

## Chapter 5: City Environmental Quality Review (CEQR)

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### § 5-01 Source of Authority and Statement of Purpose.

Section 192(e) of the Charter provides that the City Planning Commission "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." These rules are intended to exercise that mandate by redefining lead agencies within the city in accordance with law, prescribing the relationship of the new Office of Environmental Coordination with those agencies and regulating scoping. The organization and numbering of the various sections of these rules are not intended to correspond precisely to Executive Order 91. [43 RCNY Chapter 6, also, see Appendix A hereto];. Rather, these rules are an overlay on Executive Order 91. Where these rules conflict with Executive Order 91, these rules supersede the Executive Order. In deciding upon the appropriate lead agency for certain classes of actions taken by the city, the City Planning Commission has selected the involved agency "principally responsible for carrying out, funding or approving" those actions. 6 NYCRR § 617.2(v). For private ULURP applications, for § 197-a plans and for all actions primarily involving a zoning map or text change, the City Planning Commission, responsible under the Charter "for the conduct of planning relating to the orderly growth, improvement and future development of the city" (Charter § 192(d)), is the lead agency. For other ULURP applications, the city agency applicant, the agency that will generally be involved with ensuring programmatic implementation of the action, is the lead agency. Most of the remaining lead agency designations in the rules similarly address other approvals required by the Charter by designating the agency charged with ensuring programmatic implementation as the lead agency for those approvals. In appropriate cases, a lead agency designated by the rules may transfer its lead agency status to another involved agency. The rules ensure that lead agencies have access to the technical and administrative expertise of the Office of Environmental Coordination. Finally, the rules provide for involved and interested agencies, including the City Council, to participate in the environmental review process, and ensure a role for the public in scoping.

### § 5-02 General Provisions.

(a) *Continuation of Executive Order No. 91 [43 RCNY §§ 6-01 et seq.]; [See Appendix A to these rules]*. Until the City Planning Commission promulgates further rules governing environmental review of actions taken by the city, Executive Order No. 91 of August 24, 1977, as amended (Executive Order 91), shall continue to govern environmental quality review in the city except where inconsistent with these rules, provided, however, that the following provisions of Executive Order 91 shall not apply: the definitions of "Agency", "Lead Agencies" and "Project data statement" defined in § 6-02, subdivision (b) of § 6-03, subdivision (a) of § 6-05, the introductory paragraph of subdivision (b) of § 6-05, paragraphs one and two of subdivision (a) of § 6-12, § 6-14, and subdivision (b) of the TYPE II part of § 6-15.

#### (b) *Rules of Construction.*

(1) All functions required by Executive Order 91 to be performed by the "lead agencies," as formerly defined in § 6-02 of such Executive Order, shall be performed by the lead agency prescribed by or selected pursuant to these rules or by the Office of Environmental Coordination where authorized by these rules.

(2) Wherever Executive Order 91 explicitly or by implication refers to subdivision (b) of the Type II part of § 6-15 of such Executive Order, such reference shall be deemed to be to § 617.13(d) of the SEQRA Regulations.

(3) The reference to "a determination pursuant to § 6-03(b) of this Executive Order" contained in Executive Order 91 § 6-05(b)(1) shall be deemed to refer to selection of a lead agency pursuant to § 5-03 of these rules.

(4) The Office of Environmental Coordination shall succeed to functions performed by the City Clerk pursuant to Executive Order 91 with respect to the receipt and filing of documents.

(5) References in these rules and in Executive Order 91 to specific agencies and provisions of law shall be deemed to apply to successor agencies and provisions of law.

#### (c) *Definitions.*

(1) All definitions contained in Executive Order 91, other than the definitions of "agency" and "lead agencies", shall apply to these rules.

(2) "Action" as defined in § 6-02 of Executive Order 91 includes all contemporaneous or subsequent actions that are

included in a review pursuant to City Environmental Quality Review.

(3) The following additional definitions shall apply to these rules unless otherwise noted:

**Agency.** "Agency" shall mean any agency, administration, department, board, commission, council, governing body or other governmental entity of the city of New York, including but not limited to community boards, borough boards and the offices of the borough presidents, unless otherwise specifically referred to as a state or federal agency.

**City Environmental Quality Review.** "City Environmental Quality Review" (CEQR) shall mean the environmental quality review procedure established by Executive Order 91 as modified by these rules.

**Determination of Significance.** "Determination of significance" shall mean a negative declaration, conditional negative declaration or notice of determination (positive declaration).

