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Regional Planning in New York State: A State Rich in National Models, Yet Weak in Overall Statewide Planning Coordination

Patricia E. Salkin*

I. Introduction

Zoning and other land use controls are functions which have traditionally rested with units of local government rather than under state and federal jurisdiction.¹ Exactly how land use planning and regulation is implemented and enforced in New York, however, is not always entirely clear under state law. Issues, including whether local comprehensive plans should be written documents,² whether they should address certain functional elements,³ how often they should be updated,⁴ and whether they

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1. See N.Y. CONST. art. IX, § 2; N.Y. MUN. HOME RULE LAW § 10 (McKinney 1969).

2. N.Y. TOWN LAW § 263 (McKinney 1987) and N.Y. VILLAGE LAW § 7-704 (McKinney 1973) require that zoning be "in accordance with a comprehensive plan." N.Y. GEN. CITY LAW § 20(25) (McKinney 1989) requires that zoning be "in accord with a well considered plan." Yet, until 1993, New York statutes failed to define the terms "comprehensive plan" and "well considered plan." See *infra* note 3. The courts have held that a comprehensive plan need not be a written document. See *Place v. Hack*, 34 Misc. 2d 777, 780, 230 N.Y.S.2d 583, 587 (Sup. Ct. Wayne County 1962); *Walus v. Millington*, 49 Misc. 2d 104, 108, 266 N.Y.S.2d 833, 839 (Sup. Ct. Oneida County 1966), *aff'd sub nom. Walus v. Gordon Realty Corp.*, 31 A.D.2d 777, 297 N.Y.S.2d 894 (4th Dep't 1969).

3. Ch. 209 of the N.Y. Laws of 1993 finally put into law a definition of "comprehensive plan," including an enumeration of fifteen items which may be included in the plan. The new law, which takes effect July 1, 1994, amends N.Y. TOWN LAW § 272-a, N.Y. VILLAGE LAW § 7-222, and N.Y. GEN. CITY LAW § 28-a.

4. New York statutes and case law are silent on this point. The recent legislative proposals by the Legislative Commission on Rural Resources simply require that the plans be reviewed at regular intervals, without setting a time certain. In fact, ch. 209 of the N.Y. Laws of 1993, which deals with the comprehensive plan, failed to address this

should take into account regional needs⁵ and/or state concerns are part of an ongoing debate.

In New York, there are 1,530 cities, towns and villages, most of which possess authority for local land use planning and decision making.⁶ The impact of this planning and resultant decision making, however, is not confined to the arbitrary political boundaries which delineate these municipalities. In addition, many of today's problems are regional in nature.⁷ Therefore, without a requirement for some coordination, cooperation and consistency in local planning at some higher level, New York can never achieve sound, regional planning which is needed to address myriad social and environmental concerns.⁸ This article explores examples of regional planning which exist in New York, either on a voluntary or mandatory basis, and makes recommendations for further legislative/executive action in New York to promote land use planning on more than a purely local level.

issue. See Act of July 6, 1993, ch. 209, 1993 N.Y. Laws 693. The author was a member of the Land Use Advisory Committee to the Legislative Commission on Rural Resources.

5. New York statutes are silent on this point, although the Court of Appeals has told the Legislature on a number of occasions that regional needs should be a requirement. See *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975). "[I]n enacting a zoning ordinance, consideration must be given to regional needs and requirements." *Id.* at 110, 341 N.E.2d at 242, 378 N.Y.S.2d at 681. "[W]e look to the Legislature to make appropriate changes in order to foster the development of programs designed to achieve sound regional planning." *Id.* at 111, 341 N.E.2d at 243, 378 N.Y.S.2d at 682. See also *Long Island Pine Barrens Soc'y, Inc. v. Planning Bd. of the Town of Brookhaven*, 80 N.Y.2d 500, 606 N.E.2d 1373, 591 N.Y.S.2d 982 (1992) (recommending legislative changes to accommodate regional needs).

6. NELSON A. ROCKEFELLER INSTITUTE OF GOVERNMENT, *NEW YORK STATE STATISTICAL YEAR BOOK* (1992). In New York, there are 62 counties (counties are the only unit of local government which do not possess zoning authority), 932 towns, 61 cities, and 537 villages. *Id.* See generally N.Y. GEN. CITY LAW § 20(24)-(25) (McKinney 1989); N.Y. TOWN LAW § 261 (McKinney 1987); N.Y. VILLAGE LAW § 7-700 (McKinney 1973).

7. Region-wide solutions are required to address issues which transcend municipal boundaries including the environment, affordable housing, economic development, and transportation infrastructure.

8. See *supra* note 7 and accompanying text. Although N.Y. GEN. MUN. LAW §§ 239-l and 239-m (McKinney 1986) do provide for some degree of coordination at the county level, they do not provide for every zoning action, and they only apply where a county, metropolitan or regional planning agency exists.

II. Background

A. *The National Picture*

Zoning as a means of controlling land use decision-making on a community-wide basis was first "officially" introduced in New York in 1916 with the adoption of the New York City Comprehensive Zoning Ordinance.⁹ In the early 1920s the Standard State Zoning Enabling Act was circulated by the United States Department of Commerce.¹⁰ In 1926, the Department of Commerce published a revised version of the Standard Act.¹¹ Legitimized by the United States Supreme Court in 1926 as a valid exercise of the police power,¹² the process of dividing municipalities into districts, each with height, density and use restrictions based upon planning, became known as "Euclidean Zoning."¹³ Most state enabling statutes were modeled after the 1926 Act, and today, states and municipalities are discovering that these statutes are inadequate to deal with the multitude of diverse issues now involved in land use planning and development.

In 1967, President Johnson appointed the National Commission on Urban Problems, also known as the Douglas Commission, to study, among other things, zoning and development standards.¹⁴ In December 1968 the Douglas Commission transmitted its report to Congress and the President, making a number of recommendations aimed at enhancing urban development, including a call for state and regional involvement in land use planning.¹⁵ In particular, the Douglas Commission recommended that each state establish a state agency for planning and development guidance, which includes research and technical assistance to local governments in land use, and the preparation of state and regional land use plans.¹⁶ With respect to the environment, the Douglas Commission again recommended regional ap-

9. ROBERT M. ANDERSON, *NEW YORK ZONING LAW AND PRACTICE* 15 (3d ed. 1984) (citing Building Zone Ordinance, City of New York (1916)).

10. ROBERT M. ANDERSON, *AMERICAN LAW OF ZONING* 61 (2d ed. 1976).

11. *Id.*

12. *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

13. *See id.*

14. National Commission on Urban Problems, *Building the American City*, H.R. Doc. No. 34, 91st Cong., 1st Sess. (1968).

15. *Id.* at 235-56.

16. *Id.* at 239.

proaches to deal with a number of issues including conservation, water quality, air pollution and solid waste.¹⁷ It suggested that state and regional planning would allow for a pooling of resources and economies of scale in the development of new initiatives designed to address these environmental concerns.¹⁸

During the 1970s and 1980s, several states began examining and implementing new strategies to encourage regional growth management.¹⁹ Some states required that regional impacts be evaluated as part of the local planning process, and that local plans be consistent with neighboring jurisdictions as well as with those of regional entities which are responsible for reviewing the local plans.²⁰ In addition to the concept of regionalism contained within a local land use planning scheme, some states created new regional entities designed to specifically protect significant cultural, natural or environmental resources.²¹

During the 1990s, land use planners and elected officials across the country have developed a renewed interest in the concept and process of regional planning. This shift may be due in large part to federal statutes which mandate that state and local governments develop regional strategies or work with regional planning agencies to qualify for federal funding.²²

17. *Id.* at 488.

18. *Id.*

19. See generally Patricia E. Salkin, *Regional Planning: New Political Magnetism*, 6 LAND USE LAW & ZONING DIGEST 3 (1992).

20. For different approaches, see Florida State Planning Law of 1985, FLA. STAT. ch. 186.008 (1987); Vermont Growth Management Act of 1988 (Act 200), VT. STAT. ANN. tit. 24, § 4302 (1987); Georgia Coordinated and Comprehensive Planning by Counties and Municipalities, GA. CODE ANN. § 36-70-1 (1989).

21. See, e.g., Martha's Vineyard Commission in Massachusetts, Act of Dec. 21, 1977, ch. 831, 1977 Mass. Acts 1083; Pinelands Protection Act, Act of June 28, 1979, ch. 111, 1979 N.J. Laws 286; Hackensack Meadowland Reclamation and Development Act, Act of Jan. 13, 1969, ch. 404, 1968 N.J. Laws 1313; and in New York, the Temporary State Commission on Tug Hill, Act of June 8, 1972, ch. 972, 1972 N.Y. Laws 3086, and the Adirondack Park Agency, Act of June 25, 1971, ch. 706, 1971 N.Y. Laws 1133. See *infra* notes 174-99, 217-29 and accompanying text. Other regional entities created in the 1980s and 1990s include the Massachusetts Cape Cod Commission, Act of Jan. 12, 1990, ch. 716, 1989 Mass. Acts 1195 (repealed 1991), and in New York, the Hudson River Valley Greenway Council, Act of Dec. 31, 1991, ch. 748, 1991 N.Y. Laws 1451. See *infra* notes 259-74 and accompanying text.

22. See Clean Air Act, 42 U.S.C. § 7401 (1983); Safe Drinking Water Act, 42 U.S.C. § 300g (1991); Intermodal Surface Transportation and Efficiency Act, Pub. L. No. 102-240, 105 Stat. 1914 (1991). The turning point for regional planning actually started in the 1960s, resulting again from federal action. Federal aid programs for highways, mass

B. *The History of Comprehensive Regional Land Use Planning in New York State*

Comprehensive regional land use planning usually implies that a state has taken a significant role in promoting and requiring regional land use planning efforts. In New York, this approach has received considerable attention from within state government, but has never been popular with municipal governments. In the early 1920s, the Committee of New York, later known as the Committee on the Regional Plan of New York and its Environs, was established to focus on planning efforts within commuting distance to New York City.²³ In 1923, Governor Alfred E. Smith created the State Housing and Regional Planning Commission to study and report on planning in New York State.²⁴ The Commission's 1926 report demonstrated that a multi-centered, regional approach would spur new growth and development in every part of the state, not just New York City.²⁵ Viewed as being ahead of its time, the plan was not adopted, and the concept of coordinated regional planning was put on the back burner.²⁶ Since the report was presented, planning had continued as independent actions by the federal government, state agencies and local governments.²⁷ In his 1931 Special Message to the Legislature, Governor Franklin D. Roosevelt stated, "we in this State have progressed to the point where we should formulate a definite far-reaching land policy for the State"²⁸ In 1934 the Division of State Planning submit-

transit, and open space required metropolitan planning as a condition for obtaining federal action grants. Memorandum from Charles C. Morrison, Director of Land Resources Planning, Executive Division, New York State Department of Environmental Conservation to Patricia E. Salkin (May 1993) (on file with author).

23. See NEW YORK STATE OFFICE OF PLANNING COORDINATION, OPC INFORMATION BULLETIN No. 3-70, NEW YORK STATE PLANNING AND DEVELOPMENT REGIONS 5 (1970). The Committee was originally established by the Russell Sage Foundation. *Id.*

24. Act of May 24, 1923, ch. 694, 1923 N.Y. Laws 1239 (providing for the creation of a Commission of Housing and Regional Planning in conformity with Governor Smith's recommendations to the Legislature).

25. Lewis Mumford, *A New Regional Planning To Arrest Megalopolis*, ARCHITECTURAL RECORD, New York, Mar. 1965.

26. NEW YORK STATE OFFICE OF PLANNING COORDINATION, NEW YORK STATE DEVELOPMENT PLAN-I 5 (1971) [hereinafter DEVELOPMENT PLAN-I].

27. NEW YORK STATE OFFICE OF PLANNING COORDINATION, PLANNING FOR DEVELOPMENT IN NEW YORK STATE 7 (1970).

28. Governor Franklin D. Roosevelt, Special Message to the Legislature (Jan. 26,

ted a report to Governor Herbert Lehman, which called for the creation of a permanent state planning office, a reforestation program, and pollution controls.²⁹ It was not until Governor Rockefeller's term in office that the notion of regional planning received serious study and attention at the state level.

C. *Executive Department Action - The Federal Incentive*

The federal government was among the first to recognize the importance and benefit of regional planning and coordination by tying federal funding for many programs to regional organizations.³⁰ The famous federal Housing and Urban Development "Section 701" program (the Urban Planning Assistance Program) which was administered by the states from the 1950s to the early 1970s provided the major impetus for comprehensive regional planning in New York.³¹ Federal funding was passed through the state to local, regional and area wide agencies, with a matching fund requirement, for the development of comprehensive plans and zoning ordinances.³² In 1968, the federal Intergovernmental Cooperation Act³³ provided further incentive for regional planning, by requiring that wherever possible, federal funds for development purposes be consistent with state, regional and local comprehensive planning.³⁴ Under a Bureau of the Budget (now Office of Management and Budget) directive, this requirement for receiving federal funding became known as the A-95 review process.³⁵ Under A-95, state and re-

1931).

29. NEW YORK STATE DIVISION OF STATE PLANNING, STATE PLANNING FOR NEW YORK (1934) (cited in NEW YORK STATE OFFICE OF PLANNING COORDINATION, NEW YORK STATE DEVELOPMENT PLAN-I (1971)).

30. See, e.g., the Urban Renewal Fund, 42 U.S.C.A. §§ 1450-1469 (West 1986 & Supp. 1993); the Comprehensive Planning Act, 40 U.S.C.A. § 461 (West 1986) (repealed 1981) (providing funding for regional planning and cooperation).

31. Housing Act of 1954, Pub. L. No. 83-560, § 701, 68 Stat. 590, 640 (repealed 1981).

32. In fact, many local plans which were implemented in the 1970s as a result of section 701 funds have never been updated since that time. For more information about the section 701 program, see NATURAL RESOURCES DEFENSE COUNCIL, INC., LAND USE CONTROLS IN THE UNITED STATES 301-03 (1977).

33. Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, § 401(c), 82 Stat. 1098, 1103 (repealed 1982).

