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NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
-----X

SEORA LEGISLATIVE HEARINGS

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21 South Putt Corners Road
New Pal tz, New York
April 6, 2017
6:00 p.m.

B E F O R E:

LISA WILKINSON,
Administrative Law Judge

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1
2
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SPEAKER	PAGE
Audrey Friedrichsen, Scenic Hudson.....	6
Jim Bacon.....	16
Ann Finerman.....	28

6 Mary McNamara..... 30

7 Kathy Nolan, Catskill Mountaineer..... 33

8 Wayne Kocher..... 37

9 Harrison Barritt..... 42

10 Suzannah Glidden..... 47

11 Deborah Kopald..... 51

12 Manna Jo Greene, Ulster County Legislator..... 66

13 Joel Tyner, Dutchess County Legislator..... 68

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ALJ WILKINSON: I know we don't have terrific weather tonight, so we are going to get started on time. And we have six speakers, so we're not going to be real sticklers on time. You know, if we get an onslaught of people, I may ask you to move along just so we can get through everybody. But so far we only have six.

Good afternoon. Actually, I should say good evening, ladies and gentlemen. My name is

11 Lisa Wilkinson. And I am an administrative law
12 judge with the New York State Department of
13 Environmental Conservation. I will be presiding
14 over tonight's public comment hearing regarding
15 the Department's proposal to amend regulations
16 that implement the State Environmental Quality
17 Review Act, known as SEQRA, under Title 6 of the
18 Codes, Rules and Regulations of the State of New
19 York, known as 6 NYCRR Part 617.

20 The Department has prepared a Draft
21 Generic Environmental Impact Statement to
22 discuss the objectives and the rationale for the
23 proposed amendments. A Notice of Proposed
24 Rulemaking and a notice of this public hearing
25 was published on February 8th, 2017 in the

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2 Department's Environmental Notice Bulletin and
3 in the New York State Register. An errata
4 notice was published in the State Register on
5 February 22nd, 2017. Additional notices of this
6 legislative public hearing were published in the
7 New York State Register on February 15th,
8 February 22nd, March 1st, March 8th, March 15th
9 and March 22nd, 2017. Also on March 22nd, 2017,
10 notice of additional legislative public hearings
11 and public information sessions on the proposed
12 amendments was published in the New York State
13 Register and in the Environmental Notice
14 Bulletin. Information on the proposed
15 rulemaking and related documents is available on

16 the registration table outside this room and on
17 DEC's website. Department staff also held an
18 information session earlier this afternoon.

19 This hearing is to provide an
20 opportunity for the public to comment on the
21 proposed amendments to the SEORA regulations and
22 the draft Generic Environmental Impact
23 Statement. This is not a question and answer
24 session. If you do not wish to make an oral
25 statement, you may submit a written statement.

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1 HEARING

2 We have forms available for you to use, and you
3 can submit a written statement this evening. Or
4 you can submit one by May 19th, 2017. We have
5 information on the registration table, again, on
6 how you can submit comments on the rulemaking.

7 If you have written comments with you
8 tonight and you are speaking, we would ask that
9 you provide them to the court reporter. And
10 again, if you're not speaking and have comments,
11 feel free to leave them at the registration
12 table.

13 I will call your name when it's your
14 turn to speak, and if I mispronounce your name,
15 I apologize ahead of time, and please correct
16 me. I may ask you to spell your name for the
17 court reporter, just so she has a correct
18 spelling. And actually, I'm going to ask
19 everyone to do that, just so the correct
20 spelling is on the record.

21 Please speak into the microphone here
22 and speak loudly, clearly and slowly so that we
23 can get all your comments.

24 If the court reporter or I raise our
25 hand, just take a pause. It may mean there's a

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technical issue or we need you to speak louder.

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And I think that's it.

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And, just lastly, we're hosting

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additional public comment hearings on the

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proposed amendments to SEQRA regulations on

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April 13th in Hauppauge, New York, and April

8

18th in Rochester, New York. And those hearings

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will also commence at six p.m. And again,

10

information on the locations is available

11

outside at the registration table.

12

So, with no further ado, I'll call

13

Audrey Friedrichsen.

14

MS. FRIEDRICHSEN: Thank you. I have

15

the longest name and the longest title. So it's

16

Audrey Friedrichsen. A-u-d-r-e-y. Friedrichsen

17

is F-r-i-e-d-r-i-c-h-s-e-n. And I am the Land

18

Use and Environmental Advocacy attorney at

19

Scenic Hudson. I keep hoping they're going to

20

shorten that.

21

I was at the information session this

22

afternoon, that was really great, thank you. We

23

will be submitting more detailed and longer

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written comments at a later time. I just had a

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few things I wanted to raise, so I'll try and go

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1 HEARING

2 through them relatively quickly.

3 In case you don't know Scenic Hudson, we
4 preserve land and farms, we create parks. Our
5 main goal is to connect people with the
6 inspirational power of the Hudson River. And we
7 also do advocacy work, fighting threats to the
8 river and the natural resources that are the
9 foundation of our prosperity. We participated
10 in the stakeholder outreach leading up to these
11 amendments, and we really appreciate DEC's
12 significant effort to improve the regulatory
13 process while ensuring that meaningful
14 environmental review remains intact.

15 In general we support the amendments
16 that clarify procedures under the law, as well
17 as incentive beneficial projects like green
18 infrastructure and properly sited solar projects
19 and sustainable development. We do have a few
20 remaining comments and concerns, and I will
21 review them briefly.

22 First, Section 617.4(B)(9), the
23 potential impact on historic resources. We do
24 support that portion of the amendment that will
25 include properties that have been determined to

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1 HEARING

2 be eligible for listing on the state or national
3 registers. That's something we have long

4 advocated for and we do appreciate seeing that
5 change. The addition of the 25 percent
6 threshold, however, is something that we do not
7 support. And the reason why is because the
8 touchstone for eligibility and inclusion on the
9 national and state historic registers lists is
10 the resources, quote, "integrity of location,
11 design, setting, materials, workmanship, feeling
12 and association." And that's what determines
13 its quality of significance in history and its
14 quality as a historic resource.

15 The definition of integrity is the
16 ability of a property to convey its
17 significance. And so our main concern is that
18 the introduction of a 25 percent threshold might
19 allow projects that impact the integrity of a
20 historic site, the very characteristics that
21 make it eligible for listing, and will devalue
22 it as a historic resource to escape the
23 necessary initial review, which we think should
24 still be done through a full EAF.

25 Secondly, the Section 617.5(B)(14),

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installation of cellular antenna with repeaters

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on an existing structure. We appreciate the

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interest in easing the regulatory burden on

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co-located cellular antennas as well as federal

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statute that applies here, but -- and we agree

7

that when historic structures in districts are

8

impacted, that Type II exemption should not

533547 . SEQRA LEGISLATIVE HEARINGS 040617.txt
9 apply. But we are concerned for other kinds of
10 resources, in particular visual and scenic
11 resources, which might be impacted. Even a
12 co-located structure can have a visual impact.
13 So we think that scenic areas of statewide
14 significance such as those established here in
15 the Hudson Valley River region, which of course
16 is Scenic Hudson's particular interest, should
17 be included, and that the Type II exemption
18 should not apply when SAS is involved.

19 The next section, 617.5, 15 and 16,
20 which is the installation of solar energy arrays
21 of five megawatts or less on previously
22 disturbed sites or on existing structures. We
23 support state policies to reduce greenhouse gas
24 emissions, of course, and incentivize the
25 development of renewable energy, and we

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2 recognize that these additions are meant to
3 bring SEQRA into alignment with state policy
4 goals, and we support SEQRA amendments that are
5 in the interest of promoting renewable energy
6 development. However, we want to ensure that
7 it's done in a manner that protects important
8 resources such as agricultural land, conserves
9 open space, scenic resources and historic sites
10 while that development is going on. And that
11 development should be incentivized to be located
12 in more appropriate locations.

13 So to minimize competition with perhaps

533547 .SEORA LEGISLATIVE HEARINGS 040617.txt
14 already identified and appropriate uses of those
15 previously disturbed sites, these new sections
16 should include a provision to specify that the
17 types of sites that are not otherwise -- they
18 are the types of sites that have not otherwise
19 been earmarked for redevelopment with other
20 appropriate pieces. The idea is to minimize
21 competition between those proposed uses.

