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New York Local Governments Respond  
to Climate Change and Energy Efficiency

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# New York Local Governments Respond to Climate Change and Energy Efficiency

*Patricia E. Salkin*

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# New York Local Governments Respond to Climate Change and Energy Efficiency

By Patricia E. Salkin

## I. Introduction

New York ranks eighth out of the fifty states in terms of carbon emissions.<sup>1</sup> While the State government is just beginning to enact programs and incentives for local governments to encourage municipal policies and actions that will reduce the impact of local decisions on our carbon footprint, a number of local governments across the State have already been at work developing and adopting "greening" strategies, policies and regulations. At the state level, in September 2008, Governor Paterson signed into law the Green Residential Building Grant Program, which authorizes the New York State Energy Research and Development Authority (NYSERDA) to develop and establish standards for the program.<sup>2</sup> NYSERDA has reorganized its Web site so that municipalities can quickly find information about available state incentives

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to promote "green,"<sup>3</sup> as well as information about local government sustainability initiatives in the State.<sup>4</sup> Another State-level climate change program was launched in February 2009 by the New York State Department of Environmental Conservation (DEC), with the announcement of the Climate Smart Communities Initiative, designed as a State and local partnership effort to encourage climate protection.<sup>5</sup> More than forty municipalities have now adopted the Climate Smart community pledge.<sup>6</sup> In March 2008, Governor Paterson issued Executive Order 2 calling for a new State Energy Plan,<sup>7</sup> and in August 2009, a draft plan was published for comment.<sup>8</sup> The comment period extends through October 2009, with the expectation that a final plan will be adopted in November 2009.<sup>9</sup> On August 16, 2009, Governor Paterson issued Executive Order 24 setting a goal of reducing greenhouse gas emissions by 80% by the year 2050, and calling for the creation of a climate action plan.<sup>10</sup>

While these State-level programs are vital to achieving emissions reductions goals, New York's cities, towns,

and villages also have been at work trying to develop and implement strategies to curb emissions. Municipalities are choosing to adopt clear statements and action items in their comprehensive land use plans.<sup>11</sup> They are creating climate change or sustainability task forces and developing strategies.<sup>12</sup> Local governments are also enacting regulations to promote green building and alternative energy development.

This article introduces the ways in which local governments have taken the lead in mitigating and preparing for climate change. In large part, this article focuses on the manner in which local governments have incorporated climate change concerns into land use regulations, cognizant of the State's Renewable Energy Task Force's recent identification of several challenges present at the local level that toll against establishing a pervasive program to address climate change impacts. Specifically, the report recommends addressing existing barriers to municipal government purchase of green power<sup>13</sup> and notes that "renewable energy installers and potential owners face a patchwork of widely differing local government permitting requirements as well as home owner association (HOA) restrictions, which create hurdles to the efficient and widespread installation of renewable energy systems such as PV, solar thermal and small wind."<sup>14</sup>

## II. Green Legislation and the Local Level

While climate change is not exclusively a land use issue, some of the most effective strategies to slow climate change can be accomplished through modifications to building codes, zoning ordinances and other land use regulations. However, to be truly effective and to attain quantifiable results, local governments must implement a variety of tools and techniques and send a consistent message to residents. Local governments must look at opportunities for energy efficiency in municipally owned buildings and in services provided, as well as methods that can be utilized by residents of the locality to promote conservation and increased efficiency.<sup>15</sup> What follows is a discussion of various approaches recently adopted throughout the State.

### A. Climate Change Laws

The chief elected officials of approximately forty local governments in New York have voluntarily signed onto the U.S. Conference of Mayors Climate Change Agreement.<sup>16</sup> A few municipalities have adopted greenhouse gas emission (GHG) reductions goals and comprehensive strategies to meet those goals. In 2007, New York City enacted the Climate Change Protection Act with the goal of

reducing the City's operational greenhouse gas emissions by 30% of 2006 levels by 2017.<sup>17</sup> The goal is to be reached through programs set up as part of PlaNYC 2030,<sup>18</sup> and annual City-wide GHG inventories are to be posted on the City's Web site.<sup>19</sup>

In 2008, Westchester County passed a similar resolution intended to mitigate possible sources of climate change within the county. The law proposes to reduce greenhouse gases to 20% below 2005 levels by 2015, and to 80% below 2005 levels by 2050. It also calls for the completion of a county-wide inventory of greenhouse gas emissions, the development and implementation of a county-wide climate change action plan, and for increased public education and open communication.<sup>20</sup>

The Town of New Castle also amended its code in 2008, to rename the Solid Waste Advisory Board as the Sustainability Advisory Board.<sup>21</sup> In addition to its existing duties, the Sustainability Advisory Board is now responsible for developing GHG reduction targets and recommending programs to meet those goals. It is required to: undertake a GHG inventory; suggest options for increasing energy efficiency and reducing energy use; encourage the use of alternative energy; continue monitoring the town's recycling program; promote water conservation and efficient use; develop suggestions for a green building code; track the effectiveness of land use planning changes at lowering emissions; and work cooperatively with neighboring government bodies to achieve emissions reductions.<sup>22</sup>

