A Citizen’s Guide to Residential Development
Western Sullivan County and the Upper Delaware River Basin

Prepared for the Upper Delaware Preservation Coalition
by the Columbia University Urban Design Research Seminar  Spring 2008
Preface

This publication originated with a Spring Semester 2008 Urban Design Research Seminar at the Columbia University Graduate School of Architecture, Planning and Preservation, under the direction of Professor Richard Plunz. The principal collaborator in this work has been the Upper Delaware Preservation Coalition (UDPC). Additional collaborators included the Open Space Institute (OSI) and the Urban Design Lab (UDL) at Columbia’s Earth Institute. This guide to residential development is seen as a response to the past decade of unprecedented subdivision planning and construction within the Upper Delaware River basin. In part, this work is intended to augment the initiative of the Upper Delaware Roundtable that has recently produced a GIS mapping of large approved development projects within eight counties bordering the Upper Delaware. It is available from local county planning departments. This study provides further detail study for western Sullivan County, where development pressure has been particularly intense. This UDPC initiative is a sequel to a similar research seminar conducted last year that resulted in the publication A River Endangered. Proposed Power Transmission and Its Impact on Cultural History along the Upper Delaware River (2007), available from the UDPC.

Acknowledgements

We are appreciative of the support of local organizations and individuals within the Upper Delaware River valley that helped make this publication possible. The impetus for this work began in January 2008 with preparation for a field study visit to the Upper Delaware conducted on February 15-16. For logistical and other support during this visit we are especially indebted to the Upper Delaware Preservation Coalition for support of both the seminar and this publication; also to the Roebling Inn in Lackawaxen, Pennsylvania for accommodation; and to ECCE in Barryville, for hosting a community forum. In particular we wish to thank DeJay Branch, Troy Bystrom, Daria Dorosh, Donald and JoAnn Jahn, Maria Paola Sutto, John Tomlinson, and Allan Rosenblatt. We are also most appreciative for help in connecting with several other organizations: to Lee and Reid Badger, Laurie McFadden, and Mary Lucier of Keep Cochecton Rural; Jonathan Hyman of Preserve Smallwood County Life; Denise Frangipane of the Bethel Woods Center for the Arts; Frank Bernarducci of Friends of Crawford Road; Fran Hepburn and Martin denBoer of Friends of Callicoon Mountain; Commissioner William J. Pammer, Jill Weyer and Edward Camp of the Sullivan County Division of Planning & Community Development. At Columbia, on March 27, a review of the work in progress was held with many of the above persons attending. During the semester additional resources were provided by Peter Nye of the New York State Department of Environmental Conservation for location of endangered species; Ryan Trapani of the Catskill Forest Association for forestry conservation; and Cynthia Rosenzweig, Stuart Gaffin, and Radley Horton of the Columbia Center for Climate Systems Research for projections on climate change. Above all, we are indebted to Jennifer Grossman, Abigail Weinberg, and Gillian Weber of the Open Space Institute, for their participation and guidance in developing this work from the beginning; and to the Urban Design Lab for technical assistance related to the seminar research and the production of this report.

Collaborators

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Front and Back Covers: Upper Delaware summer and winter as seen from ECCE near Barryville.
The Upper Delaware is many things to many people. Most basically, however, it is a natural watershed basin, and its future lies with recognition of this fundamental geographic condition, for both its natural and social ecologies. Until recently, it has been a region dominated by agriculture and river-related transportation and enterprise. Even as the East Coast metropoli grew larger and larger, the Upper Delaware kept a coherent physical identity and social enterprise. While obviously dependent on its larger context, that context did not overwhelm. The Upper Delaware was discrete and distant. For much of the 20th century, as local enterprise atrophied, the basin became more insular - a kind of “place that time forgot.” Now it is precisely this idyll which is both the attraction and the demise of the region, as it is being re-discovered through urban expansion. Residential development has grown together with associated environmental impacts.

This Citizens’ Guide reflects the growing need within the region for a public understanding of the complexities of the residential development process within the watershed of the Upper Delaware River basin.

In these pages the reader will find an overview of issues related to the effects of residential development on the natural and social ecologies of the region. One can also find an explanation of the official review processes and public recourse related to development projects. And there are several case-studies to illustrate these processes and developmental conflicts pro and con. These latter are drawn from western Sullivan County where the recent rate of population growth has been highest. In one way or another, however, the same issues will apply elsewhere within the Upper Delaware basin.

While larger-scale subdivisions may have adverse impacts, even individual houses in sensitive locations can be damaging to the environment.
**A Citizens' Guide to Residential Development**

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- The Watershed and the Community

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The Delaware River Watershed, showing its relationship of Sullivan County, to the New York City, Trenton and Philadelphia metropolitan areas.
The Watershed and the Community

All residents of the Upper Delaware are integral to a fragile watershed. The simple fact that water flows downhill is quickly complicated by the fact that landscape alteration is incurred by the numerous systems that rely on this life-giving resource for survival. The intricate webs of native natural ecologies along the Upper Delaware River are vital for maintaining healthy flora and fauna. This eco-system is stressed when human development causes land disturbance and water pollution.

The Delaware River watershed runs on a North-South axis which begins in the Adirondack Mountains in New York State and terminates in the water estuary of the Chesapeake Bay in the states of Maryland and Virginia. The river itself divides the states of New York and Pennsylvania. The river and naturally flows from North to South. Four main tributary watersheds feed the main Upper Delaware basin. The protection of the Upper Delaware as a Wild and Scenic River designated by the Federal Government in 1978 is in part recognition of its crucial position within the whole river basin. In a region experiencing exponential growth like western Sullivan County, which lies in the heart of this watershed, any change or impact in this upstream area will have a significant impact to neighboring communities downstream.

Water knows no political boundary and is best understood when seen in its relationship to all the community stakeholders. The environmental conflicts are as complex as the players involved: governments, residents, developers, tourists; as well as the voiceless participants: the fish, deer, birds and native plants. This guide is intended to better inform existing and new residents in western Sullivan County and the greater Upper Delaware River valley of the economic, political and environmental systems that are impacted by new residential development.
The water diversion routing from the Upper Delaware Watershed to New York City

How do we share the water?

Today, the 9 million residents of the City of New York get their water from numerous reservoirs located in the Catskills. The earliest tunnels and aqueducts serving the City were operating in 1842, pulling water from the Croton Reservoir located in Westchester and Putnam counties. To increase the volume of water, the Croton system was substantially expanded between 1866 and 1911 but remained inadequate until the Catskill system was built, in 1907 and in use by 1917. This system exhausted the supply within the Hudson River watershed, so in 1931 a U. S. Supreme Court decision allowed New York City to divert 440 million gallons per day from the Upper Delaware watershed. This was water that had no natural relationship to the City and its ecological region. In 1951 the new Delaware aqueduct was in operation from the Rondout Reservoir, augmented by the Neversink (1953), Pepacton (1955) and Cannonsville Reservoirs (1964).

The diversion of the Delaware had a direct impact on the Upper Delaware basin and the habitats and cities located further downstream. A number of cities and towns including Philadelphia and Trenton are dependent upon the flow of the Delaware River, and their need must be balanced with the needs of New York City. Because Upper Delaware water quality is the highest in its system, the City of New York maintains its Delaware reservoirs at or above “drought watch levels” to meet quality standards. This leaves the runoff schedules into the Delaware River in controversy as excessively low river flow increases water temperature; and excessive releases causes flooding downstream as well as disturbances to cold water fisheries downstream. Recent large-scale flooding events on the Upper Delaware have been traced at least in part to the reservoir release practices (August 2004, April 2005, June 2006). Increasing suburban development within the Upper Delaware watershed begins to conflict with strict maintenance of river water quality affected by surface runoff and discharges from septic systems.