**Interested Agency.** "Interested agency" shall mean an agency that lacks jurisdiction to fund, approve or directly undertake an action but requests or is requested to participate in the review process because of its specific concern or expertise about the proposed action.

**Involved Agency.** "Involved agency" shall mean any agency that has jurisdiction to fund, approve or directly undertake an action pursuant to any provision of law, including but not limited to the Charter or any local law or resolution. The City Council shall be an involved agency for all actions for which, as a component of the approval procedure for the action or a part thereof, the City Council has the power to approve or disapprove, regardless of whether the City Council chooses to exercise such power.

**Lead Agency.** "Lead agency" shall mean the agency principally responsible for environmental review pursuant to these rules.

**Scoping.** "Scoping" shall mean the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of non-relevant issues.

**SEQRA Regulations.** "SEQRA Regulations" shall mean Part 617 of Volume 6 of New York Codes, Rules and Regulations.

(d) *Applicability.* These rules and Executive Order 91 shall apply to environmental review by the city that is required by the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) and regulations of the State Department of Environmental Conservation thereunder and shall not be construed to require environmental quality review of an action where such review would not otherwise be required by such act and regulations, or to dispense with any such review where it is otherwise required.

### **§ 5-03 Establishment of Lead Agency.**

(a) *General Rule.* Where only one agency is involved in an action, that agency shall be the lead agency.

(b) *Actions Subject to ULURP and Charter Sections 197-a, 200, 201, and 668.*

(1) For actions subject to the Uniform Land Use Review Procedure of § 197-c of the Charter (ULURP), and for which the applicant is not a city agency, the City Planning Commission shall be the lead agency.

(2) For actions that involve plans for the development, growth and improvement of the city, its boroughs and community districts (Charter § 197-a), the City Planning Commission shall be the lead agency.

(3) For actions that involve zoning map or text changes (Charter § 200 and/or 201), the following rules shall apply:

(i) If the only approval subject to ULURP or to Charter § 200 or 201 is a zoning map or text change, the City Planning Commission shall be the lead agency.

(ii) If the applicant for any action requiring a zoning map or text change is not a city agency, the City Planning Commission shall be the lead agency.

(iii) If the action involves a zoning map or text change, in addition to another approval under Charter § 197-c (ULURP) for which there is a city agency applicant, then the city agency applicant shall be the lead agency, provided, however, that the City Planning Commission shall be the lead agency if:

(A) The action involves a zoning map or text change that covers or may apply to areas substantially larger than

the properties covered by the non-zoning approvals required under Charter § 197-c; or

(B) The city agency applicant and the Chair of the City Planning Commission agree that the action involves a zoning map or text change that changes the uses permitted so as to substantially alter the area zoning pattern.

(4) For all other actions subject to § 197-c of the Charter (ULURP) for which the applicant is a city agency, and for actions subject to § 668 of the Charter for which the applicant is a city agency, the city agency applicant shall be the lead agency. Where there is more than one city agency applicant, the city agency applicants shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(5) Where no other provision of this section applies and an action involves a special permit or variance from the Board of Standards and Appeals (Charter § 668) for which the applicant is not a city agency, the Board of Standards and Appeals shall be the lead agency.

(c) *Section 195 Acquisitions of Office Space or Existing Buildings for Office Use.* For actions involving acquisitions of office space or existing buildings for office use (Charter § 195), the agency filing the notice of intent to acquire shall be the lead agency.

(d) *Local Laws.* The City Council and the Office of the Mayor shall be co-lead agencies for local laws. Either agency may at any time delegate to the other its lead agency status and act instead as an involved agency. In addition, after introduction of a proposed local law, the City Council may assume sole lead agency status after giving the Mayor five days notice.

(e) *Franchises, Revocable Consents, and Concessions.* For actions involving franchises, revocable consents and concessions, the responsible agency as defined in Charter § 362(c) shall be the lead agency.

(f) *Leasing of Wharf Property for Waterfront Commerce or Navigation and Waterfront Plans.* For actions involving the leasing of wharf property belonging to the city primarily for purposes of waterfront commerce or in furtherance of navigation (Charter § 1301(2)(f)), the Department of Business Services shall be the lead agency, provided that the Department of Transportation shall be the lead agency for such actions when it is acting pursuant to Charter § 2903(c)(2). For actions involving determinations of the Commissioner of Business Services pursuant to Charter § 1302 (waterfront plans), the Department of Ports and Trade shall be the lead agency.

