Timed Outline

SEQRA as an Incentive to Sustainable Development – Replacing the Stick with a Carrot. Three Perspectives on DEC's Pending Changes to Part 617

Moderator: Daniel A. Ruzow, Esq., Whiteman Osterman & Hanna LLP, Albany, NY

Speakers: Hayley Carlock, Esq., Scenic Hudson, Inc., Poughkeepsie, NY

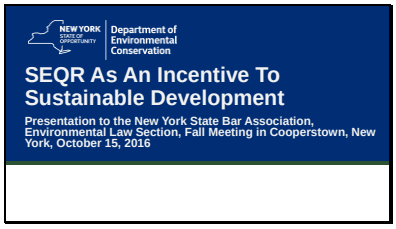
Lawrence H. Weintraub, Esq., NYS Department of Environmental Conservation, Albany, NY

8:40 am	Introductions and overview *Moderator*
8:45 am	Discussion of the goal of "sustainability" in permitting decisions and how goal has historically been part of the State Environmental Quality Review Act Description of DEC's proposals to further the goal of sustainability using the Type II list of actions in the SEQR regulations *Presenter: Lawrence H. Weintraub*
9:05 am	Environmental advocacy group perspective on using SEQR to further the goal of sustainability and DEC's proposals *Presenter: Hayley Carlock, Esq.*
9:15 am	Moderator comments and colloquy
9:20 am	Audience pespectives
9:35 am	END

SEQR AS AN INCENTIVE FOR SUSTAINABLE DEVELOPMENT

Presentation to the New York State Bar Association, Environmental Law Section, Fall Meeting in Cooperstown, New York, October 15, 2016

Slide 1



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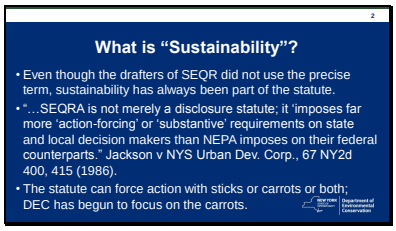
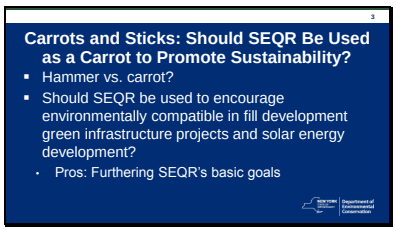


There are multiple definitions of "sustainability." They include the following one: "Sustainability is the simultaneous pursuit of environmental quality, economic prosperity and social well-being for present and future generations. It includes environmental justice and concern for the health of natural ecosystems and maintaining biodiversity." DEC/OGS, Greening NYS, Fourth Progress Report on State Green Procurement and Agency Sustainability, p. 4, available at http://www.ogs.ny.gov/EO/4/.
ECL § 8-0103(8). "…all agencies [shall] 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.

Slide 3



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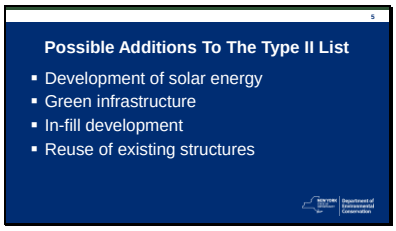
See 6 NYCRR 617.5 (c) (1) and (2).

Slide 5



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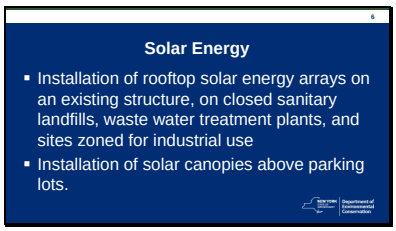

These Type II actions would encourage placement of solar panels and arrays in areas that have already been disturbed or on structures that already exist. They would also further the goals of the initiative "Reforming the Energy Vision" or "REV" and in particular the NY-Sun initiative to grow the solar energy industry in New York. Solar arrays can have visual impacts and they can be land intensive. Solar arrays can also have an impact on the visual character of designated historic structures or districts. However, since this Type II action will utilize only existing structures, previously disturbed sites or sites zoned for industrial use it would minimize such impacts such that they would not be significant.

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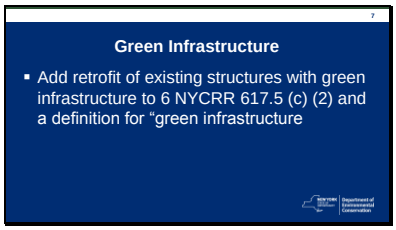

Green infrastructure practices include permeable pavement; bio-retention; green roofs and green walls; stormwater street trees and urban forestry programs; downspout disconnection; and stormwater harvesting and reuse in retrofit situations.

Slide 8

Development of sites that have been previously disturbed and that have existing infrastructure would categorically result in significantly less environmental impact than developing undisturbed sites (that are not located in downtown or main street areas). The proposed Type II actions would create a regulatory incentive for redevelopment of existing sites in downtown and main street areas already served by public infrastructure, which has clear environmental benefits over Greenfield sites that have not been already developed.

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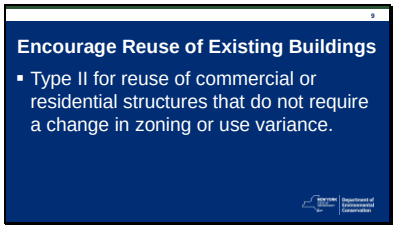
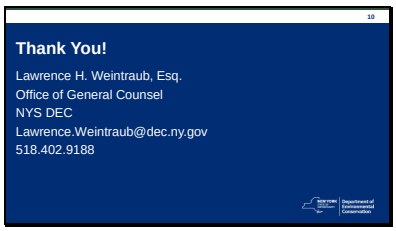


The built environment of New York State contains many structures that are currently vacant or abandoned. Many of these structures could be reused for housing or commercial development. Returning a vacant residential or commercial structure to a productive use can reduce blight, improve the vitality and live-ability of a neighborhood and return structures to municipal tax rolls.

Slide 10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Thank You!
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List of Statutes, Regulations and Cases (to be discussed)

SEQRA as an Incentive to Sustainable Development – Replacing the Stick with a

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Hayley Carlock, Esq., Scenic Hudson, Inc., Poughkeepsie, NY

Statutes

ECL §8-0113

Regulations

6 NYCRR §617.5

Cases

West Village Committee, Inc. v. Zagata, 171 Misc.2d 454 (Sup. Ct. Albany Co. 1996)*, affd in part, revd in part* 242 AD2d 91 (3 Dept. 1998), *lv den.* 92 NY2d 802 (1998).

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SAVING THE LAND THAT MATTERS MOST

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January 26, 2012

Steven Russo
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12207

RE: SEQRA Reform

Dear Mr. Russo:

This letter follows up from the meeting we attended in New York City and the ongoing discourse regarding how to make the SEQRA process more efficient without sacrificing its purpose and effectiveness.

Scenic Hudson believes there is great power in the interdependence of economic prosperity and environmental protection. Scenic Hudson's president Ned Sullivan is proud to serve as a member of the Mid-Hudson Regional Economic Development Council, and we strongly support the region's strategic plan vision:

> "From our historic urban centers and scenic waterfronts to rich rural farmland, we will preserve an unparalleled quality of life for all Mid-Hudson Valley residents by creating a competitive, pro-business climate that cultivates a highly skilled, diverse workforce; encourages investment; nurtures entrepreneurism; promotes academic excellence and scientific discovery; fosters cluster development; fortifies infrastructure; advocates environmental stewardship; expands existing companies of all sizes, while attracting others from out-of-state – resulting in unprecedented employment and economic opportunities that reach beyond our region to benefit all New Yorkers."

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And so it is critical to everyone involved in shaping the region's economic future that the regulatory process for development projects helps us to realize this vision. To that end, we hope that you will consider the following ideas as strategies that will help achieve these interconnected goals.

Implement the Recommendations from 2009-2010 Region 3 SEQRA Dialogue

In 2009 and 2010, a diverse group of Mid-Hudson Valley stakeholders was convened to address the above issues and agreed on nine recommendations to make SEQRA more efficient and more effective. The initiative was chaired by Jonathan Drapkin, Pattern for Progress; Ned Sullivan, Scenic Hudson; and William C. Janeway, Regional Director NYS DEC. The working group of 11 members represented business, planning, and environmental interests.

The working group developed consensus recommendations, which Scenic Hudson fully supports as critical first steps in making SEQRA operate more efficiently and effectively. Please find below summaries of the nine recommendations that came out of the dialogue, as well as more specific suggestions from Scenic Hudson on how the recommendations can be implemented in order to maximize SEQRA's efficiency without sacrificing its environmental objectives.

Recommendations of 2009-2010 Region 3 SEQRA Dialogue

(1) Provide Incentives for Planning

Incentives should be provided to help communities develop comprehensive plans and local waterfront revitalization programs (LWRP). Examples of such incentives include expanding state indemnification for challenges to comprehensive plans and providing technical assistance to local officials developing such plans. Further, more extensive use of the GEIS can build consensus around priority development and resource protection opportunities, thereby circumventing conflict and controversy and helping to expedite approval processes.

