

Environmental Conservation Law Article 8
6 NYCRR Part 617

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

New York State Department of State

Introduction



Basic purpose

Part 617.1 (c)

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

What are "environmental factors?"

Environment

Resources or characteristics affected by action

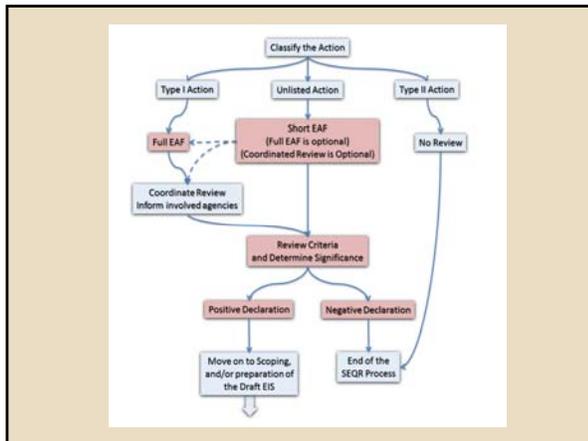
- Land
- Air
- Water
- Minerals
- Flora
- Fauna
- Noise

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

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

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

Classification of actions

One of three classifications

- ▣ 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

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



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



Unlisted actions

- Not found on either Type I or Type II list
 - Physical disturbances of ≤ 10 acres (commercial)
 - Zoning changes affecting ≤ 25 acres w/in a district
- 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

Agencies

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 which does not have jurisdiction over project, but wishes to participate in process 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

Possible SEQRA agencies

Involved

- Planning board
- Zoning board of appeals
- Town board, village board of trustees & city council
- School board
- Industrial development corporation
- State agencies

Interested

- State or local agencies acting in advisory roles
 - 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

Establishing lead agency

Involved Agency

- 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



Agencies must yield

Complete application*

Local submission requirements have been met; and

- Type II action
 - SEQRA process concludes at classification*
- Type I or Unlisted action
 - Negative declaration (or CND) issued and filed*
 - Positive declaration
 - DEIS accepted and notice of completion filed*
 - Part 617.3 (c)
- Public hearing must be held within 62 days
 - Subdivision, site plan, special use permit

SEQRA compliance

- Required & noted explicitly in statute
 - ▣ Subdivision
 - ▣ Site plan review
 - ▣ Special use permit review
 - ▣ Variances
- Some elements of SEQR may be similar to review pursuant to local land use regulations (or state in the case of variances)
 - ▣ However, they are separate & distinct processes

Subdivision – directly incorporate



- 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

SEQRA compliance

Literal

- Agencies must satisfy SEQRA's procedural requirements
- Integrating SEQRA with other reviews where appropriate, but not substituted for or represented as being equivalent to SEQRA's requirements

Substantive

- Agencies must consider & evaluate all potential impacts of proposed action ("whole action"), both within & outside of its municipal jurisdiction

Review “whole action”

All components, phases, or aspects of proposal must be considered

- Rezoning for specific project
- Projects intended to be undertaken in phases
- Highway interchanges
- Sale of property
- Some subdivisions
- Road and highway projects
- Commercial or industrial parks



Review process options

Unlisted Actions

- Coordinated Review
 - More than one agency
- Uncoordinated review
 - More than one agency
 - Single involved agency
- Requires preparation of full or short EAF at lead agency's option

Type 1 Actions

- Coordinated review is mandatory
 - Unless only one involved agency
- Requires preparation of full EAF

Environmental assessment form (EAF)

Full (“long”) or Short

- Part 1: project sponsor
 - Project information
- Part 2: lead agency
 - Project impacts & their magnitude
- Part 3: lead agency
 - Evaluation & importance of impacts identified in part 2



EAF revision update

- NEW forms effective 10/7/2013
- Incorporates consideration of areas of environmental concern since last revisions
 - 1978 (full) & 1987 (short)
- 6 NYCRR 617.20 appendices A (full) & B (short)
 - No longer a visual assessment form
- Various electronic features will be added
- “Workbooks” with detailed guidance and instruction
- www.dec.ny.gov/permits/70293.html

Uncoordinated review

Unlisted actions only

- Each agency acts independently and issues individual determinations of significance—no lead agency
- If any agency determines action may have significant adverse impact, it must coordinate with all other agencies which may have jurisdiction
- One agency’s negative declaration is superseded by another’s positive declaration **prior to** first agency’s final decision on project

Coordinated review

One integrated environmental review

- Lead agency administratively responsible for conducting review process until its completion
- Must have decision making authority
- Cannot be delegated

Determination of Significance



Determining significance Part 617.7

Determining significance



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

Determining significance

Review projects in context



Determining Significance

- Review "whole action"
- Identify all relevant impacts
- Analyze & take a "hard look"
 - H.O.M.E.S. v NYS Urban Development Corp.
69AD 2d 222, 418 NYS 2d 287 (4th Dept., 1979)
- Provide written reasons why impact may, or will not be significant



Will action have a....

