

## APPENDIX: ENVIRONMENTAL REVIEW LAWS AND REGULATIONS

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## **Chapter 5: Rules of Procedure for City Environmental Quality Review (CEQR)**

as adopted June 26, 1991

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## §5-01.

### Source of authority and statement of purpose.

Section 192(e) of the Charter provides that the City Planning Commission "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." These rules are intended to exercise that mandate by redefining lead agencies within the city in accordance with law, prescribing the relationship of the new Office of Environmental Coordination with those agencies and regulating scoping. The organization and numbering of the various sections of these rules are not intended to correspond precisely to Executive Order 91. [43RCNY Chapter 6, also see Appendix A hereto] Rather, these rules are an overlay on Executive Order 91. Where these rules conflict with Executive Order 91, these rules supersede the Executive Order.

In deciding upon the appropriate lead agency for certain classes of actions taken by the city, the City Planning Commission has selected the involved agency "principally responsible for carrying out, funding or approving" those actions. 6 NYCRR §617.2(v). For private ULURP applications, for section 197-a plans and for all actions primarily involving a zoning map or text change, the City Planning Commission, responsible under the Charter "for the conduct of planning relating to the orderly growth, improvement and future development of the city" (Charter section 192(d)), is the lead agency. For other ULURP applications, the city agency applicant, the agency that will generally be involved with ensuring programmatic implementation of the action, is the lead agency. Most of the remaining lead agency designations in the rules similarly address other approvals required by the Charter by designating the agency charged with ensuring programmatic implementation as the lead agency for those approvals. In appropriate cases, a lead agency designated by the rules may transfer its lead agency status to another involved agency.

The rules ensure that lead agencies have access to the technical and administrative expertise of the Office of Environmental Coordination. Finally, the rules provide for involved and interested agencies, including the City Council, to participate in the environmental review process, and ensure a role for the public in scoping.

## §5-02.

### General provisions.

- (a) CONTINUATION OF EXECUTIVE ORDER NO. 91. [43RCNY §6-01 et seq., Appendix A]

Until the City Planning Commission promulgates further rules governing environmental review of actions taken by the city, Executive Order No. 91 of August 24, 1977, as amended (Executive Order 91), shall continue to govern environmental quality review in the city except where inconsistent with these rules, provided, however, that the following provisions of Executive Order 91 shall not apply: the definitions of "Agency", "Lead Agencies" and "Project Data Statement" defined in §6-02, subdivision (b) of §6-03, subdivision (a) of §6-05, the introductory paragraph of subdivision (b) of §6-05, paragraphs one and two of subdivision (a) of §6-12, §6-14, and subdivision (b) of the TYPE II part of §6-15.

### (b) RULES OF CONSTRUCTION.

- (1) All functions required by Executive Order 91 to be performed by the "lead agencies," as formerly defined in §6-02 of such Executive Order, shall be performed by the lead agency prescribed by or selected pursuant to these rules or by the Office of Environmental Coordination where authorized by these rules.
- (2) Wherever Executive Order 91 explicitly or by implication refers to subdivision (b) of the Type II part of §6-15 of such Executive Order, such reference shall be deemed to be to section 617.13(d) of the SEQRA Regulations.
- (3) The reference to "a determination pursuant to §6-03(b) of this Executive Order" contained in Executive Order 91 §6-05(b)(1) shall be deemed to refer to selection of a lead agency pursuant to §5-03 of these rules.
- (4) The Office of Environmental Coordination shall succeed to functions performed by the City Clerk pursuant to Executive Order 91 with respect to the receipt and filing of documents.
- (5) References in these rules and in Executive Order 91 to specific agencies and provisions of law shall be deemed to apply to successor agencies and provisions of law.

### (c) DEFINITIONS.

- (1) All definitions contained in Executive Order 91, other than the definitions of "agency" and "lead agencies", shall apply to these rules.
- (2) "Action" as defined in §6-02 of Executive Order 91 includes all contemporaneous or subsequent actions that are included in a review pursuant to City Environmental Quality Review.
- (3) The following additional definitions shall apply to these rules unless otherwise noted:

Agency. "Agency" shall mean any agency, administration, department, board, commission, council, governing body or other governmental entity of the city of New York, including but not limited

to community boards, borough boards and the offices of the borough presidents, unless otherwise specifically referred to as a state or federal agency.

City Environmental Quality Review. "City Environmental Quality Review" (CEQR) shall mean the environmental quality review procedure established by Executive Order 91 as modified by these rules.

Determination of significance. "Determination of significance" shall mean a negative declaration, conditional negative declaration or notice of determination (positive declaration).

Interested agency. "Interested agency" shall mean an agency that lacks jurisdiction to fund, approve or directly undertake an action but requests or is requested to participate in the review process because of its specific concern or expertise about the proposed action.

Involved agency. "Involved agency" shall mean any agency that has jurisdiction to fund, approve or directly undertake an action pursuant to any provision of law, including but not limited to the Charter or any local law or resolution. The City Council shall be an involved agency for all actions for which, as a component of the approval procedure for the action or a part thereof, the City Council has the power to approve or disapprove, regardless of whether the City Council chooses to exercise such power.

Lead agency. "Lead agency" shall mean the agency principally responsible for environmental review pursuant to these rules.

Scoping. "Scoping" shall mean the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of non-relevant issues.

SEQRA Regulations. "SEQRA Regulations" shall mean Part 617 of Volume 6 of New York Codes, Rules and Regulations.

(d) **APPLICABILITY.**

These rules and Executive Order 91 shall apply to environmental review by the city that is required by the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) and regulations of the State Department of Environmental Conservation thereunder and shall not be construed to require environmental quality review of an action where such review would not otherwise be required by such act and regulations, or to dispense with any such review where it is otherwise required.

**§5-03.**

**Establishment of lead agency.**

(a) **GENERAL RULE.**

Where only one agency is involved in an action, that agency shall be the lead agency.

(b) **ACTIONS SUBJECT TO ULURP AND CHARTER SECTIONS 197-a, 200, 201, and 668.**

- (1) For actions subject to the Uniform Land Use Review Procedure of section 197-c of the Charter (ULURP), and for which the applicant is not a city agency, the City Planning Commission shall be the lead agency.
- (2) For actions that involve plans for the development, growth and improvement of the city, its boroughs and community districts (Charter section 197-a), the City Planning Commission shall be the lead agency.
- (3) For actions that involve zoning map or text changes (Charter section 200 and/or 201), the following rules shall apply:
  - (i) If the only approval subject to ULURP or to Charter section 200 or 201 is a zoning map or text change, the City Planning Commission shall be the lead agency.
  - (ii) If the applicant for any action requiring a zoning map or text change is not a city agency, the City Planning Commission shall be the lead agency.
  - (iii) If the action involves a zoning map or text change, in addition to another approval under Charter section 197-c (ULURP) for which there is a city agency applicant, then the city agency applicant shall be the lead agency, provided, however, that the City Planning Commission shall be the lead agency if:
    - (A) the action involves a zoning map or text change that covers or may apply to areas substantially larger than the properties covered by the non-zoning approvals required under Charter section 197-c; or
    - (B) the city agency applicant and the Chair of the City Planning Commission agree that the action involves a zoning map or text change that changes the uses permitted so as to substantially alter the area zoning pattern.
- (4) For all other actions subject to section 197-c of the Charter (ULURP) for which the applicant is a city agency, and for actions subject to section 668 of the Charter for which the applicant is a city agency, the city agency applicant shall be the lead agency. Where there is more than one city agency applicant, the city agency applicants shall agree upon which of them will be the lead

agency, using the selection procedure set forth in subdivision (h) of this section.

- (5) Where no other provision of this section applies and an action involves a special permit or variance from the Board of Standards and Appeals (Charter section 668) for which the applicant is not a city agency, the Board of Standards and Appeals shall be the lead agency.

**(c) SECTION 195 ACQUISITIONS OF OFFICE SPACE OR EXISTING BUILDINGS FOR OFFICE USE.**

For actions involving acquisitions of office space or existing buildings for office use (Charter section 195), the agency filing the notice of intent to acquire shall be the lead agency.

**(d) LOCAL LAWS.**

The City Council and the Office of the Mayor shall be co-lead agencies for local laws. Either agency may at any time delegate to the other its lead agency status and act instead as an involved agency. In addition, after introduction of a proposed local law, the City Council may assume sole lead agency status after giving the Mayor five days notice.

**(e) FRANCHISES, REVOCABLE CONSENTS, AND CONCESSIONS.**

For actions involving franchises, revocable consents and concessions, the responsible agency as defined in Charter section 362(c) shall be the lead agency.

**(f) LEASING OF WHARF PROPERTY FOR WATERFRONT COMMERCE OR NAVIGATION AND WATERFRONT PLANS.**

For actions involving the leasing of wharf property belonging to the city primarily for purposes of waterfront commerce or in furtherance of navigation (Charter section 1301(2)(f)), the Department of Business Services shall be the lead agency, provided that the Department of Transportation shall be the lead agency for such actions when it is acting pursuant to Charter section 2903(c)(2). For actions involving determinations of the Commissioner of Business Services pursuant to Charter section 1302 (waterfront plans), the Department of Business Services shall be the lead agency.

**(g) SELECTION OF LEAD AGENCY IN THE CASE OF MULTIPLE INVOLVED AGENCIES.**

- (1) Subdivision (b) of this section, which governs lead agency designation for actions involving approvals pursuant to ULURP or section 197-a, 200, 201 or 668 of the Charter, shall always govern determination of the lead agency regardless of whether the action involves additional approvals pursuant to other provisions of law.
- (2) For any other action involving more than one agency, the agencies designated in subdivisions (c) through (f) of this section and any agencies involved in any required city approval, other than approvals described in such subdivisions, shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

**(h) PROCEDURE FOR SELECTION OF LEAD AGENCY.**

In selecting a lead agency where agreement among agencies is required by this section, and in deciding whether transfer of lead agency status is appropriate, the agencies making the selection or decision shall determine which agency is most appropriate to act as lead agency for the particular action. In making such determination, such agencies shall consider, but shall not be limited to considering, the following criteria:

- (i) the agency that will have the greater degree of responsibility for planning and implementing the action;
- (ii) the agency that will be involved for a longer duration;
- (iii) the agency that has the greater capability for providing the most thorough environmental assessment;
- (iv) the agency that has the more general governmental powers as compared to single or limited powers or purposes;
- (v) the agency that will provide the greater level of funding for the action;
- (vi) the agency that will act earlier on the proposed action; and
- (vii) the agency that has the greater role in determining the policies resulting in or affecting the proposed action.
- (i) TRANSFER OF LEAD AGENCY STATUS.**

Lead agency status may be transferred from the lead agency, at its discretion, to an involved agency that agrees to become the lead agency. In deciding whether a transfer of lead agency status is appropriate, agencies shall use the selection

procedure set forth in subdivision (h) of this section. Notice of transfer of lead agency status must be given by the new lead agency to the applicant and all other involved and interested agencies within 10 days of the transfer. The Chair of the City Planning Commission may act on behalf of such Commission pursuant to this subdivision.

