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NEW YORK'S STRONGEST

THE SOLID WASTE FACILITY CHALLENGE: LESSONS FROM NYC

Deputy Commissioner Robert Orlin, Esq.

Bureau of Legal Affairs

Assistant Commissioner Steven Brautigam, Esq.

Environmental Affairs

Game-Changing Initiatives for Solid Waste

The Cooper Union

June 10, 2015



INTRODUCTION

Legal/Political Setting

- State Law
- Federal Law
- Local Law



NEW YORK STATE LAW

- ECL mandates a SWMP
- NYC 1992 SWMP expiring - 10 years
- 1996 law - closure of Fresh Kills Landfill
- Part 360 Solid Waste facility regulations
 - EJ policy
- Wetlands; Protection of Waters
- Hudson River Park Act
- SEQRA/CEQR



FEDERAL LAW

- Solid Waste Disposal Act/RCRA:
Close non-compliant landfills
- Waste crossing state lines leads to bills in Congress to allow states to reject out-of-state MSW
 - Solid Waste is Interstate Commerce
 - NYC vulnerable due to geography.
- Clean Air Act: NYC then out of compliance for PM2.5
 - public concern over diesel trucks



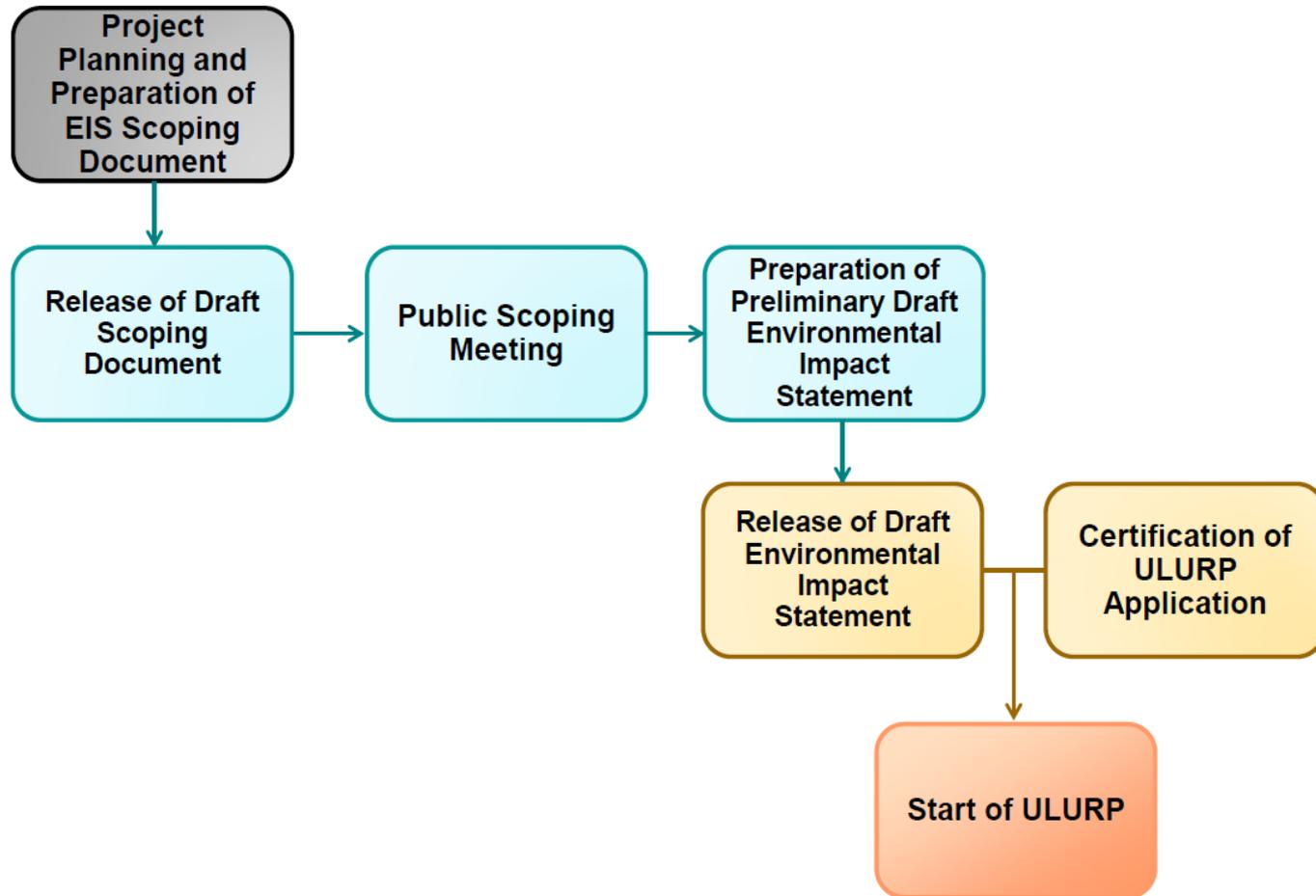
FEDERAL LAW CONTINUED

- Surface Transportation Board regulates Rail Roads, including construction of spurs
- Clean Water Act: Section 404 permits
- National Environmental Policy Act (NEPA) governs Army Corps of Engineers actions