View of the restored Roebling Bridge connecting Pike County in Pennsylvania and Sullivan County in New York State. Other cultural landmarks remain threatened including the Pond Eddy Bridge further downstream.
Endangered Watershed Natural Species

The Upper Delaware Watershed is a delicate ecosystem supporting an intricate web of plant and wildlife habitats. Human activity such as increased development and density adds pressure to these systems threatening the native environment.

The Timber Rattlesnake is a non-aggressive reptile that depends on undisturbed habitats in order to survive within exact thermal conditions. Increases in development within western Sullivan County have led to a large decrease in their numbers. Recently, an amphibian specialist, with the New York Department of Conservation reported “seeing a 65% reduction in the number of rattlesnakes in the Narrowsburg area” (Randy Stechert as quoted in The River Reporter March 5, 2008). The Timber Rattlesnakes are considered rare and are protected. The rattlesnake plays a key role in the balance of the river habitat, feeding on mice, voles and gray squirrels as well as being prey for owls and hawks.

Found along the riverbeds of the fresh waters of the Delaware River and its tributaries, the Dwarf Wedge Mussel feeds on algae and other small suspended particles. These small, brown to yellowish brown mussels are dependent on reproducing fish in the waters, latching on to bottom feeding fish to disperse its larvae offspring. The Dwarf Wedge Mussel can live up to 10 years and depend upon stable reproduction schedules to maintain their populations. These mussels are found in only 17 sites along with Atlantic Coast (once found in over 70), with the Neversink River in Orange County having the largest concentration. Along with the Federal Government, the State of New York has placed the Dwarf Wedge Mussel on the endangered list.

Although it has been removed from the Department of the Interior’s Endangered Species List, the American Bald Eagle, the icon of American freedom and democracy, is still considered threatened and protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Bald Eagles have made a remarkable comeback in the Delaware and Hudson River valleys, reaching a population of around 200 in the Delaware and Hudson River Valleys during the winter, when they make their way south because the rivers further north are iced over. The eagles winter over in Western Sullivan County and require undisturbed areas. Construction development disturbs their habitat.
Location of eagles nests in proximity to several residential subdivision studied in this document.

The deer population is domesticated as development spreads, offsetting previous natural habitats.
The Human Habitat

Human developmental practice impacts not only plant and animal species but can also create difficulties for people. The impact of any development project depends on the particular details of the build-out and the sensitivities of the land it is disturbing. Aspects include the proximity to fresh water resources, waste water discharges, landscape and topography, and the use of polluting materials and chemicals in construction and landscaping.

Activities in one community can alter and affect the environment of another, yet the review process that permits such development activities does not often take into consideration adverse environmental impacts that occur outside the immediate area of disturbance. In addition, the factors that affect the natural environment from development are just beginning to be seen and realized after decades or traditional building activities. A better understanding of these networks can help residents to better adapt to the delicate watershed they live within.

But the questions do not stop here. There is also a global component. Human-driven global environmental change is just beginning to be felt within the Upper Delaware basin; including growing evidence of climate change caused by global warming. For the Upper Delaware region, the Columbia University Center for Climate Systems Research has projected that the average temperature increase may be 1.5°C (3.2°F) by the 2020’s; and 4°C (8.5°F) by the 2080’s. This change will force new understanding about how we relate to our environment, including new criteria for environmental planning and residential subdivision.

For example, increasingly intense and localized storms will happen, the type that occurred in June 2007 on the Beaverkill River near Roscoe, in which homes were destroyed and residents killed. The fragile Upper Delaware ecology will be at stake. For example, clear-cutting of ridge tops and steep slopes will invite a very destructive erosion of thin soil layers, especially in a new era of strong storm events. And there are health concerns effecting all species. For example, the Hemock, a staple of the Upper Delaware ecology, is under serious decline caused by invasion of the Woolly Adelgid from the south. Since 2000, with the current temperature rise, slight as it is, this devastating insect is already prevalent in numbers that threaten the ecological and aesthetic identity of much of the Upper Delaware.

Of equal concern is the increasing deer tick population that is attributable in part to increasing temperatures. With it comes the threat of Lyme disease. Also of concern is the increasing deer population itself, encouraged in part by milder winters. With the deer come not only the ticks, but the significant increase in forest ground cover defoliation. Along the Upper Delaware, the natural systems are now totally intertwined with human activity, and the recent new threshold of residential development has been an important catalyst in this changing relationship.

The growth of population in Sullivan County is projected to exceed the New York State average in the next two decades; with recent home sales as a harbinger of what may be to come.
The Population of Sullivan County has increased by 6.8% from 1990 to 2000 making it the fastest growing county in New York. The median housing value has increased from $93,000 in 2000 to $190,000 in 2005. Factors that influence the growth underscored that Sullivan County is a desirable place to live, given forested wilderness, affordability, social impacts of 9/11, increase in the second home market, and the close proximity to New York City.

www.catskills.com/liveWork/factsStats

Affecting the ecosystem is the Hemlock Woolly Adelgid. Nearly the size of a speck of pepper, these aphid-like insects feed on riverside hemlock groves. Native to China and Japan, the woolly adelgid is now found within 12 states, including the Upper Delaware. The increased numbers decimate the trees, with major impact on the river basin ecosystem. This is only one example of the complexity of the natural habitat and its impact on both humans and the river valley.

With warmer winters come increased populations of insects, adding stress to both environmental and human habitats. With an increase in development, the additional stress is compounded. Due to shrinking habitat there has been a decrease in predators of deer, and higher risks of ticks carrying Lyme disease.

Climate Change is an issue of global concern, two projections have been conducted for the Upper Delaware region. The charts display the estimated temperature increase within a time frame of 30 year intervals. The red bars indicate the extreme high levels of Greenhouse gases emitted into the air while the orange bars displays the lowest levels. ECHAM (European Centre Hamburg Model ) and HADLEY (Hadley Centre for Climate Prediction and Research) are two different resources utilized to compare global climate models.
1601

1684

1800

1809

1834

March 10, 1904 [100 Year Flood]

<table>
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<tr>
<th>Year</th>
<th>Farm Ownership 1920</th>
<th>Farm Acreage 1920</th>
<th>Year</th>
<th>Farm Ownership 1925</th>
<th>Farm Acreage 1925</th>
<th>Year</th>
<th>Farm Ownership 1930</th>
<th>Farm Acreage 1930</th>
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<tr>
<td>1930</td>
<td>3,543</td>
<td>414,841</td>
<td>1930</td>
<td>3,163</td>
<td>298,303</td>
<td>1930</td>
<td>2,979</td>
<td>286,503</td>
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<tr>
<td>1946</td>
<td>3,208</td>
<td>297,065</td>
<td>1946</td>
<td>2,778</td>
<td>254,304</td>
<td>1946</td>
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August 18, 1955, 1904 [100 Year Flood]

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<th>Year</th>
<th>Farm Ownership 1950</th>
<th>Farm Acreage 1950</th>
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<tr>
<td>1959</td>
<td>1,881</td>
<td>191,978</td>
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1964
The musical festival of Woodstock was organized with 500,000 people inhabiting the county of Ulster for a three day event.

Europeans and Japanese investment in acres of farmland.

Woodstock ’94 was the 25th Anniversary event for the famed festival. This event was held in town of Saugerties in Sullivan County with 350,000 people in attendance.

September 11th - Attack on the World Trade Center, 25,000 residents moved out of the city into suburban and rural communities.

Population in Sullivan County is 73,966 inhabitants.

First Earth Day occurs in Seattle Washington.

Oil Crisis effects the US in retaliation of OAPEC band to nations supporting Isreal.

Scientist warn that Global Warming may effect the future of American Farming.

United States enters the Persian Gulf War.

United States enters the Iraq War.

Bethal Woods Center opens to the public.

NYRI power line proposed.

