



Division of Local
Government Services

New York State Environmental Quality Review Act (SEQRA)

A Division of New York Department of State

2

Introduction

A Division of New York Department of State



3

Statutory authority

- Environmental Conservation Law, Article 8
 - Title 6 NYCRR, Part 617
- Discretionary actions by state and local agencies subject to review
- Coordination between stakeholders is encouraged and required in some cases
- Process ensures mitigation of adverse impacts
- State court system is only enforcement mechanism




4




Basic purpose

Part 617.1 (c)


Incorporate consideration of environmental factors into an agency's decision making process at earliest possible time

 Division of Local Government Services

5




What are "environmental factors?"

 Division of Local Government Services


6

Resources or characteristics affected by action

- Resources of agricultural, archeological, historic or aesthetic significance
- Existing patterns of population concentration distribution or growth
- Existing community or neighborhood character
- Human health



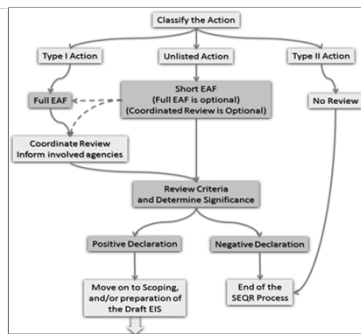
- Land
- Air
- Water
- Minerals
- Flora
- Fauna
- Noise

 Division of Local Government Services

How SEQRA works

- Agency proposes action or receives application
- Action classified*
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

*SEQRA process can conclude at any of these points




Actions

10

What are “actions?”

All are subject to SEQRA consideration:

- Undertaking, funding or approving projects or physical activities (discretionary actions)
- Planning & policy making activities
- Adopting rules, regulations & procedures
- Any combination above




11

Three classification of actions

- Type II* 6 NYCRR Part 617.5
- Type I 6 NYCRR Part 617.4
- Unlisted 6 NYCRR Part 617.2 (ak)



*DEC recommends making a note to file



12

Type II actions



- Pre-determined not to have significant adverse impact on environment
 - Area variances for one, two, or three family residences
 - Construction of commercial structure < 4,000 SF gross floor area and consistent with zoning
 - Official ministerial acts involving no discretion
- Classification concludes SEQRA
 - Normal agency processes resume



13

Type I actions


- Carry presumption of significant adverse impact on environment
- More likely to be issued positive declaration & require preparation of EIS
- Requires that SEQRA continue until its conclusion



14

Unlisted actions

- Not found on either Type I or Type II list
 - Physical disturbances of <10 acres (commercial)
 - Use variance needing no other approvals
- Governing board may supplement Type I or Type II lists with otherwise Unlisted actions
 - No agency bound by action on another's Type II list
- Requires SEQRA continue to conclusion



15

Agencies



16

What are SEQRA “agencies?”

- **Agency:** state or local public body
- **Involved agency:** public body which has jurisdiction by law to fund, approve or directly undertake action
- **Interested agency:** public body with no jurisdiction over project, but wishes to participate because of its expertise or specific concern
- **Lead agency:** the involved agency responsible for determining whether EIS will be required, and for its preparation and filing, if required

17

Possible SEQRA agencies

Involved	Interested
<ul style="list-style-type: none">• Planning board• Zoning board of appeals• Town board, city council, village board of trustees• School board• Industrial development agency & Local development corporation• State agency	<ul style="list-style-type: none">• State or local agencies acting in advisory roles<ul style="list-style-type: none">– County planning board or regional agency GML §239-m review– Environmental management or conservation advisory councils

Not classified as SEQRA agencies:


- Federal departments or agencies
- Private entities

18

Establishing lead agency

Involved agencies only

- If only one:
 - lead agency by design
- If more than one:
 - lead agency is selected by consensus (coordinated)
 - no lead agency (uncoordinated)



Establishing lead agency

- Agency to propose action, or first receive application must contact all involved agencies
 - Distribute EAF Part 1 & application
 - Inform that lead agency must be established
- Lead agency must be established within 30 days
- Once established, lead agency must make determination of significance within 20 days
 - GML §239-m review need not be concluded prior (full statement: EAF Part 1 & all materials submitted)

Review



No decisions before SEQRA concluded

“Complete application”