(j) **SELECTION OF LEAD AGENCY WHERE ACTIONS INVOLVE CITY AND STATE AGENCIES.**

Where an action involves both city and state agencies, the city agency prescribed by or selected pursuant to subdivisions (a) through (i) of this section shall, together with such state agencies, participate in selection of the lead agency pursuant to SEQRA, and such selection shall be binding upon the city. The criteria set forth in section 617.6(e)(5) of the SEQRA Regulations shall be considered in deciding whether or not a city agency shall serve as lead agency. The Office of Environmental Coordination shall perform the functions set forth in subdivision (d) of §5-04 of these rules.

**§5-04.**

**The Office of Environmental Coordination.**

- (a) The Director of City Planning and the Commissioner of the Department of Environmental Protection shall designate persons from the staffs of the Departments of City Planning and Environmental Protection who shall comprise the Office of Environmental Coordination (OEC). The OEC shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.
- (b) The OEC shall perform any environmental review function assigned to it by a lead agency, except the OEC may not issue, amend or rescind a determination of significance, notice of completion of a draft or final environmental impact statement, written findings following issuance of a final environmental impact statement, or analogous statements, notices or findings for a supplemental environmental impact statement. In addition, the lead agency may not delegate to the OEC its responsibility to issue the final scope or to attend the scoping meeting; however, the lead agency may delegate to the OEC the power to chair the scoping meeting.
- (c) In addition to any other functions the OEC may perform pursuant to these rules, the OEC shall:

- (1) work with appropriate city agencies to develop and maintain technical standards and methodologies for environmental review and, upon request, assist in the application by agencies of such standards and methodologies;
- (2) work with appropriate city agencies to develop and maintain a technical database that may be utilized by applicants and city agencies in completing the standardized environmental assessment statement described in this subdivision and in preparation of draft and final environmental impact statements;
- (3) prepare and maintain a standardized environmental assessment statement, which shall provide guidance in determining whether the action may have a significant effect on the environment;
- (4) at the request of a lead agency, coordinate the work of the technical staffs of interested agencies in order to complete environmental review, and expedite responses by interested agencies to requests of the lead agency;
- (5) (i) receive and maintain on file notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes issued pursuant to §5-07 of these rules, draft and final environmental impact statements, and significant supporting documentation comprising the official records of environmental reviews, (ii) provide to the public upon request, or make available for inspection by the public during normal business hours, materials maintained on file pursuant to this paragraph, (iii) publish a quarterly listing of all notifications of commencement, determinations of significance, draft and final scopes and draft and final environmental impact statements received and filed pursuant to this paragraph, and (iv) in its discretion, advise lead agencies as to whether such documents are consistent with standards and methodologies developed pursuant to this subdivision and reflect proper use of the standardized environmental assessment statement;
- (6) provide to lead agencies staff training, management assistance, model procedures, coordination with other agencies, and other strategies intended to remedy any problems that arise with respect to consistency with standards and methodologies developed pursuant to this subdivision or proper use of the standardized environmental assessment statement;
- (7) provide to lead agencies a format for notices of public scoping meetings, assist lead agencies in ensuring that public scoping meetings are conducted in an effective manner, and, to the extent the OEC deems appropriate, comment on the draft scope and participate in such meetings;

- (8) prepare standardized forms for notifications of commencement of environmental review, determinations of significance, notices of completion of draft and final environmental impact statements, and, as may be appropriate, other environmental review documents; and
- (9) work with appropriate city agencies to develop and implement a tracking system to ensure that mitigation measures are implemented in a timely manner, and to evaluate and report on the effectiveness of mitigation measures.
- (d) Any state agency that seeks a determination whether a city agency shall serve as the lead agency for an action that involves city and state agencies should initially communicate with the OEC. Upon receipt of such communication, the OEC shall ascertain the city agency which is designated as lead agency by or pursuant to these rules and shall notify such agency of such communication. Such designated agency may then act pursuant to subdivision (j) of §5-03 of these rules.
- (e) Where an action or part thereof has been or will be reviewed by a federal agency, the OEC shall assist city agencies in coordinating review with the appropriate federal agency.

## **§5-05.**

### **Environmental review procedures.**

#### **(a) THRESHOLD DETERMINATION.**

- (1) In the case of any action for which a lead agency is prescribed by §5-03 of these rules, and thus for which no agreement among involved agencies is necessary, only such lead agency may determine that such action, considered in its entirety, requires environmental review, and such determination shall be binding upon the city. The OEC shall, upon the request of such agency, assist in such determination.
- (2) In the case of any action for which agreement among involved agencies is necessary for selection of a lead agency, if an agency that could be the lead agency for the particular action pursuant to subdivisions (b) through (g) of §5-03 of these rules determines that such action may require environmental review, then the lead agency shall be agreed upon as provided in §5-03 of these rules, and such lead agency shall determine whether such action, considered in its entirety, requires environmental review. Such determination shall be binding upon the city. The OEC shall assist in any determination made pursuant to this paragraph upon the request of the agency making such determination.

- (3) Nothing contained in this subdivision shall be construed to require an affirmative determination, whether formal or informal, that an action is exempt from environmental review, or is a Type II action pursuant to the SEQRA Regulations, where such determination would not otherwise be required by law.

#### **(b) OTHER DETERMINATIONS.**

- (1) After the determination that an action requires environmental review, the lead agency shall notify the OEC that it is commencing environmental review and complete or cause to be completed the standardized environmental assessment statement provided by the OEC. Such statement shall provide guidance in determining whether the action may have a significant effect on the environment. The OEC and interested and involved agencies shall, upon the request of the lead agency, assist the lead agency in completing such statement.
- (2) The OEC and interested and involved agencies shall, upon the request of the lead agency, assist such lead agency with respect to any aspect of a determination of significance and/or a draft, final and/or supplemental environmental impact statement.
- (3) Whenever, in the preparation of a draft environmental impact statement, the lead agency identifies a potential significant impact, the lead agency shall consult with any agency that has primary jurisdiction to carry out possible mitigations, and with any city agency that has primary regulatory jurisdiction over the subject matter of such impact.
- (4) Lead agencies shall send copies of the following to the OEC upon issuance: notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes, draft and final environmental impact statements. In addition, lead agencies shall forward to the OEC significant supporting documentation comprising the official records of environmental reviews.

## **§5-06.**

### **Involved and interested agencies; required circulation.**

- (a) The lead agency and the OEC shall make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process. If the City Council is involved in an action, staff of the lead agency and/or staff of the OEC shall be made available to explain determinations made by the lead agency to the City Council or the appropriate City Council committee or staff.

(b) Any written information submitted by an applicant for purposes of a determination by the lead agency whether an environmental impact statement will be required by law, and documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law, shall be circulated to all affected community or borough boards, where such circulation is required by the Charter.

(c) If the City Council is involved in an action, any written information, documents or records that are required to be circulated to involved agencies or to affected community boards or borough boards shall be circulated to the City Council.

## **§5-07. Scoping.**

Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

### **(a) DRAFT SCOPE.**

Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. The lead agency may consult with the OEC and other agencies prior to issuance of the draft scope.

### **(b) PUBLIC NOTICE AND COMMENT.**

Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such

meeting, and shall set forth guidelines for public participation in such meeting.

### **(c) AGENCY NOTICE AND COMMENT.**

Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved), to the applicant, to the OEC and to agencies entitled to send representatives to the public scoping meeting pursuant to section 197-c(d) or 668(a)(7) of the Charter. Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

### **(d) PUBLIC SCOPING MEETING.**

The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved), the applicant, the OEC, and agencies entitled to send representatives pursuant to section 197-c(d) or 668(a)(7) of the Charter may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. The OEC shall assist the lead agency in ensuring that the public scoping meeting is conducted in an effective manner.

### **(e) FINAL SCOPE.**

Within thirty days after the public scoping meeting, the lead agency shall issue a final scope, which may be prepared by the applicant and approved by the lead agency. The lead agency may consult further with the OEC and other agencies prior to issuance of the final scope. Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.



(i) **SCOPING OF CITY AGENCY ACTIONS.**

For actions which do not involve private applications, nothing contained in these rules shall be construed to prevent a lead agency, where deemed necessary for complex actions, from extending the time frames for scoping set forth in this section, or from adding additional elements to the scoping process.

**§5-08. Applications and fees.**

(a) **APPLICATIONS.**

Applications submitted for City Environmental Quality Review for actions that require such review shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules. Such applications shall include information required to be obtained from applicants in order for the lead agency to complete or cause to be completed the standardized environmental assessment statement, and such other documents and additional information as the lead agency may require to make a determination of significance. In addition, except as otherwise provided in these rules, such applications shall conform to the requirements of Executive Order 91. Applicants shall file twenty-five copies of each application.

(b) **FEES.**

Except as otherwise provided by this section, fees in effect on the effective date of these rules pursuant to Executive Order 91 shall continue to govern City Environmental Quality Review applications, unless the City Planning Commission shall by rule modify such fees. Such fees shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules, and shall be in the form of a check or money order made out to the "City of New York."

**§5-09. Transition section.**

(a) An action shall not be subject to these rules, but shall comply with Executive Order 91, as in effect prior to the effective date of these rules, where: (1) a classification as exempt, excluded or Type II has been made prior to the effective date of these rules; (2) a project data statement has been completed more than thirty days prior to the effective date of these rules and a determination of significance has not been made prior to the effective date of these rules; (3) a negative declaration or a conditional negative declaration

has been issued prior to the effective date of these rules; or (4) a notice of determination (positive declaration) has been issued more than thirty days prior to the effective date of these rules; provided, however, that if a negative declaration or conditional negative declaration is rescinded, or if a classification as exempt, excluded or Type II is no longer applicable, or if a supplemental environmental impact statement is required, or if a notice of determination (positive declaration) has been issued less than thirty days prior to the effective date of these rules or is issued on or after the effective date of these rules, these rules shall apply, and the lead agency prescribed by or selected pursuant to these rules shall thereupon assume lead agency status at the earliest time practicable.

