured in the regional sustainability plans (NYSERDA, “Cleaner, Greener”).

The State’s Cleaner Greener Communities program explicitly frames smart growth as a central tenet. Not all plans take the bold stance of the Mid-Hudson Region to, “make all growth smart growth” (Ecology and Environment 2013:9-4), but many pay significant attention to the term smart growth specifically. Importantly, various of its elements are included to some extent in every regional Cleaner Greener Plan Report posted by NYSERDA.⁸ More specifically, each plan contains many short and long-term actions and goals related to smart growth principles such as sustainable land use practices, multiple transportation options, promoting affordable housing, improved waste and water management, and preservation of agricultural lands and open space. The Cleaner Greener Communities Program, through the state incentivized process of “bottoms-up” regional sustainability planning and subsequent funding of projects, adds to SGPIPA’s influence by helping to regionalize smart growth planning and implementation. This program exemplifies how State actions can leverage broader change by encouraging other levels of government to consider smart growth in their own future plans.

New York State Energy Plan

The Energy to Lead: 2015 New York State Energy Plan (approved by the NYS Energy Planning Board on June 25, 2015) “sets forth a vision for New York’s energy

⁸ All are posted at <http://www.nyserdera.ny.gov/All-Programs/Programs/Cleaner-Greener-Communities/Regional-Sustainability-Plans>

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future that connects a vibrant private sector market with communities and individual customers to create a dynamic, clean energy economy” (State Energy Plan 2015). Smart growth features prominently in the plan, and is discussed in its own chapter as an important aspect of changing energy usage in New York State. The Plan recognizes that “the way we develop our communities has a significant impact not only on greenhouse gas emissions, but also on quality of life and the affordability and desirability of communities” (State Energy Plan, 2015:129). Focusing on the integration of land use and transportation, the smart growth chapter discusses the greenhouse gas emission benefits that can be gained from using “Location Efficiency” in land use decisions and providing alternatives to automobiles in an attempt to utilize development patterns that reduce “vehicle miles traveled” (VMT). The Plan recognizes that smart growth is an interdisciplinary theory that requires many components in order to see meaningful impacts. It advocates for dense, mixed-use, and connected developments; complete streets; transit-oriented development; green infrastructure for its potential to reduce energy use; and using dense development to make buildings more efficient through clustering, attaching, and using smaller spaces.

The State Energy Plan makes specific smart growth recommendations which it links to broad benefits such as improved quality of life, reduced commuting times and vehicular use, energy savings and GHG reductions, and urban revitalization. The Plan states in particular that (State Energy Plan 2015:1.92):

The State will implement a multi-faceted approach to facilitating and unlocking private sector investment in smart growth. DOS will continue to support the development of smart growth plans that incorporate the principles contained in the New York State Public Infrastructure Policy Act of 2010. NYSERDA, Empire State Development (ESD), HCR, and DOT will provide investment incentives for smart growth and TOD projects that align with regional and local sustainability plans developed with NYSERDA support. Finally, an inter-agency TOD Working Group led by DOS will identify and coordinate the development of programs to further support TOD related to

areas such as: land-use planning, housing, economic development, tax policy, and connecting TOD developments with parks and nature trails.

With specific goals for promoting and incentivizing smart growth, the 2014 Plan is a prime example of the deliberate integration of smart growth policy into other connected arenas of governance. The specific recommendations are intended to open the door to further policy, programmatic reforms and initiatives that will implement the Energy Plan.

New York State Climate Action Council

In August 2009, Governor Paterson signed Executive Order 24, which set a goal to reduce greenhouse gas emissions in New York State by 80 percent below levels emitted in 1990 by the year 2050. As a step towards reaching this goal, the Executive Order also created the New York State Climate Action Council (CAC) and gave it the directive to prepare a climate action plan that would “assess how all economic sectors can reduce greenhouse gas emissions and adapt to climate change.” In November of 2010 the Council released an Interim Report of a Climate Change Action Plan for New York with the help of NYSERDA, the DEC, the Center for Climate Strategies, and others (NYS DEC, “Climate Action Planning”). Similar to the New York State Energy Plan discussed above, this plan includes a smart growth perspective that aids in integrating this type of sustainable development into other state policy areas. Chapter seven of this report, “Transportation and Land Use Mitigation”, is the most relevant section in terms of smart growth. This section recognizes the capacity of smart growth development to reduce greenhouse gas emissions by creating “compact, mixed-use, and interconnected” communities and allowing for a variety of transportation modes (NYS Climate Action Council, 7-1). The Climate Action plan recognizes that minimizing automobile usage by focusing development on central areas and providing other transportation options can lower greenhouse gas emission rates.

