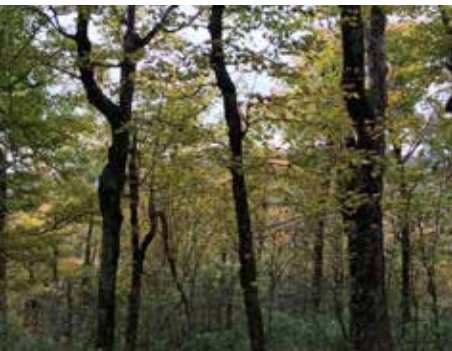


Best Practices for Adopting Conservation Inventories and Plans

A Guide for Communities in the Hudson River Estuary Watershed



Cornell University



Department of
Environmental
Conservation

Hudson River
Estuary Program

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This publication is a partnership project with Cornell University Department of Natural Resources and the Environment, with funding from the Environmental Protection Fund through the New York State Department of Environmental Conservation's Hudson River Estuary Program.



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Top image: Rondout Creek. © Laura Heady

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Bottom middle image: City of Kingston public meeting. © Ingrid Haeckel

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Foreword

For more than two decades, the NYS Department of Environmental Conservation's (DEC) Hudson River Estuary Program and Cornell University's Department of Natural Resources and the Environment have implemented a joint initiative to conserve the remarkable biodiversity of the Hudson estuary watershed. The Estuary Program's Conservation and Land Use Team has raised awareness about natural areas and habitat in the estuary watershed; provided access to current, science-based information; and increased the conservation planning capacity of communities and non-profit partners through training and technical assistance. By exchanging ideas and fostering new collaborations, we have advanced effective practices and policies that will help to sustain the estuary watershed and inspire communities to play an important role in biodiversity conservation.

In 2014, the team published [Creating a Natural Resources Inventory: A Guide for Communities in the Hudson River Estuary Watershed](#) to assist municipalities with inventorying features such as wetlands, forests, streams, wildlife habitat, geology, soils, aquifers, and farmland. Since then, through grants, technical assistance, and partner projects, the Estuary Program and Cornell have helped 34 towns, cities, and villages and three counties in the estuary watershed to develop natural resources inventories (NRIs)—and more are underway.

But NRIs are just a first step in conservation planning. We've encouraged our municipal partners to use their NRIs as a foundational reference to identify community conservation and land-use priorities and take appropriate action. In fact, the [Hudson River Estuary Action Agenda 2021-2025](#) sets a 2030 target that 50% of municipalities with NRIs completed since 2015 use the inventory for a conservation plan or policy.

At the start of 2023, we're thrilled to report that almost 40% of municipalities have used their NRIs to advance community conservation goals. For example, the Town of Cornwall in Orange County used its NRI to develop an open space inventory. The Town of New Lebanon in Columbia County used its NRI to designate two critical environmental areas (CEAs). Several Ulster County municipalities used their NRIs to pursue conservation planning and financing through the creation of community preservation funds.

To better support these initiatives, we recognized a need to provide legal guidance and best practices for formalizing these conservation inventories, plans, and policies. We engaged our long-time partner, Pace Land Use Law Center, to develop this publication, which presents options for adopting and implementing NRIs, open space inventories and plans, and CEAs. Thanks to the dedicated conservation planning efforts of many Hudson Valley municipalities, we were able to include many local examples to illustrate these practices.

We hope this guide will support communities in reaching their conservation goals and contribute to sustaining biodiversity and a resilient estuary watershed. For more information about conservation planning in the Hudson Valley, please visit hudson.dnr.cals.cornell.edu.

*Laura Heady, Conservation and Land Use Program Coordinator
Hudson River Estuary Program and Cornell University Department of Natural Resources and the Environment
March 2023*

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About Pace Land Use Law Center

Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. Through the work of its programs, centers, and institutes, the Center offers conferences, seminars, clinics, academic law school courses, continuing legal education programs, videos and podcasts, and publications and resources on contemporary land use, real estate, and environmental issues. For more information, visit law.pace.edu/landuse.

About the Hudson River Estuary Program

The Hudson River Estuary Program uses the science of ecology to help people enjoy, protect, and revitalize the Hudson River estuary. Created in 1987 through the Hudson River Estuary Management Act (ECL 11-0306), the program focuses on the tidal Hudson and its adjacent watershed from the dam at Troy to the Verrazano Narrows in New York City. The program works with many partners—from nonprofit organizations to businesses, local governments to state and federal agencies, interested residents, and many others—to develop knowledgeable and effective stewards of the estuary and watershed. For more information, visit www.dec.ny.gov.

About Cornell University's Department of Natural Resources and the Environment

The Department of Natural Resources and the Environment is a world leader in scholarship addressing social and ecological dimensions of natural resources and the environment to improve environmental sustainability, promote the well-being of communities, and ensure access to sustainable energy and environmental resources. For more information, visit dnr.cals.cornell.edu.

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Best Practices for Adopting and Implementing Natural Resources Inventories

Upland forest. © Ingrid Haeckel

What is a Natural Resources Inventory?

A **natural resources inventory (NRI)** compiles and describes important, naturally occurring resources in a municipality, such as forests, streams, wildlife habitat, soils, and bedrock geology. NRIs also include cultural resources, such as agricultural, historic, scenic, and recreational assets. A municipality's conservation advisory council (CAC) may create an NRI under New York General Municipal Law Article 12-F, Section 239-x, y. The NRI is primarily a reference document that municipalities can use to inform their land-use decisions, comprehensive planning, and land-use laws. When combined with community input and further analysis, an NRI provides a foundation for setting open space priorities in an **open space inventory or plan** and informing local conservation policies.

How are NRIs Approved, Adopted, and Implemented?

Besides a simple vote, a municipal legislative body (e.g., town board, village board of trustees, city council) may accept or adopt an NRI in one of several ways:

- **Resolution.** NRIs can be adopted by resolution through a policy statement that outlines the steps the locality intends to take to consider resources mapped and described in the NRI.
- **Comprehensive plan.** NRIs can be adopted through a comprehensive plan amendment that includes the NRI as an appendix or chapter in the plan. Comprehensive plans can also incorporate any NRI-recommended goals and actions.
- **Local Law.** A municipality can adopt an NRI by local law, with requirements such as local board and applicant consideration of important features identified in the NRI during the project review and approval process.

When deciding how to adopt an NRI, local governments should consider that the latter adoption methods—plan and law—are more robust, meaningful, and likely to be implemented and enforced. For example, although a local legislative board can easily accept an NRI by a simple vote, this does not necessarily support the NRI in a meaningful way. While formal adoption of the NRI requires more time, resources, and political support, it suggests a greater commitment to the implementation of the NRI by the local government. Municipalities should use the same adoption method for future NRI updates or amendments.

The following sections describe each of these options in greater detail.

Policy statements in resolutions

Adopted by resolution, municipalities often craft policy statements that outline and express their intention to implement local strategies or programs. Policy statements in resolutions include guiding principles that influence and determine the municipality's intended future actions and define the municipality's next steps to accomplish these activities.

NRI Resolution With Policy Statement

Prior to planning or drafting legislation, a municipality's legislature can adopt an NRI through a policy statement in a **resolution**. A resolution is informal legislation that a local government uses to undertake its day-to-day business, express formal opinions or communications, and establish municipal policies. For example, resolutions are routinely used to approve municipal budgets and hire municipal staff.

Because resolutions are informal, they take little time to prepare, are easier for the legislative board to pass, and can be classified as Type II actions under the New York State Environmental Quality Review Act (SEQR), requiring no further environmental review. However, resolutions are non-binding because of their informal nature, and there are no mechanisms in place by which the policies outlined in a resolution become mandatory. To best ensure a municipality follows its adopted policies, resolutions should include clear intentions and explicit next steps for policy implementation.

Resolutions are non-binding because of their informal nature, and there are no mechanisms in place by which the policies outlined in a resolution become mandatory.

How to draft a meaningful NRI resolution with policy statements

NRI resolutions include **"whereas" statements** that provide basic facts about NRIs, who worked on them, their funding sources, any related volunteer efforts, and their purpose. Whereas statements also explain why the NRI is important, express why the municipality cares about natural resources, and describe how the municipality intends to use the NRI.

Whereas statements could state that the municipality wants to:

- Use the NRI to inform comprehensive land-use and conservation planning, including:
 - Identifying important natural resources located in the municipality.
 - Providing a basis for open space prioritization in an open space inventory.
 - Developing and implementing open space plans.
 - Designating critical environmental areas.
- Consider the NRI when making decisions, including:
 - Evaluating the effects of proposed land-use and zoning changes.
 - Informing environmental review of development proposals.
 - Identifying stewardship opportunities on municipal lands.
- Amend land-use laws to incorporate and reference the NRI.
- Document current conditions to assess changes over time.
- Educate residents, landowners, and others interested in the stewardship of natural areas.

A resolution's **"be-it-resolved" statements** officially "adopt" or "acknowledge and accept" the NRI as the municipality's official policy. The use of the language "acknowledge and accept" in municipal resolutions likely relates to a state law that requires "acknowledgement and acceptance" of an open space inventory before a municipal CAC may become a conservation board. While the NRI is

different from an open space inventory, this language has been applied in both situations. However, municipal policy statements in resolutions more traditionally use the term “adopt,” which clearly indicates the local government’s formal approval.