1969
March 21, 1980 [100 Year Flood]

1970
February 12, 1981 [100 Year Flood]

1973
April 21, 1983 [100 Year Flood]

1980
April 12, 1981 [100 Year Flood]

March 21, 1980 [100 Year Flood]

1988
Farm Ownership 1982:

460

Farm Acreage 1982:

75,000

1990
Farm Ownership 1982:

375

Farm Acreage 1982:

63,000

1994
Farm Ownership 1997:

56,002

Farm Acreage 1997:

58,067

1999
Farm Ownership 1997:

310

Farm Acreage 1998:

60,900

2000
Farm Ownership 1997:

235

Farm Acreage 2003:

63,500

2001
Farm Ownership 2002:

235

Farm Acreage 2006:

62,700

2007
Farm Ownership 2002:

235

Farm Acreage 2007:

62,700

Scientist warn that Global Warming may effect the future of American Farming.

United States enters the Persian Gulf War.

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1994
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1980
Oil Crisis effects the US in retaliation of OAPEC band to nations supporting Isreal.
How Many Swimming Pools Go Downstream?

New Turnpike Homes - 42 lots: **93,240 gallons** of household waste water

Delaware Ridge Estates - 90 lots: **199,800 gallons** of household waste water

Chapin Estates - 180 lots: **399,600 gallons** of household waste water

Eagle Nest Estates - 14 lots: **31,080 gallons** of household waste water

Lake Diana Subdivision - 9 lots: **19,980 gallons** of household waste water

= **14,586 gallons of water**

*Based on single family use of 74 gallons - American Water Works Association*
The Septic System
The Lowest Common Denominator

We impact our environment on a daily basis every time we turn on the faucet or flush the toilet. Only the larger town centers and planned developments within the Upper Delaware have centralized sewer systems. Almost all rural residence, including planned low density developments, have individual septic systems. There are two types of septic systems; the gravity-fed and the mound. There are important distinctions between the two, especially for the Upper Delaware River basin.

GRAVITY FED SEPTIC SYSTEMS. For typical septic systems found throughout western Sullivan County, water waste released from residents is gravity fed outside to waste collection and distribution networks. An individual home septic system handles all its polluted water waste on site. Discharged water is collected in a septic tank, where solids are separated and allowed to break down. From the tank, the fluids are released into leaching fields that are buried in the yard. These fields contain a series of pipes (based on the water load for the home) that allow the waste to percolate into the ground. In theory, this process involves breaking down organic matter with naturally occurring bacteria. As the polluted discharge settles within the earth, it is filtered before entering the groundwater. Several factors make this system susceptible to both environmental and human health concerns. In areas of high ground water or wetland conditions, polluted water can reach streams and drinking water source without being properly filtered. Household “anti-bacteria” or chlorinated products can restrict the natural breakdown that in turn can add toxins into the watershed.

THE MOUND SEPTIC SYSTEM. An alternative to the traditional leach field used in areas of high water tables is the mounded system. A tank is still used for household discharges, but several alterations restrict the flow of polluted water into the groundwater and watershed. After the fluids leave the septic tank, they are directed to a dosing chamber with a pump, that maintains a constant flow of effluent, instead of the gravity feed that risks releasing peak loads and causing breakdown of the natural process. The pump feeds this effluent into an elevated absorption mound. The elevated mound allows for additional soil material to breakdown the waste. This system is more expensive, but has a longer life span. In recent years a number of variants on the leach field have come on the market, with application in western Sullivan County subject to approval of the New York State Board of Health.

The proper sizing and location of each leach field is essential to reducing the collective impacts of sewage. The size of the leach field is determined by the ability of the soil to absorb the effluents, which is determined by the “percolation tests” that are required for every application to build. The percolation test is one of the basic requirements for subdivision approval.
In a state such as New York that relies on “home rule,” primary authority for regulating land use lies within the jurisdiction of towns and villages. In the Upper Delaware region, local town regulations are crucial at the initial review of local development projects. All towns have building codes that set building construction standards but many communities still lack zoning. For site planning and zoning, the elected town board appoints a local town planning board to review and approve proposed development projects. For variances from the local zoning, the town board also appoints a zoning board of appeals. If there is no zoning, then criteria for each project is governed by the current understanding and opinion of town boards and planning boards. The legal tools at a town’s disposal can vary, and because of the political nature of the process, their interpretation can also vary. For subdivisions, all towns have some form of regulation. Some are more limited or inventive than others. For example, some town regulations may encourage higher densities and clustering through “conservation” planning.

The allowable distribution of subdivisions within each town is governed by zoning maps that control minimum lot sizes (and therefore housing density) in differing locations. And each town has rudimentary requirements for road dimensions and layout, and permissible uses. Unfortunately, almost all rural communities in the Upper Delaware region lack an adequate “master plan” that correlates residential development with other uses including businesses and institutions. They also lack sufficient correlation with local resources including natural areas, historic and cultural uses, local infrastructure, and community amenities. Because town laws frequently contain loosely-defined planning criteria, local planning boards can struggle with vague guidelines for difficult decisions; and they can be easily threatened by litigation from developers when disagreements arise.

In western Sullivan County, local planning boards have some recourse in the New York State environmental review process known as “State Environmental Quality Review Act” or SEQR which “requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision making. This means these agencies must assess the environmental significance of all actions they have discretion to approve, fund or directly undertake. SEQR requires the agencies to balance the environmental impacts with social and economic factors when deciding to approve or under an action” (www.dec.ny.gov). SEQR may be deployed for any project, either by the discretion of the town, or as a State mandate for projects that are likely to have a significant adverse environmental impact. In many circumstances, it has served as an adequate moderator to adjust development projects for minimized impact. But in many circumstances, there are loopholes that exist and are used to avoid any meaningful SEQR review. For example, most local subdivision laws require SEQR review for projects larger than a specified number of lots. But developers have learned to “segment” large projects and split the project into separate phases so that the overall impact is not reviewed in a comprehensive way and each phase is evaluated independent of one another. Awareness of the details of a project by local residents provides an important level of public scrutiny that can be extremely useful to insure that SEQR is properly addressing the entire project and intent of the law is followed.
Land Subdivision Regulations

PLANNING BOARDS are responsible for upholding regulations and managing the control of growth. Public interest are enforced by protecting:

- Neighborhood Character
- Unsightly Design
- Public Health
- Fire
- Flood
- Drainage
- Safety
- Welfare
- Erosion
- Traffic Congestion
- Accidents

PUBLIC

PRIVATE

PUBLIC Hearing 62 Days

Applicant Pre-Filing Submission

Letters to City, Town or Village

Letters to Neighbors

Public Notice

Prior to Hearing Date

Public Hearing

Applicant Filing Submission

Public has a right to respond to proposals and questions project concerns and impacts to the board.

Note: Failure of the Planning Board to take action within the established time periods will deem an approval by default towards the applicant.
"Where subdivision of land is unregulated, lots are sold without paving, water, drainage, or sanitary facilities, and then later the communities feel forced to protect the residents and take over the streets and provide for the facilities. This subdivision regulations benefit both the consumer, who is protected in purchasing a building site with assurance of its usability for a suitable home, and the community at large, which naturally gains greatly from the use of sound practices in land use and development."

Brous v. Smith (1952)

Source: [Link to Land Use Law](http://landuselaw.wikispaces.com/brous+v+smith)

A key element to Community Planning is its incentive to enforce Zoning Laws. Zoning administers the development of land in a beneficial process.


**The SEQR Process**

The State Environmental Quality Review Act

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**STEP 1**

- **IS ACTION SUBJECT TO SEQR?**

  - FOR PROJECTS REQUIRING
    - PERMIT
    - LICENSE
    - APPROVAL
    - ACTION

**STEP 2**

- **TYPE I ACTION**
  - FULL EAF

**STEP 3**

- **UNLISTED ACTION**
  - SHORT EAF
    - (FULL EAF OPTIONAL)

**STEP 4**

- **PUBLIC COMMENT**
  - -INFORM AGENCIES
  - -SELECT LEAD AGENCY
  - -WHO IS THE LEAD AGENCY
  - -LIABILITY?