The plan calls for increased investment in mass transit, smart growth planning, transit-oriented development, and the revitalization of downtowns, main streets, and other central business districts. In specific “Policies”, the

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plan calls for a focus on Priority Growth Centers that are “encouraged to have compact, mixed-use, walkable/bikeable development in existing centers of activity, whether urban centers of hamlets and village centers”, while also focusing on affordable housing options, open space conservation, and incentivizing smart growth development (NYS Climate Action Council, 7-24). Other “Policies” include calling for transit-oriented or transit-supportive development and location-efficient land use, all of which ask communities to minimize automobile usage by lowering the necessity of cars through their land use and transportation decisions. Similar to the New York State Energy Plan, the Climate Change Action Plan is exemplary of how smart growth should be connected to other sectors of New York State’s government in order to expand its implementation and reinforce its goals.

New York State Department of Transportation

The New York State Department of Transportation has been applying smart growth principles to their projects for many years, but since the passing of the Public Infrastructure Policy Act, their implementation of smart growth guidelines has become more formal. In the agency’s words: “To ensure compliance with specific requirements of the new Law, NYSDOT recently completed a comprehensive, agency-wide, phased implementation effort to integrate the elements of the Law (i.e., the consistency evaluation) into the existing, federally-required transportation development process” (NYSDOT, “NYSDOT Implementation”). Although SGPIPA works in a reactive way, evaluating plans proposed by municipalities for their smart growth principle adherence before deciding on funding, the NYSDOT has created a proactive system that tries to include smart growth in the beginning steps of their funding proposal process. These efforts include a Smart Growth Screening Tool to assess a project’s alignment with smart growth principles and a Guidance document to help their employees better understand PIPA. The agency’s focus is on incorporating smart growth into the design of the municipality’s project from the beginning, instead of reacting to the design once it’s been finished. This strategy is more efficient, both from the agency’s point of view and the municipality’s, as well as fairer to the municipalities and project managers. The NYSDOT provides a clear example of a State agency that is

building its own tools and strategies to go beyond basic compliance with SGPIPA in order to more effectively and comprehensively build smart growth into its policies.

Regional Economic Development Councils (REDCs)

In 2011, Governor Cuomo divided New York into ten regions, each with its own Regional Council, in order to “develop long-term strategic plans for economic growth for their regions.” These councils are “public-private partnerships made up of local experts and stakeholders from business, academia, local government, and non-governmental organizations” (NYS Regional Economic Development Councils). On an annual basis, these plans compete for state funding for projects intended to spark job creation and community development, with certain plans receiving more funding than others depending on their perceived strength.

Analysis by Empire State Future, a smart growth advocacy organization in New York, judged that the four regions designated as “Best Plan Awardees” in 2011 had all incorporated smart growth as a top priority economic development strategy. (Empire State Future 2014)

The Western New York (Buffalo) REDC 2013 Strategic Plan, for example, states (Duffy 2013:6): “Economic strategies grounded in smart growth principles set the state for regional success. By adhering to principles of growing effectively and efficiently, targeting development decisions, enhancing core public assets, and utilizing existing resources, WNY is reducing costs of new infrastructure and building sustainable communities that are attractive to the creative talent that drives today’s economy.” The WNY REDC created a Smart Growth Regional Coordinating Council and a Smart Growth Scorecard to guide state and local infrastructure and other investments toward downtowns and smart growth projects.