Be-it-resolved statements also present the actions and next steps that the municipality could take to implement the NRI, including:

- Using it for informational and educational purposes and as a reference for local boards to refer to for consideration and protection of natural resources.
- Reviewing and considering NRI recommendations for municipal actions by local boards and commissions.
- Using the NRI as a reference tool for comprehensive planning and future development of environmental policy.
- Incorporating the NRI into a comprehensive plan.
- Adopting a local law that:
 - Incorporates the NRI as a chapter in the municipal code.
 - Uses the NRI to define “natural resources” in the definitions section of the municipal code.
 - Utilizes the NRI to delineate borders of natural resources. For example, a law can use the NRI to set a watercourse boundary.
 - Requires the applicant to use the NRI to identify certain features on and/or near a proposed project in the application and to consider the project’s potential impacts on those resources.
 - Requires local board to take the NRI into consideration during approval process.
 - Allows approvals only for projects that limit or mitigate impacts on priority areas.
 - Incorporates use of the NRI into supplemental development regulations like open space conservation or density incentive provisions.
- Incorporating the NRI into the local review and approval process to ensure proposed land uses are designed to be compatible with existing natural resources, avoid priority or sensitive areas, and minimize and mitigate impacts to these resources.
- During SEQR, requiring development applicants to provide an analysis of and disclose any potential impacts on certain priority areas identified in the NRI (e.g., important areas for wildlife habitat connectivity or large, intact forests).
- Requiring the NRI and resolution to be uploaded to the municipal website.
- Providing copies of the NRI and web page link to local board and commission members.
- Requiring NRI presentation or training for local board and commission members.
- Regularly updating the NRI with a set schedule (e.g., minimum of every five to ten years).

To ensure the NRI’s implementation, the resolution should be drafted using language that clearly reflects this intention. Whereas and be-it-resolved statements that communicate this intent refrain from using permissive language like “may” and “should” and instead commit the municipality to act by using “shall” and “will.”

PROCEDURE

A municipality must take the following legally-required steps to adopt an NRI resolution with a policy statement:

1. Draft a formal writing with “whereas” and “be-it-resolved” clauses stating the municipality’s intent to adopt and implement the NRI.
2. Introduce the draft resolution to the local legislative board via motion.
3. Hold a board vote on the resolution to adopt it by majority, after which the resolution becomes official municipal policy.



Hudson River view. © Laura Heady

Examples of NRI resolutions with policy statements

Town and Village of New Paltz, NY

The New Paltz resolution officially adopted the town and village’s 2021 NRI and in clear, specific detail, states the town and village’s intention to incorporate the NRI into the planning board’s project review and approval process and that all development applications should include information on a proposed project’s impacts on natural features identified in the NRI. This resolution does not address public availability or regular updates of the NRI. The New Paltz 2021 NRI is available online [here](#), and the June 3, 2021 resolution is available [here](#).

- Whereas clause expresses town’s intent to require “consideration of future development’s impact on . . . natural resources.”
- Be-it-resolved clauses state that:
 - The town and village boards “adopt the NRI, which . . . should be incorporated into the Planning Board’s review process.”
 - “In all land use decisions, the NRI should be considered by the Planning Board to ensure proposed land uses are compatible with existing natural resources by minimizing impacts and providing acceptable mitigation measures when certain impacts cannot be avoided.”
 - “For all subdivision, special permit uses, uses requiring site plan approval, or other Town and Village of New Paltz development reviews that are subject to SEQR the applicant should provide an analysis of and disclose any potential impacts on any natural resource identified in the NRI. Each application should contain a Conservation Analysis, consisting of inventory maps, description of the land, and an analysis of any potential impacts to various site features identified in the NRI. The Conservation Analysis should be on a form provided by the Town and Village of New Paltz, consisting of at a minimum, a copy of the Natural Resources Inventory maps, description of the land, and any potential impacts to site features identified in the Natural Resources Inventory. No application should be acted upon without a fully completed conservation analysis.”

Town of Pound Ridge, NY

Pound Ridge adopted its NRI in 2018 via Resolution #90-20. The resolution’s policy statement clearly expressed the town board’s intent that Pound Ridge’s local boards and agencies, and the public, use the NRI to identify and consider natural resources and to inform future land-use planning, specifically requiring this for the town’s master plan. The resolution also makes an electronic version of the NRI publicly available on the town website. Although it contemplates future NRI updates, the resolution stops short of requiring this and only “acknowledges and accepts” the NRI rather than “adopting” it. The 2018 NRI is available online [here](#), and Resolution #90-20 is available [here](#).

- Whereas statements explain that:
 - The NRI was prepared “to assist the Town, its various Boards and Agencies and the General Public in identifying and considering important natural resources located within the boundaries of Pound Ridge.”
 - The purpose of the NRI is “to provide information for comprehensive land-use and conservation planning, and to allow natural resource information to be included in local planning and zoning”
 - The “NRI is publicly available on Town’s website for access by the public.”
 - “The NRI data files belong to the Town and can be updated as necessary in the future.”
- Be-it-resolved statements declare that:
 - The town board “acknowledges and accepts the NRI as a resource for the inventory of data collection identifying important community resources within the Town of Pound Ridge”
 - It is the town board’s “intent . . . that the NRI be used as a reference tool in the amendment of the Town’s Master Plan and for future development of environmental policy within the Town of Pound Ridge.”

Town of Germantown, NY

Germantown did not develop its own municipal NRI, but the town passed a resolution accepting and approving the 2018 Columbia County NRI as a reference for the town to use for informational purposes. While formal acceptance of the county NRI is an important step, this resolution does not “adopt” the NRI or require its use in any specific way. For more information, access the 2018 Columbia County NRI [here](#), and the town’s May 14, 2019 resolution [here](#).

- Whereas clause acknowledges that the NRI “is designed to be used by county and municipal officials and agencies and others concerned with land planning, management, policy-making and resource use and conservation.”
- Be-it-resolved clause states that the town “accepts and approves, for reference, informational and educational purposes, the 2018 Natural Resources Inventory, Columbia County, New York, as an inventory of data collection identifying natural resources and important community resources within the county and specifically within Germantown.”

Links to additional examples of NRI resolutions

City of Hudson, NY

- [2019 Nature in the City: A Natural Resource and Open Space Inventory of Hudson, NY](#)
- [Resolution No. 5, July 16, 2019](#)

City of Beacon, NY

- [2020 Beacon Natural Resources Inventory](#)
- [Resolution No. 109 of July 6, 2020](#)

Town of Montgomery, NY

- [2020 Montgomery Natural Resources Inventory](#)
- [Resolution No. 54 of August 5, 2021](#)

Incorporating the NRI Into a Comprehensive Plan

A **comprehensive plan** is a written document that identifies a community’s immediate and long-range enhancement, growth, and development goals. Comprehensive plans can include planning goals, objectives, strategies, and implementation measures that incorporate the NRI, a discussion of natural resources, and recommendations. Like policy statements in resolutions, comprehensive plans are non-binding on a municipality, but including the NRI in a comprehensive plan greatly increases community awareness of and accessibility to the NRI. Because New York State requires local land-use regulations to conform to a municipality’s comprehensive plan, by adding language about the NRI to the plan, a municipality lays the policy foundation for future laws that will incorporate the NRI. However, municipalities should consider that adding detailed recommendations from an NRI to a comprehensive plan could trigger more heightened environmental review of the plan.

Including the NRI in a comprehensive plan greatly increases community awareness of the NRI.

How to amend the comprehensive plan to include the NRI

Municipalities can amend their comprehensive plan to include the NRI in several ways, such as:

- Making the NRI a stand-alone chapter or appendix in the comprehensive plan.
- Referencing the NRI in the comprehensive plan’s vision statement and key issues.
- Summarizing NRI findings in a related planning chapter that addresses natural resources.
- Crafting goals and policies to protect important or priority features identified in the NRI.
- Explaining how to use the NRI together with the comprehensive plan to coordinate development that protects and enhances important natural resources.

If a comprehensive plan is amended to include the NRI, the municipality should update the plan’s publicly available, online copy to include the NRI so that the public can easily access it.

PROCEDURE

A municipality must take the following legally-required steps when amending a comprehensive plan to include an NRI:

1. Conduct environmental review of the comprehensive plan amendment as required by SEQR.
2. Refer the proposed comprehensive plan amendment to the county planning board for review and recommendation.
3. Hold at least one public hearing to facilitate public participation.
4. Hold a final public hearing ten days prior to adoption after a hearing notice is published and the proposed comprehensive plan amendment is made available for public review.
5. Draft a formal resolution with a be-it-resolved statement adopting the comprehensive plan amendment.
6. After the final public hearing, introduce the resolution to the legislative board via motion, after which the board must adopt the resolution by majority vote to officially amend the comprehensive plan.

See N.Y. Town Law § 272-a(6)-(8) for more information about this process.



Town of Cornwall volunteers work on a municipal inventory with assistance from Cornell University. © Laura Heady

Examples of incorporating the NRI into a comprehensive plan

Town of East Greenbush, NY

When crafting its 2021 comprehensive plan, East Greenbush consulted its NRI, included a summary of the NRI in the plan, and also adopted the entire NRI in the plan's appendices. The public can access the plan with the appendices on the town's website. The NRI also informed a summary of existing conditions, a list of opportunities and challenges, and recommended planning actions featured in the natural resources chapter of the comprehensive plan. The town created a CAC from its NRI working group, and this new CAC is involved in the town's project review and approval process. The town's 2019 NRI is available online [here](#), and its 2021 Comprehensive Plan is available [here](#).

- The plan's natural resource recommendations include:
 - “Protect and conserve viewshed and rural character along scenic roadways as identified by the . . . Natural Resources Inventory.”
 - “Encourage smart growth and development to protect resources while boosting the economy and increasing the efficiency of project review. a. Work with the Planning Board and CAC to develop development review procedures that consider natural resources, such as checklists, site visits, and CAC member reports. Use the pre-application conference forum, ‘Project Review Team,’ to incorporate natural resource considerations early in the process and facilitate their becoming part of the culture of development review.”

Town of St. Joseph, WI

St. Joseph's 2016 Comprehensive Plan was informed by the town's NRI, which was conducted in combination with the town's comprehensive plan update and which provides the foundation for several key policies in the plan. Publicly available on the town's website, the comprehensive plan incorporates the entire NRI in its appendices, and the plan's vision references the NRI and prioritizes natural resources protection. Chapter 6 of the plan summarizes NRI findings and includes goals and policies to protect surface waters, habitat, groundwater, open spaces, and landscapes. For example, Policy 3.1 in Chapter 6 recommends that the town adopt the NRI map. To learn more, access the 2016 NRI [here](#), and the 2016 Comprehensive Plan [here](#).

