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STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

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445 Hamilton Ave | White Plains, NY
200 Westage Business Center | Fishkill, NY

www.kblaw.com

914/946-4777 | 845/896-0120

State Environmental Quality Review Act (SEQRA)

- *Purpose/Intent*
 - Incorporate consideration of environmental factors into the application review process at the earliest possible time by identifying the environmental impacts and determining whether the application must be modified to avoid or mitigate the impacts.
 - Environmental factors must be balanced with social and economic considerations.

Compliance

- *Procedural*
 - Strict compliance required

- *Substantive*
 - Courts will review whether the Board identified the relevant standards of environmental concern and took a “hard look” at them, and made a reasoned elaboration for its determination.

Basic Framework of SEQRA

- ***Step 1 – Classify the Proposed Action***
 - Type I, Type II, Unlisted
- ***Step 2 – Determine Lead Agency***
 - Lead agency is responsible for undertaking environmental review of the project. Can be any agency that has approval authority over one or more aspects of the project.
- ***Step 3 – Determine Significance***
 - Will the application result in one or more significant adverse environmental impacts?
 - If the answer is “no” – Negative Declaration
 - If the answer is “it may” – Positive Declaration

Basic Framework of SEQRA

- *Step 4 – Scoping*
 - Mandatory as of January 1, 2019
- *Step 5 – Preparation of the DEIS*
- *Step 6 – Preparation of the FEIS*
- *Step 7 – Findings Statement*
 - Provides the rationale for the Lead Agency’s determination as to whether the action avoids or minimizes the adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating mitigation measures.

2018 Amendments to SEQRA

- June 2018 – NYSDEC adopted amendments to SEQRA. First major amendments to SEQRA in more than 20 years.
- **Effective January 1, 2019 for any application that has not already received a Positive or Negative Declaration.**
- Modifications to list of Type I actions, Type II actions and procedural amendments.

Type I Amendments

of Residential Units

- In municipalities with a population of 150,000 persons or less: construction of ~~250~~ 200 residential units that will be connected to existing public water and sewer.
- In municipalities with a population between 150,000 and 1,000,000 persons: construction of ~~1,000~~ 500 residential units that will be connected to existing public water and sewer
- In municipalities with a population of 1,000,000 or more persons: construction of ~~2,500~~ 1,000 residential units that will be connected to existing public water and sewer.

Type I Amendments, con't

Parking of Vehicles

- Previously, projects that involved parking for 1,000 vehicles or more were classified as Type I regardless of the size of the municipality.
- Now, projects in smaller communities (population of 150,000 or less) will be classified as Type I if the project involves parking of 500 vehicles or more. In larger communities, the threshold is still 1,000 or more vehicles.

Type I Amendments, con't

National/State Historic Register

- Previously, Unlisted actions that occurred wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National or State Register of Historic places, were automatically classified as Type I regardless of the project size.
- Now, Unlisted actions that meet the same locational criteria must exceed 25% of any Type I threshold to be classified as Type I.

Type I Amendments, con't

National/State Historic Register

- Previously, only historic resources that were **already listed** on the National or State Historic Register received elevated treatment.
- Now, historic resources that have not been listed, but have been determined by the Commissioner of the Office of Parks, Recreation and Historic Preservation to be **eligible** for listing must be considered in the context of this Type I category.

Type II Amendments

Generally, the focus of the amendments to the Type II list is to incentivize environmentally compatible development.

Didn't Make the Cut

- Several new Type II actions were proposed, but were not included in the final rule making for varying reasons. Some of those include:
 - Minor Subdivisions (e.g. 2-lot subdivisions)
 - Small Cell Wireless Telecommunications Deployments
 - “Sustainable Development” (construction of a certain size in a municipal center on a previously disturbed site – infill development)

Type II Amendments, con't

617.5(c)(2) – Upgrading buildings to meet state energy code

“...replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part.”

Type II Amendments, con't

617.5(c)(3) – Retrofit of existing structure and its appurtenant areas to incorporate **green infrastructure**.

“**Green infrastructure**” - “...practices that manage storm water through infiltration, evapo-transpiration and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse.”

Type II Amendments, con't

617.5(c)(7) - Installation of telecommunication cables in existing highway or utility rights of way utilizing trenchless burial or aerial placement on existing poles.