Similarly, the Long Island REDC employed smart growth and transit-oriented development as a core strategy to induce industry clusters. Their 2011 Strategic Plan states (Duffy 2011:11): “Key Strategy: Develop innovation and industry clusters in transformative locations across the region—including downtowns,

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brownfields and university, research and medical centers—by integrating the smart growth principles of transit-oriented development and vibrant community life.” The Strategic Plan became the foundation of the region’s “top-performer” status in economic development grants awarded in the 2011 competition. WNYC News in New York City reported that: “According to Bruce Katz, one of the competition’s judges and a fellow with the Brookings Institution, Long Island’s grant application also stood out for its smart growth redevelopment projects.” (Lane 2011)

Central New York (Syracuse) set as one of its three overarching economic development strategies and goals to “Revitalize our Region’s Urban Cores, Main Streets, and Neighborhoods.” The region’s Strategic Plan states (Cantor and Simpson 2011:5): “Strong regions are built around strong urban cores and neighborhoods that develop, attract, and retain the human and social capital required for industry to grow and remain competitive: the convergence of ideas and people. Many leading businesses and key industry hubs are located within these city and town centers, and the region’s anchor institutions—educational, health care, and cultural—have been at the forefront of the national movement to leverage their significant assets for community revitalization.”

Lastly, in service of their vision of creating “the greenest energy economy in the State” as one of its key economic development strategies, the North Country’s Strategic Plan includes a small city and rural community oriented priority under the smart growth label (Collins and Douglas 2011:47): “Promote Smart Growth principles by encouraging adaptive reuse of existing structures and new residential construction in or near villages and hamlets.”

Over the first three years the State awarded more than two billion dollars to the councils and their plans. According to Empire State Future, in 2012 the number of smart growth enhancing project awards jumped to 50 percent (from 40 percent in 2011), while the number of projects deemed antithetical to smart growth fell to 10 percent (from 20 percent in 2011) of the total dollar-weighted submissions; the rest were considered neutral—neither smart growth nor sprawl-inducing (Empire State Future 2014:5). Samples of smart growth

enhancing projects include mixed-use and transportation-oriented development, agricultural infrastructure in rural areas, historic rehabilitation in downtowns, and waterfront development.

Empire State Future concludes, “In short, regions are realizing that smart growth solutions are inextricably intertwined with sustainable economic development, and that smart growth solutions are the first steps to addressing the fiscal and industrial, as well as socio-economic and demographic challenges” (Empire State Future 2014:7). In our own report focused on economic development and the Regional Economic Development Councils (Mouillesseaux-Kunzman and Kay 2014), we detail the ways in which SGPIPA criteria have been integrated into the Consolidated Fund Application process for the state economic development resources that are available from many state agencies.

Finally, there is important potential in the aligning of Cleaner Greener Communities plans with the Regional Economic Development Council’s plans, as they both address the same region. With Cleaner Greener Communities plans intended to focus on sustainability and smart growth, and REDC plans incorporating more smart growth ideas every year, there is a great opportunity for both sets of plans and funding to reinforce each other in the regional smart growth investments that they make.

Upstate Revitalization Initiative (URI)

As an offshoot of the REDCs, Governor Cuomo in 2015 launched the Upstate Revitalization initiative (REDC 2015). The seven upstate REDC regions will compete for three grants of \$500,000 each (\$1.5 billion total) in special economic development funding made available through state legal enforcement action settlements with several banks. In concert with the URI, a baseline Regional Assessment of each region’s strengths, weaknesses and opportunities was conducted by the University at Buffalo Regional Institute.⁹ Among five

⁹ See <http://regional-institute.buffalo.edu/project/upstate-ny-revitalization-initiative/> and eg. http://auburnpub.com/blogs/eye_on_ny/central-new-york-economic-panel-kicks-off-upstate-revitalization-

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categories for baseline evaluation is “Smart Growth and Development”, where the analysis was based on the following questions relevant to smart growth (Beyer 2015):

- Do we make efficient use of land?
- How car dependent is the region?
- Are there development opportunities in existing employment centers?
- Is farmland preserved to support the agricultural economy and regional food systems?

To qualify for funding, each Upstate REDC must submit as their application a “Revitalization Plan,” due in October 2015, which will “1) provide a well-researched and credible argument that the region is ready for revitalization; and 2) describe the transformation that will happen if the region is granted those funds” (Cuomo 2015). The extent to which smart growth will be incorporated into the plans thus awaits future evaluation.

