

Code of the Town of Ossining, New York (Westchester County)

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Chapter 85: ENVIRONMENTAL QUALITY REVIEW

[HISTORY: Adopted by the Town Board of the Town of Ossining during codification; see Ch. 1, General Provisions, Art. II. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 63.
Excavations — See Ch. 87.
Filling and grading — See Ch. 92.
Freshwater wetlands — See Ch. 105.
Streams and watercourses — See Ch. 169.

§ 85-1. Purpose.

This chapter is adopted pursuant to Article 8 of the New York Environmental Conservation Law to provide for environmental quality review of actions which may have a significant effect on the environment.

§ 85-2. Title.

This chapter shall be known and cited as the "Environmental Quality Review Local Law" of the Town of Ossining.

§ 85-3. Intent.

It is the intent of the Town Board that:

- A. Environmental factors be incorporated into the existing planning and decisionmaking processes of all town agencies.
- B. All agencies conduct their affairs with an awareness that they are stewards of the air, water, land and living resources and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.
- C. Protection of the environment and enhancement of human and community resources be given appropriate weight along with social and economic considerations and that all these factors shall be considered together in reaching decisions on proposed actions.
- D. The processes set forth in this chapter as far as possible be integrated into existing agency procedures and that they do not result in undue delays in agency planning and decision-making.

§ 85-4. Definitions.

The following terms, phrases, words and their derivatives shall have the meanings given herein:

ACTION — Any activity of any agency, except an exempt action as defined in this section, including, without limitations:

- A. Physical activities such as construction, destruction, modification or other activities, including the approval thereof, which change the use, function or appearance of any natural resource or structure.
- B. Funding activities such as the proposing, approving or disapproving of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance.
- C. Licensing activities such as the proposing, approving or disapproving of a lease, permit, license, certificate or other entitlement for use or permission to act.
- D. Planning activities such as site selection for other activities and the proposing, approving or disapproving of master or long-range plans, zoning maps and ordinances, development plans or other plans designed to provide a program for future activities.
- E. Policymaking activities such as the making, modification, repeal or establishment of rules, regulations, procedures, policies and guidelines.

AGENCY — Any town department, official, officer, employee, board, agency, commission, council, district, public benefit corporation or public authority, including the Town Board, which is determined to be conducting an action or is responsible for an action as hereinbefore defined.

DEIS — Draft environmental impact statement.

DRAFT ENVIRONMENTAL IMPACT STATEMENT — A preliminary environmental impact statement prepared pursuant to § 85-9 herein.

ECL — The Environmental Conservation Law.

EIS — Environmental impact statement, also referred to as a "final EIS."

ENVIRONMENT — The physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, traffic, light, features of historic or aesthetic significance, existing patterns of population concentration, distribution or growth and existing community or neighborhood character.

ENVIRONMENTAL CLEARANCE FORM — A form used to determine the proper classification of a proposed action.

ENVIRONMENTAL IMPACT STATEMENT — A detailed statement setting forth the matters specified in § 85-7 herein. It includes any comments on a draft environmental impact statement which are received pursuant to § 85-9D and E herein and the agency's response to such comments to the extent that such comments raise issues not adequately resolved in the draft environmental impact statement.

EXEMPT ACTION — Any one of the following:

- A. Enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings.
- B. Ministerial actions, which are actions 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, such as the granting of a driver's license, although such law may require, in some degree, a construction of its language or intent.
- C. Maintenance or repair involving no substantial change in an existing structure or facility.
- D. Actions requiring a certificate of environmental compatibility and public need under Articles VII and VIII of the Public Service Law and the consideration, granting or denial of any such certificate.
- E. Except as set forth in § 85-11 herein, actions undertaken or given final approval prior to the effective date of this chapter. An action shall be deemed to be undertaken or given final approval prior to such date if:
 - (1) In the case of an action involving federal participation, either a draft environmental impact

statement or a negative declaration has been duly prepared under the National Environmental Policy Act of 1969.

- (2) In the case of a subdivision of land, conditional approval of a preliminary or final plat has been given.
- (3) In the case of a site plan, special permit use or variance, approval with or without conditions has been given.
- (4) In the case of all other such actions requiring a permit or authorization from an agency, each such permit or authorization has been granted.

F. Actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources.

G. Actions of any court.

LEAD AGENCY — Where several agencies are involved in an action, that agency primarily responsible for preparation of the environmental impact statement. The Zoning Board of Appeals shall be lead agency on applications for variances and special exception use permits. The Planning Board shall be lead agency on applications for subdivision or site plan approval. The Town Board shall be lead agency on any matter before such Board.

OFFICIAL NEWSPAPER — That newspaper formally designated by the Town Board as the official newspaper of the town or, if none, a newspaper of general circulation within the town.

PERSON — Any person, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

PHYSICAL ALTERATION — Includes but is not limited to the following activities: vegetation removal; demolition, stockpiling materials; grading and other forms of earthwork; dumping, filling or depositing; excavation or trenching; dredging; flooding or draining; paving; and construction of buildings or structures.

PRELIMINARY ENVIRONMENTAL REVIEW FORM — A form used to determine whether an action is likely to have a significant effect on the environment and, if so, to determine the primary areas to be analyzed in the DEIS.

SEQR — The State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law.

§ 85-5. Compliance required; programmatic statements.

- A. No decision to carry out or approve an action other than an exempt or a Type II action, as set forth in § 85-6 herein, shall be made by an agency until there has been full compliance with all requirements of this chapter; provided, however, that nothing herein shall be construed as prohibiting:
 - (1) The conducting of contemporaneous environmental, engineering, economic feasibility or other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action which does not commit the agency to approve, commence or engage in such action.
 - (2) The granting of any part of an application which relates only to technical specifications and requirements, provided that no such partial approval shall entitle or permit the applicant to commence the action until all requirements of this chapter have been fulfilled.
- B. Agencies may identify programs or categories of actions which could most appropriately be covered by a single environmental impact statement.
 - (1) Programmatic statements are often appropriate to assess the environmental effects of:

- (a) A number of separate actions in a given geographic area.
 - (b) A chain of contemplated actions.
 - (c) Separate actions having generic or common impacts.
 - (d) Programs or plans having wide application or restricting the range of future alternative policies or projects.
- (2) Such statements will eliminate multiple sequential reviews of the same or similar actions. When an individual action is proposed which was encompassed in such a programmatic EIS and the action is to be carried out in conformance with the conditions discussed in the programmatic statement, a subsequent EIS should be prepared only if site specific impacts need to be addressed. Agencies preparing such a statement shall develop procedures for amending or supplementing such statements to reflect impacts which are not addressed or adequately analyzed in such a statement as initially prepared. Such procedures shall include provision for informing the public and other agencies of the preparation of such amendments or supplements and for allowing comment thereon before incorporation of such amendments or supplements in said statement.

§ 85-6. Types of actions.

To simplify the task of determining whether or not a proposed action may have a significant effect on the environment, actions are divided into three classes, Type I, Type II and unlisted.

- A. Type I actions. Type I actions or classes of actions are likely to, but will not necessarily, require preparation of environmental impact statements because they will in almost every instance have a significant effect on the environment. For all individual actions which are Type I, determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in Subsection C. Type I actions are listed below:
- (1) The adoption of a town development plan, a comprehensive zoning ordinance or a comprehensive resource management plan.
 - (2) The following changes in the allowable uses within any zoning district, affecting 10 or more acres of the district:
 - (a) Authorizing industrial or commercial uses within a residential or agricultural district; or
 - (b) Authorizing residential uses within an agricultural district.
 - (3) The granting of a zoning change at the request of an applicant for an action that meets or exceeds one or more of the limits given in other sections of this list.
 - (4) The acquisition, sale, lease or other transfer of 100 or more contiguous acres of land by a state or local agency.
 - (5) Construction of 50 or more residential dwelling units.
 - (6) Construction of new nonresidential facilities which meet or exceed any of the following limits or the expansion of existing nonresidential facilities by more than 50% of any of the following limits, provided that the expansion and the existing facilities, when combined, meet or exceed any limit contained in this section:
 - (a) A project or action which involves the physical alteration of 10 acres.
 - (b) A project or action which would use ground- or surface water in excess of 50,000 gallons per day.
 - (c) Parking for 500 vehicles.