- Local submission requirements are satisfied for Type I or Unlisted action, and:
 - Negative declaration (or CND) has been issued; or
 - Positive declaration
 - Draft EIS has been accepted as satisfactory
 - 6 NYCRR Part 617.3(c)
- Once complete, hearing must be held within 62 days
 - Subdivision, special use permit, site plan

Literal compliance

- Satisfaction of procedural requirements
- Integration with other reviews where appropriate once application is complete
 - Draft EIS public hearing 617.3 (c)
- Some elements of P&Z review may be similar, but are not to be substituted for or represented as being equivalent to SEQRA's requirements
 - Separate & distinct processes

Subdivision – directly incorporated

- Incorporate process directly into preliminary & final plat approvals
 - Town Law §276
 - Village Law §7-728
 - General City Law §32
- Process differs if:
 - Planning board acts or does not act as lead agency
 - EIS required or not



Substantive compliance

- Consider and evaluate all potential impacts
- Take a “hard look”
 - H.O.M.E.S. v NYS UDC (1979)
- Record written reasons why impact(s):
 - May be significant; or
 - Will not be significant

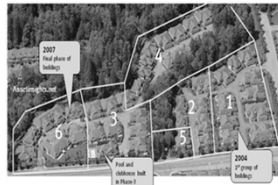


Division of Local Government Services

Avoid segmentation

“Whole action”: all components, phases, or aspects of proposal

- Rezoning for specific project
- Phased projects
- Commercial or industrial parks
- Some subdivisions
- Sale of property
- Road and highway projects



Division of Local Government Services


Environmental Assessment Form

Short EAF	Full “Long” EAF
<ul style="list-style-type: none"> • Unlisted Actions at lead agency’s discretion • 4 pages in length <ul style="list-style-type: none"> – Previously 2 	<ul style="list-style-type: none"> • Unlisted Actions at lead agency’s discretion • Mandatory for Type I Actions • 25 pages in length <ul style="list-style-type: none"> – Previously 21

28

Both full and short forms


- Part 1: Project information
(Project sponsor completes)
- Part 2: Impacts and their magnitude
(Lead Agency completes)
- Part 3: Evaluation of moderate to large impacts identified in Part 2
(Lead Agency completes; Statement of Significance)


 Division of Local Government Services

29

EAF revision update

- Online fillable forms 10/7/2013
- Considers additional areas of environmental concern
 - 1978 (full) & 1987 (short)
- No longer a separate visual assessment form
- Statement of Significance in Part 3
- Online “workbooks” with detailed guidance and instruction
- Geographic Information Systems (GIS) Mapper
- www.dec.ny.gov/permits/70293.html


 Division of Local Government Services


30

Uncoordinated review

Part 617.6 (b)(4)

Unlisted actions only

- No lead agency
- Each agency acts independently and issues individual determinations of significance
- If any one agency issues a positive declaration then:
 - All involved agencies must coordinate
 - Negative declarations issued by other agencies are superseded
 - Exception: other agency already made final decision


 Division of Local Government Services


31

Coordinated review

Part 617.6 (b)(3)

One integrated environmental review

- Lead agency administratively responsible for conducting review process until its completion
- Other involved agencies may assist lead by providing information and comments
- Lead Agency responsibility cannot be delegated



Division of Local Government Services


32

Determination of Significance


A Division of New York Department of State


Division of Local Government Services

33



Determining significance
Part 617.7


Division of Local Government Services

34

Criteria for determining significance Part 617.7(c)

- Adverse changes to the environment
- Reduction of wildlife habitat
- Hazard to human health
- Substantial change in use of land
- Conflict with adopted community plans or goals
- Impairment of "community character"

35

Evaluate impacts in context

Magnitude	Duration	Likelihood
	Short-term	Unlikely to occur
Moderate (localized)	Medium-term	Possibly will occur
	Long-term	Probably will occur
Large (severe)	Irreversible	

36

Context: magnitude, duration & likelihood

37


Will action have a potentially significant adverse environmental impact?