In April 2009, the Mayor of the City of Albany issued an executive order establishing the City of Albany Sustainability Agenda.<sup>23</sup> The agenda adopts a series of initiatives organized under energy, the built environment, public space, transit and transportation, recycling and waste management, purchasing, water, green jobs, the community sector and ensuring and measuring success.<sup>24</sup> Among the laundry list of initiatives is the development of a climate action adaptation plan, exploration of green buildings for new municipal construction, and the investigation of green building codes.<sup>25</sup>

The Town of Irondequoit recently adopted the recommendations of its Environmental Sustainability Task Force, which include a series of initiatives designed to meet nine policy statements designed to, among other things: ensure energy efficient and environmentally supportive town codes, plans and policies; improve energy efficiency of existing town buildings; build more efficient new or renovated buildings; encourage green economic development; and include green practices in the new Town master plan.<sup>26</sup>

## **B. Energy Efficiency/Energy Star Laws**

Many municipalities have adopted local laws relating to energy efficiency in buildings. Babylon,<sup>27</sup> Brookhaven,<sup>28</sup> Great Neck,<sup>29</sup> Greenburgh,<sup>30</sup> Huntington,<sup>31</sup>

North Haven,<sup>32</sup> North Hempstead,<sup>33</sup> Oyster Bay,<sup>34</sup> Riverhead,<sup>35</sup> and Southampton<sup>36</sup> have all joined the Long Island Power Authority Energy Star Homes program and incorporated Energy Star requirements into their building codes.<sup>37</sup> Although the LIPA Energy Star Homes program is generally targeted at providing incentives for builders,<sup>38</sup> Long Island municipalities that enacted Energy Star requirements have also been eligible for \$25,000 incentive grants.<sup>39</sup>

## **C. Green Building Laws**

Green building laws expand on the sustainability agenda of energy efficiency, applying principles of efficiency and conservation to the entire building, its design, operating systems and generated waste. At the state level, in March 2008, Governor Paterson continued Executive Orders 111 and 142 directing state agencies and authorities to be more energy efficient and environmentally aware, and directing state agencies and authorities to diversify their energy use by including biofuels.<sup>40</sup> Although NYSERDA has announced that it will provide additional funding under the New Construction Program,<sup>41</sup> which has provided some funding for municipal-sponsored programs in the past,<sup>42</sup> the State has not adopted any specific policies or goals to encourage the adoption of local green building laws. Despite this, in line with the national trend,<sup>43</sup> local governments across New York have started to enact local laws relating to green building development. Some green building ordinances apply only to municipal construction/renovation projects;<sup>44</sup> some apply to private projects that receive public funding;<sup>45</sup> and a few apply to both public and private construction/renovation projects.<sup>46</sup> The ordinances also differ in their specific applications, including whether actual certification by the United States Green Building Council is necessary, which level of LEED criteria must be sought, and whether waivers are available.<sup>47</sup> Some of these recently passed laws are highlighted below.

Erie County enacted a green buildings law in 2007 that requires major county construction and renovation projects to meet at least the LEED silver rating. Rockland County enacted a municipal green building law in 2008. Rockland's law requires county projects costing more than \$1 million to comply with the LEED silver criteria and to actually seek formal certification.<sup>48</sup> (It is not clear, however, what the consequences of failing to achieve certification are.) Waivers are available under the law if the county executive determines that "the benefits of waiving this local law's requirements outweigh the environmental benefits to the residents of Rockland County[.]"<sup>49</sup> The Village of East Aurora<sup>50</sup> and the Town of Riverhead<sup>51</sup> have enacted similar municipal green building laws.

New York City's green building law was enacted in 2005 and requires municipal projects costing more than \$2 million to be designed to meet LEED silver criteria, although actual certification is unnecessary.<sup>52</sup> In addition to City projects, however, the LEED requirements apply

to private developments that receive more than 50% City funding or more than \$10 million of City money. Nassau County's 2007 green building requirements, like New York City's, apply to publicly funded projects as well as to public works construction and renovation projects.<sup>53</sup> The law generally mandates compliance with the requirements for the LEED silver rating, but actual certification is not required, and exemptions can be granted on a number of financial grounds.<sup>54</sup> Ulster County requires high performance green building standards for county projects through a requirement that buildings comply with LEED silver, unless it is not financially possible.<sup>55</sup>

The Town of Babylon, in addition to passing Energy Star requirements, enacted a green building law in 2006. The law requires applicants for commercial, industrial, and large residential projects to submit completed LEED checklists or their equivalent, as deemed acceptable by the commissioner of planning and development.<sup>56</sup> While the law does not require buildings to actually achieve LEED certification, it does require a project checklist to demonstrate that it is LEED-certifiable before a building permit can be issued.<sup>57</sup> The law also allows developers that do achieve certification to receive a fee refund; fees for buildings that do not achieve certification are deposited into a green building fund.<sup>58</sup>

Finally, it should be noted that while Peekskill has not enacted a comprehensive green building law, a 2008 law grants density incentives to hotels and motels that meet LEED standards. Actual certification is not required, but applicants must submit proof that the project has been registered for LEED certification<sup>59</sup> and proof that they have applied for certification.<sup>60</sup>

#### D. Solar

Historically, solar panel ordinances enacted by local governments tended to regulate these uses for aesthetic and safety reasons. However, with New York's newly adopted policy on net-metering,<sup>61</sup> which in February 2009 changed the tariffs of six investor-owned utilities to strengthen and promote the installation of small-scale renewable energy programs in homes and businesses, the importance of local laws regulating renewable energy has increased substantially. While some municipalities have enacted local programs designed to incentivize the use of solar energy, zoning ordinances and land use regulations must similarly permit their use. What follows are examples of local laws that affirmatively provide for the use of solar energy.

