

# Land Use and Local Government Advisory Panel Meeting

May 12, 2021 | 1:00-3:00pm

## At a Glance

- Mark Lowery reviewed the Adaptation and Resilience subgroup recommendations.
- Panel members provided feedback on proposed recommendations from the Adaptation and Resilience subgroup.

## Members in Attendance

- **Chair**, Sarah Crowell – Director, Office of Planning, Development, & Community, Department of State
- Ed Marx – Former Commissioner of Planning, Tomkins County
- Jayme Breschard-Thomann – Senior Project Manager, Bergmann PC
- Juan Camilo Osorio – Assistant Professor, Pratt Institute School of Architecture
- Kathy Moser – Senior Vice President, Open Space Institute
- Gita Nandan – Board Chair, RETI (Resilience, Education, Training, and Innovation) Center
- Mark Lowery – Assistant Director, Office of Climate Change, Department of Environmental Conservation

## Members Not in Attendance

- Jessica Bacher – Managing Director, Pace University School of Law, Land Use Law Center
- Kevin Law – President & CEO, Long Island Association
- Katie Malinowski – Executive Director, NYS Tug Hill Commission
- Priya Mulgaonkar – Project Manager, Hester Street Collaborative
- Eric Walker – Climate and Clean Energy Strategist

## Staff Who Participated in the Call

- Paul Beyer – Department of State
- Laura Heady – Department of Environmental Conservation
- Josh Hunn – Department of State
- Brad Tito – Communities & Local Government, NYSERDA

## Notes

### **Welcome and Roll Call**

- Sarah Crowell, the Advisory Panel Chair, gave welcoming remarks, conducted the roll call, thanked everyone for participating and went over the agenda for the AP meeting (see 'Meeting Agenda' slide).

### **Stakeholder Engagement on Adaptation and Resilience Recommendations**

- Mark Lowery presented on the meetings and opportunities the AP hosted to date to take input on Adaptation and Resilience recommendations (see slide for full details).

### **Recommended Adaptation and Resilience Initiatives**

- Mark Lowery presented the recommendations of the Adaptation and Resilience Subgroup. He explained that edits in the document presented were categorized as follows: text to be deleted in red; text to be added in green; text that requires further discussion in yellow. Mark noted there were 12-14 areas of significant change on which the AP will focus this meeting.
- Kathy Moser praised the grouping of the recommendations and noted that the implementation of these recommendations would be meaningful and appreciates the work that went into it.
  - Mark Lowery thanked Kathy and agreed that he's hopeful to receive funding for implementation.
- Mark Lowery presented each initiative, the benefits and impacts, and components for delivery. Panel members were able to comment after each initiative (see slides for details).
- Initiative AR #2 – Discussion (Slide 19 and 20):
  - Juan Camillo-Osorio: Thanked Mark for considering recommendations and understands judgement on what can be required. The first component required for delivery is the main part where recommendations discuss projections. He shared that there is lack of detail here on what projections are that may allow developers to use projections that are less strenuous but he understands the need to be careful and allow flexibility for updating the science that's required. It is a missed opportunity if, in addition to standardizing projections we don't set the expectation that there be regulations pointing to the projections.
  - Mark Lowery: Under the Community Risk and Resiliency Act, Local Waterfront Revitalization Program (LWRP), and other funding programs, applicants are required to demonstrate consideration of climate change and that would be supported here.
  - Juan Camillo-Osorio: Recommended clarifying that in the document and asked if there is a place these documents require compliance with the CLCPA. Is there a place that says regulations should be updated to reflect CLCPA mandates?
  - Mark Lowery: Noted this might be duplicative of the statute.
  - Juan Camillo-Osorio: Expressed that Coastal Zone Management (CZM) program updates are optional, not required. If NYC doesn't update program, they may not have the most up to date information. Would it be possible to require updates of LWRPs?
  - Gita Nandan: If there is a path to a requirement, stricter methodology should be used to ensure that the latest projections are paid attention to so that communities don't ignore it.
  - Mark Lowery: LWRP is a voluntary program, so communities may opt out.
  - Juan Camillo-Osorio: In NYC, they assess consistency of design proposal along the waterfront and it is what city planning commission uses to vote if a project is consistent with city policies. In many cities, it is the guiding document.
  - Sarah Crowell: Anticipate that it would require a legislative change to require that level of planning. When the state works with cities on LWRP, they recommend including climate change impacts. She would like to see all communities use these and set comprehensive plans. They can get there but mandates would be quite difficult.
  - Juan Camillo-Osorio: Noted that he would follow up offline but suggested that requirement should be to reference the latest projections.
- Initiative AR #3 – Discussion (Slide 23 and 24):

