

**New York State
Department of Environmental Conservation
Commissioner's Determination
of
Lead Agency Under Article 8
of the
Environmental Conservation Law**

PROJECT: A proposal by the Broome County Industrial Development Agency (BCIDA) regarding the preparation of a master plan and generic environmental impact statement (GEIS)¹ for a technology park on approximately 526 acres within the territorial boundaries of two towns, the Town of Union and the Town of Maine, Broome County, to be known as the Broome Technology Park (Project).

DISPUTING AGENCIES: Broome County Industrial Development Agency (BCIDA) and the Town Board of the Town of Maine (Town Board).

I have been asked to designate a lead agency to conduct an environmental review of the Project under the New York State Environmental Quality Review Act (SEQR; Article 8 of the New York State Environmental Conservation Law [ECL], with implementing regulations at Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York [6 NYCRR Part 617]). This designation of BCIDA to serve as lead agency is based on my finding that the Project's impacts are primarily regional, and that BCIDA, as a regional agency, has the broadest governmental powers for investigation of the impacts of the Project.

ACTION AND SITE

The action is for the preparation of a master plan and creation of a new "technology park" that BCIDA seeks to populate with various industries including advanced electronics, semi-conductors, test packaging, and related supply chain companies, life sciences and agricultural processing. BCIDA will determine the site plan details of the technology park through the master planning and GEIS processes. BCIDA has or is in the process of acquiring property interests that will allow development of the park. BCIDA has proposed to prepare a GEIS to evaluate the impacts of the development scenarios under the Masterplan.

In the Town of Maine, properties that BCIDA proposes to develop are currently zoned residential. The Town's zoning is supported by a recently adopted comprehensive plan. According to the Town, the comprehensive plan provides for industrial zoning in areas with water and sewer infrastructure, in areas outside of floodplains, and in areas that are

¹ "A generic EIS is a type of EIS that is typically used to consider broad-based actions or related groups of actions that agencies may approve, fund, or directly undertake." DEC, *SEQR Handbook*, p. 220 (Fourth Edition), available on the Department of Environmental Conservation's [website](#).

relatively flat. The Town Board contends that the lands that would be rezoned to accommodate the technology park do not fit this description and hence rezoning of these lands would be contrary to the comprehensive plan.

REGULATORY SETTING

BCIDA's role is that of planner and developer of the Project. BCIDA as project sponsor is responsible for all components of the Project, including its design, construction and oversight within and outside the territorial limits of the Town of Maine. The Town Board has authority to zone the property pursuant to Town Law Article 16 and the Municipal Home Rule Law,² which would provide the Town with wide regulatory oversight over future development of the parcels in the Town of Maine that have been identified for inclusion in the technology park.³

Although other potentially involved agencies, including the Town of Union, were identified by the parties, BCIDA and the Town are the only agencies involved in this lead agency dispute.

DISCUSSION

In resolving a lead agency dispute, under 6 NYCRR Part 617.6(b)(5)(v), I am guided by the three criteria listed in order of importance as follows:

1. whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
2. which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and
3. which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

My designation of a lead agency must be based strictly on applying these criteria to the facts of each individual case.

² Damsky and Coon, *All You Ever Wanted to Know About Zoning*, p. 4-2 (New York Planning Federation, Sixth Ed.). "Municipalities have much time, effort and money invested in their zoning regulations; they place a great deal of faith in the ability of their zoning regulations to achieve the development objectives desired by the community." *Id.*, p. 4-1.

³ BCIDA argues that the Town Board removed its and the Planning Board's potential jurisdiction, thereby extinguishing their statuses as involved agencies, through its adoption of a resolution (February 20, 2024) refusing to re-zone that portion of the proposed Project area located within the Town of Maine. Generally, I am not authorized to rule on matters related to these jurisdictions and have reviewed this dispute on the merits that the agencies have, or will have, the jurisdictions as stated. Additionally, components of the project proposed to be located in the Town of Maine may still require a zoning change notwithstanding the Town's current opposition to changing the zoning to accommodate the technology park.