A number of municipalities, including the Town of Bethlehem,<sup>62</sup> the Town of East Hampton,<sup>63</sup> and the Town of Kent,<sup>64</sup> specifically indicate that solar energy and access to sunlight are important public purposes of their general land use regulations. The Village of Briarcliff Manor enacted a local law that allows solar energy collectors as permitted accessory uses in single-family residential districts, multi-family residential districts, and commer-

cial districts. Various provisions in the law regulate solar energy equipment so as to ensure that it is minimally visible from neighboring properties and public areas.<sup>65</sup> The City of Albany's solar energy regulations permit solar energy equipment as accessory uses in all zoning districts, and the law expressly states that "[w]hile there are aesthetic considerations, the City has determined that the environmental and economic benefits outweigh potential aesthetic impacts." The City requires solar energy equipment to obtain a certificate of appropriateness if located in a historic district, and that ground-mounted equipment may not be located in front yards.<sup>66</sup> The Town of Ithaca enacted a solar law in 2006 that permits rooftop solar collectors in all zoning districts and allows freestanding solar equipment as accessory uses in all districts.<sup>67</sup> The Town's law also requires solar energy equipment to be installed by "qualified solar installers" and regulates the handling and disposal of solar storage batteries.<sup>68</sup>

A number of local laws provide exemptions from height restrictions for solar energy equipment. For example, the City of Amsterdam exempts solar collectors from height restrictions and provides that they shall only be as high as necessary to accomplish the purpose for which they are intended.<sup>69</sup> The Town of Bedford provides that while maximum height limitations shall not apply to solar energy collectors, they may not extend more than 15 feet above the roof, nor cover more than 10% of the roof area.<sup>70</sup>

Municipalities may enact screening requirements and may consider the use of solar overlay zones to accomplish siting goals. The Town of Batavia enacted a local law that specifically provides that consideration should be given to the siting of residences to take best advantage of solar energy and that the zoning board of appeals should take this into consideration when reviewing requests for area variances to accomplish solar energy goals.<sup>71</sup> Other municipalities, including the City of Cohoes<sup>72</sup> and the Town of Bethlehem,<sup>73</sup> provide for similar considerations under site plan review.

Another method used to promote the use of solar energy at the local level is fee waivers or reductions. For example, the Town of Yorktown offers a 50% reduction in the building permit fee where the project includes solar improvements.<sup>74</sup> The Town of Rotterdam exempts projects that include green energy reduction, including solar, from site plan application fees,<sup>75</sup> and the Town of Southampton offers rebates for installation of solar energy systems.<sup>76</sup> Lastly, local governments interested in promoting solar energy should consider the use of incentive zoning to allow for density bonuses in exchange for the installation of renewable energy.

#### E. Wind

Municipalities that have wind potential have increasingly begun to enact regulations governing the siting, construction, operation, and decommissioning of wind

turbines. Wind turbines may be specifically permitted in some zoning districts, and prohibited from others, or they may be allowed only in wind overlay zones.<sup>77</sup> Some type of special permit is typically required, often in conjunction with site design and environmental review.<sup>78</sup> Wind ordinances may include separate provisions for building-mounted turbines, turbines intended to generate energy primarily for on-site use, and larger wind energy facilities intended to supply energy to the grid.

In 2008, New York State's Renewable Energy Task Force recommended that the State commit to realizing the potential of wind energy by, among other things, addressing local siting and permitting issues.<sup>79</sup> Wind power generation has a great potential to reduce reliance on GHG-emitting fossil fuels, but its use brings along a number of objections raised by project opponents. For example, some view wind farms as aesthetically displeasing and raise visual concerns ranging from the destruction of scenic viewsheds to the effect of shadow flicker. Project opponents also typically raise concerns associated with interference with wildlife such as birds and bats, leading the Department of Environmental Conservation to publish, in August 2009, Guidelines for Conducting Bird and Bat Studies for Commercial Wind Energy Projects.<sup>80</sup> Municipalities must be mindful that wind projects require safety regulation; access to the machinery must be restricted due to high voltages; blades can cause ice throw; and occasional machinery failures can lead to fires, oil spills, and flying blades. Additionally, the construction of wind farms, which often entails heavy traffic, significant road repairs and infrastructure improvements, can cause major impacts on host communities.<sup>81</sup>

Local wind laws impose varying height restrictions on wind towers. Some of the height regulations imposed on turbines are maximum values, intended to protect viewsheds and other visual aspects of the landscape.<sup>82</sup> The Town of Bethany, for example, encourages small turbines as "a cost effective mechanism for reducing on-site electric costs[.]" but it does not support large wind facilities, as these would negatively impact viewsheds and possibly lower property values.<sup>83</sup> Accordingly, Bethany's 2008 wind law limits the height of turbines to 80 feet if located on parcels smaller than five acres, and to 150 feet on larger parcels.<sup>84</sup> In contrast, the Town of Cohocton, which permits utility-scale wind energy generation facilities, sets the maximum height at 500 feet.<sup>85</sup>