34. *Id.*

35. Memorandum from Charles C. Morrison, Director of Land Resources Planning,

gional planning entities were given review authority which many rigorously used to ensure vertical consistency between regional and state plans and local decisions.³⁶ Since A-95 permitted peer reviews of local, state and regional agency projects, a degree of horizontal consistency was also provided.³⁷

Initially, New York was slow to react to the federal Section 701 program, taking only limited advantage of its benefits.³⁸ In 1955, Governor Averill Harriman lent his support to the program, and in April of that year he signed legislation amending the Local Finance Law³⁹ to allow the state to receive Urban Planning Assistance Program Funds.⁴⁰

The Bureau of Planning in the New York State Department of Commerce was initially responsible for facilitating meetings between state and local planning officials for the purpose of coordinating land use planning efforts and administering the Section 701 program. It was not until October 1956 that the first community planning projects were initiated under the Bureau.⁴¹ In 1959, the National Housing Act⁴² was amended,⁴³ and for the first time counties and subregions were eligible to participate in the program.⁴⁴ By 1965, there were twenty-one professional planners on the Bureau staff.⁴⁵ The Section 701 planning assis-

Executive Division, New York State Department of Environmental Conservation to Patricia E. Salkin (May 1993) (on file with author).

36. Memorandum from John Feingold, Regional Plan Association, to Patricia E. Salkin (Apr. 21, 1993) (on file with author). See *infra* note 37 for an explanation of vertical consistency.

37. *Id.* In New York, initially the OPC handled A-95 review, but later this was done by the Division of the Budget. Memorandum from Charles C. Morrison, Director of Land Resources Planning, Executive Division, New York State Department of Environmental Conservation to Patricia E. Salkin (July 22, 1993) (on file with author).

Horizontal consistency refers to land use plans that are consistent between neighboring jurisdictions (e.g., all adjacent municipalities). This is in contrast to vertical consistency, which refers to land use plans which are consistent between different levels of government (e.g., local, county, regional and state).

38. Memorandum from Richard R. Boos, New York State Department of State to Patricia E. Salkin (Apr. 21, 1993) (on file with author).

39. N.Y. LOCAL FIN. LAW § 25.00 (McKinney 1968).

40. Act of April 18, 1955, ch. 426, 1955 N.Y. Laws 1091.

41. Memorandum from Richard R. Boos, *supra* note 38.

42. Housing Act of 1954, Pub. L. No. 83-560, 68 Stat. 590.

43. Housing Act of 1954, sec. 419, § 701, 73 Stat. 654, 678 (1959).

44. Memorandum from Richard R. Boos, *supra* note 38.

45. *Id.*

tance program was expanded in the mid-1960s to provide further incentives for both county and regional planning, as well as for planning at the state level.⁴⁶ In 1974, Congress again amended the Section 701 program, this time requiring recipients of funding (states, regions and local governments) to include land use and housing elements in their planning programs.⁴⁷ The land use element was to include studies, criteria and procedures for guiding growth, and general plans for the pattern and intensity of land use for residential, commercial and other activities.⁴⁸ In 1978, the Division of State Planning at the New York State Department of State submitted the State Land Use Element to the Federal Department of Housing and Urban Development.⁴⁹ This element, which provided a framework for coordination and complimentary state policies with respect to land and water uses, was viewed as a method for economic revitalization.⁵⁰ One theme in the element was simply that future growth and development should be directed to existing population centers, where public services are available or may be easily provided.⁵¹

During Governor Nelson Rockefeller's administration, regional planning was given more attention. In his 1961 Annual Message to the Legislature, Rockefeller proposed the establishment of an Office for Urban Development, which was later created as the Office for Regional Development ("ORD").⁵² The ORD was separate and independent from the Bureau of Planning at the Department of Commerce. In 1964, the ORD published a broad policy report entitled, "Change/Challenge/Response - A Development Policy for New York State," which was

46. See Housing and Urban Development Act of 1965, Pub. L. No. 89-117, § 1102, 79 Stat. 451, 502-03. Regional planning was accomplished by combining two or more counties to become in effect a "planning unit" to address regional issues. Memorandum from Charles C. Morrison to Patricia E. Salkin (May 1993) (on file with author).

47. OFFICE OF POLICY DEVELOPMENT AND RESEARCH, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, STATE PLANNING: INTERGOVERNMENTAL POLICY COORDINATION 21 (1976).

48. *Id.*

49. DIVISION OF STATE PLANNING, NEW YORK STATE DEPARTMENT OF STATE, NEW YORK STATE COMPREHENSIVE PLANNING ASSISTANCE PROGRAM - STATE LAND USE ELEMENT (1978).

50. *Id.* §§ 1.2, 1.5.

51. *Id.* § 1.5.

52. Vincent J. Moore, *Politics, Planning and Power in New York State: The Path from Theory to Reality*, 37 J. AM. INST. PLANNERS 66, 67 (Mar. 1971).

intended to serve as a guide for future planning for the state.⁵³ The report called for the establishment of regional councils by the Governor (a recommendation which was swiftly met with resistance by local officials),⁵⁴ and suggested that a comprehensive law revision study be undertaken.⁵⁵ Although the ORD was abolished in 1967, a new Office of Planning Coordination ("OPC") was established by the Legislature at the request of Governor Rockefeller in 1966,⁵⁶ which was in essence a merger of the ORD and the Commerce Department's Bureau of Planning. The legislation which established the OPC mandated that it prepare, "a comprehensive plan for the development of New York State."⁵⁷ The OPC was also charged with coordinating all state planning, state and local planning, and creating a regional planning system.⁵⁸ The OPC advocated a comprehensive revision of New York's planning law, including the promotion of regional land use planning.⁵⁹ An OPC publication stated that, "[a]t a level between the state and locality, regional planning offers a comprehensiveness surpassing the locality's and a focus sharper than the state's."⁶⁰ In 1968, the OPC assumed responsibility for the Planning Law Revision Study for New York State, which culminated in 1970 with the publication of Study Document No. 4.⁶¹ In 1970, at the request of the OPC, legislation was introduced consistent with the study document, to revamp the local

53. NEW YORK STATE OFFICE OF REGIONAL DEVELOPMENT, CHANGE/CHALLENGE/RESPONSE - A DEVELOPMENT POLICY FOR NEW YORK STATE (1964) (hereinafter CHANGE/CHALLENGE/RESPONSE).

54. Moore, *supra* note 52, at 70.

55. CHANGE/CHALLENGE/RESPONSE, *supra* note 53, at 76.

56. Act of June 7, 1966, ch. 528, 1966 N.Y. Laws 629.

57. *Id.* sec. 1, 1966 N.Y. Laws 629, 629.

58. Moore, *supra* note 52, at 67.

59. Panel Discussion, New York State Law Revision Study, presented at 31st Annual Planning Institute of the New York Planning Federation, Oct. 20, 1969.

60. NEW YORK STATE OFFICE OF PLANNING COORDINATION, OPC INFORMATION BULLETIN No. 3-70, NEW YORK STATE PLANNING AND DEVELOPMENT REGIONS 5 (1970). The OPC further stated that it was desirable for regional planning to be concerned with the following four elements: 1) essential assumptions for the future upon which all plans are based; 2) a general development strategy for the region; 3) coordination of many single purpose programs; and 4) evaluation of the programs. *Id.*

61. Richard A. Persico, Assistant Director and Counsel, New York State Office of Planning Coordination, New York State Planning Law Revision Study, paper presented at the AIP Sixth Biennial Conference on Governmental Relations and Planning Policy (Jan. 28, 1971).

land use planning and zoning system which would have provided for increased county, regional and state land use planning.⁶² While the study recognized the traditional and constitutional notion of local home rule and recommended a more flexible legislative framework for local land use and development control, it also acknowledged the interests of counties, regions and the state with respect to land use and development.⁶³ Perhaps one of the more controversial proposals was the recommendation for an integrated system of statewide forums to evaluate proposed projects of area wide impact to ensure consideration of state, regional and county viewpoints prior to major development or action.⁶⁴ Although the emphasis was geared towards planning coordination, and not control over development,⁶⁵ one can readily realize the level of concern that was raised among local officials. In fact, the political power of local governments was also cited as a reason for the defeat of what was a presumed intrusion of state government into local affairs.⁶⁶

In 1970, the OPC released a status report on the then eight-year effort which focused on planning for the future of New York.⁶⁷ In his transmittal letter to Governor Rockefeller, D. David Brandon, Director of the OPC explained, "functional planning embraces regional and local planning efforts as well as programs of the federal government."⁶⁸ He explained that regional planning

takes the common interests of related towns, villages and cities and ties them together. The commerce and industry, transportation, water supply, educational and medical services, waste disposal and cultural resources of a region are viewed as connecting systems, with cities, suburbs and countryside each playing spe-

62. S. 9028, 193rd Leg., 1970 N.Y. Legislative Record. (Introduced by the Committee on Rules at the Request of the Executive Department, Office of Planning Coordination).

63. Persico, *supra* note 61, at 4.

64. *Id.* at 14.

65. *Id.* at 7.

66. Letter from Henry G. Williams, Former Head of the Division for State Planning, New York State Department of State, to Patricia E. Salkin (Apr. 24, 1993) (on file with author).

67. D. DAVID BRANDON, NEW YORK STATE OFFICE OF PLANNING COORDINATION, PLANNING FOR DEVELOPMENT IN NEW YORK STATE (1970).

68. *Id.* at 1.

cific roles in the lives of all the region's people.⁶⁹

The report called for comprehensive regional plans which used local comprehensive plans as components, and pointed out that such a regional plan may shed new light on the development plans of its localities.⁷⁰

One year later, in January 1971, the OPC released Phase I of the New York State Development Plan ("Development Plan").⁷¹ The Development Plan looked one generation away, to 1990, as the horizon year⁷² and set forth a proposal to guide growth and development throughout the state.⁷³ The Development Plan contained a series of regional maps detailing projected settlement and land use patterns, urging that they not be used as regional plans, but rather that they provide objectives or guidelines for the development of plans by existing regional planning groups.⁷⁴ In further support of region-wide planning, the document recommended that counties be authorized to adopt regulations dividing the county into development districts (e.g., urban, agricultural, recreation, conservation), and to prescribe development intensity and population density within each district.⁷⁵ At the same time that the Development Plan was touting regionalized planning efforts, it also called for broader local control and the authorization of flexible and innovative zoning techniques for cities, towns and villages.⁷⁶

The Development Plan, recognizing New York's strong tradition of local home rule, insisted that the regional and county proposals "would not *transfer* basic local land use control powers to broader levels of government but would provide a framework through . . . a statewide project review system; protection of areas of critical state concern; and broad county districting."⁷⁷

69. *Id.*

70. *Id.* at 26.

71. NEW YORK STATE OFFICE OF PLANNING COORDINATION, NEW YORK STATE DEVELOPMENT PLAN - I (1971).

72. *Id.* at 8.

73. *Id.* at 44.

74. *Id.* at 50.

75. *Id.* at 88.

76. *Id.*

77. *Id.*

The actions of the OPC were controversial,⁷⁸ and according to one staff member, the controversy may have been more attributable to a lack of public education and outreach, or a "campaign-to-acceptance" than to any other issue.⁷⁹ Coordinated state planning and development on a regional basis, however, emerged as a slogan in Governor Rockefeller's 1970 re-election campaign.⁸⁰

In 1971, in what was referred to by many as the "midnight massacre," the OPC was abolished.⁸¹ Its mission was revised to encourage and facilitate cooperation and collaboration among all agencies and levels of government, funds were reduced, and its name was changed to the Office of Planning Services (the "OPS"), reflecting the fact that its major remaining purpose was technical assistance, not functional planning.⁸² In 1974, early in the Carey administration, the Governor proposed to abolish the OPS and create a new Office of State Planning.⁸³ The Legislature failed to act on the proposal, and the OPS's functions were merged into the Department of State.⁸⁴ At the same time, the Office of Local Government was eliminated and its functions were also transferred to the Department of State.⁸⁵ The technical assistance functions were carried forward in the Division of Community Affairs and federal programs in the Department of

78. See NEW YORK STATE OFFICE OF PLANNING COORDINATION, PLANNING FOR DEVELOPMENT IN NEW YORK STATE (1969); NEW YORK STATE OFFICE OF PLANNING COORDINATION, *supra* note 27; DEVELOPMENT PLAN-I, *supra* note 26; see also S. 9028, 193rd Leg., 1970 N.Y. Legislative Record; Donald L. Conover, Comment, *New York State Planning Law Revision: The Lost Necessity?*, 22 BUFF. L. REV. 1021 (1973).

79. Letter from Richard R. Boos, New York State Department of State to Professor John R. Nolon, Pace University School of Law (Mar. 18, 1993) (on file with author).

80. See Moore, *supra* note 52, at 67. The slogan read "Rocky puts it all together" with a map of the state of New York. *Id.*

81. Interview with Richard R. Boos, New York State Department of State (Sept. 8, 1993).

82. Act of April 2, 1971, ch. 75, §§ 730-735, 1971 N.Y. Laws 115 (repealed 1975). It was the Legislature, particularly Assembly Speaker Perry Duryea, who insisted that the OPC be abolished. Governor Rockefeller, however, was able to negotiate the creation by law of the OPS. The new office had no authority or control over state agencies and local governments. This resulted from OPC's desire to have state agencies report to it on their plans. Memorandum from Benjamin P. Coe, Executive Director, Tug Hill Commission, to Patricia E. Salkin (April 24, 1993) (on file with author).

83. Letter from Henry G. Williams, *supra* note 66.

84. Letter from Richard R. Boos, *supra* note 79.

85. *Id.*

State. The focus of the unit was again redefined, and its mission now concentrated on local, as opposed to regional, planning. Under Secretary of State Cuomo, the Division of State Planning within the Department of State had only state planning functions, such as the development of the Coastal Management Program and State policy aspects of the Section 701 program.⁸⁶

In 1986, under Governor Cuomo's administration, the planning functions in the Department of State were targeted for abolition. The functions were saved, but the staff was cut to twelve people to service the entire state. In 1988, the offices were once again targeted for elimination, with only seven positions rescued at the midnight hour. In 1993, there are only two planners left on the local government staff at the New York Department of State for local technical assistance work. There are, however, several planners on staff in the Division of Coastal Resources and Waterfront Revitalization.