(b) Except as provided in subdivision (a) of this section, the lead agency prescribed by or selected pursuant to these rules shall assume lead agency status at the earliest time practicable. If a determination of significance has not been made and such lead agency determines that the action requires environmental review, it shall notify the OEC that it is commencing environmental review and shall complete or cause to be completed the standardized environmental assessment statement provided by the OEC, regardless of whether a project data statement has been completed. However, such lead agency shall not be required to engage in scoping pursuant to §5-07 of these rules if a final scope has already been prepared. Until the lead agency prescribed by or selected pursuant to these rules assumes lead agency status, the action shall be subject to Executive Order 91 as in effect prior to the effective date of these rules; however, after the effective date of these rules, the prior lead agency or agencies shall not issue a determination of significance or notice of completion of a draft or final environmental impact statement, classify an action as exempt, excluded or Type II, convene a scoping meeting or conduct a public hearing pursuant to CEQR.

**§5-10. Severability.**

The provisions of these rules shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of these rules, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of these rules and the application thereof shall not be affected thereby.

**§5-11. Effective date.**

These rules shall take effect on October 1, 1991.

# **CITY ENVIRONMENTAL QUALITY REVIEW**

## **Executive Order No. 91 of 1977 as amended**

WHEREAS, the improvement of our urban environment is critically important to the overall welfare of the people of the City; and

WHEREAS, the development and growth of the City can and should be reconciled with the improvement of our urban environment; and

WHEREAS, it is the continuing policy of the City that environmental, social and economic factors be considered before governmental approval is given to proposed activities that may significantly affect our urban environment; and

WHEREAS, subdivision (3) of section 8-0113 of Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act, or "SEQRA") and the regulations promulgated thereunder (6 NYCRR 617) authorizes local governments to adopt rules, procedures, criteria and guidelines for incorporating environmental quality review procedures into existing planning and decision making processes; and

WHEREAS, the procedures formulated in this Executive Order are intended to be integrated into existing agency procedures, including the Uniform Land Use Review Procedure contained in section 197-c of Chapter 8 of the City Charter, in order to avoid delay and to encourage a one-stop review process; and

WHEREAS, section 8-0117 of SEQRA, as amended, provides that only actions or classes of actions identified by the State Department of Environmental Conservation as likely to require preparation of an environmental impact statement shall be subject to this Executive Order until November 1, 1978, after which date non-exempt actions will be fully subject to this Executive Order; and

WHEREAS, the implementation of SEQRA in the City by this Executive Order will accomplish the purposes for which Executive Order No. 87 of October 18, 1973 ("Environmental Review of Major Projects") was promulgated and will continue the policy established therein.

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, Executive Order No. 87 of October 18, 1973 is, in accordance with the provisions of sections 16 and 18 hereunder, hereby replaced by this Executive Order as follows:

### **§6-01. Applicability**

No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

### **§6-02. Definitions**

As used herein, the following terms shall have the indicated meanings unless noted otherwise:

- (a) **Action.** "Action" means any activity of an agency, other than an exempt action enumerated in §6-04 of this Executive Order, including but not limited to the following:
- (1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;
  - (2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants,

## **Cross reference to CEQR Rules of Procedure**

***Supplemented by new statement of authority and purpose, Rules, §5-01.***

***Exec. Order 91 continued except as, otherwise provided, Rules §5-02(a). See new Rules of Construction, Rules §5-02(b).***

***Except as modified by Rules §5-02(a) and (d).***

***Additional definitions, Rules §5-02(c).***

***Subdiv. (a) modified by Rules §5-02(c) (2).***

**Cross reference to CEQR  
Rules of Procedure**

subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

- (3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;
- (4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;
- (5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

~~(b) Agency. "Agency" means any agency, administration, department, board, commission, council, governing body or any governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.~~

***Inapplicable. See Rules §5-02(a), §5-02(c) (3) (i).***

(c) Applicant. "Applicant" means any person required to file an application pursuant to this Executive Order.

(d) Conditional negative declaration. "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternatives designed to avoid adverse environmental impacts.

(e) DEC. "DEC" means the New York State Department of Environmental Conservation.

(f) Environment. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

(g) Environmental analysis. "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

(h) Environmental assessment form. "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

***Retitled Environmental Assessment Statement; see Rules §5-04(c) (3).***

(i) Environmental impact statement (EIS). "Environmental impact statement (EIS)" means a written document prepared in accordance with §6-08, §6-10, §6-12 and §6-13 of this Executive Order. An EIS may either be in a draft or a final form.

## **Cross reference to CEQR Rules of Procedure**

- (j) **Environmental report.** "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepare or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in §6-10 of this Executive Order as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this Executive Order, including the preparation of an EIS.
- ~~(k) **Lead agencies.** "Lead agencies" means the Department of Environmental Protection and the Department of City Planning of the City of New York, as designated by the Mayor pursuant to section 617.4 of Part 617 of Volume 6 of the New York Code of Rules and Regulations, for the purpose of implementing the provisions of Article 8 of the Environmental Conservation Law (SEQRA) in the City of New York, by order dated December 23, 1976.~~
- (l) **Ministerial action.** "Ministerial action" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, a construction of its language or intent.
- (m) **Negative declaration.** "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.
- (n) **Notice of determination.** "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.
- (o) **NYCRR.** "NYCRR" means the New York Code of Rules and Regulations.
- (p) **Person.** "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.
- ~~(q) **Project data statement.** "Project data statement" means a written submission to the lead agencies by an applicant on a form prescribed by the lead agencies, which provides an identification of and information relating to the environmental impact of a proposed action. The project data statement is designed to assist the lead agencies in their evaluation of an action to determine whether an action under consideration may or will not have significant effect on the environment.~~
- (r) **SEQRA.** "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).
- (s) **Typically associated environmental effect.** "Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.
- (t) **ULURP.** "ULURP" means the Uniform Land Use Review Procedure (section 197-c of Chapter 8 of the New York City Charter).

***Inapplicable, Rules §5-02(a).  
Superseded by Rules §5-02(b)  
(1) and §5-02(c) (3) (vi); also see  
Rules §5-03 for choice of lead  
agency.***

***See also Rules §5-02(c) (3) (iii).***

***See also Rules §5-02(c) (3) (vii).***

***Inapplicable, Rules §5-02(a).  
Superseded by Environmental  
Assessment Statement, see  
Rules §5-04(c) (3). See also  
Rules §5-05(b) (1) and 5-08(a).***

### **§6-03. Actions Involving Federal or State Participation**

- (a) If an action under consideration by any agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:
- (1) in the case of an action for which there has been duly prepared both a draft EIS and final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to §6-12 of this Executive Order.
  - (2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this Executive Order, and the action shall be fully subject to the same.

~~(b) If an action under consideration by any agency may involve any state action which may have a significant effect on the environment under SEQRA, pursuant to which a state agency is required to comply with the procedures specified in 6 NYCRR 617, then the determination as to whether the state agency or the lead agencies shall be responsible for the environmental review shall be made on the basis of the following criteria:~~

- ~~(1) the agency to first act on the proposed action;~~
- ~~(2) a determination of which agency has the greatest responsibility for supervising or approving the action as a whole;~~
- ~~(3) a determination of which agency has more general governmental powers as compared to single or limited powers or purposes;~~
- ~~(4) a determination of which agency has the greatest capability for providing the most thorough environmental assessment of the action;~~
- ~~(5) a determination of whether the anticipated impacts of the action being considered are primarily of statewide, regional or local concern, e.g., if such impacts are primarily of local concern, the lead agencies shall conduct the environmental review.~~

~~If this determination cannot be made within 30 days of the filing of an application, the Commissioner of DEC shall be requested, in writing, to make such determination.~~

### **§6-04. Exempt Actions**

The following actions shall not be subject to the provisions of this Executive Order:

- (a) projects or activities classified as Type I pursuant to §6-15 of this Executive Order directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977 which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this Executive Order;
- (1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (1), (2), (3) and (4) of this Executive Order;

### **Cross reference to CEQR Rules of Procedure**

***See also Rules §5-04(e).***

***Inapplicable, Rules §5-02(a). Entire subdivision (b) superseded by Rules §5-03(j) and §5-04(d).***

***See also Rules §5-02(d).***

**Cross reference to CEQR  
Rules of Procedure**

- (2) an action shall be deemed to be undertaken at the point that:
  - (i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or
  - (ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or
  - (iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant subsidy, loan or other form of financial assistance; or
  - (iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.
- (b) projects or activities classified as Type I pursuant to §6-15 of this Executive Order approved by an agency prior to September 1, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this Executive Order;
  - (1) such actions include, but are not limited to, those actions defined in §6-02 "Action" (2) and (5) of this Executive Order;
  - (2) an action shall be deemed to be approved at the point that:
    - (i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or
    - (ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or
    - (iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.
- (c) projects or activities not otherwise classified as Type I pursuant to §6-15 of this Executive Order directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this Executive Order;
  - (1) such actions include, but are not limited to, those actions defined in §6-02 "Action" of this Executive Order;
  - (2) an action shall be deemed to be undertaken as provided in subsections (a)(2) and (b)(2) of this section, as applicable.
- (d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;
- (e) ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in §6-15(a), Type I, of this Executive Order, relating to critical areas and historic resources;
- (f) maintenance or repair involving no substantial changes in existing structures or facilities;
- (g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Articles 7 and 8 of the Public Service Law;

**See Rules §5-02(d).**

- (h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and
- (i) actions of the Legislature of the State of New York or of any court.