For safety reasons, wind ordinances also often specify the lowest minimum distance permitted between the ground and the tips of the blades.<sup>86</sup> In Ithaca, for example, the lowest part of the turbine blade must pass no closer to the ground than 30 feet, and for building-mounted turbines, Ithaca requires the blades to be at least 15 feet above any "outdoor surfaces intended for human occupancy... that are located directly below the facility."<sup>87</sup> The Town of Eden's 2004 wind ordinance takes a slightly different approach and measures the 30 foot minimum

turbine blade height from the highest existing structure or tree within a 250-foot radius.<sup>88</sup>

Setback requirements are another regulation commonly found in wind laws, and they serve to mitigate aesthetic impacts as well as to protect adjacent property from turbine dangers such as ice throws and collapses.<sup>89</sup> Nearly all local wind laws require wind turbines to be set back from residences, power lines, public roads, and property lines.<sup>90</sup> The Town of Ellington also specifies setback distances from wetlands and gas wells.<sup>91</sup> Setbacks may be measured as a specific distance, or they may be calculated using a formula based on the turbine's height. In Cohocton, for example, the setback for a non-industrial turbine from property lines and roads is equal to one-and-a-half times its height.<sup>92</sup> Industrial turbines must be set back a distance equal to their height plus 100 feet from property lines, roads, and power lines, and they must also be at least 1,500 feet removed from any residences or areas normally used by the public.<sup>93</sup> The Towns of Ellington and South Bristol use a setback formula based on the estimated ice/blade throw distance.<sup>94</sup>

Height restrictions and setbacks are only two of the ways in which local governments have attempted to mitigate the visual impacts of wind turbines. In addition, many wind ordinances require the completion of a visual impact assessment as part of the permitting process.<sup>95</sup> In Cohocton, the visual impact analysis must address impacts within a five mile radius, and applicants may be required to submit scenic resource maps, viewshed maps, photographic simulations, and suggested visual mitigation strategies.<sup>96</sup> Provisions requiring turbines and blades to be painted in neutral, non-reflective colors are an option, and ordinances may also prohibit wind facilities from displaying advertisements. Lighting issues are usually tied to existing Federal Aviation Administration requirements, and transmission lines are typically required to be placed underground. A few ordinances require wind turbine applicants to assess the "shadow flicker effect." In the Town of Bethany, for example, the shadow flicker must be limited to less than 30 hours per year and 30 minutes per day.

Aside from visual impacts, the noise that can be generated from spinning blades can cause concern. For this reason, a review of local wind laws reveals that they typically impose noise limits of about fifty decibels, measured from adjacent property lines. The Town of Ellington, in addition to a noise limit, requires the establishment of a "noise complaint and investigation process[.]"<sup>97</sup>

Safety provisions make up a large portion of most wind ordinances. Nearly all wind ordinances require an engineer to certify that towers are designed according to appropriate standards, and most require turbines to have automatic and/or manual braking systems. Municipalities typically require applicants to demonstrate that access to the turbines will be limited by fences, locked gates, and/or high climbing pegs. Signs generally have

to be posted to warn any passersby of high voltages and ice throws, although the number and placement of signs varies among local governments. South Bristol's regulations, for instance, require warning signs to be posted at 100-foot intervals along the setback lines, and they must include the text "CAUTION: FALLING OBJECTS."<sup>98</sup> In Ellington, warning signs must include a local phone number for a 24-hour hotline,<sup>99</sup> and in Bethany, warning signs must be located at a height of five feet (eye-level) on the base of any turbine.<sup>100</sup> Other local governments simply require "appropriate" warning signs.<sup>101</sup> Periodic turbine inspection and reporting requirements are also fairly common, as are provisions requiring reports on such things as ice throw calculations, blade throw calculations, and "catastrophic tower failure."<sup>102</sup> And because none of these safety provisions are fail safe, most applicants are required to obtain liability insurance.

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Many local wind laws also include a section on decommissioning, requiring the applicant to submit a decommissioning plan and to post a performance bond.<sup>103</sup> Because the construction of wind farms can result in vegetation clearance and road damage, many ordinances also require performance bonds to ensure that applicants restore any areas affected by construction.<sup>104</sup> Host community agreements have also been used to address some of these concerns.<sup>105</sup>

### III. Conclusion

There is no doubt that this article just begins to scratch the surface of cataloging hundreds of efforts at the local government level to address climate change and covers only initiatives most closely related to land use planning and regulations. Local governments must continue these efforts, and do more to effectively meet the challenges posed by global warming. The Government Law Center of Albany Law School is creating an online database of local laws designed to address green development. If your municipality has adopted resolutions, executive orders, and legislation not mentioned in this article, please send a link to where the information may be accessed to [psalk@albanylaw.edu](mailto:psalk@albanylaw.edu).

### Endnotes

1. eRedux.com, New York Energy Consumption & New York's Carbon Footprint, [http://www.eredux.com/states/state\\_detail](http://www.eredux.com/states/state_detail).

