CHAPTER 2.1

STATE ENVIRONMENTAL QUALITY REVIEW ACT

PROJECT ENVIRONMENTAL GUIDELINES

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2.1 STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

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I. SUMMARY

The State Environmental Quality Review Act (SEQRA) and, in particular, the Department's implementing regulations -- 17 NYCRR Part 15, require the Department to consider environmental factors in its planning, review and decision making. Under SEQRA, all agencies must determine whether actions they directly undertake, fund or approve may have a significant effect on the environment. To minimize or avoid adverse environmental impacts the Department must modify its projects to the maximum extent practicable.

NYSDOT must assess all actions to determine whether the SEQRA process applies. Two types of actions are not subject to SEQRA review: Excluded Actions and Exempt Actions. A third type of action, Type II Actions, has been determined not to have a significant effect on the environment. If an action is one of these three types of actions, the SEQRA process ends. If an action is Non-Type II, an environmental assessment is prepared. After review of the environmental assessment, if the action will not have significant environmental effects, a Determination of No Significant Effect (“Negative Declaration”) is filed. If the action may have significant environmental effects, a Determination That a
Project May Have a Significant Effect ("Positive Declaration") is filed and a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) are prepared.

17 NYCRR Part 15 §15.17 (Procedures For Implementation of State Environmental Quality Review Act) ("the Procedures"), attached hereto as Attachment 2.1.A., contains a flow chart of the SEQRA process. These regulations were adopted by NYSDOT for the purpose of implementing the State Environmental Quality Review Act. Please also note that this document provides appropriate reference to various sections of the Procedures, attached hereto as Attachment 2.1.A. Such references appear as "(See Attachment 2.1.A: §XX.XX...)"

The procedures in 17 NYCRR Part 15 vary from the procedures set forth in 6 NYCRR Part 617. 17 NYCRR Part 15 allows the Department to establish a procedure for SEQRA that corresponds with and is integrated into procedures for compliance with the National Environmental Policy Act (NEPA). The guidance contained herein is intended to describe the processes to follow to comply with SEQRA. However, if there is federal funding or approval involved, compliance with NEPA is also required. Documents developed in compliance with NEPA can generally be used to satisfy the requirements of SEQRA. For instance, the Department's Environmental Assessments/Design Reports fulfill the SEQRA environmental assessment requirements. The substance of the NEPA Finding of No Significant Impact (FONSI) can be used to support the SEQRA Negative Declaration, which needs to be prepared; and an Environmental Impact Statement (EIS) would suffice for both NEPA and SEQRA processes. For further guidance on compliance with NEPA, please refer to Chapter 2.B, FHWA/UMTA Environmental Impact and Related Procedures, in the Environmental Procedures Manual.

II. DEFINITIONS

**Action** - A project or planned activity which results in the creation, alteration or new use of a structure, facility or land and which is (I) directly undertaken by the Department, (ii) is funded by the Department, (iii) requires the issuance of a new or modified permit by the Department (see Attachment 2.1.A.: §15.2(a)).

**Agency** - Any state or local agency subject to the requirements of SEQRA.

**Coordinated Review** - All the involved and interested agencies cooperate in one integrated environmental review process.

**Critical Environmental Areas (CEA)** - As authorized under NYSDEC regulation, areas designated by state or local agencies that are of exceptional or unique character. An action located in or substantially contiguous to a CEA is presumed to be a Non-Type II Action (see Attachment 2.1.A: §15.14(7)(X)).
**Department** - New York State Department of Transportation.

**Direct Action** - As defined by 17 NYCRR §15.2(h).

1. A project or physical activity that results in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, be under the jurisdiction of the Department, or
2. Making policy, regulations or procedures.

**Draft Environmental Impact Statement (DEIS)** - A draft of an Environmental Impact Statement circulated for public review.

**Environmental Assessment Form (EAF)** - A form completed to identify information needed to make a determination of the significance of environmental effects of a project. There is a full form (see Attachment 2.1.D.) used when a project exceeds a NYSDEC Type I (see Attachment 2.1.C) threshold and a short form (see Attachment 2.1.E.) used for other actions.

**Environmental Impact Statement (EIS)** - The document prepared to provide all necessary environmental information to help state agencies consider environmental concerns when making decisions on proposed actions.

**Exempt Actions** - As defined by 17 NYCRR §15.2(m) and 17 NYCRR §§15.12-15.13, certain actions that are not subject to SEQRA requirements.

**Excluded Actions** - As defined by 17 NYCRR §15.2(l), additional actions including "grand fathered" actions that are not subject to SEQRA requirements.

**Final Environmental Impact Statement (FEIS)** - The final version of the Environmental Impact Statement that incorporates comments on the Draft Environmental Impact Statement.

**Generic EIS** - Generic EISs (GEIS) may be broader and more general than site or project-specific EISs and should discuss the logic and rationale for the alternatives advanced. GEISs may be based on conceptual information in some cases. They should focus on broad issues, such as general location, mode choice and area-wide air quality and land use implications of the major alternative. They can discuss the constraints and consequences of any narrowing of future options and may present and analyze hypothetical scenarios.