**Cross reference to CEQR  
Rules of Procedure**

**§6-05. Determination of Significant Effect;  
Applications**

- ~~(a) Each agency shall ascertain whether an application need be filed pursuant to this section, employing lists of actions, classified as either exempt, Type I or Type II pursuant to §6-04 and §6-15 of this Executive Order, respectively, which lists shall be certified by the lead agencies.~~
- (b) The applicant initiating the proposed action, other than an exempt or Type II action pursuant to §6-04 and §6-15 of this Executive Order, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;
  - (1) within 20 calendar days of receipt of the application, or of a determination pursuant to §6-03(b) of this Executive Order, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;
  - (2) when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.
- (c) Each application shall include an identification of those agencies, including federal and state agencies, which to the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.
- (d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this Executive Order.
- (e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.
- (f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

***Inapplicable, Rules §5-02(a). Superseded by Rules §5-05(a). See also Rules §5-02(b) (2) and §5-02(d).***

***Introductory paragraph inapplicable, Rules §5-02(a). Paragraph (b) superseded by Rules §5-08.***

***Determination pursuant to §5-03(b) deemed to refer to lead agency selection pursuant to Rules §5-03. See Rules §5-02(b) (3).***

## **§6-06. Determination of Significant Effect; Criteria**

## **Cross reference to CEQR Rules of Procedure**

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- (a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:
- (1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;
  - (2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;
  - (3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;
  - (4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;
  - (5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;
  - (6) a major change in the use of either the quantity or type of energy;
  - (7) the creation of a hazard to human health or safety;
  - (8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to §6-13 of this Executive Order;
  - (9) the creation of a material demand for other actions which would result in one of the above consequences;
  - (10) changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.
- (b) For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e. whether it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e. degree of change or its absolute size). §6-15 of this Executive Order refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

***Reference to §6-15(b), Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b) (2).***



## **§6-07. Determination of Significant Effect; Notification**

- (a) The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to §6-05(a) of this Executive Order whether the proposed action may have a significant effect on the environment;
- (1) in making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in §6-06 and consider the lists of actions contained in §6-15 of this Executive Order;
  - (2) the lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).
- (b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:
- (1) Negative Declaration. If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §6-04 and §6-15 of this Executive Order, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:
    - (i) an action identifying number;
    - (ii) a brief description of the action;
    - (iii) the proposed location of the action;
    - (iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;
    - (v) a statement setting forth the reasons supporting the lead agencies' determination.
  - (2) Conditional Negative Declaration. If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §6-04 and §6-15 of this Executive Order, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):
    - (i) a list of the conditions, modifications or alternatives to the proposed action which supports the determination;
    - (ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;
    - (iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

## **Cross reference to CEQR Rules of Procedure**

*Error. Reference to §6-05(a) should be to §6-05(b).*

*Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b) (2).*

*Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b) (2).*

*Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b) (2).*

(3) **Notice of Determination.** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §6-04 and §6-15 of this Executive Order, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

- (i) an action identifying number;
- (ii) a brief description of the action;
- (iii) the proposed location of the action;
- (iv) a brief description of the possible significant effects on the environment of the action;
- (v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §6-08 and §6-12 of this Executive Order.

(c) The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the regional director of DEC, the commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

## **Cross reference to CEQR Rules of Procedure**

***Reference to §6-15(b), Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b) (2).***

***See additional circulation provisions, Rules §5-06(b) and §5-06(c). City Clerk function transferred to OEC, Rules §5-02(b) (4).***

## **§6-08. Draft Environmental Impact Statements; Responsibility for Preparation**

### **(a) Non-agency applicants:**

- (1) after receipt of a Notice of Determination pursuant to §6-07(c) (3) of this Executive Order, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;
- (2) the lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.
- (3) if the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

***Rules add formal scoping, Rules §5-07. Interested and involved agencies assist with DEIS on request. See Rules §5-05(b) (2).***

***See also Rules §5-05(b) (3) for requirements of lead consultation on mitigations.***

### **(b) Agency applicants:**

- (1) when an action which may have significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

- (2) all agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.
- (c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

**Cross reference to CEQR  
Rules of Procedure**

*See Rules §5-05(b)(3) for requirements of lead consultation on mitigations.*

**§6-09. Environmental Impact Statements; Content**

- (a) Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.
- (b) All draft and final EIS's shall be preceded by a cover sheet stating:
  - (1) whether it is a draft or a final;
  - (2) the name or other descriptive title of the action;
  - (3) the location of the action;
  - (4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;
  - (5) identification of individuals or organizations which prepared any portion of the statement; and
  - (6) the date of its completion.
- (c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.
- (d) The body of all draft and final EIS's shall at least contain the following:
  - (1) a description of the proposed action and its environmental setting;
  - (2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typical associated environmental effects;
  - (3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;
  - (4) a discussion of the social and economic impacts of the proposed action;
  - (5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;
  - (6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

*Lead to be guided by technical standards and methodologies developed by OEC, Rules §5-04(c).*

- (7) a description of mitigation measures proposed to minimize adverse environmental impacts;
  - (8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;
  - (9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;
  - (10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and
  - (11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.
- (e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

### **§6-10. Draft Environmental Impact Statements; Procedures**

- (a) Notice of Completion. Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.
- (1) Contents of Notice of Completion. All Notices of Completion shall contain the following:
- (i) an action identifying number;
  - (ii) a brief description of the action;
  - (iii) the location of the action and its potential impacts and effects; and
  - (iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.
- (2) Circulating Notice of Completion. All Notices of Completion shall be circulated to the following:
- (i) all other agencies, including federal and state agencies, involved in the proposed action;
  - (ii) all persons who have requested it;
  - (iii) the editor of the State Bulletin;
  - (iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

**Cross reference to CEQR  
Rules of Procedure**

(3) Filing Notice of Completion. All Notices of Completion shall be filed with and made available for public inspection by the following:

- (i) the Commissioner of DEC;
- (ii) the regional director of DEC;
- (iii) the agency applicant, where applicable;
- (iv) the appropriate Community Planning Board(s);
- (v) the City Clerk;
- (vi) the lead agencies.

(b) Filing and availability of draft EIS. All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

*City clerk function transferred to OEC. Rules §5-02(b) (4).*

(c) Public hearings on draft EIS.

- (1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.
- (2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regulation.
- (3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.
- (4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this Executive Order.

**§6-11. Final Environmental Impact Statements;  
Procedures**

- (a) Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.
  - (1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in §6-07 of this Executive Order.

*Interested and involved agencies assist with FEIS on request, Rules §5-05(b) (2).*

- (2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in the light of further review by the lead agencies, comments received and the record of the public hearing.
- (b) immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in the manner specified in §6-11(a) of this Executive Order, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.
- (c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to §6-11(b) of this Executive Order.

### **§6-12. Agency Decision Making**

- (a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.
  - ~~(1) Except as provided in paragraph (2) of this subdivision where a final decision whether or not to carry out or approve an action is required by law to be made by any agency, such decision shall be made within 30 calendar days of the filing of a final EIS.~~
  - ~~(2) Where a proposed action is simultaneously subject to ULURP, the final decision whether or not to carry out or approve the action shall be made by the Board of Estimate within 60 calendar days of the filing of the final EIS.~~
- (b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:
  - (1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;
  - (2) consistent with social, economic and other essential consideration of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.
- (c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to §6-11(b) of this Executive Order.

*Inapplicable, Rules §5-02(a).*

### **§6-13. Programmatic Environmental Impact Statements**

- (a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statements, master or area wide statements, or statements for comprehensive plans are often appropriate to assess the environmental effects of the following:

**Cross reference to CEQR  
Rules of Procedure**

- (1) a number of separate actions in a given geographic area;
  - (2) a chain of contemplated actions;
  - (3) separate actions having generic or common impacts;
  - (4) programs or plans having wide application or restricting the range of future alternative policies or projects.
- (b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:
- (1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and
  - (2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;
  - (3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this subsection shall be processed in full compliance with the requirements of this Executive Order.

**~~§6-14. Rules and Regulations~~**

~~The lead agencies shall promulgate such rules, regulations, guidelines, forms and additional procedures as may be necessary to implement this Executive Order.~~

*Inapplicable, Rules §5-02(a).*

**§6-15. Lists of Actions**

- (a) **TYPE I.** Type I actions enumerated in §617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

*See Rules §5-02(d).*

- (1) relating to public institutions:
  - (i) new correction or detention centers with an inmate capacity of at least 200 inmates;
  - (ii) new sanitation facilities, including:
    - (A) incinerators of at least 250 tons/day capacity;
    - (B) garages with a capacity of more than 50 vehicles;
    - (C) marine transfer stations;
  - (iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;
  - (iv) new schools with seating capacity of at least 1,500 seats;

**Cross reference to CEQR  
Rules of Procedure**

- (v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of the expanded facility exceeds 100,000 sq. ft. of floor area.
- (2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of the expanded facility exceeds 240,000 sq. ft. of floor area.

**(b) TYPE II.**

*See Rules §5-02(d).*

- (1) Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12 of 6 NYCRR 617.
- ~~(2) Pursuant to SEQRA, as amended, a list of Type II actions shall be promulgated prior to July 1, 1978, to become effective on September 1, 1978.~~

*Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See Rules §5-02(a) and §5-02(b) (2).*

**§6-16. Related Orders; Repeal**

- (a) Executive Order No. 87 of October 18, 1973 shall remain in effect prior to the effective dates of this Executive Order pursuant to Article 8 of the Environmental Conservation Law.
- (b) In the event of the repeal of Article 8 of the Environmental Conservation Law, Executive Order No. 87 of October 18, 1973 shall replace this Executive Order.

**§6-17. Evaluation of Effectiveness**

The lead agencies shall conduct a public hearing, not later than June 1, 1979, for the purpose of evaluating the effectiveness of this Executive Order in implementing the State Environmental Quality Review Act, and its impact on the City's physical and economic development process.

**§6-18. Effective Date**

This Executive Order shall take effect immediately.

*See new transition Rules §5-08 and §5-11. New Rules effective Oct. 1, 1991.*

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ABRAHAM D. BEAME  
Mayor, City of New York





## 617: State Environmental Quality Review

(Statutory Authority: Environmental Conservation Law Sections 3-0301(1)(B), 3-0301(2)(M) and 8-0113 (Applicable to All State and Local Agencies Within New York State Including All Political Subdivisions, Districts, Departments, Authorities, Boards, Commissions and Public Benefit Corporations))

*[Adopted: September 20, 1995; Effective: January 1, 1996]*

*[Amended June 26, 2000; Effective: July 12, 2000]*

*[Includes July 2001 address change for DEC Central Office]*

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### §617.1 Authority, intent and purpose

(a) This Part is adopted pursuant to sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113 of the Environmental Conservation Law to implement the provisions of the State Environmental Quality

Review Act (SEQR).

(b) In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(c) The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(d) It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.

(e) This Part is intended to provide a statewide regulatory framework for the implementation of SEQR by all state and local agencies. It includes:

(1) procedural requirements for compliance with the law;

(2) provisions for coordinating multiple agency environmental reviews through a single lead agency (section 617.6 of this Part);

(3) criteria to determine whether a proposed action may have a significant adverse impact on the environment (section 617.7 of this Part);

(4) model environmental assessment forms to aid in determining whether an action may have a significant adverse impact on the environment (Appendices A, B and C of section 617.20 of this Part); and

(5) examples of actions and classes of actions which are likely to require an EIS (section 617.4 of this Part), and those which will not require an EIS (section 617.5 of this Part).

## **§617.2 Definitions**

As used in this Part, unless the context otherwise requires:

(a) Act means article 8 of the Environmental Conservation Law (SEQR).

(b) Actions include:

(1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:

(i) are directly undertaken by an agency; or

(ii) involve funding by an agency; or

(iii) require one or more new or modified approvals from an agency or agencies;

(2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;

(3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

(4) any combinations of the above.

(c) Agency means a state or local agency.

(d) Applicant means any person making an application or other request to an agency to provide funding or to grant an approval in connection with a proposed action.

(e) Approval means a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.