2. Specifically, the law directs NYSERDA to: (1) develop and establish standards and criteria for a new green residential building grant program, and consult existing standards and criteria, such as those established by the United States Green Building Council under its Leadership in Energy and Environmental Design (LEED) programs and the American National Standards Institute (ANSI), in developing such standards; and (2) develop and establish other standards and criteria that are necessary for the administration of the program (such as eligibility criteria, training and qualification procedures for builders and technicians, application procedures, award determinations, award levels, and inspection, documentation and compliance requirements). The new law further provides that: The amount of the grants will be based on a number of considerations, including the size and the type of the residential structure, but may not exceed \$7,500 for one-family and two-family homes, \$11,250 for residential buildings with three to six dwelling units, and \$15,000 for residential buildings with more than six dwelling units. In addition to these limitations, no single owner, such as a developer of multiple qualified residential buildings who is a qualified owner, may receive more than \$120,000 in incentive payments during any calendar year. See Chapter 631 of the New York Laws of 2008 (S. 8134-B).
3. Nyserdera.org, Local Government/Municipalities, <http://www.nyserdera.org/municipalities/default.asp>.
4. Nyserdera.org, Local Government Sustainability Initiatives in New York State, [http://www.nyserdera.org/programs/Green\\_Buildings/local\\_gov.asp](http://www.nyserdera.org/programs/Green_Buildings/local_gov.asp).
5. See N.Y.S. Department of Environmental Conservation, Climate Change Office, Climate Smart Communities, <http://www.dec.ny.gov/energy/50845.html> (last visited Oct. 4, 2009) (The Pledge has ten primary components: (1) Pledge to combat climate change by becoming a climate smart community; (2) set goals, inventory emissions, move to action; (3) decrease energy demand for local government operations; (4) encourage renewable energy for local government operations; (5) realize benefits of recycling and other climate smart solid waste management practices; (6) promote climate protection through community land use planning; (7) plan for adaptation to unavoidable climate change; (8) support a green innovation economy; (9) inform and inspire the public; and (10) commit to an evolving process.).
6. See N.Y.S. Department of Environmental Conservation, Climate Partners, <http://www.dec.ny.gov/energy/56876.html> (last visited Oct. 4, 2009).
7. N.Y.S. Exec. Order No. 2 (2009), available at [http://www.state.ny.us/governor/executive\\_orders/exeorders/eo\\_2.html](http://www.state.ny.us/governor/executive_orders/exeorders/eo_2.html).
8. New York State Energy Plan, <http://nysenergyplan.com/> (last visited Oct. 4, 2009).
9. New York State Energy Plan—Events, <http://www.nysenergyplan.com/events.html> (last visited Oct. 4, 2009).
10. N.Y.S. Exec. Order No. 24 (2009), available at [http://www.state.ny.us/governor/executive\\_orders/exeorders/eo\\_24.html](http://www.state.ny.us/governor/executive_orders/exeorders/eo_24.html).
11. See, e.g., Town & Village of Coxsackie Community Plan, <http://www.coxsackiecommunityplan.net/actionitemsummary.pdf> (Goal VIII, action item 4.2, providing in part that the municipalities "Work to evaluate and promote alternative energy sources at larger development projects") and Town of Bethlehem Comprehensive Plan and Generic Environmental Impact Statement, <http://www.townofbethlehem.org/images/pageImages/EcoDevAndPlan/Comprehensive%20Plan%20FGEIS%20082405%20Per%20Saratoga.pdf> at 6, 11 (including a goal to "Promote energy efficiency and conservation, and the use of renewable energy in the Town" by focusing on both public and private buildings). The Village of Altamont has proposed a detailed set of action items to support its sustainability initiative: "Objective 5.1: To explore and implement where feasible "green" and environmentally sustainable programs in the Village...