22 And we also note that in the
23 Environmental Impact Statement, the Generic
24 Environmental Impact Statement, it doesn't
25 specifically address how or why the size

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2 threshold of five megawatts or less was
3 selected. This was discussed earlier in the
4 information session today. And I think that a
5 discussion of that in the final Generic
6 Environmental Impact Statement -- because the
7 fact of the matter is, there's estimates that
8 the solar array can take from up to five to ten
9 acres per megawatt, and that would result in a
10 50 acre development, which can definitely have
11 some significant impacts. So we would just --
12 we think that that five megawatt threshold
13 should be discussed and adjusted.

14 Section 617.518, which is regarding
15 minor subdivisions, we do recognize the interest
16 in reducing the administrative burdens on
17 agencies and land owners when there is something
18 that can be expected to result in de minimis

533547 . SEQRA LEGISLATIVE HEARINGS 040617.txt
19 impacts but have no significant adverse
20 environmental impacts. But we think there needs
21 to be some additional restrictions on this Type
22 II action in order to ensure that proposals,
23 again, which might affect scenic, historic and
24 agricultural resources, are subject to a review
25 and a determination of significance, rather than

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1 deemed a Type II. So that particular section
2 should include caveats that the Type II
3 exemption will not apply if the proposed minor
4 subdivision is in an ag district, an
5 agricultural district, or within a designated
6 scenic area of statewide significance, or,
7 occurs wholly or partially within or
8 substantially contiguous with any listed or
9 eligible historic resources. We would advocate
10 for those additional limiters.
11

12 The Section 617.5, 19, 20, 21 and 22,
13 which is the construction on previously
14 disturbed sites in municipal centers. Again,
15 Scenic Hudson supports policies which are meant
16 to revitalize central business districts, main
17 streets and downtown areas. And, so long as
18 development is in compliance with existing
19 zoning requirements and subject to site plan
20 review, that it be incentivized. And we do have
21 a couple of additional specific comments.
22 Again, they are Hudson Valley focused.

23 The provisions have a lowest population

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24 threshold of up to 20,000 persons, which would
25 allow for construction of up to 8,000 square

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2 feet of gross floor area. That will capture
3 many municipalities in the Hudson with
4 populations much smaller than 20,000. For
5 example, the Village of Millbrook has a
6 population of only about 1,450 people, it's only
7 1.9 square miles in size. The Village of
8 Tivoli, which is a 1.6 square mile community on
9 the shore of the Hudson River, has a population
10 of only 1,100 people. So we are thinking that
11 the FDEIS should include an analysis of whether
12 8,000 square feet of gross floor area, which is
13 tied to a population of up to 20,000, is
14 appropriate when it comes to such small
15 municipalities. And perhaps something like
16 three to five thousand square feet, or up to
17 10,000 persons in population, might make more
18 sense. Because 8,000 square feet is, you know,
19 it's a large convenience store, it can be
20 something like an Applebee's. So I think that
21 needs to be looked at.

22 In addition, it should include a
23 provision that makes it clear that the
24 development remains subject to any local law or
25 ordinance requiring architectural review or

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2 consistency with historic district requirements.

3 And again, in the event that the proposed
4 construction occurs wholly or partially within
5 or substantially contiguous to the list of
6 eligible historic resources, it should not be
7 deemed a Type II action.

8 So I think you can see sort of the theme
9 throughout the comments protecting these kind of
10 resources. Just two more points.

11 With regard to process, the mandatory
12 scoping requirement. We agree that scoping
13 should be mandatory. It's something that we
14 definitely think should happen. Just based very
15 quickly on the discussion in the information
16 session, perhaps in association with making
17 scoping mandatory, it should be looked at, the
18 provision in the regulations that provide that a
19 project sponsor can submit a DEIS right off the
20 bat, perhaps that needs to be eliminated,
21 because you wouldn't want to be submitting a
22 DEIS right off the bat if scoping is considered
23 to be mandatory. So in practice I don't think
24 any project sponsor is going to be doing that
25 anyway. So that can maybe be clarified in the

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2 regulations.

3 Then I think what is probably the most
4 difficult issue with regard to these amendments,
5 the DEIS completeness determination and the
6 specific language that is provided in 617.9 that
7 would say information submitted following the

8 completion of the final scope and not included
9 by the project sponsor in the draft EIS cannot
10 be the basis for the rejection of a draft EIS is
11 inadequate. We understand the interest of
12 making those goal posts and not having those
13 goal posts go on. But we think it is extremely
14 important that the remainder of that clause be
15 in there and remain in there, and whatever
16 amendment goes forward, which is that such
17 information may require a response to comments
18 in the final EIS or the preparation of a
19 supplemental EIS in accordance with Section
20 617.9(A)(7.) It needs to be very clear that
21 that information should, nevertheless, get
22 addressed down the line. And that the risk
23 really is placed on the project sponsor, you
24 know, if they decide to not include it in the
25 DEIS or even in the FEIS, you know, they open

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themselves up to challenge down the line when
3 and if a finding statement occurs.

4

So I think that's sort of the totality
5 of our very brief statements. Like I said, we
6 will be submitting much longer written comments
7 in the future. And thank you very much for the
8 opportunity to make a comment.

9

ALJ WILKINSON: Thank you.

10

The next speaker is Jim Bacon.

11

MR. BACON: Thanks very much. And I

12

wanted to thank the DEC for holding the public

13 information session today. I think it was very
14 helpful. It gave everybody a chance to really
15 think out loud on a lot of these subjects. So I
16 appreciate that.

17 So I'd like to present these comments on
18 behalf of Marilyn Rose. She's a long time
19 environmental advocate for clean water. She
20 started the Croton Watershed Coalition. She's
21 96 years old. She can't be here tonight, but
22 I'm here in her stead. And I'll follow these up
23 with written comments by May 19th.

24 So regarding the numeric threshold
25 number of residential units, we're glad to see

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2 that being reduced to 200 units. But many times
3 residential developments of much lower densities
4 include the potential to significantly impact
5 the environment. And in my written comments I'm
6 going to provide several specific circumstances
7 that I've seen and have been involved with as an
8 attorney representing neighbors, that really
9 should have been Type I actions and required
10 EIS's, but they did not.

11 And I recognize that the DEIS on page
12 seven states that, "Municipalities who believe
13 that thresholds are still too high have the
14 authority to lower them." But the
15 municipalities that are responsible enough to
16 recognize that are going to have planning boards
17 most likely that really implement SEORA properly

18 and do their best to mitigate impacts to the
19 maximum extent practicable. That needs to be
20 lowered for those communities that do not have
21 that same sense of being a steward of the air
22 and the water as SEQRA's policy requires. So I
23 think that the DEC should look at that threshold
24 and account for steep slopes, water course,
25 wetlands disturbance, and somehow create a

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metric that's going to help with that. And in
3 my written comments I'll try to provide some
4 specific recommendations after talking to some
5 engineers.

6

7 And the DEIS also talks about better
8 coordination, that the purpose of the SEQRA
9 amendments is really to better coordinate
10 environmental reviews. Even though I have
11 represented almost exclusively opponents to the
12 SEQRA process, you know, it's easy to understand
13 that everybody is looking for certainty. The
14 developer is looking for certainty. Opposition
15 groups are looking for certainty. They want to
16 know what the map looks like before they go and
17 they spend a lot of money on engineers or
18 whatever they need to do. So from that
19 perspective, the clearer these guidelines can be
20 and the clearer that the requirements are in the
21 model EAF, that's very important. And we talked
22 a little bit earlier about the GIS mapping being
linked with the model SEQRA documents. I think

23 that's really important. I think that more
24 should be done on that in terms of alerting the
25 prospective applicant as to what environmental

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2 attributes are out there that may be impacted.
3 For example, any water viaducts use impaired
4 under the total maximum daily load program, for
5 instance, in the Croton watershed, they should
6 know exactly what they're getting into. If
7 they're going to potentially spend millions of
8 dollars on a project they should know where the
9 water quality standards are not being met, and
10 that that will place a burden on them to make
11 sure that they don't increase the nutrient loads
12 to those streams.

13 And could it also make the lead agency
14 more aware that this is part of their obligation
15 too under the program, under the TMVL program to
16 actually reduce the amount of phosphorus that's
17 going to the viaducts. So the better
18 information and -- the scientific information is
19 all out there. And the better that can be
20 linked into these model forms, I think it will
21 go a long way towards streamlining the process.
22 So right up front everybody those knows what's
23 out there and what the project may be affecting.