(g) *Selection of Lead Agency in the Case of Multiple Involved Agencies.*

(1) Subdivision (b) of this section, which governs lead agency designation for actions involving approvals pursuant to ULURP or § 197-a, 200, 201 or 668 of the Charter, shall always govern determination of the lead agency regardless of whether the action involves additional approvals pursuant to other provisions of law.

(2) For any other action involving more than one agency, the agencies designated in subdivisions (c) through (f) of this section and any agencies involved in any required city approval, other than approvals described in such subdivisions, shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(h) *Procedure for Selection of Lead Agency.* In selecting a lead agency where agreement among agencies is required by this section, and in deciding whether transfer of lead agency status is appropriate, the agencies making the selection or decision shall determine which agency is most appropriate to act as lead agency for the particular action. In making such determination, such agencies shall consider, but shall not be limited to considering, the following criteria:

- (1) The agency that will have the greater degree of responsibility for planning and implementing the action;
- (2) The agency that will be involved for a longer duration;
- (3) The agency that has the greater capability for providing the most thorough environmental assessment;
- (4) The agency that has the more general governmental powers as compared to single or limited powers or purposes;
- (5) The agency that will provide the greater level of funding for the action;
- (6) The agency that will act earlier on the proposed action; and
- (7) The agency that has the greater role in determining the policies resulting in or affecting the proposed action.

(i) *Transfer of Lead Agency Status.* Lead agency status may be transferred from the lead agency, at its discretion, to an involved agency that agrees to become the lead agency. In deciding whether a transfer of lead agency status is appropriate, agencies shall use the selection procedure set forth in subdivision (h) of this section. Notice of transfer of lead

agency status must be given by the new lead agency to the applicant and all other involved and interested agencies within 10 days of the transfer. The Chair of the City Planning Commission may act on behalf of such Commission pursuant to this subdivision.

(j) *Selection of Lead Agency Where Actions Involve City and State Agencies.* Where an action involves both city and state agencies, the city agency prescribed by or selected pursuant to subdivisions (a) through (i) of this section shall, together with such state agencies, participate in selection of the lead agency pursuant to SEQRA, and such selection shall be binding upon the city. The criteria set forth in § 617.6(e)(5) of the SEQRA Regulations shall be considered in deciding whether or not a city agency shall serve as lead agency. The Office of Environmental Coordination shall perform the functions set forth in subdivision (d) of § 5-04 of these rules.

#### **§ 5-04 The Office of Environmental Coordination.**

(a) The Director of City Planning and the Commissioner of the Department of Environmental Protection shall designate persons from the staffs of the Departments of City Planning and Environmental Protection who shall comprise the Office of Environmental Coordination (OEC). The OEC shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.

(b) The OEC shall perform any environmental review function assigned to it by a lead agency, except the OEC may not issue, amend or rescind a determination of significance, notice of completion of a draft or final environmental impact statement, written findings following issuance of a final environmental impact statement, or analogous statements, notices or findings for a supplemental environmental impact statement. In addition, the lead agency may not delegate to the OEC its responsibility to issue the final scope or to attend the scoping meeting; however, the lead agency may delegate to the OEC the power to chair the scoping meeting.

(c) In addition to any other functions the OEC may perform pursuant to these rules, the OEC shall:

(1) Work with appropriate city agencies to develop and maintain technical standards and methodologies for environmental review and, upon request, assist in the application by agencies of such standards and methodologies;

(2) Work with appropriate city agencies to develop and maintain a technical database that may be utilized by applicants and city agencies in completing the standardized environmental assessment statement described in this subdivision and in preparation of draft and final environmental impact statements;

(3) Prepare and maintain a standardized environmental assessment statement, which shall provide guidance in determining whether the action may have a significant effect on the environment;

(4) At the request of a lead agency, coordinate the work of the technical staffs of interested agencies in order to complete environmental review, and expedite responses by interested agencies to requests of the lead agency;

(5) (i) Receive and maintain on file notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes issued pursuant to 62 RCNY § 5-07 of these rules, draft and final environmental impact statements, and significant supporting documentation comprising the official records of environmental reviews,

(ii) provide to the public upon request, or make available for inspection by the public during normal business hours, materials maintained on file pursuant to this paragraph,