(f) Coastal area means the state's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.

(g) Commissioner means the Commissioner of the New York State Department of Environmental Conservation.

(h) Conditioned negative declaration (CND) means a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in subdivision 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result.

(i) Critical environmental area (CEA) means a specific geographic area designated by a state or local agency, having exceptional or unique environmental characteristics.

(j) Department means the New York State Department of Environmental Conservation.

(k) Direct action or directly undertaken action means an action planned and proposed for implementation by an agency. "Direct actions" include but are not limited to capital projects, promulgation of agency rules, regulations, laws, codes, ordinances or executive orders and policy making that commit an agency to a course of action that may affect the environment.

(l) Environment means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

(m) Environmental assessment form (EAF) means a form used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment. The model full and short EAFs contained in Appendices A and C of section 617.20 of this Part may be modified by an agency to better serve it in implementing SEQR, provided the scope of the modified form is as comprehensive as the model.

(n) Environmental impact statement (EIS) means a written "draft" or "final" document prepared in accordance with sections 617.9 and 617.10 of this Part. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment. An EIS may also be a "generic" in accordance with section 617.10, of this Part, a "supplemental" in accordance with paragraph 617.9(a)(7) of this Part or a "federal" document in accordance with section 617.15 of this Part.

(o) Environmental Notice Bulletin (ENB) means the weekly publication of the department published pursuant to section 3-0306 of the Environmental Conservation Law , and accessible on the department's internet web site at <http://www.dec.state.ny.us>.

(p) Findings statement means a written statement prepared by each involved agency, in accordance with section 617.11 of this Part, after a final EIS has been filed, that considers the relevant environmental impacts presented in an EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency's decision and certifies that the SEQR requirements have been met.

(q) Funding means any financial support given by an agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action.

(r) Impact means to change or have an effect on any aspect(s) of the environment.

(s) Involved agency means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an "involved agency", notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an "involved agency".

(t) Interested agency means an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. An "interested agency" has the same ability to participate in the review process as a member of the public.

(u) Lead agency means an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required.

(v) Local agency means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the state.

(w) Ministerial act means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act, such as the granting of a hunting or fishing license.

(x) Mitigation means a way to avoid or minimize adverse environmental impacts.

(y) Negative declaration means a written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A negative declaration may also be a conditioned negative declaration as defined in subdivision 617.2(h). Negative declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

(z) Person means any agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

(aa) Permit means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by an agency.

(ab) Physical alteration includes, but is not limited to, the following activities: vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, dumping, filling or depositing, discharges to air or water, excavation or trenching, application of pesticides, herbicides, or other chemicals, application of sewage sludge, dredging, flooding, draining or

dewatering, paving, construction of buildings, structures or facilities, and extraction, injection or recharge of resources below ground.

(ac) Positive declaration means a written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required. Positive declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

(ad) Project sponsor means any applicant or agency primarily responsible for undertaking an action.

(ae) Residential means any facility used for permanent or seasonal habitation, including but not limited to: realty subdivisions, apartments, mobile home parks, and campsites offering any utility hookups for recreational vehicles. It does not include such facilities as hotels, hospitals, nursing homes, dormitories or prisons.

(af) Scoping means the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS including the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed and the identification of nonrelevant issues. Scoping provides a project sponsor with guidance on matters which must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

(ag) Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.

(ah) State agency means any state department, agency, board, public benefit corporation, public authority or commission.

(ai) Type I action means an action or class of actions identified in section 617.4 of this Part, or in any involved agency's procedures adopted pursuant to section 617.14 of this Part.

(aj) Type II action means an action or class of actions identified in section 617.5 of this Part. When the term is applied in reference to an individual agency's authority to review or approve a particular proposed project or action, it shall also mean an action or class of actions identified as Type II actions in that agency's own procedures to implement SEQRA adopted pursuant to section 617.14 of this Part. The fact that an action is identified as a Type II action in any agency's procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures.

(ak) Unlisted action means all actions not identified as a Type I or Type II action in this Part, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's

own SEQR procedures.

## §617.3 General rules

(a) No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part. An involved agency may not issue its findings and decision on an action if it knows any other involved agency has determined that the action may have a significant adverse impact on the environment until a final EIS has been filed. The only exception to this is provided under subparagraph 617.9(a)(5)(i) of this Part.

(b) SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies. SEQR provides all involved agencies with the authority, following the filing of a final EIS and written findings statement, or pursuant to subdivision 617.7(d) of this Part to impose substantive conditions upon an action to ensure that the requirements of this Part have been satisfied. The conditions imposed must be practicable and reasonably related to impacts identified in the EIS or the conditioned negative declaration.

(c) An application for agency funding or approval of a Type I or Unlisted action will not be complete until:

(1) a negative declaration has been issued; or

(2) until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy. When the draft EIS is accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, if reasonable time is provided for preparation, review and public hearings with respect to the draft EIS.

(d) The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQR process. Early consultations initiated by agencies can serve to narrow issues of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

(e) Each agency involved in a proposed action has the responsibility to provide the lead agency with information it may have that may assist the lead agency in making its determination of significance, to identify potentially significant adverse impacts in the scoping process, to comment in a timely manner on the EIS if it has concerns which need to be addressed and to participate, as may be needed, in any public hearing. Interested agencies are strongly encouraged to make known their views on the action, particularly with respect to their areas of expertise and jurisdiction.

(f) No SEQR determination of significance, EIS or findings statement is required for actions which are Type II.

(g) Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.

(1) Considering only a part or segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.

(2) If it is determined that an EIS is necessary for an action consisting of a set of activities or steps, only one draft and one final EIS need be prepared on the action provided that the statement addresses each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse environmental impacts. Except for a supplement to a generic environmental impact statement (see subdivision 617.10(d) of this Part), a supplement to a draft or final EIS will only be required in the circumstances prescribed in paragraph 617.9(a)(7) of this Part.

(h) Agencies must carry out the terms and requirements of this Part with minimum procedural and administrative delay, must avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and must expedite all SEQR proceedings in the interest of prompt review.

(i) Time periods in this Part may be extended by mutual agreement between a project sponsor and the lead agency, with notice to all other involved agencies by the lead agency.

## §617.4 Type I actions

(a) The purpose of the list of Type I actions in this section is to identify, for agencies, project sponsors and the public, those actions and projects that are more likely to require the preparation of an EIS than Unlisted actions. All agencies are subject to this Type I list.

(1) This Type I list is not exhaustive of those actions that an agency determines may have a significant adverse impact on the environment and require the preparation of an EIS. However, the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in subdivision 617.7(c) of this Part.

(2) Agencies may adopt their own lists of additional Type I actions, may adjust the thresholds to



make them more inclusive, and may continue to use previously adopted lists of Type I actions to complement those contained in this section. Designation of a Type I action by one involved agency requires coordinated review by all involved agencies. An agency may not designate as Type I any action identified as Type II in section 617.5 of this Part.

(b) The following actions are Type I if they are to be directly undertaken, funded or approved by an agency:

(1) the adoption of a municipality's land use plan, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations;

(2) the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;

(3) the granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list;

(4) the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency;

(5) construction of new residential units that meet or exceed the following thresholds:

(i) 10 units in municipalities that have not adopted zoning or subdivision regulations;

(ii) 50 units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(iii) in a city, town or village having a population of less than 150,000, 250 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(iv) in a city, town or village having a population of greater than 150,000 but less than 1,000,000, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works; or

(v) in a city or town having a population of greater than 1,000,000, 2,500 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:

(i) a project or action that involves the physical alteration of 10 acres;

- (ii) a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;
- (iii) parking for 1,000 vehicles;
- (iv) in a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area;
- (v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;
- (7) any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;
- (8) any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section;
- (9) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));
- (10) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR Part 62, 1994 (see section 617.17 of this Part); or
- (11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

## **§617.5 Type II actions**

(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.

(b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision

(c) of this section. No agency is bound by an action on another agency's Type II list. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:

(1) in no case, have a significant adverse impact on the environment based on the criteria contained in subdivision 617.7(c) of this Part; and

(2) not be a Type I action as defined in section 617.4 of this Part.

(c) The following actions are not subject to review under this Part:

(1) maintenance or repair involving no substantial changes in an existing structure or facility;

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

(3) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;

(4) repaving of existing highways not involving the addition of new travel lanes;

(5) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;

(6) maintenance of existing landscaping or natural growth;

(7) construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;

(8) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;

(9) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;

(10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;

- (11) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;
- (12) granting of individual setback and lot line variances;
- (13) granting of an area variance(s) for a single-family, two-family or three-family residence;
- (14) public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
- (15) minor temporary uses of land having negligible or no permanent impact on the environment;
- (16) installation of traffic control devices on existing streets, roads and highways;
- (17) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (18) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;
- (19) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (20) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (21) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (22) collective bargaining activities;
- (23) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (24) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (25) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other

hazardous materials;

(26) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;

(27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;

(28) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;

(29) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;

(30) adoption of a moratorium on land development or construction;

(31) interpreting an existing code, rule or regulation;

(32) designation of local landmarks or their inclusion within historic districts;

(33) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

(34) actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978), except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;

(35) actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate;

(36) actions subject to the class A or class B regional project jurisdiction of the Adirondack Park

Agency or a local government pursuant to section 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law; and

(37) actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained.

## **§617.6 Initial review of actions and establishing lead agency**

(a) Initial review of actions.

(1) As early as possible in an agency's formulation of an action it proposes to undertake, or as soon as an agency receives an application for funding or for approval of an action, it must do the following:

(i) Determine whether the action is subject to SEQR. If the action is a Type II action, the agency has no further responsibilities under this Part.

(ii) Determine whether the action involves a federal agency. If the action involves a federal agency, the provisions of section 617.15 of this Part apply.

(iii) Determine whether the action may involve one or more other agencies.

(iv) Make a preliminary classification of an action as Type I or Unlisted, using the information available and comparing it with the thresholds set forth in section 617.4 of this Part. Such preliminary classification will assist in determining whether a full EAF and coordinated review is necessary.

(2) For Type I actions, a full EAF (see section 617.20, Appendix A, of this Part) must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. The lead agency is responsible for preparing Part 2 and, as needed, Part 3.

(3) For Unlisted actions, the short EAF (see section 617.20, Appendix C, of this Part) must be used to determine the significance of such actions. However, an agency may instead use the full EAF for Unlisted actions if the short EAF would not provide the lead agency with sufficient information on which to base its determination of significance. The lead agency may require other information necessary to determine significance.

(4) An agency may waive the requirement for an EAF if a draft EIS is prepared or submitted. The draft EIS may be treated as an EAF for the purpose of determining significance.

