

The New (and Old) Secrets About SEQRA

Seth M. Mandelbaum, Esq., *Partner, McCullough, Goldberger & Staudt, LLP*

David B. Schiff, AICP, PP, *Senior Project Manager, Kimley-Horn of New York, P.C.*

Nicholas M. Ward-Willis, Esq., *Member, Keane & Beane, P.C.*

Lawrence H. Weintraub, Esq., *Office of General Counsel, New York State Department of Environmental Conservation*

MODERATOR: Jennifer L. Gray, Esq., *Member, Keane & Beane, P.C.*

STATE ENVIRONMENTAL QUALITY REVIEW ACT
FINDINGS STATEMENT FOR AMENDMENTS TO 6 NYCRR PART 617 (2018)

Pursuant to Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR Part 617” or “State Environmental Quality Review Act [SEQR] statewide implementing regulations” or “SEQR regulations”), the New York State Department of Environmental Conservation (“DEC” or the “Department”), as lead agency, makes the following findings of fact and conclusions of law:

Name of Action:

Amendment of 6 NYCRR Part 617.

Summary Description of Action:

DEC proposed and hereby adopts amendments to the SEQR regulations intended to streamline and improve the SEQR process without sacrificing meaningful environmental review. The amendments are the third step in DEC’s initiative to modernize the SEQR regulations, which began with the Commissioner’s adoption of electronic environmental assessment forms (that have greatly improved the speed and accuracy of environmental impact assessment) and companion workbooks to the environmental assessment forms intended to guide project sponsors, agencies and the public in completing the forms.

The major streamlining amendments to Part 617 are those adding to the Statewide list of Type II actions (actions that the Commissioner has determined to not require further review under SEQR, in addition to actions that the Legislature has previously excluded or made exempt from SEQR)¹ and mandatory scoping.

DEC assembled the additions to the list of Type II actions based on multiple stakeholder outreach meetings and its experience in reviewing projects and advising local governments regarding SEQR. DEC also studied Type II lists from other states that have SEQR-like laws. To add a category of action to the Type II list of actions, the Commissioner must conclude that the category of action will not have a significant impact on the environment. Here, DEC concludes that the proposed additions to the Statewide Type II list actions would not have a significant impact on the environment. In some cases, the proposed Type II actions would avoid or reduce impacts on the environment by supporting policies that favor green infrastructure, renewable energy and smart growth — to the extent that the placement of such actions on the Statewide list of Type II actions provides a regulatory incentive for the actions to occur. I agree with that conclusion.

The scoping amendments make scoping mandatory for all draft environmental impact statements. In the proposal, DEC applied this new rule to both environmental impact statements and supplemental environmental impact statements. Based on public comment, DEC modified the proposal to make it so mandatory scoping does not apply

¹ Under 6 NYCRR § 617.5, each agency may adopt its own Type II list of actions to supplement the Statewide list of Type II actions.

to supplemental environmental impact statements. With regard to scoping, DEC's rationale behind the scoping requirements is to have shorter EISs that focus on the relevant and significant adverse environmental impacts associated with a proposed action. The better the scope, the better the quality and efficiency of the EIS process. Up until the present time, EIS scoping has been an optional procedure. In general, scoping improves the quality of the EIS process by bringing relevant issues to the forefront earlier in the EIS process and eliminating irrelevant or non-significant issues from the EIS discussion — which can distract the attention of agencies from significant issues. Mandatory scoping will work in tandem with the modifications to the acceptance procedures for draft environmental impact statements. DEC has added additional public notice and web posting requirements for scoping statements to address concerns that mandatory scoping and the other changes to the acceptance procedures for draft EISs will have the effect of limiting public involvement in the SEQR process.

Mandatory scoping for all EISs has made 6 NYCRR § 617.6 (a) (4) obsolete. That regulation provides as follows: “An agency may waive the requirement for an EAF if a draft is prepared or submitted. The draft EIS may be treated as an EAF for the purpose of determining significance.” Accordingly, the revised proposal eliminates it. It makes little sense from the project sponsor or agency side for a project sponsor to submit a draft EIS ahead of the scope that will determine its contents.

Greenhouse gas emissions and their contribution to climate change are among the impacts addressed by SEQR. Climate change has and is expected to bring about flooding and sea level rise, among other impacts. DEC has modified 6 NYCRR § 617.9 (b) (5) (iii) (i) to include, where applicable and significant, discussion in an EIS of “measures to avoid or reduce both an action's environmental impacts and vulnerability from the effects of climate change such as sea level rise and flooding.”

DEC has modified the Statewide Type I list of actions to establish a threshold for designating Unlisted actions as Type I actions because of proximity to historic resources. Before these revisions, any Unlisted action, regardless of size, would be elevated to a Type I action if it were located substantially contiguous to a property listed on the National Register of Historic Places or within a district listed on the National Register of Historic Places. DEC has added properties that the Commissioner of Parks, Recreation and Historic Preservation has determined to be eligible for listing on the State Register of Historic Places to the same Type I threshold and at the same time has amended the environmental assessment forms to account for this change. The forms have been engineered to take advantage of readily available geographic and spatial information, and are able to self-populate this information for the user. This information will include proximity to eligible properties and listed properties.

The Department's findings for the adoption of the 1995 regulatory amendments to SEQR, dated September 20, 1995, discusses the unprecedented amount of public outreach conducted by the Department for those amendments. Likewise, for the 2018 amendments, the Department conducted an extraordinary stakeholder outreach process (see Appendix A to the Final Generic Environmental Impact Statement) and then a robust public review process. The stakeholder and public outreach process are described in the Executive Summary to the Final Generic Environmental Impact Statement. See also, appendices A and G to the Final GEIS. The robust public process

was as it should be since public participation is foundational to the environmental impact statement process under SEQR and its parent statute — the National Environmental Policy Act of 1969.

Location: Statewide

Statutory Authority: Environmental Conservation Law § 3-0301(1)(b), § 3-0301(2)(m) and § 8-0113

Date Final GEIS Filed: June 13, 2018

Facts and Conclusions in the EIS Relied Upon to Support the Decision:

The Department has not identified any significant adverse environmental effects from the amendments. Nonetheless, the Department chose to use a generic EIS as the means for describing the proposed changes — as it did for SEQR rulemakings in 1979, 1986 and 1995. At the same time, collectively, the amendments, meet the Department’s goals of streamlining and improving the SEQR process without sacrificing meaningful environmental review. (The Department’s adopted 2018 amendments to the SEQR regulations are summarized in the Appendix attached to these findings.)

Throughout this document, newly adopted regulatory text is underlined and deleted regulatory text appears in [brackets].

