STATE ENVIRONMENTAL QUALITY REVIEW ACT

FINDINGS STATEMENT FOR AMENDMENTS TO 6 NYCRR PART 617 (2018)

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

Name of Action:

Amendment of 6 NYCRR Part 617.

Summary Description of Action:

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

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

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

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

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

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

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

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

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

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

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

Location: Statewide

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

Date Final GEIS Filed: June 13, 2018

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

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

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

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

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

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

i. Adopted Rule

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

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

"… (iii) in a city, town or village having a population of [less than] 150,000 persons or less, [250] 200 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

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

(v) in a city or town having a population of [greater than] 1,000,000 or more persons, [2,500] 1000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works; …."

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

i. Adopted Rule

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

"… (iii) parking for 500 vehicles in a city, town or village having a population of 150,000 persons or less;

[iii] (iv) parking for 1,000 vehicles in a city, town or village having a population of more than 150,000 persons; …"

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

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

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

i. Adopted Rule

The Department hereby adopts revisions to 6 NYCRR § 617.9 (b) (9) as follows: "…any Unlisted action (unless the action is designed for the preservation of the facility or site), that exceeds 25 percent of any threshold established in this section, occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places (Volume 36 of the Code of Federal Regulations, parts 60 and 63, which is incorporated by reference pursuant to section 617.17 of this Part), or that [has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that] is listed on the State Register of Historic Places or that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law [(The National Register of Historic Places is established by 36 Code of Federal Regulations (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part))]; …"

ii. Impacts

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

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

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

iii. Facts, Analysis and Conclusions

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

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

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

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

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

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

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

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

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

a. Upgrade of Buildings to Meet Energy Codes

i. Adopted Rule

The Department hereby adopts revisions to an existing Type II category, to be codified at 6 NYCRR § 617.5 (c) (2), to read as follows: “Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part.”

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

b. Green Infrastructure Retrofits

i. Adopted Rule

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

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

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

ii. Impacts

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

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

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

iii. Facts, Analysis and Conclusions

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

c. Installation of Telecommunications Cables

i. Adopted Rule

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

d. Installation of Solar Energy Arrays

i. Adopted Rule

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

"(14) Installation of solar energy arrays where such installation involves 25 acres or less of physical alteration on the following sites:

(i) closed landfills;

(ii) brownfield sites that have received a Brownfield Cleanup Program certificate of completion ("COC") pursuant to ECL § 27-1419 and 6 NYCRR § 375-3.9 or Environmental Restoration Project sites that have received a COC pursuant to 6 NYCRR § 375-4.9, where the COC under either program for a particular site has an allowable use of commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;

(iii) sites that have received an inactive hazardous waste disposal site full liability release or a COC pursuant to 6 NYCRR § 375-2.9, where the Department has determined an allowable use for a particular site is commercial or industrial, provided that the change of use requirements in 6 NYCRR § 375-1.11(d) are complied with;

(iv) currently disturbed areas at publicly-owned wastewater treatment facilities;

(v) currently disturbed areas at sites zoned for industrial use; and

(vi) parking lots or parking garages;

(15) installation of solar energy arrays on an existing structure provided the structure is not:

(i) listed on the National or State Register of Historic Places;

(ii) located within a district listed in the National or State Register of Historic Places;

(iii) been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law; or

(iv) within a district that has been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places pursuant to sections 14.07 or 14.09 of the Parks, Recreation and Historic Preservation Law."

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

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

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

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

e. Lot Line Adjustments

i. Adopted Rule

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

f. Reuse of residential or commercial structures

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (18), to read as follows: "reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part."

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

g. County Planning Board Referrals

i. Adopted Rule

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

h. Acquisition and Dedication of Parkland and Conservation Easements

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (39), to read as follows: "an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement."

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

Therefore, the Department concludes that an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement, will not have a significant adverse effect on the environment.

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

i. Adopted Rule

The Department hereby adopts a revised Type II category, to be codified at 6 NYCRR § 617.5 (c) (11), to read as follows: "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph [(11)] (13) of this subdivision and the installation, maintenance [and/] or upgrade of a drinking water well [and] or a septic system, or both, and conveyances of land in connection therewith."