It was agreed that greater local government comprehensive planning would help to address and partially shift reliance on SEQRA as a means of dispute resolution and would promote consensus building through:

- Public involvement, as early involvement is essential and increases the availability of a significant range of effective consensus-building techniques;
- Environmental resource inventorying and identification – also an essential aspect of any quality plan; and
- Increasing marketplace and fiscal predictability for the applicant through defining desirable and undesirable development activities and locations.

Scenic Hudson's Recommendation for Implementation: Use the Tenets of the Smart Growth Public Infrastructure Policy Act to Enhance Certainty and Facilitate Decision-making

In general, changes to SEQRA should provide incentives for projects that are consistent with the New York State Smart Growth Public Infrastructure Policy Act (the "Act"). Projects that are consistent with the Act should be prioritized for quicker review and there should be a presumption that such projects can move forward with minimal delay.

Identification of priority growth areas based on the tenets of the Act should be established in comprehensive plans to delineate areas in and around existing built areas and where infrastructure exists as well as places where conservation should be prioritized in order to protect agricultural lands, aquifer recharge areas, biodiversity resources, recreational opportunities and/or sensitive viewsheds. This approach will make information readily available to municipalities, stakeholders and developers and can provide a baseline for evaluation. It will also ensure that cumulative community and region-wide impacts are taken into account, rather than the parcel-by-parcel assessment that is typical of SEQRA today.

Having this information available up-front can facilitate a more efficient and transparent SEQRA process by providing a baseline for environmental assessment that applicants, lead agencies and the public can refer to during evaluation. This can reduce time-consuming disputes and uncertainty as to whether and where development should occur in a municipality by adding predictability to the process.

(2) Expand SEQRA Education and Training for Lead Agencies

SEQRA educational training opportunities should be expanded in partnership with other agencies and private stakeholders. Tools made available on the DEC website and the use of modern information technology (including the web) should be increased. Creating a detailed technical assistance manual and making it easily available online would allow both agencies and private stakeholders to implement SEQRA in a more efficient and effective manner and decrease the uncertainty that sometimes surrounds the process. This would lead to more informed decision-making by lead agencies and increase predictability for applicants.

The report indentified three specific ways that education and training could help make the process run more smoothly:

- Create a user-friendly technical manual to provide uniform guidelines for issues such as water testing, species data, and air quality relevant to the region. It was suggested that a timeline and time-checks tool should be included to clarify standards for lead agencies.

- A DEC Region 3 ombudsman (staff person and hotline phone number/email) is a much needed resource for technical assistance. Such an individual also would be well positioned to assist applicants and consultants by directing them to data and studies already compiled for a particular part of the region, e.g. through the Hudson River Estuary Program, watershed maps, previously documented habitat studies, etc.

  Given limited resources, a volunteer "academy" of trainers might be more feasible in the interim. The report suggests that Region 3 could work with planners, attorneys and other interested parties to coordinate a group of available SEQR experts and trainers to provide classes at conferences and symposia held periodically throughout the region. It will be critical for DEC to insure that a consistent and balanced message is delivered.

- Region-specific online resources could be enormously beneficial and relatively inexpensive to maintain. Examples included Patricia Salkin's Albany Law School blog "*Law of the Land*" and other resources of other academic institutions such as Pace Law School, both of which provide potential links to relevant SEQRA related issues.

Scenic Hudson's Recommendation for Implementation: Enhance Access to Information for Developers, Decision-makers and the Public

DEC must ensure that local agencies have all the information they need to lead to informed, consistent decisions. A web-based database containing this information in a user-friendly format would be ideal. Examples of such information include: maps of geographic zones identified and categorized by their ecological sensitivity; data correlating environmental and economic impacts; information on the state of water quality and the state of ecological health/biodiversity; a comparative look at local and regional development trends across the state; and public infrastructure information. This information should be publically accessible, pooled in an intuitive and organized fashion, and comparative. Having relevant information easily accessible to agencies, developers and the public in one place will decrease the time spent gathering this information and minimize disputes regarding the natural effect of resources at risk.

(3) Produce Regional SEQRA Guidance for SEQRA Practitioners

Develop a guidance manual for all SEQRA practitioners with regard to substantive and procedural issues, including timelines, scoping, public hearings, mitigation, assessment methodology, reasonableness and other issues. The manual would address substantive and procedural issues, including the following:

- Citizen participation: required early outreach by agency/applicant to community; guidance on citizen participation throughout the process.
- Determination of significance: guidance on what is a "relevant area of environmental concern" and how to determine the "significance" of a potential impact.
- Scoping: Specific guidance on producing relevant but appropriately comprehensive EIS scopes. Recommend scoping as a required "best practice."
- Information setting forth agreed upon methodologies to assess and evaluate environmental impacts, such as: cultural resources; traffic; fiscal impact; air; stormwater; wetlands; endangered, threatened and special concern plant and animal species; open space conservation, etc.
- Guidance on SEQRA fees so that lead agencies can: 1) be mindful of the statutory caps for what an applicant can be charged; 2) make a good faith effort to not exceed these caps, and; 3) be sensitive to the need to have and follow a budget.
- Best procedural practices; guidance about reasonable timeframes and administration; guidance on what constitutes completeness, etc.

(4) Increase Availability of DEC Staff to Provide SEQR Advice and Help to communities

Consistent with Number 2 above, establish a "DEC SEQRA Circuit Rider," "Specialist" or "Ombudsman," and SEQR phone number to provide communities with guidance and advice regarding implementation. Provide resources for state and local agencies enabling DEC and others to be more proactive, involved and responsive to coordinating agencies and stakeholder requests.

In Regions 3 and 4, DEC should work closely with NYSDOS, the Hudson River Valley Greenway, County and local planning entities to reestablish a SEQRA assistance unit available to provide advice and non-binding suggestions regarding SEQRA procedural questions. The office or individual would also assist with training and updating and expanding DEC SEQRA guidance.

The report also suggested:

- Promoting the use of a regional DEC phone number and email box for SEQRA questions.
- Expanding resources to state agencies to support SEQRA decision making
- Expanding resources to local agencies to assist with SEQRA
- Providing matching grants to support regional, intermunicipal and local planning
- Expanding technical services that the DEC provides to the region's municipalities

Scenic Hudson's Recommendation for Implementation: Enhance Access to Information

Local decision-makers need something they can reference to assess the value of a particular environmental asset. For example, they should use natural resource inventories (NRIs) and scenic inventories with values attached as a basis for informed decision-making; in fact, there is already funding set aside for this purpose through state and federal grant programs, including through the Hudson River Estuary Program when funding is available and through federal agencies including the US Forest Service and US Fish and Wildlife Service. Many municipalities are unaware of these grant opportunities and don't take advantage of them. Agencies could use NRIs to assess the importance of resources on a local and regional basis and to see trends of how things are changing through time. This would lead to fewer

surprises to developers, local officials and residents, thereby increasing predictability and reducing contentiousness in SEQR proceedings.

Independent research and consultant costs should be paid for by a percentage of permit fees assessed on a developer for larger projects with potential for great environmental impact as is permitted pursuant to 6 NYCRR § 617.13(a). This would increase the ability of cash-strapped municipalities to adequately review complex environmental studies. There are some municipalities that already use fees for this purpose, but many don't. Such a use of permit fees would allow valuable information and analysis to be available to lead agencies and the public and would likely cost the developer less than litigation that could result if the requisite "hard look" is not taken due to a lack of funding and expertise available to the lead agency.

(5) Emphasize Timelines in the SEQR Review Process

Lead agencies should publicly discuss and set forth regulatory and anticipated timeframes based upon comparable projects in the region at the earliest possible stage.

SEQR guidance documents should be developed for lead agencies and others on the subject of timelines. These documents would present examples of anticipated timelines for less complex to more complex projects with emphasis on an adequate public review completed within a reasonable timeframe. Lead agencies should be urged to implement SEQR consistent with the spirit of the law, including conducting reviews "as expeditiously as possible."

6 NYCRR Section 617.14, which explicitly permits a local list of Type 1 and 2 actions, appears to be underutilized and could aid the SEQR process by enabling local procedures to be set to provide for more sensible and reasonable timeframes. In addition, local agency guidelines could be established for areas such as scoping, determinations of significance and evaluation of impacts.

Scenic Hudson's Recommendation for Implementation: Establish Guidelines for Timelines, but Not Strict Deadlines

Adequate opportunity for public comment is a key ingredient of SEQRA, and the complexity and length of many applications and DEISs mean that strict timelines would severely constrain the public's ability to participate in some cases. However, the lead agency should be aware of and set forth for the developer and the public reasonable anticipated timeframes based on similar projects to assist the developer in knowing how long it might expect the SEQRA process to take in a given case, and also to serve as a blueprint for the agency to follow as closely as practicable to move the review along in an expeditious manner. Often, new information or inadequate responses by the applicant lead to delay, and in such cases adherence to strict timelines would inappropriately allow projects to go forward without a full environmental review of all significant issues.

In addition, Scenic Hudson supports incentives to prevent unreasonable delays by either project proponents or lead agencies, such as alternative dispute resolution (ADR) if parties cannot agree to a "completeness" determination after a long period of time. ADR could be paid for on a cost-sharing basis, and would be less expensive for all parties than resorting to litigation. These measures would lead to increased efficiency without sacrificing the ability of the public to meaningfully participate in the SEQR process.