**STEP 5**

- **POSITIVE DECLARATION**
  - -REVIEW CRITERIA
  - -DETERMINE SIGNIFICANCE
  - -NEGATIVE DECLARATION

**STEP 6**

- **SCOPING OPTION**

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**Type I Action:**

An action that meets or exceeds a threshold contained on the list in section 617.4 or one that is an agency’s locally adopted Type I list. Type I actions are more likely to have a significant adverse impact on the environment than Unlisted actions and may require the preparation of a draft Environmental Impact Statement (EIS).

**Unlisted:**

An action that does not meet or exceed the thresholds contained on the Type I list and is not contained on the Type II list. An Unlisted action requires a determination of significance and may require the preparation of a draft EIS.

**Type II Action:**

An action contained on the list in section 617.5 or an agency’s locally adopted Type II list. Type II actions have been determined not to have significant impact or are otherwise precluded from environmental review under SEQR. Type II actions never require the preparation of a determination of significant or a draft EIS.
Note: The diagram illustrates the process of preparing a Draft Environmental Impact Statement (DRAFT EIS) and its subsequent steps. Each step is outlined in a sequential flowchart, with arrows indicating the progression from one step to another.

**STEP 7:** DRAFT EIS PREPARED FOR LEAD AGENCY ACCEPTANCE

**STEP 8:** DRAFT EIS ACCEPTED FOR PUBLIC REVIEW

**STEP 9:** PUBLIC COMMENT

**STEP 10:** SERQ HEARING OPTION

**STEP 11:** FINAL EIS RESPONSIBILITY OF LEAD AGENCY

**STEP 12:** EACH AGENCY MAKES FINDINGS

**END REVIEW PROCESS**

Information Source: The SEQR Cookbook, A Step by Step Discussion of the Basic SEQR Process-New York State Department of Environmental Conservation, 2004
Location of the case-studies included in this publication within the context of western Sullivan County and the Upper Delaware.
When well constructed and used, local subdivision law and SEQR can together come into play to stream-line the process of development within a transparent public atmosphere that encourages discussion. A key element in town planning is generating public consensus on issues related to management of growth together with preservation of open space and other community resources. Issues for community stakeholders to keep in mind include the preservation of neighborhood character, good design of public space, protection of the public health, fire, flood, drainage, safety, welfare, erosion, traffic congestion and impacts on the school system and other community services. Town boards can use zoning and public policy as tools to mold and shape the future needs of their communities while maintaining and preserving unique qualities as defined by public input.

What follows are five subdivision case studies in western Sullivan County that illustrate the nature of the public review and approval process. They are diverse, representing five different town governments; and they range in scale from 8 to 177 lots. They give an indication of the value of an accurate and comprehensive approval process for a proper evaluation of environmental impacts and public participation. All demonstrate the importance of general public knowledge of development proposals as well as the difficulties and disadvantages when public participation comes too late. They also demonstrate some of the weaknesses in local town law in terms of providing sufficient criteria for informed decisions on the merits of any given project proposal and show the importance of considering projects in their cumulative context, not just as isolated parcels within the environment.

Finally, the negative long-term local economic impacts of residential subdivision can be substantial. On average, in the five towns where the following case studies are located, residential development costs each town $1.26 for each $1.00 in tax revenue collected. By contrast, commercial, agricultural and open space produce a tax gain of $.50 for each tax $1.00 in tax revenue collected (William J. Pammer, Marc A. Baez, “A Cost of Community Services Study for Sullivan County, N.Y.,” 2006). After reading these case studies, we hope the reader will be encouraged to learn more about their local regulations and zoning restrictions to be an advocate for their communities, their families and their own personal and environmental health.

The land areas of case-study subdivisions included in this publication, compared with the land area of Central Park in Manhattan and the city of Port Jervis.
In October 2004 a developer from Warwick in Orange County New York, Joseph S. Mackey, Jr., purchased three lots adjoining Lake Diana. The combined lots totaled 89 acres, which were undeveloped. Lake Diana is a 30-acre shallow pond, much of which is owned by Camp Simcha, a camp for children with cancer. Its capacity is 100 children, and at least as many staff members.

In December 2004, the developer appeared before the Lumberland Planning Board with a proposal to subdivide the principal lot of 80 acres into 11 lots - 10 for single-family houses and one for 64 townhouse units. This was in access of the existing zoning that would have allowed 40 two-acre single-family houses. In the following months the Town Board approved a moratorium on “cluster building” (townhouses); and by April 2005 the developer had presented a revised plan envisioning three phases.

Only Phase one was specific with eight lots for single-family houses. Phase two envisioned unspecified additional lots. Having less than 10 lots, Phase one avoided to be classified as a “major subdivision” under Town law, and therefore would not have to be subject to a strict review, including a full Environmental Impact Statement (EIS).
The Phase three area included an 18-acre wetland. Over the following months, project development focused only on Phase one, which was easiest to develop; but with major questions remaining about the environmental impacts of the subsequent phases. Of concern was likely road encroachment on the 18-acre wetland, and a dead-end road not in compliance with Town regulations.

Regardless of questions about the scope of the entire project, by October 2006 the Planning Board scheduled a public hearing limited to Phase one. The hearing raised a number of issues, including the effects of new wells on existing neighboring wells; increased traffic on adjacent roads; disruption of wildlife; excessive clear-cutting of the lots; and impacts on the wetland. Based on the public hearing, representatives of Camp Simcha immediately raised additional issues related to the impacts of the adjacent subdivision. Most prominent were questions of water quality as related to children with immune deficiencies; and issues of privacy for the children who use the small body of water. A medical doctor associated with the camp wrote that the expanded public use of the lake “would pose a danger to our children”. (Peter G. Steinherz MD, as quoted on The River Reporter, December 15, 2005).

Within the Planning Board the issue of segmentation was also raised, especially in relation to health issues that could be intensified by Phase two and beyond. The majority of the Board, however, declared to be satisfied with the progress of the application.

In November 2006, further issues were raised by Camp Simcha pertaining to public access to Lake Diana, in that the Camp owned outright the water surface up to the Developer’s land, except for only a small public access point for the entire 80-acre parcel. The issue of overuse of this single access point with the build out of the entire project further raised issues of segmentation. The Town’s legal and engineering consultants to the Board indicated that this issue was not the province of the Board; and that the health and water issues were to be left to the jurisdiction of the New York State Board of Health, to be determined after the Board’s preliminary approval of Phase one.

In December 2005 with dissension of two Board Members and two members absent, the Board failed to get the votes needed to approve a Negative Declaration. In January 2006 a second vote was taken with the full Board present, which overrode the dissent, and passed the Negative Declaration and preliminary approval. While the voting procedure was questioned by some board members legal council advised the board that it was valid. At this point further scrutiny under the State Environmental Quality Review Act was effectively cancelled and the process proceeded to final approval. However, in the past two years no work has begun on the site, while the owner of record remains unchanged.

Panorama of Lake Diana from White Road.

Eight lot subdivision on partial Lake Diana site, with detail, as approved.
In March 2006, Paul Savad, a lawyer and developer from Nyack in Rockland County, New York, entered into an informal agreement to buy this 108 acre parcel. He also expressed interest in buying an adjacent five acre parcel with a house, should the owners be concerned about having a major new subdivision next to them. Assuming two acre lots, the site could total up to 54 new houses. This scale was unprecedented in the Town of Cochecton, where the rural character was highlighted by the proposed development’s winding and narrow connecting roads, in places of dirt and gravel. The project would adjoin the adjacent Delaware Ridge Estates in the neighboring Town of Delaware, and would share the same drainage basin to the Tamarack Swamp and Callicoon Creek tributary of the Upper Delaware.

By June 2006, several site alternatives had been discussed informally with Town officials, including a gated “conservation subdivision” comprising 42 one acre lots with community land set aside including a “community center and pool.” But by then it had also become clear that the developer had not yet purchased the land, and that the final sales price would depend on which configuration the Cochecton Planning Board would eventually approve.