(iii) publish a quarterly listing of all notifications of commencement, determinations of significance, draft and final scopes and draft and final environmental impact statements received and filed pursuant to this paragraph, and

(iv) in its discretion, advise lead agencies as to whether such documents are consistent with standards and methodologies developed pursuant to this subdivision and reflect proper use of the standardized environmental assessment statement;

(6) Provide to lead agencies staff training, management assistance, model procedures, coordination with other agencies, and other strategies intended to remedy any problems that arise with respect to consistency with standards and methodologies developed pursuant to this subdivision or proper use of the standardized environmental assessment statement;

(7) Provide to lead agencies a format for notices of public scoping meetings, assist lead agencies in ensuring that public scoping meetings are conducted in an effective manner, and, to the extent the OEC deems appropriate, comment on the draft scope and participate in such meetings;

(8) Prepare standardized forms for notifications of commencement of environmental review, determinations of

significance, notices of completion of draft and final environmental impact statements, and, as may be appropriate, other environmental review documents; and

(9) Work with appropriate city agencies to develop and implement a tracking system to ensure that mitigation measures are implemented in a timely manner, and to evaluate and report on the effectiveness of mitigation measures.

(d) Any state agency that seeks a determination whether a city agency shall serve as the lead agency for an action that involves city and state agencies should initially communicate with the OEC. Upon receipt of such communication, the OEC shall ascertain the city agency which is designated as lead agency by or pursuant to these rules and shall notify such agency of such communication. Such designated agency may then act pursuant to subdivision (j) of § 3 of these rules.

(e) Where an action or part thereof has been or will be reviewed by a federal agency, the OEC shall assist city agencies in coordinating review with the appropriate federal agency.

### **§ 5-05 Environmental Review Procedures.**

#### *(a) Threshold Determination.*

(1) In the case of any action for which a lead agency is prescribed by 62 RCNY § 5-03 of these rules, and thus for which no agreement among involved agencies is necessary, only such lead agency may determine that such action, considered in its entirety, requires environmental review, and such determination shall be binding upon the city. The OEC shall, upon the request of such agency, assist in such determination.

(2) In the case of any action for which agreement among involved agencies is necessary for selection of a lead agency, if an agency that could be the lead agency for the particular action pursuant to subdivisions (b) through (g) of 62 RCNY § 5-03 of these rules determines that such action may require environmental review, then the lead agency shall be agreed upon as provided in § 3 of these rules, and such lead agency shall determine whether such action, considered in its entirety, requires environmental review. Such determination shall be binding upon the city. The OEC shall assist in any determination made pursuant to this paragraph upon the request of the agency making such determination.

(3) Nothing contained in this subdivision shall be construed to require an affirmative determination, whether formal or informal, that an action is exempt from environmental review, or is a Type II action pursuant to the SEQRA Regulations, where such determination would not otherwise be required by law.

#### *(b) Other Determinations.*

(1) After the determination that an action requires environmental review, the lead agency shall notify the OEC that it is commencing environmental review and complete or cause to be completed the standardized environmental assessment statement provided by the OEC. Such statement shall provide guidance in determining whether the action may have a significant effect on the environment. The OEC and interested and involved agencies shall, upon the request of the lead agency, assist the lead agency in completing such statement.

(2) The OEC and interested and involved agencies shall, upon the request of the lead agency, assist such lead agency with respect to any aspect of a determination of significance and/or a draft, final and/or supplemental environmental impact statement.

(3) Whenever, in the preparation of a draft environmental impact statement, the lead agency identifies a potential significant impact, the lead agency shall consult with any agency that has primary jurisdiction to carry out possible mitigations, and with any city agency that has primary regulatory jurisdiction over the subject matter of such impact.

(4) Lead agencies shall send copies of the following to the OEC upon issuance: notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes, draft and final environmental impact statements. In addition, lead agencies shall forward to the OEC significant supporting documentation comprising the official records of environmental reviews.