(6) Encourage Early Dialogue Among Stakeholders and Improved Use of Scoping

Explore providing new incentives to encourage early dialogue among project proponents, review agencies and key stakeholders, including improved use of scoping.

Projects that are fully designed without prior discussion with members of the public – and without an openness to make modifications – are the most prone to experience lengthy delays. Therefore, an early, pre-application dialogue among applicants, lead agencies and stakeholders offers the best chance to head off delay and opposition during the formal SEQRA review. The report recommended that pre-application meetings be encouraged to establish communication between project proponents, review agency (or agencies) and stakeholders early in the process to develop better projects, and potentially more timely and less expensive review processes.

SEQRA public hearings should be coordinated to take place in tandem with other review processes, such as Department of State Coastal Consistency Review, and repeated adjournments and unnecessarily lengthy hearings should be avoided as long as interested stakeholders have adequate opportunity to comment on relevant information identified in the scope.

Effective scoping to focus on the material environmental impacts and avoid issues that have already been studied or are irrelevant should be emphasized.

Scenic Hudson's Recommendation for Implementation: Mandatory, Targeted Scoping

The scoping process should be mandatory for SEQRA actions, including limiting areas to be studied to those identified as relevant and significant and requiring that impact analysis methodologies should be identified and agreed-upon in advance. The earlier the public can have input into a project, the more efficient the process will be. Absent scoping, a developer spends a lot of time and money creating a detailed plan before ever putting it before the public, which can lead to public distrust of the process and can make for a more expensive and time-consuming process. With appropriate scoping, a project can be designed so that it is more acceptable to the public in the first place. However, there needs to be a mechanism by which new issues can later be identified and added to the scope, if they meet a threshold of relevance and significance.

(7) Employ Greater Use of Mediation to Resolve Disputes

The report stressed the need to use ADR during the SEQR process. It was also suggested that DEC (or others) could play a role in resolving disputes. For example, the DEC Regional Working Group could serve as an ADR entity to resolve disputes at any juncture in the process. Services could be by mediated agreement or binding arbitration at the option of parties.

Scenic Hudson's Recommendation for Implementation: SEQRA Process Interim Appeals and Mediation

A task force or appeals board comprised of representatives from the Department of State Coastal Resources staff (for coastal regions of the state) and DEC should be convened to hear appeals of decisions/determination in the middle of the SEQR process. Stakeholders, developers and interested agencies alike could appeal to this board, whose members should be impartial and have expertise in relevant areas. This would be an intermediate step before having to resort to expensive and time-consuming litigation. A cost-sharing mechanism could be employed to pay for the ADR process, which would be less expensive than litigation. While there may be some disputes that will advance to litigation anyway, many may be resolved much more quickly and inexpensively by such an appeals board.

(8) Designate a Point Person for Large Regional Priority Project Reviews

For larger scale state-recognized regionally important projects, designate a senior level staff person from the state to convene and host a pre-application meeting with all involved agencies, the applicant and key stakeholders.

Occasionally, large-scale, regionally important projects are proposed that represent state or regional environmental, sustainability and economic development priorities. For example, regionally significant Empire State Development projects could be candidates for such designation. The report recommended that when the State recognizes a project as such, a senior level executive staff person for the appropriate State agency should be designated to assist, but not supersede the authority of, local agencies. A pre-application meeting would be held to get all involved agencies, the applicant and key stakeholders together to facilitate improved communication and coordination with regard to SEQRA and respective permit reviews. The report also suggested that local agencies should explore opportunities to appoint a similar "point person" for smaller, more typical project proposals.

Scenic Hudson Recommendation for Implementation: Create Separate Tracks for Review of Local Projects and Developments of Regional Impact

Several states, including Florida, New Hampshire and Georgia, have created a process separate from the normal project review for "developments of regional impact" or "DRIs." DRIs are generally defined as large-scale developments that are likely to have regional effects beyond the local government jurisdiction in which they are located. These states have established procedures for review of these projects designed to improve communication between affected governments and to provide a means of revealing and assessing potential benefits and impacts of large-scale developments before conflicts relating to them arise. Such a region-wide planning scheme would increase consistency with the principles of the Smart Growth Infrastructure Act.

At the same time, local government autonomy is preserved since the host government maintains the authority to make the final decision on whether a proposed development will or will not go forward. Projects can be DRIs based on their aggregate size or if they are likely to impact or enhance a resource of regional or statewide interest. This approach would help avoid conflicts between interested municipalities and ensure that such large-scale developments were designed in a manner amenable to all affected communities.

(9) Establish a DEC Regional Hudson Valley Catskill Working Group

A diverse, voluntary DEC Regional Working Group should be established to assist with implementation of recommendations, including but not limited to development of a SEQR Guidance Manual and evaluation of any changes that are tried.

The report recommended that a working group be established to improve implementation of the SEQR process in the Hudson Valley without compromising environmental protection or public participation. It was suggested that Pattern for Progress and Scenic Hudson work with DEC to structure and coordinate formation of the group as well as oversee its ongoing activities. The composition of the group would be representative of stakeholder interests in the region; environmental, economic, government and citizen. Meetings would be open to the public.

It was acknowledged that the group would need funds to perform its tasks – particularly the production of the best practices manual and (if appropriate) dispute resolution services. It is suggested that these funds

could be raised from both grant sources and private sector contributions and that the regulated community would financially support this because it is an effort to make the process more predictable and inject more certainty.

The group's work should include promoting the Technical Assistance Manual to Hudson Valley agencies. Every decision-making agency in the Valley should adopt the Manual and agree to utilize and follow its guidance. The Technical Assistance Manual should, in effect, become the standard for SEQRA compliance in Region 3 and be relied upon by all parties in the event of dispute. Deviations from the Manual would need to be explained and documented. DEC, DOS, The Hudson Valley Greenway, ESD and other agencies would be invited to cooperate and assist with this work, and creation of the advisory manual.

Scenic Hudson's Recommendation for Implementation

This recommendation was developed within the particular context of the Region 3 Dialogue and is focused on the Hudson Valley/Catskill region. However, the idea of having regional working groups across the state, to address problems specific to each region, is applicable statewide and would help to implement changes to SEQR in ways appropriate to each region. Each region has a unique set of obstacles to overcome and priorities for growth and development and should therefore have its own working group; guidance and procedures that may work well in the Hudson Valley could be unnecessary or impractical in the North Country, for example.

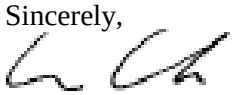
Conclusion

Given the extensive palette of recommendations that was offered as a result of a lengthy, collaborative process involving SEQRA practitioners representing diverse perspectives, these recommendations should receive first priority in the State's efforts to make SEQRA more efficient and effective. Through experience in Region 3, we know that these recommendations have the support of SEQRA practitioners who believe they will make the SEQR process more efficient and friendly to applicants and public agencies alike without sacrificing environmental protection and sustainable development principles.

We would welcome the opportunity to meet to discuss these recommendations further. Please let us know if that would be of interest.

Thank you for your consideration and please contact the undersigned with any questions.

Sincerely,



Hayley Carlock, Esq.
Scenic Hudson, Inc.

cc: Ned Sullivan
Steve Rosenberg

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August 10, 2012

By Email
Jack Nasca
New York State Department of Environmental Conservation
Division of Environmental Permits & Pollution Prevention
625 Broadway
Albany, New York 12233-1750
depprmt@gw.dec.state.ny.us

Dear Mr. Nasca:

Please accept the following comments on behalf of Scenic Hudson, Inc. ("Scenic Hudson") on the Draft Scope for the Generic Environmental Impact Statement ("GEIS") on the Proposed Amendments to the State Environmental Quality Review Act ("SEQRA").

Scenic Hudson is a not-for-profit organization working to protect and restore the Hudson River as an irreplaceable national treasure and a vital resource for residents and visitors. An advocate for the valley since 1963, today we are the largest environmental group focused on the Hudson River Valley. Scenic Hudson combines land conservation, citizen-based advocacy and sophisticated planning tools to create environmentally healthy communities, champion smart economic growth, open up riverfronts to the public and preserve the valley's inspiring beauty and natural resources.

Scenic Hudson is pleased to see many positive changes proposed in the draft scope that will streamline the SEQR process without sacrificing meaningful environmental review. Mandatory scoping, incentives to encourage development in urban areas rather than greenfields and to encourage green infrastructure projects, extension of the timeframe for the filing of Final Environmental Impact Statements ("FEIS"), and reducing some of the thresholds for Type I actions are all excellent steps that will lead to a more efficientand effective SEQRA process.We commend the Department of Environmental Conservation ("DEC") for conducting the stakeholder outreach that took place over the last year, as the constructive discussions resulted in many positive proposed changes that both increase efficiency and environmental protection in the SEQRA process.

However, Scenic Hudson has some remaining concerns with the proposed amendments that are critical to address before we can say that the proposed amendments are something that will be truly beneficial.

Type I Actions

Unlisted Actions Within or Contiguous to an Historic Resource

The Draft Scope proposes to amend 6 NYCRR Part617.4(b)(9) to add to the list of Type I actions,"an Unlisted action that exceeds 25% of any threshold in that 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, or that has been proposed by the New York State

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Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places ."[1]

We understand the desire to exclude from SEQRA review smaller scale actions sited near historic resources, but this one-size-fits-all approach would certainly result in detrimental alteration of the context of culturally and economically important historic resources.