24 And I spoke a little bit earlier about
25 expanding the definition of involved agency. I

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know that's not specifically one of the amendments that's being proposed, but I think that, for instance, many times federal permits are required. And sometimes these federal permits have specific standards that have to be met by the applicant. And I just wanted to note this quickly from the Russo Gerard Weinberg Environmental Law Treatise of New York. It says, "Actions that are the subject of SEQRA often require permits under federal statutes. In these situations SEQRA compliance must include consideration by the lead agency of conformity with federal law."

Now, in practice that's a great statement. But in practice many lead agencies don't have a clue what is required by federal law. And specifically I'm talking about something like wetlands impacts. You know, for the federal regulations, and I'll put this in my comments, is that practical alternatives to filling wetlands are presumed to be available. Now, that would be good if lead agencies were aware of that from the federal standpoint. I know there's overlapping jurisdictions with the

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state wetlands sometimes or local wetlands. But that as an underlying issue, that would be good for planning boards to be educated about.

And also I think that planning boards

7 requirements in Part 750 concerning stormwater
8 and the fact that the stormwater permits should
9 not be issued to a project that's going to
10 result in contravening water quality standards.
11 So I think that somehow that should be also in
12 the model forum. And I think that the GIS ideas
13 that I had about planning board or lead agencies
14 as to what the water quality standards are right
15 now, and whether or not water viaducts are use
16 impaired, would go a long way towards doing
17 that.

18 And the other thing is that, you know,
19 New York has an anti degradation policy under
20 their own sort of system of that. But it's a
21 very nebulous idea. It's a requirement of the
22 Clean Water Act, but nobody really takes that
23 seriously during the SEQRA process. And this is
24 a shame because a lot of -- some federal
25 agencies, the EPA, for example, has since

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2 recommended that there be no net increase of
3 phosphorus loading in the Croton watershed. And
4 that's part of the anti degradation requirements
5 of the Clean Water Act. But that whole issue,
6 again, gets entirely lost in the SEQRA process.
7 And it really should -- that could be a way for
8 DEC to bring that into New York policy and have
9 lead agencies begin to be aware of that.

10 Now, revising the parking space

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11 thresholds, I think that's a good idea. Again,
12 our concern is much with the runoff from, and
13 phosphorus and nitrogen loadings into, water
14 bodies. And where there's going to be a
15 redevelopment project of a large parking lot,
16 sometimes I think that should be a Type I
17 action. Because you have -- say you've got a
18 use impaired water body, and I'll give a
19 specific example in my comments, it happens to
20 be the Hunterbrook in the Town of Yorktown. But
21 it's a huge project down in Yorktown, a
22 redevelopment of the Staples plaza parking lot
23 with a gas station. And the applicant did not
24 even put on the site plan where the discharge
25 pipe was going into the Hunterbrook. And it's

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2 right next to the Hunterbrook. So it was very
3 difficult to try putting comments on a project
4 where they don't even show you where the water
5 is going. So I think for those reasons on
6 redevelopment projects, that has to be dealt
7 with in some way.

8 The Type II list I think generally is
9 good. The section on minor divisions we spoke
10 about earlier. And I have a concern about that
11 because I think that discretion should remain
12 with the lead agency. And the Type II list
13 takes away the discretion. And I understand
14 that's important and, you know, it reflects the
15 policy of the state to advance important goals

16 like, you know, meeting the energy codes and
17 promoting solar energy arrays. But I think for,
18 you know, the definition of what a minor
19 division is and what the impacts of that are
20 going to be vary so greatly throughout the
21 state. In western New York State you may have
22 some four lot subdivision that has absolutely no
23 impacts. Whereas if you have the same type of
24 division next to a reservoir or a water body
25 then there could really be significant impacts.

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So I think that in that case, especially when
3 you have, as I had in this case over in the Town
4 of Bethel, where the developer is building like
5 a 12,000 square foot home with tennis courts and
6 pools, I mean that really ramps up the impact.
7 And I know that's an unusual situation, but I
8 think that calls for leaving the discretion to
9 the planning board.

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Now, with regard to the brownfield
cleanup. I think those agreements are fine if
that's a Type II action. But if that agreement
also talks about the development of a site, then
I think it should be subject to SEQRA. For
instance, if it's tied in the development of an
apartment building or something like that. And
I know you have to look at where exactly that
line is crossed where it's going to trigger this
action. But I think that the DEC should be
aware of that and make sure that those

533547 .SEORA LEGISLATIVE HEARINGS 040617.txt
21 agreements don't get caught into a development
22 plan.

23 I think mandatory scoping is absolutely
24 a great idea. I really think it probably should
25 have been done back in '95.

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2 And, as Scenic Hudson said with regard
3 to the preparation of EIS's after a scoping
4 document is accepted, I think the lead agency
5 should retain the discretion to include new
6 information or to require the applicant to
7 include new information in the DEIS and not wait
8 for the FEIS or go through the process of
9 supplemental. Because after the DEIS is
10 accepted and goes out for a substantial public
11 comment, there's really no second chance for the
12 public to look at that. And unfortunately
13 what's happened in practice is that certain
14 municipalities or -- well, like the County of
15 Orange have decided that an amended FEIS is an
16 appropriate vehicle to put new information in
17 instead of doing an SEIS. Even where a court
18 case, this was a case involving Kiryas Joel in
19 the County of Orange, and Judge Nicolai had said
20 in an earlier case that the county should really
21 do an SEIS. Well, the county didn't do an SEIS.
22 They did an FEIS. And it went back to court and
23 they said well, that's okay. And even then the
24 public had no opportunity for any substantive
25 comment. So I'll put that into to my written

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comments as an example.

I'm probably way over my time now?

ALJ WILKINSON: Yes, Mr. Bacon. If you could wrap it up, that would be helpful.

MR. BACON: Okay.

ALJ WILKINSON: And if we have time at the end, you know, we can --

MR. BACON: Well, that's okay.

So the last thing I will say is that the more clear that these regulations can be about that the lead agency has an obligation to hold the applicant's feet to the fire and conform to the scoping document, the better that will be. Because what you don't want to have happen is have an applicant go through the whole SEQRA process, get to the end, and all of a sudden surprise the public with something in the FEIS or not even get to a substantive issue in the FEIS and then it winds up being some kind of negotiation between the developer and some agency over an issue that should have been mitigated, and/or the mitigation should have been looked at during the SEQRA process. So, and I think it's great that you have in there

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the mitigation measures about storm related events impacts, you know, considering Irene and Lee and Sandy and Floyd, I think, you know,

5 especially flood prone areas really have to look
6 at stormwater impacts in a whole new way.

7 So thanks very much.

8 ALJ WILKINSON: Thank you.

9 MR. BACON: Roger Downs from the Sierra
10 Club sent me his comments. I'm not going to
11 have time to read it but I'd like to hand it in
12 if I can.

13 ALJ WILKINSON: Certainly you can.

14 MR. BACON: Thank you.

15 ALJ WILKINSON: All right, our next
16 speaker is going to be Ann Finneran.

17 MS. FINNERAN: I'm going to be brief, so
18 if you --

19 MR. BACON: Are you going to read it?

20 MS. FINNERAN: I am with the Sierra Club
21 Atlantic Chapter. I could read the comments
22 just after my comment.

23 ALJ WILKINSON: Well, we have, I mean,
24 we do have the written comments and they will be
25 part of the record.

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2 MS. FINNERAN: Oh, okay. I didn't know
3 if you needed them to be --

4 ALJ WILKINSON: No, they will be in the
5 written record as if they were read.

6 MS. FINNERAN: Okay, all right. Okay.

7 I'm not a lawyer, I'm not detail
8 oriented. I do look at the philosophy. And
9 what I looked at and really all I can comment on

10 is the executive summary of the draft proposal
11 for the streamlining. And I had some concerns
12 about the motivation for this whole thing. And
13 I have some experience and can comment on that.

14 I know in the recent case the Greenidge
15 Power Plant in the Finger Lakes area, the DEC
16 argument by the office of the attorney general
17 against the petitioners was primarily one of
18 timing. And I see that concern repeated again
19 in the executive summary.