- Ed Marx: Recommended deleting yellow language on slide 23, as it seems like two different things to have an outreach campaign and solicit projects.
- Mark Lowery: Explained that original suggestion was intended to provide mass communication plan. A number of us anticipated that if the public is to understand the CLCPA and transformation that needs to occur, we need a mass communication plan like “I Love New York.” That’s what this is intended to set the stage for. That suggestion that was added may well stand as a separate component, but that may need to be teased out.
- Juan Camillo-Osorio: Articulated that the text is meant to not stop at engagement level, but to move to soliciting projects from the public.
- Mark Lowery: Asked for additional details on what a state program to that effect would look like.
- Juan Camillo-Osorio: Offered to share recommendations in short order given timeline for submission of recommendations.
- Initiative AR #4 – Discussion (Slide 28):
  - Mark Lowery: noted towns have authority over Watershed Protection Improvement Districts and recommended removing language.
- Initiative AR #5 – Discussion (Slide 33):
  - Juan Camillo-Osorio: Presented new language he proposed and noted that the language in the LULG recommendations should be used. Recommends building capacity of disadvantaged communities to plan.
  - Sarah Crowell: Noted this would be like the Brownfield Opportunity Area (BOA) program, which invites communities to be leaders in the future of their communities. She wondered if for space and consistency, this should be generalized a bit more and the more specific language could be saved as notes for later. She will work with Mark to pull language from LULG to update and be shared.
  - Ed Marx: Recommended changing “land-use plans” to “neighborhood and community reinvestment plans” to avoid jurisdiction issues as land-use plans are clearly under control of local government.
- Initiative AR #5 – Discussion (Slide 34):
  - Laura Heady: Noted that the red change was something that appeared in Initiative #7 but has other things added. It looks like it’s turned a bit into stone soup. The initial intent was technical assistance for land use solutions.
  - Mark Lowery: Asked if he should edit or if it should be dropped as they are covered in other locations.
  - Laura Heady: The spirit of this recommendation is captured in the LULG recommendations so it could be removed. If it is kept, “water efficiency practices and” should be removed.
  - Mark Lowery: Based on council discussion we are going to have a greater argument to maintain wetlands for adaptation value, not mitigation.
  - Laura Heady: That is likely true for tidal, but inland, it is very important for mitigation.
- Initiative AR #5 – Discussion (Slide 34):
  - Mark Lowery: Noted that wording changes could be made. Someone from DEC would need to get the ball rolling.

- Initiative AR #6 – Discussion (Slide 38):
  - Ed Marx: The issue is that climate needs to be included in the law that governs comprehensive plans. Recommendation here should be that climate mitigation, adaptation, and resilience be listed as in the legislation as one of the topics to be included in county plans and in county review of local zoning and planning actions. Including climate mitigation, adaptation and resilience in the list of components of a comprehensive plan in the law, it would end the question on if it's intended and authorized by state law.
- Initiative AR #8 – Discussion (Slide 46):
  - Mark Lowery: Codes division noted they don't do incentives. He recommends splitting into two recommendations.
  - Sarah Crowell: The code team would prefer "building envelope" language.
  - Mark Lowery: They objected to using "roofs and walls."
  - Sarah Crowell: Will confirm correct language with team.
- Initiative AR #9 – Discussion (Slide 49):
  - Mark Lowery started discussion around yellow text noting that public and investor-owned utilities and generators include training and preparedness for emergency procedures but that their regulations do not entail site specific vulnerability assessment, and it's not clear DEC has that authority outside of the permitting process. PSC has required this of utilities under rate cases, but DEC is not doing rate cases for these facilities.
  - Juan Camillo-Osorio: We are looking at a regulatory gap. In the process of addressing it, we should consider if the community right to know toolkit is the right place to do this. When looking at who should do this, the list gets narrowed down but there's nothing in there to the spirit of CLCPA promoting pollution and chemicals, which connects with incentives on CE and EE.
  - Mark Lowery: This is an excellent question and it will be shared with unit to develop recommendation on where we go from here.
  - Mark Lowery: We received three detailed letters related to the red text on this slide. We agreed at the most recent working group meeting that we should defer to the PowerGen Advisory Panel which has reliability as a key theme, rather than this panel weighing in on gas infrastructure maintenance/retirement, but because there were detailed letters, including one from the utility group convened by the Council, want to make sure the Panel can comment.
  - Juan Camillo-Osorio: Agreed with recommendation. This is in purview of the PowerGen panel, not ours.
  - Ed Marx: Agreed with decision to strike but not sure it's totally a power generation issue, as this is infrastructure that serves customers. He read letters and find those in opposition more compelling.
  - Juan Camillo-Osorio: There is a connection with the chemical dislodgement conversation. In addition to mitigating risk, we should be incentivizing pollution reduction strategies, not just reducing GHG, but improving air quality. We could consider adding pollution prevention to first line in addition to risk reduction.