- Explore and implement ways to use solar power/wind power for municipal facilities, thereby promoting energy efficiency through its use. iii. Establish zoning and development standards that encourage use of and remove impediments to using solar and green buildings... Encourage the use of Leadership in Energy and Environmental Design (LEED) standards for new development and redevelopment of buildings and sites in the Village. ii. Utilize environmentally-friendly materials where possible in municipal operations and construction and redevelopment of buildings and sites within the Village. iv. Encourage and offer incentives for cooperative sharing of residential solar power... Develop incentives to encourage private landowners to implement green building programs. i. Consider use of a density bonus to developers willing to undertake utilization of green building methods." Village of Altamont Comprehensive Draft Plan, <http://altamontvillage.org/complanone.htm>.
12. For example, Mayor Jennings of the City of Albany announced that he signed the U.S. Conference of Mayors Climate Change Agreement and that he set up a planning committee to evaluate what Albany needs to do. Mayor Gerald D. Jennings, State of the City Address, <http://albanyny.gov/Files/StateOfCity.pdf> at 24 (last visited Oct. 4, 2009).
  13. Renewable Energy Task Force, First Report to Lt. Governor David A. Paterson, *Clean, Secure Energy and Economic Growth: A Commitment to Renewable Energy and Enhanced Energy Independence* (February 2008), [http://www.ny.gov/governor/press/lt\\_RETF\\_Report.pdf](http://www.ny.gov/governor/press/lt_RETF_Report.pdf).
  14. *Id.*
  15. See Keith H. Hirokawa, *At Home with Nature: Early Reflection on Green Building Laws and the Transformation of the Built Environment*, 39 *Env'tl. L.* 507, 529-539 (2009) (discussing the roles of incentive programs and the greening of municipal buildings as largely responsible for the explosion of interest in green building).
  16. USMayors.org, List of Participating Mayors—Mayors Climate Protection Center, <http://www.usmayors.org/climateprotection/list.asp> (In the Capital Region, the following municipalities have signed on: City of Albany, City of Schenectady, City of Watervliet.). By signing the agreement, municipalities agree to strive to reduce greenhouse gas emissions by, among other things, enacting anti-sprawl land use policies, and to support lobbying efforts before statehouses and Congress designed to reduce greenhouse gas emissions.
  17. City of New York, Local Law No. 55 (2007), available at [http://www.nycouncil.info/pdf\\_files/bills/law07055.pdf](http://www.nycouncil.info/pdf_files/bills/law07055.pdf).
  18. NYC.gov, PLANYC 2030, <http://www.nyc.gov/html/planyc2030/html/home/home.shtml>.
  19. City of New York, Local Law No. 55 (2007), available at [http://www.nycouncil.info/pdf\\_files/bills/law07055.pdf](http://www.nycouncil.info/pdf_files/bills/law07055.pdf).
  20. County of Westchester, Resolution No. 149 of 2008., <http://www.ecode360.com/?custId=WE0640>.
  21. Town of New Castle, Local Law No. 6, §§ 7-1 to 7-3 (2008), codified at New Castle Code pt. I, available at <http://www.ecode360.com/?custId=NE0395>. In its findings statement, the Town acknowledged that "climate change poses a real and increasing threat to our local and global governments and that it is due to greenhouse gas emissions" and that "[o]ur response to climate change provides us with an unprecedented opportunity to implement environmentally sustainable practices to protect and enhance the quality of life for future generations of the Town[.]" The law explains that "sustainable practices and programs are those designed to promote efficient and wise use of resources and materials such as: (i) using renewable energy sources, (ii) implementing reduce, reuse, and recycle programs to minimize the amount of solid waste generated and to conserve natural resources, (iii) protecting the quality and quantity of our water supplies, and (iv) ensuring that new construction is built to minimize impact on the environment."
  22. Town of New Castle, Local Law No. 6 (2008). <http://www.ecode360.com/?custId=NE0395>.
  23. Mayor Gerald Jennings, Executive Order No. 422-09, available at <http://albanyny.gov/Files/Exec%20Order%20Template%202.pdf>.
  24. *Id.*
  25. *Id.*
  26. Irondequoit Environmental Sustainability Task Force, Final Report, (Sept. 17, 2007) (adopted by the Town Board October 17, 2007), available at <http://www.irondequoit.org/images/SupervisorColumns/etfadoptedrp.pdf>.
  27. Town of Babylon, Local Law No. 23 (2006), available at <http://www.ecode360.com/?custId=BA0924>.
  28. Town of Brookhaven, Local Law No. 24 (2006), available at <http://www.ecode360.com/?custId=BR0012>.
  29. Village of Great Neck, Bill 11 (2008) (Energy Conservation Construction Code).
  30. Town of Greenburgh, Local Law No. 3-2002(2002), available at <http://www.ecode360.com/?custId=GR0237>.
  31. Town of Huntington, Local Law No. 24 (2007), available at <http://www.ecode360.com/?custId=HU0566>.
  32. Village of North Haven, Local Law No. 1 (2008), available at <http://www.ecode360.com/?custId=NO1009>, Pt. II, Ch. 55, Art. I, § 55-4 (K) (1).
  33. Town of North Hempstead, Local Law No. 12 (2008), available at <http://www.ecode360.com/?custId=NO0081>.
  34. Town of Oyster Bay, Local Law No. 12 (2006), available at [http://gcp.esub.net/cgi-bin/om\\_isapi.dll?clientID=50615&infobase=oyster.nfo&softpage=Browse\\_Frame\\_Pg42](http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=50615&infobase=oyster.nfo&softpage=Browse_Frame_Pg42).
  35. Town of Riverhead, Local Law No. 55 (2006), available at <http://www.ecode360.com/?custId=RI0508>.
  36. Town of Southampton, Local Law No. 58 (2008), available at <http://www.ecode360.com/?custId=SO0286>.
  37. See Long Island Power Authority News, *LIPA Lauds Brookhaven's Move to Require E-Star Homes*, available at [http://www.lipower.org/newscenter/pr/2006/062806\\_brookhaven.html](http://www.lipower.org/newscenter/pr/2006/062806_brookhaven.html) (explaining that LIPA gave municipalities \$25,000 grants to adopt Energy Star standards).
  38. LIPA | Efficiency | NY Energy Star Labeled Homes, [http://www.lipower.org/efficiency/nyesh\\_builder.html](http://www.lipower.org/efficiency/nyesh_builder.html).
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  41. NYSEKDA—New Construction Program, [http://www.nyserda.org/programs/New\\_Construction/default.asp](http://www.nyserda.org/programs/New_Construction/default.asp) (last visited Oct. 4, 2009).
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  45. See, e.g., County of Nassau, Local Law No. 16 (2007), available at [http://gcp.esub.net/cgi-bin/om\\_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse\\_Frame\\_Pg42](http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse_Frame_Pg42); City of New York,