Impacts of development proposals are never isolated, and should always be considered as part of a larger cumulative development context.

It is relatively easy for development planning and negotiations to proceed in private with public officials before SEQR procedures are applied and without broader public knowledge and input.

Public advocacy groups can have a strategic impact on the planning process, given sufficient time to mobilize.

The commonplace mantra, “if you don’t like what they are doing, buy the land yourself,” is sometimes the only practical recourse.

Frequently local planning board members are not well-versed in SEQR and other review procedures; and are overly reliant on advice from professional who are themselves conflicted between advocacy for the public good and the interests of their private clients.
In this regard, a negotiation was already underway regarding problems of access to the subdivision, which had only one existing road connection, and needed a second connection in order to meet code requirements. An adjacent property owner, who was also a Planning Board Member, had offered a private access road through his land, providing that the Town would take over the road’s maintenance. On June 29, this scheme was approved in principle by the Planning Board, but would need the final approval of the Town Board. On July 12, the developer presented this scheme and another to the Town Board. The second scheme was not made public and no decision was taken. At some point the developer offered the Town $70,000 in return for the second access road agreement, and public interest was growing. Neighbors made a FOIL request to the Town Board to reveal the second scheme and other materials germane to the “negotiations.” No materials were ever provided.

By August 2006, local residents had organized to protest both the proposed development and the process by which it was being reviewed. The “Keep Cochecton Rural; Concerned Citizens Group” (KCR) was formed and retained legal counsel. By then it was clear that the subdivision should be subject to SEQR review as a Type 1 subdivision, with a full environmental impact statement (EIS). SEQR review would require the Town of Cochecton (or other official entity) to be declared lead agency, before commencing the review, and the KCR demanded that the Town Board refrain from making any agreement with the developer until the proper procedure had begun. Accordingly, by the end of August, the “private” access road agreement had been dropped from discussion, and the developer was proposing a single large “boulevard” with a second gated single-lane emergency access.

On August 31, the Planning Board scheduled a “scoping” and “sketch approval” meeting, attempting to follow SEQR procedure. The developer’s attorney pressed for “sketch approval,” but by then it was understood that “scoping” should come first; which was scheduled for the following month. However, by the September 28 “scoping” meeting, the Planning Board had not yet declared itself Lead Agency - such that the session could not be considered to satisfy SEQR procedure. Many substantive issues were raised by the large public audience, including: discrepancy in the property boundaries, increased traffic issues, impacts on neighboring wells, and quality of life impacts. The developer’s attorney retorted: “You’re looking to preserve for yourself that which is not yours! You want to preserve it? Buy it!” (Martin Miller, as quoted in The Sullivan County Democrat, October 10, 2006). Two months later, the developer announced withdrawal of his application for the subdivision. The property was subsequently purchased by a neighbor, with the promise that it will be permanently protected from development of any kind. The developer and his attorney moved on to the equally controversial Burr Road subdivision in Bethel.
The pre-reviews project consultations by developers with local planning boards are crucial in that the level of scrutiny can be informally pre-determined without adequate public input.

Given the workings of “home rule,” the Upper Delaware River Management Plan can be easily overlooked as an important decision-making tool.

Economic and aesthetic impacts can have extremely long-term negative consequences for local Towns, but such criteria are normally excluded from the review process.

The simple willingness of a developer to invest in a project does not guarantee positive economic results.

Professional advice within the region varies widely, as local professionals tend to practice as “free agents, between both public and private interests.

Many studies show that developer promises of local tax surplus from residential development are at best questionable, and in most cases not credible in the long-term.
In 2001, the long-time owner of most of this 146.5 acre parcel had put it on the market and notified several adjacent property owners that it was for sale. The property is located along the ridge overlooking the Delaware River above Crawford Road in the Town of Tusen and its main entrance is on Route 97. By January 2002, the property was purchased by Robert J. Wiegers, a retired businessman from New Jersey who owned a second home on Crawford Road adjoining the site. He immediately obtained a logging permit and for a period of nearly a year, removed most pine trees from the property. In addition to the noise disturbance to his neighbors, this “cutting increased the runoff onto Crawford Road which continues to flood each time there is a heavy rain.

In the spring of 2002 the developer presented a preliminary sketch to the Town of Tusen Planning Board for a proposed 16 lot subdivision called Eagles Nest Estates. The other property owners on Crawford Road had questions about how this project would impact them and they were advised to attend the monthly Planning Board meetings where the project would be discussed. Undoubtedly the developer’s promise of $1 million homes and hefty tax revenues encouraged the Board to move ahead quickly, giving a favorable “preliminary approval” in July 2002. But the project also quickly became a lighting rod for public scrutiny. Adjoining property owners began to attend the monthly Planning Board meetings to ask questions and express concerns. The review process was challenged, including the basis for the planned 2,600 foot cul-de-sac for accessing the lots, in that the Town subdivision law allowed a maximum length of only 2,000 feet.

Such questions were largely dismissed and the public was told that any environmental concerns it might have would be “mitigated.” This was the first time in more than 20 years that a subdivision of this size was before the Board and many of the Board Members remained mute on most of the issues at hand.

“Friends of Crawford Road,” a local citizens group, was formed by the adjoining property owners and several other concerned individuals. They hired legal counsel with experience in environmental issues, who questioned the Planning Board’s review procedures in that they had given “preliminary approval” before several steps in the SEQR process had been followed. Because of the site’s adjacency to the Upper Delaware Wild and Scenic River corridor, the Upper Delaware Council (UDC) and the Sullivan County Planning Board also communicated questions relative to the River Management Plan, primarily related to environmental impacts such as runoff, erosion, slope, and visual impacts related to ridge cutting. Ironically, the project got its name because three American Bald Eagle nests were located on the property so naturally this was of concern not only to the neighbors but to the New York State Department of Environmental Conservation (NYSDEC) as well. The Sullivan County Planner requested a “Type 1” review as part of the SEQR process, and suggested that the development might best be designed as a “conservation subdivision.” The latter prospect was rejected out of hand by the developer, but he was eventually forced to prepare outline deed restrictions relative to cutting of trees, due to public outcry over the ridge-cutting that the project would require in order to promote home sites with views.

The Planning Board ultimately declared the project as a minor subdivision, although the number of lots could have received the category of “major subdivision” which would have involved submitting an environmental impact study (EIS). Growing public pressure did force the Planning Board to require the developer to provide a storm water plan. Apart the runoff problems from clearing trees, there was also concern about runoff from septic systems, given the impervious rock ledge and the steep slopes that characterized most of the lots.

Early and prominent among the many issues was the remaining presence of one active Eagles nest on the site, triggering involvement of the New York State Department of Environmental Conservation (NYSDEC), and enforcement of the Endangered Species Act. Because of the Eagles, the site plan had to be revised, with the lot shapes reconfigured and the number reduced from 16 to 14, in order to provide a 350 foot undisturbed radius around the nest. Apart from the Eagles, all other issues seemed to remain the purview of the Town Planning Board, including permission for the 2,600 foot cul-de-sac access road; and exemption from the Town Law that would have limited the project to nine lots because of the cul-de-sac. The Planning Board left certain issues unaddressed, like the negative aesthetics of the runway-like access road from Route 97; potential disruption of the “view shed” from the ridge top clearing; and the widespread clearing of the flat portions of the site which gave minimal privacy between the lots.