20 "Stakeholders agree that SEORA continues
21 to play a key role in assuring that
22 environmental concerns factor into agency
23 decision making and on the need to update the
24 regulations to make the process more efficient
25 and less frustrating to the regulated

♀

29

1

HEARING

2 community." And this is, I think that might not
3 be part of their -- the DEC's concern, and that
4 the environmental should take top priority.

5 Especially we see in here, later on down
6 there, it took "the length of time of such
7 reviews is an impediment to businesses
8 contemplating a relocation from other states to
9 New York." Again, to me that is not an
10 appropriate concern for the Department of
11 Environmental Conservation. It sounds more like
12 something from the department of economical
13 considerations.

14 I do think that the mandatory scoping is

15 good. And but I do think that this is allowing
16 items that might be discovered or should have
17 been discovered after scoping is complete to
18 disallow them is overly constrictive of the
19 environment if the environment is to maintain
20 top priority.

21 And that's pretty much all I have.

22 Oh, the other thing and part of my other
23 experience with this is because of the 2011
24 amendments that the DEC made, and they have not
25 followed through on, especially in regards to

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HEARING

2

water withdrawal for energy use, they have been
3 allowing over a hundred thousand gallons to be
4 Type II exemptions for already existing
5 industries, and that really needs to be changed.
6 And I don't know if that's anywhere in this
7 because I didn't have a chance to read it. So I
8 will reserve the right to submit written
9 comments later. And thank you for your time.

10

ALJ WILKINSON: Thank you very much.

11

Mary McNamara.

12

MS. McNAMARA: Good evening. I'm Mary
13 McNamara. I'm here as an individual, but I am
14 active with the different Hudson Watershed
15 organizations and boards, including many
16 different things related to the Ashokan
17 Reservoir. I do live in the Village of
18 Saugerties and work in the Town of Saugerties.

19

I too am not a lawyer, so you can relax

20 a bit; my comments will be general. But I drove
21 here in a pounding rain, to make sure that the
22 DEC knows how very much the tool of SEQR is
23 critical to the ability of communities,
24 individuals, organizations, including DEC
25 itself, to protect the quality of life, the

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HEARING

1
2 quality of growth, the quality of community
3 building. So I take very seriously, with great
4 appreciation, the fact that New York State has
5 this tool.

6 I really wanted to mention two specific
7 points relating to expansion of the Type II
8 list, specifically for green infrastructure. I
9 think that's wonderful to help encourage that to
10 be part of projects. But I would say that green
11 infrastructure is not equal. And so if that is
12 to be included in Type II, I would hope that it
13 has more detail, at least have boundaries of
14 what you're talking about when you say green
15 infrastructure and some sort of limits.

16 In regard to the wonderful inclusion of
17 alternative energy, solar panels and other types
18 of solar alternative energy infrastructure,
19 within my own township of Saugerties we have
20 been moving aggressively with zoning and
21 promoting new net sharing, net meter sharing, et
22 cetera. The issue of agriculture, as other
23 speakers have mentioned, has come up. I do not
24 think it's important to slow down the promotion

25 of alternative energy, but I would say that I

♀

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1 HEARING

2 did not note any addressing of agricultural
3 lands.

4 I also did not note, and I will look
5 forward to writing a more detailed response with
6 different organizations that I work with, but I
7 would say that there is not enough attention to
8 the protection of surface water, stream water
9 bodies, streams, and flood prone areas.

10 And I apologize, I have the wrong
11 glasses with me.

12 So then the other is that the inclusion
13 of economic growth within metropolitan centers,
14 I understand the importance of smart growth, but
15 I would make sure that the issue of
16 environmental justice is not diminished in the
17 process of promoting growth within metropolitan
18 centers. So I did not see any particular
19 addressing of that. And I understand that it's
20 possible that environmental justice will be
21 weakened at the federal level, and so it's all
22 the more important for the states to not weaken
23 that protection.

24 The other category that is of interest
25 and concern is, and again, spoken about by

♀

33

1 HEARING

2 others, is the scoping process. Again, working

533547 . SEORA LEGISLATIVE HEARINGS 040617.txt
3 with different issues in the area, I understand
4 the critical role that data that comes in during
5 the scoping process plays in having a very
6 complete organic decision made with a final EIS.
7 So I would strongly recommend that any
8 supplemental information be incorporated into a
9 total report. Not as an adjacent -- as an
10 addendum.

11 So just in closing with my very short
12 comments I want to reiterate that the tool of
13 SEQR has made a huge difference in the ability
14 of communities to advocate for themselves. I've
15 seen it also be a tool to minimize litigation,
16 and to increase a stronger product. So I
17 applaud the goals. I applaud that you've
18 included climate change. That's so important,
19 so critical. But I hope that the open process
20 for reviewing this is reflective of the strength
21 of SEQR.

22 So thank you for letting me speak.

23 ALJ WILKINSON: Thank you very much.

24 The next speaker will be Kathy Nolan.

25 MS. NOLAN: Thank you very much. My

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1 HEARING

2 name is Kathy Nolan. I am a nutrition and
3 bioethicist and senior research director for
4 Catskill Mountaineer. And I will be making
5 these comments on behalf of the Catskill
6 Mountaineer. I appreciate very much the
7 hearing and multiple hearings on this topic

9 Catskill Mountainkeeper supports the
10 goal of streamlining the SEQRA process while
11 preserving meaningful environmental review. We
12 offer the following preliminary comments and
13 concerns about the proposed revisions, with more
14 detailed written comments to come later.

15 We applaud the addition to the list of
16 Type II action projects that align with New York
17 State's environmental, open space and energy
18 policy goals, including the retrofitting of
19 existing structures or facilities to incorporate
20 green infrastructure; the installation of fiber
21 optics and broadband cable technology; and the
22 installation of up to five megawatts of solar
23 arrays. But I appreciate the comments of the
24 earlier speaker about five megawatts being
25 perhaps not the right metric for assessing the

♀

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1 HEARING

2 degree of impact. The size of arrays in terms
3 of acreage might be better and also might allow
4 for changing technologies, in which 50 megawatts
5 in the future, within a few years, might be able
6 to be put on the same size land. So I think
7 looking at what the issue is in terms of
8 environmental impact, which in terms of runoff
9 and acreage that goes to a certain type of
10 aesthetic might be a better metric than the
11 megawattage that is brought out.

12 We also appreciate the addition of the

533547 . SEORA LEGISLATIVE HEARINGS 040617.txt
13 dedi cation of park land and acqui si ti on of up to
14 a hundred acres of land for park land into the
15 Type II list.

16 We endorse the expansion of actions on
17 the Type I list in general as well.

18 We also appreciate that under
19 617.9(B)(4) the DEC proposes to mandate
20 consideration of climate change and flooding,
21 including proposals for mitigation. And we
22 suggest, therefore, that potential impacts of
23 climate change and flooding be considered within
24 the environmental assessment form, and as a
25 required element of scoping.

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1 HEARING

2 While we support making scoping of an
3 environmental impact statement mandatory rather
4 than optional, we cannot endorse the
5 formalization of a requirement that a
6 supplemental EIS be prepared for any change to a
7 scoping document. Such a requirement is
8 unnecessary, since existing regulations allow
9 the lead agency to require a supplemental EIS
10 when the scope has changed in major ways. With
11 the formal requirement, small changes may, in
12 many instances, generate an unnecessary SEIS, to
13 no one's advantage; there's been a change, we
14 have got to do this. A formal requirement also
15 removes agency discretion and could trigger an
16 increased frequency of litigation. And, most
17 importantly, a formal requirement puts too large

18 a burden on the initial scoping to be
19 comprehensive, down to minute and often
20 unpredictable details. We simply do not know at
21 the time of original scoping what the issues are
22 going to be that a project generates.

23 We strongly object, therefore, to
24 limiting the scoping process to 60 days. In
25 many instances such a time frame will limit

♀

37

1 HEARING

2 public input and lead to an inadequately
3 prepared scope, requiring more onerous
4 interventions such as the creation of one or
5 more supplemental environmental impact
6 statements at later stages of review.

7 So we find here much to endorse, with a
8 few major concerns. And I appreciate the
9 comments of the earlier speakers. And I
10 appreciate the opportunity to make these
11 comments.