(c) *Type II.* The following actions are not subject to review under City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations, subject to 62 RCNY § 5-05(d) of these rules:

(1) Special permits for physical culture or health establishments of up to 20,000 gross square feet, pursuant to § 73-36 of the Zoning Resolution;

(2) Special permits for radio and television towers, pursuant to § 73-30 of the Zoning Resolution;

(3) Special permits for ambulatory diagnostic or treatment health care facilities, pursuant to § 73-125 of the Zoning Resolution;

(4) Special permits to allow a building or other structure to exceed the height regulations around airports, pursuant to § 73-66 of the Zoning Resolution;

(5) Special permits for the enlargement of buildings containing residential uses by up to 10 units, pursuant to § 73-621 of the Zoning Resolution;

(6) Special permits for eating and drinking establishments of up to 2,500 gross square feet with accessory drive-through facilities, pursuant to § 73-243 of the Zoning Resolution;

(7) Acquisition or lease disposition of real property by the City, not involving a change of use, a change in bulk, or ground disturbance;

(8) Construction or expansion of primary or accessory/appurtenant park structures or facilities involving less than 10,000 square feet of gross floor area;

(9) Park mapping, site selection or acquisition of less than ten (10) acres of existing open space or natural areas;

(10) Authorizations for a limited increase in parking spaces for existing buildings without parking, pursuant to § 13-442 and § 16-341 of the Zoning Resolution;

(11) Special permits for accessory off-street parking facilities, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-351 of the Zoning Resolution;

(12) Special permits for public parking garages and public parking lots, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-352 of the Zoning Resolution; and

(13) Special permits for additional parking spaces, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 13-45 of the Zoning Resolution.

(d) *Type II Prerequisites.*

(1) An action listed in 62 RCNY § 5-05(c), which is also classified as Type I pursuant to 6 NYCRR Part 617.4, shall remain Type I and subject to environmental review.

(2) An action listed in 62 RCNY § 5-05(c)(2)-(5), or (8) of these rules involving ground disturbance shall remain subject to environmental review, unless it is determined that any potentially significant hazardous materials impacts will be avoided.

(3) An action listed in 62 RCNY § 5-05(c)(2), (3), (5), or (8) of these rules involving excavation of an area that was not previously excavated shall remain subject to environmental review, unless it is determined that the project site is not archaeologically sensitive.

(4) An action listed in 62 RCNY § 5-05(c)(4) of these rules shall remain subject to environmental review, unless it is determined that any potentially significant noise impacts will be avoided.

(5) An action listed in 62 RCNY § 5-05(c)(2), (3), (5), or (8) of these rules involving the removal or alteration of significant natural resources shall remain subject to environmental review.

(6) An action listed in 62 RCNY § 5-05(c)(2), (4), (5), (6), (8), or (11)-(13) of these rules shall remain subject to environmental review if the project site is:

(i) wholly or partially within any historic building, structure, facility, site or district that is calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark;

(ii) substantially contiguous to any historic building, structure, facility, site or district that is designated, calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; or

(iii) wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or archaeological or prehistoric site that is listed, proposed for listing or eligible for listing on the State Register of Historic Places or National Register of Historic Places.

**§ 5-06 Involved and Interested Agencies; Required Circulation.**

(a) The lead agency and the OEC shall make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process. If the City Council is involved in an action, staff of the lead agency and/or staff of the OEC shall be made available to explain determinations made by the lead agency to the City Council or the appropriate City Council committee or staff.

(b) Any written information submitted by an applicant for purposes of a determination by the lead agency whether an environmental impact statement will be required by law, and documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law, shall be circulated to all affected community or borough boards, where such circulation is required by the Charter.

(c) If the City Council is involved in an action, any written information, documents or records that are required to be circulated to involved agencies or to affected community boards or borough boards shall be circulated to the City Council.

### **§ 5-07 Scoping.**

Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

(a) *Draft Scope.* Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. The lead agency may consult with the OEC and other agencies prior to issuance of the draft scope.

(b) *Public Notice and Comment.* Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such meeting, and shall set forth guidelines for public participation in such meeting.

(c) *Agency Notice and Comment.* Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved), to the applicant, to the OEC and to agencies entitled to send representatives to the public scoping meeting pursuant to § 197-c(d) or 668(a)(7) of the Charter. Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

(d) *Public Scoping Meeting.* The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved), the applicant, the OEC, and agencies entitled to send representatives pursuant to § 197-c(d) or 668(a)(7) of the Charter may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. The OEC shall assist the lead agency in ensuring that the public scoping meeting is conducted in an effective manner.

(e) *Final Scope.* Within thirty days after the public scoping meeting, the lead agency shall issue a final scope, which may be prepared by the applicant and approved by the lead agency. The lead agency may consult further with the OEC and other agencies prior to issuance of the final scope. Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.

(f) *Scoping of City Agency Actions.* For actions which do not involve private applications, nothing contained in these rules shall be construed to prevent a lead agency, where deemed necessary for complex actions, from extending the time frames for scoping set forth in this section, or from adding additional elements to the scoping process.

