

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 6. Department of Environmental Conservation
Chapter VI. General Regulations
Part 617. State Environmental Quality Review (Refs & Annos)

6 NYCRR 617.7

Section 617.7. Determining significance

(a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

(b) For all Type I and Unlisted actions the lead agency making a determination of significance must:

(1) consider the action as defined in sections 617.2(b) and 617.3(g) of this Part;

(2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

(3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and

(4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

(c) Criteria for determining significance:

(1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- (ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
- (iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to section 617.14(g) of this Part;
- (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- (v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- (vi) a major change in the use of either the quantity or type of energy;
- (vii) the creation of a hazard to human health;
- (viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
- (ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- (x) the creation of a material demand for other actions that would result in one of the above consequences;
- (xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or
- (xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

(d) Conditioned negative declarations.

(1) For Unlisted actions involving an applicant, a lead agency may prepare a conditioned negative declaration (CND) provided that it:

(i) has completed a full EAF;

(ii) has completed a coordinated review in accordance with section 617.6(b)(3) of this Part;

(iii) has imposed SEQR conditions pursuant to section 617.3(b) of this Part that have mitigated all significant environmental impacts and are supported by the full EAF and any other documentation;

(iv) has published a notice of a CND in the ENB and a minimum 30-day public comment period has been provided. The notice must state what conditions have been imposed. An agency may also use its own public notice and review procedures, provided the notice states that a CND has been issued, states what conditions have been imposed and allows for a minimum 30-day public comment period; and

(v) has complied with subdivision (b) of this section and section 617.12(a) and (b) of this Part.

(2) A lead agency must rescind the CND and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify:

(i) potentially significant adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or

(ii) a substantial deficiency in the proposed mitigation measures.

(3) The lead agency must require an EIS if requested by the applicant.

(e) Amendment of a negative declaration.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency, at its discretion, may amend a negative declaration when substantive:

(i) changes are proposed for the project; or

(ii) new information is discovered; or

(iii) changes in circumstances related to the project arise; that were not previously considered and the lead agency determines that no significant adverse environmental impacts will occur.

(2) The lead agency must prepare, file and publish the amended negative declaration in accordance with section 617.12 of this Part. The amended negative declaration must contain reference to the original negative declaration and discuss the reasons supporting the amended determination.

(f) Rescission of negative declarations.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency must rescind a negative declaration when substantive:

- (i) changes are proposed for the project; or
 - (ii) new information is discovered; or
 - (iii) changes in circumstances related to the project arise; that were not previously considered and the lead agency determines that a significant adverse environmental impact may result.
- (2) Prior to any rescission, the lead agency must inform other involved agencies and the project sponsor and must provide a reasonable opportunity for the project sponsor to respond.
- (3) If, following reasonable notice to the project sponsor, its determination is the same, the lead agency must prepare, file and publish a positive declaration in accordance with section 617.12 of this Part.

Credits

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