I. Regulatory Amendments to the Statewide Type I List of Actions (6 NYCRR § 617.4)

Environmental Conservation Law § 8-0113 (2) (c) (i) authorizes the Commissioner to adopt rules and regulations identifying actions or classes of action that are likely to require preparation of environmental impact statements. These rules and regulations are known as the statewide Type I list of actions and is set out in 6 NYCRR § 617.4. There are three effects of an action or class of actions being classified as Type I. The first effect is that the lead agency must coordinate its review with all other involved agencies (referred to as mandatory coordinated review). The second effect is that the lead agency must complete the full environmental assessment form in determining whether to require preparation of a draft environmental impact statement. Finally, Type I actions are classified as such because they are more likely to require preparation of an environmental impact statement — in effect creating a presumption of environmental significance. The Type I list has remained relatively unchanged since the 1978 rule making. The 2017 proposal and 2018 revised proposal rule set out three modifications to the Type I list of actions as follows:

a. 6 NYCRR § 617.4 (5) (iii), (iv) and (v) — Lowering the Type I threshold for construction of new residential units

i. Adopted Rule

The Department proposed and is hereby adopting the changes to the Type I threshold for residential units for cities, towns and villages with a population of less than 150,000 from 250 units to 200 units as set out in the revised express terms. The Department proposed and is hereby changing the Type I threshold for residential units for cities, towns and villages having a population of greater than 150,000 persons from

1000 to 500 units as set out in the revised express terms. And, for cities having a population greater than 1,000,000, the Department proposed and hereby changes the Type I threshold from 2,500 units to 1000 units as set out in the revised express terms. The new rules read as follows:

“... (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;
....”

ii. Impacts

Residential developments may be the most frequent kind of action subject to SEQR. See Ruzow, Weinberg and Gerrard, *Environmental Impact Review in New York*, § 4.01 at p. 4-01 (Lexis Nexis 2016). Large residential developments are often the subject of an environmental impact statements. When such developments are proposed on new sites they carry with them potentially significant impacts (for example, stormwater pollution/water quality and traffic).

iii. Facts, Analysis and Conclusions

As discussed in the FGEIS, the Type I residential thresholds were established in the 1978 rule making; there is little documentation in that rule making as to the basis for establishing the number of units that would trigger a Type I action. They were rarely triggered, and failed to include some residential developments that should have been classified as Type I actions. Even with the changes, the new thresholds remain quite large and will likely result in a change of classification to a very small number of proposed residential developments (in the single digit range for communities with a population of 150,000 persons or less). One commenter urged the Department to make the thresholds lower, which was also stated as an alternative in the generic environmental impact statement (namely, 75 for communities with populations of 150,000 persons or less and 150 for communities with populations of more than 150,000 persons). While the lower thresholds stated in the alternative may be reasonable, the Department’s alternative of 200 and 500 are also reasonable and an advancement over the existing regulation. The thresholds can be made more context sensitive by local governments since cities, towns and villages are authorized to adopt their own Type I lists — lowering the residential development thresholds for Type I actions — through local law pursuant to 6 NYCRR §§ 617.4 (a) (2) and 617.14 (e). The Department also considered the no-action alternative, which is unacceptable inasmuch

as the current thresholds that have been in effect since at least 1978 have no apparent basis. Unquestionably, the thresholds need to be lowered.

b. 6 NYCRR § 617.4 (b) (6) (iii) and (iv) — Creating a Type I parking threshold for smaller communities

i. Adopted Rule

The Department hereby adopts an additional parking threshold for 500 vehicles in communities of 150,000 persons or less. Currently, the threshold is 1000 vehicles for all community types. That threshold dates to the earliest SEQR regulations. The change to 6 NYCRR § 617.4 (b) (6) (iii) and (iv) reads as follows:

“... (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; ...”

ii. Impacts

As for impacts of parking lots, most parking facilities are constructed in connection with development such as a shopping mall or industrial facility. One commenter expressed the view parking is rarely constructed as a stand-alone development (except for a municipal parking garage) and that other development is likely to exceed a Type I threshold. Thus, the parking threshold is a surrogate for classifying the development that parking is intended to serve. Large commercial or industrial development projects will generally require a substantial amount of associated parking spaces and land dedicated for those spaces. Construction of surface parking lots can result in the loss of green space and generate a large volume of storm water pollution. Development that requires expansive parking may also have an impact on traffic and community character.

iii. Facts, Analysis and Conclusions

The new threshold is based on a common and often recommended measurement for determining the number of parking spaces that will be required for a project. The calculation is based on the amount of gross floor area. Using this measure, one parking space would be required for every 200 square feet of gross floor area of a building. For communities of less than 150,000 persons, the applicable Type I threshold for the construction of commercial or industrial facilities is 100,000 square feet of gross floor area. This equates to 500 parking spaces. Any facility of 100,000 square feet or more with 500 associated parking spaces in a community of 150,000 persons or less is large enough that it should undergo coordinated review and complete the full-EAF.

By adding this new threshold for communities of 150,000 persons or less it will change the applicability of the existing parking threshold — parking for 1000 vehicles — so that it will apply only to communities with a population of 150,000 persons or more.

As for alternatives, the no-action alternative is unacceptable because the reduced Type I parking threshold equates to actions that meet the statutory test of actions more likely to require the preparation of an environmental impact statement. Another commenter suggested that the threshold could be even lower. Another alternative set out in the FGEIS was to reduce the parking threshold for all communities to 500 spaces.

The Department's preferred alternative is, however, more context sensitive to communities of lesser size recognizing that the size of a community influences the degree of impact that may be expected. Thus, the Department chooses to adopt its principal alternative, which is to create a Type I threshold of parking for 500 vehicles in a city, town or village having a population of 150,000 persons or less.

c. 6 NYCRR § 617.4 (b) (9) — Modifications to the Type I list for actions affecting historic resources

i. Adopted Rule

The Department hereby adopts revisions to 6 NYCRR § 617.9 (b) (9) as follows: “...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)); ...”

ii. Impacts

There are two elements to this adopted rule. The first element adopts a threshold to the existing Type I action; i.e., it includes projects exceeding the threshold of 25 percent of any other threshold in the Type I list (for example, projects larger than 2.5 acres) that are occurring wholly or partially within, or substantially contiguous to historic properties. The second element is the addition of “eligible” properties to this Type I category; i.e., in addition to capturing actions that are occurring wholly or partially within or are substantially contiguous to “listed” properties, this Type I is now broadened to encompass those actions that are occurring wholly or partially within or substantially contiguous to properties that the Commissioner of Parks, Recreation and Historic Preservation has determined to be eligible for inclusion on the State Register of Historic Places.

The adopted rule has several procedural impacts for agencies undertaking a SEQR review. The Type I procedures (coordinated review, full EAF, and ENB notice for negative declarations) will apply to actions previously not covered by this Type I category, but that may have a significant adverse impact on properties of potential historic significance that have yet to be listed on the State Register of Historic Places. These procedural requirements do not result in a significant adverse impact to the environment. Furthermore, in this regard, the adopted rule has the beneficial impact of requiring coordinated scrutiny of actions that occur within or substantially contiguous to these eligible properties. The Department has determined that this will have a beneficial impact statewide.

The adopted rule corrects a longstanding issue with the Type I category, as previously drafted, in which any Unlisted project, regardless of size, within the vicinity of a listed property was classified as a Type I action. The adopted rule corrects this issue by including a threshold similar to other Type I categories dealing with place-based resources (i.e., parks and agricultural districts). Thus, under the adopted rule, projects that do not meet the 25 percent threshold would continue to be classified as Unlisted. Because actions not exceeding the new threshold must still undergo SEQR review as Unlisted actions, and are thus subjected to the same “hard look” standard, the impacts associated with the adopted rule are essentially procedural.

iii. Facts, Analysis and Conclusions

As far back as the 1986 regulatory amendments to SEQR, the Department proposed adding properties to the Type I list of actions that the Commissioner of Parks, Recreation and Historic Preservation had determined to be eligible for listing. The Department rejected this proposal at the time, stating “[i]t is too difficult and time consuming to determine whether something is eligible for listing...” Final Generic Environmental Impact Statement...For Revisions to 6 NYCRR 617, p. 34, February 18, 1987. At that time, the Department pointed out that “...it was felt that the Type I list should have fairly readily determinable criteria. It is too difficult and time consuming to determine whether something is ‘eligible’ for listing. This does not mean that an eligible property should be ignored in conducting a SEQR review, only that its proximity may not trigger treatment as an action as Type I.” In 1995, the same issue arose in the rule making. OPRHP had proposed adding eligible properties to the Type I list. The Department dropped the proposal after OPRHP could not supply a continually updated list. See, Final Generic Environmental Impact Statement on the Proposed Amendments to the State Environmental Quality Review Act Regulations, p. 18, September 6, 1995.