**Involved Agency** - An agency that will have to make a discretionary decision with respect to an action such as funding, permitting or approving.

**Lead Agency** - An involved agency principally responsible for undertaking or approving an action and primarily responsible for SEQRA compliance.
Ministerial Action - As defined in 17 NYCRR §15.2(s), an act performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although the law may require some interpretation or construction. A list of ministerial actions is found in 17 NYCRR §15.13.

Negative Declaration - A determination by the lead agency that an action will not result in a significant adverse environmental impact; therefore, no EIS will be prepared.

Non-Type II Action - Actions that are not Type II, exempt, excluded or ministerial and require an environmental review in accordance with 17 NYCRR Part 15, Section 15.6.

Positive Declaration - A determination by the lead agency that an action may result in a significant adverse environmental impact and an EIS will be prepared.

Record of Decision - As defined in 17 NYCRR §15.2(v), a public document stating the decision of the Department, stating facts and conclusions in the EIS on which the Department relied in making its decision and containing the specific findings required under SEQRA.

Segmentation - The entire set of activities constituting a project is considered an action. Segmentation is environmental review of an action such that various activities or stages of such an action are analyzed as though they were independent, unrelated activities needing individual determinations of significance. Segmentation is contrary to SEQRA (see "III. APPLICABILITY" below).

Type II Actions - Actions or classes of actions, listed in 17 NYCRR §15.14, determined by the Department not to have significant effect on the environment and, therefore, not requiring preparation of an EIS.

III. APPLICABILITY

All actions must be examined to determine SEQRA classification, except the two types of actions described below in this section. It should be stressed that the entire set of activities constituting a project are considered an action subject to SEQRA (see Attachment 2.1.a. §15.3(e)). Conducting separate environmental reviews for each activity is not acceptable, unless it can be affirmatively stated in the determination of significance that such an approach is no less protective of the environment (see also 6 NYCRR Part 617, §617.2(ag) & §617.3(g)).

1. Exempt Actions (see Attachment 2.1.A.: §15.2(m) (see also §15.12 and 15.13 for a list of actions as defined in 15.2(m)):
   a. Law enforcement or criminal proceedings;
   b. Maintenance or repair involving no substantial changes in existing structures or facilities
(Note: Most rehabilitation projects should be classified as Type II. Refer to discussion in Part IV below (see also Attachment 2.1.A.: §15.14(37)(iv));

c. Acquisition and use of equipment to rehabilitate, maintain or repair existing structures or facilities;

d. Emergency actions immediately necessary for the preservation of life, health, property or natural resources;

e. Actions required to be made within a specific time limit set by federal law, rule or regulation or other federal requirement that renders completion of an EIS impossible;

f. Ministerial Acts, including: control of outdoor advertising, removal of junkyards and highway/railroad grade crossing eliminations ordered by the Commissioner of NYSDOT.

2. Excluded Actions (see Attachment 2.1.A: §15.2(1)):

 a. "Grand fathered" Direct Actions (Grand fathering may be available through 1978 for projects that are undertaken by a local agency or permitted by the state. Refer questions on these matters to the Office of Legal Affairs.) that were undertaken, funded or approved before September 1, 1976 where NYSDEC has not required an EIS and no modifications are proposed that may result in a significant adverse effect on the environment;

 b. Construction of a major utility transmission facility (certain electric or fuel gas transmission lines) where the Public Service Commission requires environmental review as part of issuing a certificate of environmental compatibility and public need under Article VII of the Public Service Law;

 c. Actions subject to the jurisdiction of the Adirondack Park Agency pursuant to §809 of the Executive Law.

IV. PROCEDURES

STEP 1. Determine if the action is subject to review under SEQRA

1. The action must be a Direct Action or one that the Department permits or funds. Direct Actions (see definition), funding and permitting by the Department are subject to SEQRA review. Actions are projects or physical activities that result in the creation, alteration or new use of structures or land. Conducting preliminary planning and budgetary activity or environmental, engineering, feasibility and other studies necessary to form a proposal for action are not subject to SEQRA review as long as these activities do not commit the Department to start, engage in, fund or approve the action (6 NYCRR §617.5(c)(18)).

2. The action must be a discretionary decision. All discretionary decisions of an agency to directly undertake, permit or fund an action or an essential part of an action that may affect the
environment are subject to SEQRA review, unless the action is excluded or exempt. A decision to construct a new highway or substantially change an existing highway is an example of a discretionary decision. Discretionary decisions involve project choices to be made by the decision makers.

3. If the action is a Type II, exempt or excluded, no further review is required under SEQRA. For a discussion of exempt and excluded actions, see Section III, Applicability, above. It should be noted that projects in or substantially contiguous to a Critical Environmental Area (CEA), as defined in Attachment 2.1.A.: §15.2(f), are presumed to be Non-Type II Actions unless there is clearly only minor alteration of or adverse effect upon such CEA (see Attachment 2.1.A.:§15.14(7)(x); see also 6 NYCRR Part 617.2(I) & .14(g)).