Although many believe the history of coordinated statewide regional planning from within state government began with independent planning departments, and practically ended with the abolition of the OPC, the Department of Environmental Conservation (the "DEC") cannot be overlooked for its role as a *de facto* state planning agency. Despite the fact that the DEC has no legal authority with respect to general comprehensive land use planning, nor is it empowered to provide technical assistance to local governments in this area, the DEC is statutorily charged with a number of powers and duties which have direct and indirect impacts on regional land use planning.⁸⁷ In 1973, a new planning office, the Office of Program Development, Planning and Research (the "Office"), was established within the DEC.⁸⁸ The Office consisted of three bureaus: Land Resources Program Development, Environmental Resource Planning and Water Quality Planning.⁸⁹ Although the Office was abolished in 1978, its functions continue to exist in the divisions of Water,

86. Letter from Henry G. Williams, *supra* note 66.

87. N.Y. ENVTL. CONSERV. LAW §§ 3-0301 to -0307 (McKinney 1984).

88. Memorandum from Charles C. Morrison, Director of Land Resources Planning, New York State Department of Environmental Conservation, to Patricia E. Salkin (June 8, 1993) (on file with author).

89. *Id.*

Lands and Forests, and the Executive Division.⁹⁰ Throughout this article there are references to myriad regional planning programs which directly involve the DEC.⁹¹

Certain state agencies may prepare statewide plans which contain significant regional planning recommendations or components. For example, recognizing that environmental concerns cross municipal boundaries, a major objective of the 1973 Environmental Plan for New York State (the "Environmental Plan") was the establishment of a "statewide system for land use guidance, to fully account for local and regional and statewide environmental values"⁹² Although the Environmental Plan was submitted to three successive governors (Rockefeller, Wilson and Carey) for approval, it was never accepted.⁹³ More recently, in 1992, the DEC and the Office of Parks, Recreation and Historic Preservation released an Open Space Conservation Plan for New York State.⁹⁴ The Plan, prepared pursuant to legislation which authorized the 1990 Environmental Quality Bond Act ("Bond Act")⁹⁵ to be submitted to the voters was developed with input from nine regional advisory committees, appointed jointly by the state and county governments. Of significance is a recommendation within the Plan that the regional advisory committees be "continued as a permanent link between the public and state government."⁹⁶ This recommendation was based on the belief that the regional bodies are crucial to the promotion of partnerships between different levels of government and the private sector.⁹⁷ Furthermore, the Plan provides for several ongoing functions of the regional committees, including consulting with local governments, advising agencies on regional projects and

90. *Id.*

91. *See, e.g., infra* notes 92-94 and accompanying text.

92. NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ENVIRONMENTAL PLAN FOR NEW YORK STATE, SUMMARY, PRELIMINARY EDITION (1973) (nonpaginated document).

93. Memorandum from Charles C. Morrison, *supra* note 88.

94. DEPARTMENT OF ENVIRONMENTAL CONSERVATION & THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, CONSERVING OPEN SPACE IN NEW YORK STATE (1992) (Plan & Final Generic Environmental Impact Statement approved by Governor Cuomo in November 1992) [hereinafter Plan].

95. Act of May 14, 1990, ch. 146, 1990 N.Y. Laws 239.

96. Plan, *supra* note 94, at 156.

97. *Id.*

priorities, and providing technical assistance to local governments.⁹⁸ The Plan also calls for the involvement of the county environmental management councils as well as local governments.⁹⁹ Although the voters did not approve the Bond Act, the Plan is a significant statewide and regional index and inventory of open space areas which should be conserved and protected should adequate funding be available.¹⁰⁰

III. New York

A. State Legislative Action

In 1968, the New York State Joint Legislative Committee on Metropolitan and Regional Areas stressed the need for strong county government in metropolitan areas, and the creation of comprehensive planning systems.¹⁰¹ The Committee stated that any proposal for regional planning in New York State must be based upon respect for the history of local government in the state.¹⁰² The Committee recommended that the state develop a policy of "regionalism" under which the state must encourage the creation of regional agencies, beginning with comprehensive planning bodies, adequately staffed to coordinate federal, state, local and private development activities with a regional impact.¹⁰³ State agencies and quasi-public entities would, under the proposal, be required to coordinate their public improvements and planning activities with regional agencies.¹⁰⁴ This proposal served as the basis for Governor Rockefeller's 1971 Executive Order which specified that a set of regions should be used for all state planning by all state agencies.¹⁰⁵ In 1970, the

98. *Id.*

99. *Id.*

100. The Plan recommended adoption of the Governor's 1992 proposed Environmental Assistance Fund. In 1993, the Legislature established the Environmental Assistance Fund, to achieve some of the recommendations in the Plan. Act of Aug. 4, 1993, ch. 610, 1993 N.Y. Laws 1516.

101. See NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON METROPOLITAN AND REGIONAL AREAS STUDIES, GOVERNING URBAN AREAS: STRENGTHENING LOCAL GOVERNMENT THROUGH REGIONALISM (1968).

102. *Id.* at 17.

103. *Id.* at 19.

104. *Id.*

105. Exec. Order No. 44, N.Y. Comp. Codes R. & Regs. tit. 9, subtitle A, Governor's Office (1971).

Joint Legislative Committee released a draft of a new planning law for New York.¹⁰⁶ The proposal, if enacted in its entirety, would have put New York at the forefront of what has become a national trend toward comprehensive, coordinated and consistent land use planning and development. This proposal also failed to win legislative approval.

In 1990, the Senate Minority Task Force on Balanced Growth and Land Use Planning held a regional conference to address how the state could accommodate growth and development in the Hudson Valley region while retaining important ecological areas, scenic vistas, open spaces, and other natural resources.¹⁰⁷ Recommendations of advisory councils to the Task Force included: (1) the need for regional coordination to provide technical assistance on land use planning issues; (2) a call for integrated planning among state, county and local levels, including the suggestion that New York develop a model statewide land use master plan which would guide county master plans; (3) a requirement that each county develop a master plan which would designate growth areas and a streamlined approval process for development; and (4) amending the State Environmental Quality Review Act to establish a process for the review of projects which have regional impacts by requiring a more significant county review or by establishing interjurisdictional review boards on an ad hoc basis.¹⁰⁸ Unfortunately, the Task Force Chair failed to win re-election, and the project ended.

Over the years there have been legislative proposals which, if enacted, would have provided for significant regional planning in New York. Most recently, in 1993, Assemblyman Richard Brodsky introduced legislation which provided for a comprehensive system of statewide and regional planning in New York.¹⁰⁹ This is a revised version of a 1973 bill which was based upon the

106. NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON METROPOLITAN & REGIONAL AREAS STUDY, PLANNING LAW REVISION (Proposed Draft 1970).

107. SENATE MINORITY TASK FORCE ON BALANCED GROWTH AND LAND USE PLANNING, HUDSON VALLEY REGIONAL LAND USE PLANNING CONFERENCE, SUMMARY PROCEEDINGS, April 26, 1990. The Task Force was chaired by Senator Arthur Gray.

108. *Id.* app. B.

109. A. 6209, 215th Gen. Assembly, 1st Sess. (1993) (referred to local governments on Mar. 18, 1993)

American Law Institute's Model Land Development Code.¹¹⁰

B. *Definition of Region*

New York statutes fail to provide a simple standard definition of "region." As early as 1970, the OPC called for a consistent set of state planning regions to guarantee the coordination of the administration of federal, state and local services.¹¹¹ The OPC stated that "[r]egionalization is simply a process of delineating an area for the purposes of description, analysis or policy formulation."¹¹² Regions could be established in a number of ways, including homogeneity, modality, political realism, statistical efficiency, social identification, and urban growth trends.¹¹³ The Office of Regional Development defined a region as "an area larger than a county united by economic interest, geography or other factors"¹¹⁴ As previously noted, in 1971 Governor Rockefeller issued an executive order establishing state comprehensive planning and development regions, to further the coordination of the comprehensive and functional regional planning activities of the state and its agencies with one another and with the federal, local and private sectors.¹¹⁵ Pursuant to the order, eleven regions were established, and the heads of state departments and agencies were directed to recognize and use these official comprehensive planning and development regions for all comprehensive and functional planning activities.¹¹⁶ At that time and today, New York had/has a number of overlapping regions which were established by various agencies for administrative and planning purposes. For example, many state agencies have divided the state into administrative regions where their services and local assistance funding may be delivered.¹¹⁷ One observer suggested that coordination among the agencies would

110. AMERICAN LAW INSTITUTE, A MODEL LAND DEVELOPMENT CODE (1975).

111. NEW YORK STATE OFFICE OF PLANNING COORDINATION, *supra* note 27, at 9.

112. *Id.*

113. *Id.* at 9-12.

114. CHANGE/CHALLENGE/RESPONSE, *supra* note 53, at 5.

115. Exec. Order No. 44, *supra* note 105.

116. *Id.*

117. These regions are not set forth by statute, but maps are available from each agency directly. For example, the Departments of Economic Development, Environmental Conservation, Health, and Transportation have regional maps.

be impossible due to the diversity of interests among the various departments.¹¹⁸ Another observer pointed out that, "[i]f you took all of the maps of the different state agencies and laid them on top of each other, the overlapping lines would give you a black map," although today agencies do attempt to coordinate their functions and in a sense are engaging in "ad hoc regional planning and coordination."¹¹⁹ In 1975 one writer questioned not whether New York would have a coordinated, functional comprehensive planning approach, but rather when and in what form.¹²⁰ Today, we are back to the issue of whether such a system can be successfully implemented.

C. *The Role of County Planning*

New York State has sixty-two counties including five that comprise New York City.¹²¹ Counties were originally established as administrative units of the government to carry out state policies.¹²² With respect to land use planning, each county might arguably be considered a region for the cities, towns and regions located therein. Under current law, a county acting alone, or in collaboration with any of the municipalities therein, or in cooperation with the legislative body of an adjacent county may establish a regional or county planning board.¹²³ Once established, the board may perform planning work, conduct studies and research, adopt a county comprehensive plan, and recommend a comprehensive zoning plan to cities, towns and villages within its jurisdiction.¹²⁴ While the county planning board may prepare

118. Interview with Rocco Ferraro, Planner of the Capital District Regional Planning Commission, in Schenectady, N.Y. (June 1992).

119. Interview with Paul Duval, New York State Department of Economic Development, in Albany, N.Y. (June 1992). For example, in recent years, Governor Cuomo has played a key role in reducing overlap and duplication by directing a number of inter-agency actions such as the development of the State Energy Plan which involved the State Energy Office, the Department of Environmental Conservation, and the Department of Public Service. N.Y. ENERGY LAW §§ 6-103, 6-104 (McKinney 1984 & Supp. 1993).

120. Betty Hawkins, *Patchwork Land Use Planning in New York*, EMPIRE STATE REPORT, Apr. 1975, at 112.

121. See *supra* note 6.

122. See NEW YORK STATE DEPARTMENT OF STATE, LOCAL GOVERNMENT HANDBOOK 59 (1988).

123. N.Y. GEN. MUN. LAW § 239-b (McKinney Supp. 1993).

124. N.Y. GEN. MUN. LAW § 239-d (McKinney 1986 & Supp. 1993).

and recommend a master plan for the county,¹²⁵ there is no requirement that city, town or village comprehensive plans pay attention to or respect the county-wide document. Furthermore, there is no provision which would authorize county comprehensive plans to be in effect for municipalities within the county which chose not to enact a local plan. A statute enacted in 1993, which provides authority for counties to participate in agreements relating to intermunicipal cooperation in land use planning and the administration of such regulations, still fails to provide counties with any significant coordinating role with respect to land use planning.¹²⁶

The statutory scheme for counties is permissive, not mandatory, as it is for the cities, towns and villages which are making the final decisions. Although county planning boards are given certain review responsibilities for the coordination of designated municipal and zoning actions,¹²⁷ they may be overridden by the municipality in which the issue arose.¹²⁸ A current legislative proposal which would recodify and amend General Municipal Law section 239-n has sparked discussion among county planning directors as to the appropriate role of county planning.¹²⁹

Is there really a difference as to whether the role of the county planning department is to plan for the interests of the county, or whether it is to provide technical assistance and serve

125. *Id.* § 239-d(5).

126. Act of July 6, 1993, ch. 242, 1993 N.Y. Laws 648. This statute gives counties the power to prepare and administer comprehensive plans, land use regulations, laws, or ordinances.

127. N.Y. GEN. MUN. LAW §§ 239-l & -m (McKinney 1986 & Supp. 1993).

128. N.Y. GEN. MUN. LAW § 239-d(2) (McKinney 1986) (authorizing local planning and zoning boards to override a decision of the county planning board by an affirmative majority vote). Effective July 1, 1994, ch. 544 of the N.Y. Laws of 1993 provides that a majority plus one vote of all the members of a referring planning body may override a recommendation of the county planning agency even where the county agency fails to report within the stated time period.

129. The legislative proposal, S. 3028 & A. 5124, 215th Gen. Assembly, 1st Sess. (1993), was discussed in detail at the March 8, 1993 meeting of the New York Association of County Planning Directors, held at the Desmond Americana in Albany. Ch. 544 of the N.Y. Laws of 1993 did amend Section 239-m of the General Municipal Law. Although the new law, which takes effect July 1, 1994, primarily recodifies the section for easier comprehension, several substantive changes were made including an increase in the time the county or regional agency has to act from 30 days to 45 days.

as a resource to the towns, cities and villages therein? To serve either function well, it may be necessary to do both. However, it has been suggested that competition between the counties and smaller municipalities could be lessened if the county department focused only on technical assistance.¹³⁰ This would then create a trust between municipalities within the county and the county government itself, in that the services were offered without strings and were not "pushing" or advancing the county agenda.¹³¹ Some counties have taken a proactive role in promoting a coordinated land use planning approach for the municipalities within its borders.¹³² These attempts have met with a mixed degree of success.