- Local Law No. 86 (2005), available at [http://www.nyc.gov/html/dob/downloads/pdf/il\\_86of2005.pdf](http://www.nyc.gov/html/dob/downloads/pdf/il_86of2005.pdf).
46. See, e.g., Town of Babylon, Local Law No. 40 (2006), available at <http://www.ecode360.com/?custId=BA0924>.
  47. A word of caution for practitioners about incorporating LEED certification into local laws—the LEED certification standards continue to evolve, and what may be understood as required today, may not be enough to satisfy the criteria in the future. Furthermore, many discussions have been taking place at conferences over the last year about the impact of requiring LEED certification and housing affordability.
  48. County of Rockland, Local Law No. 14 § 3(2008), available at <http://www.ecode360.com/?custId=RO1021>.
  49. County of Rockland, Local Law No. 14 § 4(2008), available at <http://www.ecode360.com/?custId=RO1021>.
  50. Village of East Aurora, Local Law No. 8 (2007), available at <http://www.ecode360.com/?custId=EA0398>.
  51. Town of Riverhead, Local Law No. 32 (2008), available at <http://www.ecode360.com/?custId=RI0508>.
  52. City of New York, Local Law No. 86 (2005), available at [http://www.nyc.gov/html/dob/downloads/pdf/il\\_86of2005.pdf](http://www.nyc.gov/html/dob/downloads/pdf/il_86of2005.pdf).
  53. County of Nassau, Local Law No. 16 §§ 3-4 (2007), available at [http://gcp.esub.net/cgi-bin/om\\_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse\\_Frame\\_Pg42](http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse_Frame_Pg42), (projects smaller than 5,000 are not covered).
  54. County of Nassau, Local Law No. 16 § 6 (2007), available at [http://gcp.esub.net/cgi-bin/om\\_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse\\_Frame\\_Pg42](http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=50640&infobase=na2789.nfo&softpage=Browse_Frame_Pg42), (exemptions).
  55. Establishing High Performance Green Building Standards For County Of Ulster New Construction Projects, Ulster County, Resolution No. 393 (Nov. 8, 2006), available at <http://www.co.ulster.ny.us/resolution-archives/2006/383-06.pdf>.
  56. Town of Babylon, Local Law No. 40 § 89-86 (A) (2006), available at <http://www.ecode360.com/?custId=BA0924>.
  57. *Id.* at § 89-86 (C). See <http://www.greenerbuildings.com/blog/2008/03/11/leed-certifi-able-vs-leed-certified> for commentary on the difference between LEED certified and LEED certifiable.
  58. *Id.* at § 89-86 (B).
  59. See <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=65>.
  60. Local Law No. 5, City of Peekskill, Peekskill City Code § 575-38 M-1 (2008), available at <http://www.ecode360.com/?custId=PE0161>.
  61. PUBLIC SERVICE COMM'N, *PSC Gives Green Light to Clean Energy*, available at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/2CF6704A17B63B6B8525755B005F929C/\\$File/pr09010.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/2CF6704A17B63B6B8525755B005F929C/$File/pr09010.pdf?OpenElement).
  62. "The purposes of objectives of this chapter are to... (8) To facilitate, as far as environmental conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor." Town of Bethlehem, Ch. 128 Zoning, § 128-8 (2006), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?custId=BE1011&guid=8993782>.
  63. "(2) It is the Planning Board's policy to encourage the use of alternative energy sources, including but not limited to solar, wind and water power, as a conservation measure." Town of East Hampton, Ch. 220, § 220-1.05 (1999), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=8163507&j=256>.
  64. "This chapter is adopted to protect and promote the health, safety, comfort, convenience, economy, aesthetics and general welfare and for the following additional purposes:...(7) To make provision for access to sunlight and the accommodation of solar energy systems and equipment and other alternative energy systems." Town of Kent, Ch. 77 § 77-2 (2008), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=8322939&j=256>.
  65. Village of Briarcliff Manor, Local Law No. 3 (2007), available at <http://www.ecode360.com/?custId=BR1701>.
  66. City of Albany, Albany City Code, Article XIV, § 375-9 (1995), available at <http://www.ecode360.com/?custId=AL0934>.
  67. Town of Ithaca, Local Law No. 11 of (2006), available at <http://www.ecode360.com/?custId=IT1944>.
  68. *Id.*
  69. City of Amsterdam, Ch. 250 § 250-15 (1992), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=8071006&j=256>.
  70. Town of Bedford, Ch. 125 § 125-20 (1983), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=6237436&j=256>.
  71. Town of Batavia, Ch. 235 § 235-61 (2000), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=8983839&j=256>.
  72. City of Cohoes, Ch. 285 § 285-127 (2006), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=8476691&j=256>.
  73. Town of Bethlehem, Ch. 128 § 128-71 (2008), available at <http://www.ecode360.com/?custId=BE1011>.
  74. Town of Yorktown, Local Law 4-2008 § 130-4 (2008), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=6849802&j=256>.
  75. Town of Rotterdam, Ch. 270 § 270-137 (2009), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?&guid=7093522&j=256>.
  76. Town of Southampton, Ch. 176 § 176-1 (2006), available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?custId=SC00286&guid=8695756>; see also *id.* at § 176-2, available at <http://www.ecode360.com/ecode3-back/getSimple.jsp?custId=SC00286&guid=8695759>.
  77. POWER NATURALLY, WIND ENERGY MODEL ORDINANCE OPTIONS 3 (2004), available at [http://www.powernaturally.org/Programs/Wind/toolkit/2\\_windenergymodel.pdf](http://www.powernaturally.org/Programs/Wind/toolkit/2_windenergymodel.pdf).
  78. *Id.*
  79. Renewable Energy Task Force, First Report to Lt. Governor David A. Paterson, *Clean, Secure Energy and Economic Growth: A Commitment to Renewable Energy and Enhanced Energy Independence* (Feb. 2008), available at [http://www.ny.gov/governor/press/lt\\_RETf\\_Report.pdf](http://www.ny.gov/governor/press/lt_RETf_Report.pdf).
  80. NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, GUIDELINES FOR CONDUCTING BIRD AND BAT STUDIES AT COMMERCIAL WIND ENERGY PROJECTS, available at [http://www.dec.ny.gov/docs/wildlife\\_pdf/finwindguide.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/finwindguide.pdf).
  81. See generally POWER NATURALLY, OTHER POTENTIAL ENVIRONMENTAL IMPACTS (2004), available at [http://www.powernaturally.org/Programs/Wind/toolkit/5\\_otherpotenviroimpactsrevised.pdf](http://www.powernaturally.org/Programs/Wind/toolkit/5_otherpotenviroimpactsrevised.pdf); see also POWER NATURALLY, AGRICULTURAL IMPACTS RESULTING FROM WIND FARM CONSTRUCTION (2004), available at [http://www.powernaturally.org/Programs/Wind/toolkit/7\\_visualimpactupfront.pdf](http://www.powernaturally.org/Programs/Wind/toolkit/7_visualimpactupfront.pdf).
  82. See Patricia E. Salkin, *Planning & Zoning for Wind Power in New York*, GOVERNMENT LAW ONLINE, Sept./Oct. 2005, at 4, available at [http://www.governmentlaw.org/files/ZLPR-Planning\\_Zoning\\_windpower.pdf](http://www.governmentlaw.org/files/ZLPR-Planning_Zoning_windpower.pdf).
  83. Town of Bethany, Local Law No. 1, Section IV (2008).
  84. Town of Bethany, Local Law No. 1 (2008), available at <http://www.townofbethany.com/other%20pdf%20files/WindEnergyZoningAmendments.pdf>.
  85. Town of Cohocton, Windmill Local Law (2006), available at <http://www.gflrpc.org/programareas/wind/LL/CohoctonWindmillLaw.pdf>.
  86. WIND ENERGY, *supra* note 77, at 5.