A better approach would be amending Part 617 to consider potential impacts to historic resources in a manner similar to Critical Environmental Areas ("CEA"). Currently, once designated as a CEA, the potential impact of any Type I or Unlisted Action on the environmental characteristics of the CEA becomes a relevant area of environmental concern and must be evaluated in the determination of significance prepared pursuant to Part 617.

To ensure impacts to historic resources are fully evaluated, the action should be designated as Type I, and if upon completion of a Full Environmental Assessment Form ("EAF") it is determined that impacts to the historic resource would occur, a narrowly scoped DEIS should be prepared that focuses on the particular impact to the historic resource.

In addition to the well-established public policy that recognizes the value of historic sites to our state's culture, historic sites also play an important role in supporting state and local economies through heritage-based tourism. Maintaining the context of New York's renowned historic sites is an important driver of state and local economies, and ensuring that impacts to historic resources are avoided or mitigated to the maximum extent practicable is an important function of the SEQRA process.

Type II Actions

Minor Subdivisions

The Draft Scope proposes to add "minor subdivisions" of 10 acres or less and defined as minor under a town, village or city's adopted subdivision regulations or subdivision of four or fewer lots, whichever is less, in municipalities with adopted subdivision regulations, to the Type II list.

Even a "minor subdivision" can have a significant environmental impact in certain areas. While in many cases exempting these actions from SEQRA review may not present a problem, the cumulative impact of even a few subdivisions on sensitive visual resources or coastal areas could result in a significant erosion of aesthetic and environmental quality. Especially given that scenic and coastal areas are often subject to increased development pressure, these important qualities could be put at risk by what might in other areas be considered an inconsequential subdivision. The community character of small hamlets and villages could be dramatically impacted by a "minor subdivision".

To avoid these unintended consequences, subdivisions meeting the definition of "minor" should not be added to the Type II list if they are located within a Scenic Area of Statewide Significance

[1]Draft Scope for the Generic Environmental Impact Statement on the Proposed Amendments to the State Environmental Quality Review Act, July 11, 2012, at pages 3-4.

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("SASS"),within any of New York State's designated coastal zones, or within or adjacent to designated historic resources. This will allow for small subdivisions to only require SEQRA review when they are located in

particularly sensitive areas where a seemingly minor project could have a devastating effect on the state's scenic and/or coastal resources.

Recommendations of County or Regional Planning Entity

The Draft Scope also proposes that recommendations of a county or regional planning entity made following referral of an action pursuant to General Municipal Law Sections 239-m or 239-n be added to the Type II list.

Scenic Hudson acknowledges that actions such as the adoption or amendment of Comprehensive Plan are not well suited to review under SEQRA, and recognizes that use of a valuable and proactive planning tool such as a Comprehensive Plan should be encouraged. However, given that it is possible that a planning entity could recommend adoption of a Comprehensive Plan or zoning ordinance that could encourage significant destruction of environmental, scenic and cultural resources, such an action should still be subject to a "hard look" at significant environmental impacts. DEC should propose an alternate mechanism for the review of Comprehensive Plans before this action is added to the Type II list and exempt from SEQRA review.

Scoping

Information Submitted Following the Completion of the Final Scope

The Draft Scope proposes revising Part 617.8(h) to prohibit a lead agency from rejecting a DEIS as inadequate based on information that is submitted after the completion of the final scope and not included by the project sponsor in the DEIS.

While inefficiency arises when numerous minor issues are brought up after the scoping process is complete, there are occasions when legitimately new information arises that was unknown at the time of scoping and has a significant bearing on the environmental impact of a proposed project. In cases where this new information was not known or reasonably available during the scoping process and is of a significant nature, it must be a proper basis for rejection of the DEIS as inadequate, even if it was not included in the final scope.

If new information, which was unknown and not easily discoverable during the scoping process, comes up after the final scope is complete, it must be considered in order for a proper "hard look" at environmental impacts to be taken. The proposed amendment to Part 617.8(h) should be narrowed so that there is a mechanism for these issues to be evaluated.

Preparation of EIS

While Scenic Hudson supports extending the timeframe for filing FEIS's to 180 days from the lead agency's acceptance of the DEIS, it is not acceptable for this 180 day period to trigger automatic

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acceptance of the FEIS as complete if the lead agency has not yet acted. An absolute cut-off of the timeframe for completion of the FEIS could result in incomplete and inadequate review of environmental impacts of proposed actions and alternatives. The draft scope doesn't recognize the time needed to review complex technical material or the frequent need to hire technical experts to supplement municipal staff and citizen planners. Particularly in cases of large, complex proposals, this arbitrary 180-day cutoff will lead to woefully inadequate environmental review and presents an incentive for project proponents to load unsophisticated lead agencies with volumes of information they have no hope of wading through within 180 days.

Conclusion

Scenic Hudson supports DEC's efforts to create more efficient environmental review, but such review must also be effective in maintaining small-town character, the context of historic sites, and the environmental integrity of sensitive areas. Heritage- and recreation-based tourism are important drivers of the state and local economies and should not be compromised for the sake of efficiency. Scenic Hudson believes the recommendations provided above strike an appropriate balance between efficiency and meaningful environmental review.

Thank you for the opportunity to comment and please feel free to contact the undersigned with any questions or concerns.

Respectfully submitted,

Hayley Carlock, Esq.
Scenic Hudson, Inc.

Adirondack Council
Capital Region Action Against Breast Cancer (CRAAB!)
Catskill Mountainkeeper
Citizens' Environmental Coalition
Clean and Healthy New York
Environmental Justice Action Group of Western New York
Environmental Advocates of New York
Group for the East End
Hudson River Sloop Clearwater
Long Island Environmental Voters Forum
Long Island Pine Barrens Association
New York City Environmental Justice Alliance
New York Lawyers for the Public Interest
New York Public Interest Research Group
New York State Nurses Association
Riverkeeper
Sierra Club Atlantic Chapter

August 10, 2012

Mr. Jack Nasca
Director, Division of Environmental Permits and Pollution Prevention
N.Y.S. Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1750

Sent via e-mail to: depprmt@gw.dec.state.ny.us

Re: Draft Scope for the GEIS on Proposed Amendments to 6 NYCRR Part 617 - State Environmental Quality Review Act (SEQRA)

Dear Mr. Nasca:

Thank you for the opportunity to review and comment on the draft scope for the Generic Environmental Impact Statement (GEIS) on proposed amendments to the 6 NYCRR Part 617 regulations that implement the State Environmental Quality Review Act (SEQRA).

Our groups represent state, regional and local organizations dedicated to protecting the health and the environment of New York's citizens. We have significant concerns about the impacts of many of the proposed "streamlining" amendments to SEQRA, which we believe must be identified and addressed as part of the scope of the GEIS. In addition, the GEIS must consider alternatives to the proposed action, including that of taking no action.

General Comments

According to the Draft Scope, "the principal purpose of the amendments is to streamline the SEQR process without sacrificing meaningful environmental review." The GEIS should include a fact-based rationale for why the DEC believes that streamlining the SEQRA regulations is necessary and how such an action will "prevent or eliminate damage to the environment and enhance human and community resources" in accordance with the law (ECL 8-0101).

The proposed amendments would eliminate environmental review for a potentially significant number of proposed actions, limit the content of environmental impact statements (EISs) to whatever is raised in the scoping process, and set an arbitrary cut-off date for the EIS process to conclude. Yet the Draft Scope states that "The Department has not identified any significant adverse environmental impacts from the proposed amendments." The DEC did not file an Environmental Assessment Form for this action or provide any other documentation to support this statement.

The Draft Scope cites the DEC's "30+ years of experience" as the basis for many of these proposed changes. This is not sufficient for a proper review of the potential impacts. **The GEIS should include a complete assessment of the potential adverse environmental impacts resulting from any expansion of the Type II list of actions, any reductions in the Type I list of actions, any restrictions on the scoping process, and any reductions in the timeframes for conducting environmental reviews.** This assessment should include statistics on the number of projects that could be affected by the rule change and the ranges of types of projects. Where the regulations propose reducing or eliminating SEQRA review, the GEIS should identify scenarios of projects with potentially significant adverse impacts that might be affected.

Moreover, the Final Scope should identify those impacts that will be assessed in the GEIS. 6 NYCRR Section 617.8 requires the project sponsor (DEC) to submit a draft scope that contains the items listed in Section 617.8(f), including the potentially significant adverse impacts identified both in a positive declaration **and as a result of consultation with the other involved agencies and the public**, as well as initial identification of mitigation measures and reasonable alternatives to be considered. The Draft Scope circulated for comment fails to meet these regulatory requirements. **The Final Scope of the GEIS must include all of the items listed in 6 NYCRR Section 617.8(f).**

In considering the potential adverse impacts of the proposed amendments, the DEC should analyze the effects of previous changes to the SEQRA regulations. It is widely recognized, for instance, that after the Type II list of projects exempted from SEQRA was expanded in 1996 to include construction of nonresidential structures under 4,000 square feet in floor area, there was a dramatic increase in development proposals for structures just below that size threshold. This was such a widespread occurrence that this section of the SEQRA regulations is commonly referred to as the "Stewart's loophole," after the convenience store chain which took full advantage of this exemption.