- The plan's “General Goal #2” is to “maintain and enhance the natural landscape by encouraging special consideration for places of natural significance in the Town” and a related policy is to “preserve and protect key natural resources as identified through the natural resources inventory.”
- Plan Chapter 6: Agricultural, Natural and Cultural Resources Element states that the NRI “will help to guide future land use and development to ensure that the Town's important natural resources are protected and enhanced.”

Implementing the NRI Through Local Laws

The New York State Constitution grants municipalities the power to enact **local laws** that have the same legal status as an act of the State Legislature. Requirements set forth by local laws are mandatory. Compared with the other options for adopting an NRI, however, the process to adopt a local law can be time and cost intensive; needs strong political and public support; and will require environmental review. Although some municipalities historically have adopted legislation by **ordinance**, local laws are highly preferable because the adoption procedure for local laws is more streamlined, they can only be amended by another local law, and local laws are presumed valid in court if challenged.

Local laws versus ordinances

The highest form of local legislation, a **local law** is enforceable legislation adopted by a local legislature under its Municipal Home Rule Authority in the New York State Constitution. Because a local law is presumed valid in a court of law, anyone who challenges the local law bears the burden of proving it is invalid.

An **ordinance** is also a local legislative act that towns and cities can adopt under N.Y. Town Law §§ 130-134 and City Charters, respectively. Villages do not have authority to adopt ordinances. Ordinances can be enforced via penalty but lack presumption of validity in court.

What to include in a local law that is implementing the NRI

To ensure implementation of the NRI, local laws can incorporate the NRI into local land-use regulations in a variety of ways, including by:

- Drafting a law's purpose section to aim for consistency with the NRI.
- Using the NRI to define "natural resources" in a law's definitions section.
- Utilizing the NRI to delineate borders of natural resources. For example, a law can use the NRI to set a watercourse boundary.
- Requiring applicants to provide a map showing certain NRI-identified resources in or near the proposed project's boundaries, as well as any priority resources the project will impact.
- Requiring local boards to take the NRI into consideration during the approval process for land-use decisions and during the environmental review process.
- Allowing local boards to approve only those projects that are protective of certain resources identified in the NRI.
- Requiring conservation subdivision applicants to conduct a conservation analysis of certain natural resources identified in the NRI.
- Incorporating the NRI into supplemental development regulations like overlay zones delineated according to certain NRI-identified resources, open space conservation regulations that require protection of priority resources, and density incentive provisions that offer a density bonus in exchange for protection of priority resources.
- Requiring the NRI to be reviewed and updated at minimum time intervals.

A municipality can amend several existing laws to include these NRI requirements or could adopt a new, stand-alone law that includes all NRI-related requirements. It is recommended that the law be adopted with substantive requirements to achieve meaningful implementation of the NRI.

Local governments should avoid simply adopting an NRI by local law without any substantive requirements, as this will not implement the NRI in a meaningful way.



City of Poughkeepsie NRI community outreach. © Laura Heady

PROCEDURE

A local government must adhere to the following legally-required steps when adopting a local law to implement the NRI:

1. Refer the proposed local law to the county planning board for review and recommendation.
2. Draft the formal local law, including where it would be codified in the municipal code to ensure implementation.
3. Introduce the draft local law to the legislative board.
4. Schedule a public hearing and publish a notice advertising the public hearing and proposed local law.
5. Hold the public hearing after certain waiting periods expire (more details available [here](#)).
6. If no substantive changes are made, pass the local law via majority vote of the legislative board at the public hearing.
7. File the local law with the NYS Secretary of State, after which it becomes effective on its effective date.

For more information about these procedural steps, see Article 3 of the Municipal Home Rule Law.

Examples of local laws that implement the NRI

Model Local Law to Adopt the NRI

The DEC Hudson River Estuary Program guide, *Creating a Natural Resources Inventory: A Guide for Communities in the Hudson River Estuary Watershed*, contains a model local law that municipalities can use to adopt and implement an NRI. The model law requires an “NRI review process” for all subdivision, special use permit, site plan, and other development reviews subject to SEQR. This process requires project applicants to (1) use the NRI as a basis for identifying natural and cultural resources on the property where the proposed project is located; (2) design and arrange development to avoid impacts to features identified in the NRI; and (3) include in the application “a conservation analysis consisting of inventory maps, a description of the land, and an analysis of the conservation value of various site features identified from the NRI.” The model law also charges the planning board with incorporating certain NRI-identified resources in the review process. For more information, access the model law [here](#).

Town of Canandaigua, NY

In 2020, Canandaigua updated its 2011 NRI, which is referenced throughout its town code. The town's site plan and subdivision laws require project applicants to submit sketch plans that identify "environmentally sensitive features identified on the NRI" and require the "planning board . . . to determine whether "proposed . . . development is designed and arranged to avoid impacts to natural features identified" in the NRI. Subdivision proposals must be "designed to preserve and protect natural features as identified in the NRI," and planning board findings regarding site plans must "address the specific questions contained in the NRI." Additionally, preliminary subdivision plats and site plans must include a delineation of natural features described in the NRI. Conservation subdivision sketch plan and preliminary plat submissions must "include a conservation analysis that identifies any 'priority conservation assets' identified in the Town's NRI, such as rare or vulnerable ecological communities, riparian buffers, steep slopes, agricultural land, and scenic landscapes, among others." Part of the NRI serves as the town's open space index, and Canandaigua's conservation board participates in application review, using a Project Review Guide to implement these requirements. Town of Canandaigua, NY Code Section 1-17, Chapter 174, and Chapter 220 are available [here](#), and the town's 2020 NRI [here](#).

City of Poughkeepsie, NY

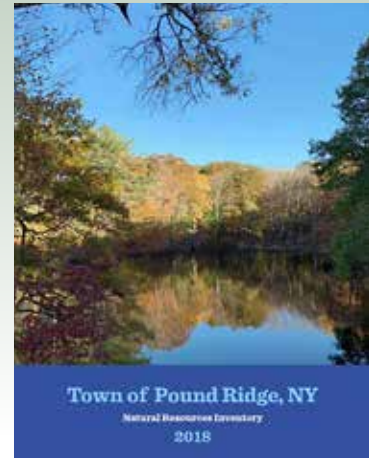
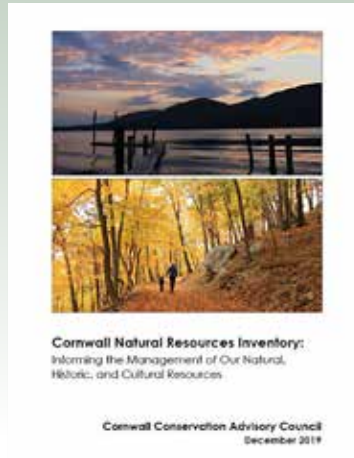
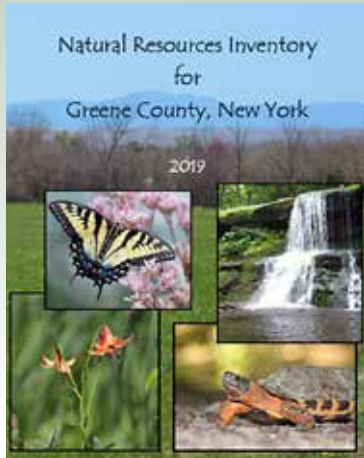
Poughkeepsie's Natural Resources law adopted the city's 2019 NRI and required the planning board to consider the NRI in all land-use decisions subject to the city's site plan and special permit regulations "to ensure proposed land uses are compatible with existing natural resources by minimizing impacts and providing acceptable mitigation measures . . ." The natural resources law further requires all subdivision, special use permit, site plan, and other applicants to provide an analysis of and disclose any potential impacts a proposed project may have on any natural resource identified in the NRI. Certain applications must contain a conservation analysis with inventory maps and a land description and impacts analysis for any NRI-identified site features. The planning board must ensure that proposed projects incorporate NRI-recommended natural resource protections into project design and mitigate, to the extent possible, impacts on these resources. City of Poughkeepsie, NY Code Section 19-6.4 is available [here](#), and Poughkeepsie's 2019 NRI [here](#).

Town of Cornwall, NY

Cornwall adopted an NRI and Scenic Resource Inventory law that requires all land-use applications, for which approval is subject to SEQR, to include a written statement of consistency with the NRI that sets forth "whether the project encompasses or affects resources identified within the NRI . . . and that "specifically identifies which resources, if any, identified within the NRI . . . are affected and how such resources are affected by the project." Before approving the land-use application, the reviewing board must find that any potential significant adverse environmental impact on NRI resources is mitigated to the extent possible. Town of Cornwall, NY Code Section 158-25.2 is available [here](#), and the 2019 Town of Cornwall NRI is available [here](#).

Montville Township, NJ

Montville adopted a law to protect natural, water, agricultural, and scenic resources in the township's Highlands Preservation Area. The Highlands Preservation Area Land Use law defines the term "highlands open waters," as "seeps, lakes, ponds, and vernal pools; all categories (including springs, streams, and wetlands) as described and defined in the township environmental resource inventory" (ERI). Additionally, the law instructs applicants to use the township's ERI to identify off-site upland forest located near the subject property in a map included in the forest impact report required for a forest-disturbance permit. Montville Township, NJ Code Article 6 is available [here](#), and the 2013 Township of Montville NRI [here](#).



Town of Victor, NY

Victor's incentive zoning law requires the town board to consider relevant information and guidance in Victor's NRI when determining whether a specific site is appropriately located for a density increase. Applicants must submit a narrative that identifies any features described in the NRI that are present at the site proposed for additional density. Developers may receive a density bonus at one site in exchange for a density reduction on a site ". . . where preservation of open space, rural character and/or agriculture would be of benefit to the Town." The Town of Victor, NY Code Section 211-46.1 is available [here](#), and the 2014 Town of Victor NRI & Assessment [here](#).