In both instances, therefore, the Department decided not to include eligible properties in the Type I list for the simple reason that it was nearly impossible for agencies to readily identify the location of an eligible property. The Department’s inclusion of eligible properties would unduly delay the classification of an action. An agency’s classification of an action should be, as the drafters of the 1986 amendments to SEQR wrote, based on readily determinable criteria. This is no less true in 2018.

However, the advent of the internet has made the identification of eligible properties readily determinable. Eligible properties can now be quickly identified using the Office of Parks, Recreation and Historic Preservation’s Cultural Resource

Information System (CRIS). The Department expects the same data set to be incorporated into the EAF Mapper. As a result, project sponsors will be able to identify eligible properties along with listed properties. Accordingly, the Department's past rationale for not including eligible properties in this Type I category is no longer convincing. Rather, if an Unlisted action affects an eligible property it will receive the same level of review as if the property was listed, with the new caveat that the Unlisted action must exceed a Type I threshold, as discussed further below.

As discussed above, the impacts associated with the addition of the new 25 percent threshold are procedural in that actions that do not meet the threshold would be classified as Unlisted instead of as Type I. Therefore, in either event (Unlisted or Type I) the action would be subject to the same hard look standard to determine whether it poses a potentially significant adverse impact on historic resources. On this basis, the Department concludes that the new rule would not have a potentially significant impact on the environment, and, at the same time, will streamline the SEQR process without sacrificing meaningful environmental review. Moreover, the revision will strengthen consideration of historic resources in SEQR, and align SEQR with NEPA through the inclusion of eligible properties in this Type I category.

II. Regulatory Amendments to the Statewide Type II List of Actions (6 NYCRR § 617.5)

Environmental Conservation Law § 8-0113 (2) (c) (ii) requires the Department to identify actions that do not have a significant effect on the environment, and hence do not require environmental impact statements. The Statewide Type II list of actions allows agencies to focus their review efforts on those projects that may have a significant environmental effect. Expansion of the Type II list also serves the purpose of ensuring that an environmental impact statement is used as the Legislature intended, which is to assess the potential for significant environmental effect.

The original Type II list was adopted in 1978. The Department modified the Type II list in 1987 and again in 1995 (effective January 1, 1996). The Legislature never intended the Type II list to be static, and authorized the Commissioner to expand the list as warranted based on the standard that any proposed additions not have a significant effect on the environment. As the Department and other agencies gained experience with SEQR, the Legislature expected that new actions would be added to the list. This is recognized by the authority given to agencies to produce lists of Type II actions to supplement the statewide list. The City of New York, for example, has its own Type II list of actions.

The Department prepared the proposed additions to the Type II list of actions primarily based on stakeholder outreach and its experience in administering SEQR for over 40 years. The Department modelled some proposed Type II actions on previously proposed ones. The Department also reviewed past environmental notice bulletins for actions that were commonly subject to negative declarations.

a. Upgrade of Buildings to Meet Energy Codes

i. Adopted Rule

The Department hereby adopts revisions to an existing Type II category, to be codified at 6 NYCRR § 617.5 (c) (2), to read as follows: “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.”

ii. Impacts

The Department has determined that this addition to the Type II list is a reasonable and practicable change to the existing language that will have no significant effect on the environment. Such upgrades are analogous to other building code requirements captured by the existing Type II language being modified. By clarifying that the upgrade of a building to meet energy code is a Type II action, the process for agencies subject to SEQR to fund, undertake or approve such energy-saving upgrades will be streamlined and therefore have a positive environmental impact. These energy code upgrades may result in construction-related impacts; however, they would be minimal, and in any event, would not qualify as Type II if they exceed any Type I threshold.

iii. Facts, Analysis and Conclusions

The Department originally proposed changing the word “building” to “structures” and adding the word “facilities.” These changes were meant to clarify the intent of the Type II category to include not only buildings but other kinds of structures. After further consideration, the Department has determined to remove this proposed modification and favor the no action alternative as it was unnecessary to make this clarification. The express language of the existing regulation makes it clear that it applies to both structures and facilities.

Environmental impacts from actions covered by the adoption of this clarification will be minimal, and must not exceed any of the Type I thresholds. The Department originally proposed eliminating the Type I limiting language associated with this Type II category. Many public commenters were opposed to this proposal, and upon further consideration, the Department determined that eliminating the Type I language may result in significant impacts, such as construction or traffic impacts, that may be associated with large-scale reconstruction projects. By selecting the no-action alternative regarding the elimination of the Type I limitations on this Type II category, the Department concludes the adopted revision does not result in any significant effect on the environment.

b. Green Infrastructure Retrofits

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (3), to read as follows: “Retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure.”

In addition, the Department is adopting a new definition of "green infrastructure," to be codified at 6 NYCRR § 617.2 (r), to read as follows: "...'green infrastructure' means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse."

In response to public comment, the Department modified both the proposed definition of "green infrastructure" and the express terms of the proposed Type II. Specifically, the definition of "green infrastructure" was revised to clarify that the enumerated list of green infrastructure practices is an exhaustive list for the purposes of the Type II and deleted the word "programs" from the listed practice of "urban forestry programs." Both changes limit the potential universe of practices that will fall under the proposed Type II and thus allow the Department to make the categorical determination that the associated Type II will not result in any significant effects on the environment. The express terms of the proposed Type II were also revised to clarify that the scope of the exemption was retrofitting existing structures and their appurtenant areas.

ii. Impacts

The Department did not identify any significant effects on the environment associated with the proposed Type II or the associated proposed definition of "green infrastructure." The Department did identify several positive impacts associated with the proposed Type II, including improving energy efficiency of certain structures, reducing stormwater generation and runoff, and improving the quality of such runoff.

The Department identified that activities included with the Type II may result in minimal construction-related impacts. However, the Department concludes that these potential impacts are minimal, and do not have a significant effect on the environment. Project proponents and state and local agencies may nonetheless desire to incorporate project-specific requirements for such projects to further minimize any such construction-related impacts.

In addition, at least one comment raised the possibility that the adoption of this Type II may result in adverse effects to historic or culturally significant properties. The Department considered this possibility in the FGEIS and noted in response to comment that SEQRA does not modify existing historic preservation laws, and any such project in an historic district or adjacent to an historic structure would still need to comply with federal, state and local historic preservation laws. The Department has revised the definition of "green infrastructure" to make the list of practices exhaustive and inclusive. Therefore, the Department is able to conclude that the enumerated practices included within the scope of the Type II category will not result in a significant adverse effect on the environment. It should be noted that this determination does not bind other agencies, such as local historic preservation boards or commissions, or the State Historic Preservation Office in any determination made under relevant historic preservation laws. Moreover, the Department believes that the green infrastructure practices included within this Type II category can be constructed as to complement almost all historic properties, subject of course to any required local, state or federal approval.

iii. Facts, Analysis and Conclusions

Installation of green roofs or other green infrastructure techniques can substantially improve energy efficiency, reduce generation of runoff and result in the improvement of water quality on a site-specific basis. Green infrastructure practices are gaining in popularity due to these beneficial impacts, and therefore are being adopted by an ever-increasing number of federal, state and local agencies as well as private actors. By promulgating this new Type II category, the Department is streamlining the process for local and state agencies to fund, adopt or undertake green infrastructure practices. The Department concludes that the adoption of this new Type II category will not result in significant effects on the environment, and thus the “no action” alternative was not selected. In addition, the adoption of this new Type II category may have a positive impact on the proliferation of these environmentally beneficial practices.