Under the proposed amendments, this loophole could be expanded by up to tenfold, depending on the size of the municipality. According to the Draft Scope, the rationale for this expansion of the Type II list is to provide "a regulatory incentive for …sustainable development." This is not an appropriate use of SEQRA, nor is SEQRA an effective tool for promoting sustainable

development. The purpose of SEQRA is to identify and mitigate the significant environmental impacts of proposed actions in New York State. It is not intended as a planning tool or a mechanism for developing or implementing land use policy.

Finally, the description of the proposed action in the Draft Scope is inconsistent and incomplete. For instance, the language for the proposed definitions has not been included, while other proposed amendments are spelled out in great specificity. **Complete and consistent information about the proposed action should be included in the Final Scope**.

Changes To The Type I List

The proposed amendments to lower the thresholds in the Type I list for residential subdivisions and parking will lead to more environmental review in New York and therefore we support these proposed changes.

The proposal to bring the threshold reduction for historic resources in line with other resource-based items on the Type I list will result in less environmental review and reduced protection for historic buildings, structures, facilities and sites in New York. The Draft Scope cites as its rationale for this change "the fact that the new Full EAF now requires much more information [and] it would be very onerous and potentially expensive for a project sponsor to have to complete a Full EAF for a relatively minor activity." **The GEIS should include a complete assessment of the potential adverse impacts on New York's historic resources as a result of this change.** Simply because the form might be onerous is not an acceptable rationale for weakening protections for sensitive resources. In its consideration of alternatives, the GEIS should evaluate whether the new EAF forms are in need of modification.

One of the alternatives the GEIS should look at is expanding the Type I list to include additional actions that are currently unlisted. This would reduce confusion about how to classify certain proposed actions, which can be time-consuming and contentious, and thus help to streamline the SEQRA review process while increasing environmental review.

Expansion Of Type II List

The proposed amendments dramatically expand the "Type II" list of actions in New York that would be exempt from SEQRA review. The Notice of Intent states that the purpose of expanding the Type II list is "to encourage development in urban areas vs. development in greenfields and to allow green infrastructure projects." The Draft Scope further states that "the overall goal is to provide a regulatory incentive for project sponsors to further the State's policy of sustainable development."

Exempting projects from SEQRA review is neither an effective nor a prudent mechanism for incentivizing smart growth. The purpose of SEQRA is to review the environmental impacts of proposed actions and to mitigate significant adverse impacts. A project that truly adheres to smart growth principles will not have significant adverse impacts, and therefore should encounter no difficulties in the environmental review process. **Conversely, many of the actions that would escape SEQRA review as a result of the proposed exemptions could have significant adverse environmental impacts.**

While the Draft Scope states that "the additions to the Type II list are based on discussions that DEC has conducted with representatives from state agencies, environmental organizations, business, etc." it fails to note that during stakeholder discussions this spring, a number of environmental groups objected to many of the proposed additions. Among the most serious concerns were the proposed exemptions for projects under a certain size threshold based upon the population of the municipality, exemptions for subdivisions below a certain size threshold, and exemptions for the sale, auction, leasing or transfer of public land.

The proposed Type II actions would dramatically expand the existing "Stewart's loophole" of 4,000 square feet. Depending on the size of the municipality, the threshold exemptions would range from projects under 8,000 feet or 10 units or less in a population under 20,000, to projects under 40,000 square feet (almost an acre in size) or 50 units or less in a population over 150,000. While the intent is to steer projects to locations where there is existing infrastructure such as water, sewerage and roads, this exemption could actually exacerbate sprawl development. The DEC is making the erroneous assumption that communities exceeding these population thresholds have "municipal centers," a term that is used in the proposed regulations but is not defined in the Draft Scope and has no definition in land use law. Many towns in New York have populations in excess of the proposed size thresholds but no densely-populated center. The proposed regulations would allow actions to proceed without SEQRA review as long as the infrastructure is completed by the time they are occupied.

Even if the regulations achieve the desired goal of steering development towards urban centers with existing infrastructure, it is does not mean that there are no potential significant adverse impacts associated with the actions. **The GEIS must consider the full range of projects that could fall under these proposed exemptions and analyze the potential impacts.** Development in congested urban centers needs to take into account the impacts of increased air pollution, traffic, and other environmental hazards, particularly in environmental justice communities. Likewise, even smaller subdivisions could have significant adverse environmental impacts.

The DEC should not predetermine whether or not a project will have adverse environmental impacts. As a home rule state, the community is in the best position to determine the potential significance of an action. The GEIS should explore how local decision-making can be improved and enhanced through increased training, technical assistance, and better guidelines.

Scoping Revisions

While the proposed amendments give the appearance of improving the scoping process by requiring scoping for all EISs, the revisions in fact severely restrict the content of EISs and limit the ability of the public and lead agencies to address issues that are identified after the conclusion of the scoping process.

Rarely is there full public awareness of a proposed action at the scoping stage. A case in point is this GEIS. Many people and organizations only became aware of the SEQRA streamlining review process this week and yet, despite the valuable input they could have provided, the DEC refused to grant requests for an extension of the public comment period on the scope of this GEIS. Under the proposed revisions, if they fail to meet the August 10th comment deadline,

their information – however relevant or significant – would not affect the scope of the review or the content of this GEIS.

Furthermore, the proposed amendments dictate that "scoping should result in EISs that are only focused on relevant, significant adverse impacts" (emphasis added). A lead agency should retain the discretion to expand the scope of the EIS to include all the information it deems necessary to adequately review a proposed action.

The GEIS should evaluate alternatives to the proposed regulations that would result in greater public participation in the scoping process. Such changes should include enhanced notification requirements and provisions for automatically granting extensions of public comment periods upon request.

Timetable For Completing Environmental Impact Statements

The proposed regulations undermine the goals and intent of SEQRA by establishing an arbitrary cut-off point for SEQRA reviews. Under this proposal, if a final FEIS is not prepared within 180 days after the lead agency's acceptance of the draft EIS, the review process comes to a halt and the EIS is deemed complete. Capping the time frame for completion of the EIS will almost certainly result in incomplete and inadequate review of environmental impacts of proposed actions and alternatives. This proposal doesn't recognize the time needed to review complex technical material or the frequent need to hire technical experts to supplement municipal staff and citizen planners. The only justification the DEC provides for this change is to "provide certainty for when the EIS process will end."

This change will benefit project applicants but not the general public or the environment, since it provides no certainty that adverse impacts will be adequately identified, assessed or mitigated. Moreover, the DEC's proposed automatic expiration of the final review period in fact incentivizes project applicants simply to let the clock run out and not address matters raised in the DEIS, thus undermining the very purpose of SEQRA.

Environmental Justice Impacts

It is deeply troubling that environmental justice organizations were not included in stakeholder meetings held this spring on the proposed streamlining regulations. Environmental justice communities stand to be disproportionately impacted by these proposed regulations. The proposed Type II threshold exemptions will encourage development in municipal centers while exempting such development from environmental review. Such actions could lead to increased air pollution, traffic, noise, and other adverse environmental and public health impacts in low-income and minority communities that are already overburdened with pollution. In addition, the proposed changes to the scoping process, which place much greater burden on citizens to raise issues of concern at the earliest stages of the review process, may adversely impact environmental justice communities more significantly than the population at large.

This proposed streamlining of SEQRA appears at odds with Governor Cuomo's commitment in the 2011 Power NY Act, which seeks to increase protections for overburdened communities from increased pollution levels from the siting of power plants by requiring a comprehensive environmental review, including cumulative impacts.

The GEIS must include an analysis of the environmental justice impacts of the proposed regulatory changes, particularly the Type II threshold exemptions and the scoping changes. The GEIS should also evaluate whether the proposed regulatory changes are consistent with the DEC's Environmental Justice Policy (Commissioner Policy 29 or CP-29), which provides guidance for incorporating environmental justice concerns into the DEC's application of SEQRA, and assess how they would impact its implementation.

Alternatives Analysis

Since this GEIS is being prepared relatively early in the decision making process, the DEC has the opportunity to explore a full range of alternatives to the proposed action, including the no action alternative. The goal should be to make SEQRA a more effective tool for local government decision-makers, not to merely streamline the process for developers.

Beginning such a broad process with such specific language to review is a mistake. We have identified a number of flaws and concerns with the proposed regulatory language. Through the GEIS process, the DEC has an opportunity to take a step back, set the proposed regulatory language aside, and conduct a much broader and more rigorous analysis of where and how the SEQRA process could be improved. **The DEC should use fact-based analyses of projects subject to SEQRA over the past 30+ years to distinguish between issues in need of reform and anecdotal claims of the burdens posed by SEQRA.**

The DEC should not move forward with adopting these proposed draft regulations.

Thank you for your consideration of these comments.

Sincerely,

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FINAL SCOPE
for the
Generic Environmental Impact Statement (GEIS)
on the
Proposed Amendments
to the
State Environmental Quality Review Act (SEQRA)

6 NYCRR - Part 617

PREPARED BY THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL PERMITS & POLLUTION PREVENTION
November 28, 2012

1.0 Description of the Action & Environmental Setting

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the State Environmental Quality Review Act ("SEQR", Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York . The principal purpose of the amendments is to improve and streamline the SEQR process without sacrificing meaningful environmental review. The changes being proposed are modest in nature, not intended to change the basic structure of an environmental review, build on the changes made to the environmental assessment forms and are within the authority of the DEC to implement without seeking additional legislative action. SEQR applies to all state and local agencies in New York State when they are making a discretionary decision to undertake, fund or approve an action.