Type II:

If the action is a Direct Action of the Department, determine whether the action is on the Department Type II list (Attachment 2.1.A.: §15.14; see also Attachment 2.1.B. for the Type II list and a discussion of when to classify a project and how to determine Type II classification using the CAPER 1 computer program).

If the action is Type II, no further SEQRA review is required. Do sufficient documenting of the Type II classification as required by Chapter 2 and Appendix B of the Design Procedure Manual. For instance, documentation should clearly illustrate how the action is consistent with a particular Type II action listed in §15.14(e). In addition, how the action does not exceed applicable §15.14(d) thresholds should be clearly stated.

Prudent judgement must be applied in determining if the applicable §15.14(d) thresholds are exceeded on any given project. To decide whether there is a more than minor or significant effect, consideration must be given to the effect's magnitude or severity and the importance or relation to its setting. Generally, the larger the impact, the more likely more in-depth analysis would be required. However, a small impact on a resource that is not that large to begin with or that may be highly valued by the local community may also warrant additional review.

If the action will be funded or permitted by the Department, determine whether the action is on the Department Type II list or on the Type II list of the applicant agency. The applicant for such projects shall submit sufficient information for the Department to make the Type II determination. The Region should keep documentation of the Type II determination in the project files.

If the Department is not the lead agency, it will be notified of the determination of the lead agency that the project is Type II, non-Type II (Type I or unlisted under 6 NYCRR Part 617), exempt or excluded. In such a case, upon review and concurrence of submitted determination, the Department may fund, permit or undertake action with respect to the action and no further
SEQRA review is required (See also discussion of Involved Agency Responsibilities below).

If an action is excluded, exempt or Type II, there is no further review required under SEQRA. (Note: Although SEQRA does not require any further reviews, Department policy may require additional reviews, such as Design Quality Assurance Bureau reviews and Structures Division technical reviews.) However, a memo to the file should be prepared which clearly shows how the action meets the definition of a particular listed Type II action, as set forth in § 15.14(e), and does not exceed applicable §15.14(d) thresholds. The Department's decision relative to Type II actions should be reflected in the Expanded Project Proposal, Scope Summary Memorandum and/or Design Approval Document.

STEP 2. **Determine the Lead Agency** (see Attachment 2.1.A.: §15.5)

The lead agency decision should be made during the project scoping stage. The Department is the lead agency:

1. In Direct Actions;

2. Where the Department is funding the action and the action is a capital construction project for which the Department will prepare or directly supervise preparation of the project design (unless the applicant is an agency that asks to be the lead agency and the Department agrees);

3. Where the Department is asked to fund or permit an action of an applicant that is not an agency subject to SEQRA and where no other agencies are involved.

The Department is not the lead agency where:

1. There is an agency applicant, the Department is asked to fund or permit the action and the action is not a capital construction project for which the Department will prepare or directly supervise project design preparation (the lead agency will be the applicant or any other agency as agreed by the applicant and such other agency);

2. There are other agencies involved with greater responsibility for the proposed action and the Department is asked to construct, design, fund or approve non-essential transportation facilities or structures that are supplementary to the proposed non-transportation action;

3. There are other agencies involved with greater responsibility for the proposed action and the Department is asked to permit a proposed non-transportation action.

In unusual cases, the Department may agree to be lead agency even if the preceding factors apply. If such an unusual cases arises, please contact the Environmental Analysis Bureau and/or the Office of Legal Affairs for advice.
It is also possible for the Department to act as a co-lead agency. If you feel a co-lead agency situation is advisable, please contact the Environmental Analysis Bureau for advice.

**Involved Agency Responsibilities**

The Department is an involved agency under SEQRA when funding, approving or issuing a permit for a project and such funding, approval or permit issuance is an essential part of the project. (see Appendix A of the Department's Manual of Administrative Procedures Code No. 7.12-2, dated 10/12/93 for guidance on when SEQRA processing is required) As an involved agency the Department has responsibility for providing the lead agency with comments on the SEQRA documents produced in the SEQRA process (see Attachment 2.1.A.: §15.6(b) and §15.7(b)). see also 6 NYCRR Part 617 § 617.3(e)). It is the policy of the Department not to issue a highway work permit until all the SEQRA requirements are met. (Policy for Entrance to State Highways, Section 2.2.3 - SEQRA Coordination) The Department's "An Informational Guide to the Highway Work Permit Process", which includes the Policy for Entrance to State Highways, encourages applicants to contact the Department as soon as the local government begins the SEQRA process.

The Department's involved agency input or comments should be closely related to its highway design, traffic and safety expertise and related environmental impact experience and obligations. (For additional discussion about utilizing the involved agency role, particularly with respect to arterial access management, see "The Toolbag of Techniques For NYS Arterial Management - 1997 Summary" prepared by the Corridor Management Group; see also policy for Entrance to State Highways, Section 2.2.4 - Arterial/Access Management Initiative). In addition, there are certain situations where, as an involved agency, the Department is required to conduct or cause to have conducted certain environmental impact analysis.