Rural Regional Smart Growth Grants Programs

As noted in the early sections of this paper, several early State growth management efforts at protecting open space and encouraging development to locate in already existing settled centers were targeted at rural areas of the state. These efforts have evolved in very different contexts in the Adirondack and Catskill Parks and in the Tug Hill region within the jurisdiction of the State’s Tug Hill Commission. While the Tug Hill Commission has focused on training, technical assistance and other ways to “help local governments and citizens shape the future of the Tug Hill region”, the Commission attempts to “leverage conservation and sustainable development [to] benefit the communities and state as a whole”. The nonregulatory Commission promotes good land use practices and educates about locally driven comprehensive planning, already identified in the literature we have reviewed as one of

competition/article_32f66394-ef95-11e4-866e-33ced1359218.html

the most important components of a smart growth toolkit.¹⁰

Since the 1970’s and therefore before the concept of “smart growth” was even coined, more aggressive approaches to growth management were implemented in the Catskill and Adirondack Park regions, including regulatory and land acquisition policies. As of 2007, with dedicated funding from the State’s Environmental Protection Fund, formally designated “smart growth” grants were authorized in these regions via a competitive process. In the Adirondacks, contingent on consistency with smart growth principles, planning and implementation funds have been granted in several years to “counties, towns and villages that need financial or technical assistance to plan successfully for the future.” The Central Catskill Park/Mountains Smart Growth Program similarly provided support for projects intended to enhance historic hamlets through implementation of capital projects applying smart growth principles along the Route 28 corridor.¹¹

Open space, agricultural and farmland protection

One of the central principles of smart growth is the preservation of open space, forests, farmland, natural beauty, and critical environmental areas. Smart growth is dedicated to the idea that it is possible to promote growth by encouraging physically intensive development in existing village and urban centers while simultaneously relieving development pressure on the type of farming and natural areas just listed. In this sense, the protection of desirable farmland and open space is inherent to the very idea of growth that is “smart”.

The NYS Department of Environmental Protection asserts that, “Open space conservation and smart growth go hand in hand, just as the natural and built

¹⁰ See <http://www.tughill.org/> and <http://www.tughill.org/wp-content/uploads/2011/09/TechPaper-ComprehensivePlan.pdf>

¹¹ For a list of recent awards, see <http://www.noodls.com/view/17253797B1CBDF0FF72340100DD573C75FAF38D9?6520xxx1433278609>

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environments are interconnected.”¹² The State’s current vision for and role in open space protection is articulated in the Draft New York State Open Space Conservation Plan (Cuomo 2014). The plan includes frequent mention of and endorsement of smart growth principles, and recommends their implementation in a number of contexts in the service of open space conservation.

As with open space, measures that serve to protect farmland and support its stewards also broadly serve the interests of smart growth. The American Farmland Trust highlights development pressure – “working farmland lost to poorly planned development” – as a primary threat to the future of farms and farming in New York State. In a Guide including a comprehensive “toolkit” for enhancing New York agriculture and farmland, AFT highlights and explains the advantages and limitations of most of the farmland protection tools that are authorized by and/or administered by the State but implemented almost always of necessity in partnership with local government. (AFT 2011) These include the State’s Agricultural Districts programs and related protections and benefits for farmers, the resources of the NYS Agricultural Mediation Program for resolving farm related conflicts, authorization for county and town right to farm laws, several State programs available to reduce property tax burdens on owners of actively managed farm and forest land, and the purchase of development rights (PDR) programs that compensate landowners for placing their land under permanent protection for farming through agricultural conservation easement programs that may be funded by the State or other programs. The State also plays an authorizing and occasionally directly supporting role (through funding and technical assistance) with respect to the adoption of agricultural and farmland protection plans, transfer of development rights (TDR) programs, and county and local comprehensive plans to shape development and the protection of undeveloped land. It plays a similar background role in regards to local adoption and implementation of farm friendly zoning, subdivision ordinances, site planning ordinances, and other local land use laws.

Of course, there are many other State policies (eg. in research, education and marketing) that influence the viability of agriculture in the state and in this sense establish a context for more targeted smart growth.