The Planning Board approved the project in March 2004, with only one member objecting. With the approval, the developer announced that “I intend to improve the image of the ridge-top development”. (Robert J. Wiegers, as quoted in The River Reporter, March 18–24, 2004). Therefore, the DEC gave final approval for the Eagle habitat solution, and the developer commenced construction of the road and installing the utilities. In 2005 the lots went on the market. To date, no houses have been built, and a “For Sale” sign has been posted for the entire development. The Eagles, for whom the enterprise is named, have endured in their nest. And Robert J. Wiegers has begun planning his next subdivision project, “Blue Stone Mountain Estates,” on a ridge top across the Delaware River in Damascus, Pennsylvania.
Before present development began, this 572 acre parcel was part of a larger land area owned by the Tamarack Hunting Club. In 1987, it was sold to Joseph DeFalco, a businessman from Long Island, who began to develop a large residential subdivision called “Top of the World Estates.” The original plan entailed four phases. Phase One, consisting of 44 lots, was begun in 1987, and is substantially built. Phase Two, with an additional 47 lots, remains not completed, with 42 lots still available.

Phases three and four are presently undeveloped. At the time of its original planning, the project was considered to be upscale, with its generous five acre lots in access of the required minimums. Unfortunately for the coherence of the entire parcel, was the presence of the Columbia A-5 natural gas pipeline, built in 1948, which effectively bisects Phases One and Two. It is incorporated as the median of a portion of one of the main feeder roads called “Country Road.” The pipeline will undoubtedly become more problematic with its upgrading as the Millennium Pipeline, from 12 inches to 30 inches, currently under construction.

This problem has been reinforced with the proposal of the New York Regional Interconnect (NYRI) for a new high-voltage power line to follow the Millennium Pipeline corridor.

Especially for large projects taking years to complete, the impacts related to long-term phasing should be adequately understood from the beginning, especially those related to the larger environmental contexts.

Watersheds cross project review boundaries, such that in some situations public review should involve impacted downstream communities.

Public transparency regarding negotiation between Town officials and developers is always in the ultimate good, as the extended litigation demonstrated.

“Grandfathering” should be limited, such that any incomplete development more than a few years old should be requalified relative to updated environmental criteria.

Frequently increased initial costs of innovation in planning (i.e. conservation subdivision) can be more than offset by the increased value of the development longer-term.
At the moment, plans show it detouring around the Delaware Ridge Estates parcel. Other planning dilemmas involve Phases Three and Four, and especially the presence of the “Tamarack Swamp,” a large wetland that lies at the development’s center, bordered by rather steep topography. Taken cumulatively, these conditions represent a case where planning based on “conservation subdivision” principles might have had real benefits for both the economic and functional viability of the overall development concept from the beginning.

In its earlier years, this project suffered from prolonged litigation between the developer and the Town of Delaware. In 1996, a jury trial found Town Board and Planning Board members culpable in extortion involving the developer such that he was deterred from completing Phase Two. It took several more years of appeals and cross-appeals until, in 2001, the case was definitely decided in the developer’s favor (244F.3d286 2ndDir.2001). While in this instance the circumstances were more blatant than usual, the trial did provide a window on the often subtle “dialogue” between town officials and developer interests, that can easily pass beneath public scrutiny.

In May and June 2004, the Town was approached by Scott Ugell, a representative of potential new owners, Eagle Valley Development Corporation; and Mark Dubrovsky of Bethel Design Consultants, Inc., relative to pre-purchase inquiries about completion of Phase Two of the project. The Town Board expressed concerns about storm water retention, a reflection of increasing public awareness of water-quality issues within the Upper Delaware basin. This question was of particular importance given that Top of the World runoff is channeled into the Upper Delaware directly and indirectly through Callicoon Creek and the Tamarack Swamp. Conversation also engaged the general need for a project review and re-approval, given that the original planning dated to 1987; and the impacts related to potentially doubling the number of homes. Other kinds of discussion also ensued, including a deal whereby the purchasers would donate land to the Town for a new Town Hall. Later in 2004, however, the project quietly passed to new ownership for $2.3 million; to another developer on Long Island, and the name was changed to “Delaware Ridge Estates.” To date the new owners have concentrated on marketing the remaining lots in Phase two. The fate of Phases Three and Four remains unknown.
## Development Facts

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<td><strong>% Daily Value</strong></td>
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- **County**: Sullivan 0%
- **Town**: Bethal 0%
- **Timeline**
  - Phase 1: 1997-2001 195 Parcels
  - Phase 2: 2001-Present 188 Parcels
- **Availability**: Custom Houses for Sale

### The 5,600 acre Chapin Estate subdivision complex is part of a once larger 18,000 acre holding purchased in 1891 by New York City financier, Chester W. Chapin Jr. In 1922, Rockland Power and Light obtained the property for its hydropower enterprises along the Mongaup River watershed.

In 1990, recognizing the potential of lake front real estate along the Toronto and Swinging Bridge Reservoirs, a developer and Bethel resident, Steve Dubrovsky, principal of The Woodstone Group, purchased the land for residential subdivision. A primary financial partner has been Howard M. Schoor, prominent New Jersey engineer and businessman. To date, approximately 347 five-acre lots have been created in eight phases. “The Preserve” is the latest phase with 177 lots. By 2006, at the time of “The Preserve” proposal, 125 of the previous 194 lots had been sold, at an average price of $325,000 each, with an estimated house price of an additional $1.35 million each. “The Preserve” development has in turn been separated into several phases, with the first 37 of the 177 lots receiving final approval from the Town of Bethel Planning Board in May, 2007.

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### In the development of any project, the public hearing can arrive too early for the public to have a full understanding of the project impacts; in this case, without knowledge of the concerns of NYSDEC, and organizations such as the Riverkeeper and citizens groups.

### SEQR does not require a second public hearing, leaving this decision at the discretion of the local planning board, which will tend not to want this complication within the process.

### That public transparency is not requisite to post-hearing negotiation between local and State agencies should be addressed by a mandatory second public hearing.

### The cumulative impacts of large long-term projects can easily be ignored within a review process that includes only piece-meal studies of separate phases within the overall plan.

### Increased tax income isn’t everything, especially if it is traded for loss of public amenities and community character.
The Chapin Estate has been designed and marketed as an elite private gated community with large lot sizes, private trails, and other shared community amenities including a boat and beach club. The developer has argued that the tax revenue from the project will provide enormous economic benefit to the Town of Bethel. For example, in 2007 the developer represented that the 41 houses completed to date at The Chapin Estate each generated $30,000 or more in property taxes, in contrast to approximately $5,000 average in the Town of Bethel. This marketing of high-end homes with relatively low density, however, has not been able to avoid certain public environmental concerns, especially given the project’s enormous land mass and intimate relationship with the fragile Mongaup ecology, which is a watershed area and a major tributary to the Upper Delaware River.

A draft environmental impact statement (DEIS) was required for The Preserve, and was submitted to the Bethel Planning Board as Lead Agency in October 2006. A public hearing was scheduled for December 12, 2006 and two business weeks were allowed for further public comment (until December 29). This compressed timing forced the New York State Department of Environmental Conservation (NYSDEC) to request an extension to January 19, 2007 in order to have adequate time to consider the project’s impacts. NYSDEC expressed a number of serious concerns ranging from streams to wetlands, to mining (gravel extraction), to endangered species (the Timber Rattlesnake and the Bald Eagle).

Some of these same concerns were echoed by the regional environmental advocacy group, the Delaware Riverkeeper. Prior to final approval of The Preserve subdivision, the NYSDEC in fact claimed that the developer had misrepresented the NYSDEC’s position on the issue of Bald Eagles in the final environmental impact statement (EIS). No further public hearings were held, however, and final approval by the Bethel Planning Board was granted on May 7, 2007, for the first 36 (of 177) home sites.