First, it is the policy of the Department not to knowingly progress, approve, permit, fund or adopt any project that causes or further exacerbates a violation of ambient air quality standards. If the Department is asked to fund or permit a project, a review of the environmental documentation to ascertain the appropriateness of the air quality assessment should be conducted. For further guidance on this policy see EPM Chapter 1A - Air Quality: Sections 8 & 19. Second, Section 14.09 of the Parks, Recreation and Historic Preservation Law requires consultation with the State Historic Preservation Office (SHPO) prior to an action of approval, if it appears that any aspect of the project may beneficially or adversely impact any historic, architectural, archeological or cultural property on or eligible for listing on the National Register of Historic Places. Applicants to the Department should be asked to perform appropriate analysis and coordinate with SHPO accordingly.

In a coordinated review process where the lead agency has exercised due diligence in identifying the Department as an involved agency and issued a Negative Declaration, the Department having utilized the opportunity to make sure its interest are appropriately represented, can rely on that determination in making a decision to permit, approve or fund (see Attachment 2.1.A.: §15.8(a); see also 6 NYCRR Part 617.6(b)(iii)). Where the lead agency has prepared an EIS, the Department must issue a findings
statement prior to funding, approving or permitting a project (see Step 14 - SEQRA Record of Decision for findings statement contents).

STEP 3. **Compliance with Coastal Policies and Regulations** (see Attachment 2.1.A.: §15.6)

If an action is Non-Type II and within a coastal area, the Department must comply with the procedures of the New York Department of State (DOS) Coastal Zone Regulations, 19 NYCRR 600. Any FEIS for an action in the coastal zone must include a statement that it is consistent with 19 NYCRR Part 600. Even if the action is determined not to have a significant effect (a Negative Declaration under Step 5), a certification that the action will not substantially hinder the coastal policies in Part 600 must be included in the Negative Declaration and filed with the DOS. (See also EPM Chapter 4.2. - Coastal Management)

STEP 4. **Determination of Significance**

The determination of significance is a critical step in the SEQRA process where the Department decides whether an EIS must be prepared. The tentative determination of significance is first made during the scoping stage of project development to enable the project developer to estimate project cost, scope and schedule. Such a determination of significance is confirmed in Design Phase I (see Design Procedure Manual).

The Department must consider severity of the environmental impacts and their importance in relation to the setting. The information compiled in the environmental assessment should be reviewed to determine whether the action may have a significant effect on the environment.

1. **Prepare Environmental Assessment**

The Department shall prepare an environmental assessment on proposed Direct Actions that are not Type II, exempt or excluded. Such an assessment will form the basis for making the determination of significance. The Design Procedure Manual provides guidance on how to develop Design Reports/Environmental Assessments (see Appendix B of the Design Procedure Manual). If the action is not a Direct Action, the applicant can be requested to complete a Full Environmental Assessment Form (EAF) (see Attachments 2.1.D. and 2.1.E.). **An environmental assessment is not required if the Department chooses to go directly to a DEIS**; however, it may be useful to prepare an environmental assessment even if the action is likely to be the subject of a DEIS. If the Department decides a DEIS will be prepared, go to Step 8.

It should be noted that use of the attached EAF's is not mandatory. Agencies may create their own assessments provided they are at least as comprehensive as the forms and include an evaluation of the known or potential environmental impacts.
2. Determine Significance

a. Factors to consider in determining significance are listed in Attachment 2.1.A.: §15.11(a).

b. The entire set of activities that constitute the project is one action for the purposes of SEQRA review. The whole action must be considered in determining significance, including all known phases of the action. If separate phases of an action will be treated independently, a generic EIS must be prepared. Generic EIS’s can deal with phases or sequenced actions. Generic EIS’s must include not only the site-specific actions but an analysis of subsequent phases’ cumulative effects on the environment and existing natural resource base. You should consult with EAB if you think a generic EIS is required.

c. Reasonably related short-term (immediate), long-term and cumulative impacts must be considered. It is usually not necessary to consider cumulative impacts of unrelated actions when making the determination of significance. Cumulative impacts occur when actions are reasonably expected to take place in a way that their combined probable effects may be significant. If you think that cumulative effects are of concern in a particular action, you may wish to consult with the Office of Legal Affairs as well as EAB. Cumulative effects need to be considered in determining significance if two or more simultaneous or subsequent actions are:

i) included in any long-range plan of which the action under consideration is a part (For example, if a community formally adopted a master plan or comprehensive plan that projected a need for certain transportation projects and other not necessarily related projects, the Department, in assessing the environmental impacts of the transportation projects, must also consider potential impacts associated with such other not necessarily related projects discussed in the master or comprehensive plan.);

ii) likely to be undertaken as a result of the proposed action. For instance, if, as a result of a transportation project, additional projects or development is likely, the Department must assess the potential impacts of such additional projects or development as part of its review of the transportation project;

iii) dependent on one another and one action cannot or will not proceed unless the other action is taken. (Consideration of these cumulative impacts is only necessary to the extent to which they are consistent with the definitions set forth in a. and/or b. above.);

d. Significance of an impact should be assessed in connection with its setting (e.g. urban or
rural), probability of occurrence, duration, irreversibility, geographic scope, magnitude and the number of people it may affect.