... potential significant adverse environmental impact?

Positive Declaration

Negative Declaration

- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> EIS required | <input type="checkbox"/> No EIS required |
| | <input type="checkbox"/> Process concluded |

Negative declaration

- Lead agency concludes that action, as proposed, will have **no significant adverse environmental impact**

- No likely impacts were identified; or
- No identified are significant; or
- Identified significant impacts are mitigated

- Written determination must include reasons behind conclusions

Conditioned negative declaration

- Criteria for CND determination
 - Only for Unlisted actions
 - Full EAF required
 - Coordinated review required
- May be issued if imposed conditions will mitigate or avoid significant impacts
- Publish notice in Environmental Notice Bulletin and 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

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

Positive declaration

- Lead agency determines action has potential to cause or result in at least one significant adverse environmental impact
- Low threshold for Positive Declaration/EIS



Environmental Impact Statement

Environmental Impact Statement (EIS)

- Provides a means for agencies, project sponsors & public to systematically consider significant adverse environmental impacts, alternatives & mitigation
- Facilitates the weighing of social, economic & environmental factors early in planning & decision-making process

6 NYCRR Part 617.2(n)

Generic EIS

- 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

6 NYCRR Part 617.10

www.dec.ny.gov/permits/56701.html

Preparation of draft EIS (DEIS)

- Initial statement circulated for review & comment
- Preparation of DEIS may be done by project sponsor, **or** lead agency at project sponsor's option
- However, lead agency is responsible for determining adequacy of DEIS for public review within 45 days
 - 30 day period for re-submission of a DEIS
- Lead agency may charge fees to applicant in order to recover actual costs of **either preparation or review of DEIS/FEIS, but not both**
- 6 NYCRR Parts 617.9 & 617.13

Scoping the DEIS

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

6 NYCRR Part 617.8

DEIS content

Analytical, not encyclopedic

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

Public hearings

- Optional under SEQRA
- If held, should be held concurrently with any other required hearing on same action
- Public notice published in newspaper at least 14 days prior to hearing
- Hearing must start between 15 and 60 days after DEIS notice of completion
- Public comment period continues for at least 10 days after close of hearing

6 NYCRR Part 617.9 (4)

Final EIS (FEIS) content

Filter DEIS to form FEIS

- DEIS & any revisions
- All comments received
- Lead agency’s responses to comments

Preparing the FEIS

- Lead agency responsible for completing
 - ▣ Within 45 days after a public hearing, **or**;
 - ▣ Within 60 days after the DEIS notice of completion if no public hearing was held
- Notice of completion of FEIS starts 10 day period of time for involved agencies and public to consider FEIS before lead agency can issue written findings

Final Decision & Filing



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

SEQRA findings & final decision

- Findings certify that:
 - ▣ Selected alternative avoids or minimizes significant adverse environmental impacts to maximum extent practicable, **and**;
 - ▣ Mitigation measures incorporated in project, or conditions of approval will avoid or minimize all significant adverse environmental impacts
- Findings & final decision may be made concurrently

Filing & distribution

- Type I
 - ▣ Negative Declaration
 - ▣ Positive Declaration
 - Unlisted
 - ▣ CND
 - ▣ Positive Declaration
 - EIS Notice of completion
 - EIS
 - Notice of hearing & findings
 - 6 NYCRR Part 617.12
- ▣ Lead agency
 - ▣ Involved agencies
 - ▣ Applicant
 - ▣ Individuals upon request
 - ▣ Municipal CEO
 - ▣ NYS DEC
 - ▣ EIS
 - ▣ NYS DOS
 - ▣ EIS only in coastal areas

Environmental notice bulletin (ENB)

- Official online publication
 - ▣ Type I: Notice of declaration (neg or pos)
 - ▣ Unlisted: Notice of CND or positive declaration
 - ▣ 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

Contacting the NYSDOS

(518) 473-3355 Training Unit

(518) 474-6740 Legal Department

(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov

Website: www.dos.ny.gov

www.dos.ny.gov/lq/

www.dos.ny.gov/LG/seqr.html



Contacting the NYSDEC



(518) 402-9167 Division of
Environmental Permits

Email: deprmt@gw.dec.state.ny.us

Website: www.dec.ny.gov

www.dec.ny.gov/permits/357.html

§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.