12 ALJ WILKINSON: Thank you very much.

13 The next speaker is Wayne Kocher.

14 MR. KOCHER: Thanks for allowing me to
15 talk. My name is Wayne Kocher. I did 31 years
16 with three different railways. I was one of the
17 highest award winning workers they had. I was
18 offered the President's club award. And I'm
19 currently 29 years as a volunteer watchdog with
20 the Riverkeeper, and have been involved in many
21 different environmental issues. Tonight I would
22 like to discuss cell phones, Wi-Fi and cell

23
24
25

The other day at the VA -- I belong to
the group there and I have a counselor there --

♀

38

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HEARING

2

I noticed on the water towers they have cell

3

panels, which make these water towers cell

4

towers. So I was very concerned about this.

5

And no one seemed to know much about it. And

6

then also about ten minutes from my house

7

there's a flag pole. That flag pole was also a

8

cell tower, in front of Camp Smith, on the other

9

of the Hudson River. I live in Fort Montgomery.

10

There's another flag pole cell tower. So we're

11

having a lot of these things in a lot of towns,

12

in a lot of areas, in a lot of hospitals.

13

I have about almost 15 years experience

14

in different seminars and different programs and

15

articles I've read, that I'm very concerned for

16

this. In Haifa, Israel, if I'm saying it right,

17

they removed the Wi-Fi from kindergarten to

18

twelfth grade. Other countries are doing

19

similar things. In Russia you have to be 18 to

20

own a cell phone.

21

I was at a seminar where it showed a

22

five year old's brain and the effects of a cell

23

phone. The brain is mostly liquid, it is soft.

24

You don't want any juice to this little kid's

25

brain.

♀

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HEARING

Page 32

2 My friend works for a psychiatric prison
 3 in Middletown. And when they bring the
 4 psychiatric patients to the Wi-Fi, they see a
 5 big increase in aggression and activity. My
 6 neighbor lived with the cell phone in his pocket
 7 and rode a train to work. He got a tumor on his
 8 testicle. That was removed, but his newborn son
 9 may carry that gene. A lady at the VA wears a
 10 cell phone in her bra. She has two tumors. A
 11 lady at the cell -- not the cell, the health
 12 food store, she wears the cell phone in her bra,
 13 she has two tumors. So just because something
 14 is new doesn't mean it's safe.

15 Really, the cell phones from my
 16 education were designed for emergency only,
 17 twenty minutes a day maximum. We are way beyond
 18 that. I recommend you read your directions when
 19 you get your cell phone, and ask questions. One
 20 neighbor of mine, she has a child, one hour on
 21 Wi-Fi she has to calm him down, he gets so
 22 excited.

23 So if we were to blacken the skies right
 24 now, all you would see is rays going through all
 25 the different cell phones and cell towers.

♀

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HEARING

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6

Now, I was at a seminar with Congressman
 Maloney, and his daughter happened to be there
 with a laptop working. Outside our meeting
 place in the village hall in Highland Falls,
 fourteen wires, three transformers. Then you

7 have all these, you know, wireless things
8 working. And you wonder why the kids can't
9 sleep or they're acting out. And how many car
10 crashes can we put to the texting and driving?
11 So, as you could see, I'm not too happy with
12 this stuff.

13 And there are different meters that can
14 show different levels. One child I read about
15 was acting out so much, psychiatric medications,
16 that they sent him to his grandfather's farm.
17 Without medicine or anything they got a brand
18 new kid. And he said I'm not coming home. So
19 we might want to think about this here and do a
20 better job of it.

21 Lastly I'd like to thank you all for
22 coming here and giving us a chance to talk. But
23 I really would like to speak about conservation.
24 We don't need electricity. We don't use
25 electricity. In my house I tried very hard to

♀

41

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HEARING

2

I live by daylight. I carpoled with two or three
3 people for years. This eliminates -- it puts
4 one car out there instead of two or three.

5

Hasi dic people take Saturday off from driving.

6

We can make a big difference with this.

7

I'm on the mountains helping with hawk
8 counts. And you can see the mini LA fog that's
9 there. We have so many failing and poor air
10 quality days, that just with a little bit of
11 thinking we do better than this. In my house if

12 you're not in a room and the lights on, you have
13 to pay 25 cents as a reminder.

14 So anyway, we have a lot of work to do.
15 But there's so much room for improvement. And I
16 guess that's about it. But thank you so much
17 for having me and for the ability to speak.
18 Thank you very much.

19 ALJ WILKINSON: Thank you very much.

20 The next speaker I have is Harrison
21 Barritt.

22 Mr. Barritt, I just want to confirm the
23 spelling of your name.

24 MR. BARRITT: Sure.

25 ALJ WILKINSON: B-a-r-r-i-t-t?

♀

42

1 HEARING

2 MR. BARRITT: Correct.

3 ALJ WILKINSON: Thank you very much.

4 MR. BARRITT: Thank you.

5 So I'd like to follow up with the topic
6 that Mr. Kocher just brought up. Does anybody
7 remember when you were a kid where the antennas
8 were located? On the roof, right.

9 So now antennas are in your pockets.
10 The first cell phones came out, they had an
11 antenna, remember, you could pull it up a little
12 bit, pull it away a little bit. And then they
13 tried to move it. And now they're just, the
14 hell with it, now the antenna is buried in the
15 phone.

16 So there's two kinds of radiation.

17 There's ionizing and non-ionizing. The
18 ionizing, that's the stuff we all agree on.
19 That's the stuff you don't want to get too much
20 of it obviously. That's put vests on, cover
21 this and cover that. Because we all agree we
22 all know that ionizing radiation can do us in if
23 we get too much of it.

24 The non-ionizing radiation is on the
25 other half of the spectrum, of the

♀

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HEARING

2 electromagnetic spectrum. And non-ionizing
3 radiation comes out of basically any
4 communication device that's not plugged into a
5 wall, okay. So a good mantra to keep in mind
6 for yourselves is the three D's; distance,
7 degree and duration. You have a source of
8 radiation. Is it dangerous? It could be. It
9 depends on how far you are from it, the degree
10 of radiation that emanates from it, and the
11 duration, the amount of time you're going to
12 spend on it.

13 So 2.3.4, co-location of cellular
14 antennas and repeaters. Okay. This is an idea
15 that's come down to put repeaters, which are
16 basically boosters, to boost the signal of the
17 Wi-Fi radiation on street lamps, where you were
18 talking about cell towers. You walk outside, a
19 street lamp can easily have a little -- can look
20 like this, just sitting right on top. And it's
21 kicking out a signal to help a 5G network do

22 what it wants to do.

23 Now we all love these devices. We love
24 them. And my students are addicted to them.

25 Johnny, put your phone away. He says come on,

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44

1

HEARING

2

I'm done with my work, Mr. B. That's in class.

3

So I said would you rather put your phone away

4

or go speak to the principal. I'll go talk to

5

the principal. So we're clearly hooked on these

6

things. And for good reason. Sometimes they're

7

incredibly efficacious and sometimes it's just a

8

distraction. That's not the point. That's a

9

philosophical discussion. My point is that when

10

you introduce them into a community at the rate

11

and proliferation that's intended in this

12

co-location of cellular antennas or repeaters,

13

you are exposing a community to the -- remember

14

the degree, distance and duration. It's

15

nonstop. It's nonstop.

16

I do have a meter. I do have a meter

17

and I can measure it and I can show it to you.

18

And it beeps and bounces according to which --

19

you know, what kind of radiation is coming out

20

of the source. And you don't want this level

21

radiation emanating throughout your community

22

where people are walking by, where kids are

23

playing, where pregnant women are extremely

24

vulnerable to this. Children are even twice as

25

vulnerable because their skulls are not thick

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45

1 HEARING

2 enough. So the radiation penetrates the skull
3 easily on a child until he's 18. This is a
4 serious thing.

5 So the World Health Organization
6 finally, in its infinite wisdom, came to the
7 perception that yes, we'll call it a class B
8 carcinogen, okay. You know how long it took the
9 tobacco companies to finally admit, you know,
10 that we'll put that on the side of the package
11 of cigarettes that used to say may cause harm,
12 may, you know. Now they say causes. It took 50
13 years of litigation to take the word "may" out.