If an action's impact on the environment is not considered significant, after an environmental assessment is prepared, a Negative Declaration can be prepared (Step 5). If an action's impact on the environment may be significant, a Positive Declaration must be prepared (Step 6).

**STEP 5. Negative Declaration**

If the Department determines, based on consideration of a completed environmental assessment (i.e., FDR/EA or FDR (see Design Procedure Manual, Appendix B for format and content)), comments received and transcript of any public hearing (i.e., EDPL or federal-aid), that the action will not have significant environmental effects, it will prepare a Negative Declaration (see Attachment 2.1.A.: §15.6(b) and §15.7(b)).

1. **Negative Declaration Contents**

   A Negative Declaration or Determination of No Significant Effect is the decision that an action will not result in a significant environmental impact and, consequently, no EIS will be prepared. The determination is based on facts known at the time and cannot depend on the outcome of future studies. (In the Department, this notice is filed in Design Phase IV just prior to requesting design approval [see the appropriate section of Part II, Steps of the Design Procedure Manual]). The Notice of a Negative Declaration shall contain the following:

   - A statement that it is a Negative Declaration for the purposes of Article 8 of the Environmental Conservation Law;
   - A statement that the Department (as lead agency) has determined that the action will not have a significant effect on the environment;
   - The name, address and telephone number of the Department employee who can provide further information;
   - A brief description of the nature, extent and location of the action;
   - A statement of the reasons that support the determination (NOTE: This statement should be a reasoned elaboration of the facts and circumstances supporting the Negative Declaration. It should identify all the relevant areas of environmental concern and succinctly show, based on the environmental assessment, why the impact, if any, is not significant);
   - Where applicable, a determination of consistency with the Department of State Local
Waterfront Revitalization Plan policies.

2. Conditioned Negative Declaration

The Conditioned Negative Declaration (CND), not generally issued by the Department, is only available for non-ministerial and non-type II actions that the Department is funding or permitting. An agency may not use a CND for Direct Actions. The Department may choose to make a CND where the action may have potentially significant environmental effects that can be eliminated or adequately mitigated by conditions. CND's have the following requirements in addition to those listed above in Section A (see 6 NYCRR §617(d)):

- Must be for projects which do not exceed NYSDEC Type I thresholds (see Attachment 2.1.G.);
- Must use coordinated review procedures with other agencies, as described in NYSDEC SEQRA Regulations, 6 NYCRR §617.6(b)(3);
- Must use Full EAF;
- Must publish the CND in the NYSDEC's Environmental Bulletin for a minimum 30-day comment period;
- Must explicitly state mitigation measures CND.

STEP 6. Positive Declaration (see Attachment 2.1.A.: §15.6© and 15.7(c))

1. Positive Declaration Contents (see Attachment 2.1.A.: §15.10(b))

The Department shall prepare a formal declaration that the action may result in significant environmental impacts, known as a Positive Declaration NEPA process. Such a positive declaration can be made as early as in Design Phase I (see the Design Procedure Manual, Part II Steps, for timing and Appendix D for a sample notice). These actions will require the preparation of an EIS. The Notice of a Positive Declaration must contain the following:

- A statement that it is a Positive Declaration for the purposes of Article 8 of the Environmental Conservation Law;
- A statement that the Department (as lead agency) has determined that the action may have a significant effect on the environment;
- A statement that a DEIS will be prepared;
• The name, address and telephone number of the Department employee who can provide further information;

• A brief description of the nature, extent and location of the action;

• A brief description of the possible significant effects that have been identified.

2. Actions Where the NEPA Process Applies

The NEPA review process applies to actions that are federally funded or subject to federal approvals. If the Department determines that an action may have significant environmental effects and is subject to the NEPA review process, the Department shall follow procedures for compliance with NEPA that will result in the completion of a federal EIS. If another agency is the lead agency and the Department is notified that the action may have significant effects and is subject to the NEPA review process, the Department shall follow procedures for compliance with NEPA (see Attachment 2.1.A.: §15.8(b)). Completing the Federal FEIS and co-authoring a document entitled the Federal Record of Decision (see Step 14) completes the SEQRA process if the co-authored Record of Decision contains all the substantive requirements of a SEQRA Record of Decision. If a Federal Record of Decision is prepared by the Federal Agency, the Department still has to do the substantive SEQRA work. That is, the Department may adopt the Federal Record of Decision as a statement of facts and conclusions relied upon in the FEIS for the Department's decision. However, the Department must still state its decision and make the findings required by SEQRA (See Step 14 below for a discussion of SEQRA's findings statement requirements).

STEP 7. **Filing the Notice of Negative or Positive Declaration** (see Attachment 2.1.A: §15.10(a)(2) & (b)(2); see also 617.12(b) & (c))

Immediately upon completion, the Notice of a Negative or Positive Declaration shall be filed:

• With the NYSDOT Main Office;

• With the Commissioner of Environmental Conservation at 50 Wolf Road, Albany, NY 12233;

• In the Environmental Notice Bulletin (ENB) (Attachment 2.1.F provides a form which may be used in fulfilling this notice requirement);

• For Direct Actions, with the NYSDOT Regional office;

• For Direct Actions, with the Regional NYSDEC office;

• For Direct Actions, with the chief executive officer of all the political subdivisions in which the

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action is located;

• If there is an applicant, with the applicant;

• If there are involved agencies, with the involved agencies.