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

i. Adopted Rule

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

k. Anaerobic Digesters at Publicly-Owned Landfills

i. Adopted Rule

The Department hereby adopts a new Type II category, to be codified at 6 NYCRR § 617.5 (c) (41), to read as follows: "…construction and operation of an

anaerobic digester, within currently disturbed areas at an operating publicly-owned landfill, provided the digester has a feedstock capacity of less than 150 wet tons per day, and only produces Class A digestate (as defined in 6 NYCRR § 361-3.7) that can be beneficially used or biogas to generate electricity or to make vehicle fuel, or both."

ii. Impacts

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

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

iii. Facts, Analysis and Conclusions

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

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

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

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

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

i. Adopted Rule

The Department hereby adopts the following changes to 6 NYCRR § 617.8 (a):

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

(b) [If scoping is conducted,] The [the] project sponsor must submit a draft scope that contains the items identified in paragraphs (e) [(f)] (1) through (5) of this section to the lead agency. The lead agency must provide a copy of the draft scope to all involved agencies, and make it available to any individual or interested agency that has expressed an interest in writing to the lead agency.

[(c) If scoping is not conducted, the project sponsor may prepare a draft EIS for submission to the lead agency.]

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

(d)[(e)] Scoping must include an opportunity for public participation. The lead agency may either provide a period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means.

(e) [(f)] The lead agency must provide a final written scope to the project sponsor, all involved agencies and any individual that has expressed an interest in writing to the lead agency within 60 days of its receipt of a draft scope. The final written scope should include:

(1) a brief description of the proposed action;

(2) the potentially significant adverse impacts identified both in Part 3 of the environmental assessment form [the positive declaration] and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;

(3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and

required new information, including the required methodology(ies) for obtaining new information;

(4) an initial identification of mitigation measures;

(5) the reasonable alternatives to be considered;

(6) an identification of the information [/] or data that should be included in an appendix rather than the body of the draft EIS; and

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

(f) [(g)] All relevant issues should be raised before the issuance of a final written scope. Any agency or person raising issues after that time must provide to the lead agency and project sponsor a written statement that identifies:

(1) the nature of the information;

(2) the importance and relevance of the information to a potential significant impact;

(3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review.

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

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

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

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

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

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

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

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

i. Adopted Rule

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

(a) Environmental impact statement procedures. (1) The project sponsor or the lead agency, at the project sponsor's option, will prepare the draft EIS. If the project sponsor does not exercise the option to prepare the draft EIS, the lead agency will prepare it, cause it to be prepared or terminate its review of the action. A fee may be charged by the lead agency for preparation or review of an EIS pursuant to section 617.13 of this Part. [When the project sponsor prepares the draft EIS, the document must be submitted to the lead agency.]

(2) The lead agency will use the final written scope [, if any,] and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made in accordance with the standards in this section within 45 days of receipt of the draft EIS. A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8 (g) and 617.9(b) of this Part, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures.

(i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.

(ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt. The determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies provided by the lead agency following the previous review, unless changes are proposed for the project, there is newly discovered information, or there is a change in circumstances related to the project.

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

i. Adopted Rule

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

ii. Impacts

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

iii. Facts, Analysis and Conclusions

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

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

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

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

V. Other Regulatory Changes

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

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

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

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

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

c. Fees and Costs (6 NYCRR § 617.13)

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

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

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

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

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

VI. Alternatives

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

VII. Provisions in the Revised Proposal Not Undertaken

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

VIII. Effective Date

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

Certification of Findings to Undertake an Action

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

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

New York State Department of Environmental Conservation

Basil Seggos
Commissioner

Dated: June 27, 2018
Albany, New York

Appendix

Summary of Changes to the SEQR Regulations

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

	currently disturbed areas at sites zoned for industrial use, and parking lots/garages. Installation of solar arrays on certain existing buildings. 617.5 (C) (16) [formerly 12] – Existing Type II for granting of individual setback and lot line variances modified to include lot line adjustments. 617.5 (C) (18) - added a new express Type II category for reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses. 617.5 (C) (19) - added a new express Type II category for recommendations of a county or regional planning board or agency pursuant to General Municipal Law sections 239-m or 239-n. 617.5 (C) (39) - added a new express Type II category for an agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement. 617.5 (C) (40) - added a new express Type II category for sale and conveyance of real property by public auction. 617.5 (C) (41) - added a new express Type II category for construction and operation of an anaerobic digester, within currently disturbed areas at an operating municipal solid waste landfill.
617.6 – Initial Review of Actions and Establishing lead agency	Removed the language that allows the lead agency to waive the requirement for an EAF.
617.8 - Scoping	617.8 (a) - Modifications were made to make scoping required for all EIS's, except for supplements to EIS's which remains optional. 617.8 (g) [formerly h] – modified this section to require that the project sponsor must incorporate eligible late filed comments on the scope into the DEIS or attach them to an appendix of the DEIS. Additional non-substantive amendments of a procedural nature were also made to other sections of 617.8.
617.9 – Preparation and content of environmental impact statements	617.9 (a) Changes to this section tighten the procedures to define when a DEIS is adequate for public review. 617.9 (b)(5)(iii) – A new clause was added to evaluate measures to avoid or reduce an

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