- (d) A facility with more than 100,000 square feet of gross floor area.
 - (7) Any nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to the Agriculture and Markets Law, Article 25 AA, § 303) which exceeds 10% of any threshold established in this section.
 - (8) Any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to, any facility or site listed on the National Register of Historic Places, or any building, structure or site that has been proposed by the Committee on the Registers for consideration by the New York State Board on Historic Preservation for a recommendation to the State Historic Officer for nomination for inclusion in said National Register.
 - (9) Any project or action, which exceeds 25% of any limit in this section, but 50% of the limit in Subsection A(6)(c), occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland or recreation area or designated open space.
 - (10) Any action which takes place wholly or partially within a freshwater wetland as defined in Article 24 of the ECL and the Town of Ossining Freshwater Wetlands Protection Law Editor's Note: See Ch. 105, Freshwater Wetlands. or within the setback prescribed in the Town of Ossining Freshwater Wetlands Protection Law except as listed in Subsection B(8) of this section.
 - (11) All excavations for natural products.
- B. Type II actions. Type II actions or classes of actions have been determined not to have a significant effect on the environment and do not require environmental impact statements. Type II actions are listed below:
- (1) Replacement of a facility, in kind, on the same site, unless such facility meets any of the thresholds in the Type I list.
 - (2) The granting of individual setback and lot line variances.
 - (3) Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming.
 - (4) Repaving of existing highways not involving the addition of new travel lanes.
 - (5) Street openings for the purpose of repair or maintenance of existing utility facilities.
 - (6) Installation of traffic control devices on existing streets, roads and highways.
 - (7) Public or private forest management practices other than the removal of trees or the application of herbicides or pesticides.
 - (8) Construction or placement of minor structures accessory or appurtenant to existing facilities, including garages, carports, patios, home swimming pools, fences, barns or other buildings not changing land use or population density.
 - (9) Maintenance of existing landscaping or natural growth.
 - (10) Mapping of existing roads, streets, highways, uses and ownership patterns.
 - (11) Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession.
 - (12) Sales of surplus government property other than land, radioactive material, pesticides, herbicides or other hazardous materials.
 - (13) Collective-bargaining activities.
 - (14) Routine or continuing agency administration and management not including new programs or major reordering of priorities.

- (15) License and permit renewals where there will be no material change in permit conditions or the scope of permitted activities.
- (16) Routine activities of educational institutions which do not include capital construction.
- (17) Pure information collection, including basic data collection and research, master plan study components, water quality and pollution studies, traffic counts, engineering studies, boring studies, surveys and soils studies.
- (18) Minor temporary uses of land having negligible or no permanent effect on the environment.
- (19) Construction or alteration of four or less single- or two-family residences and accessory appurtenant uses or structures if not in conjunction with the construction or alteration of a total of more than four such residences and if not in a wetland, as defined in the Freshwater Wetlands Protection Law of the Town of Ossining, Editor's Note: See Ch. 105, Freshwater Wetlands. in a flood hazard area or on a slope exceeding a grade of 20%.
- (20) Construction or alteration of a store, office or restaurant designed for an occupant load of 20 persons or less and the construction of utility facilities to serve such establishments if not in conjunction with the construction or alteration of other stores, offices or restaurants and if not in a wetland, as defined in the Freshwater Wetlands Protection Law of the Town of Ossining, or on a slope exceeding a grade of 20%.
- (21) Operation, repair, maintenance or minor alteration of existing structures, land uses and equipment.
- (22) The extension of utility distribution facilities to serve new or altered single- or two-family residential structures or to render service in approved subdivisions.
- (23) Actions which are immediately necessary for the protection or preservation of life, health, property or natural resources.

C. Unlisted actions.

- (1) Unlisted actions or classes of actions are actions which are neither Type I nor Type II and are not specifically listed in Part 617 of Title 6 of the New York Codes, Rules and Regulations, the Rules and Regulations of the Department of Environmental Conservation which implement SEQR. The Town of Ossining considers such actions to have a significant effect on the environment if they can reasonably be expected, by the agency, to lead to one of the following consequences:
 - (a) A substantial adverse change to ambient air, ambient light or water quality or noise levels or in solid waste production, drainage, erosion or flooding.
 - (b) The removal or destruction of large quantities of flora or fauna, substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on a significant habitat area or substantial adverse effects on a rare or endangered species of animal or plant or the habitat of such a species.
 - (c) The encouragement or attraction 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 place absent the action.
 - (d) The creation of a material conflict with a community's existing plans or goals as officially approved or adopted.
 - (e) The impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of the existing community or neighborhood character.
 - (f) A substantial change in the use of either the quantity or type of energy.
 - (g) The creation of a hazard to human health or safety.