14 So there's a concept of doubt which can
15 be brilliantly marketed and deployed. And it
16 can be part of something that somebody wants to
17 either avoid, keep you from awareness, or sell
18 to you. So it's my opinion, not just my
19 opinion, but today it's my opinion that it's
20 currently listed as a -- it's currently a Type
21 II, right? And I want it to be an unlisted
22 category, this co-location of cellular antennas.
23 Because you don't want to fast track something
24 like that to people. You don't want to go
25 quickly for something like this. Because call

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1 HEARING

2 backs, right, you know, when the drug goes wrong
3 or the brakes fail, cost lives, right? But call
4 backs in terms of, you know, what are they going

5 to say when they finally come out with more
6 levels of the onion, you know, are peeled back,
7 what are they going to say okay, look, we told
8 you that in your smart phone instruction
9 pamphlet on page 36 that you shouldn't push it
10 against your ear. We told you that, you know.

11 The Telecommunications Act of 1996
12 basically allows for the -- allows the
13 telecommunications companies to erect cell
14 structures in our neighborhoods. And they're
15 free, they're free to go. Whether or not they
16 cause a health impact, an environmental impact,
17 they can't be held liable anymore. They got
18 carte blanche there. And so while we are
19 addicted, it's too late for that to be reversed,
20 but you do want to raise your level of
21 consciousness, right.

22 So it's not a popular subject when
23 you're trying to pull technology away from a
24 community. I get that. I understand. I'm a
25 teacher. I can use technology. I can make

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47

1 HEARING
2 twice as good of a lesson with technology in
3 half the time, and you know, it's over the
4 Internet. But if it's on a wire, if it's on a
5 wire, there's much less radiation radiating out
6 of a device.
7 Okay, I think that's all I have to say.
8 ALJ WILKINSON: Thank you, Mr. Barritt.
9 The next speaker is Suzannah Glidden.

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active member of several New York State groups.
But I'm going to speak this evening as a deeply
concerned individual. And I'm going to take the
liberty, if you will, of speaking in several
general terms that involves the state and DEC,
in addition to our concern about SEQRA.

I've driven an hour and a half to get
here, through thunder and lightning, tremendous
downpours, flooding on the roads and in the
fields next to the roads, to come here about
streamlining SEQRA at a time in history when
these weather extremes are worsening at such an
alarming rate because of global warming caused
by extracting, transporting and burning fossil
fuels, emitting carbon dioxide and methane, the

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HEARING

latter emissions, methane, exacerbating climate
change, as we know, at 86 to 100 times worse
than CO2 over a 20 day period, and 30 times
worse CO2 -- 34 times worse THAN CO2 over a one
hundred year period.

We are at the point now where we have a
president who denies global warming and slashing
protective federal regulations of fossil fuels
and, as unbelievably, is increasing their use.
This is exactly the time where New York State
Governor Cuomo, Commissioner Seggos and DEC
should be strengthening every state tool we have
to offset the federal administration's suicidal

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15 actions. This includes strengthening and not
16 streamlining SEQRA. It's commendable that
17 Governor Cuomo banned fracking in New York
18 state. But it's only a temporary ban. And it
19 appears in doing so he made a deal with the
20 devil, to allow the natural gas industry to
21 overrun us with gas infrastructure build-out,
22 which includes not only hideously poisonous
23 compressor and metering stations, making the air
24 we breath untenable and sickening us, but also
25 facilitates outrageous gas power plants with

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49

1 HEARING

2 even greater air and health ruination.

3 The governor and DEC should resolutely
4 cease issuing air and water permits for any
5 further gas projects, at the least. And also,
6 terribly importantly, a full State Environmental
7 Quality Review should be applied routinely to
8 every FERC project that rears its very ugly
9 ahead. SEQRA is the only way our health and
10 environment are protected during the
11 steamrolling FERC process that focuses on the
12 siting of a project, and not the damage to our
13 health and environment.

14 Prove to us that the Governor's
15 concerned about our health and environment, as
16 is his primary mandate, to protect our health
17 and safety. He should rescind all formerly
18 issued gas pipeline and power plants permits,
19 halt all such construction and stand up firmly

533547 . SEQRA LEGISLATIVE HEARINGS 040617.txt
20 and finally as a leader determined to stop the
21 insanity of the one percent profit over the 99
22 percent people, rather than betraying his
23 constituencies' health, safety and property
24 values and quality of life. And I speak
25 personally about this, because I am being

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1 HEARING

2 affected in my very backyard by a compressor
3 station of a project that the DEC issued water
4 permits and air permits for under the Governor's
5 supervision.

6 Jim Bacon and other attorneys this
7 evening will speak to the particulars of SEQRA's
8 streamlining direction, reversing in any way our
9 environment's protection in favor of developers
10 and big business ravaging our state and planet.
11 The people await a clear signal from the
12 Governor and DEC that they are for the people
13 and our environment and not for the forces that
14 are killing us. SEQRA revisions need to be
15 strenuously redirected to meaningfully
16 strengthen environmental and health protections
17 and not in any way erode them.

18 I am representing constituencies in
19 Westchester, Putnam and Rockland counties. And
20 I'm sure we are joined by others from every part
21 of the state in saying that if we don't have New
22 York State environment and health justice, New
23 Yorkers should next consider holding a general
24 strike to bring this state to its knees in

25

♀

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1

HEARING

2

Thank you for your consideration.

3

ALJ WILKINSON: Thank you.

4

Okay, the next speaker is Deborah, and

5

if you could help me with your last name.

6

MS. KOPALD: Kopal d.

7

ALJ WILKINSON: And when you get to the

8

microphone can you spell your name for us,

9

please.

10

MS. KOPALD: K-o-p-a-l-d.

11

ALJ WILKINSON: Thank you very much.

12

You can go ahead.

13

MS. KOPALD: Okay.

14

Right now consideration for cell towers

15

and SEQRA review is an unlisted action. And

16

this proposed rule making change to 6 NYCRR Part

17

617 would, as I understand it, make it a Type

18

II. So it would give an express lane to

19

purveyors of wireless transmitters, including

20

the new 5G so-called small cell purveyors, to

21

not have an environmental review.

22

People have used environmental reviews

23

to assess cell towers for a long time. There

24

are many issues with them. The lights, the

25

generators that make noise, that do have

♀

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1

HEARING

2

environmental effects. When I did speak with

3

this office I was told oh, well, the 5G small

4 cells are smaller so they must have less of an
5 effect. Nothing could be farther from the
6 truth.

7 To begin with, I recently took a
8 continuing legal education course, cell tower
9 wireless law, it was offered by the Federal Bar
10 Association. The course can still be taken
11 online. And, in fact, the batteries, the base
12 of some of these 5G small cells have hazardous
13 chemical materials. And it is an environmental
14 consideration.

15 And in the CLE class they talked about
16 having bonds to make sure, in case these
17 batteries leaked, that they would be cleaned up.
18 So if you have a small cell in an environmental
19 district and where there is wildlife or near a
20 school, that's an environmental issue.

21 In addition, many of these 5G small
22 cells are also concomitantly offered with
23 lighting systems, with LED lights, which are
24 super bright. Almost as if you have one of
25 these lighting systems you're lighting up your

♀

1 HEARING
2 town like an airport runway. And light is a
3 pollutant. Light is an environmental pollutant.
4 That has to be considered as well.

5 Some of these 5G quote, unquote small
6 cells are on poles that are 120 feet high that
7 are eyesores. This was recently documented in
8 FCC Docket 16-421. Many municipalities weighed

9 in. They said that they were against the
10 proposal by the 5G small cell purveyors to force
11 these transmitters up on utility poles to get
12 control of the right-of-ways. The
13 municipalities weighed in, whether it was New
14 York City or Austin, Texas or Florida
15 Association of Municipalities, they all said the
16 same thing, it was interfering with the
17 functions of local government and that they were
18 not entitled to have, you know, express lane,
19 automatic right-of-way on utility poles.

20 In addition, I saw in a document today
21 from the City of Orlando which was discussing
22 these small cells, also known as distributed
23 antenna systems, they said that some of the
24 purveyors had proposed having so-called soil
25 sterilization. Now, that involves either

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1 HEARING
2 chemicals or radiation. That's an environmental
3 issue. That's something that should be subject
4 to SEQRA review.

5 This is yet another reason why we
6 shouldn't put this as a Type II action. It
7 should stay unlisted and municipalities should
8 have the discretion to be able to look at a
9 particular proposal and say that there are
10 environmental considerations here.

11 In addition, some of these small cells
12 have cooling fans. Which are noisy and
13 unsightly.

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I brought some pictures with me.
There was one submission in particular,
in the FCC 16-421 docket from Omar Mazeri, who
is a municipal planner in California.
Here's a picture here. It says bulky
boxes, tacky bundles of wiring below unpainted
antennas and noisy cooling fans.
So here's a picture. I can show it to
you, you can look up close later. But the point
is, is that the concept of these so-called small
cells are unobtrusive and nobody is going to
notice them is an absolute fiction.

