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

SEQRA LEGISLATIVE HEARINGS

-----X  
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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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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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.

3

And I think that's it.

4

And, just lastly, we're hosting

5

additional public comment hearings on the

6

proposed amendments to SEQRA regulations on

7

April 13th in Hauppauge, New York, and April

8

18th in Rochester, New York. And those hearings

9

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

25

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

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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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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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1 HEARING  
2 installation of cellular antenna with repeaters  
3 on an existing structure. We appreciate the  
4 interest in easing the regulatory burden on  
5 co-located cellular antennas as well as federal  
6 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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1 recognize that these additions are meant to  
2 bring SEQRA into alignment with state policy  
3 goals, and we support SEQRA amendments that are  
4 in the interest of promoting renewable energy  
5 development. However, we want to ensure that  
6 it's done in a manner that protects important  
7 resources such as agricultural land, conserves  
8 open space, scenic resources and historic sites  
9 while that development is going on. And that  
10 development should be incentivized to be located  
11 in more appropriate locations.  
12

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

533547 .SEORA LEGISLATIVE HEARINGS 040617.txt  
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

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

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For example, any water viaducts use impaired

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under the total maximum daily load program, for

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instance, in the Croton watershed, they should

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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

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out there and what the project may be affecting.

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And I spoke a little bit earlier about

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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

6 could be more educated about DEC specific  
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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HEARING

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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1 HEARING

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

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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  
Page 24

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

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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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did not note any addressing of agricultural

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lands.

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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

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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

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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 --

♀

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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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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?

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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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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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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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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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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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HEARING

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Thank you for your consideration.

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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: Kopald.

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

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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

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are many issues with them. The lights, the

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generators that make noise, that do have

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environmental effects. When I did speak with

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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

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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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HEARING

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

23

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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HEARING

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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.

22

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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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HEARING

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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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. Kopald.

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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HEARING

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

533547 .SEORA LEGISLATIVE HEARINGS 040617.txt  
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

♀