- (h) A substantial change in the use or intensity of use of land or other natural resources or in the capacity of land or other natural resources to support existing uses.
 - (i) The creation of a material demand for other actions which would result in one of the above consequences.
 - (j) Changes in two or more elements of the environment, no one of which is substantial but, when taken together, result in a material change in the environment.
 - (k) Restoration or reconstruction of an existing structure which increases existing overall size, square footage and usage by less than 50%.
- (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:
- (a) Are included in any long-range comprehensive integrated plan of which the action under consideration is a part;
 - (b) Are likely to be undertaken as a result thereof; or
 - (c) Are dependent thereon.
- (3) The significance of a likely consequence should be assessed in connection with its setting, its probability of occurrence, its duration, its irreversibility, its controllability, its geographic scope and its magnitude.
- (4) Plenary environmental review forms may be used in whole or in part by an agency to aid in determining whether or not an unlisted action will have a significant effect on the environment.

§ 85-7. Contents of environmental impact statement.

- A. Within the framework presented in Subsection D herein, environmental impact 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, the significance of its potential impacts and the existing resources and capability of the agency responsible for the statement. An agency may require that an EIS be prepared by a duly qualified professional.
- B. All draft and final environmental impact statements shall be preceded by a cover sheet stating:
- (1) Whether it is a draft or final.
 - (2) The name or other descriptive title of the action.
 - (3) The location of the action, including the name of this town.
 - (4) The name and address of the agency which required its preparation and the name and telephone number of a person at the agency to be contacted for further information.
 - (5) Identification of the individuals or organizations who prepared any portion of the statement.
 - (6) The date of its completion and the date of its acceptance by the agency responsible for its preparation.
 - (7) In the case of a draft EIS, the date by which comments must be submitted.
 - (8) When not otherwise provided, e.g., in an accompanying application, the names of all parties involved in the action and, where a parcel of land is involved, the name(s) of the owner(s) and the section, block and lot numbers.
- C. If a draft or final EIS exceeds 10 pages in length, it shall have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement, focusing

on issues of controversy, matters to be decided and major conclusions.

- D. The body of all draft and final EIS's shall at least contain the following:
- (1) A concise description of the proposed action, its purpose and need.
 - (2) A concise description of the environmental setting of the areas to be affected, sufficient to understand the effects of the proposed action and alternatives.
 - (3) A statement of the important environmental impacts of the proposed action, including short- and long-term effects and typical associated environmental effects, and road, traffic and drainage patterns shall be addressed if applicable.
 - (4) An identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed action is implemented.
 - (5) A description and evaluation of reasonable alternatives to the action which would achieve the same or similar objectives. (The description and evaluation should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The no-action alternative must also be discussed and evaluated.)
 - (6) An identification of any irreversible and irretrievable commitments of resources which would be associated with the proposed action should it be implemented.
 - (7) A description of mitigation measures to minimize the adverse environmental impacts.
 - (8) A description of any growth-inducing aspects of the proposed actions, 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 any underlying studies, reports and other information obtained and considered in preparing the statement.
 - (11) For final environmental impact statements, copies or a summary of the substantive comments received in response to the DEIS and the responses to such comments and the statements of findings required by § 85-9H(3) or (4). All changes made to the draft EIS incorporated into the final EIS shall be specifically indicated and identified as such.
- E. An environmental impact statement may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced document shall be made available to the public within the time period for comment at the Town Clerk's office in the Municipal Building. When a statement uses incorporation by reference, the referenced document shall be briefly described, its applicable findings summarized and its date of preparation provided.

§ 85-8. Procedures; designation of lead agency; determination of need.

- A. Coordination. When an action which may have a significant effect on the environment involves the approval of more than one agency, all involved agencies shall, to the fullest extent possible, coordinate their environmental reviews through a lead agency to the end that the requirements of this chapter are met by a single draft environmental impact statement, a single final environmental impact statement and a single hearing process. Such coordination is mandatory for all Type I actions and for all unlisted actions which the agency determines may have a significant effect on the environment. For all other actions, coordination is optional. However, where an agency wishes to finalize, in the shortest possible time, lead agency status and the agency's determination of nonsignificance, the agency should follow the coordination procedures below.
- B. Application forms. For all actions, agencies and applicants requesting approval by an agency shall complete an environmental clearance form to aid in determining whether the action is an exempt, Type I, Type II or unlisted action. If Type I or unlisted, a preliminary environmental review form shall

be completed by the applicant in order to aid in determining whether the action may have a significant effect on the environment. In order to expedite any coordination, agencies shall require applicants to specify in their applications which other agencies, to the best of their knowledge, will have approval authority over the proposed action. If no coordination is intended, an agency shall require an applicant requesting approval by an agency to complete a preliminary environmental review form. An applicant shall present such form to the agency whose approval is being sought, accompanied by a fee as set forth in § 85-12 herein.