Links to additional examples of NRI laws

Town of Hillsdale, NY

- [2020 NRI](#)
- [Town Code § 245-60, Natural resources inventory](#)

Mount Kisco, NY

- [2017 NRI](#)
- [Town/Village Code Ch. 75A, Natural resources inventory](#)

Town of Eden, NY

- [2012 NRI](#)
- [Town Code § 184-37, Subdivision sketch plat requirements](#)

Understanding when to do environmental review

The New York State Environmental Quality Review Act (SEQR) requires local agencies, including local legislatures and boards, to consider the potential environmental impacts of their actions, including when adopting and implementing an NRI via the comprehensive plan or a local law. The following resources help municipalities determine when their actions require environmental review and how to ensure SEQR compliance.

- NYS Department of Environmental Conservation (DEC), *SEQR Handbook*, <https://www.dec.ny.gov/permits/6188.html>.
- DEC, *The SEQR Cookbook*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf.
- NYS Department of State, *SEQRA Basics*, <https://dos.ny.gov/state-environmental-quality-review-act-seqra-basics>

2

Best Practices for Adopting and Implementing Open Space Inventories

View of the Catskill Mountains from the Shawangunk Ridge. © Laura Heady

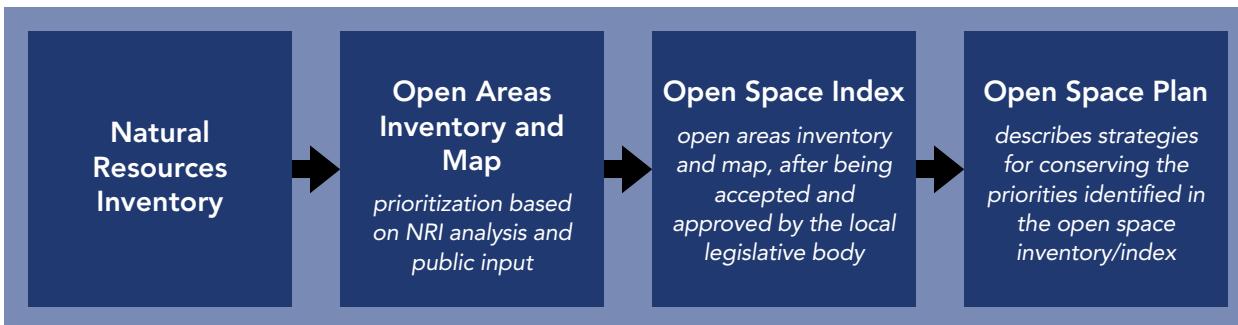
What is an Open Space Inventory?

An **open space inventory (OSI)** lists a community’s important lands and displays them on an open space map. NY General Municipal Law Article 12-F Section 239-x, y directs the community’s CAC to complete the OSI by prioritizing open areas in a municipality for preservation based on natural and scenic values. The NRI, which maps and describes these resources, can provide the foundation for a community’s OSI.

What is open space?

New York’s *Local Open Space Planning Guide* (2004) defines “open space” as public or private land that is not intensively developed. Open space serves many purposes, whether publicly or privately owned, and can include parks, recreational sites, scenery, trails, forests and woodlands, wetland and stream corridors, rare or important habitats, farms, and historic properties. In urban areas, open space might also include amenities like community gardens or walking paths.

An OSI is often developed within a broader **open space plan**, which outlines strategies for the conservation and stewardship of priority lands and serves to complement and inform the local comprehensive plan.



Inventory and prioritization of natural areas are essential steps in the process of identifying a community’s open space conservation strategies.

How a CAC becomes a conservation board

Once adopted, the OSI becomes a municipality's official **open space index**, and its CAC may advance to conservation board status with a formal role in the municipality's environmental review process for any proposed actions affecting lands prioritized in the OSI. Under Article 12-F Section 239-y, the local legislature may, by resolution, redesignate the CAC as a conservation board after the OSI is "accepted and approved" as the municipality's open space index. Local legislatures can convert CACs to conservation boards via local law as well.

How are OSIs Approved, Adopted, and Implemented?

Besides a simple vote, a municipal legislative body (e.g., town board, village board of trustees, city council) may accept or adopt an OSI in one of several ways:

- **Resolution.** OSIs can be adopted by resolution through a policy statement that outlines the steps the locality intends to take to consider priority lands mapped and described in the OSI.
- **Comprehensive plan.** OSIs can be adopted through a comprehensive plan amendment that includes the OSI as an appendix or chapter in the plan and that incorporates planning goals and actions which protect and enhance priority open spaces.
- **Local Law.** A municipality can adopt an OSI by local law, with requirements such as local board and applicant consideration of priority parcels listed in the OSI during the project review and approval process.

When deciding how to adopt an OSI, local governments should consider that the latter adoption methods—plan and law—are more robust, meaningful, and likely to be implemented and enforced. For example, although a local legislative board can easily accept an OSI by a simple vote, this does not necessarily support the OSI in a meaningful way. While formal adoption of the OSI requires more time, resources, and political and public support, it suggests a greater commitment to implementation of the OSI by the local government. Municipalities should use the same adoption method for future OSI updates or amendments.

The following sections describe each of these options in greater detail.

Policy statements in resolutions

Adopted by resolution, municipalities often craft policy statements that outline and express their intention to implement local strategies or programs. Policy statements in resolutions include guiding principles that influence and determine the municipality's intended future actions and define the municipality's next steps to accomplish these activities.

OSI Resolution With Policy Statement

Prior to planning or drafting legislation, a municipality's legislature can adopt an OSI through a policy statement in a **resolution**. A resolution is informal legislation that a local government uses to undertake its day-to-day business, express formal opinions or communications, and establish municipal policies. For example, resolutions are routinely used to approve municipal budgets and hire municipal staff.



Town of Blooming Grove OSI public input session. © Laura Heady

Because resolutions are informal, they take little time to prepare, are easier for the legislative board to pass, and can be classified as Type II actions under SEQR, requiring no further environmental review. However, resolutions are non-binding because of their informal nature, and there are no mechanisms in place by which the policies outlined in a resolution become mandatory. To best ensure a municipality follows its adopted policies, resolutions should include clear intentions and explicit next steps for policy implementation.

Resolutions should include clear intentions and explicit next steps for implementation to best ensure a municipality follows its adopted policies.

How to draft a meaningful OSI resolution with policy statements

OSI resolutions include **“whereas” statements** that provide basic facts about OSIs, who worked on them, their funding sources, any related volunteer efforts, and their purpose. Whereas statements also explain why the OSI is important, express why the municipality cares about open space, and describe how the municipality intends to use the OSI.

Whereas statements could state that the municipality wants to:

- Use the OSI to inform comprehensive land-use and conservation planning, including:
 - Prioritizing important lands located in the municipality.
 - Developing and implementing an open space plan.
 - Designating critical environmental areas.
- Consider the OSI when making decisions, including:
 - Evaluating the effects of proposed land-use and zoning changes.
 - Informing environmental review of development proposals.
 - Identifying stewardship opportunities on municipal lands.
- Amend land-use laws to incorporate and reference the OSI, such as by creating conservation overlay zoning.
- Document current conditions to assess changes over time.
- Educate residents, landowners, and others interested in preservation of priority lands.



Hudson Highlands near the City of Beacon. © Laura Heady

A resolution’s **“be-it-resolved” statements** officially “adopt” or “acknowledge and accept” the OSI as the municipality’s official policy. The use of the language “acknowledge and accept” in municipal resolutions relates to Article 12-F Section 239-y, which requires “acknowledgement and acceptance” of an OSI before a municipal CAC may become a conservation board. To clearly indicate the local government’s approval of the OSI, the term “adopt” should be used in the resolution. Following this, the resolution also can include a be-it-resolved statement that converts the CAC to a conservation board.

Be-it-resolved statements also present the actions and next steps that the municipality could take to implement the OSI, including:

- Using it for informational and educational purposes and as a reference for local boards to refer to for consideration and protection of priority lands.
- Using the OSI as a reference tool for comprehensive planning and future development of environmental policy.
- Incorporating the OSI into a comprehensive plan.
- Using the OSI to develop an open space plan or community preservation plan.
- Redesignating the CAC as a conservation board in a subsequent resolution or local law.
- Adopting a local law that:
 - Requires the applicant to use the OSI to identify whether the proposed project is on or near priority lands and to consider the project’s potential impacts on those lands.
 - Requires local boards to take the OSI into consideration during approval process.
 - Allows approvals only for projects that are protective of priority lands.
 - Incorporates use of the OSI into supplemental development regulations like open space conservation or density incentive provisions.
- Incorporating the OSI into the local review and approval process to ensure proposed land uses are designed to avoid and be compatible with priority lands and minimize and mitigate impacts to these spaces.
- During SEQR, requiring development applicants to provide an analysis of and disclose any potential impacts on priority lands in the OSI (e.g., important areas for wildlife habitat connectivity or large, intact forests).
- Requiring the OSI and resolution to be uploaded to the municipal website.
- Providing copies of the OSI and web page link to local board and commission members.
- Requiring OSI presentation or training for local board and commission members.
- Regularly updating the OSI with a set schedule (e.g., minimum of every five to ten years).

To ensure the OSI's implementation, the resolution's statements should be drafted using language that clearly reflects this intention. Whereas and be-it-resolved statements that communicate this intent refrain from using permissive language like "may" and "should" and instead commit the municipality to act by using "shall" and "will."

PROCEDURE

A municipality must take the following legally-required steps to adopt an OSI resolution with a policy statement:

1. Draft a formal writing with "whereas" and "be-it-resolved" clauses stating the municipality's intent to adopt and implement the OSI.
2. Introduce the draft resolution to the local legislative board via motion.
3. Hold a board vote on the resolution to adopt it by majority, after which the resolution becomes official municipal policy.