DEC has proposed changes to the SEQR regulations, which it does not expect to have a significant impact on the environment. However, given the importance of the SEQR regulations in general in all areas of environmental impact review, DEC has chosen to use a generic environmental impact statement (GEIS) as the means to discuss the objectives and the rationale for the proposed amendments, present alternative measures which are under consideration and provide the maximum opportunity for public participation.

2.0 Summary of Proposed Amendments to 6 NYCRR Part 617

617.2 DEFINITIONS

- Add definition of "Green Infrastructure"
- Add definition of Minor Subdivision"
- Add definition of "Municipal Center"
- Add Definition of "Replacement in Kind"
- Add definition of "Substantially Contiguous"

- Revise definitions of:
  - "Negative Declaration"
  - "Positive Declaration"

617.4 TYPE I ACTIONS

- Reduce number of residential units in items 617.4(b)(5)(iii), (iv) & (v);
- Reduce number of parking slots for municipalities with a population under 150,000; and
- Reduce the threshold reduction for historic resources [617.4(b)(9)] in line with other resource based items on the Type I list and add eligible resources.

617.5 TYPE II ACTIONS

- Add new Type II actions to encourage development on previously disturbed sites in municipal centers and to encourage green infrastructure projects;
- Add new Type II actions to encourage the installation of solar energy arrays;
- Add new Type II action that allows for the sale, lease or transfer of property for a Type II action;
- Add new Type II action for minor or small scale subdivisions;
- Add a new Type II actions to make the disposition of land by auction a Type II action; and
- Add a new Type II action to encourage the renovation and reuse of existing structures.

617.8 SCOPING

- Make scoping mandatory;
- Provide greater continuity between the environmental assessment process, the final written scope and the draft environmental impact statement (EIS) with respect to content;
- Strengthen the regulatory language to encourage targeted EISs;
- Clarify that issues raised after the completion of the final written scope cannot be the basis for the rejection of the draft EIS as inadequate.

617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

- Add language to require that adequacy review of a resubmitted draft must be based on the written list of deficiencies; and
- Revise the timeline for the completion of the FEIS.

617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION

- Add language to encourage the electronic filing of EISs with DEC.

617.13 FEES AND COSTS

- Add language to require that a lead agency provide the project sponsor with an estimate of review cost, if requested; and
- Add language to require that a lead agency provide the project sponsor with a copy of invoices or statements for work done by a consultant, if requested.

3.0 Discussion of Proposed Changes and Alternatives

The following discussion provides the objectives and rationale for the major proposed changes and the alternatives under consideration. It also includes preliminary express terms. The pre-draft text amendments show proposed language deletions as bracketed ([XXXX]) and new language as underlined (XXXX). This language is being provided to stimulate consideration and comment on the preliminary changes

3.1 Type I List

3.1.1 Preliminary Text Amendment:

- 617.4(b)(5)(iii) in a city, town or village having a population of [less than]150,000 persons or less, [250] 200 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 150,000 persons but less than 1,000,000, [1,000]500 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;
- 617.4(b)(5)(iv) in a city, town or village having a population of greater than 1,000,000, [2,500] 1000 units to be connected (at the commencement of habitation) to existing community or public water and sewage systems including sewage treatment works;

Objectives and Rationale: The Department proposes to reduce some of the thresholds for residential subdivisions. Experience has shown that the thresholds for some of the Type I items for residential construction are rarely triggered because they were set too high in 1978. There is scant information in the 1978 draft and final EIS that demonstrates any basis for the selection of the thresholds other than the numbers in a rural and urban area should be different. The proposed change will bring the review of large subdivision into conformance with current practice. Large subdivisions are frequently the subject of an EIS and by nature when proposed on new sites often have one or more potentially significant impacts on the environment due to the need for the expansion of infrastructure such as water, sewer and roads needed to serve the new development.

Alternatives: The “no action” alternative would retain the current numbers which were established in 1978. There is no substantive record supporting the numbers that were selected in 1978. Other suggested alternatives include reducing the number or threshold to a lower number of lots that would trigger Type I classification.

3.1.2 Preliminary Text Amendment:

- 617.4(b)(6)(iii) in a city, town or village having a population of 150,000 persons or less, parking for 500 vehicles;
- 617.4(b)(6)(iv) in a city, town or village having a population of 150,000 persons or more, parking for 1000 vehicles;

Objectives and Rationale: The Department proposes to add a threshold for parking spaces for communities of less than 150,000 persons. A common and often recommended measurement is one parking space per 200 square feet of gross floor area of a building. For communities of less than 150,000 persons the applicable Type I threshold for the construction of commercial or industrial facilities is 100,000 square feet of gross floor area. This equates to 500 parking spaces.

Alternatives: The "no action" alternative would retain the current Type I threshold at 1000 vehicles for all municipalities without regard to size. Other suggested alternatives include reducing the number of parking spaces for all communities to 500 or less vehicles.

3.1.3 Preliminary Text Amendment:

- 617.4(b)(9) any Unlisted action that exceeds 25 percent of any threshold in this section [(unless the action is designed for the preservation of the facility or site)] occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National or State Register of Historic Places, or that has been [proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is] 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 (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));

Objectives and Rationale: The Department proposes to bring the threshold reduction for historic resources in line with other resource based items on the Type I list. On the existing Type I list any Unlisted action, regardless of size, that occurs wholly or partially within or substantially contiguous to a historic resource is automatically elevated to a Type I action. This results in very minor actions being elevated to Type I. Other resource based Type I items such as those addressing agriculture and parkland or open space result in a reduction in the Type I thresholds by 75%. Given the fact that the new Full EAF, which will be effective on April 1, 2013, requires much more information on historic resources it would be unduly onerous for a project sponsor to have to complete a Full EAF for a relatively minor activity. Also, the new Short EAF now contains a question regarding the presence of historic resources so the substance of the issue will not escape attention. This change does not change the substantive requirements of a SEQR review. This listing has been expanded to include properties that have been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation eligible for listing. This change would make SEQR consistent with both State and Federal Historic Preservation legislation.

Alternatives: The "no action" alternative would retain the current Type I item. Other suggested alternatives include the following: exclude projects that are subject to review under Section 106 of the National Historic Preservation Act of 1966 or 1409 of the State Historic Preservation Act and delete the entire listing but require that when a listed property may be impacted by a project that the determination of significance must include an evaluation of the potential for impact to the attributes that are the basis for the listing.

3.2 Type II List

The Department proposes to broaden the list of actions that will not require review under SEQRA. This will allow agencies to focus their time and resources on those projects likely to have significant adverse impacts on the environment. The additions to the Type II list are based on discussions that DEC has conducted with representatives from state agencies, environmental organizations, business and the experience of staff in the Division of Environmental Permits.

A second and more important reason for many of the proposed additions to the Type II list is to try and encourage environmentally compatible development. Many of the additions attempt to encourage development on previously disturbed sites in municipal centers with supporting infrastructure and encourage green infrastructure projects and solar energy development. Others proposed items will remove obstacles encountered by municipalities when developing affordable housing in cooperation with not-for-profit organizations. The overall goal is to provide a regulatory incentive for project sponsors to further the State's policy of sustainable development.

3.2.1 Preliminary Text Amendment:

- The acquisition, sale, lease, annexation or transfer of any ownership of land to undertake any activity on this list.

Objectives and Rationale: One of the basic concepts of SEQR is the "whole action". Having the land transaction of a proposed activity subject to review under SEQR when the activity itself is listed as a Type II action violates this concept. This quirk has also resulted in affordable housing projects like those sponsored by not-for-profit agencies being subjected to SEQR review for the transfer of land from the municipality to the not-for-profit when the activity involved the construction of a one, two or three family residence which is a Type II action. Adding this item to the Type II list will remove a potential stumbling block to the construction of affordable housing and clarify.

Alternatives: The "no action" alternative would remove this item from the Type II list. Other suggested alternatives include adding acquisition of land by fee or easement for public open space or passive recreation.

3.2.2 Preliminary Text Amendment:

- Disposition of land, by auction, where there is no discretion on the part of the disposing agency on the outcome.

Objectives and Rationale: A municipality or a state agency may acquire land through foreclosure or other means where the land reverts to the agency due to a failure of the owner to remain current on property taxes. State law requires that the municipality or agency dispose of this land through a public action to the highest qualified bidder. The municipality or agency has no discretion but to abide by the results of the auction. Currently, agencies are required to perform a SEQR review since the sale, lease or other transfer of greater than 100 acres is a Type I action and amounts under 100 acres are classified as Unlisted actions. The environmental assessments under these circumstances are fairly meaningless since the agency has no idea of what the ultimate use of the property will be by the new owner at the time of the auction. The

only guide the agency can use is zoning or the lack of zoning. In addition, the subsequent development of the property will generally result in an environmental review if the proposed action requires a discretionary permit or approval from a state or local agency

Alternatives: The "no action" alternative would remove this item from the Type II list and continue to require a SEQR review prior to the disposition of land by auction. Other suggested alternatives: expand this proposed listing to allow for disposition of land by any means as a Type II action, limit the item by including the phrase "unless such action meets or exceeds the criteria found in 617.4(b)(4) of this Part."