C. Type I actions.

- (1) For Type I actions, the agency shall send the completed form and a copy of any application it has received to all involved agencies, notifying them that within 30 calendar days of the date the forms were mailed a lead agency must be designated by agreement among them. The following criteria, in order of importance, shall be used to designate the lead agency.
 - (a) Whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance, i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved shall be the lead agency.
 - (b) Which agency has the broadest governmental powers for investigation into the impacts of the proposed action.
 - (c) Which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.
- (2) The lead agency chosen shall determine the need for an EIS according to Subsection F. Such determination shall be made within 15 calendar days of designation as lead agency or within 15 calendar days of receipt of a complete application, whichever is later; provided, however, that such period may be extended by mutual agreement of the applicant and the agency.
- (3) If the involved agencies are unable to resolve the question of lead agency within the prescribed thirty-calendar-day period, they shall follow the procedures of Subsection E below.

D. Other actions.

- (1) For all actions which are not Type I, the agency shall make an initial determination of the need for an EIS according to Subsection F with the aid of the environmental clearance form and the preliminary environmental review form. In cases where an applicant is involved, the determination shall be rendered within 45 calendar days following receipt of a complete application for approval of the action sought; provided, however, that such period may be extended by mutual agreement of the applicant and the agency.
- (2) If the agency determines that the action is exempt, Type II or an unlisted action which will not have a significant effect on the environment, and intends no coordination, it shall so inform the applicant and the proposed action may be processed without further regard to this chapter.
- (3) If the agency finds that the action may have a significant effect on the environment or it wishes to coordinate with other agencies, the agency shall notify such other agencies of the initial determination and reasons supporting it, supplying them with copies of any preliminary environmental review forms and any applications which have been prepared.
- (4) If within 15 calendar days from the date of mailing such notification no other involved agency submits a written objection to the initial agency being lead agency, the initial determination of need shall be confirmed. If within 15 calendar days from the date of notification any other involved agency submits a written objection to the initial agency being lead agency, all involved agencies shall follow the procedures of Subsection E below.

E. Lead agency resolution. If all involved agencies are unable, under either Subsection C or D, to resolve the choice of lead agency, they shall:

- (1) Where the agencies are all agencies of the Town of Ossining, submit the question to the Town Board for its determination.

- (2) Where nonlocal agencies are involved, submit the question in writing to the Commissioner of the Department of Environmental Conservation, who shall, within 12 business days of the date the request was mailed, designate a lead agency based on a review of the facts, the criteria in Subsection C(1) and any comments received.
- F. Determination of need for an EIS.
- (1) In each case, the lead agency shall determine whether the proposed action is:
 - (a) An exempt action.
 - (b) A Type II action.
 - (c) A Type I or unlisted action which will not have a significant effect on the environment.
 - (d) A Type I or unlisted action which may have a significant effect on the environment.
 - (2) The agency may meet with the applicant and meet and consult with any other person or agency for the purpose of aiding it in making the determination.
- G. If the lead agency, once chosen or confirmed, determines that a proposed action is an exempt or Type II action or an unlisted action which will not have a significant effect on the environment, the proposed action may be processed without further regard to this chapter.
- H. If the lead agency, once chosen or confirmed, determines that the proposed action is a Type I action, whether it may or may not have a significant effect on the environment, or an unlisted action which may have a significant effect on the environment, the agency shall do the following:
- (1) The agency shall prepare a written notice, which shall state:
 - (a) Either that it is a positive declaration (a DEIS is required) or that it is a negative declaration (a DEIS is not required).
 - (b) The name and address of the agency.
 - (c) The name and telephone number of a person who can provide further information.
 - (d) A brief and precise description of the nature, extent and location of the action proposed.
 - (e) The reasons supporting the determination.
 - (f) In the case of an action which may have a significant effect, the location and nature of its potential significant environmental impacts and effects.
 - (2) Such written notice shall be circulated to:
 - (a) Commissioner, New York State Department of Environmental Conservation.
 - (b) Region 3, New York State Department of Environmental Conservation.
 - (c) The Town Supervisor.
 - (d) Any applicant.
 - (e) Any other agencies involved in approval of the action.
 - (f) The official newspaper for publication.
- I. All other agencies involved in the action shall have no further obligations under this chapter with respect to the action being considered except:
- (1) To provide their views where appropriate and to the extent practical, appropriate technical analysis and support;
 - (2) To make the findings required by § 85-9H herein; and
 - (3) Not to approve, commence or engage in such actions until the procedures set forth in § 85-9 herein have been completed and the action has been approved by the lead agency.