- Mark Lowery: We would need to separate hazardous waste facilities and generators given difference in authority.
- Juan Camillo-Osorio: Agreed that makes sense but post-Sandy, energy generators chemicals had been cleaned up without documentation. We could reduce reliance on chemicals, even if you're just focused on utilities and generators.
- Mark Lowery: Understand and will amend.
- Ed Marx: Would this apply to things like coal ash storage facilities? Wondering what the scope is. This came up in Tompkins county, as things are closed and there is less oversight, which brings long term concerns.
- Initiative AR #10 – Discussion (Slide 54):
  - Mark Lowery: There was a question about addressing dams that are not municipally owned. We might argue that identification of state-owned dams for which there might be benefits for removal would be identified under statewide conservation framework.
  - Laura Heady: That idea of a conservation framework was a comprehensive set of priorities for land protection. If there was a statewide data set of dams for repair, it could potentially be included if it's related to aquaculture connectivity but hasn't been scoped yet.
  - Kathy Moser: This should be limited to dams, but it could be addressed through culverts and other linkages. After Hurricane Sandy, there was a review of connectivity and issues from infrastructure being too small.
  - Laura Heady: There is an effort to map connectivity and there are varying levels of available data. This could be added to list.
  - Mark Lowery: One initiative includes flood plain assessment. We are looking specifically at pinch points and recommending increasing the pace.
- Initiative AR #10 – Discussion (Slide 55):
  - Ed Marx: Yellow language could be replaced with language that says state legislature enables planning at county, city, and town level that includes mention of climate adaptation and resiliency as subject for consideration in comprehensive plans.
  - Kathy Moser: The Land Trust Alliance (LTA) component could be expanded. The LTA program is great. They look at restoring and stabilizing stream beds and side but if this is specifically about forest easements, it may not fit.
  - Mark Lowery: Will think this through.
- Initiative AR #12 – Discussion (Slide 64):
  - Ed Marx: Recommended that the item on forest health be a more general statement because invasive species and deer are also issues. The topic should be looked at comprehensively.
  - Mark Lowery: Agreed and noted linkage with the Agriculture and Forestry Advisory Panel recommendations.

### **Meeting Close and Next Steps**

- Mark Lowery reviewed next steps:
  - Panel members can comment until 8:30AM Monday, May 17, 2021.
  - CAC Meeting is tentatively scheduled for June 8, 2021.

- By the end of the year, the draft scoping plan will be finished. This will be the responsibility of the CAC, but staff will be engaged in drafting recommendations selected by CAC. There will be one year to finish plan with inclusion. One year after plan finished, DEC mitigation regulations are due.
- Ed Marx: Do we envision that in scoping plan process there will be identification of where recommendations fall into existing programs and will fold under that authority and where new authority or programs are needed?
- Mark Lowery: Think that will be needed.
- Mark thanked all panel members for engaging in this effort.
- Sarah Crowell thanked everyone and hopes group can meet informally in person in the future given the nature of remote work. This is the last formal meeting but there is a long process from here.
- Advisory Panel members thanked them for all their hard work, leadership, effort, and acknowledged the heavy lift this work was and is.