**Filing the Notice of Negative Declaration concludes the SEQRA process for an action.**

Any subsequent notices required to be filed or published by the Department which are related to a proposed action for which the Department has filed a Negative Declaration, shall contain a statement that such an action has been the subject of such Negative Declaration (see Attachment 2.1. A.: §15.10(f)).

**STEP 8. EIS Scoping (see Attachment 2.1.A.: §15.2(x), §15.6(c)(2) and §15.7(d))**

After filing a Positive Declaration, the Department will undertake such scoping as is necessary. Scoping is the process that identifies relevant environmental effects of an action that must be addressed in a DEIS. This scoping is with respect to SEQRA. It should not be confused with the Department's Project Scoping. This is not to say, however, that pertinent EIS scoping information should not be introduced at Project Scoping, if available. Scoping is intended to narrow the issues in the EIS so the relevant areas of environmental concern are identified and fully explored. Scoping can be thought of in formal or informal terms (A scoping checklist devised by NYSDEC is included as Attachment 2.1.G.).

1. **Formal Scoping (6 NYCRR Part 617 §617.8)**

   Formal scoping results in a written scope of issues to be addressed in the EIS. If there is an applicant, the Department may ask the applicant to prepare a draft written scope of issues, but as lead agency, the Department must provide a Draft scope to involved agencies and make such a scope available to interested agencies. As Lead Agency the Department shall provide involved agencies and others who provided comment a Final Scope within 60 days of the distribution of the Draft Scope. In formal scoping, an opportunity, whether it be by public meeting or other means, for public participation must be provided. Any substantive information obtained during scoping, not included in the DEIS should be considered public comment on the DEIS.

2. **Informal Scoping**

   Informal scoping is based on informal comments from the applicant and any involved agencies. There is no separate written document. Comments are merely incorporated into the draft EIS.

   The Department has the option of whether to utilize formal or informal scoping. Criteria to consider might include, but are not limited to: (1) degree of public interest, (2) number of and
role of involved agencies and (3) degree of project complexity.

STEP 9. Preparation and Review of a Draft EIS

Based on Regional Office input and Main Office advisory input, as appropriate, the Region will prepare or supervise the preparation of the draft EIS (DEIS).

1. DEIS Content

The DEIS should contain all information necessary to make decisions involving environmental concerns for the proposed action. The DEIS also allows public review and comment on the environmental effects of a proposed action. The Department will prepare the DEIS for Direct Actions. Where another agency is the lead agency, the Department will comment on the DEIS. If there is an applicant and the Department will prepare or supervise design of the project, the Department will prepare the DEIS unless the applicant wants to and the Department agrees. In all other cases, the applicant will be notified to prepare the DEIS in accordance with Department procedures (see Attachment 2.1.A.: §15.15 for a list of DEIS and FEIS contents; see also the Design Procedure Manual, Appendix B (Format and Content of Design Approval Documents)).

2. Review of Draft EIS

After preparing the Design Report/DEIS (see the Design Procedure Manual, "Procedural Steps," Non-Type II (EIS), Phase I), the DR/DEIS is distributed to the Regional reviewers and for advisory reviews, the Design Quality Assurance Bureau and Main Office reviewers, as appropriate (see Design Procedure Manual, Part II - Steps and Appendix I for instructions regarding Main Office reviews). If the DEIS is prepared for a project that the Department is permitting and/or funding, the applicant must be notified when the DEIS is accepted by the Department.

STEP 10. Notice of Completion of the DEIS: Contents and Filing (see Attachment 2.1.A.: §15.10(c))

After completing internal review of the DEIS, the Department files a Notice of Completion of the DEIS, allowing for a minimum comment period of 30 days (see Attachment 2.1.A.: §15.6(d)(3) and §15.7(f)(3); see also Design Procedure Manual, Appendix D, for a sample notice).

1. The Notice of Completion of the DEIS must contain the following:
   
   • A statement that it is a Notice of Completion of a DEIS;
   
   • A statement that NYSDOT is the lead agency;
• The name, address and telephone number of the NYSDOT employee who can provide further information;

• A brief description of the nature, extent and location of the action;

• A brief description of the possible significant effects that have been identified in the DEIS;

• A statement indicating where and how copies of the DEIS may be obtained from the Department;

• A statement that comments on the DEIS are requested and will be received and considered by the Department for not less than 30 days from the date of filing of the notice or not less than 10 days from the close of any hearing held to consider the DEIS, which ever is last;

• The address to which comments should be sent.