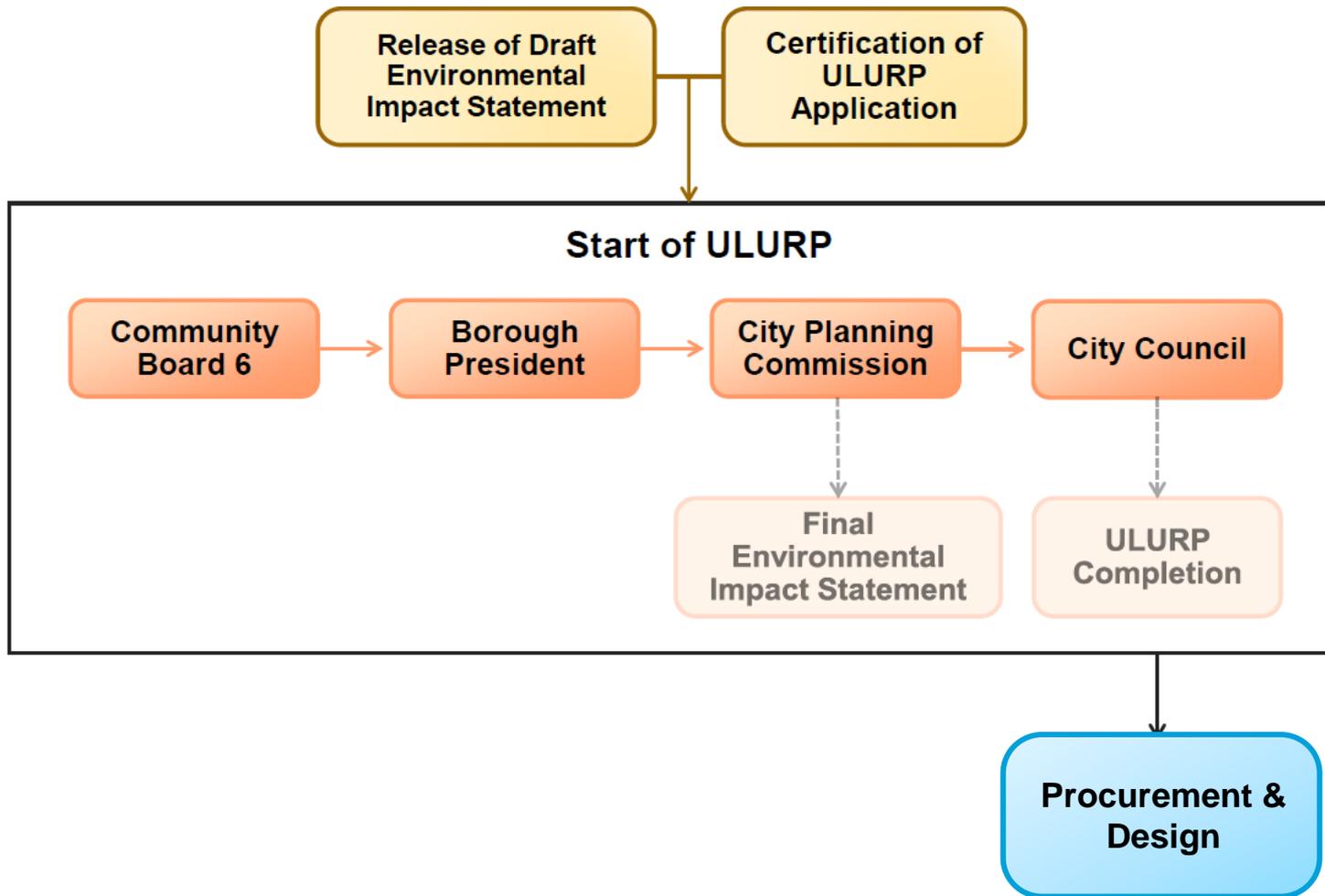
LOCAL REGULATORY SETTING

- Zoning regulates land use: Transfer Stations go in M districts. Local truck routes
- ULURP governs selection of public facilities
- Local City Environmental Quality Review adds certain procedures
- City Air and Noise Codes
- Superstorm Sandy- Advisory Base Flood Elevation now 4.5 ft higher – NYC Department of Buildings

OVERVIEW OF ENVIRONMENTAL REVIEW PROCESS



OVERVIEW OF PUBLIC REVIEW PROCESS



MAIN PERMITS

NYSDEC

- Part 360 Permit for Transfer Station
- Protection of Waters; Tidal Wetlands
- State Air Facility

NYS Dept of State

- License for river bottom

U.S. Army Corps

- Section 404 of CWA - dredge and filling

City Planning Commission

- Facility Site Selection



LOCAL POLITICAL CONTEXT

Expiring SWMP was only for 10 years; was a generic plan, deferring many disposal and recycling facility siting decisions

Prior plans to recover value from waste:

- Resource Recovery Facility and composting facilities failed to advance
- Koch/Dinkins Brooklyn Navy Yard WTE plan delayed by NYSDEC proceeding, then dropped by new Mayor Giuliani.



LOCAL POLITICAL CONTEXT CONTINUED

- Community concerns as private transfer stations proliferate in certain areas since Fresh Kills tip fee increase in 1989