Examples of OSI resolutions with policy statements

Town of Cornwall, NY

The Town of Cornwall adopted its OSI in a resolution dated June 14, 2021. The resolution's policy statement expressed the town's intent to use the OSI as ". . . an important tool and resource for assisting in making land use decisions within the Town of Cornwall . . ." but did not explain in detail how the town intends to incorporate the OSI into its plans and regulations. The resolution "recognized and adopted" the OSI as an official document of the town. Cornwall's OSI resolution is available in town board minutes [here](#), and the OSI is available [here](#).

Town of Rochester, NY

In Resolution #175-2018, Rochester accepted the town's 2016 OSI as a standalone document and have used the OSI as a basis for future zoning changes. Rochester's 2016 OSI is available [here](#), and the resolution is included in town minutes [here](#).

Incorporating the OSI into a Comprehensive Plan

A comprehensive plan is a written document that identifies a community's immediate and long-range enhancement, growth, and development goals. Comprehensive plans can include planning goals, objectives, strategies, and implementation measures that incorporate the OSI, a discussion of priority open spaces, and recommendations. Like policy statements in resolutions, comprehensive plans are non-binding on a municipality, but including the OSI in a comprehensive plan greatly increases community awareness of and accessibility to the OSI. Also, because New York State requires local land-use regulations to conform to a municipality's comprehensive plan, it is important for the plan to include language that lays the policy foundation for future laws that will incorporate the OSI. However, municipalities should consider that adding detailed recommendations from an OSI to a comprehensive plan could trigger more heightened environmental review of the plan.

Including the open space inventory in the comprehensive plan greatly increases community awareness of the inventory.

How to amend the comprehensive plan to include the OSI

Municipalities can amend a comprehensive plan to include the OSI in several ways, such as:

- Making the OSI and its maps an appendix in the comprehensive plan.
- Referencing the OSI in the comprehensive plan’s vision statement and key issues.
- Summarizing OSI findings in a related planning chapter that addresses open space.
- Crafting goals and policies to protect lands prioritized in the OSI.
- Explaining how to use the OSI, together with the comprehensive plan, to ensure new development avoids or has minimal impact on priority lands.

If a comprehensive plan is amended to include the OSI as an appendix, the municipality should update the plan’s publicly available, online copy to include the OSI so that the public can easily access it.

PROCEDURE

A municipality must take the following legally-required steps when amending the comprehensive plan to include the OSI:

1. Conduct environmental review of the comprehensive plan amendment as required by SEQR.
2. Refer the proposed comprehensive plan amendment to the county planning board for review and recommendation.
3. Hold at least one public hearing to facilitate public participation.
4. Hold a final public hearing ten days prior to adoption after a hearing notice is published and the proposed comprehensive plan amendment is made available for public review.
5. Draft a formal resolution with a be-it-resolved statement adopting the comprehensive plan amendment.
6. After the final public hearing, introduce the resolution to the legislative board via motion, after which the board must adopt the resolution by majority vote to officially amend the comprehensive plan.

See N.Y. Town Law § 272-a(6)-(8) for more information about this process.

Example of incorporating the OSI into a comprehensive plan

Town of Philipstown, NY

Philipstown adopted an updated OSI in 2016, which informed its Comprehensive Plan 2030. This plan includes a goal to “protect our natural resources” and a strategy to “identify critical parcels of land for preservation.” Related action items include, “update the Open Space Index . . . every 5-10 years . . .” and “supplement the OSI with an index of properties critical to key drinking water resources . . .” Philipstown’s Comprehensive Plan 2030 is available [here](#).

Implementing the OSI Through Local Laws

The New York State Constitution grants municipalities the power to enact **local laws** that have the same legal status as an act of the State Legislature. Requirements set forth by local laws are mandatory. Compared with the other options for adopting an OSI, however, the process to adopt a local law can be time and cost intensive; needs strong political and public support; and will require environmental review. Although some municipalities historically have adopted legislation by **ordinance**, local laws are highly preferable because the adoption procedure for local laws is more streamlined, they can only be amended by another local law, and local laws are presumed valid in court if challenged.



Town of Cornwall OSI community outreach. © Nate Nardi-Cyrus

Local laws versus ordinances

The highest form of local legislation, a **local law** is enforceable legislation adopted by a local legislature under its Municipal Home Rule Authority in the New York State Constitution. Because a local law is presumed valid in a court of law, anyone who challenges the local law bears the burden of proving it is invalid.

An **ordinance** is also a local legislative act that towns and cities can adopt under N.Y. Town Law §§ 130-134 and City Charters, respectively. Ordinances can be enforced via penalty but lack presumption of validity in court.

What to include in a local law that is implementing the OSI

To ensure its implementation, local laws can incorporate the OSI into local land-use regulations in a variety of ways, including by:

- “Accepting and approving” the OSI in a chapter of the municipal code and converting the CAC to a conservation board that provides advisory opinions to local boards.
- Drafting the law’s purpose section to aim for consistency with the OSI.
- Using the OSI to define “open space” in the law’s definitions section.
- Utilizing the OSI as a reference for identification and consideration of priority lands. For example, a municipality can use the OSI maps to evaluate creation of conservation areas or parkland defined in subdivision regulations.
- Requiring applicants to provide a map showing whether the proposed project is on or near any priority lands and to identify any important open spaces that the project will impact.
- Requiring local boards to take the OSI into consideration during the approval process for land-use decisions and during the environmental review process.
- Allowing local boards to approve only those projects that are protective of priority lands identified in the OSI.
- Incorporating the OSI into supplemental development regulations like overlay zones delineated according to lands prioritized in the OSI, open space conservation regulations that require protection of priority lands, and density incentive provisions that offer a density bonus in exchange for protection of priority lands.
- Requiring the OSI to be reviewed and updated at minimum time intervals.



Town of Blooming Grove OSI community engagement. © Laura Heady

A municipality can amend several existing laws to include these OSI requirements or could adopt a new, stand-alone law that includes all OSI-related requirements. For example, a stand-alone law could create the conservation board and define its role and procedures that include consulting the OSI during the project review process. Local governments should avoid simply adopting an OSI by local law without any substantive requirements, as this will not implement the OSI in a meaningful way.

PROCEDURE

A local government must adhere to the following legally-required steps when adopting a local law to implement the OSI:

1. Refer the proposed local law to the county planning board for review and recommendation.
2. Draft the formal local law, including where it would be codified in the municipal code to ensure implementation.
3. Introduce the draft local law to the legislative board.
4. Schedule a public hearing.
5. Publish a notice advertising the public hearing and proposed local law and hold the public hearing after certain waiting periods expire (more details available [here](#)).
6. If no substantive changes are made, pass the local law via majority vote of the legislative board at the public hearing.
7. File the local law with the NYS Secretary of State, after which it becomes effective on its effective date.

For more information about these procedural steps, see Article 3 of the Municipal Home Rule Law.

Examples of local laws that implement the OSI

Town of Wawarsing, NY

Wawarsing’s subdivision regulations authorize the Town’s planning board to refer a subdivision applicant’s sketch plat to Wawarsing’s conservation board for its review and comment if the proposed activity would occur on parcels designated on the Town’s OSI map. (Note the Town has not yet created a conservation board.) Town of Wawarsing, NY Code Section 95-13(F) is available [here](#).

Town of Pound Ridge, NY

Pound Ridge adopted a law that “accepts and approves” the town’s Open Space Inventory and Map, on file in the town hall, and redesignates the town’s CAC as a conservation board. Town of Pound Ridge, NY Code Chapter 4 is available [here](#).

Town of Philipstown, NY

To implement recommendations in its Comprehensive Plan 2030, which was informed by the town’s OSI, Philipstown adopted a local law that converted its CAC to a conservation board and required consideration of the OSI during the building permit process. This law charges the conservation board with “keeping and updating the Open Space Index . . . with the plan of obtaining information pertinent to proper use of such open lands, including lands owned by the state, any other municipality within the state or by the Town itself.” The law also requires the town’s code enforcement officer (CEO) to refer building permit applications to the conservation board and Philipstown’s natural resources review officer “if the proposed work is to be conducted on a property listed on the Open Space Index.” Upon receipt, the natural resources review officer must consult with the conservation board chair and issue a report to the CEO determining “the effect of the proposed work on the Open Space Index” and “make recommendations as to the most appropriate use or development of the open area”

Philipstown also adopted an Open Space Conservation Overlay (OSO) District to provide “special protection of large tracts of land identified as important for conservation by the town’s Open Space Index” The OSO District “includes land shown in the Open Space Index that is located on parcels of 30 acres or more” and requires “conservation resource values identified in the Open Space Index to be preserved to the maximum extent practicable in any development approval.” Town of Philipstown, NY Code Sections 10-1, 62-4, 62-19, and 175.18 are available [here](#).

Understanding when to do environmental review

The New York State Environmental Quality Review Act (SEQR) requires local agencies, including local legislatures and boards, to consider the potential environmental impacts of their actions, including when adopting and implementing an OSI via the comprehensive plan or a local law. The following resources help municipalities determine when their actions require SEQR review and how to ensure compliance.