c. Installation of Telecommunications Cables

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (7), to read as follows: “Installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles.”

ii. Impacts

Installation of telecommunication cable is a routine utility construction project. Impacts are temporary and primarily associated with soil and vegetation disturbances from excavation of soil to install poles or bury cable. Potential environmental impacts are the runoff of sediment or sediment laden waters (storm water) into a surface waterbody (streams and wetlands) or removal disturbance/removal of vegetation or habitat, as well as noise and fugitive dust.

iii. Facts, Analysis and Conclusions

This new Type II category limits installation of telecommunication cables to placement overhead on existing poles and trenchless burial methods. Trenchless burial greatly minimizes the area of surface ground disturbance that could contribute to an adverse impact. Excavation pits that are required for installing cable/conduit by sub-surface boring technology or minimally disruptive trenchless burial methods, i.e. those that immediately backfill the trench such as “plow line”, result in very minimal width required to bury cable/conduit. Ground disturbances associated with these types of burial are routinely and readily addressed by standard sediment and erosion controls and reestablishment (e.g., seeding and mulching) of any areas where vegetation is temporarily disturbed.

This new Type II category further limits installation of telecommunication cables to those areas within existing highway or utility right-of-way. Placement within existing highway or utility right-of-way limits these actions to areas that are currently disturbed (periodic mowing and maintenance of a road shoulder ROW or utility ROW). DEC has been involved in the review of the proposed installation of thousands of miles of telecommunications cable as part of the NYS Broadband Program. In no instance has DEC determined that a telecommunications cable installation required the preparation

of an EIS. Furthermore, DEC has determined that the no-action alternative is not favorable for this action, as SEQR review for activities covered by this Type II category would not result in any significant environmental benefit. While DEC has identified in some instances where a project location is near or adjacent to a potential sensitive resource or habitat (i.e., a state listed threatened or endangered species habitat or known occurrence of a species, freshwater wetland or surface water), it has found that impacts are temporary during the construction phase, the allowable methods of installation are not land intensive or consumptive and do not result in any temporary or permanent significant effects on the environment.

d. Installation of Solar Energy Arrays

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (14) & (15), to read as follows:

“(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.”

ii. Impacts

Commenters focused on the Type II categories for solar on landfills and industrial areas. In the FGEIS, the Department identified or discussed in response to public comment the following potential impacts: visual or aesthetic impacts of solar arrays and that solar arrays could cause fragmentation of sensitive habitat areas for wildlife species. Additionally, the Department identified that improper installation of arrays may result in puncturing or compromising of the landfill cap and impairment of the landfill's side slope integrity. Improper installation of solar arrays could also damage or impact the effectiveness of existing landfill control structures (e.g., leachate or gas management systems). One commentator observed that closed landfills are in some cases used for parkland and that solar arrays could create a competing use. Finally, improper installation of solar arrays could also result in the creation of stormwater issues.

iii. Facts, Analysis and Conclusions

Based on the FGEIS, the Department concludes that there are no potentially significant effects on the environment from the proposed Type II category.

In the 1995 rulemaking, the Department evaluated the potential significance of a Type II category by looking at the degree to which the category of action was the subject of negative declarations. The Department has done so again for solar. The Department conducted an analysis of the Environmental Notice Bulletin (ENB) for solar energy projects subject to SEQR (between from 2016 to 2018). Notice of utility-scale solar projects regularly began appearing in the ENB in 2016. The Department was, therefore, unable to conduct an analysis outside of this period. The ENB sample identified 32 projects of less than 25 acres, including a wide variety of site locations including “Greenfields” and other land use types. All 32 projects received negative declarations and are listed in the table that appears at page 68 of the FGEIS. For such projects, lead agencies have uniformly determined that there are no significant adverse environmental effects. The Department agrees that there may be minimal impacts (such as construction-related impacts, visual impacts, impacts to habitat, or other resources as noted above) associated with these solar installations; however, agencies subject to SEQR have uniformly determined that these impacts are not significant.

The Department has also concluded that significant adverse effects will be avoided because the Type II category limits the installation of solar arrays to currently disturbed or developed locations. The proposal included all industrial zoned areas whereas the adopted rule clarifies that the Type II category only applies to currently disturbed industrial zoned areas to avoid significant new land disturbance. The Department's original intent was that this Type II category would not result in significant new land disturbance, and as such, the adopted rule includes clarifying language requiring that placement at publicly-owned wastewater treatment facilities and sites

zone for industrial use be limited to only ‘currently disturbed’ areas of these sites. The Department has also concluded that significant adverse effects will be avoided because the Type II category limits the installation of solar arrays to currently disturbed or developed locations.

Potential technical conflicts between solar installations and engineering controls or site remedies will be addressed and resolved prior to the installation of solar arrays for Brownfield Cleanup Program Sites, Environmental Restoration Project Sites, and inactive hazardous waste disposal (Superfund) sites that have received a Department-issued Certificate of Completion or release of liability. The Department’s regulations require notification of a proposed change of use and compliance with use restrictions, and prohibit activities that will interfere with a completed remedial program. With respect to closed landfills, installation of solar arrays would require Department approval to prevent technical conflicts between the solar arrays and the landfill or its engineering controls.

The Department concludes that the adoption of these new Type II categories will not result in significant adverse effects on the environment. To the contrary, the Department concludes that these new Type II categories will have a positive environmental effect by encouraging renewable energy that will serve to meet the Governor’s goals of fifty percent renewables by 2030. In addition, the adoption of these new Type II categories also serves the goal of this rule making, to streamline SEQR without sacrificing meaningful environmental review.

e. Lot Line Adjustments

i. Adopted Rule

The Department hereby adopts a revised Type II category, to be codified at 6 NYCRR § 617.5 (c) (16), to read as follows: “Granting of individual setback and lot line variances and adjustments.” In addition, the Department hereby adopts a revised Type II category, to be codified at 6 NYCRR § 617.5 (c) (17), to read as follows: “Granting of an area variance[s] for a single-family, two-family or three-family residence.”

ii. Impacts

The Department has not identified any environmental impacts associated with the adopted rule related to clarification surrounding lot line adjustments. As noted in the FGEIS, lot line adjustments should never result in any significant adverse effects on the environment as they only involve a change in the lot line between two lots and are even less significant than existing Type II categories codified at 6 NYCRR § 617.5 (c) (12) and (13) (changes to setbacks and variances for one, two or three-family residences). The Department did not receive any comments opposing the addition of lot line adjustments to the Type II list of action.

iii. Facts, Analysis and Conclusions

The original proposal would have revised an existing Type II category to include area variances not involving a change in allowable density in addition to lot line adjustments. The Department chose to withdraw most elements of the proposed rule in

favor of the no-action alternative, with the exception that lot line adjustments should be included as Type II actions. Some commenters noted that density is not uniformly defined by municipalities, and therefore, significant variances of floor area of commercial space, for example, may not be considered density and therefore allow for an area variance to be Type II. The Department did not evaluate the original proposal under this light, and has therefore opted for the no-action alternative in this regard. The simple addition of adjustment (which was proposed in the initial rule), avoids the issues identified by commenters, and the Department has determined that it will not result in any significant adverse effect on the environment.

f. Reuse of residential or commercial structures

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (18), to read as follows: “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 by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part.”

ii. Impacts

As quoted in the FGEIS at p. 92, “a common phrase among green building advocates is “the greenest building is the one that isn’t built.” An existing structure already possesses its embodied energy, except for maintenance and rehabilitation. And unlike new construction, rehabilitation involves largely labor (usually local), and less materials. Rehabilitation also avoids the disposal of building materials in a landfill that would result from the ultimate demolition of an existing building that is not maintained or restored. Since one-quarter of the material in solid waste facilities is comprised of construction debris (much of which is from building demolition), the minimization or avoidance of building demolition through rehabilitation reduces solid waste. Impacts are limited to construction-related ones (i.e., truck traffic), which are in the case of this adopted rule temporary, minimal and manageable through special use permits or site plan review.

iii. Facts, Analysis and Conclusions

Commenters criticized the proposal arguing that while the Type II category requires that the reuse must also be a permitted use, zoning is sometimes or even often out of date, and that reuse of an existing building could result in a use out of sync with the neighborhood character and without SEQR review. Also, re-use of a building could result in temporary construction-related impacts.

