617. State Environmental Quality Review

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 (ECL) 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 of section 617.20 of this Part); and

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

617.2. Definitions.

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

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

b. Actions include:

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

i. are directly undertaken by an agency; or

ii. involve funding by an agency; or

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

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

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

4. any combinations of the above.

c. Agency means a State or local agency.

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

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

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

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

h. Conditioned negative declaration (CND) means a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in 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.

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. Disadvantaged Communities shall have the same meaning as it does in subdivision five of section 75-0101 of the ECL, that is, communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified by the Climate Justice Working Group pursuant to section 75-0111 of ECL article 75.

[l]m. 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]n. Environmental assessment form (EAF) means a form used by an agency to assist it in determining the environmental significance 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 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]o. 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 section 617.9(a)(7) of this Part or a "Federal" document in accordance with section 617.15 of this Part.

[o]p. Environmental Notice Bulletin (ENB) means the weekly publication of the department published pursuant to section 3-0306 of the Environmental Conservation Law.

[p]q. 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]r. 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]s. Green infrastructure means practices that manage storm water through infiltration, evapotranspiration and reuse including only the following: the use of permeable pavement; bioretention; 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.

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

[t]u. 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".

[u]v. 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.

[v]w. 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.

[w]x. Local agency means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the State.

[x]y. 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.

[y]z. Mitigation means a way to avoid or minimize adverse environmental impacts.

[z]aa. 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.

[aa]ab. Person means any agency, individual, corporation, governmental entity, partnership, association, trustee, or other legal entity.

[ab]ac. 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.

[ac]ad. 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.

ae. Pollution shall have the same meaning as it has in ECL subdivision 19 of section 1-0303, that is, the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.

[ad]af. Positive declaration means a written 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.

[ae]ag. Project sponsor means any applicant or agency primarily responsible for undertaking an action.

[af]ah. Residential means any facility used for permanent or seasonal habitation, including but not limited to the following: 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.

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

[ah]aj. 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.

[ai]ak. State agency means any State department, agency, board, public benefit corporation, public authority or commission.

[aj]al. 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.

[ak]am. 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.

[al]an. 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 [indentified] identified as a Type I or Type II action in the agency's own SEQR procedures.

617.3. General rules.

a. No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been compiled with. The only exception to this is provided under section 617.5(c)(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 150,000 persons or less, 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, 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 1,000,000 or more persons, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

6. <u>construction</u> 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;

iv. parking for 1,000 vehicles in a city, town or village having a population of more than [then] 150,000 persons;

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;

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 is listed on the State Register of Historic Places or that has been determined by the Commissioner of the [offie] 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;

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 (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;

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;

5. repaving of existing highways not involving the addition of new travel lanes;

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;

8. maintenance of existing landscaping or natural growth;

9. construction or expansion of a primary or accessory/appurtenant, nonresidential 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;

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;

11. residential construction projects involving:

i. construction or expansion of a single-family[,] or a two-family or multifamily dwelling consisting of a three-family [or a three-family]residence on an approved lot including provision of necessary utility connections as provided in paragraph (13) of this subdivision and the installation, maintenance, or upgrade of a drinking water well or a septic system or both, and conveyances of land in connection therewith;

ii. construction of a building with four or more dwelling units including provision of necessary utility connections as provided in paragraph (13) of this subdivision and conveyances of land in connection therewith, under the following conditions:

a. the gross floor area of the building does not exceed 10,000 square feet;

b. the building is constructed on an approved lot;

c. the building will be connected (at the commencement of habitation) to existing public water and sewerage systems; and

d. the use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and subject to site plan review; or

iii. construction or rehabilitation of appurtenant structures in connection with subparagraph (ii) of this paragraph, including sidewalks, parking areas, playgrounds, and landscaping;

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;

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 section 27-1419 and section 375-3.9 of this Title or environmental restoration project sites that have received a COC pursuant to section 375-4.9 of this Title, 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 section 375-1.11(d) of this Title are complied with;

iii. sites that have received an inactive hazardous waste disposal site full liability release or a COC pursuant to section 375-2.9 of this Title, where the department has determined

an allowable use for a particular site is commercial or industrial, provided that the change of use requirements in section 375-1.11(d) of this Title are complied with;

iv. currently disturbed areas at [publicly-owned]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;

16. granting of individual setback and lot line variances and adjustments;

17. granting of an area variance 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;

20. public or private best forest management (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;

21. minor temporary uses of land having negligible or no permanent impact on the environment;

22. installation of traffic control devices on existing streets, roads and highways;

23. mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;

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;

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);

26. routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;

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;

28. collective bargaining activities;

29. investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

30. inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;

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;

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;

33. adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;

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;

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;

36. adoption of a moratorium on land development or construction;

37. interpretation of an existing code, rule or regulation;

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]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 section 361-3.7 of this Title) that can be beneficially used or biogas to generate electricity or to make vehicle fuel, or both;

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;

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;

44. actions requiring a certificate of environmental compatibility and public need under articles VII and[,VIII, X or] 10 of the Public Service Law or requiring a major renewable energy facility or a major electric transmission facility siting permit under article VIII of the Public Service Law[and the consideration of, granting or denial of any such certificate];

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

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 2 and 3.