Smart Growth and the State Environmental Quality Review Act

Perhaps the most powerful environmental protection tool in place in New York State is the State Environmental Quality Review Act, or SEQRA. Unlike SGPIPA, SEQRA reaches deep into the heart of almost every significant private sector and municipal development decision by requiring a SEQRA review before public permits or funding for “actions” can be approved. SEQRA requires state agencies, counties and municipalities to assess and mitigate to the maximum extent practicable the potentially significant negative environmental impacts of actions.

In order to determine whether a full scale environmental impact statement is required, which is a relatively rare circumstance, applicants and the agency must complete a short and/or full environmental assessment form. The agency leading the environmental review is responsible for filling out Part 2 of the full form and judging from the information available whether no, small, moderate or large environmental impacts may occur. If a potentially moderate to large impact has been identified, the agency must determine whether further analysis and mitigation is needed.

The agency is not required under SEQRA to make decisions enforcing smart growth principles unless these are already built into its underlying permitting criteria (e.g. its zoning law). However, it is required to take a hard look at a variety of impacts which have much bearing on smart growth and to exercise discretion regarding what is “practicable” in requiring any mitigations of impacts. The selection of a dozen questions that follow are among those which must be addressed in Part 2 of the full form. They, along with others not included here, are animated by issues which are of great importance for smart growth compliance. Insofar as the agency is prompted to consider and may propose appropriate mitigations for these kinds of

¹² See <http://www.dec.ny.gov/lands/317.html>

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impacts, SEQRA advances smart growth principles even without labeling them as such.

- The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.
- The proposed action may allow or result in residential uses in areas without water and sewer services.
- The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.
- The proposed action may result in development within a 500 year floodplain.
- The proposed action may result in loss of an area now used informally by the community as an open space resource.
- The proposed project is not consistent with the adopted municipal Farmland Protection Plan.
- The proposed action will degrade existing pedestrian or bicycle accommodations.
- The proposed action is inconsistent with local land use plans or zoning regulations.
- The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.
- The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.
- The proposed action may create a demand for additional community services (e.g. schools, police and fire).
- The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.

Conclusion

The policies and programs mentioned above describe many but not all of the ways in which New York has integrated smart growth into its policy framework. The Smart Growth Public Infrastructure Policy Act lists a variety of different smart growth criteria that range from incorporation of multiple transportation options to open space preservation, from promoting sustainability to intergovernmental coordination, and more. The diversity of principles embedded in smart growth lends itself to the approach that New York is

undertaking, wherein smart growth is integrated outside of the context of omnibus legislation into a wide variety of governmental agencies, laws, programs, and policies. This disarticulated, multifaceted consideration of smart growth has its limitations, but it also enables varying components to reinforce and legitimize each other from a variety of standpoints of policy and political strength.

As discussed earlier in this report, most smart growth management states are recognized as such because of their state-mandated or recommended programs for comprehensive local planning. This type of approach does not respect the context of New York's strong home rule traditions. We do not cover all of the potential ways in which smart growth policies could be expanded in the future. But within the framework most broadly recognized for smart growth policy nationally, additional measures to strengthen the quality of local comprehensive planning and its consistency with regional and state planning would rank high. In a home rule state, the importance of functional state-local partnerships in planning and implementation cannot be overestimated.

It is telling that the highest profile smart growth policy in the state, the Smart Growth Public Infrastructure Policy Act, focused on State agencies as its main forum for introducing smart growth principles into New York law. SGPIPA legislation has clear limitations with respect to scope (state agencies, infrastructure decisions) and lack of bite beyond its procedural compliance requirements. But of greater significance is the full panoply of state policies that implement smart growth principles. In this context, and considering the strengths, weaknesses and mixed performance reviews of the higher profile "smart growth states", New York's approach to realization of the benefits of smart growth deserves more recognition, respect, attention, and evaluative research. More and more, the State and its legislators, agencies, and existing programs appear to be evolving constructively in a unique demographic and policy ecosystem and developing innovative new ways to integrate smart growth into vastly different corners of New York policy and programming. Deciding whether New York deserves, by virtue of the impact of its evolving policies, to take its place alongside Howell-Moroney's (2007) "strong" smart growth states remains

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to be analyzed. That it deserves to be considered among the states that take smart growth seriously in policy has, we claim, been amply demonstrated.

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