D. *Multi-Jurisdictional Planning Through Regional Planning Boards*

Other than the Regional Plan Association, regional planning organizations existed in New York as early as 1925.¹³³ These entities were probably strongest during the 1960s and 1970s as a result of the federal government's requirement that local proposals for federal funding were to be reviewed on a regional basis to determine district-wide significance and potential conflicts with master planning. Although this federal requirement no longer exists, non-mandatory regional planning boards still operate

130. Memorandum from Benjamin P. Coe, Executive Director, Tug Hill Commission, to Patricia E. Salkin (Apr. 19, 1993) (on file with author).

131. *Id.*

132. For example, Dutchess County issued a comprehensive plan, entitled *Directions: The Plan for Dutchess County* in 1987, which calls for a cross-acceptance of county and local land use plans. DUTCHESS COUNTY PLANNING DEPARTMENT, DIRECTIONS: THE PLAN FOR DUTCHESS COUNTY (1987). In 1990, Yates County released a county comprehensive plan, and it attempted to coordinate the planning efforts of the towns within the county. ROGER TRANCIK, YATES COUNTY LOOKING AHEAD: A PLANNING AND DESIGN GUIDE (1990). In 1991, Onondaga County issued a report on development goals and policies which called for consensus and coordination on community goals and policies of all levels of government for fiscal management, the environment, infrastructure, land use, and economic development. SYRACUSE-ONONDAGA COUNTY PLANNING AGENCY, ONONDAGA COUNTY PLAN REPORT 3, DEVELOPMENT GOALS AND POLICIES (1991). In 1992, the Chenango County 2020 Vision Commission on the Future released a summary report which calls for the development of a county land use plan, and the formation of a county-wide federation of local planning boards spear-headed by the County Planning Board. CHENANGO COUNTY PLANNING DEPARTMENT, CHENANGO COUNTY'S 2020 VISION: ANTICIPATING THE 21ST CENTURY (1992).

133. N.Y. GEN. MUN. LAW § 239-b.

through the use of cooperative agreements authorized pursuant to statute.¹³⁴ Nine regional planning boards currently exist within the state, encompassing fifty-two of the state's fifty-seven counties outside of New York City.¹³⁵

In addition to the authority to organize county and regional planning boards, municipalities "may associate themselves together in a federation to promote community or inter-community planning within or by such municipalities, to provide for the collection and distribution of information on planning, platting and zoning matters"¹³⁶ Municipalities may also "cooperate with appropriate state and county authorities in matters affecting the master plan of such county and the county plan."¹³⁷ Again, as with county and regional planning agencies, this type of arrangement is also voluntary.

The major drawback to this voluntary or permissive system of inter-municipal regional planning is that counties and localities may withdraw from involvement at any time. With funding contributed by each participating municipality, if one or more cease to participate, the regional planning agency may no longer be financially able to operate. This may cause political problems for regional planning agencies who may be prevented from making meaningful contributions and recommendations with respect to serious regional land use planning issues for fear of political retribution. Therefore, some regional planning boards usually resort to disseminating statistical and demographic information to participating municipalities, thus avoiding involvement in political decision-making.

134. See generally N.Y. GEN. MUN. LAW §§ 119-m and 239-b (McKinney 1986 & Supp. 1993).

135. The nine regional planning boards are: Capital District Regional Planning Commission; Central New York Planning & Development Board; Erie-Niagara Regional Planning Board; Genesee-Finger Lakes Regional Planning Council; Herkimer-Oneida Counties Comprehensive Planning Program; Hudson Valley Regional Council; Lake Champlain-Lake George Regional Planning Board; Southern Tier Central Regional Planning & Development Board; and Southern Tier West Regional Planning & Development Board. All of these regional planning boards belong to the New York State Association of Regional Planning and Development Organizations.

136. N.Y. GEN. MUN. LAW § 239-e (McKinney 1986).

137. *Id.*

E. *Special Purpose Regional Planning Bodies*

New York is rich in special purpose regional planning bodies. These are entities created to address one specific aspect of land use and community planning. The existence of multiple special purpose agencies, however, may not be a desirable way to achieve sound regional planning, because if regional governance organizations exist for single purposes, a functional bias may be created.¹³⁸ Oftentimes there is a lack of authority, especially if the regional organization is voluntary in nature. Further, since regional governance is made up of elected local officials, local political incentives continue to dominate the decision-making processes of existing regional agencies.¹³⁹

Examples of special purpose regional planning schemes in New York include regional or multi-jurisdictional comprehensive planning as authorized by statute for solid waste management plans,¹⁴⁰ transportation,¹⁴¹ environmental protection,¹⁴² and water resources.¹⁴³

1. *Transportation - Metropolitan Planning Organizations*

In 1975 the Legislature designated the existing metropolitan planning organizations ("MPOs") to carry out certain planning functions in each urbanized area in which a public transportation system provides services.¹⁴⁴ The focus of the regional MPOs centers on transportation planning.¹⁴⁵ Among their numerous responsibilities, MPOs are charged with developing effective involvement of county and municipal governments in the metropolitan planning process,¹⁴⁶ and with developing long range regional transportation plans for consideration in the state

138. See ASSEMBLY OFFICE OF RESEARCH, CALIFORNIA 2000: GETTING AHEAD OF THE GROWTH CURVE, THE FUTURE OF LOCAL GOVERNMENT IN CALIFORNIA 40 (Dec. 1989).

139. ASSEMBLY OFFICE OF RESEARCH, *supra* note 137, at 43.

140. N.Y. ENVTL. CONSERV. LAW § 27-0107 (McKinney Supp. 1993).

141. N.Y. TRANSP. LAW § 15-a (McKinney Supp. 1993).

142. N.Y. ENVTL. CONSERV. LAW §§ 47-0101 to -0117 (McKinney 1984).

143. N.Y. ENVTL. CONSERV. LAW §§ 15-1101 to -1113 (McKinney 1989); N.Y. ENVTL. CONSERV. LAW §§ 55-0101 to -0117 (McKinney Supp. 1993).

144. N.Y. TRANSP. LAW § 15-a (McKinney Supp. 1993).

145. *Id.*

146. *Id.* § 15-a(2).

transportation master plan.¹⁴⁷ These regional bodies can be important vehicles for the promotion of integrated regional transportation planning and local comprehensive land use plans. They have been given added importance under the 1990 Federal Intermodal Surface Transportation Efficiency Act¹⁴⁸ as they now possess the authority to decide how the funding available under this program will be spent at the regional and local levels.¹⁴⁹

2. *Water Protection*

a. *Regional Water Resources Planning Boards*

Local and regional water resources planning and development boards may be established pursuant to the Environmental Conservation Law as a method of providing "comprehensive planning for the protection, control, conservation, development, and beneficial utilization of water resources."¹⁵⁰ At the request of any county, city, town or village, the Department of Environmental Conservation ("DEC") may, after a public hearing, appoint a regional water resources planning board to study, survey, and develop a comprehensive plan for the protection, conservation, development, and utilization of water resources within the region.¹⁵¹ Unlike the lack of definition for comprehensive land use plans, the statute enumerates several items to be included in the comprehensive water plan.¹⁵² Counties may recommend members for the board, and must pay the DEC twenty-five percent of the costs associated with the board.¹⁵³ Proposed plans are subject to approval by the DEC.¹⁵⁴ Although these boards were very active in the 1960s and 1970s, during which time their plans, along with comparable federally funded "Level B Studies," blanketed the state, all of the boards have since been disbanded and the DEC is not presently encouraging their

147. *Id.* § 15-a(3)(a).

148. Pub. L. No. 102-240, 105 Stat. 1914 (1991).

149. *Id.*

150. N.Y. ENVTL. CONSERV. LAW § 15-1101 (McKinney 1984).

151. *Id.* §§ 15-1103 to -1107.

152. *Id.* § 15-1107.

153. *Id.* § 15-1111(2). Where more than one county is involved, the 25% fee is divided equitably among the participating counties. *Id.*

154. *Id.* § 15-1107.

existence.¹⁵⁵

b. *Sole Source Aquifer Protection*

A designated planning entity shall provide for the protection of groundwater through the preparation of a comprehensive management plan.¹⁵⁶ The area-wide planning entity is to examine local plans already in existence, and to incorporate such plans, where appropriate, into its work.¹⁵⁷ The Sole Source Aquifer Protection Act¹⁵⁸ enumerates eleven items¹⁵⁹ which must be included in a comprehensive plan, including "a comprehensive statement of land use management as it pertains to the maintenance and enhancement of groundwater quality and quantity,"¹⁶⁰ and a program for local government implementation of the area-wide plan.¹⁶¹ The statute also requires communication and coordination with interested local, state and federal agencies.¹⁶²

3. *Solid Waste and Hazardous Waste Disposal*

Local governments are encouraged by State law and policy to cooperate in the development of ten year solid waste management plans.¹⁶³ State statute defines a "planning unit" as "a county, two or more counties acting jointly, a local government agency or authority established pursuant to state law for the purpose of managing solid waste, or two or more municipalities which the department [of environmental conservation] determines to be capable of implementing a regional solid waste management program."¹⁶⁴ The statute enumerates items to be articulated in the local plans, including requirements that the plan describe measures undertaken to "secure participation of neigh-

155. Memorandum from Charles C. Morrison to Patricia E. Salkin (July 22, 1993) (on file with author).

156. N.Y. ENVTL. CONSERV. LAW § 55-0115 (McKinney Supp. 1993).

157. *Id.*

158. N.Y. ENVTL. CONSERV. LAW §§ 55-0101 to -0117 (McKinney Supp. 1993).

159. *Id.* § 55-0115.

160. *Id.*

161. *Id.*

162. *Id.* § 55-0117(1)(a).

163. *Id.* § 27-0107.

164. *Id.*

boring jurisdictions" and a "summary of specific written suggestions received from neighboring jurisdictions."¹⁶⁵

4. *County and Regional Environmental Management Councils*

The Local Environmental Protection Act was enacted in 1970, upon a declaration that "local county or regional understanding of the importance of all aspects of the environment is necessary for the most balanced use of natural resources."¹⁶⁶ The law is permissive, granting to counties the authority, if they choose, to establish a county environmental management council, with representation from city, town, and village conservation councils.¹⁶⁷ Two or more counties may decide to consolidate these bodies and create a regional council.¹⁶⁸ The council is charged with a number of tasks, including: (1) reviewing the state of the county environment as a whole; (2) cooperating with the county planning agency and other agencies for the preparation of a plan to protect the county's environment and manage its natural resources; (3) maintaining an index of all open space within the county, including open marsh lands, swamps, and other wetlands; and (4) maintaining an inventory of natural resources within the county.¹⁶⁹ The DEC is authorized to provide up to fifty percent of the operating expenses of these agencies, on a reimbursable basis and within the limit of appropriations.¹⁷⁰ Thirty-five counties currently participate in this program.¹⁷¹

F. *Regional Agencies to Protect Significant Multi-Jurisdictional Resources*

New York also has a rich tradition of special purpose regional agencies or commissions created to carry out land use

165. *Id.*

166. N.Y. ENVTL. CONSERV. LAW § 47-0103 (McKinney 1984).

167. *Id.* § 47-0105.

168. *Id.* § 47-0113.

169. *Id.* § 47-0107.

170. *Id.* § 47-0115.

171. Interview with Charles C. Morrison, Director of Land Resources Planning, New York State Department of Environmental Conservation, in Albany, N.Y. (June 7, 1993).

planning and environmental protection on a multi-jurisdictional basis. These regional entities, which were established primarily by the natural landscape, may serve as laboratories to experiment with and develop land use planning methods for other parts of the state.¹⁷² Each agency, however, was developed and empowered to address specific issues within its geographic jurisdiction.¹⁷³

1. *Adirondack Park Agency*

In 1885, New York created the State Forest Preserve, requiring that all state owned land in the Adirondack region be kept "forever wild."¹⁷⁴ The Adirondack Park, then a 2.8 million acre tract of both public and private land, was established by law in 1892.¹⁷⁵ The 1968 Temporary Study Commission on the Future of the Adirondacks, appointed by Governor Rockefeller, warned that to protect the character of the Park, the forest landscape would have to be preserved.¹⁷⁶ In 1970, the Temporary Study Commission released its final report,¹⁷⁷ which listed 181 recommendations for action, including recommendations for establishment of an independent, bipartisan Adirondack Park Agency.¹⁷⁸ It was this recommendation from the Temporary Commission which finally led to the Adirondack Park Agency Act ("Act") in 1971.¹⁷⁹

Regularly cited in planning literature as a model for regional land use control, the Adirondack Park Agency ("APA") was established by the Legislature in 1971 as an independent state agency to conserve, protect, preserve and develop the park and forest preserve lands which now amount to six million acres

172. DOROTHY REISER, LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, MAKING LAND USE DECISIONS IN NEW YORK STATE 39 (Nov. 1975) (citing Benjamin P. Coe, Executive Director of the Tug Hill Commission).

173. *Id.*

174. Act of May 15, 1885, ch. 283, 1885 N.Y. Laws 482. The forever wild provision was later given constitutional protection in 1894. See N.Y. CONST. art. XIV, § 1.

175. HOLLY NELSON & ALAN J. HAHN, STATE POLICY AND LOCAL INFLUENCE IN THE ADIRONDACKS 4 (Cornell University, Sept. 1980).

176. TEMPORARY STUDY COMMISSION ON THE FUTURE OF THE ADIRONDACKS, THE FUTURE OF THE ADIRONDACK PARK FINAL REPORT (Dec. 1970).

177. *Id.*

178. *Id.*

179. Act of June 25, 1971, ch. 706, 1971 N.Y. Laws 1133.

of land,¹⁸⁰ filled with unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological, and natural resources.¹⁸¹ The Act directs the APA to develop and implement a regional land use and development plan for the Park,¹⁸² which encompasses 2,440,817 acres of forest preserve land spread over twelve counties and 105 town and village governments.¹⁸³ The Act has been cited as unusual in that it seeks to represent a statewide constituency, while in effect creating a regulatory agency to oversee the use of land and development in a specific region of the state.¹⁸⁴ Control is divided between the APA and local governments, which can assume jurisdiction for certain regional land use decisions if the APA approves their local land use programs.¹⁸⁵ The APA always has jurisdiction over projects of park-wide significance, and local governments have jurisdiction over purely local decisions.¹⁸⁶

Unlike other regional planning entities, the state took special interest in the APA, due to a significant statewide concern for the resources within the Park including an extensive amount of state-owned forest preserve land.¹⁸⁷ This is one of only a handful of independent regional planning entities in the state whose enabling act has been codified within the Executive Law and which is placed within the Executive Department.¹⁸⁸ Appointments to the APA are made by the Governor with the advice and consent of the Senate.¹⁸⁹ A local government review board advises and assists the APA.¹⁹⁰ The board consists of twelve representatives, one appointed by each of the twelve

180. *Id.* sec. 1, 1971 N.Y. Laws 1133, 1133-34 (codified at N.Y. EXEC. LAW § 801 (McKinney 1982)); COMMISSION ON THE ADIRONDACKS IN THE TWENTY-FIRST CENTURY, *supra* note 175, at 2.