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There were other pictures in the 16-421
docket that showed, you know, huge poles in
front of people's houses. Clearly an eyesore.
Here is a picture from Lafayette,
California, of the accouterments at the base of
one of these so-called small cells. You can see
all the radiation warning signs and a child near
them. This doesn't belong in an area where
children play. It doesn't belong near a wetland
or an historic site. It's unsightly. And this
is something that should be subject to SEQRA
review.
There's another picture that was offered
in 16-421. Here is a small cell in front of a
historic building in Pittsburgh, Pennsylvania,
which absolutely ruins the view. These are all
things that should be subject to SEQRA review.

19 So I'm concerned that there's a thinking
20 that we should not give these things
21 environmental review, that we should gut that.
22 When now, more than ever, with this transmitter
23 proliferation, we need to have those rights. We
24 need to preserve these rights for
25 municipalities.

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 The only reason to do this, my
understanding from reading, I was told by a
lawyer actually that it was in the Law Journal
that Governor Cuomo wanted these regulations.
The only conclusion is he's completely in the
tank with the wireless industry. There is no
reason to take away a tool that people use to
regulate the placement of these transmitters,
this infrastructure. It's getting pushed more
and more into people's neighborhoods, into
historic districts, into environmentally
sensitive areas, near children. It's
inappropriate. And at a time when you just had
this docket, again, 16-421, where people weighed
in on their concerns about these 5G small cells,
whether they were municipalities, whether they
were, in fact, some people were doctors talking
about the health considerations. This would not
be the time to take tools away from people, from
citizens, from municipalities, to regulate
these.

 Now, in addition, we all know we're not

24 allowed to regulate them on the basis of FCC
25 emissions, but let's talk about situations where

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you can breach the FCC limits. And this picture
3 that I showed you here with the kid at the base
4 of one of these towers, you have some of these
5 small cells, also known as distributed antenna
6 systems, going near schools. You could have a
7 child potentially breach the FCC limits. That
8 is an environmental issue.

9

The Wall Street Journal reported that
10 ten percent of cell sites are out of compliance.
11 The FCC doesn't go around testing them. The EMR
12 Policy Institute reported a hundred such sites.
13 And the FCC sent one of them a warning. And
14 when they came to test it, they turned the
15 radiation down and then turned it back up when
16 the FCC left. It is more common than ever for
17 municipalities to get a grip on how much
18 radiation is coming out of these things. And to
19 make sure in the process of review that they
20 look at situations where the FCC limits could be
21 breached.

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In addition, now that we have these
small cells going on utility poles, you have
utility workers, you have the person who fixes
the phone line, and whatever else is now on the

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2 utility pole, where if there's a small cell
3 there they could potentially exceed, breach FCC
4 limits while doing their job. In the UK an
5 engineer named Alister Phillips, who is an
6 advisor to the UK Health Protection Agency,
7 warned that in situations where you have
8 transmitters on buildings that firefighters who
9 went to put out a fire, if they didn't have a
10 key to turn off the system or have access to it,
11 that they could in fact cook their eyeballs to
12 the point where they would have serious
13 cataracts forming, you know, shortly thereafter.

14 So we have -- this is -- in fact, it's
15 not just a public safety issue. But if you're
16 breaching those FCC limits, it is legally an
17 environmental issue. And if you have a
18 configuration of these small cells in such a way
19 that it is more likely that people are going to
20 breach these FCC limits, that is a SEORA issue.
21 That is something that needs to be reviewed.

22 So then there is another issue that I
23 want to talk about. Which has to do -- you
24 know, it's interesting, when they first started
25 rolling these out in New York, one of the first

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places was in Greenburgh, in Westchester. It
3 really became a game of hot potato. Whoever
4 knew the supervisor would call and complain and
5 say hey, I don't want this one across the street
6 from my house. Whoever had more money or was

7 more well-heeled could sort of control the
8 political process in that way. But really
9 nobody should be forced to live near any of
10 these.

11 And the issue with them as well, when we
12 bring in these transmitters, cell towers, when
13 you get off the highway here, they just put a
14 cell tower there. Now, you bring the
15 transmitters in closer, the radiation levels are
16 higher. The radiation levels in people's
17 neighborhoods are higher. And though we
18 understand that the state and municipalities
19 cannot discriminate against these if they fall
20 within FCC limits, dot, dot, dot,
21 notwithstanding the fact that, in 2013, FCC
22 Docket 13-84 was openly questioning the
23 standards. The FCC has done nothing about it.
24 There were 900 comments saying the standards are
25 completely out of whack. Including the

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Department of the Interior, who drove to the
3 NTIA, the National Telecommunications and I
4 think Internet Administration I think it's
5 called, and said that the standards are 30 years
6 out of date.

7

8 So there's an understanding, which I
9 think other people have discussed, that there is
10 a public health crisis going on. But
11 specifically where I think this needs to be
considered with SEORA is that people who live in

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electrosensitivity from publicly allowable levels of radiation, that have sickened with what the EU has said is three to five percent of the population, independent studies show from 1.5 percent to 13.3 percent in different countries, and independent scientists are saying 20 to 30 percents are reactive overtly to this radiation in some form or another.

But when you talk about the population of people with electrohypersensitivity, and I go back to that docket from 2013 to the FCC, 13-84, the cities of Boston and Philadelphia wrote in and said to the FCC the more you roll out these

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transmitters, the more of an access barrier problem you're creating for this population of people. And, in fact, the more you raise the radiation levels, the more you create the more numbers of people who are electrosensitive, the more people who will have this access barrier problem from these transmitters.

And, in fact, the Fair Housing Act is used to take off wireless water meters, utility meters, et cetera, from the vicinity of people's homes who are electrosensitive, and say to utilities you've got to roll this back, at least in this neighborhood where this person can't even access their own home. And, in addition, in terms of public facilities, the ADA advocates

533547 . SEORA LEGISLATIVE HEARINGS 040617.txt
17 for people getting Wi-Fi turned off because it's
18 an ADA consideration.

19 So if you're going to have more of these
20 transmitters on every utility pole every third
21 house, you're going to keep increasing it,
22 you're going to create a situation where this
23 population of people can't access basic
24 services, government buildings, schools. This
25 is already happening. There are already people

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1 HEARING

2 who have filed with HUD, filed with human rights
3 commissions, filed with the United States
4 Department of Justice, because they can't get
5 access to a court, to a school, to a hearing
6 such as this to be able to speak. I understand
7 there's no Wi-Fi here so the DEC doesn't have
8 that issue.

9 But that's an issue for many people,
10 accessing government, to be able to speak out.
11 They can't go speak at the state house because
12 there's Wi-Fi in the state house. There's no
13 Wi-Fi in the lower lobby of the legislative
14 office building. But this is a real issue. And
15 if you put transmitters in front of people's
16 houses or in front of areas where they have to
17 go, where they can't access, it becomes a very
18 serious problem.

19 The Telecommunications Act does not
20 preempt the Americans with Disabilities Act or
21 the Fair Housing Act. So we go back to a

533547 . SEQRA LEGISLATIVE HEARINGS 040617.txt
22 situation where one of these companies wants to
23 roll out these transmitters in a town, if you
24 have a person or persons who are
25 electrosensitive who can't have one of these

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1 HEARING

2 things in front of their house, or other places
3 they need to access, that becomes an
4 environmental issue. And it doesn't matter what
5 the absolute radiation level is. You can't say
6 yes, the FCC says a thousand microwatts per
7 centimeter squared is the law of the land.
8 You're interfering with the civil rights of
9 someone who's electrosensitive.

10 The population that, again, that letter
11 from the city of Boston and Philadelphia to the
12 FCC referenced in 2013 a population which is
13 also recognized as being disabled by the Access
14 Board. In addition to the Department of Labor
15 came out with guidelines about this recently,
16 last year. That's an environmental issue.
17 That's something that should be considered in
18 the context of a SEQRA review.

19 ALJ WILKINSON: Ms. Kopald, could you
20 wrap it up? I just want to get to a few more
21 speakers. But we would be happy to have your
22 written comments too.

