

Chapter 9 – Design Guides

9.12 ENVIRONMENTAL ASSESSMENT & PERMITTING GUIDE

9.12.1 NYS ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

A. AUTHORITY, INTENT AND PURPOSE

The New York State Environmental Quality Review Act (6 NYCRR PART 617) is governed by the Statutory Authority of Environmental Conservation Law Sections 3-0301(1)(B), 3-0301(2)(M) and 8-0113. This LAW is applicable to all State and Local Agencies within New York State and includes all Political Subdivisions, Districts, Departments, Authorities, Boards, Commissions and Public Benefit Corporations.

In adopting SEQRA, 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.

SEQRA is an Environmental Assessment. **IT IS NOT A PERMIT.** The basic purpose of SEQRA 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, SEQRA requires that all agencies determine whether the project activities or 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.

B. DEFINITIONS

1. Actions include:
 - a. 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:
 - 1) are directly undertaken by an agency; or
 - 2) involve funding by an agency; or
 - 3) require one or more new or modified approvals from an agency or agencies.
 - b. Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.
 - c. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment.

- d. Any combinations of the above.
- 2. **Agency** means a state or local agency.
- 3. **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.
- 4. **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.
- 5. **Conditioned Negative Declaration** 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 will modify the proposed action so that no significant adverse environmental impacts will result.
- 6. **Critical environmental area (CEA)** means a specific geographic area designated by a state or local agency, having exceptional or unique environmental characteristics.
- 7. **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.
- 8. **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.
- 9. **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.
- 10. **Environmental Impact Statement (EIS)** means a written "draft" or "final" document that 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", a "supplemental" or a "federal" document.

11. **Environmental Notice Bulletin (ENB)** means the weekly publication DEC published pursuant to the Environmental Conservation Law, and accessible on the department's internet web site at <http://www.dec.ny.gov>.
12. **Findings Statement** means a written statement prepared by each involved agency 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 SEQRA requirements have been met.
13. **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 SEQRA process is commenced. The lead agency is also an "involved agency".
14. **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.
15. **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.
16. **Local Agency** means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the state.
17. **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.
18. **Mitigation** means a way to avoid or minimize adverse environmental impacts.
19. **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.

20. **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.
21. **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.
22. **Positive Declaration** means a written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required.
23. **Project Sponsor** means any applicant or agency primarily responsible for undertaking an action.
24. **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.
25. **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 non-relevant issues. Scoping provides a project sponsor with guidance on matters which must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.
26. **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.
27. **State Agency** means any state department, agency, board, public benefit corporation, public authority or commission.
28. **Type I Action** means an action or class of actions that are more likely to require the preparation of an EIS than Unlisted actions.
29. **Type II Action** means an action or class of actions not subject to review under SEQRA. When the term is applied in reference to an individual agency's authority to review or approve a particular proposed project or action, it shall also mean an

action or class of actions identified as Type II actions in that agency's own procedures to implement SEQRA. 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.

- 30. Unlisted Action** means all actions not identified as a Type I or Type II action, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's own SEQRA procedures.

C. CLASSIFICATION OF THE TYPE OF ACTION

The first step in the "**decision making process**" is to classify the Action as Type I, Unlisted or Type II. If the action is a Type II, no further action is necessary. Type I and Unlisted actions require that an **Environmental Assessment** be prepared. If an action is determined not to have significant adverse environmental impacts, a determination of nonsignificance (Negative Declaration) is prepared. If an action is determined to have potentially significant adverse environmental impacts, an "**Environmental Impact Statement**" (EIS) is required.

- 1. Type I Actions:** 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, which is not exhaustive of those actions that an agency determines may have a significant adverse impact on the environment and require the preparation of an EIS. However, the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the following list of criteria. The following actions are Type I if they are to be directly undertaken, funded or approved by an agency:
 - a.** The adoption of a municipality's land use plan, the adoption by any state agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations.
 - b.** The adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district.
 - c.** 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.
 - d.** The acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency.
 - e.** Construction of new residential units that meet or exceed the following thresholds:

- 1) 10 units in municipalities that have not adopted zoning or subdivision regulations.
 - 2) 50 units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works.
 - 3) In a city, town or village having a population of less than 150,000, 250 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works.
 - 4) In a city, town or village having a population of greater than 150,000 but less than 1,000,000, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works.
 - 5) In a city or town having a population of greater than 1,000,000, 2,500 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works.
- f. Activities, other than the construction of residential facilities (dorms, prisons, training center housing), 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:
- 1) A project or action that involves the physical alteration of 10 acres.
 - 2) A project or action that would use ground or surface water in excess of 2,000,000 gallons per day.
 - 3) Parking for 1,000 vehicles.
 - 4) 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.
 - 5) 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.
- g. Any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height.
- h. Any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district and exceeds 25 percent of any threshold established in this section.
- i. Any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places.
- j. 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.

- k. Any Unlisted action that exceeds a Type I threshold established by an involved agency.

2. Type II Actions: Type II actions or classes of actions are not subject to SEQRA review under. 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. The following actions are considered Type II and not subject to review:

- a. Maintenance or repair involving no substantial changes in an existing structure or facility.
- b. Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds of a Type I Action.
- c. 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.
- d. Repaving of existing highways not involving the addition of new travel lanes.
- e. Street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities.
- f. Maintenance of existing landscaping or natural growth.
- g. 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.
- h. 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.
- i. 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 and the installation, maintenance and/or upgrade of a drinking water well and a septic system.
- j. 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.
- k. 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.
- l. Granting of individual setback and lot line variances.
- m. Granting of an area variance(s) for a single-family, two-family or three-family residence.

- n. Public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides.
- o. Minor temporary uses of land having negligible or no permanent impact on the environment.
- p. Installation of traffic control devices on existing streets, roads and highways.
- q. Mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns.
- r. 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.
- s. 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.
- t. Routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment.
- u. 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.
- v. Collective bargaining activities.
- w. Investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt.
- x. Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession.
- y. 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.
- z. 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.
- aa. Adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list.
- bb. 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.
- cc. 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.
- dd. Adoption of a moratorium on land development or construction.
- ee. Interpreting an existing code, rule or regulation.

- ff. Designation of local landmarks or their inclusion within historic districts.
 - gg. 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 SEQR.
 - hh. 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.
 - ii. Actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate.
 - jj. Actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to section 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law.
 - kk. 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.
3. **Unlisted Actions:** Unlisted actions encompass all actions not identified as a Type I or Type II action, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's own SEQR procedures.

End of NYS Environmental Quality Review Act (SEQRA)