(5) For state agencies only, determine whether the action is located in the coastal area. If the action is either Type I or Unlisted and is in the coastal area, the provisions of 19 NYCRR 600 also apply. This provision applies to all state agencies, whether acting as a lead or involved agency.

(6) Determine whether the Type I or Unlisted action is located in an agricultural district and comply with the provisions of subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law, if applicable.

(b) Establishing lead agency.

(1) When a single agency is involved, that agency will be the lead agency when it proposes to undertake, fund or approve a Type I or Unlisted action that does not involve another agency.

(i) If the agency is directly undertaking the action, it must determine the significance of the action as early as possible in the design or formulation of the action.

(ii) If the agency has received an application for funding or approval of the action, it must determine the significance of the action within 20 calendar days of its receipt of the application, an EAF, or any additional information reasonably necessary to make that determination, whichever is later.

(2) When more than one agency is involved:

(i) For all Type I actions and for coordinated review of Unlisted actions involving more than one agency, a lead agency must be established prior to a determination of significance. For Unlisted actions where there will be no coordinated review, the procedures in paragraph 617.6(b)(4) of this Part must be followed.

(ii) When an agency has been established as the lead agency for an action involving an applicant and has determined that an EIS is required, it must, in accordance with subdivision 617.12(b) of this Part, promptly notify the applicant and all other involved agencies, in writing, that it is the lead agency, that an EIS is required and whether scoping will be conducted.

(iii) The lead agency will continue in that role until it files either a negative declaration or a findings statement or a lead agency is re-established in accordance with paragraph 617.6(b)(6) of this Part.

(3) Coordinated review.

(i) When an agency proposes to directly undertake, fund or approve a Type I action or an Unlisted action undergoing coordinated review with other involved agencies, it must, as soon as possible, transmit Part 1 of the EAF completed by the project sponsor, or a draft EIS and a copy of any application it has received to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date the EAF or draft EIS was transmitted to them. For the purposes of this Part, and unless otherwise specified by the department, all coordination and

filings with the department as an involved agency must be with the appropriate regional office of the department.

(ii) The lead agency must determine the significance of the action within 20 calendar days of its establishment as lead agency, or within 20 calendar days of its receipt of all information it may reasonably need to make the determination of significance, whichever occurs later, and must immediately prepare, file and publish the determination in accordance with section 617.12 of this Part.

(iii) If a lead agency exercises due diligence in identifying all other involved agencies and provides written notice of its determination of significance to the identified involved agencies, then no involved agency may later require the preparation of an EAF, a negative declaration or an EIS in connection with the action. The determination of significance issued by the lead agency following coordinated review is binding on all other involved agencies.

(4) Uncoordinated review for Unlisted actions involving more than one agency.

(i) An agency conducting an uncoordinated review may proceed as if it were the only involved agency pursuant to subdivision (a) of this section unless and until it determines that an action may have a significant adverse impact on the environment.

(ii) If an agency determines that the action may have a significant adverse impact on the environment, it must then coordinate with other involved agencies.

(iii) At any time prior to its final decision an agency may have its negative declaration superseded by a positive declaration by any other involved agency.

(5) Actions for which lead agency cannot be agreed upon.

(i) If, within the 30 calendar days allotted for establishment of lead agency, the involved agencies are unable to agree upon which agency will be the lead agency, any involved agency or the project sponsor may request, by certified mail or other form of receipted delivery to the commissioner, that a lead agency be designated. Simultaneously, copies of the request must be sent by certified mail or other form of receipted delivery to all involved agencies and the project sponsor. Any agency raising a dispute must be ready to assume the lead agency functions if such agency is designated by the commissioner.

(ii) The request must identify each involved agency's jurisdiction over the action, and all relevant information necessary for the commissioner to apply the criteria in subparagraph (v) of this subdivision, and state that all comments must be submitted to the commissioner within 10 calendar days after receipt of the request.

(iii) Within 10 calendar days of the date a copy of the request is received by them, involved



agencies and the project sponsor may submit to the commissioner any comments they may have on the action. Such comments must contain the information indicated in subparagraph (ii) of this subdivision.

(iv) The commissioner must designate a lead agency within 20 calendar days of the date the request or any supplemental information the commissioner has required is received, based on a review of the facts, the criteria below, and any comments received.

(v) The commissioner will use the following criteria, in order of importance, to designate lead agency:

(a) 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);

(b) which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action; and

(c) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

(vi) Notice of the commissioner's designation of lead agency will be mailed to all involved agencies and the project sponsor.

(6) Re-establishment of lead agency.

(i) Re-establishment of lead agency may occur by agreement of all involved agencies in the following circumstances:

(a) for a supplement to a final EIS or generic EIS;

(b) upon failure of the lead agency's basis of jurisdiction; or

(c) upon agreement of the project sponsor, prior to the acceptance of a draft EIS.

(ii) Disputes concerning re-establishment of lead agency for a supplement to a final EIS or generic EIS are subject to the designation procedures contained in paragraph (5) of subdivision (b) of this section.

(iii) Notice of re-establishment of lead agency must be given by the new lead agency to the project sponsor within 10 days of its establishment.

## **§617.7 Determining significance**

(a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

(b) For all Type I and Unlisted actions the lead agency making a determination of significance must:

(1) consider the action as defined in subdivisions 617.2(b) and 617.3(g) of this Part;

(2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

(3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and

(4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

(c) Criteria for determining significance.

(1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or

aesthetic resources or of existing community or neighborhood character;

(vi) a major change in the use of either the quantity or type of energy;

(vii) the creation of a hazard to human health;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

(d) Conditioned negative declarations.

(1) For Unlisted actions involving an applicant, a lead agency may prepare a conditioned negative declaration (CND) provided that it:

(i) has completed a full EAF;

(ii) has completed a coordinated review in accordance with paragraph 617.6(b)(3) of this Part;

(iii) has imposed SEQR conditions pursuant to subdivision 617.3(b) of this Part that have mitigated all significant environmental impacts and are supported by the full EAF and any other documentation;

(iv) has published a notice of a CND in the ENB and a minimum 30-day public comment period has been provided. The notice must state what conditions have been imposed. An agency may also use its own public notice and review procedures, provided the notice states that a CND has been issued, states what conditions have been imposed and allows for a minimum 30-day public comment period; and

(v) has complied with subdivisions 617.7(b) and 617.12(a) and (b) of this Part.

(2) A lead agency must rescind the CND and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify:

(i) potentially significant adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or

(ii) a substantial deficiency in the proposed mitigation measures.

(3) The lead agency must require an EIS if requested by the applicant.

(e) Amendment of a negative declaration.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency, at its discretion, may amend a negative declaration when substantive:

(i) changes are proposed for the project; or

(ii) new information is discovered; or

(iii) changes in circumstances related to the project arise; that were not previously considered and the lead agency determines that no significant adverse environmental impacts will occur.

(2) The lead agency must prepare, file and publish the amended negative declaration in accordance with section 617.12 of this Part. The amended negative declaration must contain

reference to the original negative declaration and discuss the reasons supporting the amended determination.

(f) Rescission of negative declarations.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency must rescind a negative declaration when substantive:

(i) changes are proposed for the project; or

(ii) new information is discovered; or

(iii) changes in circumstances related to the project arise; that were not previously considered and the lead agency determines that a significant adverse environmental impact may result.

(2) Prior to any rescission, the lead agency must inform other involved agencies and the project sponsor and must provide a reasonable opportunity for the project sponsor to respond.

(3) If, following reasonable notice to the project sponsor, its determination is the same, the lead agency must prepare, file and publish a positive declaration in accordance with section 617.12 of this Part.

## §617.8 Scoping

(a) The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant. Scoping is not required. Scoping may be initiated by the lead agency or the project sponsor.

(b) If scoping is conducted, the project sponsor must submit a draft scope that contains the items identified in paragraphs 617.8(f)(1) through (5) of this section to the lead agency. The lead agency must provide a copy of the draft scope to all involved agencies, and make it available to any individual or interested agency that has expressed an interest in writing to the lead agency.

(c) If scoping is not conducted, the project sponsor may prepare a draft EIS for submission to the lead agency.

(d) Involved agencies should provide written comments reflecting their concerns, jurisdictions and information needs sufficient to ensure that the EIS will be adequate to support their SEQR findings. Failure of an involved agency to participate in the scoping process will not delay completion of the final written scope.

(e) Scoping must include an opportunity for public participation. The lead agency may either provide a period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means.

(f) The lead agency must provide a final written scope to the project sponsor, all involved agencies and any individual that has expressed an interest in writing to the lead agency within 60 days of its receipt of a draft scope. The final written scope should include:

(1) a brief description of the proposed action;

(2) the potentially significant adverse impacts identified both in the positive declaration and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;

(3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

(4) an initial identification of mitigation measures;

(5) the reasonable alternatives to be considered;

(6) an identification of the information/data that should be included in an appendix rather than the body of the draft EIS; and

(7) those prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review.

(g) All relevant issues should be raised before the issuance of a final written scope. Any agency or person raising issues after that time must provide to the lead agency and project sponsor a written statement that identifies:

(1) the nature of the information;

(2) the importance and relevance of the information to a potential significant impact;

(3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review.

(h) The project sponsor may incorporate information submitted consistent with subdivision 617.8(g) of this section into the draft EIS at its discretion. Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS.

(i) If the lead agency fails to provide a final written scope within 60 calendar days of its receipt of a draft scope, the project sponsor may prepare and submit a draft EIS consistent with the submitted draft scope.

## **§617.9 Preparation and content of environmental impact**

## statements

### (a) Environmental impact statement procedures.

(1) The project sponsor or the lead agency, at the project sponsor's option, will prepare the draft EIS. If the project sponsor does not exercise the option to prepare the draft EIS, the lead agency will prepare it, cause it to be prepared or terminate its review of the action. A fee may be charged by the lead agency for preparation or review of an EIS pursuant to section 617.13 of this Part. When the project sponsor prepares the draft EIS, the document must be submitted to the lead agency.

(2) The lead agency will use the final written scope, if any, and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made in accordance with the standards in this section within 45 days of receipt of the draft EIS.

(i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.

(ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt.

(3) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency must prepare, file and publish a notice of completion of the draft EIS and file copies of the draft EIS in accordance with the requirements set forth in section 617.12 of this Part. The minimum public comment period on the draft EIS is 30 days. The comment period begins with the first filing and circulation of the notice of completion.

