



Smart Growth – Fast Track – Law: Q & A
By Lewis Goldshore, Esq.*

The smart growth, or *fast track*, law (PL 2004, c. 89) was signed into law by Governor McGreevey on July 9, 2004. While some of its provisions are clear, others raise significant issues that will only be clarified during the implementation process. The following “Q & A” discussion provides an overview of the new law’s most important provisions.

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1. Q. *What was the origin of the smart growth – fast track – law?*
A. A number of compromises had to be made to secure the Legislature’s adoption of the Highlands Water Protection and Planning Act (Highlands Law). One of these was a commitment to promptly enact other legislation designed to streamline state permitting in smart growth areas (SGAs).

2. Q. *What was the legislative process that led to the Smart Growth Law’s (SGL) approval?*
A. The Legislature adopted the Highlands Law on June 10, 2004. Four days later, on June 14, 2004, SGL was introduced as an Assembly Committee Substitute for Assembly, No. 3008 (Sires and McKeon) and a Senate Committee Substitute for Senate No. 1368 (Sweeney and Codey). On June 17, 2004, SGL was adopted by both houses. This expedited process did not afford a full discussion of SGL’s merits and implications.

Despite strong objections from environmentalists, the Governor approved SGL on July 9, 2004. L. 2004, c.89. The law took effect immediately but it will not be fully implemented until regulations are adopted by the Department of Environmental Protection (DEP), the Department of Community Affairs (DCA) and the Department of Transportation (DOT). The regulations will be adopted within 120 days of SGL’s approval – that is, by November 6, 2004.

Copies of SGL can be downloaded from the New Jersey Legislature’s website, www.njleg.com.state.nj.us/bills.

3. Q. *What portions of the state are affected by SGL?*
A. SGL does not apply throughout the state. Rather, the law is limited to SGAs. These are identified as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center, or a designated growth center in an endorsed plan, a smart growth area and planning area designated by the New Jersey Meadowlands Commission, a

growth area designated by the Pinelands Commission, an urban enterprise zone, an area determined to be in need of redevelopment as approved by DCA, or similar areas designated by DEP. Additionally, SGL does not apply to the preservation area identified in the Highlands Law.

4. Q. *What permits are affected by SGL?*

A. The affected permits include permits or approvals issued by DEP with the exception of any approval of a grant, or a permit issued pursuant to the Coastal Area Facility Review Act, the Air Pollution Control Act, the Solid Waste Management Act or the Radiation Protection Act. Also included are DOT permits or approvals and DCA permits or approvals required as a condition of development or redevelopment. SGL will not be construed or implemented in a manner that modifies any law required to retain federal delegation to, or assumption by, the state to implement a federal law or program.

SGL does not affect permits or approvals issued by local government including, but not limited to, those issued pursuant to the terms of the Municipal Land Use Law.

5. Q. *What are SGL's key provisions?*

A. SGL has four basic elements:

- Creation of a Smart Growth Ombudsman (SGO) in DCA;
- Establishment of Divisions of Smart Growth (DSG) in DEP, DOT and DCA;
- Development of programs for the qualification and registration of professionals (the self-certification process); and
- Expedited appeals in the Office of Administrative Law (OAL).

6. Q. *What are the SGO's responsibilities?*

A. Governor McGreevey appointed DCA Commissioner Susan Bass-Levin to also serve as SGO.

SGO is authorized to: (a) with the DSG directors, review all relevant permit programs and make recommendations regarding integration of multiple review and approval processes and recommendations on those permits for which approval can be expedited; (b) maintain and operate an informational website; (c) at the request of an applicant, participate in the permit application and review process to ensure compliance with the statutory time frames; (d) review and approve proposed state agency administrative rules that pertain to SGAs to assure that they are consistent with the State Development and Redevelopment Plan; and (e) submit an annual report to the Governor and the Legislature detailing the SGL's implementation.

The SGO's authority to review and approve other state agencies' proposed administrative rules will need to be exercised very carefully.

7. Q. *What are the DSGs' responsibilities and how will expedited permit review work?*
A. A DSG is established in the DEP, DOT and DCA. (Sections 5, 7 and 9.) The DSG directors shall review and take action on permits for which applicants have requested expedited review.

An applicant may request an expedited permit application review for a proposed project in an SGA. To qualify for expedited review, the application must include all the necessary documentation, a request for expedited permit application review, and the expedited permit review fee. The expedited review fees will be used to support the program's costs and it is expected that they will be substantially higher than the customary application fees.

The expedited permit application will need to be signed by the applicant and a professional qualified and registered in accordance with the SGL and certify that the permit application is complete and that the statutory and regulatory requirements have been met. Copies of these applications will be submitted to the SGO and to the appropriate municipal and county clerks.

The generally applicable time frames for expedited review are 20 days for determining administrative completeness; 45 days for determining technical completeness; and 45 days to take action on a technically complete application, which may be extended for an additional 30 days by mutual consent of the applicant and the appropriate department. If the department fails to take action, the application shall be deemed to have been approved. The time frames for taking action are adjusted in the case of certain water allocation permits and NJPDES permits and run from the close of the applicable public comment periods.

In other contexts, the courts have been especially reluctant to enforce statutory automatic approval provisions.

8. Q. *What are the programs for the qualification and registration of professionals?*
A. Within 120 days of SGL's enactment [that is, by November 6, 2004], each of the DSG directors is required to develop a program for the qualification and registration of professionals who certify that a permit application is complete and that the applicable statutory and requirements were satisfied by the applicant.

Very significant sanctions are provided for those professionals who violate any requirement of the qualification and registration program. Those found to have negligently violated any requirement may lose their professional licensure for one year, be barred from qualification and registration for a period of three years, and cause their firms to be barred from seeking qualification and registration for three years. Those found to have willfully or recklessly violated any of the requirements shall lose their professional licensure for one year and the professional and their firm shall be permanently barred from seeking qualification and registration.

Applications for an expedited permit application review shall not be accepted until November 6, 2004 – 120 days following SGL’s enactment.

9. Q. *What are the permits-by-rule?*

A. SGL specifies five types of permits-by-rule upon certification of compliance with statutory and regulatory requirements by qualified and registered professionals. These include: treatment works approvals for sewer lines, pumping stations, force mains or service connections in sewer service areas; water quality management plan amendments for a new or expanded sewer service associated with an existing wastewater treatment facility; water main extension permits where a public water system has available, uncommitted resources; well drilling permits; and certain waterfront development act general permits. A similar procedure is available in connection with certain Highway Occupancy permits or approvals.

SGL also requires DEP to take action within 45 days on certain wetlands general permits and within 30 days on specified minor stream encroachment permits, upon certification of compliance by a qualified and registered professional.

A copy of the application for a general permit or a notice of the permit-by-rule is to be submitted to the SGO and appropriate municipal and county clerk.

10. Q. *How will administrative appeals be expedited?*

A. SGL provides the opportunity for expedited administrative appeals to contest permit actions for proposed projects located in SGAs. A Smart Growth Unit is established in the OAL for this purpose. The Administrative Law Judges assigned to this unit are authorized to conduct expedited appeals related to permit completeness, permit denial or conditional permit approval.

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