- NYS Department of Environmental Conservation (DEC), *SEQR Handbook*, <https://www.dec.ny.gov/permits/6188.html>.
- NYS DEC, *The SEQR Cookbook*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf.
- NYS Department of State, *SEQRA Basics*, <https://dos.ny.gov/state-environmental-quality-review-act-seqra-basics>

3

Best Practices for Adopting and Implementing Open Space Plans

Intermittent stream. © Laura Heady

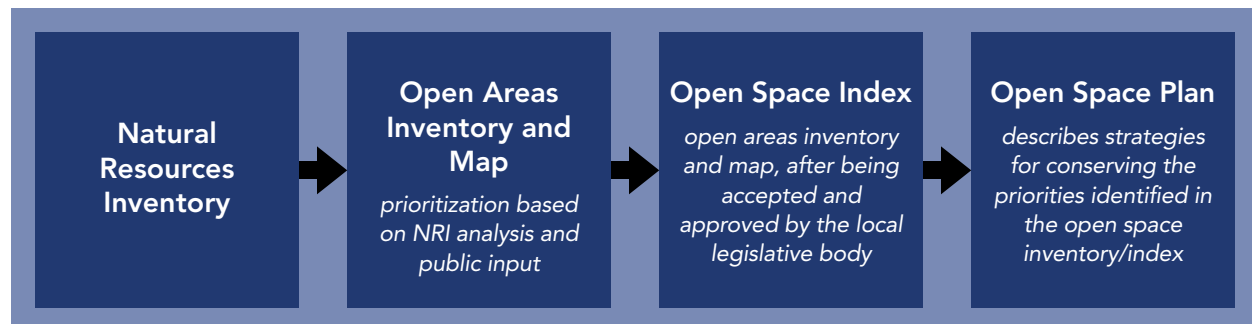
What is an Open Space Plan?

A municipal **open space plan (OSP)** identifies a community’s open space priorities, outlines the best options for use and protection of priority lands and waters, and provides strategies for conservation and stewardship. The OSP complements and informs the local comprehensive plan.

What is open space?

New York’s *Local Open Space Planning Guide* (2004) defines “open space” as public or private land that is not intensively developed. Open space serves many purposes, whether publicly or privately owned, and can include parks, recreational sites, scenery, trails, forests and woodlands, wetland and stream corridors, rare or important habitats, farms, and historic properties. In urban areas, open space might also include amenities like community gardens or walking paths.

A municipality’s **natural resources inventory** and **open space inventory** provide a foundation for the OSP. A natural resources inventory maps and describes the municipality’s natural resources, and an open space inventory lists the community’s important undeveloped lands and waters and displays these priorities on an open space map.



Inventory and prioritization of natural areas are essential steps in the process of identifying a community’s open space conservation strategies.



Hudson River view. © Laura Heady

How are OSPs Approved, Adopted, and Implemented?

Besides a simple vote, a municipal legislative body (e.g., town board, village board of trustees, city council) may accept or adopt an OSP in one of several ways:

- **Resolution.** OSPs can be adopted by resolution through a policy statement that expresses the locality's intention to implement the OSP.
- **Comprehensive plan.** OSPs can be adopted through a comprehensive plan amendment that includes the OSP as an appendix or chapter in the plan and that incorporates planning goals and actions which protect and enhance priority open spaces.
- **Local Law.** A municipality can adopt an OSP by local law, with requirements such as local board and applicant consideration of priority parcels listed in the OSP during the project review and approval process.

When deciding how to adopt an OSP, local governments should consider that the latter adoption methods—plan and law—are more robust, meaningful, and likely to be implemented and enforced. For example, although a local legislative board can easily accept an OSP by a simple vote, this does not necessarily support the OSP and its implementation in a meaningful way. While formal adoption of the OSP requires more time, resources, and political and public support, it suggests a greater commitment to the plan's goals by the local government.

When updating or amending the OSP in the future, municipalities should use the same adoption method as they did for the original plan.

The following sections describe each of these options in greater detail.

Policy statements in resolutions

Adopted by resolution, municipalities often craft policy statements that outline and express their intention to implement local strategies or programs. Policy statements in resolutions include guiding principles that influence and determine the municipality's intended future actions and define the municipality's next steps to accomplish these activities.

OSP Resolution with Policy Statement

Prior to planning or drafting legislation, a municipality's legislature can adopt an OSP through a policy statement in a resolution. A resolution is informal legislation that a local government uses to undertake its day-to-day business, express formal opinions or communications, and establish municipal policies. For example, resolutions are routinely used to approve municipal budgets and hire municipal staff.

Because resolutions are informal, they take little time to prepare, are easier for the legislative board to pass, and can be classified as Type II actions under SEQR, requiring no further environmental review. However, resolutions are non-binding because of their informal nature, and there are no mechanisms in place by which the policies outlined in a resolution become mandatory. To best ensure a municipality follows its adopted policies, resolutions should include clear intentions and explicit next steps for policy implementation.

Resolutions should include clear intentions and explicit next steps for implementation to best ensure a municipality follows its adopted policies.

How to draft a meaningful OSP resolution with policy statements

OSP resolutions include **"whereas" statements** that provide basic facts about OSPs, who worked on them, their funding sources, any related volunteer efforts, and their purpose. Whereas statements also explain why the OSP is important, express why the municipality cares about open space, and describe how the municipality intends to implement the OSP.

Whereas statements could state that the municipality wants to:

- Use the OSP to inform comprehensive land-use and conservation planning, including designating critical environmental areas.
- Consider the OSP when making decisions, including:
 - Evaluating the effects of proposed land-use and zoning changes.
 - Informing environmental review of development proposals.
 - Identifying stewardship opportunities on municipal lands.
- Implement the OSP's recommendations for protecting priority lands, including amending land-use laws to incorporate and reference the OSP, such as by creating conservation overlay zoning.
- Use the OSP as a basis for pursuing conservation financing to acquire or protect priority lands and waters.
- Educate residents, landowners, and others interested in preservation of priority lands.

A resolution's **"be-it-resolved" statements** officially "adopt" or "acknowledge and accept" the OSP as the municipality's official policy. To clearly indicate the local government's approval of the OSP, the term "adopt" should be used in the resolution.

Be-it-resolved statements also present the actions and next steps that the municipality could take to implement the OSP, including:

- Using it for informational and educational purposes and as a reference for local boards for consideration and protection of priority lands.
- Using the OSP as a reference tool for comprehensive planning and future development of environmental policy.
- Incorporating the OSP into a comprehensive plan.
- Adopting a local law that:
 - Requires the applicant to use the OSP to identify whether the proposed project is on or near priority lands and to consider the project’s potential impacts on those lands.
 - Requires local boards to take the OSP into consideration during approval process.
 - Allows approvals only for projects that are protective of priority lands.
 - Incorporates use of the OSP into supplemental development regulations like open space preservation and acquisition regulations or cluster development regulations.
- Incorporating the OSP into the local review and approval process to ensure proposed land uses are designed to avoid and be compatible with priority lands and minimize and mitigate impacts to these spaces.
- During SEQR review, requiring development applicants to provide an analysis of and disclose any potential impacts on priority lands in the OSP (e.g., important areas for wildlife habitat connectivity or large, intact forests).
- Requiring the OSP and resolution to be uploaded to the municipal website.
- Providing copies of the OSP and web page link to local board and commission members.
- Requiring OSP presentation or training for local board and commission members.
- Regularly evaluating the need for OSP updates to address new trends or changing community priorities.

To ensure the OSP’s implementation, the resolution’s statements should be drafted using language that clearly reflects this intention. Whereas and be-it-resolved statements that communicate this intent refrain from using permissive language like “may” and “should” and instead commit the municipality to act by using “shall” and “will.”

PROCEDURE

A municipality must take the following legally-required steps to adopt an OSP resolution with a policy statement:

1. Draft a formal writing with “whereas” and “be-it-resolved” clauses stating the municipality’s intent to adopt and implement the OSP.
2. Introduce the draft resolution to the local legislative board via motion.
3. Hold a board vote on the resolution to adopt it by majority, after which the resolution becomes official municipal policy.

Incorporating the OSP into a Comprehensive Plan

A **comprehensive plan** is a written document that identifies a community’s immediate and long-range enhancement, growth, and development goals. Comprehensive plans can include planning goals, objectives, strategies, and implementation measures that incorporate the OSP, a discussion of priority open spaces, and recommendations. Like policy statements in resolutions, comprehensive plans are non-binding on a municipality, but including the OSP in a comprehensive plan greatly increases community awareness of and accessibility to the OSP. Also, because New York State requires local land-use regulations to conform to a municipality’s comprehensive plan, it is important for the plan to include language that lays the policy foundation for future laws that will implement the OSP. However, municipalities should consider that adding detailed recommendations from an OSP to a comprehensive plan could trigger more heightened environmental review of the plan.



Town of Wawarsing officials and volunteers meet with a landowner during development of the OSP. © Laura Heady

Including the open space plan in a comprehensive plan greatly increases community awareness of the plan.

How to amend the comprehensive plan to include the OSP

Municipalities can amend a comprehensive plan to include the OSP in several ways, such as:

- Making the OSP an appendix in the comprehensive plan.
- Referencing the OSP in the comprehensive plan's vision statement and key issues.
- Including OSP goals and policies in a related planning chapter that addresses open space.
- Explaining how to use the OSP, together with the comprehensive plan, to ensure new development avoids or has minimal impact on priority lands and waters.

If a comprehensive plan is amended to include the OSP as an appendix, the municipality should update its online copy of the comprehensive plan to include the OSP so the public can easily access it.

PROCEDURE

A municipality must take the following legally-required steps when amending the comprehensive plan to include the OSP:

1. Conduct environmental review of the comprehensive plan amendment as required by SEQR.
2. Refer the proposed comprehensive plan amendment to the county planning board for review and recommendation.
3. Hold at least one public hearing to facilitate public participation.
4. Hold a final public hearing ten days prior to adoption after a hearing notice is published and the proposed comprehensive plan amendment is made available for public review.
5. Draft a formal resolution with "whereas" and "be-it-resolved" statements adopting the comprehensive plan amendment.
6. After the final public hearing, introduce the resolution to the legislative board via motion, after which the board must adopt the resolution by majority vote to officially amend the comprehensive plan.

See N.Y. Town Law § 272-a(6)-(8) for more information about this process.



City of Kingston OSP public input session. © Emily Vail

Examples of incorporating the OSP into a comprehensive plan

Town of Saugerties, NY

In 2021, Saugerties updated its comprehensive plan to include statements and recommendations related to its 2010 OSP. For example, the plan’s land-use and development policies recognize that “the open spaces and rural aspects of the area are not replaceable, and any development should be well thought-out and planned with the future in mind. The Comprehensive Plan also seeks to strike a balance between open space conservation and economic development as stated in the Open Space Plan.” In addition, the plan’s natural resource protection goal includes a recommendation to “establish town conservation financing or other options to preserve critical open space resources,” referencing Saugerties’s open space plan. Saugerties’s comprehensive plan is available [here](#), and the town’s open space plan is available [here](#).