Apart the obvious questions of segmentation, procedural questions also involved the sequence of the process itself, in that both the NYS DEC and the Riverkeeper raised issues that were unknown at the time of the single public hearing. In this regard, the developer argued that NYSDEC approval was not necessary; and the Planning Board Chairperson argued that “all topics had been discussed,” (Leon Smith, as quoted in the Times Herald Record, May 11, 2007) therefore a discretionary public hearing allowed by Town law was not necessary. Subsequent to final approval, the NYSDEC threatened to delay the project until a resolution to their questions had been reached, but this never came to pass.
The questions were substantive. From NYSDEC came a number of concerns, including adequacy of information on possible disturbance to streams; on cut and fill operations needed for construction of roads; need for NYSDEC verification of wetlands, especially with 21 lots partially within flood plains; cumulative impacts to wildlife, especially to Bald Eagles within the area; reliability of the 177 percolation tests all made in one month’s time; lack of clarity on longer-term development, especially for roadway connections to future undeveloped parcels. The Delaware Riverkeeper also raised concerns about the nature of the Developer’s response to NYSDEC’s issues. Still, how those issues were ultimately resolved remained outside of the purview of the general public because the Planning Board resisted to take their allowable option of a second public hearing. The Riverkeeper has since remained persistent in its concerns about the impacts of Town of Bethel development on the Mongaup watershed having recently written the NYSDEC about a proposed townhouse development on and around the Smallwood Golf Course site, another parcel of sensitive watershed land.

By far the most public and contentious issue for The Chapin Estate has had to do with the developer’s attempts to close a public access road to the Toronto Reservoir dam, a long-time component of the Federal licensing agreement with the hydropower companies who owned the property. In the past all citizens who wanted to fish, swim, or boat had access to the Reservoir. In May 2002, although it owned the road, the Town Board approved closing it in response to the developer’s request. While many people were shut out and disappointed, the closing most directly affected the hamlet of Smallwood, an area adjacent to “The Chapin Estate,” and Chapin’s antithesis - a historic un-gated community of 1000 modest seasonal and year-around houses. In May 2008, despite the fact that the access road and easement rights were still at issue and in litigation, the Town gave the road to the developer for a specific and finite set of considerations, including repairs to a connecting access road the Town owns, access to a gravel pit, and a one time fee of $1000 per lot as each one gets developed, payable the Town’s Highway Department general fund. The issue has been in constant contention and is currently still in litigation, with the “Friends of Toronto Reservoir” (an offshoot of the Smallwood Civic Association) strongly advocating for access, which currently remains denied. It is a battle that is unresolved after five years.
The steady increase in development along the Upper Delaware River puts at risk the “rural character” of Sullivan County. Recent increases in population, especially related to second homes, have yet to realize the impact they have on the natural environments of the region. In recent years, new locally-based community organizations and non-profits have increased public and government awareness of the environmental and economic risks associated with ill-considered and poorly designed developments.

Organizations like Friends of Crawford Road, Keep Cochecton Rural, and Preserve Smallwood Country Life have worked hard to shed light on many long ignored environmental, health and social costs. Developer and town government response has been slow, and in spite of increasing activism, the ability of towns and their citizens, to encourage and achieve land development that balances a productive and enjoyable harmony between humans and the environment remains elusive.

The recent evolution of public involvement in the planning process in the Town of Bethel provides a good insight into local citizen participation. Development pressure in Bethel has been especially strong in recent years - more than elsewhere in western Sullivan County, with many proposals and the realization of a number of large new projects.

In 2003, Bethel had one subdivision application; in 2004 there were 16; in 2005 there were 79. Over time there has also been the on-going planning and gradual realization of the 5,600 acre residential development called The Chapin Estate; the realization of the Bethel Woods Center for the Arts as a major East Coast cultural destination; and increasingly, the negative impact of secondary development in general.

For example, the failure to consider the overall impact of many individual development projects has increased traffic volume on Route 17B and ancillary roads, and has encouraged further strip development.

By 2002, quality of life concerns began to be voiced by the Smallwood Civic Association and another group in Smallwood called “Preserve Smallwood Country Life.” Each group represents a different cause in the long-established hamlet of some 1000 homeowners who were beginning to experience the negatives of hyper-development.

In August 2002, when the developer of The Chapin Estate closed one of two public access points to the Toronto Reservoir because it interfered with the privacy of a gated community, the Smallwood Civic Association, through its ad hoc group, “Friends of Toronto Reservoir,” became the catalyst for opposition to the closing because the Smallwood community was the primary user of the road.

The relationship between citizens and planning-governance.
In 2006 “Preserve Smallwood Country Life” formed to voice objections to a massive townhouse development on a defunct golf course. The group argued that Smallwood, a lake community and already the most populated and densely populated area in Bethel, was ill equipped to absorb more population density, particularly in an area that hosts environmentally sensitive wetlands and habitat and serves as a watershed to the Delaware River. In general, the large new developments tend to locate on or near “waterfront” as a marketing advantage, and in Bethel these are all inextricably connected to the Mongaup watershed and the Upper Delaware.

Recent such proposals have included have been the 400 acre Kenoza Lake Estates; a 768 acre subdivision at Swan Lake; and the 1,523 acre subdivision called “The Preserve” at The Chapin Estate; and the 87 acre Burr Road subdivision. The Burr Road subdivision was proposed by lawyer and developer Paul Savad with 47 homes on 47 buildable acres. Opposition was swift. The developer threatened litigation, arguing that the opposition was selfish and illegally manipulating the Planning Board. “I got mine, they shouldn’t get theirs,” is how his attorney described the opposition (Martin Miller, as quoted in The Times Herald-Record, June 16, 2007).

The controversy over developing the 200 acre Smallwood Golf Course site into 200 condominium townhouses drew attention to the fact that the above projects alone would total almost 3000 acres, and sounded an alarm that the Bethel Town Board needed to take a hard look at the Town’s planning tools and procedures, in addition to updating its 45 year old subdivision laws. This skirmish spurred an important general debate about the future of development in Bethel. Other organizations, including “Keep Bethel Rural,” and “Bethel Now!” sprang up, and with “Preserve Smallwood Country Life” worked to advocate for larger minimum acreage building lots and emphasized the community character of the disparate sections of the Town.

The groups argued effectively that although the Town’s recently enacted Comprehensive Plan was a fairly good and well intentioned document, the Town did not have the zoning in place to support the plan’s goals. The vibrant town discourse that emerged was especially focused on finding a path to accept growth, yet balance the preservation of working farms, farmland and the rural qualities of the area, mitigating against the negative ecological and social consequences of badly planned over-development.

In March 2006, a six-month moratorium was placed on commercial development on the Route 17B corridor. In June 2007, at the urging of the three previously mentioned Bethel citizens groups and individual citizens, a three-month moratorium on major residential subdivisions of four lots or more was enacted. It is still in effect through a series of extensions and new moratoriums.

A new zoning plan will soon give consideration to ecological and infrastructural resources, including the down-zoning of the Smallwood Golf Course site. The new zoning plan will be supported by a generic environmental impact study (GEIS), such that the threat of developers to litigate over the new restrictions can be thwarted. Public awareness and action continues to grow. The continuing pressure for development along route 17B has led to a new citizen’s group, “Royce Road Alliance for Responsible Development” (RRARD). In this regard, Bethel is fast becoming the best equipped town in the Upper Delaware to plan for new development and a positive model for other towns to follow.

Public advertising for subdivision sites in Bethel, Callicoon, and Barryville
Typical disturbance of virgin soil around new construction in the town of Delaware, indicating extent of eco-system disruption even in the best of conditions.

TOP and MIDDLE: View from Damascus, Pennsylvania of Callicoon Mountain, showing a portion of the controversial clear-cut from 2003 by developer Andy Parsons. The impact of this unauthorized clearing was heightened by the steep slope. The Town of Delaware was pressured by the “Friends of Callicoon Mountain” required the developer to re-mediate the site through re-planting with seeding.
A Region at Risk!
Not just Subdivisions

Before the real estate boom of the last decade, many newcomers noted that the Upper Delaware region was the last inexpensive refuge from within a two hour radius of New York City. The Chapin Estate advertises itself as a “sanctuary” only “two hours from Midtown Manhattan . . . unmatched anywhere on the East Coast.” The recent development boom has demonstrated the viability of this approach, and validated the strategic importance of the region as a new primary focus of sub-urban residential growth. And it also demonstrates that “growth” takes many forms - not just houses and subdivisions. Urbanization is also about infrastructure - about energy and water, and these two essential lifelines of New York City have had increasingly dramatic impacts on the Upper Delaware.