The Type II category for reuse presupposes conditions that serve to avoid impacts including that 1) the use is permitted by zoning, 2) it is subject to some type of discretionary review (which would make it subject to SEQR to begin with), 3) is residential or commercial or mixed use, and 4) cannot include an action that would trigger a Type I threshold. Under these conditions, the Department does not believe the impacts of the Type II category would be significant. Impacts below the significance

level can readily be dealt with through a municipality's land use jurisdiction. This Type II action is closely related to the Type II action for replacement in kind and contains the same Type I limiting condition. If a municipality or other agencies have no discretionary review jurisdiction for reuse, then SEQR would not apply for that reason. The Department therefore concludes that the adopted rule would not have a significant adverse effect on the environment and streamlines SEQR without sacrificing meaningful environmental review.

g. County Planning Board Referrals

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (19), to read as follows: "...the recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n."

ii. Impacts

The Department did not identify any significant effects on the environment associated with this Type II category.

iii. Facts, Analysis and Conclusions

County planning board recommendations are advisory opinions and not subject to SEQR. An explanation of this interpretation by the courts is already included in the SEQR Handbook (DEC SEQR Handbook, p. 179, 2010 PDF Version, available on DEC's website at <http://www.dec.ny.gov/permits/6188.html>). The adopted rule codifies the status of such recommendations thereby bringing greater certainty to the law. The Department has determined that the adopted rule would not create any significant adverse effects on the environment.

h. Acquisition and Dedication of Parkland and Conservation Easements

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (39), to read as follows: "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."

ii. Impacts

Acquisition and dedication of parkland, in and of itself, does not result in any adverse environmental impacts. Similarly, acquisition of a conservation easement, in and of itself, does not result in any adverse environmental impacts. Because this Type II category does not include any development activities, any such further proposed development of parkland, provided the development were Unlisted or Type I, would be subject to SEQR.

iii. Facts, Analysis and Conclusions

In response to comments received on the original proposal, which would have categorized the acquisition and dedication of up to 99 acres of parkland as Type II, the Department reduced the threshold acreage to 25 acres or less for acquisition purposes. There are no acreage thresholds for dedication of parkland previously acquired, or for the acquisition of conservation easements. Based on one comment, the Department also added acquisition of conservation easements to the Type II category.

Dedication of parkland has no adverse impact on the environment. Some commenters argued the same for acquisition and others expressed concern that development on parkland could have a significant impact on the environment depending on the development. While the Department is inclined to agree that acquisition of parkland has no adverse impact on the environment, it has chosen to take a conservative path with the adopted language that contains a 25-acre maximum for acquisition and dedication of parkland. As explained in the Final GEIS, twenty-five acres is close to the medium size of parkland in New York State. Larger acquisitions would still have to be analyzed under SEQR. Furthermore, the Department considers the act of acquiring and dedicating land as parkland as having an intrinsic beneficial impact on the environment because it will automatically provide a significant degree of natural resource protection and simultaneously preclude inconsistent uses and activities.

Therefore, the Department concludes that 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, will not have a significant adverse effect on the environment.

i. Transfers of Land for One, Two and Three Family Housing

i. Adopted Rule

The Department hereby adopts a revised Type II category, to be codified at 6 NYCRR § 617.5 (c) (11), to read as follows: “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.”

ii. Impacts

Since part of the underlying action, construction or expansion of a single-family, a two-family or a three-family residence, is already classified as a Type II action, the addition of this provision would not have a significant adverse impact on the environment. Additionally, the Department did not identify any significant adverse environmental impacts associated with the adopted rule through analysis or public comment when the revised proposal was published for public comment on April 4, 2018.

iii. Facts, Analysis and Conclusions

The Department originally proposed to create a new Type II category for the transfer or conveyance of five acres or less by a municipality or a public corporation to a not-for-profit corporation for the construction or rehabilitation of one, two or three family housing. Based on public comment, the Department chose the no-action alternative but modified another Type II category to achieve the substance of the proposal by only including conveyances of land associated with the construction or expansion of one, two and three family homes (which is already on the Type II list). Construction of one, two and three family housing was made a Type II action in the 1995 regulatory amendments, where the Department concluded that such activities did not significantly adversely impact the environment. The Department now concludes that the incidental transfer of title associated with this existing Type II action should also be a Type II action, as it will not have a significant adverse effect on the environment and streamlines SEQR without sacrificing meaningful environmental review.

j. Sale and Conveyance of Real Property by Public Auction Pursuant to Article 11 of the Real Property Tax Law

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (40), to read as follows: “sale and conveyance of real property by public auction pursuant to article 11 of the Real Property Tax Law.”

ii. Impacts

The Department has not identified any significant adverse environmental impacts associated with adopting this new Type II category.

iii. Facts, Analysis and Conclusions

SEQR requires that an agency conduct an environmental review at the earliest possible time. But there are situations where that leads to an environmental review that is essentially meaningless because the details needed to conduct a review are not yet available and arguably in this case the agency has no discretion to change what it is doing. This is one of those situations. The agency disposing of the property has no control over the future use of the property; it has no discretion but to sell the property to the highest bidder. This addition to the Type II list would merely codify an action as Type II that is ministerial and not subject to SEQR in any event. The Department concludes that the adopted rule will not have a significant adverse effect on the environment and streamlines SEQR without sacrificing meaningful environmental review.

k. Anaerobic Digesters at Publicly-Owned Landfills

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (41), to read as follows: “...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.”

ii. Impacts

The Department identified the following potential impacts associated with the adopted rule: visual or aesthetic impacts, traffic impacts, odors and impacts to community character.

Food waste is the second largest category of municipal solid waste in the United States, accounting for approximately 18% of the waste stream (“Organic: Co-Digestion,” 2014). The diversion of food waste and other high energy organic wastes from landfills to anaerobic digesters would reduce the quantity of organics placed in landfills, extend the life of landfills, increase renewable energy generation and increase the production of organic soil amendments.

iii. Facts, Analysis and Conclusions

The original proposal included the construction and operation of a digester at publicly-owned wastewater treatment facilities. In response to comment, the Department modified the proposal and has removed these facilities to avoid these potential impacts. The primary reason for this determination being the change in land use and potential resultant impacts to community character and aesthetics associated with operation of a digester. Construction/operation of a 150 wet-ton per day facility, with associated tanks, piping, and other appurtenances, could require a land area of up to two acres. While many municipal wastewater treatment facilities are typically well screened and their daily operations are relatively unobtrusive, this may not be the case for all facilities, particularly those located within a dense urban setting. The placement of an anaerobic digester at a wastewater treatment plant in a dense urban environment may bring about a significant change in land use and local traffic patterns.