City of Kingston, NY

Kingston’s Resolution 163 of 2020 adopted the city’s 2019 OSP as an addendum to its 2016 comprehensive plan, which included a recommendation to develop and adopt the OSP. The online version of the comprehensive plan was updated to include the OSP. Kingston’s 2019 Open Space Plan is available [here](#), and the city’s comprehensive plan is available [here](#). Resolution 163 of 2020 is available [here](#).

Town of Gardiner, NY

Gardiner’s 2007 OSP is included as Appendix C in the town’s 2022 Comprehensive Plan. Gardiner incorporated recommendations related to the OSP in the comprehensive plan, including a priority to continue implementation of the OSP, and Goal B-3 in Chapter 3: “Establish a framework for a conservation network in the Town, connected to neighboring towns, that focuses on the important resources and findings of the Gardiner Open Space Plan and Natural Resources Inventory (NRI).” They stated the OSP is a guiding policy and the Open Space Commission should advise the town board on open space priorities, advance research needed for a Community Preservation Plan, and educate the public. The OSP is available [here](#), and the comprehensive plan is available [here](#).

Town of Wawarsing, NY

In Resolution #47, dated July 19, 2018, Wawarsing adopted the town’s 2018 final OSP as an appendix to its 2015 comprehensive plan. The online version of the comprehensive plan has not been updated to include the OSP as of this writing. The 2018 OSP is available [here](#).

Implementing the OSP Through Local Laws

The New York State Constitution grants municipalities the power to enact local laws that have the same legal status as an act of the State Legislature. Requirements set forth by local laws are mandatory. Compared with the other options for adopting an OSP, however, the process to adopt a local law can be time and cost intensive; needs strong political and public support; and will require environmental review. Although some municipalities historically have adopted legislation by ordinance, local laws are highly preferable because the adoption procedure for local laws is more streamlined, they can only be amended by another local law, and local laws are presumed valid in court if challenged.

Local laws versus ordinances

The highest form of local legislation, a **local law** is enforceable legislation adopted by a local legislature under its Municipal Home Rule Authority in the New York State Constitution. Because a local law is presumed valid in a court of law, anyone who challenges the local law bears the burden of proving it is invalid.

An **ordinance** is also a local legislative act that towns and cities can adopt under N.Y. Town Law §§ 130-134 and City Charters, respectively. Ordinances can be enforced via penalty but lack presumption of validity in court.

What to include in a local law that is implementing the OSP

To ensure its implementation, local laws can incorporate the OSP into local land-use regulations in a variety of ways, including by:

- Drafting the law's purpose section to aim for consistency with the OSP.
- Utilizing the OSP as a reference for identification and consideration of priority lands and waters. For example, a municipality can use the OSP to evaluate creation of conservation areas or parkland defined in subdivision regulations.
- Requiring applicants to provide a map showing whether the proposed project is on or near any conservation priorities and to identify any important open spaces that the project will impact.
- Requiring local boards to take the OSP into consideration during the approval process for land-use decisions and during the environmental review process.
- Allowing local boards to approve only those projects that are protective of priority lands and waters identified in the OSP.
- Incorporating the OSP into supplemental development regulations, like open space preservation and acquisition regulations that authorize a municipality to acquire priority lands, and cluster development regulations that require protection of priority lands.
- Requiring the OSP to be reviewed and updated at minimum time intervals.

A municipality can amend several existing laws to integrate OSP requirements or could adopt a new, stand-alone law that includes all OSP-related requirements. It is recommended that the law be adopted with substantive requirements to achieve meaningful implementation of the OSP. For example, a stand-alone law could require applicants to consult the OSP during the project review process.

PROCEDURE

A local government must adhere to the following legally-required steps when adopting a local law to implement the OSP:

1. Refer the proposed local law to the county planning board for review and recommendation.
2. Draft the formal local law, including where it would be codified in the municipal code to ensure implementation.
3. Introduce the draft local law to the legislative board.
4. Schedule a public hearing.
5. Publish a notice advertising the public hearing and proposed local law and hold the public hearing after certain prescribed waiting periods expire (more details available [here](#)).
6. If no substantive changes are made, pass the local law via majority vote of the legislative board at the public hearing.
7. File the local law with the NYS Secretary of State, after which it becomes effective on its effective date.

For more information about these procedural steps, see Article 3 of the Municipal Home Rule Law.

Examples of local laws that implement the OSP

Town of Wawarsing, NY

After adopting its 2018 OSP, Wawarsing amended its zoning code to clarify that its purpose is in part, to “provide a system of open spaces and park and recreation facilities and review proposed applications for consistency with the Town of Wawarsing Open Space Plan, as may be amended from time to time.” The town also amended its cluster development regulations to require open space lands in proposed cluster developments to “comply” with the Town’s Open Space Plan and to require proposed primary conservation areas to “. . . be delineated comprising those primary conservation areas identified in the Town’s Open Space Plan . . . including floodplains, wetlands and their buffers, significant habitat and biodiversity conservation areas, slopes over 15% and other features defined and mapped in the Open Space Plan . . .” Town of Wawarsing, NY Code Sections 112-2 and 112-27(J)(1)(a) are available [here](#).

Town of Gardiner, NY

Gardiner amended its land-use regulations in several ways to implement its 2007 OSP. The town adopted an open space preservation and acquisition law that authorizes Gardiner to acquire real property to preserve the town’s open spaces and farmland consistent with the OSP. The law creates an open space commission empowered to “. . . advise and assist the Town Board in protecting undeveloped land and other natural and cultural resources as defined in the Open Space Plan” and to “promulgate, subject to Town Board approval, such procedural rules and regulations as may be necessary to carry out the purposes and intent of this chapter, including developing ranking criteria that are consistent with the Open Space Plan.” Gardiner also amended its zoning code to implement its OSP, including encouraging developers to create “open space developments,” in lieu of traditional subdivisions, in its Rural Agriculture (RA) and Shawangunk Ridge Protection (SP) districts. Open space development applications require a conservation analysis under Code Section 220-20(A)(4)(k) and when certain criteria are met, there are allowances for density transfers (Code Section 220-22). Finally, Section 220-65(B)(21) requires site plan applicants, where appropriate, to provide “. . . a site analysis using the Open Space Priority Scoring and Priority Conservation Network items from the adopted Town Open Space Plan.” Town of Gardiner, NY Code Chapters 165 and 220 are available [here](#).



City of Rensselaer OSP public engagement. © Angie Hernandez

Town of New Paltz

New Paltz implemented its 2006 OSP by adopting an agriculture and open space preservation and acquisition law that authorizes the town to purchase rights in real property to preserve open space and farmland characterized within the OSP. The law creates a Clean Water and Open Space Protection Commission authorized to “develop ranking criteria for evaluation of properties consistent with the open space plan.” The law defines “eligible landowner” as “a landowner with property that has at least a minimum score under the scoring criteria established by the . . . commission, consistent with the New Paltz Open Space Plan.” Town of New Paltz, NY Code Chapter 44 is available [here](#).

Understanding when to do environmental review

The New York State Environmental Quality Review Act (SEQR) requires local agencies, including local legislatures and boards, to consider the potential environmental impacts of their actions, including when adopting and implementing an OSP via the comprehensive plan or a local law. The following resources help municipalities determine when their actions require SEQR review and how to ensure compliance.

- NYS Department of Environmental Conservation (DEC), *SEQR Handbook*, <https://www.dec.ny.gov/permits/6188.html>.
- DEC, *The SEQR Cookbook*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf.
- NYS Department of State, *SEQR Basics*, <https://dos.ny.gov/state-environmental-quality-review-act-seqra-basics>

4

Best Practices for Adopting and Implementing Critical Environmental Areas

Large wetland complex in Town of Wawarsing. © Laura Heady

What is a Critical Environmental Area?

A **critical environmental area (CEA)** is a geographic area designated by the state, a county, or municipal agency to recognize exceptional or unique character with respect to one or more of the following:

- A benefit or threat to human health.
- A natural setting such as fish and wildlife habitat, forest and vegetation, open space, and areas of important aesthetic or scenic quality.
- Agricultural, social, cultural, historic, archeological, recreational, or educational values.
- An inherent ecological, geological, or hydrological sensitivity that may be adversely affected by any change.

CEAs are an element of New York State’s environmental review policy, created pursuant to the landmark 1975 State Environmental Quality Review Act (SEQR). When it enacted SEQR, the NYS legislature stated that its intent was to:

“encourage productive and enjoyable harmony between people and their environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.” ECL Art. 8-0101.

SEQR establishes a process to systematically consider environmental factors early in the planning stages of actions that local, regional and state agencies directly undertake, fund, or approve. By incorporating environmental review early in the planning stages, projects can be modified as needed to avoid adverse impacts on the environment. Once a CEA has been designated, potential impacts on the CEA warrant special consideration during environmental review under SEQR.

Counties and municipalities may designate specific geographic areas within their boundaries as CEAs. State agencies also may designate specific geographic areas that they own, manage, or regulate as CEAs. CEA designation alerts landowners, developers, and regulatory agencies to the community’s concern for the CEA’s special attributes, which must be considered and addressed during environmental review to determine how a proposed project might affect the qualities of the CEA. This ensures that the exceptional or unique features identified by a designated CEA are not overlooked during SEQR.



Shawangunk Ridge view from a CEA in Town of Wawarsing. © Laura Heady

CEA designation does not substitute for, nor does it provide, governmental protection afforded by land-use controls such as zoning or land acquisition. There are no automatic restrictions on any activities in a CEA. Additionally, CEA designation does not grant any agency or other jurisdiction permitting authority that did not already exist before the designation. While CEAs can be a valuable first step to bring recognition and consideration to important natural areas during SEQR, if community concern for a particular area warrants greater regulation, more targeted land-use controls like conservation overlay zoning may be desirable.