(4) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency will determine whether or not to conduct a public hearing concerning the action. In determining whether or not to hold a SEQR hearing, the lead agency will consider: the degree of interest in the action shown by the public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment. If a hearing is to be held:

(i) the lead agency must prepare and file a notice of hearing in accordance with subdivisions 617.12(a) and (b) of this Part. Such notice may be contained in the notice of completion of the draft EIS. The notice of hearing must be published, at least 14 calendar days in

advance of the public hearing, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register;

(ii) the hearing will commence no less than 15 calendar days or no more than 60 calendar days after the filing of the notice of completion of the draft EIS by the lead agency pursuant to subdivision 617.12(b) of this Part. When a SEQR hearing is to be held, it should be conducted with other public hearings on the proposed action, whenever practicable; and

(iii) comments will be received and considered by the lead agency for no less than 30 calendar days from the first filing and circulation of the notice of completion, or no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered, whichever is later.

(5) Except as provided in subparagraph (i) of this paragraph, the lead agency must prepare or cause to be prepared and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later.

(i) No final EIS need be prepared if:

(a) the proposed action has been withdrawn or;

(b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance section 617.12 of this Part.

(ii) The last date for preparation and filing of the final EIS may be extended:

(a) if it is determined that additional time is necessary to prepare the statement adequately; or

(b) if problems with the proposed action requiring material reconsideration or modification have been identified.

(6) When the lead agency has completed a final EIS, it must prepare, file and publish a notice of completion of the final EIS and file copies of the final EIS in accordance with section 617.12 of this Part.

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

(a) changes proposed for the project; or

(b) newly discovered information; or



(c) a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

(a) the importance and relevance of the information; and

(b) the present state of the information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedures of this Part.

(b) Environmental impact statement content.

(1) An EIS must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives. EISs must be analytical and not encyclopedic. The lead agency and other involved agencies must cooperate with project sponsors who are preparing EISs by making available to them information contained in their files relevant to the EIS.

(2) EISs must be clearly and concisely written in plain language that can be read and understood by the public. Within the framework presented in paragraph 617.9(b)(5) of this subdivision, EISs should address only those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process. EISs should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material should be summarized and, if it must be included in its entirety, should be referenced in the statement and included in an appendix.

(3) All draft and final EISs must be preceded by a cover sheet stating:

(i) whether it is a draft or final EIS;

(ii) the name or descriptive title of the action;

(iii) the location (county and town, village or city) and street address, if applicable, of the action;

(iv) the name and address of the lead agency and the name and telephone number of a person at the agency who can provide further information;

(v) the names of individuals or organizations that prepared any portion of the statement;

(vi) the date of its acceptance by the lead agency; and

(vii) in the case of a draft EIS, the date by which comments must be submitted.

(4) A draft or final EIS must have a table of contents following the cover sheet and a precise

summary which adequately and accurately summarizes the statement.

(5) The format of the draft EIS may be flexible; however, all draft EISs must include the following elements:

(i) a concise description of the proposed action, its purpose, public need and benefits, including social and economic considerations;

(ii) a concise description of the environmental setting of the areas to be affected, sufficient to understand the impacts of the proposed action and alternatives;

(iii) a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence. The draft EIS should identify and discuss the following only where applicable and significant:

(a) reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts;

(b) those adverse environmental impacts that cannot be avoided or adequately mitigated if the proposed action is implemented;

(c) any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented;

(d) any growth-inducing aspects of the proposed action;

(e) impacts of the proposed action on the use and conservation of energy (for an electric generating facility, the statement must include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan);

(f) impacts of the proposed action on solid waste management and its consistency with the state or locally adopted solid waste management plan;

(g) impacts of public acquisitions of land or interests in land or funding for non-farm development on lands used in agricultural production and unique and irreplaceable agricultural lands within agricultural districts pursuant to subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law; and

(h) if the proposed action is in or involves resources in Nassau or Suffolk Counties, impacts of the proposed action on, and its consistency with, the comprehensive management plan for the special groundwater protection area program as implemented pursuant to article 55 or any plan subsequently ratified and adopted pursuant to article 57 of the Environmental Conservation Law for Nassau and Suffolk counties;

(iv) a description of the mitigation measures;

(v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative:

(a) sites;

(b) technology;

(c) scale or magnitude;

(d) design;

(e) timing;

(f) use; and

(g) types of action. For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor;

(vi) for a state agency action in the coastal area the action's consistency: with the applicable coastal policies contained in 19 NYCRR 600.5; or when the action is in an approved local waterfront revitalization program area, with the local program policies;

(vii) for a state agency action within a heritage area or urban cultural park, the action's consistency with the approved heritage area management plan or the approved urban cultural park management plan;

(viii) a list of any underlying studies, reports, EISs and other information obtained and considered in preparing the statement including the final written scope.

(6) In addition to the analysis of significant adverse impacts required in subparagraph 617.9(b)(5)(iii) of this section, if information about reasonably foreseeable catastrophic impacts to the environment is unavailable because the cost to obtain it is exorbitant, or the means to obtain it are unknown, or there is uncertainty about its validity, and such information is essential to an agency's SEQRA findings, the EIS must:

(i) identify the nature and relevance of unavailable or uncertain information;

(ii) provide a summary of existing credible scientific evidence, if available; and

(iii) assess the likelihood of occurrence, even if the probability of occurrence is low, and the consequences of the potential impact, using theoretical approaches or research methods generally accepted in the scientific community.

This analysis would likely occur in the review of such actions as an oil supertanker port, a liquid propane gas/liquid natural gas facility, or the siting of a hazardous waste treatment facility. It does not apply in the review of such actions as shopping malls, residential subdivisions or office facilities.

(7) A draft or final EIS may incorporate by reference all or portions of other documents, including EISs that contain information relevant to the statement. The referenced documents must be made available for inspection by the public within the time period for public comment in the same places where the agency makes available copies of the EIS. When an EIS incorporates by reference, the referenced document must be briefly described, its applicable findings summarized, and the date of its preparation provided.

(8) A final EIS must consist of: the draft EIS, including any revisions or supplements to it; copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing); and the lead agency's responses to all substantive comments. The draft EIS may be directly incorporated into the final EIS or may be incorporated by reference. The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it. All revisions and supplements to the draft EIS must be specifically indicated and identified as such in the final EIS.

## **§617.10 Generic environmental impact statements**

(a) Generic EISs may be broader, and more general than site or project specific EISs and should discuss the logic and rationale for the choices advanced. They may also include an assessment of specific impacts if such details are available. They may be based on conceptual information in some cases. They may identify the important elements of the natural resource base as well as the existing and projected cultural features, patterns and character. They may discuss in general terms the constraints and consequences of any narrowing of future options. They may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur.

A generic EIS may be used to assess the environmental impacts of:

(1) a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; or

(2) a sequence of actions, contemplated by a single agency or individual; or

(3) separate actions having generic or common impacts; or

(4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations or agency comprehensive resource management plans.

(b) In particular agencies may prepare generic EISs on the adoption of a comprehensive plan prepared in accordance with subdivision 4, section 28-a of the General City Law; subdivision 4, section 272-a of the Town Law; or subdivision 4, section 7- 722 of the Village Law and the implementing regulations. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the generic EIS may require no or limited SEQR review as described in subdivisions (c) and (d) of this section.

(c) Generic EISs and their findings should set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the generic EIS.

(d) When a final generic EIS has been filed under this part:

(1) No further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement;

(2) An amended findings statement must be prepared if the subsequent proposed action was adequately addressed in the generic EIS but was not addressed or was not adequately addressed in the findings statement for the generic EIS;

(3) A negative declaration must be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action will not result in any significant environmental impacts;

(4) A supplement to the final generic EIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts.

(e) In connection with projects that are to be developed in phases or stages, agencies should address not only the site specific impacts of the individual project under consideration, but also, in more general or conceptual terms, the cumulative impacts on the environment and the existing natural resource base of subsequent phases of a larger project or series of projects that may be developed in the future. In these cases, this part of the generic EIS must discuss the important elements and constraints present in the natural and cultural environment that may bear on the

conditions of an agency decision on the immediate project.

## **§617.11 Decision-making and findings requirements**

(a) Prior to the lead agency's decision on an action that has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS before issuing its written findings statement. If a project modification or change of circumstance related to the project requires a lead or involved agency to substantively modify its decision, findings may be amended and filed in accordance with subdivision 617.12(b) of this Part.

(b) In the case of an action involving an applicant, the lead agency's filing of a written findings statement and decision on whether or not to fund or approve an action must be made within 30 calendar days after the filing of the final EIS.

(c) No involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until the time period provided in subdivision 617.11(a) of this section has passed and the agency has made a written findings statement. Findings and a decision may be made simultaneously.

(d) Findings must:

(1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;

(2) weigh and balance relevant environmental impacts with social, economic and other considerations;

(3) provide a rationale for the agency's decision;

(4) certify that the requirements of this Part have been met;

(5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

(e) No state agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written finding that the action is consistent with applicable policies set forth in 19 NYCRR 600.5. When the Secretary of State has approved a local government waterfront revitalization program, no state agency may make a final decision on an action, that is likely to affect the achievement of the policies and purposes of such program, until the agency has made a written finding that the action is consistent to the maximum extent practicable with that local waterfront revitalization program.

## §617.12 Document preparation, filing, publication and distribution

The following SEQR documents must be prepared, filed, published and made available as prescribed in this section.

### (a) Preparation of documents.

(1) Each negative declaration, positive declaration, notice of completion of an EIS, notice of hearing and findings must state that it has been prepared in accordance with article 8 of the Environmental Conservation Law and must contain: the name and address of the lead agency; the name, address and telephone number of a person who can provide additional information; a brief description of the action; the SEQR classification; and, the location of the action.

(2) In addition to the information contained in paragraph (a)(1) of this subdivision:

(i) A negative declaration must meet the requirements of subdivision 617.7(b) of this Part. A conditioned negative declaration must also identify the specific conditions being imposed that have eliminated or adequately mitigated all significant adverse environmental impacts and the period, not less than 30 calendar days, during which comments will be accepted by the lead agency.

(ii) A positive declaration must identify the potential significant adverse environmental impacts that require the preparation of an EIS and state whether scoping will be conducted.

(iii) A notice of completion must identify the type of EIS (draft, final, supplemental, generic) and state where copies of the document can be obtained. For a draft EIS the notice must include the period (not less than 30 calendar days from the date of filing or not less than 10 calendar days following a public hearing on the draft EIS) during which comments will be accepted by the lead agency.

(iv) A notice of hearing must include the time, date, place and purpose of the hearing and contain a summary of the information contained in the notice of completion. The notice of hearing may be combined with the notice of completion of the draft EIS.

(v) Findings must contain the information required by subdivisions 617.11(d) and (e) of this Part.