The Upper Delaware River itself has been increasingly impacted by the demands of the New York City water supply in recent years; from issues of excessive draw-down and consequent ecological damage, to excessive storage, with consequent flooding. There has been one 500 year and two 100 year flood events between 2004 and 2006; all traceable in part to the ill-timed releases from the New York City reservoirs, and with likely connection to regional climate change factors. For regional energy infrastructure, there have been similar negatives. In 2003, the Pegasus high-voltage powerline project was proposed, following the rail corridor along the Upper Delaware, to feed the increasing energy needs of the New York metropolitan region. It would have had dire consequences for the river ecosystem and its tourism industry. The proposal reappeared in 2006 when the New York Regional Interconnect (NYRI) purchased the Pegasus rail corridor rights; and also proposed an possible alternative along the Millenium Gas Pipeline corridor. This time, the proposals were reinforced by the 2005 Energy Act, lessened local oversight in realizing new power delivery corridors. The project is still under review, with the pipeline said to be the preferred route. But the pipeline is already the site of new environmental impacts, with an enlargement project tripling its size.

By far, the most worrisome impact of the 2005 Energy Act is the proliferation of gas drilling leases within the region. Western Sullivan County, like much of the Upper Delaware Basin, is home to the Marcellus Shale geologic layer, which contains natural gas reserves. A combination of new extraction technology, and the relaxing of the government oversight by the Energy Act, has led to hundreds of drilling contracts with local property owners.

To this date, in Delaware County alone, more than 375 leases have been signed. The upgraded Millennium Pipeline will facilitate gas transport. The extraction process is highly water consumptive, and there are no guarantees about protection of water usage and quality, let alone destruction of local road infrastructure and general quality of life. Thus, in the rush for new energy sources and delivery, the Upper Delaware is particularly vulnerable, given its strategic position relative to the New York metropolitan area. Vulnerability originates in short-sighted resource extraction, not only through suburban sprawl, but also through delivery infrastructure. There is too little discussion of conservation of resources, both in the city and countryside; and too much reliance on short-term solutions to long-term problems.
Legend

NYRI Power Lines
Delaware River
Natural Gas Reserve (Marcellus Shale)

Delineation of Marcellus Shale and NYRI powerline routes in Sullivan County.
What You Can Do!

Conservation Easements
Property owners who wish to preserve their land for future generations by limiting development have recourse through placing a conservation easement in their property deeds. This practice can prevent future owners from pursuing development activity that is deemed harmful to the environment; and to the amenity of open space. For the Upper Delaware, since 1994 the Delaware Highlands Conservancy has been instrumental in providing technical assistance to property owners in implementing easements. Other similar groups in the region include: the Catskill Center for Conservation and Development, Delaware River Commission, Open Space Institute, The Nature Conservancy, and the Trust for Public Land.

480-a Forest Tax Law
Increasing land taxes have forced many property owners to consider selling their land to developers. However, there are options in lieu of an outright sale that can lower the annual tax burden accrued from owning large tracts of land. In New York State, the 480-a Forest Tax Law allows land owners to receive tax exemption in exchange for maintaining an approved management plan for an extended period of time. Land owners must have at least 50 contiguous acres of forested land with “merchantable forest crop” (timber or pulpwood with market value). Owners must first file with the New York State Department of Environmental Conservation (NYSDEC) for a certificate of approval. After review and public hearing, the certificate is filed with the county in which the land is located. An approved management plan must provide for the continuing production of commercially viable forest crop for a minimum of 10 years. Certified land approved for exemption can be tax exempt for 80 percent of the assessed value of their land, or $40 per acres, whichever is less.

See: (www.barnardclan.com/dec/publications/480a/480a_Forest_Tax_Law.pdf)

Regional Planning Resources
For western Sullivan County, the Sullivan County Division of Planning and Community Development has oversight on some aspects of local town planning practice and procedure. By law, it must be consulted on certain aspects of residential subdivision approval. Additionally its staff is mandated to be available for consultation on local planning issues and proposals. Other county planning departments within jurisdiction of the Upper Delaware basin are Delaware and Orange in New York; Wayne, Pike, and Monroe in Pennsylvania; and Warren and Sussex in New Jersey. All of the above, and the National Park Service, have collaborated with the Upper Delaware Roundtable to produce a GIS-based “regional development map,” as a tool to encourage evaluating planning decisions across town, county and state borders. The map may be obtained through county planning departments.

See: (www.scgnet.us)

U.S. Farm Bill (Pension Protection Act of 2006)
The Pension Protection Act of 2006 gives landowners the option of conserving their property and land use through tax incentives. A conservation easement is granted as long as the landowner is able to warrant that the property will remain generally available for agriculture production. The property does not have to be put into agricultural use. A pledge is required that it remain available for such activity. Farmers benefit with up to 100% in tax deduction from the IRS on the property’s fair market value.

See: (www.irs.gov/charities/article/0,,id=161145,00.html)

FOIL (Freedom of Information Law)
All local review proceedings for project approval are a matter of public record and documentation should be available to the public. For whatever reasons, however, Planning Boards and Town Boards may be hesitant to fuel questions from the general public about projects under review, or in some cases, projects already approved. In this event, the only recourse may be to file a Freedom of Information Law (FOIL) request for documents. For the Upper Delaware, both New York State and Pennsylvania have FOIL laws that guarantee the right of citizens to access the records of State and local governments. Of course it is far easier to obtain information through regular attendance at Planning Board meetings, and frequently the official record is only a small portion of the actual discussions.

See: (www.dos.state.ny.us/coog/foil2.htm)

New Guidelines
The United States Green Building Council (USGBC) is in the process of releasing its “best practices” checklist for New Developments. This voluntary-based list of criteria can help local planning boards to sort through criteria that may not be spelled out in their local laws. For example, it will help explore questions of site locations and proximities to water, waste water infrastructure, ecological communities, wetland and water body conservation, steep slope protection, habitat and wetlands protection and restoration and conservation management measures. Projects that follow the above criteria can qualify for LEED tax incentives.

See: (www.usgbc.org)
Prevent the destruction of the Upper Delaware River Valley...help now!

Name: ____________________________
Business: ____________________________
Address: _______________________________________
City, State, Zip: ____________________________
Email: ____________________________ □ add me to your mailing list

☐ $10  ☐ $25  ☐ $100  ☐ $500
Other Contribution: ____________________________

We thank you for your contribution!

Research Seminar Team

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Resource Organizations

We all can take a part in protecting our watershed and the habitats that make up the Upper Delaware River Valley. Below are organizations are working in the Western Sullivan County Area.

Audubon Society  
(www.sullivanaudubon.org)
Catskill Mountain Keeper  
(catskillmountainkeeper.org)
Damascus Citizens for Self-Government, LLC  
(damascuscitizens.org)
Delaware Highlands Conservancy
Delaware River Keeper  
(delawareriverkeeper.org)
The Delaware River Basin Commission
Friends of Crawford Road
Bethel Now!
Friends of Callicoon Mountain
Friends of the Pond Eddy Bridge
Friends of Toronto Reservoir
Friends of the Upper Delaware  
(fudr.org)

Keep Bethel Rural  

Keep Cochecton Rural  
(www.cochechton.org)
The Nature Conservancy  
(tnc.org)
Open Space Institute  
(osiny.org)
Preserve Smallwood Country Life
Trout Unlimited  
(tu.org)
Upper Delaware Council (UDC)
The Upper Delaware River Preservation Coalition  
(udpc.net)
Royce Road Alliance for Responsible Development (RRARD)
Watershed Agriculture Council (WAC)  
(nycwatershed.org)