3.2.3 Preliminary Text Amendment:

- In a city, town or village with an adopted zoning law or ordinance, reuse of a commercial or residential structure not requiring a change in zoning or use variance unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8), (9), (10), and (11) of this Part.

Objectives and Rationale: The built environment of New York State contains many structures that are currently vacant. For example, the City of Albany has recently determined that there are 809 vacant buildings in the city. These vacant structures, if not properly maintained, contribute to urban blight and are an under used resource. Many of these structures could be reused for housing or commercial development rather than developing a greenfield site. Since these properties generally have existing infrastructure the suite of potential environmental issues is very limited and are routinely handled under the existing local land use reviews. Returning a vacant residential or commercial structure to a productive use can reduce blight, improve the vitality and live-ability of a neighborhood and return structures to the tax role.

Alternatives: The "no action" alternative would remove this item from the Type II list and continue to require a SEQR review prior to the proposed reuse of a vacant or abandoned structure. Other suggested alternatives: Expand this provision to apply to all structures including industrial uses.

3.2.4 Preliminary Text Amendment:

- Lot line adjustments and area variances not involving a change in allowable density [replacing existing items 12 and 13 in 6 NYCRR 617.5(c)].

Objectives and Rationale: Individual setback and lot line variances and area variances for single, two- or three- family homes are currently Type II actions. This proposed revision would expand the applicability to all types of structures so long as the proposed lot line adjustment or area variance does not change the allowable density. These types of variances are subject to the review and approval of zoning boards which are required under state law to consider environmental factors in their decision to either issue or deny the requested relief.

Alternatives: The "no action" alternative would remove this item from the Type II list and continue the current situation which would restrict area variance to only one-, two- and three-family residences.

3.2.5 Preliminary Text Amendment:

- In cities, towns and villages with adopted subdivision regulations, subdivisions defined as minor under the municipality's adopted subdivision regulations, or subdivision of four or fewer lots, whichever is less, involves ten acres or less, and provided the subdivision does not involve the construction of new roads, water or sewer infrastructure, and was not part of a larger tract subdivided within the previous 12 months.

Objectives and Rationale: The municipal enabling laws for subdivision plat review (e.g., Town Law §276) authorize municipalities to define subdivisions as major or minor. Minor subdivisions, as defined in many municipal subdivision regulations, usually consist of four or fewer lots or two lots. The municipal enabling laws provide a sufficient grant of authority to municipalities to consider the typical and expected environmental impacts of minor subdivisions. Under such circumstances and the ability of municipalities to condition or deny approvals along with the additional caveats for numbers of acres, connection to utilities, and no construction of new roads, provides assures that such actions would not have a significant effect on the environment.

Alternatives: The "no action" alternative would remove this item from the Type II list and continue to require a SEQR review for minor subdivisions. An alternative would be to disallow the small or minor subdivision Type II when there are sensitive environmental features on the site (e.g., designated critical environmental areas or other identifiable resources). Other alternatives would be to make the Type II item less restrictive by removing one or more of the conditions, e.g., 1) removal of the restriction on establishment of new roads since the restriction may impede context sensitive design for small subdivisions, or 2) removal of the restriction on acres.

3.2.6 Preliminary Text Amendment:

- The recommendation of a county or regional planning entity made following referral of an action pursuant to General Municipal Law, sections 239-m or 239-n.

Objectives and Rationale: This is one of the most frequently asked questions by town and county planners. Since these reviews under 239-m & n are not binding and can be overturned by a majority plus one vote by the municipality they have been interpreted as not triggering SEQR.

Alternatives: The "no action" alternative would remove this item from the Type II list.

3.2.7 Proposed Text Amendment:

- On a previously disturbed site in the municipal center of a city, town or village having a population of less than 20,000, with adopted zoning regulations, construction or expansion of a residential or commercial structure or facility involving less than 8,000 square feet of gross floor area where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community owned or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new public roads.

- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 20,000 but less than 50,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 10,000 square feet of gross floor area where the project is subject to site plan review, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new public roads;

- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 50,000 but less than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 20,000 square feet of gross floor area where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.

- On a previously disturbed site in the municipal center of a city, town or village having a population of greater than 150,000, with adopted zoning regulations, construction or expansion of a commercial or residential structure or facility involving less than 40,000 square feet of gross floor area where the project is subject to review under local land use regulation, and will be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works which have the capacity to provide service and does not involve the construction of new roads.

Objectives and Rationale: Building a structure on a previously disturbed lot with existing road, sewer and water infrastructure substantially reduces the number and severity of potential impacts that must be considered in an environmental review. The four proposed Type II actions that allow for a sliding scale of development depending on population levels are intended to serve as an incentive for development on previously disturbed sites within existing municipal centers. Development of sites that have been previously disturbed and that have existing infrastructure result in less environmental impact than developing undisturbed greenfield sites and these impacts can be readily addressed through the land use review process. Also, the notion that development should be encouraged and funneled into existing sites in municipal centers with existing infrastructure that supports such development, has become part of the State's public policy.

Alternatives: The "no action" alternative would remove these items from the Type II list. Other suggested alternatives include changing the population numbers and the amount of allowed development for each item and the addition of more environmental conditions under which the development would not be allowed such as prohibiting use of this item when the project includes demolition or if site is located substantially contiguous to a designated or eligible historic structure or district.

3.2.8 Preliminary Text Amendment:

- Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading of buildings to meet building, energy, or fire codes, or to incorporate green building infrastructure techniques, unless such action meets or exceeds any of the thresholds in section 617.4(b)(6),(8),(9),(10) and (11) of this Part.

Objectives and Rationale: The inclusion of upgrades of existing building to meet new energy codes is consistent with the current intent of the item. Also, the current item on replacement, rehabilitation or reconstruction is limited to "in kind" construction. This allows for some limited deviations from the existing structure but could be interpreted to preclude the use of green infrastructure in place of the existing more conventional development techniques. Installation of green roofs or other green infrastructure techniques can substantially improve energy efficiency and reduce generation of runoff. The addition of the specific Type I thresholds provides additional clarity for the application of this item and places limits on the size of the replacement, rehabilitation or reconstruction that could be undertaken as a Type II action.

Alternatives: The "no action" alternative would return the item to its current wording in the regulation. Another alternative would be to not include the provision regarding green building infrastructure techniques.

3.2.9 Preliminary Text Amendment:

- Installation of rooftop solar energy arrays on an existing structure that is not listed on the National or State Register of Historic Places or 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, or installation of less than 25 megawatts of solar energy arrays on closed sanitary landfills.

Objectives and Rationale: The installation of solar energy arrays can substantially reduce energy costs and the generation of greenhouse gases. The rooftops of many commercial and industrial facilities are already home to a myriad of heating ventilation and air conditioning (HVAC) equipment. This is just another type of HVAC system. This provision would not allow installation on designated historic structures. The redevelopment of a closed sanitary landfill as a solar energy site would return a currently under used site to a productive use. Many closed sanitary landfills currently generate energy from the combustion of methane gas and have the necessary infrastructure in place to connect to the electrical grid.

Alternatives: The "no action" alternative would remove this item from the Type II list. Other suggested alternatives: delete the restriction for designated historic properties, place a limit on the size of roof top installations and reduce the size of an installation on closed sanitary landfills.

3.2.10 Preliminary Text Amendment:

- Installation of cellular antennas or repeaters on an existing structure that is not listed on the National or State Register of Historic Places or 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.

Objectives and Rationale: The current Type II item [617.5(c)(7)] that precludes the installation of radio communication and microwave transmission facilities as a Type II action has generated a substantial number of questions on the SEQR classification for installation of antennas and repeaters on existing structures. These antenna and repeaters can in many locations be installed on existing buildings and preclude the construction of a new tower.

Alternatives: The "no action" alternative would remove this item from the Type II list and continue to require a SEQR review prior to the installation of cellular antennas and repeaters on existing structures. Other suggested alternatives include: adding the phrase "structure or district" to the proposed listing to prohibit the applicability of this item in a designated historic district, prohibit the installation of cellular antennas or repeaters within 500 feet of a designated historic structure or district and require that all cellular antennas and repeaters that are located within 500 feet of a historic structure or district be camouflaged to reduce visibility.

3.2.11 Preliminary Text Amendment:

- Brownfield site clean-up agreements under Title 14 of ECL Article 27.

Objectives and Rationale: This item would clarify that the development and implementation of a brownfield clean-up agreement is a Type II action. The DEC has considered these types of agreements and clean-ups as civil or criminal enforcement proceedings [617.5(c)(29)]. As more agencies start to enter into these agreements it will clarify the correct SEQR classification for these activities.

Alternatives: The "no action" alternative would remove this item from the Type II list.

3.3 Scoping

3.3.1 Preliminary Text Amendment:

- 617.8(a) - The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or [non] not significant. Scoping should result in EISs that are only focused on relevant, significant, adverse impacts. Scoping is [not] required for all EISs [. Scoping] and may be initiated by the lead agency or the project sponsor.
- 617.8(f)(2) - the potentially significant adverse impacts identified both in Part III of the environmental assessment form [positive declaration] and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;
- 617.8(f)(7) - A brief description of the prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review[.] and the reason(s) why those issues were not included in the final written scope.
- 617.8(h) - The project sponsor may incorporate information submitted consistent with subdivision 617.8(g) of this section into the draft EIS at its discretion. Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS. Information submitted following the completion of the final scope and

not included by the project sponsor in the draft EIS cannot be the basis for the rejection of a draft EIS as inadequate.