### **§ 5-08 Applications and Fees.**

(a) *Applications.* Applications submitted for City Environmental Quality Review for actions that require such review shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to 62 RCNY § 5-03 of these rules. Such applications shall include information required to be obtained from applicants in order for the lead agency to complete or cause to be completed the standardized environmental assessment statement, and such other documents and additional information as the lead agency may require to make a determination of significance. In addition, except as otherwise provided in these rules, such applications shall conform to the requirements of Executive Order 91. Applicants shall file twenty-five copies of each application.

(b) *Fees.* Except as otherwise provided by this section, fees in effect on the effective date of these rules pursuant to Executive Order 91 and codified as 62 RCNY § 3-02 of these rules shall continue to govern City Environmental Quality Review applications, unless the City Planning Commission shall by rule modify such fees. Such fees shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to 62 RCNY § 5-03 of these rules, and shall be in the form of a check or money order made out to the "City of New York."

### **§ 5-09 Transition Section.**

(a) An action shall not be subject to these rules, but shall comply with Executive Order 91, as in effect prior to the effective date of these rules, where:

(1) a classification as exempt, excluded or Type II has been made prior to the effective date of these rules;

(2) a project data statement has been completed more than thirty days prior to the effective date of these rules and a determination of significance has not been made prior to the effective date of these rules;

(3) a negative declaration or a conditional negative declaration has been issued prior to the effective date of these rules; or

(4) a notice of determination (positive declaration) has been issued more than thirty days prior to the effective date of these rules; provided, however, that if a negative declaration or conditional negative declaration is rescinded, or if a classification as exempt, excluded or Type II is no longer applicable, or if a supplemental environmental impact statement is required, or if a notice of determination (positive declaration) has been issued less than thirty days prior to the effective date of these rules or is issued on or after the effective date of these rules, these rules shall apply, and the lead agency prescribed by or selected pursuant to these rules shall thereupon assume lead agency status at the earliest time practicable.

(b) Except as provided in subdivision (a) of this section, the lead agency prescribed by or selected pursuant to these rules shall assume lead agency status at the earliest time practicable. If a determination of significance has not been made and such lead agency determines that the action requires environmental review, it shall notify the OEC that it is commencing environmental review and shall complete or cause to be completed the standardized environmental assessment statement provided by the OEC, regardless of whether a project data statement has been completed. However, such lead agency shall not be required to engage in scoping pursuant to 62 RCNY § 5-07 of these rules if a final scope has already been prepared. Until the lead agency prescribed by or selected pursuant to these rules assumes lead agency status, the action shall be subject to Executive Order 91 as in effect prior to the effective date of these rules; however, after the effective date of these rules, the prior lead agency or agencies shall not issue a determination of significance or notice of completion of a draft or final environmental impact statement, classify an action as exempt, excluded or Type II, convene a scoping meeting or conduct a public hearing pursuant to CEQR.

### **§ 5-10 Severability.**

The provisions of these rules shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of these rules, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of these rules and the application thereof shall not be affected thereby.

### **§ 5-11 Effective Date.**

These rules shall take effect on October 1, 1991.

## **APPENDIX A TO CHAPTER 5**

### **CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED]\***

#### **§ 6-01 ? Applicability.**

[Except as modified by City Planning Rules, § 502(a) and (d).]

No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

## § 6-02 ? **Definitions.**

[Additional definitions, City Planning Rules § 5-02(c).]

As used herein, the following terms shall have the indicated meanings unless noted otherwise:

**Action.**[Modified by City Planning Rules § 5-02(c)(2).] "Action" means any activity of an agency, other than an exempt action enumerated in § 6-04 of this chapter, including but not limited to the following:

- (1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;
- (2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;
- (3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;
- (4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;
- (5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

**Agency.**[Inapplicable. See City Planning Rules § 5-02(a), § 5-02(c)(3)(i).] "Agency" means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

**Applicant.** "Applicant" means any person required to file an application pursuant to this chapter.

**Conditional negative declaration.** "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternative designed to avoid adverse environmental impacts.

**DEC.** "DEC" means the New York State Department of Environmental Conservation.

**Environment.** "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

**Environmental analysis.** "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

**Environmental assessment form.**[Retitled *Environmental Assessment Statement*; see City Planning Rules § 5-04(c)(3).] "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

**Environmental impact statement (EIS).** "Environmental impact statement (EIS)" means any written document prepared in accordance with §§ 6-08, 6-10, 6-12 and 6-13 of this chapter. An EIS may either be in a draft or a final form.

