

Legal Alert

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DEC ANNOUNCES RELEASE OF PROPOSED AMENDMENTS TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT FOR PUBLIC COMMENT

February 14, 2017

On February 8, 2017, the New York State Department of Environmental Conservation (DEC) released for public comment a draft rulemaking to update the New York State Environmental Quality Review Act (SEQRA) regulations. The proposed amendments represent the first update to SEQRA in 20 years.

Conversations concerning possible amendments to SEQR began as early as 2009 when DEC collaborated with Mid-Hudson Patterns for Progress to form a workgroup of SEQR stakeholders. As part of that process, Keane & Beane member, Richard L. O'Rourke, Esq., Corporate Secretary of Mid-Hudson Patterns for Progress, appeared at DEC's Region 3 offices to provide comments on improving the SEQR review process.

DEC's stated goal of the proposed amendments is to "streamline the SEQR process without sacrificing meaningful environmental review." Streamlining would be accomplished through an improved scoping process, clarification and reduction in review requirements, and improved timeliness of decision making. To this end, the proposed amendments require public scoping of an Environmental Impact Statement (EIS) and encourage targeted EISs. Modifications to the list of Type I actions would revise parking space thresholds based on community size, reduce the number of residential units that will trigger the Type I threshold, and eliminate the automatic Type I trigger for unlisted actions which are proximate to historic resources in favor of a minimum threshold for triggering such classification. Lastly, the



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proposed amendments expand the list of Type II actions (actions not subject to environmental review) to encourage development in urban areas and green infrastructure projects, among other things.

The expansion of the Type II list will result in increased regulatory certainty for applicants and municipalities. Examples of actions proposed to be added to the list of Type II actions include:

- Upgrades of structures to meet energy codes
- Retrofit of a structure or facility to incorporate green infrastructure practices
- Installation of fiber-optic or other broadband cable technology in existing highway or utility rights of way
- Co-location of cellular antennas and repeaters
- Installation of solar energy arrays
- Lot line adjustments and area variances not involving a change in allowable density
- Minor subdivisions, as defined by a municipality's subdivision regulations, or a subdivision of four or fewer lots, whichever is less, that involves ten acres or less
- Sustainable development actions
- Reuse of an existing residential or commercial structure
- County planning board referrals under Section 239-m or 239-n of the General Municipal Law
- Dedication of parkland
- Acquisition of less than 100 acres of land to be dedicated as parkland
- Certain transfers of land to provide affordable housing
- Sale and conveyance of real property by public action pursuant to Article 11 of the Real Property Tax Law
- Brownfield site clean-up agreements
- Construction and operation of an anaerobic digester

DEC's proposed agency rulemaking will include a 90-day public comment period and hearing, as required by the State Administrative Procedures Act (SAPA). DEC prepared a Draft GEIS to support this rulemaking, and the SEQR process will run concurrently with the SAPA process. Comments on the proposed amendments may be submitted by mail to the New York State Department of Environmental Conservation, Division of Environmental Permits, Attn: James J. Eldred, Environmental Analyst, 625 Broadway, Albany, New York 12233-1750 or by e-mail to: segqa617@dec.ny.gov. Comments will be accepted until the close of business on **May 19, 2017**. A public hearing will be held on **March 31, 2017**, at 1:00 pm at 625 Broadway, Albany, New York, Public Assembly Room 129 to discuss the proposed amendments.

The proposed amendments and the draft GEIS and SAPA Impact Statement may be found at:
<http://www.dec.ny.gov/permits/83389.html>.



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Please visit www.kblaw.com and feel free to contact any of our attorneys. If you need immediate assistance, please contact our Office Manager Barbara Durkin at (914) 946-4777 or bdurkin@kblaw.com

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