2. The Notice of Completion of the DEIS, together with a copy of the DEIS, shall be filed (see Attachment 2.1.A.: §15.10(c)(2); see also 6 NYCRR Part 617 §617.12(b)(c)):

• With the Environmental Analysis Bureau on all projects and the Design Quality Assurance Bureau on federal-aid projects;

• With the Commissioner of the Department of Environmental Conservation at 50 Wolf Road, Albany, NY  12233;

• In the ENB  (Attachment 2.1.F provides a form which may be used in fulfilling this notice requirement) (NOTE: Business Environment Publication, Inc. need not receive a copy of the DEIS or FEIS);

• For Direct Actions, with the NYSDOT Regional office;

• For Direct Actions, with the Region NYSDEC office;

• For Direct Actions, with the chief executive officer of all the appropriate political subdivisions in which the action is located;

• If there is an applicant, with the applicant;

• If there are involved agencies (local, state or federal), with the involved agencies;
• With the Secretary of State if the action is in a coastal area.

**STEP 11. Holding a SEQRA Hearing**

1. Determination of Whether to Hold a SEQRA Public Hearing (see Attachment 2.1.A.: §15.6(d)(2) and 15.7(f)(2)).

Upon completion of the DEIS, the Department shall determine whether or not to hold a hearing (**NOTE:** Notices of Public Hearing may be combined with Notice of Completion of DEIS). Hearings are optional under SEQRA. At the discretion of the Department, it may determine that a hearing is advisable based on the degree of interest shown by other persons and the extent to which a hearing can aid in the Department decision-making process. It is presumed that whenever there is public interest identified, the Department will to the fullest extent possible address any issues or concerns raised by the public.

**NOTE:** If a project is federal-aid, make the determination based on Federal Public Hearing requirements (see 23 CFR 771, §771.111). Also, if takings are more than de minimis, an Eminent Domain Procedures Law (EDPL) public hearing may be required, in which case the hearing should be conducted in accordance with federal-aid public hearing procedures (see discussion of the appropriate Design Phase II section of the Design Procedure Manual, Part II, Steps). The SEQRA or NEPA public hearing can create an exemption from the EDPL hearing requirement if the hearing is held on notice to owners of property which may be acquired for the project. In the case where more than de minimis amounts of property are to be acquired, the notice of hearing should be mailed to each property owner and documentation of that mailing should be maintained in the Department's project files.

2. Contents of the Notice of SEQRA Hearing (see Attachment 2.1.A.: §15.10(d))

The hearing notice must be published in a newspaper of general circulation in the area of the potential impacts and effect of the proposed action a minimum of 14 days before a hearing is held. Copies of the notice of the public hearing must be sent to local, state and federal advisory agencies and individuals on the project mailing list. The Notice of Hearing shall contain the time, place and purpose of the hearing and a summary of information contained in the Notice of Completion of the DEIS.

It shall be filed in the same manner as the Notice of Completion of the DEIS.

**NOTE:** Notice requirements are different for EDPL or federal-aid public hearings (see Design Procedure Manual, Part II, Steps, Design Phase III).
3. **Conduct of the SEQRA Hearing**

   At the meeting, the public may speak and submit written comments. There should be arrangements to keep a transcript of the oral comments. A sign-in sheet should be provided to keep a record of attendees. The record of the hearing should be kept as part of the project files. Written comments must be accepted for 10 days following the close of the hearing.

   For further information on public hearing requirements, see the Design Procedure Manual, Part II, Steps, Design Phase III, Appendix D and Appendix E.

After consideration of the DEIS, comments received and transcript of any public hearing, the Department uses this information to prepare a DR/FEIS.

**STEP 12. Preparation and Review of Final Environmental Impact Statement**

The Region will prepare or supervise the preparation of the Final Environmental Impact Statement (FEIS). There is no specific time limit in which the Department must prepare a FEIS incorporating comments and changes from the DEIS; however, the FEIS should be prepared as promptly as possible. All substantive or relevant comments received on the DEIS should be answered in the FEIS (see Attachment 2.1.A.: §15.15; see also the Design Procedure Manual, Appendix B (“Formal and Content of Design Approval Documents”). After internal review by Regional and Main Office reviewers, the Region resolves comments and revises the FEIS. When the Region determines that comments have been satisfactorily resolved, it notifies the applicant if there is one and publishes a Notice of Completion of the FEIS.

**STEP 13. Notice of Completion of the FEIS; Contents and Filing (see Attachment 2.1.A.: §15.10(e); see also 617.12(b) & (c))**

After completing internal review of the FEIS, the Department publishes a Notice of Completion of the FEIS.

1. The Notice of Completion of the FEIS must contain the following:

   - A statement that it is a Notice of Completion of an FEIS;
   - A statement that NYSDOT is the lead agency;
   - A brief description of the nature, extent and location of the action;
   - A statement indicating where and how copies of the FEIS may be obtained from the Department;
A statement that comments on the FEIS are requested and will be received and considered by the Department for not less than 10 days from the date of filing of the notice;

- The address to which comments should be sent.