- 2000 SWMP Mod: no local WTE; reuse MTS sites with new EBUF.
- 2002: New Mayor and City Council



OTHER LOCAL FACTORS

- NYC Transfer Station siting rules
- “Fair Share” principles



SITING STRATEGY: BUILD CONSENSUS – AND PREPARE FOR OPPOSITION

- Reused four DSNY marine waste transfer sites, complying with zoning, maintaining consistency with the 2000 SWMP Modifications and settled neighborhood expectations
- Focus on equitable distribution of solid waste facilities
- Go through the ULURP process for site selection for a capital project, which maximizes public input



SITING STRATEGY CONTINUED

- MTS design was much more environmentally protective than the prior MTS designs from 1939.
- Comprehensive environmental review, public meetings
- Careful attention to procedures and administrative record



SWMP & FACILITY SITING APPROVED

- Council vote
- DEC approval of SWMP- October 27, 2006
- Next: Permitting Proceedings and Legal Challenges

DEFENDING THE SWMP





DEFENDING THE SWMP

Legal Challenges to:

- East 91st Street MTS
- North Shore MTS
- Southwest Brooklyn MTS
- Spring Creek Composting Facility

E. 91ST STREET MARINE TRANSFER STATION





EAST 91ST STREET MARINE TRANSFER STATION

ACORN v. Bloomberg (ACORN I & II)