- Trenchless methods means a type of subsurface construction work that requires periodic excavation but not continuous open trenches.
- Common trenchless burial methods include horizontal directional drilling, “jack and bores,” and “impact moling.”
- Limited to telecommunication projects – not all utilities
- Does not involve actions that involve placement of new poles
- Does not involve co-location of cellular antennas and repeaters (5G/small cells)

Type II Amendments, con't

Section 617.(c)(11) – Conveyances of land in connection with a single-family, two-family or three-family residence on an approved lot

“construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in section 617.5(c)(13) and the installation, maintenance and/or upgrade of a drinking water well or a septic system, or both, and conveyances of land in connection therewith.”

Type II Amendments, con't

617.5(c)(14) – Installation of solar energy arrays where such installation involves:

- 25 acres or less of physical alteration
- on certain categories of sites, such as:
 - closed landfills, brownfields sites, Superfund sites, disturbed areas at publicly-owned wastewater treatment facilities, disturbed sites in industrial zoning districts, parking lots or garages

Type II Amendments, con't

617.5(c)(15) - Installation of solar energy arrays on an existing structure provided the structure is not historically sensitive as described in the regulations.

Type II Amendments, con't

617.5(c) (16) – Lot line adjustments

“Granting of individual setback and lot line variances and adjustments”

- Lot line adjustments do not create new lots, but rather vary the location of a lot line between two or more lots.
- Limited to setback variances
- “Individual” refers to one project on one lot (not one individual setback variance)
- Does not extend to use variances

Type II Amendments, con't

617.5(c)(18) - Reuse of a **residential or commercial structure**, or of a structure containing **mixed residential and commercial uses**, where the residential or commercial use is a **permitted use** under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceed any of the Type I thresholds.

- Encourages reuse of vacant buildings, but also includes change of use of an occupied building.
- Reuse can include nominal/de minimus site work and still be classified as Type II
- Industrial uses are not included in this category
- DEC did not separately define “commercial” but instead chose to rely upon common meaning or definitions in local zoning codes.

Type II Amendments, con't

617.5(c)(19) – County recommendations pursuant to General Municipal Law 239-m or 239-n

- Not subject to SEQRA because they are advisory opinions
- Where the proposed action is not subject to SEQRA (i.e. lot line adjustment), EAF will not be a required component of the “full statement” of the project referred to the County Planning Board.

Type II Amendments, con't

617.5(c)(39) - Acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired, or acquisition of a conservation easement

- Applies to the dedication of parkland by a municipality, but does not include park management activities or development plans or actions within the parkland that would otherwise be subject to SEQRA

Type II Amendments, con't

617.5(c)(40) - Sale and conveyance of real property by public action pursuant to Article 11 of the Real Property Tax Law (in rem)

617.5(c)(41) - Construction and operation of an anaerobic digester, within currently disturbed areas at an operating publicly-owned landfill, provided the digester has a feedstock capacity of less than 150 wet tons per day, and only produces Class A digestate...that can be beneficially used, or biogas to generate electricity or to make vehicle fuel, or both

Other Amendments

Scoping

- Scoping is now mandatory, except for a Supplemental EIS
 - Clarifies that scoping is not limited to the analysis of potentially significant issues identified in the EAF
- New process for late-filed comments on the Scope:

Scoping comments submitted after issuances of the Final Scope must be incorporated into the DEIS or attached as appendix, if the comment identifies:

 1. Nature of the information
 2. Importance and relevance to a potential significant impact
 3. Why it was not identified during scoping
 4. Why it should be included now

Other Amendments

- DEIS Completeness Determination
 - Adds that the determination of adequacy of a resubmitted draft EIS must be based solely on the written list of deficiencies
- DEIS Content
 - Adds climate change impacts to the list of subjects to be studied in a DEIS, if relevant. Must include discussion on the impacts of the project on climate change, and also the effect climate change may have on the project

Other Amendments

- Notices and Publication
 - Notice of Type I draft and final scopes must now be published in the NYSDEC Environmental Notice Bulletin
 - Draft and final scopes & draft and final EIS must be published on a publicly accessible website that is free of charge. The website can be discontinued one year after all federal, state and local permits have been issued or after the action has been funded or undertaken, whichever is later. Printed filings and notices must indicate the website address where the filing is posted.
- Fees
 - Project sponsor may request estimate of costs for review of EIS, and may request copies of invoices for municipal consultant's work in reviewing the EIS

KEANE & BEANE P.C.
ATTORNEYS AT LAW

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Thank you!
For more information:
Jennifer L. Gray, Esq.
jgray@kblaw.com

445 Hamilton Ave | White Plains, NY
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