Yes	No
<ul style="list-style-type: none"> • Positive Declaration 	<ul style="list-style-type: none"> • Negative Declaration
<ul style="list-style-type: none"> • EIS required 	<ul style="list-style-type: none"> • EIS not required
	<ul style="list-style-type: none"> • Process concludes

38

Negative declaration Part 617.7 (a)(2)

- Analysis of **adverse environmental impacts** concludes:
 - No likely impacts identified; or
 - None identified are significant; or
 - Identified significant impacts are mitigated
- Written determination must include reason behind conclusions
- Incorporate into any subsequent legal notices



39


Conditioned negative declaration

- Criteria for CND determination
 - Only for Unlisted actions
 - Full EAF required
 - Coordinated review required
- May issue if imposed conditions will mitigate or avoid significant impacts
- Publish notice in ENB; provide at least 30 days for public comment
- Must be rescinded and reissued as positive declaration if substantive comments identify that mitigation may not be accomplished

40

After the negative declaration

- Each agency returns to underlying procedures
 - Planning board or zoning board of appeals:** site plans; subdivisions; variances; special use permits
 - Local legislative body:** adoption/revision to zoning or comprehensive plan; funding or bonding
 - State or other local agencies:** permits; grants, loans or bonds; construction; regulations
- May be amended or rescinded prior to final decision if substantive changes proposed; new information discovered; changes in circumstances


 Division of Local Government Services

41

Positive declaration

Part 617.7 (a)(1)

- Intended for lead agency to apply low threshold
- Action has potential to cause or result in at least one significant adverse environmental impact
- Environmental Impact Statement required
- If no coordination, one agency's positive declaration supersedes another's negative declaration

 Division of Local Government Services

42

Environmental
Impact Statement

A Division of New York Department of State

 Division of Local Government Services


43

Environmental Impact Statement

Part 617.2(n)

Disclosure document which:

- lets agencies, project sponsors & public systematically consider significant adverse environmental impacts, alternatives & mitigation
- weighs social, economic & environmental factors early in planning & decision-making process




44

Generic EIS

Part 617.10

- Broader & more general than site/project specific EIS
- Should discuss logic & rationale for choices/options
- May include assessment of specific impacts
- May be conceptually based in some cases
- May identify important natural resources, existing & projected cultural features, patterns & character
- May discuss constraints & consequences of hypothetical scenarios that could occur




45

Preparation of draft EIS (DEIS)

Parts 617.9 & 617.13

- Initial statement circulated for review & comment
- Prepared by project sponsor or delegated to lead agency
- However, lead agency must determine adequacy of DEIS for public review within 45 days; 30 days for re-submission
- Lead agency may charge applicant fees to recover actual costs for either DEIS/FEIS preparation or review, **but not both**



46

Scoping the DEIS

Part 617.8

- Focus on significant issues
 - Identify what information is needed
 - Eliminate non-significant issues
- Identify alternatives
- Identify mitigation measures
- Opportunity for other agency and public input


Scoping
(formerly
optional), is now
mandatory
effective
January 2019

47

Draft EIS (DEIS) content

Part 617.9 (b)

- Describe action
- Define location & setting
- Evaluate potential significant adverse impacts
- Identify potential mitigation
- Discuss reasonable alternatives
- Analyze "no action" alternative




48

Public hearings

Part 617.9 (4)

- Optional at lead agency's discretion
- Hold concurrently with any other required hearing(s)
- Supplemental hearing earlier in the process?
- Publish legal notice ≥ 14 days prior to hearing
- Hearing must start 15-60 days after Notice of completion w/hearing published
- Public comment period continues for at least 10 days after close of hearing



Preparation of FEIS

- Lead agency responsible for completion within:
 - 45 days after public hearing, or;
 - 60 days after DEIS notice of completion if no public hearing
- Notice of completion begins 10+ day period for involved agencies and public to consider FEIS
 - Lead agency may issue written findings afterwards
- Notice of Completion of Draft/Final EIS

Final EIS (FEIS) content

Part 617.9 (b)(8)

- Revised Draft EIS
- Supplements, if applicable
- All comments received
- Lead agency's responses to substantive comments



Conditions Part 617.3 (b)

Authority to impose substantive conditions that are practicable & reasonably related to impacts identified in EIS or in conjunction with CND

52

Decision-making and findings

Findings must:

Consider information in FEIS

Balance environmental factors

Provide rationale for decisions

Certify rules have been followed

Certify chosen alternative mitigates adverse environmental impacts to extent possible