181. Act of June 25, 1971, ch. 706, sec. 1, 1971 N.Y. Laws 1133, 1133-34; COMMISSION ON THE ADIRONDACKS IN THE TWENTY-FIRST CENTURY, *supra* note 175, at 11.

182. N.Y. EXEC. LAW § 801.

183. COMMISSION ON THE ADIRONDACKS IN THE TWENTY-FIRST CENTURY, *supra* note 175, at 2, 21.

184. HOLLY NELSON AND ALAN J. HAHN, STATE POLICY AND LOCAL INFLUENCE IN THE ADIRONDACKS 1 (Cornell University Center for Environmental Research 1980).

185. N.Y. EXEC. LAW § 808 (McKinney 1982).

186. *Id.* §§ 801, 804.

187. *Id.* § 801.

188. *Id.* § 803.

189. *Id.*

190. *Id.* § 803-a(1).

counties within or partly within the park.¹⁹¹

The powers granted to the APA have not been without vocal local opposition. For example, criticism continues to come from local Adirondack residents who do not want any government regulation over their land, and who see the APA as an agent of "rabid environmentalism."¹⁹² In addition, critics have voiced opposition to the manner in which the APA operates, including project review, conditional approvals, and rigid interpretation of regulations.¹⁹³ In 1973, a legislative proposal was introduced to delay the adoption of the private land use and development plan for the Park.¹⁹⁴ In 1977, the New York Court of Appeals held that "the future of a cherished regional park" is a matter of state concern "transcending local interests."¹⁹⁵ In April 1990, after one year of study and public meetings, the Commission on the Adirondacks in the Twenty-First Century transmitted its final report to the Governor.¹⁹⁶ Finding that the number of lots included for subdivision requests to the APA tripled between 1984-1989,¹⁹⁷ the Commission proposed 245 recommendations, including an Open Space Protection plan which would preserve open space through conservation easements, zoning changes and transfer of development rights.¹⁹⁸ In addition to a proposed one year moratorium on development and subdivision in certain areas, the Commission recommended that the Act be amended to: (1) make environmental considerations the most important issue; (2) subject all development, subdivision and land use changes to review by state or local government for environmental impact; (3) limit compatible uses for each of the six land use categories in the Park; and (4) require the APA to set

191. *Id.*

192. See Nelson and Hahn, *supra* note 184, at 20.

193. *Id.*

194. In 1973, legislation was introduced by Assemblyman Harris and Senator Stafford. The bill passed both houses, but was vetoed by Governor Rockefeller. Since that time, a number of legislative proposals to abolish the APA have been introduced.

195. *Wambat Realty Corp. v. State*, 41 N.Y.2d 490, 491, 495, 362 N.E.2d 581, 582, 584, 393 N.Y.S.2d 949, 950, 952 (1977).

196. COMMISSION ON THE ADIRONDACKS IN THE TWENTY-FIRST CENTURY, *THE ADIRONDACK PARK IN THE TWENTY-FIRST CENTURY* (1990).

197. *Id.* at 3.

198. *Id.* at 7, 8-9.

performance standards to safeguard biological resources.¹⁹⁹ The report became the subject of controversy, and three years later, the Governor's office and the Legislature continue to negotiate a plan for the Adirondack Park in the next century.

2. Catskill Park

Thirty-eight percent of land within the Catskill Park, or 272,000 acres, is situated within the State Forest Preserve.²⁰⁰ The Catskill Forest Preserve was created by law in 1885.²⁰¹ In 1904, the Catskill Park was created, consisting then of 576,120 acres.²⁰² As part of the DEC's responsibility for care, custody and control of the Forest Preserve,²⁰³ the agency developed a master plan for the management of state-owned lands in the Catskill Park which was adopted in 1986.²⁰⁴ Unlike the Adirondack Park, however, private land within the Catskill Park is not subject to a regional land use plan and there is no regional planning agency for the Catskill Park.²⁰⁵ In fact, the only state law involving land use within the Catskill Park is a regulation on signs and advertising which was adopted in the 1930s.²⁰⁶

The Temporary State Commission to Study the Catskills was established in 1971.²⁰⁷ Its final report in 1975 recommended the establishment of a regional agency to manage developments of regional significance and to issue regional guidelines addressing minimum performance standards for county and local land use management.²⁰⁸ Although such an agency was never created, the report is credited with increasing local planning efforts, upgrading some county planning agencies, and fostering a coopera-

199. *Id.* at 9.

200. NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, CATSKILL PARK STATE LAND MASTER PLAN i (1985) [hereinafter CATSKILL MASTER PLAN].

201. Act of May 15, 1885, ch. 283, 1885 N.Y. Laws 482.

202. Act of April 5, 1904, ch. 233, 1904 N.Y. Laws 427. *See* CATSKILL MASTER PLAN, *supra* note 200, at 4.

203. N.Y. ENVTL. CONSERV. LAW § 9-0105 (McKinney 1986).

204. CATSKILL MASTER PLAN, *supra* note 200.

205. *Id.* at i-ii.

206. N.Y. ENVTL. CONSERV. LAW § 9-0305 (McKinney 1984).

207. CATSKILL MASTER PLAN, *supra* note 200, at 6.

208. Reiser, *supra* note 172, at 39 (citing TEMPORARY STATE COMMISSION TO STUDY THE CATSKILLS, THE FUTURE OF THE CATSKILLS, FINAL REPORT 6 (1975)).

tive planning effort among five municipalities.²⁰⁹ After the Commission released its 1975 report, the DEC, at the request of Governor Carey, completed the work undertaken by the Commission.²¹⁰ By November 1975, the DEC had issued fifteen study reports, and recommended, among other things, cooperative intergovernmental planning which would utilize local and county plans to develop a regional plan.²¹¹ Although legislation was introduced from 1976-1978 to create the Catskill Regional Land Resources Management Act,²¹² it failed to progress through the legislative process.

In 1990, Governor Cuomo proposed the creation of a Commission on the Catskills in the Twenty-First Century to examine what actions may be necessary to protect the lands and regional water supplies within the Catskill Park from the impact of development activities.²¹³ The proposed commission was never appointed. Opponents take credit for preventing what they perceived would be a body similar to the Adirondack Park Agency for the Catskills, but the Governor cited budgetary reasons for his decision not to proceed.²¹⁴ The DEC is currently preparing public access plans for both the Adirondack and Catskill Parks as well as updating the 1986 State Land Master Plan.²¹⁵

3. *Commission on Tug Hill*

The Tug Hill region with a population of just over 100,000 is located at the eastern end of Lake Ontario, and encompasses 2,100 square miles spread over four counties and forty-one

209. *Id.*

210. NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, LAND RESOURCES MANAGEMENT IN THE CATSKILLS: ASSESSMENT AND RECOMMENDATIONS, CATSKILL STUDY REPORT No. 1 2 (Sept. 1976).

211. *Id.* at 72. Of note is the fact that no regional land use controls similar to the Adirondack Park Agency, were recommended.

212. *Id.* at 47.

213. Governor Mario M. Cuomo, *Message to the New York State Legislature* (Jan. 3, 1990).

214. Phil Brown, *Catskills Commission Victim of Funding Cut From ENCON*, TIMES UNION, Nov. 20, 1990, at A8.

215. Interview with Charles C. Morrison, Director, Office of Land Resources Planning, New York State Department of Environmental Conservation, in Albany, N.Y. (June 7, 1993).

towns.²¹⁶ The Temporary State Commission on Tug Hill ("Tug Hill Commission") was established by the Legislature in 1972, shortly after the Horizon Corporation placed an option to buy 55,000 acres of forest wilderness in the area's central core.²¹⁷ Originally, the appointed Tug Hill Commission was to study the region and make recommendations on its future.²¹⁸ The Tug Hill Commission soon began to provide technical assistance to a portion of the four county region²¹⁹ through the establishment of a Cooperative Tug Hill Planning Board, which was comprised of different town planning boards in the central forest and watershed areas within the region.²²⁰ The Cooperative Planning Board was established through an intermunicipal agreement.²²¹ The Tug Hill experience is unique to New York in that it demonstrates how small, inexperienced rural municipalities can cooperate to create an effective regional planning scheme.²²² Among the long range goals adopted by the Tug Hill Commission were: (1) to provide comprehensive plans to cover the Tug Hill Region; (2) to develop and test working organization structures for implementation; (3) to do the above in a manner which would both provide for the protection of natural values of state and regional interest and allow for maximum local government responsibility and authority; (4) to strengthen local government's capacity for handling complex decisions and programs; and (5) to conduct research and pilot programs so as to evaluate issues affecting the future of the region.²²³ Today, these goals are being pursued through four councils of government, each served by a jointly funded circuit rider.²²⁴ The Commission, with the counties, provides a wide range of back-up support to the town and

216. Benjamin P. Coe, *Tug Hill, New York Progress Through Cooperation in a Rural Region*, NAT'L CIVIC REV. 449, 451 (Fall-Winter 1992).

217. Act of June 8, 1972, ch. 972, 1972 N.Y. Laws 3086. See also Benjamin P. Coe & Thorton K. Ware, *The Tug Hill Experience*, NYPF PLANNING NEWS, Mar.-Apr. 1977, at 1; ELIZABETH REDFIELD MARSH, TEMPORARY STATE COMMISSION ON TUG HILL, COOPERATIVE RURAL PLANNING - A TUG HILL CASE STUDY 25-26 (1981).

218. Coe, *supra* note 216, at 449.

219. The Tug Hill Region covers parts of the counties of Jefferson, Lewis, Oneida, and Oswego. Coe & Ware, *supra* note 217, at 1, 3.

220. Coe, *supra* note 216, at 449-50.

221. *Id.* at 449.

222. Marsh, *supra* note 217, at 3.

223. Coe & Ware, *supra* note 217, at 4.

224. Coe, *supra* note 216, at 450.

village governments to meet technical assistance and training needs, including land use planning, community design and development, and general assistance to governing boards.²²⁵ This is an example of intermunicipal arrangements which foster both horizontal and vertical consistency.²²⁶

In 1992, the Legislature formally changed the name of the Commission from the Temporary State Commission on Tug Hill to the Tug Hill Commission.²²⁷ The Tug Hill Reserve Act, also enacted in 1992, recognizes Tug Hill as a special region and empowers local councils of government to prepare reserve plans.²²⁸ The legislation requires state and county agencies to consult with communities on the reserve plans, but does not grant to the higher levels of government veto power over the plans.²²⁹

4. *Lake George Park Commission*

The Lake George Park Commission was established in 1961 within the DEC for, among other things, the preservation and enhancement of the lake, and the conservation and preservation of pure water supplies and natural resources.²³⁰ The Lake George Park is comprised of approximately 300 square miles of a combination of state-owned land and privately owned land.²³¹ There are nine members of the Commission comprised of at least two representatives from each of the three watershed counties (Warren, Washington and Essex) and the Commissioner of the DEC who serves *ex officio*.²³² Among the powers of the Com-

225. Memorandum from Benjamin P. Coe to Patricia E. Salkin (Apr. 16, 1993) (on file with author).

226. *See supra* note 37 for an explanation of horizontal and vertical consistency.

227. Act of July 24, 1992, ch. 561, 1992 N.Y. Laws 1570.

228. Act of July 17, 1992, ch. 486, 1992 N.Y. Laws 1343. There are presently four voluntary councils of government in the Tug Hill region. According to Benjamin P. Coe, Executive Director of the Tug Hill Commission, 10 out of 15 communities are expected to have reserve plans in place by the end of 1993. Memorandum from Benjamin P. Coe to Patricia E. Salkin, *supra* note 225.

229. *Id.*

230. Act of April 11, 1961, ch. 454, 1961 N.Y. Laws 769.

231. TASK FORCE FOR THE FUTURE OF THE LAKE GEORGE PARK, THE PLAN FOR THE FUTURE OF THE LAKE GEORGE PARK 1 (Jan. 1987) [hereinafter TASK FORCE]. The Park boundaries coincide approximately with the Lake George Watershed, and it lies wholly within the Adirondack Park. Memorandum from Charles C. Morrison to Patricia E. Salkin (July 22, 1993) (on file with author).

232. N.Y. ENVTL. CONSERV. LAW § 43-0105 (McKinney 1984).

mission are consideration of the cumulative impact of actions upon all the resources in Lake George Park;²³³ establishing rules, regulations, and procedures with respect to certain land use activities;²³⁴ and encouraging and cooperating with municipalities located within Lake George Park in the preparation and adoption of zoning and other land use regulations.²³⁵

In 1984, the DEC created the Task Force for the Future of the Lake George Park ("Task Force") for the purpose of developing a management plan for Lake George and its watershed.²³⁶ The Task Force, which operated under the Park Commission, was comprised of state and federal agency staff, county and other local government representatives, private citizens, and academic and environmental organizations.²³⁷ The Task Force released its final report in 1987, which contained 209 recommendations addressing growth management, better land use planning, local designation of critical environmental areas, open space dedication and preservation, historic preservation, and scenic area designation.²³⁸ The report resulted in comprehensive amendments to the Lake George Park Commission Act in 1987, including the granting of authority to the Commission for the regulation of sewage, storm water run-off and other factors which might affect the quality of the water.²³⁹ The Task Force report contains a series of 210 recommendations that address the appropriate roles of the Commission, the Adirondack Park Agency, DEC and local governments with respect to land use controls, improvements, and project review.²⁴⁰ Although a number of specific proposals were advanced, the APA has not implemented them, due perhaps, to the Agency's apprehension of addressing concerns on the basis of the whole Adirondack Park, rather than just the Lake George Park which happens to lie

233. N.Y. ENVTL. CONSERV. LAW § 43-0107(13) (McKinney Supp. 1993).

234. *Id.* § 43-0107(19). These activities include regulation of commercial uses, defined as any use of land that makes a profit. N.Y. ENVTL. CONSERV. LAW § 43-103(3) (McKinney 1984). Therefore, it could be construed to include residential subdivision of land.

