

4.14 LAND USE AND ZONING

Written Comment 4H:

The DEIS must comply with the SEQRA regulations in addition to the standards in the town's zoning ordinance. Under SEQRA, if the benefits outweigh the burdens, the project can be approved, if it also meets the requirements of the town's zoning ordinance. If the burdens are greater than the benefits, even if all the zoning requirements are met the Board as SEQRA lead agency should deny approval.

Response to Written Comment 4H:

The commenter appears to confuse the two separate processes that are SEQRA and local land use approval. The DEIS complies with SEQRA and provides the requisite identification and assessment of impacts, consideration of alternatives to the proposed action, and identification of mitigation measures for adverse impacts. SEQRA does not alter or change the jurisdiction of the Town, but rather overlays a formalized process for consideration of the environmental impacts onto the Town's jurisdiction to issue local zoning approvals. SEQRA's mandate is that "the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable,"¹ but SEQRA does not dictate a decision on the action. Separate and apart from its Findings under SEQRA, the Town will make a decision whether to issue the Project approvals under the Town's local zoning laws based on the Project's compliance with the requirements of those local laws and the relevant standards.

Regarding weighing impacts and benefits, please see FEIS Section 4.1.

The following comments are general concerns regarding Town zoning compliance of the Project.

Written Comment 12C:

Where are the safeguards for our investment? To say we feel betrayed is an understatement. As to this proposed Project, I have studied the current Zoning Ordinance, as updated August of 2007. This project is **NOT** in keeping with the objectives stated in the Town's Zoning Ordinance (Section 1.06, Intent and Purpose, Letter (D), Objectives) In fact, this project fails miserably when compared to those established goals:

¹ 6 N.Y.C.R.R. §617.11(d)(5).

1. It is in no way “functionally and aesthetically harmonious with nearby structures and land uses”
2. It causes, rather than prevents, “ecological damage and visual blight”
3. In this case, “environmental resources are eliminated or substantially altered to serve development purposes only”

I am not aware of any exceptions to these objectives based on how much money an out-of-town developer decides to wave at us. These objectives were just amended in 2007. I certainly hope they are still valid.

Oral Comment 12B:

As to this proposed project, I have studied the current zoning ordinance. This project is not in keeping with the objective stated in the town’s zoning ordinance as updated in August of 2007. This project fails miserably when compared to those established goals. It is in no way functionally and aesthetically harmonious with nearby structures and land uses.

Oral Comment 12C:

It causes rather than prevents ecological damage and visual [b]light. And in this case, environmental resources are eliminated or substantially altered to serve development purposes only.

Oral Comment 12D:

I am not aware of any exceptions to these objectives based on how much money an out-of-town developer decides to waive at us. These objectives were just amended in 2007. I certainly hope they are still valid.

Response to Written Comment 12C and Oral Comments 12B, 12C, and 12D:

1. Wind farms are an allowable special use in the areas proposed; the current review does include the prior determination of the Town Board to permit wind farms where and if appropriate.
2. With respect to the Project being considered harmonious with nearby structures and land uses, please refer to the Land Use and Zoning chapter of the DEIS. Specifically, Section 3.13.2.2 of the DEIS states, “*The generating portion of the Project will occur entirely on private land in areas dominated by managed/disturbed forestland and oil/gas extraction. Project components will be sited in accordance with local setback requirements and no public lands or recreational facilities will be impacted. Only very minor changes in land use within the Project Site are anticipated as a result of Project implementation. As shown in Table 36, the Project represents a cumulative*

conversion of approximately 27 acres of land from its current use to built facilities...In terms of zoning, the Project components will occupy approximately 25.25 acres of A-F District in the Town of Allegany, and the 1.75-acre substation will be located within an A-R District in the Town of Olean...During Project operation, additional impacts on land use should be infrequent and minimal. Other than occasional maintenance and repair activities, the Project should not interfere with on-going land use (e.g., oil/gas extraction, timber management). However, based on EDR's experience with existing wind power projects (e.g., Madison, Fenner, and Maple Ridge), the Project may result in a perceived change in land use. As discussed in Section 3.5, the visibility and visual impact of the wind turbines will be highly variable based upon distance, number of turbines in the view, weather conditions, sun angle, the extent of visual screening, scenic quality, viewer sensitivity and/or existing land uses. However, the remote/rural character of the area may be impacted in those locations where a significant number of the proposed turbines can be seen, or where the turbines can be viewed from near mid-ground distances (e.g., 0.5 to 1.0 mile)."

3. With respect to ecological damage, the comments provide no useable evidence. Section 3.3 (Biological Resources) of the DEIS provides a detailed discussion on existing resources, potential impacts, and proposed mitigation. As indicated in Section 3.3.3.1 of the DEIS, *"Rockhouses/outcrops, streams, and wetlands are being avoided to the extent practicable. Therefore, the most ecologically significant communities within the Project Site will be largely protected from disturbance. Project access roads will be sited on existing roads to the extent practicable, and areas of disturbance will be confined to the smallest area possible. In addition, a comprehensive sediment and erosion control plan will be developed and implemented to protect adjacent undisturbed vegetation and other ecological resources."* With respect to visual blight, please refer to Section 3.5 and Appendix K of the DEIS, and Section 4.6 and the Visual Impact Assessment Addendum in Appendix E of this FEIS.
4. With respect to eliminating or substantially altering environmental resources, the DEIS and FEIS address the environmental impacts of the Project.

In addition, the Project will be reviewed by the Town Planning Board as part of the Special Use Permit/Site Plan Review Process required for the wind generating facilities. Moreover, by enacting provisions in its zoning ordinances to permit wind turbines to be located in the community, the Town of Allegany has established as a legislative policy that such structures are compatible with the character of the community.

The inclusion of a use in a zoning law as a special permitted use is tantamount to a legislative finding that the permitted use is in harmony with a Town's general zoning plan and will not adversely affect the community.²

Written Comment 16A:

I'm writing in opposition to the construction of the proposed industrial wind array in the Town of Allegany. I want to point out that this industrial array is not a "farm" in any sense and calling it such amounts to a clever manipulation of public opinion. Make no mistake; it is an industrial installation and has absolutely no place in an area zoned Agricultural Forest.

Response to Written Comment 16A:

As set forth in the Town of Allegany Wind Energy Regulations (Adopted August 28, 2007), commercial and non-commercial wind energy conversion systems are considered a Special Permitted Use in the A-F (Agricultural-Forestry) District.

²See *Retail Property Trust v Board of Zoning Appeals of the Town of Hempstead*, 98 NY2d 190 [2002]; *Twin Party Recycling v Yevoli*, 90 NY2d 1000 [1997]; *Wegmans Enterprises, Inc. v Lansing*, 72 NY2d 1000 [1988]; *Robert Lee Realty Co. v Village of Spring Valley*, 61 NY2d 892 [1984]; *North Shore Steak House, Inc. v Board of Appeals of the Village of Thomaston*, 30 NY2d 238 [1972]; and *Hudson Resources, Inc. v Venditto*, 282 AD2d 676 [2d Dept 2001].