- Art. 78: Challenges included SEQRA/CEQR, Public and Private Nuisance; arbitrary and capricious; didn't follow City's Siting Rules for private transfer stations

Powell v. City of New York (Powell I & II)

- Art. 78 alleged failure to analyze construction impacts;
- Parkland alienation claimed re impacts to Robert Wagner walkway and Asphalt Green.
- Alleged needed approval by the State Legislature

EAST 91ST STREET MTS CONTINUED

Gracie Point Community Council v. N.Y. State Department of Environmental Conservation

- Challenged DEC permits and water quality certification for dredging/fill: alleged must disclose final disposal site and route
- Alleged noise analysis precluded permit; that wetlands permit should not be issued because a reasonable alternative exists in Bronx

Kellner v. City of New York

- Alleged City failed to update CEQR review for project due to delays in implementing SWMP, and failed to have a SWMP modification rather than a compliance report



EAST 91ST STREET MTS CONTINUED

Residents for Sane Trash Solutions, Inc. et al. v. Army Corps of Engineers, et al.

- Plaintiffs claim that the Corps' issuance of the CWA § 404 permit was arbitrary, capricious, and unlawful, and that the Corps failed to take a "hard look" at the transfer station's consequences and alternatives, as required by the National Environmental Policy Act of 1969 ("NEPA").
- Plaintiffs allege that the Corps:
 - 1) Improperly limited the scope of environmental review under NEPA;
 - 2) Failed to adequately consider alternatives to the 91st Street MTS;
 - 3) Failed to consider potential degradation of waters stemming from construction of the 91st Street MTS; and
 - 4) Superstorm Sandy required the Corps, the City of New York, and DSNY to supplement their environmental analysis and reconsider the permit.



EAST 91ST STREET MTS CONTINUED

- Also, Plaintiffs claim that the City and DSNY denied them equal protection of the law in violation of the Fourteenth Amendment and the New York State Constitution.
- Asphalt Green Inc., brought claims against the City for breach of contract, trespass, and private nuisance based on the City's intrusion on the Asphalt Green campus for the purpose of constructing the 91st Street MTS.

NORTH SHORE MARINE TRANSFER STATION





NORTH SHORE MTS

FAA review; MTS design modification; No Hazard letter – but then: “Miracle on the Hudson” Jan 2009.

Paskar v. New York State Department of Environmental Conservation (Paskar I)

- Challenged issuance of DEC permit for MTS

Paskar and Friends of LaGuardia Airport, Inc. v. City of New York et al.

- Bird Hazard: RCRA citizen suit in Federal Court alleged MTS is a “MSWLF unit” “solid waste facility” that will attract birds and thus needs certain public notice to the FAA before being sited; or is “a facility or practice of disposing of solid waste” within 10,000 feet of LaGuardia that must show it doesn’t attract birds.



NORTH SHORE MTS CONTINUED

Paskar v. FAA (two petitions)

- Sought review of letter by FAA

Paskar v. DEC (Paskar II)

- Art. 78 petition; challenged renewal of DEC permit; again alleged bird hazards, etc.
- City prevailed in all matters.

SOUTHWEST BROOKLYN MTS





SOUTHWEST BROOKLYN MTS

Raritan Baykeeper et al. v. Martens

- Art. 78 Proceeding
- Court upholds DEC decision; adds a few permit conditions regarding public notice
- Rejects claims of hazardous sediments and of risks from potential U.S. Navy munitions lost in the Bay



SPRING CREEK COMPOSTING FACILITY

Matter of Raritan Baykeeper v. City of New York

- Challenged yard waste composting facility permit; in park near residences. DEC Commissioner grants permit.

BUT: Subsequent Article 78 proceeding challenged DEC permit, and then:

Raritan Baykeeper v. City of New York (Public Trust Doctrine)

- Court holds facility within a mapped but unimproved park is parkland alienation, needs legislative approval.
- Facility lost permit.



THANK YOU

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