235. N.Y. ENVTL. CONSERV. LAW § 43-0107(20) (McKinney Supp. 1993).

236. TASK FORCE, *supra* note 231, at 1.

237. *Id.* at 6.

238. *See generally* TASK FORCE, *supra* note 231.

239. N.Y. ENVTL. CONSERV. LAW § 43-0107 (McKinney Supp. 1993).

240. TASK FORCE, *supra* note 231, at 48-53.

wholly within it. This demonstrates the difficulties in coordinating regional planning initiatives when there are overlapping regional planning entities.

5. *Urban Cultural Parks System*

In 1982, the State of New York established a program for urban cultural parks²⁴¹ described as "definable urban or settled areas of public and private uses ranging in size from a portion of a municipality to a regional area with a special coherence,"²⁴² to preserve the resources through development and use in a system of state designated urban cultural parks.²⁴³ The Act declares it the policy of the state to coordinate the plans, functions, powers and programs of the state as they affect urban cultural parks, with federal, regional, and local governments, as well as with other public and private organizations.²⁴⁴ The Commissioner of the Office of Parks, Recreation, and Historic Preservation has the authority to relate or integrate local and regional urban cultural parks into a statewide system of state designated urban cultural parks.²⁴⁵ The statute identifies a number of urban cultural parks for inclusion in the program,²⁴⁶ with a provision for ongoing state designation.²⁴⁷

A significant land use planning component of the program calls for the preparation of a comprehensive management plan by the appropriate local governmental entity, which, upon approval by the Commissioner of the Office of Parks, Recreation, and Historic Preservation, shall then be deemed the plan for both the local and state government.²⁴⁸ A statutorily prescribed list of items which must be included in the comprehensive management plans includes: (1) an inventory of resources within the park; (2) a statement of goals and objectives; (3) identification of types of uses and their linkage to the overall statewide system;

241. Act of July 20, 1982, ch. 541, 1982 N.Y. Laws 1409.

242. N.Y. PARKS REC. & HIST. PRESERV. LAW § 31.01(2) (McKinney 1984).

243. *Id.* § 31.03.

244. *Id.*

245. *Id.* § 35.13.

246. N.Y. PARKS REC. & HIST. PRESERV. LAW § 35.03 (McKinney 1984 & Supp. 1993).

247. *Id.* § 35.03(4).

248. *Id.* § 35.05.

(4) a description of techniques or means for preservation and protection of the natural and cultural resources within the park; and (5) a schedule for the planning, development, and management of the park.²⁴⁹ Incentives for the development of the plan include assistance from the state for acquisition, development and programming within the park,²⁵⁰ grants for planning and design,²⁵¹ and a requirement that state agencies which may be conducting funding or approving activities within the park boundaries consult, cooperate, and coordinate their activities with the Office of Parks, Recreation and Historic Preservation, and with the local government.²⁵² This provides an example of vertical consistency achieved through a "bottom-up" approach.²⁵³

6. Hudson River Valley Greenway Communities Council

In 1966, partly in response to a federal proposal for an interstate basin commission, Governor Rockefeller proposed and the legislature passed a law establishing the Hudson River Valley Commission.²⁵⁴ The Commission's primary functions were comprehensive planning and project review within one-half mile of the river or line of sight from the river.²⁵⁵ The Commission lasted until 1971, when its enabling legislation was repealed.²⁵⁶ In 1979, the DEC conducted a study of the natural and cultural resource protection needs of the Hudson Valley, which led to the creation of the Heritage Task Force for the Hudson River Valley ("Heritage Task Force").²⁵⁷ While the Heritage Task Force was

249. *Id.* § 35.05(4).

250. *Id.* § 35.05(8).

251. *Id.* § 35.11.

252. *Id.* § 35.07(3).

253. See *supra* note 37 for an explanation of vertical consistency. A "bottom-up" approach refers to land use planning which is initiated and driven at the local government level, and the local plan is then followed and recognized by other planning entities at larger-scale levels (such as county, region, and state). This approach allows land use planning to remain a purely local function, requiring other levels of government to make certain that their plans are consistent with the local plan. This is contrasted with a "top-down" approach in which, traditionally, the state government develops a plan and requires all other governments within the state to adopt plans consistent with the state plan.

254. Act of May 11, 1966, ch. 345, 1966 N.Y. Laws 404 (repealed 1971).

255. *Id.*

256. Act of Apr. 2, 1971, ch. 74, 1971 N.Y. Laws 108.

257. Memorandum from Charles C. Morrison to Patricia E. Salkin (July 22, 1993)

initially an advisory body to the DEC, in 1988 it was codified and in 1991 its name was changed to the Greenway Heritage Conservancy.²⁵⁸

The Hudson River Valley Greenway Act was signed into law in 1991 for the purpose of creating a process for regional decision-making in the geographic region of the Hudson River Valley.²⁵⁹ Recommended by the Hudson River Valley Greenway Council ("Council"),²⁶⁰ the "greenway" is defined as a structure which: (a) brings local governments into a strong regional alliance; (b) furthers their ability to achieve appropriate economic development consistent with conservation objectives; (c) provides technical assistance on a regional perspective, relating to agriculture, development trends, and open space protection; (d) preserves natural, cultural and architectural assets; (e) preserves open space by encouraging new development in existing areas and by encouraging development where infrastructure already exists; (f) interweaves recreation, access and travel corridors; and (g) promotes an appreciation of the Hudson River.²⁶¹

The Council was given a long list of powers including, but not limited to: (1) reviewing and commenting upon capital and long-range plans of state agencies as they affect the objects and plan of the greenway; (2) reviewing and commenting as an interested agency during an environmental review process; (3) designating multi-county planning districts or subregions based on environmental, economic and social factors linking counties, cities and towns for the purpose of developing a greenway compact; and (4) organizing and meeting with county planners

(on file with author).

258. Act of Dec. 31, 1991, ch. 748, sec. 10, 1991 N.Y. Laws 1451, 1457-58 (codified at N.Y. ENVTL. CONSERV. LAW § 44-0111(2) (McKinney Supp. 1993)).

259. Act of Dec. 31, 1991, ch. 748, 1991 N.Y. Laws 1451. Sections 4-10 of the Act are codified at N.Y. ENVTL. CONSERV. LAW §§ 44-0101 to -0121 (McKinney Supp. 1993). The Hudson River Valley Greenway area encompasses the counties of Albany, Columbia, Dutchess, Orange, Putnam, Rensselaer, Rockland, and Westchester, and the areas of Green and Ulster counties which are not within the Catskill Park, and the Town and Village of Waterford in Saratoga County. N.Y. ENVTL. CONSERV. LAW § 44-0109.

260. The Council was created in 1988 by Governor Mario Cuomo. See Governor Mario Cuomo, Message to the New York State Legislature (Jan. 9, 1991). See also N.Y. ENVTL. CONSERV. LAW §§ 44-0101 to -0121; HUDSON RIVER VALLEY GREENWAY COUNCIL, A HUDSON RIVER VALLEY GREENWAY (Feb. 1991).

261. HUDSON RIVER VALLEY GREENWAY COUNCIL, HUDSON RIVER VALLEY GREENWAY: PLANNING PRINCIPLES 1 (1993).

within the greenway regarding regional projects and the provision of planning services.²⁶² The first step in the compact planning process requires the Council to assist municipalities with modernizing their local planning and zoning.²⁶³ Second, the Council is to convene a meeting of municipalities in the greenway area to begin work on the preparation of regional plans.²⁶⁴ Finally, the Council is to prepare an overlapping compact that incorporates all of the regional plans and addresses valley-wide concerns.²⁶⁵ The Council is further charged with the responsibility of consulting, cooperating and coordinating its activities with other interested state agencies.²⁶⁶

The Council is to "guide and support a cooperative planning process to establish a *voluntary* regional compact amongst the counties, cities, towns and villages of the greenway"²⁶⁷ The Council must approve the regional plans, and upon such approval, the participating communities become a part of the greenway compact.²⁶⁸ This voluntary "bottom-up" approach, with elements of horizontal and vertical consistency may prove to be a model for regional planning in New York. As incentives for voluntary participation in the regional planning process, municipalities become eligible to receive funding from the Department of Economic Development for urban and community development feasibility studies, and for commercial revitalization and redevelopment projects.²⁶⁹ Municipalities may receive economic development assistance grants from the Urban Development Corporation's urban and community development and regional economic development programs.²⁷⁰ Further, they are eligible for capital, program and planning matching grants, and, each participating community shall receive indemnity from the state in the event of legal actions brought against the community or its agents resulting from land acquisition or implementa-

262. N.Y. ENVTL. CONSERV. LAW § 44-0107 (McKinney Supp. 1993).

263. *Id.* § 44-0119.

264. *Id.* § 44-0119(3).

265. *Id.*

266. *Id.* § 44-0115(1).

267. *Id.* § 44-0119(1) (emphasis added).

268. *Id.* § 44-0119(4).

269. *Id.* § 44-0119(3).

270. *Id.* § 44-0119(9).

tion of zoning or other land use controls consistent with the regional plan.²⁷¹ Another significant incentive is the exemption from review under the State Environmental Quality Review Act²⁷² for projects that are in conformance with the regional plan.²⁷³ Finally, participating municipalities are authorized to regulate docks, boathouses and like structures in the navigable waters of the state to a distance of 1,500 feet from the shoreline.²⁷⁴

In addition to the Council, the Legislature established the Greenway Heritage Conservancy ("Conservancy") for the Hudson River Valley, a public benefit corporation.²⁷⁵ The Conservancy is authorized to provide technical assistance to county and local officials, landowners and interested organizations with regard to resource protection and preservation.²⁷⁶ It may also encourage and assist state, county and local governments with implementing procedures for identifying and designating critical areas.²⁷⁷ The Conservancy may initiate the preparation of comprehensive and systematic inventories and studies of the resources of the Hudson River Valley (a geographic information system)²⁷⁸ and assist with the development and implementation of a comprehensive program and plan at the state, county and local levels for resource preservation and enhancement in scenic corridors (trail systems).²⁷⁹ In addition, it may jointly designate and develop model greenway projects with the Council to demonstrate implementation of greenway planning and make grants to municipalities and non-profits within the greenway for such planning.²⁸⁰

The Hudson River Valley Greenway Trail is to be established on both sides of the Hudson River along the Greenway area, and, to the extent practicable, be within view or have phys-

271. *Id.*

272. N.Y. ENVTL. CONSERV. LAW §§ 8-0101 to -0117 (McKinney 1984 & Supp. 1993).

273. N.Y. ENVTL. CONSERV. LAW § 44-0119(5) (McKinney Supp. 1993).

274. N.Y. NAV. LAW § 46-a (McKinney 1989 & Supp. 1993).

275. N.Y. ENVTL. CONSERV. LAW § 44-0111 (McKinney Supp. 1993).

276. *Id.* § 44-0113(15).

277. *Id.* § 44-0113(16).

278. *Id.* § 44-0113(18).

279. *Id.* § 44-0113(20).

280. *Id.* § 44-0113(29).

ical access to the river.²⁸¹ The aim of the trail is to create pedestrian-friendly links among the cities, towns and villages, and among the historic, cultural and natural resources of the Hudson River Valley.²⁸² A hotel occupancy tax was established on all hotels, motels and similar establishments with 26 or more rooms as a method of financing the Greenway Plan.²⁸³

Although the voluntary compact concept is being hailed by some as a model for the rest of the state, it is too early to draw conclusions as to its success. Clearly in a state such as New York where there is a strong tradition of local home rule, a non-mandatory regional planning approach would receive a warmer local political reception. According to Council staff, a number of municipalities are currently developing plans to submit for participation in the compact.²⁸⁴

7. *St. Lawrence-Eastern Ontario Commission*

In 1969, the St. Lawrence-Eastern Ontario Commission was created to "insure optimum conservation, protection, preservation, development and use of the unique, scenic, aesthetic, historic, ecological, recreational, economic and natural resources of the St. Lawrence-Eastern Ontario area."²⁸⁵ The Commission is charged with the development of a long range policy which recognizes statewide interest in the conservation, use, and development of the area's resources.²⁸⁶ Commission members include the Commissioner of the DEC, the Secretary of State, and the Commissioner of Commerce (or their designees).²⁸⁷ Fourteen additional members are appointed by the Governor with the advice and consent of the Senate.²⁸⁸ Twelve of the appointed members must be residents of St. Lawrence, Jefferson, Oswego, and Ca-

281. *Id.* § 44-0121(1).

282. HUDSON RIVER VALLEY GREENWAY COUNCIL, *supra* note 260, at 20, 21.

283. N.Y. TAX LAW § 1104-a (McKinney Supp. 1993).

284. Lawrence Weintraub, Counsel, Hudson River Valley Greenways Communities Council, remarks at the meeting of New York Future at Albany Law School, Albany, New York (Mar. 11, 1993).