Findings & final decision may be made concurrently

SEQR Findings Form

Division of Local Government Services

53

Filing and Publication

A Division of New York Department of State

Division of Local Government Services

54

Filing

What gets "filed"

Type I: neg and pos decs

Unlisted: CND, pos decs

EIS

EIS Notice of completion

Notice of hearing

Findings

Who gets a copy

Involved agencies

Applicant

Individuals upon request

Chief Executive Officer

Additional filing may be applicable

NYS DEC: EIS only


NYS DOS: EIS only in coastal areas

18

55

Environmental notice bulletin (ENB)

- Official online publication www.dec.ny.gov/enb/87269.html
 - Type I: neg and pos decs
 - Unlisted: CND; pos dec
 - Notice of completion of EIS
- Published weekly: 6 PM Wednesday submission deadline for publishing following Wednesday
- Submit ENB Notice Publication Form by email or mail:
 - enb@gw.dec.state.ny.us
 - ENB, NYS DEC, 625 Broadway, 4th Floor, Albany, NY 12233


Division of Local Government Services

56

SEQR changes effective January 2019

See attached regulations for more details.

New changes are underlined; bracketed words are deleted.

57

Why were SEQR updates needed?

- Need: Regulations were last revised in 1995
- Goal: Streamline regulatory process without sacrificing environmental protection
- Generic EIS and findings explain changes

58

Update timeline

- Notice of Intent and Draft Scope, July 11, 2012
- Final Scope, November 28, 2012
- Proposed Rule and Draft GEIS, January 20, 2017
- Revised Rule and Revised Draft GEIS, April 4, 2018
- Rule Adopted, June 27, 2018
- Rule Effective, January 1, 2019

59

Overview of Changes

- Type I List
- Type II List
- EIS Scoping
- EIS Preparation
- Document Preparation
- SEQR Fees

60

Type I List

- Lowered thresholds for residential subdivisions
- Added threshold for parking spaces in smaller communities
- Align threshold for historic properties with other sensitive resources and adds "eligible" historic properties
- Eligible properties will now appear on EAF Mapper

61
Type II List
<ul style="list-style-type: none">• Upgrading buildings to meet state energy code• Green infrastructure• Installation of telecommunications cables in ROWs with trenchless burial or use of existing poles• Conveyances of land in connection with 1-3 family residence• Solar (on rooftops, landfills, brownfield and Superfund sites, wastewater treatment facilities, parking lots/garages and industrial areas)• Lot line adjustments

62
Type II List, continued
<ul style="list-style-type: none">• Reuse of a commercial or residential structure• GML §§ 239-m or 239-n planning recommendations• Acquisition/dedication of parkland or conservation easement• Conveyance of property by public auction• Organic digesters at operating municipal landfills

63
Scoping
<ul style="list-style-type: none">• Scoping will be required for all EISs (similar to Federal and NYC requirements) except for supplemental EISs• Process for late-filed comments on scope

64

EIS Preparation

- Clarify procedures to define when a DEIS is adequate for public review
- Addition of requirement, where relevant, to evaluate measures to avoid or reduce an actions impact on climate change and associated impacts of flooding and sea level rise.

65

Document Preparation and SEQR Fees

- Draft and final scopes must be noticed in the ENB
- Draft and finals scopes, as well as draft, final and supplemental EISs must be posted on a publicly available website

66

New York State Department of State

Division of Local Government
(518) 473-3355
www.dos.ny.gov/lg/index.html

New York Department of Environmental Conservation

Division of Environmental Permits
(518) 402-9167
www.dec.ny.gov/permits/357.html



617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO	YES
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO	YES
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