**Environmental report.** "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepare or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in § 6-10 of this chapter as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this chapter, including the preparation of an EIS.

**Lead agencies.***[Inapplicable, City Planning Rules § 5-02(a). Superseded by City Planning Rules § 5-02(b)(1) and § 5-02(c)(3)(vi); also see City Planning Rules § 5-03 for choice of lead agency.]*

**Ministerial action.** "Ministerial action" means an action 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 such law may require, in some degree, a construction of its language or intent.

**Negative declaration.** "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.

**Notice of determination.***[See also City Planning Rules § 5-02(c)(3)(iii).]* "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

**NYCRR.***[See also City Planning Rules § 5-02(c)(3)(viii).]* "NYCRR" means the New York Code of Rules and Regulations.

**Person.** "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

**Project data statement.***[Inapplicable, City Planning Rules § 5-02(a). Superseded by Environmental Assessment Statement, see City Planning Rules § 5-04(c)(3). See also City Planning Rules § 5-05(b)(1) and § 5-08(a).]*

**SEQRA.** "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

**Typically associated environmental effect.** "Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

**ULURP.** "ULURP" means the Uniform Land Use Review Procedure (§ 197-c of Chapter 8 of the New York City Charter).

### § 6-03 ? **Actions Involving Federal or State Participation.**

(a) *[See also City Planning Rules § 5-04(e)]* If an action under consideration by an agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to § 6-12 of this chapter.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter, and the action shall be fully subject to the same.

(b) *[Inapplicable, City Planning Rules § 5-02(a). Entire subdivision (b) superseded by City Planning Rules § 5-03(j); and § 5-04(d).]*

### § 6-04 ? **Exempt Actions.** *[See also City Planning Rules § 5-02(d).]* The following actions shall not be subject to the provisions of this chapter:

(a) projects or activities classified as Type I pursuant to § 6-15 of this chapter directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in § 6-02 "Action" (1), (2), (3) and (4) of this chapter;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or

project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to § 6-15 of this chapter approved by an agency prior to September 1, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in § 6-02 "Action" (2) and (5) of this chapter;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to § 6-15 of this chapter directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in § 6-02 "Action" of this chapter;

(2) an action shall be deemed to be undertaken as provided in paragraphs (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) *[See City Planning Rules § 5-02(d).]* ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in § 6-15(a), Type I, of this chapter, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

## § 6-05 ? **Determination of Significant Effect - Applications.**

(a) *[Inapplicable, City Planning Rules § 5-02(a). Superseded by City Planning Rules § 5-05(a). See also City Planning Rules § 5-02(b)(2) and § 5-02(d).]*

(b) *[Introductory paragraph inapplicable, City Planning Rules § 5-02(a). Paragraph (b) superseded by City Planning Rules § 5-08.]* The applicant initiating the proposed action, other than an exempt or Type II action pursuant to § 6-04 of this chapter, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of a determination pursuant to § 6-03(b) of this chapter, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) *[Determination pursuant to § 5-03(b) deemed to refer to lead agency selection pursuant to City Planning Rules § 5-03. See City Planning Rules § 5-02(b)(3).]* when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal or state agencies, which to the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this chapter.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

### § 6-06 ? **Determination of Significant Effect - Criteria.**

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to § 6-13 of this chapter.

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

(b) *[Reference to § 6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules § 5-02(b)(2).]* For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e. where it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e. degree of change or its absolute size). Section 6-15 of this chapter refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

## § 6-07 ? **Determination of Significant Effect - Notification.**

(a) *[Error. Reference to § 6-05(a) should be to § 6-05(b).]* The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to § 6-05(a) of this chapter whether the proposed action may have a significant effect on the environment;

(1) *[Reference to § 6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules § 5-02(b)(2).]* In making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in § 6-06 and consider the lists of actions contained in § 6-15 of this chapter;

(2) The lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) *Negative Declaration.* *[Reference to § 6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13 See Rules § 5-02(b)(2).]* If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§ 6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

- (i) an action identifying number;
- (ii) a brief description of the action;
- (iii) the proposed location of the action;
- (iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;
- (v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) *Conditional Negative Declaration.* *[Reference to § 6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules § 5-02(b)(2).]* If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§ 6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):

- (i) a list of conditions, modifications or alternatives to the proposed action which supports the determination;
- (ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;
- (iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

(3) *Notice of Determination.* *[Reference to § 6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules § 5-02(b)(2).]* If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§ 6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

- (i) an action description number;
- (ii) a brief description of the action;
- (iii) the proposed location of the action;
- (iv) a brief description of the possible significant effects on the environment of the action;
- (v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §§ 6-08 and 6-12 of this chapter.