285. N.Y. EXEC. LAW § 847-a (McKinney 1982).

286. *Id.*

287. N.Y. EXEC. LAW § 847-c (McKinney 1982 & Supp. 1993).

288. *Id.*

yuga counties.²⁸⁹ Among its numerous duties, the Commission is charged with formulating and implementing a coastal zone management program for the shoreline within its jurisdiction,²⁹⁰ and for review of public and private projects proposed within the area to ensure a balancing of interests.²⁹¹ The Commission has thirty-five days within which to comment on proposed projects, and offer advice and assistance to improve the project (or recommend against it).²⁹²

In 1983, the National Park Service, in cooperation with the St. Lawrence-Eastern Ontario Commission, the DEC and the Office of Parks, Recreation and Historic Preservation, completed a study of the St. Lawrence River-Thousand Islands area.²⁹³ The final report recommended the creation of a "greenway plan" which would establish a regional cooperative partnership between local, state and federal governments, and private landowners for conservation and enhancement of the region's land and water resources.²⁹⁴ Due to a lack of local support, there has been no movement on this proposal.²⁹⁵

G. Regional Planning Programs Within Other State Laws

1. Coastal Zone Management Program

In 1972 the federal government passed the Coastal Zone Management Act²⁹⁶ which set in place a mechanism and incentive for thirty coastal states and five territories to begin to plan for the protection and enhancement of 95,000 miles of shoreline.²⁹⁷ New York began to participate in the Coastal Zone Pro-

289. *Id.*

290. N.Y. EXEC. LAW § 847-f (McKinney 1982).

291. N.Y. EXEC. LAW § 847-g (McKinney 1982 & Supp. 1993). Projects within the Commission's jurisdiction include those which "might destroy or substantially impair significant scenic, historic, recreational, ecological, conservation or natural resources or might bring about a major change in the appearance or use of the water in the St. Lawrence-eastern Ontario area, or the surrounding land" *Id.*

292. N.Y. EXEC. LAW § 847-g(6) (McKinney Supp. 1993).

293. UNITED STATES DEPARTMENT OF THE INTERIOR, CONSERVING THE GARDEN OF THE GREAT SPIRIT: THE ST. LAWRENCE RIVER-THOUSAND ISLANDS AREA REPORT (May 1983).

294. *Id.* (nonpaginated report).

295. Memorandum from Charles C. Morrison to Patricia E. Salkin (June 7, 1993) (on file with author).

296. 16 U.S.C. §§ 1451-1464 (1988 & Supp. III 1991).

297. *Id.*

gram in November 1974 through the Division of State Planning in the Department of State.²⁹⁸ The DEC also had early responsibility for coastal zone management, and was the major subcontractor in the Coastal Zone Program from 1974 to 1976.²⁹⁹ Although the DEC continued to receive some coastal funds through the mid-1980s, in 1976 coastal responsibilities were centralized in the Department of State.³⁰⁰ In 1981, New York enacted the Waterfront Revitalization and Coastal Resources Act.³⁰¹ The Act was designed to ensure "coordinated and comprehensive policy and planning for preservation, enhancement, protection, development and use of the state's coastal resources . . . [to] proper[ly] balance between natural resources and the need to accommodate the needs of population growth and economic development"³⁰² The Act implemented a form of geographic regional planning for up to 3,200 miles of New York's coastline. The Act declares it the policy of the state within the coastal area "[t]o assure consistency of state actions and, where appropriate, federal actions, with policies within the coastal area, and with accepted waterfront revitalization programs"³⁰³ The Act was amended in 1986 to extend the applicability of its provisions to inland waterways under certain conditions.³⁰⁴ The Secretary of State is charged with advising the Governor and state agencies concerning "planning, programs and policies for the achievement of wise use of the land and water resources of coastal areas";³⁰⁵ evaluating federal, state and local programs and legislation relating to coastal issues, and, where appropriate, making recommendations;³⁰⁶ and reviewing and commenting upon programs and actions of state agencies which may have the potential to affect the policies and purposes of the

298. Memorandum from Charles C. Morrison to Patricia E. Salkin (July 22, 1993) (on file with author).

299. Memorandum from Charles C. Morrison to Patricia E. Salkin (June 8, 1993) (on file with author).

300. *Id.*

301. Act of July 27, 1981, ch. 840, 1981 N.Y. Laws 1676.

302. N.Y. EXEC. LAW § 910 (McKinney Supp. 1993).

303. *Id.* § 912(9).

304. Act of July 21, 1986, ch. 366, 1986 N.Y. Laws 762.

305. N.Y. EXEC. LAW § 913(1) (McKinney Supp. 1993).

306. *Id.* § 913(2).

Act.³⁰⁷

The Act also provides for optional local government waterfront revitalization programs which allow any local government, or two or more local governments acting jointly, which has (have) any portion of its (their) jurisdiction contiguous to coastal waters, to submit a local plan for approval concerning the preservation of resources and development along the coast.³⁰⁸ The Secretary of State is charged with providing technical assistance to localities desiring to develop waterfront plans and facilitating consultation and coordination among local, county, regional, state agencies, federal agencies, and community groups with respect to both the preparation and the implementation of the local plan.³⁰⁹ Benefits of approved local waterfront revitalization plans include expedited permitting procedures³¹⁰ and grants to localities for actions which lead to the preparation of a local plan.³¹¹ The coastal program offers a good opportunity for regional/intermunicipal cooperation with respect to preservation and promotion of coastal resources.

2. *Horizons Waterfront Commission*

The Horizons Waterfront Commission was established in 1988 as a subsidiary of the State Urban Development Corporation through the use of an intermunicipal agreement among eight municipalities,³¹² the Niagara Frontier Transportation Authority, and Erie County.³¹³ It is an example of a regional planning initiative not created by an act of state law. Among the purposes and powers of the Commission are: (1) the development, adoption and updating of a master plan for Erie County's waterfront; (2) the coordination of all activities of all governmental entities in the development of the waterfront; and (3) the coordination and focus of private investment and develop-

307. N.Y. EXEC. LAW § 913(4) (McKinney 1982).

308. N.Y. EXEC. LAW §§ 915, 915-a (McKinney 1982 & Supp. 1993).

309. N.Y. EXEC. LAW § 917 (McKinney 1982).

310. N.Y. EXEC. LAW § 916(2) (McKinney Supp. 1993).

311. N.Y. EXEC. LAW § 918(1)(a) (McKinney 1982).

312. The eight municipalities are the towns of Grand Island, Tonawanda, Hamburg, Evans and Brant, and the cities of Tonawanda, Buffalo and Lackawanna.

313. HORIZONS WATERFRONT COMMISSION, HORIZONS WATERFRONT ACTION PLAN: EXECUTIVE SUMMARY 1 (Jan. 1992).

ment.³¹⁴ The Horizons Waterfront Action Plan was adopted by the Commission and the Urban Development Corporation in January 1992.³¹⁵ It provides another unique example of a regional approach to waterfront planning and development.

3. *Long Island Pine Barrens Maritime Reserve Act*

In 1990, the State Legislature established the Long Island Pine Barrens Maritime Reserve Council to help local governments and the state coordinate the efforts of all municipal, county, state and federal agencies involved in the management of the reserve, and to oversee and prepare a comprehensive intergovernmental management plan for the reserve which state and local governments may adopt.³¹⁶ Recognizing that the Pine Barrens, an area encompassing over 100,000 acres in Suffolk County, overlies the largest source of pure groundwater in New York, the state set up a management system to protect this resource through the adoption of state and local comprehensive plans, and the coordination of programs and studies in the region.³¹⁷

The Long Island Pine Barrens Maritime Reserve Council³¹⁸ is charged with the preparation and adoption of a comprehensive management plan for the Long Island Pine Barrens, which

314. *Id.* at 2.

315. *Id.* at 1, 2.

316. Act of July, 25, 1990, ch. 814, sec. 1, 1990 N.Y. Laws 1645, 1646 (codified at N.Y. ENVTL. CONSERV. LAW § 57-0103 (McKinney Supp. 1993)). This Act was amended effective July 13, 1993 to create a new mechanism for the development and implementation of a comprehensive land use plan. Act of July 13, 1993, ch. 262, sec. 3, 1993 N.Y. Laws 735, 743.

317. N.Y. ENVTL. CONSERV. LAW § 57-0105 (McKinney Supp. 1993). Due to development after World War II, only one hundred thousand acres remain of what was once a two hundred fifty thousand acre Pine Barrens. See Stephen L. Kass and Michael B. Gerrard, *Pine Barrens: The Fruitful Compromise*, N.Y. L.J., Aug. 27, 1993, at 3.

318. The Council is established within the DEC and is composed of seventeen voting members, three of whom are appointed by the Governor, four by the Suffolk County Executive with the advice and consent of the Senate, and one each by the town supervisors of the Towns of Riverhead, Southold, Shelter Island, Southampton, East Hampton and Brookhaven. The Commissioner or his or her designee, the Commissioner of Parks, Recreation and Historic Preservation or his or her designee, the Secretary of State or his or her designee, and the Commissioner of the Department of Economic Development or his or her designee also have one appointment each to the Council. See N.Y. ENVTL. CONSERV. LAW § 57-0111 (McKinney Supp. 1993).

the state and localities may adopt.³¹⁹ The plan must include: (1) the general goals and policies to best protect and enhance the public values in the area; (2) a map of the area; (3) management guidelines for the preservation, recreational and educational use of the Pine Barrens; (4) guidelines for protecting and promoting economic activities such as agriculture, fishing, recreation and tourism; and (5) a survey and management priorities for natural and historic resources, erosion control and stream protection, and trails and other recreational uses.³²⁰

In July 1993, Governor Cuomo signed into law the Long Island Pine Barrens Protection Act.³²¹ Enacted after a two year lawsuit concerning environmental review with respect to the cumulative impact of development in the Pine Barrens,³²² the new law created the Central Pine Barrens Joint Planning and Policy Commission which is now charged with the adoption and implementation of a plan to balance preservation and development within the Pine Barrens.³²³ The newly adopted Act provides another approach towards achieving sound and coordinated regional planning, in a manner amenable to all involved local governments. The composition of the five-member Commission includes a representative of the Governor, the Suffolk County executive, and the supervisors of the towns of Brookhaven, Riverhead and Southampton.³²⁴ By providing for unanimous adoption of the final plan, the Act calls for the exercise of home rule at the front end of the process.³²⁵ Within three months of final adoption of the plan, the municipalities in the Pine Barrens area are required to amend their land use and zoning regulations

319. *Id.* § 57-0115.

320. *Id.* § 57-0115(1).

321. Act of July 13, 1993, ch. 262, 1993 N.Y. Laws 735; Act of July 13, 1993, ch. 263, 1993 N.Y. Laws 757.

322. See *Long Island Pine Barrens Soc'y v. Planning Bd. of the Town of Brookhaven*, 80 N.Y.2d 500, 606 N.E.2d 1373, 591 N.Y.S.2d 982 (1992).

323. Act of July 13, 1993, ch. 262, sec. 9, 1993 N.Y. Laws 735, 745, 747 (to be codified at N.Y. ENVTL. CONSERV. LAW § 57-0121).

324. *Id.* sec. 9, 1993 N.Y. Laws 735, 745 (to be codified at N.Y. ENVTL. CONSERV. LAW § 57-0119(2)).

325. See Kass and Gerrard, *supra* note 317, at 3. The Act provides that unless the Commission has formally adopted the final land use plan by March 1995, the entire law expires. Act of July 13, 1993, ch. 263, sec. 10, 1993 N.Y. Laws 757, 765. Adoption of the plan by the Commission requires the approval of all five of its members. *Id.* sec. 5, 1993 N.Y. Laws 757, 763.

to conform to those of the plan.³²⁶ These revisions are subject to approval by the Commission.³²⁷

This approach was developed through a series of negotiations with all the involved interests.³²⁸ Unlike other special regional planning entities which have been created by statute, the Long Island Pine Barrens Protection Act contains very specific deadlines for the satisfaction of various plan stages.³²⁹ This reflects the desire of interested parties to settle the issues and move forward toward sound regional planning which accommodates preservation and development in an area which contains significant natural resources and a demand for growth and development.

4. Thruway Barge Canal System

New York's canal system is 524 miles long, not counting tributary streams and reservoirs, and runs through eighteen counties.³³⁰ In 1989, the New York State Barge Canal Planning and Development Board issued recommendations for the coordinated, long term development of tourism and economic potential on the canal system.³³¹ In 1991, the citizens of New York State approved a constitutional amendment that authorized the leasing of canal lands³³² and removal of the longstanding prohibition on charging fees on the canal system.³³³ The following year, in

326. Act of July 13, 1993, ch. 262, sec. 9, 1993 N.Y. Laws 735, 753-54 (to be codified at N.Y. ENVTL. CONSERV. LAW § 57-0123(1)).

327. *Id.*

328. Kass and Gerrard, *supra* note 317, at 3.

329. The Act provides that a draft comprehensive land use plan along with a draft environmental impact statement must be prepared by July 1994. Act of July 13, 1993, ch. 262, sec. 9, 1993 N.Y. Laws 735, 745, 747 (to be codified at N.Y. ENVTL. CONSERV. LAW § 57-0121(1)). Public hearings must be held and revised documents must be submitted to the three towns by October 1994. Act of July 13, 1993, ch. 263, sec. 5, 1993 N.Y. Laws 757, 763 (to be codified at N.Y. ENVTL. CONSERV. LAW § 57-0121(12)). For the plan to take effect, the Commission must approve the plan and the environmental impact statement by March 1995. *Id.* sec. 10, 1993 N.Y. Laws 757, 765.

330. Paul M. Bray, *The Role of the Public Trust Doctrine in Planning and Management of the New York State Canal System*, in *THE USE OF THE PUBLIC TRUST DOCTRINE AS A MANAGEMENT TOOL FOR PUBLIC AND PRIVATE LANDS* 57, 57 (Government Law Center, Albany Law School, Dec. 4, 1992).

331. See Legislative Memorandum in Support of Act of Aug. 3, 1992, ch. 766, 1992 N.Y. Laws 2081.

332. N.Y. CONST. art. XV, § 1.

333. N.Y. CONST. art. XV, § 3.

an effort to increase economic development and tourism along the canal system, and to devise a systematic proposal for the preservation and future development of the canal system and lands adjacent thereto, the State Legislature amended the Canal Law,³³⁴ the Public Authorities Law,³³⁵ and the State Finance Law.³³⁶ These amendments transferred jurisdiction of the barge canal system from the Department of Transportation to the New York State Thruway Authority³³⁷ and created a New York State Canal Recreationway Commission.³³⁸ Voting members include the Chairman of the Thruway Authority³³⁹ and the Commissioners of Transportation and of Environmental Conservation. Voting members also include ten individuals involved in canal use, development, preservation or enhancement and local governments from counties adjacent to or intersected by the canal system.³⁴⁰ The Commissioner of Economic Development, the Commissioner of Parks, Recreation and Historic Preservation, and the Secretary of State are nonvoting, *ex-officio* members.³⁴¹

The Commission is charged with the development, maintenance, and periodic update of a statewide canal recreationway plan for the canal system.³⁴² This task requires a significant amount of cooperative regional planning. For example, the statute specifically requires that the Commission solicit input from counties which intersect or border the canal system, and provides that multi-county canal plans may substitute for individual county plans.³⁴³ The county plans are to reflect participation by diverse local interests, including "recreation, hunting and

334. Act of Aug. 3, 1992, ch. 766, sec. 1-17, 1992 N.Y. Laws 2081, 2081-94.

335. *Id.* sec. 18-31, 1992 N.Y. Laws 2081, 2094-2101.