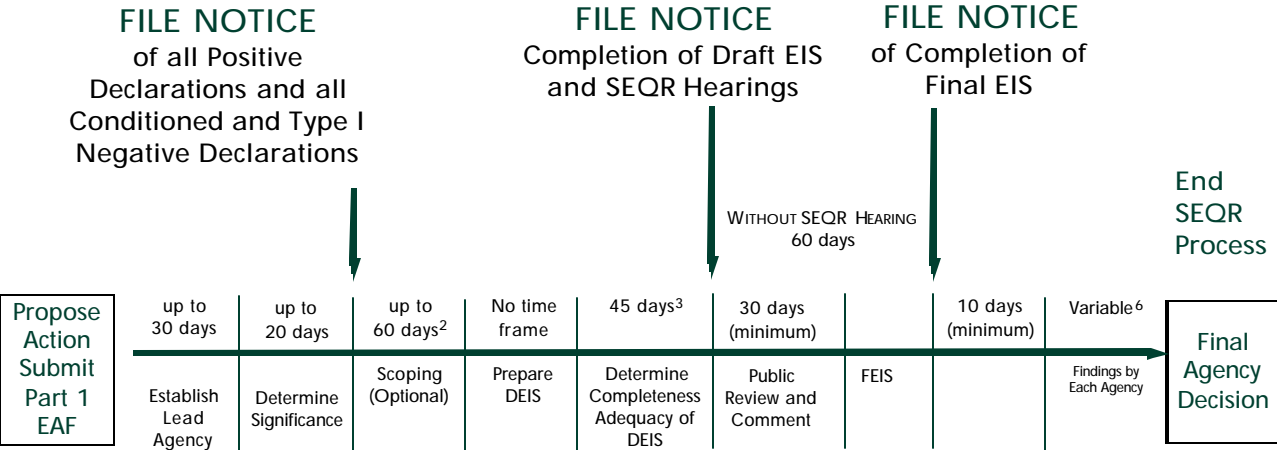
Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

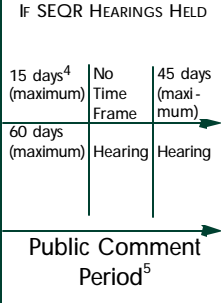
Signature of Preparer (if different from Responsible Officer)

SEQR TIME FRAMES¹

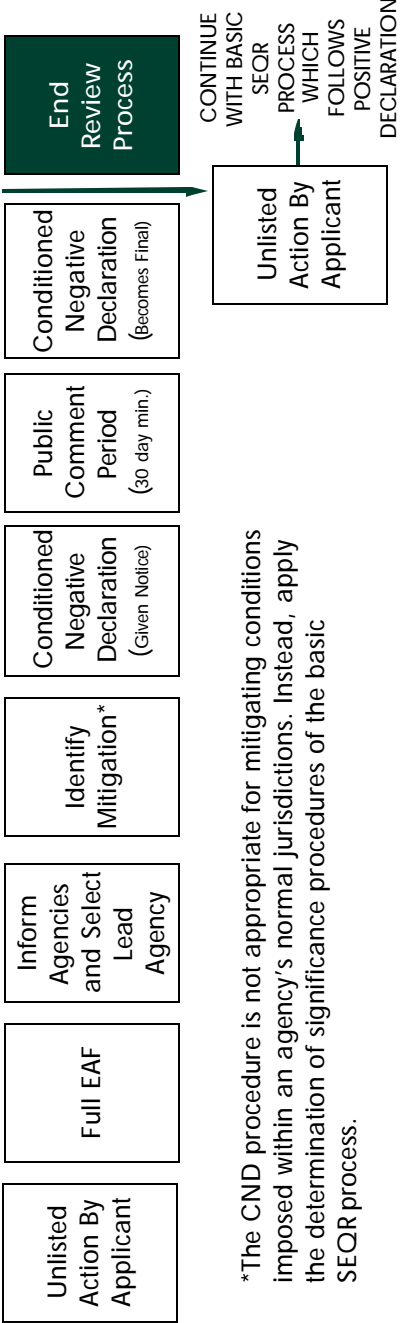


Footnotes

- 1-All time frames may be extended by mutual consent of involved parties.
- 2-Time clock starts with submission of draft scope by applicant
- 3-Thirty days resubmitted DEIS
- 4-Publish hearing in general circulation newspaper at least 14 days before a public hearing. The hearing may commence on the 15th day.
- 5-Public comment must remain open until 10 days after the close of hearing.
- 6-When applicant is involved, lead agency findings and decisions must be made within 30 days of filing the FEIS; otherwise, findings not required until an agency must make a decision on final action.