87. City of Ithaca, § 270-219.4.
88. Town of Eden, Local Law No. 3, § 217-4(C)(11)(2004), available at <http://www.ecode360.com/?custId=ED1729>.
89. See generally WIND ENERGY, *supra* note 77 (discussing setbacks); POWER NATURALLY, ASSESSING AND MITIGATING VISUAL IMPACTS (2004), available at [http://www.powernaturally.org/Programs/Wind/toolkit/6\\_visualimpactupfront.pdf](http://www.powernaturally.org/Programs/Wind/toolkit/6_visualimpactupfront.pdf) (discussing visual impacts); David Wahl & Philippe Giguere, *Ice Shedding and Ice Throw—Risk and Mitigation*, GE ENERGY (2006), available at [http://www.gepower.com/prod\\_serv/products/tech\\_docs/en/downloads/ger4262.pdf](http://www.gepower.com/prod_serv/products/tech_docs/en/downloads/ger4262.pdf) (discussing ice throw mitigation).
90. WIND ENERGY, *supra* note 77.
91. Town of Ellington, Local Law No. 1, § 12(E)(3), (4).
92. Town of Cohocton, Windmill Local Law § I(b)(1) (2004), available at <http://www.gflrpc.org/programareas/wind/LL/CohoctonWindmillLaw.pdf>.
93. Town of Cohocton, Windmill Local Law § II(B)(1) (2006), available at <http://www.gflrpc.org/programareas/wind/LL/CohoctonWindmillLaw.pdf>.
94. Town of South Bristol, § 170-40 (B)(1) (residential), § 170-41 (B)(1) (commercial).
95. See, e.g., City of Lackawanna, § 230-85 (A)(c).
96. Town of Cohocton, *supra* note 93.
97. Town of Ellington, Local Law No. 1, § 12(A), (G).
98. South Bristol, Local Law No. 2, § 170-40(D)(1) (2003), available at <http://www.gflrpc.org/programareas/wind/LL/TofSouthBristol.pdf>.
99. Town of Ellington, Local Law No. 1, § 10(7)(1).
100. Town of Bethany, Local Law No. 1 § 5(D)(11) (2007), available at <http://www.townofbethany.com/other%20pdf%20files/WindEnergyZoningAmendments.pdf>.
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104. See, e.g., Cohocton, N.Y., Windmill Local Law § I(F)(4) (Jan. 6, 2006), available at <http://www.gflrpc.org/programareas/wind/LL/CohoctonWindmillLaw.pdf>.
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Patricia E. Salkin is the Raymond & Ella Smith Distinguished Professor of Law at Albany Law School where she also serves as Associate Dean and Director of the Government Law Center. She is the author of *New York Zoning Law & Practice*, 4th ed., and *American Law of Zoning*, 5th ed. The author is grateful for the assistance of Amy Lavine, Esq. of the Government Law Center and Albany Law School students Robin Wheeler '10 and Michael DeRise '11.

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