How are CEAs Designated?

[SEQR Section 617.14\(g\)](#) provides the specific procedures for designating a CEA. The regulations require preparation of a map at an appropriate scale to readily locate the CEA boundaries and a written justification supporting the designation. The map and justification are often prepared by municipal staff and/or board or commission members, including CAC members, who submit the proposal to the legislative body.

Prior to designating a CEA, municipalities often conduct inventories and planning to evaluate and identify the community's conservation priorities. A municipality's natural resources are compiled and described in a **natural resources inventory**, and local open space priorities are defined in an **open space inventory**. An **open space plan** outlines the best options for use and protection of priority lands and lays out a plan for action. Together, these resources, along with the comprehensive plan, can provide the basis for determining appropriate areas to propose for CEA designation.

Though not required, an agency may consider first holding an informational meeting with affected landowners, other interested agencies, and the public to present and discuss the CEA proposal. The designating agency must provide written public notice and hold a public hearing prior to the designation. The act of designating a CEA is a discretionary decision by the designating agency and is, therefore, subject to SEQR. After the agency approves the designation, hard copies of the map, a written justification, and proof of public hearing must be filed with the DEC Commissioner, regional DEC office, county planning department, and other agencies typically involved in SEQR. A digital copy of the justification and map is sent to the DEC Division of Environmental Permits in Albany. The designation takes effect 30 days after these filings. All CEAs in the state are listed on the DEC website and viewable on the DECinfo Locator map available [here](#), so use of Geographic Information Systems (GIS) to create the CEA boundary is recommended.

CEA designation by resolution or local law

A municipality's legislature can adopt a CEA by **resolution** or **local law**. Resolutions are informal legislation that a local government uses to undertake its day-to-day business, express formal opinions or communications, and establish municipal policies. A **local law** is enforceable legislation adopted by a local legislature under its Municipal Home Rule Authority in the New York State Constitution. Local laws have the same legal status as an act of the State Legislature, and their requirements are mandatory; however, the process to adopt a local law can be time and cost intensive and generally needs strong political support.

Resolutions that designate a CEA present "**whereas**" statements that state:

- The municipality's authority to designate a CEA under 6 NYCRR 617.14G.
- Requirements for designating a CEA.
- References to a series of supportive information, including the narrative statement proposing the CEA, recommendations by local committees or boards to designate the CEA, a map of the CEA, any studies performed, the legally-required steps that have been completed, and the completed Short Environmental Assessment Form.

The resolution's "**be-it-resolved**" statements close the required public hearing; declare that CEA designation will not have a significant negative impact on the environment; designate the CEA pursuant to 6 NYCRR § 617.14(g) as set forth in the CEA map; and direct copies of the resolution, the narrative statement, the CEA Map, and a list of tax parcels to be filed with the municipal clerk, the DEC Commissioner, the relevant DEC Region, the local planning board, the county planning board, and any other public agencies commonly involved in SEQR.

Local laws that designate a CEA include similar language and requirements. Local governments must adhere to the following legally-required steps when adopting a local law:

1. Draft the formal local law.
2. Introduce the draft local law to the legislative board.
3. Schedule a public hearing (encouraged to be held concurrently with other required public hearings).
4. Publish a notice advertising the public hearing and proposed local law.
5. Hold the public hearing after certain waiting periods expire (more details available [here](#)).
6. If no substantive changes are made, pass the local law via majority vote of the legislative board at the public hearing.
7. File the local law with the NYS Secretary of State, after which it becomes effective on its effective date.

In some instances, a municipal attorney prepares the Environmental Assessment Form and drafts the resolution or local law; in other cases, the municipality's chief elected officer or a legislative board member prepares these documents. The CAC or other municipal committees and boards may assist with preparing drafts for review by the municipal attorney. Once designated by resolution or local law, the CEA may be added to the municipal code to ensure implementation. If the CEA is not added to the code, it may fall out of use over time, as membership on local boards change.

How are CEAs Used?

Once a CEA is designated, it becomes a regular part of environmental review under SEQR. The "lead agency," a public body that is responsible for undertaking, funding, or approving an action, must consider possible impacts to the CEA from that proposed action. Municipalities, state agencies, and regional industrial development agencies all may serve as a lead agency. Because they make local decisions, municipal legislatures and planning boards are often lead agencies under SEQR.

What are SEQR actions?

When an agency makes a decision that may impact the environment, that decision becomes an “action” that may require review under SEQR. The lead agency must prepare an environmental impact statement (EIS) if it determines that an action will have potentially significant adverse environmental impacts. SEQR actions are divided into three types as follows:

- **Type I** actions meet or exceed environmental impact thresholds included in SEQR regulations and are likely to require an EIS.
- **Type II** actions are determined by regulation and never require SEQR review.
- **Unlisted** actions do not meet Type I thresholds but may still require an EIS.

Consideration of impacts to CEAs is only required for Type I or Unlisted actions under SEQR. Type II actions, such as construction of a single-family dwelling on an approved lot, are not subject to this review. Project applicants seeking local approvals for Type I or Unlisted actions must complete Part 1 of the short or full Environmental Assessment Forms (EAFs) to identify whether their proposed action is within or adjacent to a designated CEA. If so, the lead agency must identify and evaluate the magnitude of any potential adverse impacts to the qualities of the CEA. A thorough evaluation should include the original purpose of the CEA, its characteristics, the proposed project goals, and the proximity and extent of the proposed action in relation to the CEA boundaries. Will the proposed action affect the quantity and quality of the resource or characteristics of the designated area?

As with other questions during SEQR, the lead agency is empowered to request additional information from the applicant to make an informed decision. If a moderate or large impact is identified, the lead agency must decide if the impact is significant, whether the impact will be avoided or substantially mitigated, and whether or not to require an EIS. DEC’s *SEQR Handbook* and *EAF Workbooks* provide additional guidance.

It is important to note that in most cases, CEA designation does not affect the classification of actions under SEQR (i.e., it does not change actions from Unlisted to Type I or otherwise). However, municipalities can adopt local SEQR regulations that reclassify actions within CEA boundaries, although this is rare. For example, the Town of Woodstock Environmental Quality Review Act elevates Unlisted actions within a CEA to Type I status. Regardless, actions within a CEA do not automatically trigger a declaration of a positive impact or automatically require preparation of an EIS.

Examples of CEA designation

Town of Wawarsing, NY

In June 2019, Wawarsing approved two CEAs after adopting the town’s 2018 Open Space Plan (OSP), which included open space “components” selected for protection and recommended actions “to effectively and comprehensively protect or conserve them.” Component 10 in the OSP aims to “Maintain and Enhance Biodiversity and habitat integrity of rare/threatened species through the establishment of . . . CEAs.” CEA designations were recommended for three of the town’s priority open spaces, and the following two were designated by Resolution #27, dated June 6, 2019: (1) the Catskill-Shawangunk Greenway Corridor, an important natural and recreational corridor connection linking the Catskill and Shawangunk regions and (2) the Cedar Swamp, considered the largest wetland of its kind in the Catskill region with trees over 400 years old. The resolution referenced the OSP and recommendations by the town’s environmental commission to designate these two CEAs “due to their exceptional and unique environmental characteristics” and declared the town board’s intent to serve as lead agency. The written justifications for these CEAs emphasize that Wawarsing’s OSP prioritized

these areas for protection and conservation. The 2018 OSP is available [here](#), and the CEA justifications are available [here](#) and [here](#). A CEA video describing the Town of Wawarsing’s CEA designation experience is available [here](#).

New Lebanon, NY

The Town of New Lebanon Open Space Inventory (2014) and Natural Resources Conservation Plan (2017) identified important places and resources throughout the town and set conservation goals. In 2021, the town updated its Comprehensive Plan and incorporated the Natural Resources Conservation Plan. The updated Comprehensive Plan adopted specific objectives, including the protection of “surface water, wetlands, and groundwater from potential sources of pollution” and “the encouragement of restoration, preservation and protection of the Lebanon Warm Mineral Spring.” In 2022, the town designated two CEAs in support of these objectives via resolutions. One focuses on the only warm spring known in the state and the lands nearby where human activities could affect the temperature, chemistry, or flow of the spring. The other CEA covers four cool ravines, a regionally rare habitat with a cool, moist microclimate that offers a refuge for plants and animals adversely impacted by a changing climate. Prior to the designation, the CAC reached out individually to landowners in the proposed areas to discuss the proposal. Resolution #15 for the Warm Spring CEA, dated May 10, 2022, is available in town meeting minutes [here](#), and Resolution #21 for the Cool Ravines CEA, dated June 14, 2022 is available in town minutes [here](#).

Woodstock, NY

In 2022, Woodstock approved the Zena Woods CEA, an exceptional area of intact forest and wetlands along the Saw Kill stream corridor. A CEA working group, including members of the town board, planning board, and environmental commission and staff of the Woodstock Land Conservancy, proposed the area based on analysis of the town’s 2020 Natural Resources Inventory (NRI), 2018 Comprehensive Plan Update, and other prior studies. The resolution designating the Zena Woods CEA directs the town’s environmental commission to include the map of Zena Woods CEA in the town’s NRI. The environmental commission hosted two informational meetings for residents and solicited review by the planning board and housing oversight task force prior to the public hearing. The CEA proposal is available [here](#), and Resolution #180-2022, dated September 20, 2022, is available [here](#).

Additional Resources

DEC Web Page on CEAs
<https://www.dec.ny.gov/permits/6184.html>

DECinfo Locator
(under Environmentally Sensitive Areas)
<https://www.dec.ny.gov/pubs/109457.html>

DEC SEQR Handbook
<https://www.dec.ny.gov/permits/6188.html>

DEC EAF Workbooks
<https://www.dec.ny.gov/permits/90125.html>



Swamp in a Town of Woodstock CEA. © Ingrid Haeckel