First Criterion

The first criterion favors BCIDA. Potential impacts of the Project are arguably local and regional in nature; they would occur not only in the towns of Union and Maine, but in broader areas of the County of Broome. Impacts include the anticipated demand for energy; the potential regional impacts on surface water, groundwater, historic and archaeological resources, and agricultural resources; the impact on broader community and economic development plans; and the potential impact on regional transportation. The Project also has the potential to create further demand for regional community services. Importantly, as stated above, the technology park would include lands in two towns. Thus, the action would affect both towns as well as the surrounding region. This is not to discount the fact that significant impacts to the Town — unless properly evaluated and planned for — can be expected to occur from BCIDA's redevelopment of hundreds of acres zoned residential to light industrial. BCIDA, however, as a regional agency, is in a better position to consider the impacts of the the Project on both towns as well as, potential impacts that would occur outside of both towns.

Second Criterion

For similar reasons, the second criterion favors BCIDA. While the Town, in support for it being designated under this criterion, makes a comparison to *Commissioner's Lead Agency Decision in DEC v. DOT v. Huntington Town Board v. Planning Board v. Suffolk County*, June 27, 1991,⁴ wherein the Commissioner in consideration of zoning changes concluded "[t]he importance of the zoning decision and potential for that decision to modify or affect subsequent decision making at the site points to the Town of Huntington Town Board as the most appropriate involved agency to serve as lead agency" [emphasis added], I find there are dissimilarities between the facts of that case and the matter at hand, and the conclusions made in the Huntington Town Board matter do not support the Town in this case. In the Huntington Town Board lead agency dispute, the project site fell within the territorial boundaries of a single municipality having zoning authority, and the disputing agency was DEC as a permitting agency. In this case, the Project spans two municipalities. Here, the Town has decisionmaking authority only within its jurisdictional boundaries, while BCIDA has broader decisionmaking authority throughout the entire project area, including the Town of Union. Furthermore, BCIDA, as sponsor, designer, construction overseer and the agency funding the Project, possesses a much greater ability to add, modify or even eliminate project elements. This is especially important if design changes would be needed to avoid or minimize project impacts outside of the Town of Maine.

Third Criterion

BCIDA and the Town present competing arguments about which agency is more capable of providing the most thorough environmental assessment of the Project. A designation of lead agency here can be made without relying on the third criterion since the first and

⁴ DEC publishes the Commissioner's lead agency decisions on its [website](#). They are also commercially available through Westlaw.

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second criteria favor BCIDA. Therefore, I do not reach a conclusion as to whether the third criteria favors either of the parties.

Finding

I find that BCIDA should be designated as lead agency based on the first and second criteria. My finding is based on the scale of the Project —spanning the territorial limits of two towns, the Project's predominantly regional impacts and BCIDA's comparatively broader authority to investigate impacts for the Project site as Project sponsor.

My decision to designate BCIDA as lead agency in no way limits the Town of Maine's authority or responsibility as an involved agency. I strongly encourage BCIDA to affirmatively involve the Town of Maine Town Board and Planning Board in the development of the Masterplan and GEIS; BCIDA's review would benefit from the Town of Maine's land use expertise, the comprehensive planning work it has accomplished and the fact that the majority of lands affected by the Project are located in the Town of Maine. I strongly encourage BCIDA to seek and use the expertise of other involved or interested agencies in evaluating potential impacts of the Project.



Sean Mahar, Interim Commissioner

Dated: April 30, 2024
Albany, New York

Distribution of Copies

Disputing Agencies/Sponsor (mail and e-mail copy):

Potential Interested Agencies/Parties (e-mail copy):

Liz Coyne, Chair, Town of Maine Planning Board
James Tokos, Supervisor, Town of Union
Kevin Balduzzi, Regional Permit Administrator, DEC Region 7

New York State Department of Environmental Conservation (e-mail copy):

Lawrence H. Weintraub, Office of General Counsel, NYSDEC Central Office
Dereth Glance, Regional Director, NYSDEC Region 7

Filings:

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BCIDA request for lead agency determination, Frank C. Previc of Harris Beach PLLC, representing BCIDA (February 26, 2024).

Town Board Town of Maine request for lead agency determination, Robert H. McKertich of Coughlin & Gerhart, LLP, representing Town Board Town of Maine (March 1, 2024).

BCIDA follow-up request for lead agency determination – in response to Town Board Town of Maine 3/1/2024 correspondence, Frank C. Previc of Harris Beach PLLC, representing BCIDA (March 11, 2024).

Town Board Town of Maine follow-up request for lead agency determination – in response to BCIDA 3/11/2024 correspondence, Robert H. McKertich of Coughlin & Gerhart, LLP, representing Town Board Town of Maine (March 21, 2024).