### (b) Filing and distribution of documents.

(1) A Type I negative declaration, conditioned negative declaration, positive declaration, notice of completion of an EIS, EIS, notice of hearing and findings must be filed with:

(i) the chief executive officer of the political subdivision in which the action will be principally located;

(ii) the lead agency;

(iii) all involved agencies (see also paragraph 617.6(b)(3)) of this Part;

(iv) any person who has requested a copy; and

(v) if the action involves an applicant, with the applicant.

(2) A negative declaration prepared on an Unlisted action must be filed with the lead agency.

(3) All SEQR documents and notices, including but not limited to, EAFs, negative declarations, positive declarations, scopes, notices of completion of an EIS, EISs, notices of hearing and findings must be maintained in files that are readily accessible to the public and made available on request.

(4) The lead agency may charge a fee to persons requesting documents to recover its copying costs.

(5) If sufficient copies of the EIS are not available to meet public interest, the lead agency must provide an additional copy of the documents to the local public library.

6) A copy of the EIS must be sent to the Department of Environmental Conservation, Division of Environmental Permits, 625 Broadway, Albany, NY 12233-1750.

(7) For state agency actions in the coastal area a copy of the EIS must be provided to the Secretary of State.

(c) Publication of notices.

(1) Notice of a Type I negative declaration, conditioned negative declaration, positive declaration and completion of an EIS must be published in the Environmental Notice Bulletin (ENB) in a manner prescribed by the department. Notice must be provided by the lead agency directly to Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750 for publication in the ENB. The ENB is accessible on the department's internet web site at <http://www.dec.state.ny.us>.

(2) A notice of hearing must be published, at least 14 days in advance of the hearing date, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register.

(3) Agencies may provide for additional public notice by posting on sign boards or by other appropriate means.

(4) Notice of a negative declaration must be incorporated once into any other subsequent notice required by law. This requirement can be satisfied by indicating the SEQR classification of the action and the agency's determination of significance.



## §617.13 Fees and costs

(a) When an action subject to this Part involves an applicant, the lead agency may charge a fee to the applicant in order to recover the actual costs of either preparing or reviewing the draft and/or final EIS. The fee may include a chargeback to recover a proportion of the lead agency's actual costs expended for the preparation of a generic EIS prepared pursuant to section 617.10 of this Part for the geographic area where the applicant's project is located. The chargeback may be based on the percentage of the remaining developable land or the percentage of road frontage to be used by the project, or any other reasonable methods. The fee must not exceed the amounts allowed under subdivisions (b) through (d) of this section. If the lead agency charges for preparation of a draft and/or final EIS, it may not also charge for review; if it charges for review of a draft and/or final EIS, it may not also charge for preparation. Scoping will be considered part of the draft EIS for purposes of determining a SEQR fee; no fee may be charged for preparation of an EAF or determination of significance.

(b) For residential projects, the total project value will be calculated on the actual purchase price of the land or the fair market value of the land (determined by assessed valuation divided by equalization rate) whichever is higher, plus the cost of all required site improvements, not including the cost of buildings and structures, as determined with reference to a current cost data publication in common use. In the case of such projects, the fee charged by an agency may not exceed two percent of the total project value.

(c) For nonresidential construction projects, the total project value will be calculated on the actual purchase price of the land or the fair market value of the land (determined by the assessed valuation divided by equalization rate) whichever is higher, plus the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common use. In the case of such projects the fee charged may not exceed one half of one percent of the total project value.

(d) For projects involving the extraction of minerals, the total project value will be calculated on the cost of site preparation for mining. Site preparation cost means the cost of clearing and grubbing and removal of over-burden for the entire area to be mined plus the cost of utility services and construction of access roads. Such costs are determined with reference to a current cost data publication in common use. The fee charged by the agency may not exceed one half of one percent of the total project value. For those costs to be incurred for phases occurring three or more years after issuance of a permit, the total project value will be determined using a present value calculation.

(e) Where an applicant chooses not to prepare a draft EIS, the lead agency will provide the applicant, upon request, with an estimate of the costs for preparing the draft EIS calculated on the total value of the project for which funding or approval is sought.

(f) "Appeals procedure". When a dispute arises concerning fees charged to an applicant by a lead agency, the applicant may make a written request to the agency setting forth reasons why it is felt that such fees are inequitable. Upon receipt of a request the chief fiscal officer of the agency or his designee will examine the agency record and prepare a written response to the applicant setting forth reasons why the applicant's claims are valid or invalid. Such appeal procedure must not interfere with or cause delay in the EIS process or prohibit an action from being undertaken.

(g) The technical services of the department may be made available to other agencies on a fee basis, reflecting the costs thereof, and the fee charged to any applicant pursuant to this section may reflect such costs.

## **§617.14 Individual agency procedures to implement SEQR**

(a) Article 8 of the Environmental Conservation Law requires all agencies to adopt and publish, after public hearing, any additional procedures that may be necessary for them to implement SEQR. Until an agency adopts these additional procedures, its implementation of SEQR will be governed by the provisions of this Part. If an agency rescinds its additional SEQR procedures, it will continue to be governed by this Part. The agency must promptly notify the commissioner, and the commissioner shall publish a notice in the ENB, of the adoption of additional procedures or the rescission of agency SEQR procedures.

(b) To the greatest extent possible, the procedures prescribed in this Part must be incorporated into existing agency procedures. An agency may by local law, code, ordinance, executive order, resolution or regulation vary the time periods established in this Part for the preparation and review of SEQR documents, and for the conduct of public hearings, in order to coordinate the SEQR environmental review process with other procedures relating to the review and approval of actions. Such time changes must not impose unreasonable delay. Individual agency procedures to implement SEQR must be no less protective of environmental values, public participation and agency and judicial review than the procedures contained in this Part. This Part supersedes any SEQR provisions promulgated or enacted by an agency that are less protective of the environment.

(c) Agencies may find it helpful to seek the advice and assistance of other agencies, groups and persons on SEQR matters, including the following:

- (1) advice on preparation and review of EAFs;
- (2) recommendations on the significance or non-significance of actions;
- (3) preparation and review of EISs and recommendations on the scope, adequacy, and contents of EISs;
- (4) preparation and filing of SEQR notices and documents;

(5) conduct of public hearings; and

(6) recommendations to decisionmakers.

(d) Agencies are strongly encouraged to enter into cooperative agreements with other agencies regularly involved in carrying out or approving the same actions for the purposes of coordinating their procedures.

(e) All agencies are subject to the lists of Type I and Type II actions contained in this Part, and must apply the criteria provided in subdivision 617.7(c) of this Part. In addition, agencies may adopt their own lists of Type I actions, in accordance with section 617.4 of this Part and their own lists of Type II actions in accordance with section 617.5 of this Part.

(f) Every agency that adopts, has adopted or amends SEQR procedures must, after public hearing, file them with the commissioner, who will maintain them to serve as a resource for agencies and interested persons. The commissioner will provide notice in the ENB of such procedures upon filing. All agencies that have promulgated their own SEQR procedures must review and bring them into conformance with this Part. Until agencies do so, their procedures, where inconsistent or less protective, are superseded by this Part.

(g) A local agency may designate a specific geographic area within its boundaries as a critical environmental area (CEA). A state agency may also designate as a CEA a specific geographic area that is owned or managed by the state or is under its regulatory authority. Designation of a CEA must be preceded by written public notice and a public hearing. The public notice must identify the boundaries and the specific environmental characteristics of the area warranting CEA designation.

(1) To be designated as a CEA, an area must have an exceptional or unique character covering one or more of the following:

(i) a benefit or threat to human health;

(ii) a natural setting (e.g., fish and wildlife habitat, forest and vegetation, open space and areas of important aesthetic or scenic quality);

(iii) agricultural, social, cultural, historic, archaeological, recreational, or educational values; or

(iv) an inherent ecological, geological or hydrological sensitivity to change that may be adversely affected by any change.

(2) Notification that an area has been designated as a CEA must include a map at an appropriate scale to readily locate the boundaries of the CEA, the written justification supporting the designation, and proof of public hearing and, must be filed with:

- (i) the commissioner;
- (ii) the appropriate regional office of the department; and
- (iii) any other agency regularly involved in undertaking, funding or approving actions in the municipality in which the area has been designated.

(3) This designation shall take effect 30 days after filing with the commissioner. Each designation of a CEA must be published in the ENB by the department and the department will serve as a clearinghouse for information on CEAs.

(4) Following designation, the potential impact of any Type I or Unlisted Action on the environmental characteristics of the CEA is a relevant area of environmental concern and must be evaluated in the determination of significance prepared pursuant to Section 617.7 of this Part.

### **§617.15 Actions involving a federal agency**

(a) When a draft and final EIS for an action has been duly prepared under the National Environmental Policy Act of 1969, an agency has no obligation to prepare an additional EIS under this Part, provided that the federal EIS is sufficient to make findings under section 617.11 of this Part. However, except in the case of Type II actions listed in section 617.5 of this Part, no involved agency may undertake, fund or approve the action until the federal final EIS has been completed and the involved agency has made the findings prescribed in section 617.11 of this Part.

(b) Where a finding of no significant impact (FNSI) or other written threshold determination that the action will not require a federal impact statement has been prepared under the National Environmental Policy Act of 1969, the determination will not automatically constitute compliance with SEQR. In such cases, state and local agencies remain responsible for compliance with SEQR.

(c) In the case of an action involving a federal agency for which either a federal FNSI or a federal draft and final EIS has been prepared, except where otherwise required by law, a final decision by a federal agency will not be controlling on any state or local agency decision on the action, but may be considered by the agency.

### **§617.16 Confidentiality**

When a project sponsor submits a completed EAF, draft or final EIS, or otherwise provides information concerning the environmental impacts of a proposed project, the project sponsor may request, consistent with the Freedom of Information Law (FOIL), article 6 of the Public Officers Law, that specifically identified information be held confidential. Prior to divulging any such information, the agency must notify the applicant of its determination of whether or not it will hold the information confidential.

## §617.17 Referenced material

The following referenced documents have been filed with the New York State Department of State. The documents are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, and for inspection and copying at the Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1750.

(a) National Register of Historic Places, (1994), 36 Code of Federal Regulation (CFR) Parts 60 and 63.

(b) Register Of National Natural Landmarks,(1994), 36 Code of Federal Regulation (CFR) Part62.

## §617.18 Severability

If any provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances

## §617.19 Effective date

This Part, as revised, applies to actions for which a determination of significance has not been made prior to January 1, 1996. Actions for which a determination of significance has been made prior to January 1, 1996 must comply with Part 617 effective June 1, 1987.

## §617.20 Appendices

[Appendices A, B and C](#) are model environmental assessment forms which may be used to satisfy this Part or may be modified in accordance with sections 617.2 and 617.14 of this Part.