336. *Id.* sec. 32, 1992 N.Y. Laws 2081, 2101.

337. *Id.* sec. 4, 1992 N.Y. Laws 2081, 2082-84.

338. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2090-94 (codified at N.Y. CANAL LAW §§ 138-a to 138-c).

339. The Chairman of the Thruway Authority is the statutory chair of the Commission. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2090 (codified at N.Y. CANAL LAW § 138-a(2)).

340. These ten appointments are made by the Governor, three people who shall be recommended by the temporary president of the Senate, and three who shall be recommended by the speaker of the Assembly. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2090 (codified at N.Y. CANAL LAW § 138-a(1)(b)).

341. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2090 (codified at N.Y. CANAL LAW § 138-a(1)(c)).

342. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2091 (codified at N.Y. CANAL LAW § 138-b(1)).

343. *Id.* (codified at N.Y. CANAL LAW § 138-b(2)).

fishing, the environment, canal related tourism businesses, historic preservation, and commercial development.”³⁴⁴

The statewide canal recreationway plan is, in effect, a comprehensive land use management and development plan for the canal system.³⁴⁵ The plan shall include: (1) criteria for use of the canal system; (2) a system for both clusters of development and stretches of undeveloped open space in areas between municipalities which are conducive to waterfowl, fish and wildlife habitats; (3) “provisions for the consideration of environmental resources;” (4) provisions to protect the public interest in the canal lands for commerce, navigation, fishing, hunting, bathing, recreation and public access; (5) “provisions to protect agricultural uses;” (6) provisions for business development to support outdoor recreation activities; (7) provisions for the management of water resources; and (8) “provisions to protect commercial shipping interests.”³⁴⁶

The new law does, however, give deference to local zoning ordinances and laws. It provides that the Commission’s review of consistency of the canal recreationway plan with respect to lands proposed to be leased or lands adjacent to such property, “shall include, to the extent practicable, the consideration of the compatibility of such leases with the requirements of such local zoning laws and zoning ordinances”³⁴⁷

An interesting provision in the law asserts that the statewide canal recreationway plan is to encourage public access to the canal system.³⁴⁸ This public trust doctrine language has potential implications for future area wide land use planning to protect this resource.³⁴⁹

344. *Id.*

345. *See id.* sec. 17, 1992 N.Y. Laws 2081, 2093 (codified at N.Y. CANAL LAW § 138-c(1)).

346. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2093 (codified at N.Y. CANAL LAW § 138-c(1)(a)-(h)).

347. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2092 (codified at N.Y. CANAL LAW § 138-b(5)(b)).

348. *Id.* sec. 17, 1992 N.Y. Laws 2081, 2093 (codified at N.Y. CANAL LAW § 138-c(1)(d)).

349. *See generally*, THE GOVERNMENT LAW CENTER, ALBANY LAW SCHOOL, THE USE OF THE PUBLIC TRUST DOCTRINE AS A MANAGEMENT TOOL FOR PUBLIC AND PRIVATE LANDS (Dec. 1992).

H. *Current Proposals for Regional Planning*

There are a number of ongoing projects at the state and inter-state levels which may present new opportunities for regional planning initiatives.

1. *Skylands Greenway Task Force*

In December 1989, Governor Kean of New Jersey signed an Executive Order creating a Skylands Greenway Task Force, comprised of representatives and officials from both New York and New Jersey.³⁵⁰ The Skylands, a combination of urban, suburban, rural and forested resources, runs the length of the New Jersey/New York border from the Delaware River to the Hudson River.³⁵¹ The Skylands Greenway is home to 3.5 million residents, and a number of significant natural resources.³⁵² In January 1992, the Task Force released its final report which called for the designation of a Skylands National Greenway to be designated at both the state and federal legislative levels, and the creation of a Skylands Greenway Council.³⁵³ The Task Force recognized that overlapping regional planning jurisdictions would exist if the Skylands Greenway was created, noting that the entire New York portion is also within the area of the Hudson River Valley Greenway.³⁵⁴ The Task Force, however, views the overlap as a positive, observing that it allows for more community-oriented decision making and can contribute to a wider perspective.³⁵⁵

2. *The New York-New Jersey Highlands*

The Federal Food, Agriculture, Conservation and Trade Act of 1990³⁵⁶ authorized the Secretary of Agriculture to conduct a

350. Governor Thomas Kean, Exec. Order No. 224, Dec. 20, 1989.

351. GOVERNOR'S SKYLANDS GREENWAY TASK FORCE, SKYLANDS GREENWAY: A PLAN FOR ACTION 5 (Jan. 1992).

352. *Id.*

353. *Id.* at 20.

354. *Id.* at 23.

355. *Id.*

356. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359.

study of the Highlands Region.³⁵⁷ The Highlands Area consists of 1.1 million acres from the Hudson River to the Delaware River.³⁵⁸ The study was to include: (1) an inventory of natural resources in the region; (2) past, present and projected future land use, management and ownership patterns; and (3) potential conservation strategies to "protect the long-term integrity and traditional uses of lands with the region."³⁵⁹ The final study discusses the following five goals: (1) achieving an interstate growth management strategy; (2) providing for the management and maintenance of quality surface and ground water; (3) conserving forest resources; (4) developing a comprehensive recreation and tourism management plan; and (5) fostering integrated regional land use planning which promotes economic prosperity.³⁶⁰

In the spring of 1992, the Highlands Work Group ("Work Group") was created when former members of the New York-New Jersey Highlands Regional Study, the Skylands Greenway Task Force, and other interested citizens joined forces to translate the general recommendations of the Skylands Greenway Task Force Report and the New York-New Jersey Highlands Regional Study into a set of actions.³⁶¹ The Work Group supported the creation of a Highlands Regional Council to develop guidelines for land use, promote intergovernmental coordination, undertake a regional planning process, provide technical and financial assistance to local governments, operate a land conservancy and conduct public outreach.³⁶² The Work Group suggested that Congress designate a Highlands National Stewardship Area and Highlands Regional Council, after which New York and New Jersey, along with the United States Forest Service would establish the Regional Council through a joint memorandum of understanding.³⁶³

357. *Id.* § 1244(b), 104 Stat. at 3547.

358. UNITED STATES DEPARTMENT OF AGRICULTURE, NEW YORK-NEW JERSEY HIGHLANDS REGIONAL STUDY 7 (undated).

359. *Id.* at 5.

360. *Id.* at 14.

361. REPORT OF THE NEW YORK-NEW JERSEY HIGHLANDS WORK GROUP 1 (Sept. 1992).

362. *Id.* at 17-21.

363. *Id.* at 22. In 1993, efforts are continuing to accomplish these objectives.

I. *Recent Legislative Attempts to Foster Intermunicipal Cooperation in Land Use Planning*

In 1992, the State Legislature enacted a new statute designed to encourage intermunicipal cooperation in land use planning.³⁶⁴ The legislative intent was "to promote intergovernmental cooperation, . . . increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, . . . [and] enhanced protection of community resources"³⁶⁵ The new law authorizes the establishment of consolidated planning boards which may replace individual planning boards; the establishment of consolidated zoning boards of appeal which may replace individual boards; the creation of joint comprehensive plans or land use regulations which may be adopted independently by each participating municipality; joint administration and enforcement programs; and the creation of intermunicipal overlay districts to protect, enhance or develop community resources that encompass two or more municipalities.³⁶⁶ These arrangements, which may be accomplished through the use of intermunicipal agreements, are exemplified in the Tug Hill region.³⁶⁷

IV. What Direction Should Regional Planning Policy Take in New York?

A. *Leadership Is Needed*

Since the demise of the OPC in 1971 and the subsequent shut-down of the OPS, no state agency or office has been officially authorized to address and coordinate regional land use planning. The New York State Department of State is now statutorily charged with providing information and technical assis-

364. Act of July 31, 1992, ch. 724, sec. 1, 1992 N.Y. Laws 1952 (codified at N.Y. TOWN LAW § 284 (McKinney Supp. 1993)). Act of July 6, 1993, ch. 242, 1993 N.Y. Laws 648, provides for county participation in intermunicipal cooperation.

365. N.Y. TOWN LAW § 284(1).

366. *Id.* § 284(4).

367. OFFICE FOR LOCAL GOVERNMENT SERVICES, NEW YORK STATE DEPARTMENT OF STATE, DEPARTMENT OF STATE CONSOLIDATION CASE STUDIES: ZONING BOARD SERVES SIX LOCAL GOVERNMENTS (undated).

tance to municipalities on land use planning issues,³⁶⁸ but due to budget cuts over the decades, this agency is left only with the capacity to react to and answer inquiries from municipal officials. Although some state agencies, such as the DEC continue to work with regional planning boards, their attention is focused on functional issues such as water quality, air quality, transportation, etc. Other states which have strong statewide and regional planning programs have created or maintained offices within the Executive branch to specifically address planning.³⁶⁹ If the Executive branch fails to assume leadership, the Legislative branch should act. The Legislature should create a task force on regional planning to develop new initiatives to address the needs of the state, and should propose the establishment of a planning agency within the Executive branch.³⁷⁰

B. The Role of County and Regional Planning Boards Must Be Strengthened

County planning departments should be given a greater role in the coordination of planning efforts of the municipalities within their jurisdictions. County comprehensive plans should be developed and adopted by all cities, towns and villages therein. Thereafter, local plans should be consistent with the county plan. A conflict resolution mechanism should also be available to resolve differences between the local plan and the county plan. In addition, where municipalities choose not to adopt a local comprehensive plan, the county plan should be substituted for a local plan until such time when the municipality adopts its own. Since the county plan would not normally contain the same level of detail as a local plan, it does not present an ideal alternative to a locally adopted comprehensive plan. It should, however, serve as an incentive for municipalities to adopt their own plans.

All counties should be required to participate in a regional

368. N.Y. EXEC. LAW § 152(11)-(12) (McKinney Supp. 1993).

369. For example, in California, the Governor's Office of Planning and Research; in Florida and Pennsylvania, the Department of Community Affairs; and in Maryland, the Office of Planning.

370. For example, in California, both the Governor's Interagency Council on Growth Management and the Legislature's Growth Management Consensus Project worked independently on the development of a statewide and regional growth management strategy.

planning commission. These commissions should be charged with, among other responsibilities, the review of county comprehensive plans for coordination and consistency with each other and with a regional plan.

The establishment of regional planning commissions covering the entire state, either through a gubernatorial executive order or an act of the legislature, is essential to address issues which are multi-county in nature. Many functional issues, however, such as transportation and water and air quality may either be subregional in nature, or cross over the boundaries of established regions. A regional planning structure should be flexible to deal with these cross-jurisdictional situations, perhaps through the creation of special state or joint county commissions. The key to success, however, remains with a structure which fosters dialogue and coordination between all levels of government.

C. Regionalism Must Be a Required Element in All Comprehensive Plans

In 1993, New York amended its planning and zoning enabling laws to include a definition of a comprehensive land use plan as well as to provide for consideration of regional needs and inclusion in the local plan of the official plans of other regional governmental units.³⁷¹ This provision is too weak because it stops short of requiring such consideration. In almost all of the recent acts that establish special regional planning entities for geographic or environmental purposes, mandatory elements for inclusion in the comprehensive plan or required management plan are clearly articulated in the respective statutes.³⁷² The definition of a comprehensive land use plan should further include a requirement that municipalities consider regional impacts as they relate to other elements within their plans.

371. Act of July 6, 1993, ch. 242, 1993 N.Y. Laws 648.

372. See, e.g., Act of Dec. 31, 1991, ch. 748, sec. 10, 1991 N.Y. Laws 1451, 1459 (codified at N.Y. ENVTL. CONSERV. LAW § 44-0119(3) (McKinney Supp. 1993)).

D. *The State Should Provide for a Coordinated System of Regional Land Use Planning*

Although New York has several regional planning models, each currently operates independently with little or no coordination. With respect to the state-established regional planning programs, there should be an effort to review all of these initiatives to ensure coordination and consistency. These programs should be measured against a set of statewide planning goals with respect to the management, preservation and protection of our natural, historic, economic, and cultural resources. Growth management techniques should be explored as the method of accomplishing these purposes. A system should be developed which provides for a "bottom-up" approach to both horizontal and vertical consistency among local and regional plans. A "bottom-up" approach is feasible even if state governments set out broad goals or policies in a state plan, provided that local and regional planning agencies have latitude and flexibility to design plans which would meet local, regional and statewide needs. Incentives should be put into place to encourage "bottom-up" participation, similar to the incentives offered in the Hudson River Valley Greenway Plan.³⁷³ Without substantial incentives or disincentives, anything short of a mandate will fail to achieve significant results as evidenced by the fact that a number of permissive provisions already exist in statute which allow for such activity. Funding should be made available to municipalities for participation in this effort.

V. Conclusion

New York policy-makers must decide if the current mosaic of independent regional planning entities is a pattern worth extending all over the state. While small scale sub-state entities created to address specialized issues may be an easier "political sell," they run the risk of duplicating planning services at a time when fiscal resources for such activities have grown increasingly scarce, and they may still fail to adequately address impacts which cross both municipal and regional boundaries. As we prepare to enter the twenty-first century, we must put aside the

373. See *supra* notes 269-74 and accompanying text.

steadfast notion of home rule and local control which many use to end the discussion. Rather, with an open mind, municipal officials and others should look to home rule as a positive mechanism to explore the possibilities for developing a more balanced approach to land use planning for the preservation, protection, and enhancement of environmental, cultural, scenic, economic, and social concerns. As these issues develop into regional and statewide concerns, they fail to meet the test of a matter of local concern, which further supports the need for cooperative and coordinated planning.