23 MS. KOPALD: Okay. I think that covers
24 most of my main points.

25 But, and I just want to add as well that

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there is the issue with the solar arrays as well as the transmitters that we're talking about. In Sullivan County they're solarizing everything. And solar without the proper inverters creates high frequency transits on the wiring. And that, again, creates an electromagnetic radiation pollution problem. That creates a Fair Housing Act problem. That creates an ADA problem. And that is also something that should be subject to environmental review in environmentally sensitive areas.

So yeah, and I guess my final comment really is just that you can't be taking rulemaking, taking tools away from municipalities to have some common sense regulations around these things which would make sure that people's rights are met, make sure that the environment is protected. Whether it's from the batteries, the lights, the cooling fans or what have you. But there's absolutely no reason to take discretion away and to make this go from unlisted to Type II. It should stay unlisted, the discretion should stay within

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municipalities.
And, finally, I would just say, you know, my final comment to the DEC and to Governor Cuomo is this problem is only getting

6 worse. It is understood to be a public health
7 problem.

8 Other countries are doing something
9 about it. In regards to these 5G small cells,
10 there was just a conference from the National
11 Institute of Environmental Health Sciences from
12 the U.S. in Israel with the Israel Institute for
13 Advanced Studies, where they said that these
14 frequencies will cause enzymatic disruption in
15 humans, unzipped DNA, create all kinds of
16 problems. There's a report from Brooks Air
17 Force Base about these frequencies, and a report
18 from Los Alamos Lab corroborating what was said
19 at that conference.

20 The DEC, the Governor, Eric
21 Schneiderman, the attorney general, need to
22 stand up for people. They need to be showing up
23 in these FCC proceedings, like the one I
24 mentioned, where these city planners commented.
25 And they need to back up the people of New York,

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1 HEARING
2 protect the civil rights of people who have
3 become electrosensitive, and protect everyone
4 else from becoming electrosensitive or
5 developing any of the other diseases that are
6 known to be associated with these levels,
7 including neurotransmitter diseases, cancer,
8 infertility, et cetera.

9 ALJ WILKINSON: Thank you, Ms. Kopal d.

10 MS. KOPALD: Thank you.
Page 55

11 ALJ WILKINSON: The next speaker will be
12 Manna Jo Greene.

13 MS. GREENE: Thank you. I'm Manna Jo
14 Greene. I'm the Environmental Director for
15 Hudson River Sloop Clearwater, and I also serve
16 on the Ulster County Legislature. I will be
17 preparing comments for Clearwater, but tonight
18 I'm just speaking as an individual. And I'm
19 going to speak very briefly.

20 But first I want to talk -- I want to
21 thank the people that brought up the concerns
22 about electromagnetic radiation. And I'll tell
23 you why.

24 I've been working on the PCB issue in
25 the Hudson River for 17 years. Actually longer.

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2 But I've been paid for work on it for 17 years.
3 One of the people I most respect, who taught me
4 enough about the health effects of PCBs to make
5 the arguments that I think Clearwater made
6 pretty eloquently back -- to persuade EPA to get
7 GE to clean up the Hudson River PCBs, and that
8 was Dr. David Carpenter. And if Dr. Carpenter
9 says that we need to use precautionary
10 principles when dealing with electromagnetic
11 radiation, I listen, I pay attention. This is
12 not someone who is prone to conspiracy theory or
13 anything else you want to throw at people to
14 cast doubt.

15 I think that we do need to be cautious.

16 I think we especially need to be cautious in
17 schools where children are required to sit for
18 hours a day. And he says that, you know, they
19 can learn -- they can become very facile with
20 their computers if they're wired rather than
21 wireless. So I just want to take a stand and
22 thank the people who raised this issue. I
23 didn't expect it to come up tonight.

24 The other issue I want to raise is with
25 regard to the inequity that is already present,

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2 and I'm afraid I have to read the details, but
3 I'm afraid may be worse with regard to SEQRA.
4 And that is that the amount of funds that a
5 developer or a municipality have to protect
6 their interest versus what individual community
7 members or groups of community members and
8 neighborhoods having to do literally bake sales
9 to hire an attorney to fight for their rights to
10 file an Article 78, I'm just about to enter --
11 I've been doing it -- as I said, I've been doing
12 this for more than 17 years, and I've seen a lot
13 of issues where even with SEQRA we could not
14 adequately protect people's health or the
15 environment. And what I think we should be
16 working on is not streamlining SEQRA, but
17 providing intervenor funds for citizens so that
18 when there is an issue of debate, that we can
19 afford to hire lawyers to create equity in the
20 decision making process.

21 So that's all I'm going to stay tonight.
22 We'll be writing up our comments. But I wanted
23 to make these comments publicly.

24 Thank you.

25 ALJ WILKINSON: Thank you very much.

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1 HEARING

2 Joel Tyner.

3 MR. TYNER: Hello. I'm a County
4 Legislator in Dutchess County for Rhinebeck and
5 Clinton.

6 And I want to just echo almost
7 completely what Manna Jo Greene said. I was
8 even going to actually reference Dr. David
9 Carpenter, believe it or not. Because,
10 unfortunately, a lot of people unfortunately do
11 paint the folks like Deborah or other experts
12 and advocates in the tinfoil hat club. And they
13 don't belong in the tinfoil hat club.

14 Dr. David Carpenter is a director and
15 the founder of SUNY Albany Institute for Health
16 and the Environment, incredibly well-respected.
17 And, just as Manna mentioned, you know, for
18 years was the source, you'd hear him always on
19 WAMC talking about the PCBs in the river.

20 And it was four or five years ago that
21 Dr. Dave Carpenter released a bio-initiative
22 report, peer reviewed, talking about how serious
23 the issues Deborah Kopald brought up are. And
24 we shouldn't be making it easier for the
25 wireless industry to jeopardize our public

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1 HEARING

2 health. We should be making it harder.

3 Expanding the number of actions not
4 subject to further review, expanding the number
5 of Type II actions, that's not cool. I'm not
6 down for that. And modifying certain thresholds
7 for actions deemed more likely to require the
8 preparation of an environmental impact
9 statement, modifying, basically quote, unquote,
10 streamlining, I'm not down for that.

11 This is the New York State Department of
12 Environmental Conservation. We already have a
13 huge problem with the New York State quote,
14 unquote Public Service Commission, where it
15 serves private utilities and corporations and
16 the likes of Central Hudson and Fortis, and not
17 the public. This is the Department of
18 Environmental Conservation. Not the department
19 of corporate conservation. The Department of
20 Environmental Conservation.

21 I just saw 1984 a day or two ago at
22 Upstate Films in Rhinebeck. And this should not
23 be happening in this building. The DEC is
24 supposed to be about protecting the environment.
25 Not gutting SEQRA.

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1 HEARING

2 As Hayley Carllock of Scenic Hudson wrote
3 five years ago, the SEQRA process made the

4 as a continuous wall of buildings ended up as
5 two clustered villages. Both the city and the
6 developer praised the final design.
7

8 In Tarrytown, an asphalt plant was
9 turned into a recycling facility.

10 Corporations and the well connected
11 moneyed special interests, the real estate
12 developers who have already raped quite a bit of
13 the landscape here in the Hudson Valley, they
14 have enough power as it is. As Manna Jo Greene
15 brought out already, they have already won many,
16 many times. They don't need to be given more.

17 So, that's all I wanted to say. And,
18 all too often, it seems as if government is not
19 doing the bidding of the people. Government is
20 doing the bidding of corporations. It would
21 seem that is the case once again here. You have
22 an opportunity to change that.

23 ALJ WILKINSON: Thank you very much.

24 Is there anyone else who hasn't spoken
25 tonight that would like to speak?

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1 HEARING

2 (No response.)

3 ALJ WILKINSON: No, all right. I will
4 just remind everyone that we do have a hearing
5 coming up next week on Long Island. And the
6 week after that we have one in Rochester.

7 Public comments can be submitted through
8 May 19th. We have fact sheets out on the table

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if you want to know how to submit a public
comment.

And I thank everybody for coming tonight
and for speaking tonight. And we're adjourned
at 7:27.

(Time noted: 7:27 p.m.)

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I, KARI L. REED, a Registered
Professional Reporter (Stenotype) and Notary
Public with and for the State of New York, do
hereby certify:

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I reported the proceedings in the
within-entitled matter and that the within
transcript is a true record of such proceedings.

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I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of April, 2017.

KARI L. REED

♀