Objectives and Rationale: The Department proposes to:

(1) Require public scoping for all EISs. Currently scoping is not mandatory but all parties have come to accept the importance of public scoping as a tool to focus an EIS on the truly substantive and significant issues. Seeking public input early in the EIS process helps to ensure that all of the substantive issues are identified prior to the preparation of the draft EIS.

(2) Place more emphasis on using the EAF as the first step in scoping. The revised EAFs are much more comprehensive than the previous versions. This should allow the lead agency to assess, in a thorough fashion, all of the potential impacts and to establish a basis for determining those issues that need additional scrutiny in an EIS and issues that do not require any further analysis and can be excluded from the EIS scope. Scoping can then be used to determine the depth and type of assessment that will be required in the draft EIS.

(3) Provide clearer language on the ability to target an EIS. All parties agree that many EISs are currently filled with information that does not factor into the decision. This is driven by the defensive approach agencies and project sponsors take in developing the EIS record. In pursuit of the "bullet proof EIS" the tendency is to include the information even though the environmental assessment has already concluded that the issue is not substantive or significant.

(4) Provide better guidance on the basis for accepting or rejecting a draft EIS for adequacy. The current regulations give to the project sponsor the responsibility for accepting or deferring issues following the preparation of the final written scope. A lead agency cannot reject a draft EIS as inadequate if the project sponsor has decided to defer an issue and treat it as a comment on the draft EIS. Language would be added to clarify that the decision of the project sponsor cannot serve as the basis for the rejection of a draft EIS as not adequate to start the public review process.

Alternatives: The "no action" alternative would result in scoping remaining an optional procedure. Other suggested alternatives: provide the lead agency with the authority to include "late items" after the preparation of the final scope and require that scoping must include a public meeting.

3.4 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

3.4.1 Preliminary Text Amendment:

- 617.9(a)(2) The lead agency will use the final written scope[,if any,] and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made [in accordance with the standards in this section] within 45 days of receipt of the draft EIS. Adequacy means a draft EIS that meets the requirements of the final written scope and section 617.9(b) of this Part.

(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.

- 617.9(a)(5) - Except as provided in subparagraph (iii) 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] 180 calendar days after the lead agency's acceptance of the draft EIS[, whichever occurs later].

[(i) No final EIS need be prepared if:
(a) the proposed action has been withdrawn or;
(b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance with section 617.12 of this Part.]
(i) If the Final EIS is not prepared and filed within the 180 day period, the EIS shall be deemed complete on the basis of the draft EIS, public comment and the response to comments prepared and submitted by the project sponsor to the lead agency. The response to comments must be submitted to the lead agency a minimum of 60 days prior to the required filing date of the final EIS or this provision does not take effect.
(ii) The lead and all involved agencies must make their findings and can issue a decision based on that record together with any other application documents that are before the agency.
[(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.]
(iii) No final EIS need be prepared if:
(a) the proposed action has been withdrawn or;
(b) on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance section 617.12 of this Part.

Objectives and Rationale: The Department proposes to add language to require that the adequacy review of a resubmitted draft must be based on the written list of deficiencies and revise the timeline for the completion of the FEIS.

Determining the adequacy of a draft EIS, which is the province of the lead agency, is a challenging step of the EIS process. If the document has been rejected as not adequate, the lead agency must provide a written list of the identified deficiencies that the project sponsor needs to correct. When the document is re-submitted the second review must be based on the list of

deficiencies that were identified in the first round of review. This is an issue of fairness and will lead to a more efficient process. The goal is to provide a document that is adequate to start the public review.

The current language regarding the timeframe for the preparation of the final EIS is unrealistic. It requires that the final EIS be prepared within 45 days after the close of any hearing or within 60 days of the filing of the draft EIS. Rarely, if ever, are these timeframes met. The Department proposes to extend this timeframe and provide certainty for when the EIS process will end.

Currently in SEQR any timeframe may be extended by mutual agreement between a project sponsor and the lead agency [See 617.3(i)]. So for large complex projects where the lead agency and the applicant agree that additional time is necessary to prepare the final EIS there is already a provision that would allow the six month clock to be extended. This provision would also not apply to direct actions of an agency.

Alternatives: The "no action" alternative would result in no change to the current language on determining adequacy and the timeframe for preparation of a final EIS. Other suggested alternatives are as follows: Require that the submitted draft EIS be determined complete if it contains all items listed in the final scope and require default acceptance of the submitted draft EIS if the lead agency exceeds the time provided for acceptance; require the applicant to submit a demand letter before the default acceptance is triggered; or add language that would create a narrow exception to the final timeframe where an action is subject to a trial-like adjudicatory hearing which by law becomes part of the record.

3.5 SEQR Fees

3.5.1 Preliminary Text Amendment:

617.13(e) [Where an applicant chooses not to prepare a draft EIS, t] The lead agency shall 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 shall also be entitled, upon request to, copies of invoices or statements for work prepared by a consultant.

Objective and rationale: The Department proposes to clarify existing fee assessment authority by amending language to provide project sponsors with the ability to request an estimate of the costs for reviewing the EIS and a copy of any invoices or statement of work done by any consultant for the lead agency. This is primarily an issue of fairness and disclosure. A project sponsor should have the right to receive an estimate of the lead agency's costs for the review of the EIS along with written documentation to support such fees. Currently, the lead agency must provide an estimate to the project sponsor when they take on the responsibility for the preparation of the EIS.

Alternatives: The "no action" alternative would remove this item from the Fees section. Other suggested alternatives: require that a fee be collected for all EIS and the EIS be prepared by a third party hired by the lead agency.

4.0 Issues Not Included in the Final Scope

A total of 37 comments letters were received during the public comment period that expired on August 10, 2012. The following is a brief discussion of the major issues that were considered for inclusion in the final scope of the regulatory changes but were dismissed from further consideration in this rule making.

4.1 Allow Conditioned Negative Declarations to be used for Type I Actions

This issue has been debated since the changes to SEQR made in 1987 that recognized the use of conditioned negative declarations (CND) and allowed them to be used for actions classified as Unlisted. It was rejected in 1987, reconsidered and rejected again in 1995. There are three primary concerns regarding the expansion of CNDs to Type I actions. First, Type I actions are presumed, to require the preparation of an EIS. Second, as it stands, the CND process adds an arguably unnecessary level of procedural complication to SEQR and the DEC does not favor carrying it over to Type I actions (which are by definition often the most environmentally significant types of actions. Third, the DEC questions whether it has the statutory authority for expanding the use of CNDs to Type I actions. The 1995 Final Generic EIS on the changes to SEQR has a complete discussion of this issue.
http://www.dec.ny.gov/docs/permits_ej_operations_pdf/finalgeis.pdf

4.2 Establish a Board or Council to Review SEQR Decisions

This issue has been raised by many parties over the years. It would establish an independent board or council that could, on request, review disputes and issue opinions on the proper implementation of SEQR. The make-up of the body, whether the determination was advisory or mandatory and identifying what parties could seek a review are elements that would have to be established. This issue has been rejected because it is outside of the scope of this regulatory action. Establishing a board or council that could issue a binding decision would require legislation and a change to Article 8 of the Environmental Conservation Law.

4.3 DEC Should Develop a Best Practice Manual

The suggestion has been raised that DEC should prepare a “Best Practices Manual” to establish the recommended or required practices that should be applied for issues that are frequently involved in the environmental review of an activity. This issue would not require a regulatory change so long as the practices were not required to be used by agencies. The suggestion has great appeal. DEC has, for many years, made available a SEQR Handbook to help SEQR practitioners’ with the process questions. A workbook to help users prepare and review the revised EAF forms is in preparation but it will not contain standard methodologies for the conduct of a traffic study, air analysis, wetland survey, etc. New York City (NYC) has taken this approach for activities that are subject to environmental review under the City Environmental Quality Review Act (CEQRA) and this manual is a great source of information. Preparing a best practice manual to cover even the most common environmental issues that could be fairly applied to the varied environments in New York State would be an expensive task which is currently beyond the fiscal capabilities of the DEC.

4.4 Rely on a Licensed Professional to Attest to the Accuracy of the Review

The issue was raised that the regulations should allow or require a lead agency to rely on the expertise of licensed professionals in the resolution of issues during an environmental review. If a licensed professional is willing to attest to the completeness and accuracy of an environmental impact review by affixing his or her stamp on the plan/assessment, that issue should not be the subject of additional scrutiny or debate by the lead agency or interveners. Making this change would significantly undermine the powers of the lead agency and much of the fact-finding that is part of the SEQR process. Although a licensed professional may have arrived at a conclusion there is no guarantee that the selected approach is the most environmentally compatible approach or that the professional is in fact correct or objective. Allowing other experts and the public the opportunity to review and offer comment is a healthy process. Obviously, the conclusions of a licensed professional should carry significant weight in the resolution of an issue. But, it should not be the only determining factor. Giving deference in this fashion would require legislation and a change to Article 8 of the Environmental Conservation Law.