The Department determined, however, that the same impacts when considered at an operating publicly-owned landfill will not result in significant adverse environmental impacts. Operational landfills are constantly receiving waste and must maintain processing equipment such that the addition of digester equipment and traffic associated with a digester does not create a significant change. Further, the Department has modified the proposal in response to public comment, and clarified that placement is limited to currently disturbed areas of the facility. This condition serves to avoid the development of ‘greenfield’ areas and the removal of existing buffers where construction and operation of a digester may otherwise result in encroachment or potential impacts to a sensitive resource (e.g., along costal or riparian areas). As a result, the addition of a digester to an operational landfill would not have a potentially significant adverse impact on the environment.

The Department therefore concludes that the adoption of this Type II action will not have a potentially significant adverse effect on the environment.

III. Regulatory Amendments to the Scoping Regulations (6 NYCRR § 617.8)

An important theme in this rule making was to improve the efficiency of SEQR without sacrificing meaningful environmental review. The efficiency of SEQR is furthered by the following amendments making scoping mandatory except for supplemental environmental impact statements.

i. Adopted Rule

The Department hereby adopts the following changes to 6 NYCRR § 617.8 (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 [non-significant] not significant. Scoping is [not] required for all EISs (except for supplements to EISs). [Scoping] and may be initiated by the lead agency or the project sponsor.

(b) [If scoping is conducted,] The [the] project sponsor must submit a draft scope that contains the items identified in paragraphs (e) [(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.]

(c) [(d)] Involved agencies should provide written comments reflecting their concerns, jurisdictions and [information] needs for environmental analysis sufficient to ensure that the EIS will be adequate to support their SEQR findings. The lead agency shall include such informational needs in the final scope, unless they are unreasonable. Failure of an involved agency to participate in the scoping process will not delay completion of the final written scope.

(d) [(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.

(e) [(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 Part 3 of the environmental assessment form [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 [/] or data that should be included in an appendix rather than the body of the draft EIS; and

(7) a brief description of the [those] prominent issues that were considered in the review of the environmental assessment form or raised during scoping, or both, and determined to be [not] neither relevant nor [or not] environmentally significant or that have been adequately addressed in a prior environmental review and the reasons why those issues were not included in the final scope.

(f) [(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.

(g) [(h)] The project sponsor [may] must incorporate information submitted consistent with subdivision (f) [(g)] of this section into the draft EIS [at its discretion] or attach such comments into an appendix of the draft EIS. [Any substantive information not incorporated into the body of the draft EIS must be considered as public comment on the draft EIS.] “

ii. Impacts

The Department finds that the amendment’s impacts are procedural rather than substantive. At the same time, the Department expects that mandatory scoping will have a positive impact on the EIS process since scoping should lead to earlier identification of issues and EISs that are more targeted to significant concerns.

iii. Facts, Analysis and Conclusions

Scoping is a process that develops a written document (referred to as a “scope”) that outlines the topics and analyses of potential environmental impacts of an action that will be addressed in a draft environmental impact statement (draft EIS). The regulatory change will result in channeling the identification of issues for evaluation in an environmental impact statement through a public scoping process. The scoping process will affirmatively determine which impacts require additional study in the draft environmental impact statement and which impacts do not require additional study. Under SEQRA, up until now, that process has been optional but now it will be a required step.

The rationale for the change is to ensure that the lead agency as well as other participants in the EIS process identify significant issues as early as possible in the EIS process and to make sure that environmentally significant issues are the focus of the DEIS. An environmental impact statement should focus on potentially significant adverse issues. Further, the scope should build on the environmental assessment process (EAF) by which an agency determines that an environmental impact statement is warranted.

The Department decided, based on public comment, to choose the no action alternative for adopting mandatory scoping for supplemental environmental impact statements. One commenter pointed out that a supplemental environmental impact statement, by definition, is already narrower and limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS. The Department agrees with the commenter's analysis (Comment No. 161 on the draft generic environmental impact statement) for the reasons stated in response to that comment.

The Department made one more important change to 6 NYCRR § 617.8. Under the 1995 changes to the SEQR regulations, in response to late filed comments on the scope, project sponsors could either address the comments in the draft EIS or as response to comments in the final EIS. This assumes that the late filer has justified the late filing (pursuant to 6 NYCRR § 617.8 (g)) by describing "the nature of the information, the importance and relevance of the information to a potential significant impact and the reasons why the information was not identified during scoping and why it should be included at this stage of the review." Under the revised regulations, a late filer must still make this showing. However, if the project sponsor does not evaluate such information in the body of the draft EIS then the project sponsor must attach the comments into an appendix of the draft EIS. The information contained in the appendix would then be treated as public comment that would be responded to in the FEIS.

The change may result in the project sponsor having to create an extra appendix. The new provision responds to the many comments received by the Department that the public often learns of a project late in the EIS process. Some comments indicated that this will shut the public out of the EIS process. The opposite is true. The appendix will enable the public to view all late filed comments that are substantive and relevant at the DEIS stage without unduly burdening the project sponsor.

With the advent of instantaneous electronic communication, lead agencies sometimes receive form comments, generated by automated systems, where identical forms are submitted electronically in great number. Sometimes, these comments may appear to be individual comments through slight modification to a word or phrase. Although these form comments may repeat the same information hundreds, if not thousands, of times the underlying information should be given the same consideration as a single thoughtful comment letter. The appendix of substantive late-filed comments should not be treated as a venue for repetitive or non-substantive comments. Instead, the lead agency should reserve the appendix for late-filed, yet substantive and significant comments that are not already addressed in the DEIS. Lead agencies retain their discretion to ensure that the appendix serves its intended function.

Under changes to 6 NYCRR § 617.12, the Department is also requiring project sponsors to notify the public of the draft and final scopes in the Environmental Notice Bulletin. The Department intended that these changes should work in tandem with the new scoping provisions to provide the public with the greatest opportunity to be appraised of the EIS process and to participate.

IV. Regulatory Amendments to the Regulations Governing the Preparation and Content of EISs (6 NYCRR § 617.9)

a. Environmental Impact Statement Procedures (6 NYCRR § 617.9 (a))

The proposed rules would tighten the acceptance procedures for draft environmental impact statements and make the consideration of climate change and its associated impacts explicit in SEQR.

i. Adopted Rule

The Department adopts the following revisions to 6 NYCRR § 617.9:

(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. A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8 (g) and 617.9(b) of this Part, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures.

(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. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review, unless changes are proposed for the project, there is newly discovered information, or there is a change in circumstances related to the project.

ii. Impacts

The Department finds that the impacts of the changes to section 617.9 are procedural. At the same time, the changes will not cause any potentially significant adverse environmental impacts.

iii. Facts, Analysis and Conclusions

The Department's revisions to section 617.9 are intended to tighten the acceptance standards for draft environmental impact statements by defining when a draft environmental impact statement is adequate for public review and the circumstances under which a resubmitted draft environmental impact statement can be rejected by the lead agency. This regulatory change meets the goal of streamlining SEQR without sacrificing meaningful environmental review.