3. For Unlisted actions, the short EAF (see section 617.20, Appendix 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. 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 Part 600 also apply. This provision applies to all State agencies, whether acting as a lead or involved agency.

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. Determining significance.

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

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

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

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

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

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

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

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

c. Criteria for determining significance:

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

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

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

iii. the impairment of the environmental characteristics of a critical environmental area as designated pursuant to section 617.14(g) of this Part;

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

v. the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

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

vii. the creation of a hazard to human health;

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

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

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

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

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

xiii. an action that may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action.

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

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

ii. likely to be undertaken as a result thereof, or

iii. dependent thereon.

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

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

ii. its probability of occurrence;

iii. its duration;

iv. its irreversibility;

v. its geographic scope;

vi. its magnitude; and

vii. the number of people affected.

d. Conditioned negative declarations.

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

i. has completed a full EAF;

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

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

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

v. has complied with subdivision (b) of this section and section 617.12(a) and (b) of this Part.

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

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

ii. a substantial deficiency in the proposed mitigation measures.

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

e. Amendment of a negative declaration.

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

i. changes are proposed for the project; or

ii. new information is discovered; or

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

2. The lead agency must prepare, file and publish the amended negative declaration in accordance with section 617.12 of this Part. The amended negative declaration must contain reference to the original negative declaration and discuss the reasons supporting the amended determination.

f. Rescission of negative declarations.

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

i. changes are proposed for the project; or

ii. new information is discovered; or

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

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

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

617.8. Scoping.

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

b. The project sponsor must submit a draft scope that contains the items identified in paragraphs (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. Involved agencies should provide written comments reflecting their concerns, jurisdictions and 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.

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.

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 from 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 prominent issues that were considered in the review of the environmental assessment form or raised during scoping, or both, and determined to be neither relevant nor 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. 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. The project sponsor must incorporate information submitted consistent with subdivision (f) of this section into the draft EIS or attach such comments into an appendix of the draft EIS.

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.

2. The lead agency will use the final written scope 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) of this Part and subdivision (b) of this section, 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] <u>based on</u> 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 procedural requirements of this subdivision 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 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 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 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;

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; and[.]

j. impacts of any proposed action on a disadvantaged community, including whether the action may cause or increase a disproportionate pollution burden on a disadvantaged community.

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 section 600.5 of Title 19 NYCRR; 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. Generic environmental impact statements.

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

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

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

3. separate actions having generic or common impacts; or

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

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

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

d. When a final generic EIS has been filed under this Part:

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

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

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

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

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

617.11. Decision-making and findings requirements.

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

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

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

d. Findings must:

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

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

3. provide a rationale for the agency's decision;

4. certify that the requirements of this Part have been met; and

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

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

617.12. Document preparation, filing, publication and distribution.

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

a. Preparation of documents.

1. Each negative declaration, positive declaration, notice of completion of an EIS, notice of hearing and findings must 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 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 must be submitted by the lead agency to the Environmental Notice Bulletin 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 website.

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 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 or final EIS, it may not also charge for review of the draft or final EIS; if it charges for review of a draft 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. 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. Individual agency procedures to implement SEQR.

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

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

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

1. advice on preparation and review of EAF's;

2. recommendations on the significance [or nonsignificance] of actions;

3. preparation and review of EISs and recommendations on the scope, adequacy, and contents of EISs;

4. preparation and filing of SEQR notices and documents;

5. conduct of public hearings; and

6. recommendations to decisionmakers.

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

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

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

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

identify the boundaries and the specific environmental characteristics of the area warranting CEA designation.

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

i. a benefit or threat to human health;

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

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

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

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

i. the commissioner;

ii. the appropriate regional office of the department; and

iii. any other agency regularly involved in undertaking, funding or approving actions in the municipality in which the area has been designated.

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

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

617.15. Actions involving a Federal agency.

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

b. Where a finding of no significant impact (FNSI) or other written threshold determination that the action will not require a Federal impact statement has been prepared under the National Environmental Policy Act of 1969, the determination will not automatically constitute

compliance with SEQR. In such cases, state and local agencies remain responsible for compliance with SEQR.

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

617.16. Confidentiality.

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

617.17. Referenced material.

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

a. National Register of Historic Places, (2017), 36 Code of Federal Regulations (CFR) parts 60 and 63.

b. National Natural Landmarks Program, (2017), 36 Code of Federal Regulations (CFR) part 62.

617.18. Severability.

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

617.19. Effective date.

This Part, as revised takes effect 30 calendar days after publication of the Notice of Adoption in the New York State Register, except as provided below. For actions subject to a determination of significance, [T]this Part, as revised, applies to actions for which a determination of significance has not been made or the lead agency has issued a positive declaration and a draft environmental impact statement has not been accepted prior to [January 1, 2019] the effective date of this regulation, as amended. [Actions for which a determination of significance has been made prior to January 1, 2019 must comply with this Part effective July 3, 2001.]

617.20. Appendices.

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(n[m]) and 617.14 of this Part. *

* Appendices A and B are hereby repealed and replaced. *