(c) [See additional circulation provisions, City Planning Rules § 5-06(b) and § 5-06(c). City Clerk function transferred to Office of Environ. Coord., City Planning Rules § 5-02(b)(4).] The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the regional director of the DEC, the commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

#### § 6-08 ? **Draft Environmental Impact Statements - Responsibility for Preparation.**

(a) *Non-agency applicants.*

(1) [Rules add formal scoping, City Planning Rules § 5-07. Interested and involved agencies assist with DEIS on request. See City Planning Rules § 5-05(b)(2).] After receipt of a Notice of Determination pursuant to § 6-07(c)(3) of this chapter, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) [See also City Planning Rules § 5-05(b)(3) for requirements of lead consultation on mitigations.] the lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) if the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) *Agency applicants.*

(1) When an action which may have a significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) [See City Planning Rules § 5-05(b)(3) for requirements of lead consultation on mitigations.] All agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

#### § 6-09 ? **Environmental Impact Statements - Content.**

(a) [Lead to be guided by technical standards and methodologies developed by Office of Environ. Coord., City Planning Rules § 5-04(c).] Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

#### § 6-10 ? **Draft Environmental Impact Statements - Procedures.**

(a) *Notice of Completion.* Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) *Contents of Notice of Completion.* All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) *Circulating Notice of Completion.* All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) *Filing Notice of Completion.* All Notices of Completion shall be filed with and made available for public inspection by the following:

- (i) the Commissioner of DEC;
- (ii) the regional director of DEC;
- (iii) the agency applicant, where applicable;
- (iv) the appropriate Community Planning Board(s);
- (v) the City Clerk;
- (vi) the lead agencies.

(b) *Filing and availability of draft EIS.* [City clerk function transferred to OEC, City Planning Rules § 5-02(b)(4).] All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) *Public hearings on draft EIS.*

(1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regulation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this chapter.

## § 6-11 ? **Final Environmental Impact Statements - Procedures.**

(a) [Interested and involved agencies assist with FEIS on request, City Planning Rules § 5-05(b)(2).] Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in § 6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in § 6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to § 6-11(b) of this chapter.

## § 6-12 ? **Agency Decision Making.**

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) [Inapplicable, City Planning Rules, § 5-02(a).]

(2) [Inapplicable, City Planning Rules, § 5-02(a).]

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment,

it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to § 6-11(b) of this chapter.

### § 6-13 ? **Programmatic Environmental Impact Statements.**

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statements, master or area wide statements, or statements for comprehensive plans are often appropriate to assess the environmental effects of the following:

- (1) a number of separate actions in a given geographic area;
- (2) a chain of contemplated actions;
- (3) separate actions having generic or common impacts;
- (4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this section shall be processed in full compliance with the requirements of this chapter.

### § 6-14 ? **Rules and Regulations.** *[Inapplicable, City Planning Rules § 5-02(a).]*

### § 6-15 ? **Lists of Actions.**

(a) *Type I.* *[See City Planning Rules § 5-02(d).]* Type I actions enumerated in § 617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of § 617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(1) relating to public institutions:

(i) new correction or detention centers with an inmate capacity of at least 200 inmates; (ii) new sanitation facilities, including:

- (A) incinerators of at least 250 tons per day capacity;
- (B) garages with a capacity of more than 50 vehicles;
- (C) marine transfer stations;

(iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(iv) new schools with seating capacity of at least 1,500 seats;

(v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor

area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of an expanded facility exceeds 100,000 sq. ft. of floor area.

(2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of an expanded facility exceeds 240,000 sq. ft. of floor area.

(b) *Type II.*

(1) *[See City Planning Rules § 5-02(d).]* Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of § 617.12 of 6 NYCRR 617.

(2) *[Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See City Planning Rules § 5-02(a) and § 5-02(b)(2).]*

**Effective Date.** *[See new City Planning transition rules § 5-08 and § 5-11. New Rules effective Oct. 1, 1991.]*