CONDITIONED NEGATIVE DECLARATION (CND) PROCESS
(Possible only for Unlisted Actions proposed by an applicant)



*The CND procedure is not appropriate for mitigating conditions imposed within an agency's normal jurisdictions. Instead, apply the determination of significance procedures of the basic SEQR process.

SEQR
FLOW
CHART
AND
TIME
FRAMES



§ 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 requires 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 section 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 persons or less, [250] 200 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 persons but less than 1,000,000 persons, [1,000] 500 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 or more persons, [2,500] 1000 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 500 vehicles in a city, town or village having a population of 150,000 persons or less;
 - [iii] (iv) parking for 1,000 vehicles in a city, town or village having a population of more than 150,000 persons;
 - [iv] (v) 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] (vi) 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), that exceeds 25 percent of any threshold established in this section, 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 (Volume 36 of the Code of Federal Regulations, parts 60 and 63, which is incorporated by reference pursuant to section 617.17 of this Part), 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 or that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law [(The National Register of Historic Places is established by 36 Code of Federal Regulations (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] which is incorporated by reference pursuant to 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, except as otherwise provided in this section. 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. The fact that an action is identified as a Type II action in an 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.

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 section 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, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

(3) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure;

[3] (4) 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] (5) repaving of existing highways not involving the addition of new travel lanes;

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

(7) installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles;

[6] (8) maintenance of existing landscaping or natural growth;

[7] (9) 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] (10) 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] (11) 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)] (13) of this subdivision and the installation, maintenance [and/] or upgrade of a drinking water well [and] or a septic system, or both, and conveyances of land in connection therewith;

[10] (12) 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] (13) 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;

(14) installation of solar energy arrays where such installation involves 25 acres or less of physical alteration on the following sites:

(i) closed landfills;

(ii) brownfield sites that have received a Brownfield Cleanup Program certificate of completion ("COC") pursuant to ECL § 27-1419 and 6 NYCRR § 375-3.9 or Environmental Restoration Project sites that have received a COC pursuant to 6 NYCRR § 375-4.9, where the COC under either program for a particular site has

an allowable use of commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;

(iii) sites that have received an inactive hazardous waste disposal site full liability release or a COC pursuant to 6 NYCRR § 375-2.9, where the Department has determined an allowable use for a particular site is commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;

(iv) currently disturbed areas at publicly-owned wastewater treatment facilities;

(v) currently disturbed areas at sites zoned for industrial use; and

(vi) parking lots or parking garages;

(15) installation of solar energy arrays on an existing structure provided the structure is not:

(i) listed on the National or State Register of Historic Places;

(ii) located within a district listed in the National or State Register of Historic Places;

(iii) been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law; or

(iv) within a district that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law;

[12] (16) granting of individual setback and lot line variances and adjustments;

[13] (17) granting of an area variance[s] for a single-family, two-family or three-family residence;

(18) reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part;

(19) the recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n;

[14] (20) public or private best forest management ([silvicultural] silviculture) 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] (21) minor temporary uses of land having negligible or no permanent impact on the environment;

[16] (22) installation of traffic control devices on existing streets, roads and highways;

[17] (23) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;

[18] (24) 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] (25) 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] (26) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;

[21] (27) 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] (28) collective bargaining activities;

[23] (29) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

[24] (30) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;

[25] (31) 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] (32) 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] (33) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;

[28] (34) 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] (35) 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] (36) adoption of a moratorium on land development or construction;

[31 interpreting] (37) interpretation of an existing code, rule or regulation;

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

(39) an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement;

(40) sale and conveyance of real property by public auction pursuant to article 11 of the Real Property Tax Law;

(41) construction and operation of an anaerobic digester, within currently disturbed areas at an operating publicly-owned landfill, provided the digester has a feedstock capacity of less than 150 wet tons per day, and only produces Class A digestate (as defined in 6 NYCRR § 361-3.7) that can be beneficially used or biogas to generate electricity or to make vehicle fuel, or both;

[33] (42) 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] (43) actions undertaken, funded or approved prior to the effective dates set forth in SEQRA (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] (44) actions requiring a certificate of environmental compatibility and public need under articles VII, VIII, [or] X or 10 of the Public Service Law and the consideration of, granting or denial of any such certificate;

[36] (45) actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to sections 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] (46) 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.