2. The Notice of Completion of the FEIS, together with a copy of the FEIS, shall be filed for a minimum 10-day period with the following (see Attachment 2.1.A.: §15.6(g), §15.7(l) and §15.10(e)):

- With the Environmental Analysis Bureau for all projects and the Design Quality Assurance Bureau for federal-aid projects;
- With the Commissioner of the Department of Environmental Conservation at 50 Wolf Road, Albany, NY 12233;
- In the ENB (Attachment 2.1.E. provides a form which may be used in fulfilling this notice requirement) (NOTE: Business Government Publications, Inc. need not receive the FEIS);
- For Direct Actions, with the NYSDOT Regional office;
- For Direct Actions, with the Region NYSDEC office;
- For Direct Actions, with the chief executive officer of all the political subdivisions in which the action is located;
- If there is an applicant, with the applicant;
- If there are involved agencies (local, state of federal), with the involved agencies;
- With the Secretary of State if the action is in a coastal area.

STEP 14. **SEQRA Record of Decision** (see Attachment 2.1.A.: §15.9)

The Department will prepare a Record of Decision for Direct Actions or actions that the Department will permit or fund, where the action has been the subject of a FEIS or a federal FEIS. The Department may adopt the federal Record of Decision if the action was the subject of a federal FEIS and the Department jointly prepared the Record of Decision pursuant to 40 CFR 1505.2 (effective July 30, 1979).

1. The Record of Decision of the Department shall articulate such decision and include the following:
A findings statement indicating the following:

1. That the requirements of Environmental Conservation Law §8-0109 have been met;

2. That, consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action is one that minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the EIS;

3. That, consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures that were identified as practicable;

4. That, if the action is in a coastal area, the action is consistent with 19 NYCRR 600.5 or, if in an approved Local Waterfront Revitalization Program area, consistent with those policies;

A statement of the facts and conclusions relied upon in the FEIS supporting its decision and indicating the social and other economic factors that formed the basis for the decision.

In addition to the required legal findings, the Record of Decision should discuss all mitigation measures that formed the basis for the decision to proceed with the project. Listing all required mitigation in the Record of Decision will assist subsequent tracking of mitigation commitments.

A copy of the Record of Decision shall be maintained by the Region in the project files and sent to all involved agencies and, where appropriate, to the applicant. In addition, copies should be sent to the Environmental Analysis Bureau and the Design Quality Assurance Bureau in the Main Office, appropriate FHWA liaison (in most cases this will be the Design Quality Assurance Bureau (see Design Procedure Manual, Introduction, pages IV-V)).

STEP 15. Further Review Based on Project Changes: SEIS (6 NYCRR Part 617.9(a)(7))

At any point in project design where project changes are proposed, the SEQRA classification should be reviewed with the Regional Environmental Contact to assure that no project changes have occurred that would require review of the SEQRA classification or the FEIS. A Supplemental EIS (SEIS) must be prepared where project changes or a change in circumstances may result in significant adverse environmental effects or new information arises about significant adverse effects that was not previously addressed. An SEIS may also be required for project-specific analysis following a generic EIS. If an SEIS is required, the Region must file a Notice of Intent to Prepare an FSEIS and publish it in the same way as a Notice of Completion of an FEIS. You may wish to consult
with the Environmental Analysis Bureau if you think an SEIS may be required.

Any change in project’s classification should be documented by a memo to the file from the decision maker and in the Design Approval Document as appropriate.

**STEP 16. When an Action May be Undertaken** (see Attachment 2.1.A.: §15.3(c), §15.6(h) and §15.7(j))

The Department may not make a final decision (i.e., design approval) or commitment (i.e., detailed design, right-of-way acquisition, letting or starting construction) until the SEQRA process is finished. If an action requires an FEIS or is the subject of a federal EIS, the Department shall not commit itself to directly undertake the action, enter into any binding agreement or contract to fund the action or grant or commit itself to grant a permit for the action until the Record of Decision is prepared.

At the conclusion of the comment period on the FEIS or federal FEIS, the Department may undertake, fund or permit the action if it has given consideration to the FEIS or federal FEIS and prepared the Record of Decision.

**V. CITATIONS**

The following state and federal laws and regulations are used as a source for this guidance. Copies of the laws and regulations are maintained by the Regional Environmental Contact.

**STATE STATUTES**

Environmental Conservation Law §8-0101 to 8-0117 - The State Environmental Quality Review Act (SEQRA)

**STATE REGULATIONS**

17 NYCRR Part 15 - Procedures for the Implementation of State Environmental Quality Review Act (NYSDOT)

6 NYCRR Part 617 - State Environmental Quality Review Regulations (NYSDEC)

**STATE GUIDANCE**


**RELATED FEDERAL STATUTE/REGULATIONS**
VI. ADDITIONAL INFORMATION

This Project Environmental Guideline was prepared by Thomas G. Benware. For further information, contact the Cultural Resources/Socio-Economic/Process Section of the Environmental Analysis Bureau, Building 5, Room 303, 1220 Washington Avenue, Albany, New York 12232-0473; telephone (518) 457-9608.

VII. ATTACHMENTS

2.1.A. 17 NYCRR Part 15 - Procedures for Implementation of State Environmental Quality Review Act

2.1.B. Type II List and Method to Determine Type II Classification

2.1.C. NYSDEC List of Type I Actions

2.1.D. Full Environmental Assessment Form (EAF)

2.1.E. Short Environmental Assessment Form (EAF)

2.1.F. Environmental Notice Bulletin - Publication Form

2.1.G. NYSDEC Scoping List