Under the change in the regulations, adequacy will be largely governed by whether the project sponsor has met the requirements of the final written scope (which may include eligible late filed comments (617.8 (h)). (Late filed comments should be the rare exception and not the rule.) If the project sponsor produces a draft EIS that is consistent with the final written scope it should be presumed that the document is adequate to commence the public review process. This will allow the EIS process to continue to move forward to the public comment phase, and should strongly discourage lead agencies from moving the goal post such that an applicant who is acting in good faith to fulfill the requirements of the scope cannot get to a complete or adequate draft EIS. In so doing, the Department is balancing the competing goals of expediting the SEQR EIS process in the interest of prompt review while ensuring that all relevant, significant issues are examined in the draft EIS.

b. Environmental Impact Statement Content (6 NYCRR § 617.9 (b)) — Address the Effects of Climate Change

i. Adopted Rule

The Department hereby adopts the following amendment as follows: 6 NYCRR § 617.9 (b) (5) (iii) (i): measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding.

ii. Impacts

The new provision adopts climate change and its associated impacts to the list of issues that may be addressed in an EIS.

iii. Facts, Analysis and Conclusions

Consideration of climate change in the context of environmental review includes two primary components: (1) mitigation of the greenhouse gas emissions that cause and contribute to climate change; and (2) a project's vulnerability or resiliency to the effects of climate change, which in turn may affect the nature or significance of a project's environmental impacts. The adopted regulation makes this consideration explicit under the SEQR regulations.

Climate change is driven by greenhouse gas emissions, which can be associated with a variety of emission sources, but is most commonly associated with fossil fuel combustion. A given project may result in additional greenhouse gas emissions, which in turn contributes to climate change and its associated impacts. Secondly, climate change has the potential to exacerbate almost all environmental hazards. As such, any project that is vulnerable to these hazards may not only experience greater risk itself,

but may also impose additional risks and impacts on the local environment and communities.

To clarify that these climate change considerations are relevant, including because of how climate change may impact the current and future context of a project, the Department added this new provision regarding the content of a draft EIS. To help ensure consistent consideration of climate change, the adopted revisions to Part 617 now require all draft EISs to include, where relevant and significant, a statement and evaluation of any significant adverse impacts associated with measures to avoid or reduce both an action's impacts on climate change and associated impacts due to vulnerability from the effects of climate change such as sea level rise and flooding (617.9(b)(5)(iii)(i)). This revision will have a beneficial impact on the quality of environmental reviews under SEQRA, and will not have any significant adverse impact on the environment.

V. Other Regulatory Changes

The Department also adopts other changes to the SEQR regulations as follows:

a. Initial Review of Actions and establishing lead agency (6 NYCRR § 617.6)

Based on the discussion in the FGEIS, the Department adopts the amendment to 6 NYCRR § 617.6 that removes the provision that provides that “[a]n agency may waive the requirement for an EAF if a draft EIS is prepared or submitted,” and the sentence that follows, which provides that “[t]he draft EIS may be treated as an EAF for the purpose of determining significance.” Mandatory scoping makes this provision obsolete.

b. Document Preparation, Filing, Publication and Distribution (6 NYCRR § 617.12)

Under 6 NYCRR § 617.12, based on the FGEIS, the Department hereby adopts various changes to the document preparation, filing, publication and distribution requirements including a requirement for draft and final scopes and draft and final EISs to be published on a publicly available website as well as a requirement for ENB notice of draft and final scopes. The Department received very little public comment on these changes.

c. Fees and Costs (6 NYCRR § 617.13)

Based on the FGEIS, the Department hereby adopts the revisions to 6 NYCRR § 617.13 entitling the applicant to copies of invoices for statements of work where the lead agency has hired a contractor whose cost of work is being charged back to the applicant. The Department did not receive any comments on this change. The Department received little or no public comment on this revision.

d. Environmental Assessment Forms (6 NYCRR § 617.20 appendices A & B)

The Department modified the environmental assessment forms with the Type I changes related to certain actions located next to properties listed on the National or State registers of historic places including a change allowing for the identification of properties that have been determined to be eligible for listing on the State Register of Historic Places. The Department has also corrected some typographical errors in the

forms and clarified truck types in Part 1, D.2. of the Full EAF. In sum, the changes appear in Part 1 of the Short EAF. Parts 2 and 3 of the Short-EAF are unchanged. Parts 1 and 2 of the Full-EAF contain changes. Part 3 of the Full EAF is unchanged.

The Department does not believe that these changes will have a significant effect on the environment but rather implement the substance of the revised proposal.

VI. Alternatives

During the revision process the Department considered alternatives. They are set forth in the FGEIS. The Department has taken note of some of these suggestions and will consider them in the next regulatory revision.

VII. Provisions in the Revised Proposal Not Undertaken

The Department wrote several proposals that it determined based on public comment not to adopt. They are set forth in the FGEIS and the rationale for why they were not adopted.

VIII. Effective Date

The foregoing changes to 6 NYCRR Part 617 become effective on January 1, 2019 and will apply to all actions for which a determination of significance has not been made prior to January 1, 2019.

Certification of Findings to Undertake an Action

The revisions to the SEQR regulations will not result in any significant adverse effects on the environment. The Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Statement In lieu of Job Impact Statement (accompanying the FGEIS) discuss how the changes to Part 617 should reduce costs for agencies or not affect them. Having considered the draft, revised and final generic environmental impact statements on the proposed amendments to Part 617, and having considered the relevant environmental impacts, facts and conclusions disclosed in the final generic environmental impact statement and the findings above on the revisions to Part 617, the Department hereby certifies the following:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives thereto,
 - a. the action approved is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable,
 - b. adverse environmental impacts revealed in the environmental impact statement process will be avoided or minimized by incorporating as conditions to the decision those mitigation measures that were identified as practicable.
3. This action is consistent with the applicable policies of Article 42 of the Executive Law as implemented by 19 NYCRR Part 600.
4. This action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

New York State Department of Environmental Conservation



Basil Seggos
Commissioner

Dated: June 27, 2018
Albany, New York

Appendix

Summary of Changes to the SEQR Regulations

<p>617.2 - Definitions</p>	<p>A new definition was added for the term “green infrastructure” and non-substantial or conforming changes have been made to six existing definitions (“critical environmental area,” “environmental assessment form,” “environmental notice bulletin,” “positive declaration,” “scoping,” and “Type II action”).</p>
<p>617.4 - Type I List</p>	<p>617.4 (b) (5) (iii), (iv) & (v) – modified this item to lower the numeric threshold for number of new residential units that would trigger a Type I classification. 617.4 (b) (6) (iii) & (iv) – added a new numeric category threshold for smaller communities and modifies the existing threshold for parking that triggers a Type I classification. 617.4 (b) (9) – creates a threshold for when an action <i>that is located wholly or partially</i> within or substantially contiguous to a National Register listed historic site becomes a Type I action and adds properties determined to be eligible for inclusion on the State Register of Historic Sites to the Type I list.</p>
<p>617.5 – Type II List</p>	<p>617.5 (C) (2) – modified to include upgrading an existing building to meet energy codes. 617.5 (C) (3) – adds a new express Type II item for retrofit of an existing structure to incorporate green infrastructure. 617.5 (C) (7) – adds a new express Type II item for installation of telecommunications cables in existing highway or utility rights of way. 617.5 (C) (11) [formerly 9] – construction or expansion of a single-family, a two-family or a three-family residence - modified to include the conveyances of land in connection therewith. 617.5 (C) (14) & (15) - added a new express Type II item for installation of up to 25 acres of solar energy arrays on a closed landfill, environmental remediation sites (brownfields, environmental restoration project, and inactive hazardous waste sites), currently disturbed areas at publicly-owned WWTFs,</p>

	<p>currently disturbed areas at sites zoned for industrial use, and parking lots/garages. Installation of solar arrays on certain existing buildings.</p> <p>617.5 (C) (16) [formerly 12] – Existing Type II for granting of individual setback and lot line variances modified to include lot line adjustments.</p> <p>617.5 (C) (18) - added a new express Type II category for reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses.</p> <p>617.5 (C) (19) - added a new express Type II category for recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n.</p> <p>617.5 (C) (39) - added a new express Type II category for 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.</p> <p>617.5 (C) (40) - added a new express Type II category for sale and conveyance of real property by public auction.</p> <p>617.5 (C) (41) - added a new express Type II category for construction and operation of an anaerobic digester, within currently disturbed areas at an operating municipal solid waste landfill.</p>
617.6 – Initial Review of Actions and Establishing lead agency	Removed the language that allows the lead agency to waive the requirement for an EAF.
617.8 - Scoping	<p>617.8 (a) - Modifications were made to make scoping required for all EIS’s, except for supplements to EIS’s which remains optional.</p> <p>617.8 (g) [formerly h] – modified this section to require that the project sponsor <u>must</u> incorporate eligible late filed comments on the scope into the DEIS or attach them to an appendix of the DEIS.</p> <p>Additional non-substantive amendments of a procedural nature were also made to other sections of 617.8.</p>
617.9 – Preparation and content of environmental impact statements	<p>617.9 (a) Changes to this section tighten the procedures to define when a DEIS is adequate for public review.</p> <p>617.9 (b)(5)(iii) – A new clause was added to evaluate measures to avoid or reduce an</p>

	actions impact on climate change and associated impacts of flooding and sea level rise.
617.12 – Document preparation, filing, publication and distribution.	<p>617.12(c) (1) – section was modified to require draft and final scopes be noticed in the ENB;</p> <p>617.12 (c) (5) – section was modified to add the existing statutory requirement that EIS’s be published on a publicly available website and included in this section that draft and final scopes also be published.</p> <p>Other non-substantial modification and edits were also made.</p>
617.13 – SEQR Fees	617.13 (e) – section was modified to require lead agencies, upon request, to provide applicants with copies of invoices for work prepared by a consultant in preparing or reviewing an EIS.

Express Terms

§ 617.1 Authority, intent and purpose

(a) This Part is adopted pursuant to sections 3-0301(1)(b), (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 [, and 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).

(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 section 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 having exceptional or unique environmental characteristics that has been designated by a state or local agency pursuant to section 617.14 of this part [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 B[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) "Green infrastructure" means practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse.

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

[s] (t) "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] (u) "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] (v) "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] (w) "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] (x) "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] (y) "Mitigation" means a way to avoid or minimize adverse environmental impacts.

[(y)] (z) "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 (h) of this section. Negative declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

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

[aa] (ab) "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] (ac) "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] (ad) "Positive declaration" means a written [statement prepared] determination 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] (ae) "Project sponsor" means any applicant or agency primarily responsible for undertaking an action.

[ae] (af) "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] (ag) "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] irrelevant issues. Scoping, which is not limited to the analysis of potentially significant issues identified in the EAF, provides a project sponsor with [guidance on] a written outline of [matters] topics [which] that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

[ag] (ah) "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] (ai) "State agency" means any state department, agency, board, public benefit corporation, public authority or commission.

[ai] (aj) "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] (ak) "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 SEQR 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] (al) "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 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 section 617.5(c) [(18), (21), and (28)] (24), (27), and (34) 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 section 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 section 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 section 617.10(d) of this Part), a supplement to a draft or final EIS will only be required in the circumstances prescribed in section 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 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 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] (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.

§ 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; and

(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 [Parts] parts 2 and [, as needed, Part] 3.

(3) For Unlisted actions, the short EAF (see section 617.20, Appendix [C] B, 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)] (4) 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)] (5) 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 (4) of this subdivision 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 section 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 that 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 (6) of this subdivision.

(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 paragraph, 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 paragraph.

(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 (b)(5) 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 remains the same.

§ 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 not significant [or nonsignificant]. Scoping is [not] required for all EISs (except for supplemental EISs), and [. Scoping] may be initiated by the lead agency or the project sponsor.

(b) [If scoping is conducted,] The [the] project sponsor must submit a draft scope that contains the items identified in paragraphs [(f)] (e) (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)] (c) Involved agencies should provide written comments reflecting their concerns, jurisdictions and [information] needs for environmental analysis sufficient to ensure that the EIS will be adequate to support their SEQR findings. The lead agency must include such informational needs in the final scope provided they are reasonable. Failure of an involved agency to participate in the scoping process will not delay completion of the final written scope.

[(e)] (d) 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)] (e) 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 Part 3 of the environmental assessment form [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 [/] or data that should be included in an appendix rather than the body of the draft EIS; and

(7) a brief description of the [those] prominent issues that were considered in the review of the environmental assessment form or raised during scoping, or both, and determined to be [not] neither relevant nor [or not] environmentally significant or that have been adequately addressed in a prior environmental review and the reasons why those issues were not included in the final scope.

[(g)] (f) 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)] (g) The project sponsor [may] must incorporate information submitted consistent with subdivision [(g)] (f) of this section into the draft EIS [at its discretion] or attach such comments into an appendix of the draft EIS. [Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS.]

[(i)] (h) 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. A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8 (g) and 617.9 (b) of this Part, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures.

(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. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review, unless changes are proposed for the project, there is newly discovered information, or there is a change in circumstances related to the project.

(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 section 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 section 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 with section 617.12 of this Part.

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

(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;

(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] procedural requirements of section 617.9 (a) of this Part except that scoping is not required.

(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 (5) of this subdivision, EISs should address only those potential significant adverse environmental impacts that can be reasonably anticipated and [/or] that 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 contact information [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 impacts only where [applicable] they are relevant 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; and

(i) measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding.

(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 (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 SEQR 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 following: 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 substantive revisions and supplements to the draft EIS must be specifically indicated and identified as such in the final EIS.

§ 617.10 remains the same.

§ 617.11 remains the same.

§ 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 following: 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 (1) of this subdivision:

(i) A negative declaration must meet the requirements of section 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] how and when 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 section 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 section 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, in electronic or printed format, of the documents to the local public library.

(6) A copy, in electronic or printed format, 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, draft and final scopes and completion of an EIS must be published in the Environmental Notice Bulletin (ENB) in a manner prescribed by the department. Notices [Notice] must be submitted [provided] by the lead agency [directly] to the Environmental Notice Bulletin [, Room 538,] by e-mail to the address listed on the ENB's webpage or

to the following address: Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750. 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.

(5) The lead agency shall publish or cause to be published on a publicly available website (that is free of charge) the draft and then final scopes and the draft and final EISs. The website posting of such scopes and statements may be discontinued one year after all necessary federal, state and local permits have been issued or after the action is funded or undertaken, whichever is later. Printed filings and public notices shall clearly indicate the address of the website at which such filings are posted.

§ 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 of the draft or final EIS; if it charges for review of a draft [and/] or final EIS, it may not also charge for preparation of the EISs. 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 [the] lead agency will provide the applicant, upon request, with an estimate of the costs for preparing or reviewing the draft EIS calculated on the total value of the project for which funding or approval is sought. The applicant is also entitled to, upon request, copies of invoices or statements for work prepared by a consultant that are submitted to the lead agency in connection with any services rendered in preparing or reviewing an EIS.

(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 through § 617.16 remains the same.

§ 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, NY 12233-1750.

(a) National Register of Historic Places, ([1994] 2017), 36 Code of Federal Regulation (CFR) Parts 60 and 63.

(b) [Register O] National Natural Landmarks Program, ([1994] 2017), 36 Code of Federal Regulation (CFR) Part 62. § 617.18 remains the same.

§ 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] 2019. Actions for which a determination of significance has been made prior to January 1, [1996] 2019 must comply with this Part effective [June 1, 1987] July 3, 2001.

§ 617.20

Appendices A and B are model environmental assessment forms that may be used to help satisfy this Part or may be modified in accordance with sections 617.2 (m) and 617.14 of this Part.