§ 85-9. Environmental impact statement procedure.

- A. Following a determination that a proposed action may have a significant effect on the environment, the agency shall prepare a draft environmental impact statement or, in the case of an action involving an applicant, the applicant shall prepare an environmental impact report in the form of a draft environmental impact statement. The applicant shall submit a fee, in accordance with § 85-12 herein, to defray the expense to the agency of reviewing the draft environmental impact statement and, if necessary, the final environmental impact statement. If the applicant decides not to submit an environmental impact report, the processing of the application will cease, and no approval will be issued.
- B. An application for a permit or authorization for an action upon which a DEIS is determined to be required shall not be complete until such DEIS has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearing with respect to the DEIS.
- C. Notice of completion.
 - (1) Upon completion of a draft environmental impact statement, a notice of completion shall be prepared by the agency, which shall state:
 - (a) That it is a notice of completion of a DEIS.
 - (b) The name and address of the lead agency.
 - (c) The name and telephone number of a person who can provide further information.
 - (d) A brief and precise description of the nature, extent and location of the action proposed.
 - (e) The location and nature of the action's potential significant environmental impacts and effects.
 - (f) Where and how copies of the statement can be obtained from the agency.
 - (g) That comments on the DEIS are requested and will be received and considered by the agency at a given address for a given period, which shall be not less than 30 calendar days from the date of circulation of the notice of completion or 10 calendar days following a public hearing, whichever is longer.
 - (2) The notice of completion shall be circulated to:
 - (a) Any applicant.
 - (b) The official newspaper for publication.
 - (c) The New York State Clearinghouse.
 - (d) The A-95 Coordinator, Tri-State Regional Planning Commission.
 - (3) In addition, the notice of completion and a copy of the draft environmental impact statement shall be circulated to:
 - (a) Commissioner, New York State Department of Environmental Conservation.
 - (b) Region 3, New York State Department of Environmental Conservation.
 - (c) The Town Supervisor.
 - (d) Any other agencies involved in approval of the action.
 - (e) Persons requesting it. Where sufficient copies of a statement are not available, the agency may charge a fee to cover its costs in making the additional statements available.
- D. Public hearing.

- (1) If the agency, at its discretion, decides to hold a public hearing on a draft environmental impact statement, notice thereof shall be prepared by the agency. It shall specify the time, place and purpose of the hearing and shall contain a summary of the information contained in the notice of completion of the DEIS. The notice shall be circulated to:
 - (a) Commissioner, New York State Department of Environmental Conservation.
 - (b) Region 3, New York State Department of Environmental Conservation.
 - (c) The Town Supervisor.
 - (d) Any applicant.
 - (e) Any other agencies involved in approval of the action.
 - (2) A notice of hearing may be combined with the notice of completion of the DEIS and shall be published in the official newspaper at least 14 calendar days prior to such public hearing. The hearing shall commence no less than 15 calendar days nor more than 60 calendar days from the date of circulation of the DEIS, except as otherwise provided where the agency determines that additional time is necessary for the public or some other agency to review the DEIS or to coordinate the environmental review process with other procedures relating to review and approval of an action or where a different hearing date is required as appropriate under other applicable law.
- E. Analysis of the DEIS. If, on the basis of a draft environmental impact statement or a public hearing thereon, the agency determines in writing that an action will not have a significant effect on the environment, the proposed action may be processed without further regard to this chapter. For public information purposes, copies of such determination shall be circulated to:
- (1) Commissioner, New York State Department of Environmental Conservation.
 - (2) Region 3, New York State Department of Environmental Conservation.
 - (3) The Town Supervisor.
 - (4) Any applicant.
 - (5) Any other agencies involved in approval of the action.
 - (6) The official newspaper for publication.
 - (7) The New York State Clearinghouse.
 - (8) The A-95 Coordinator, Tri-State Regional Planning Commission.
- F. Final EIS. If the agency determines that an action may have a significant effect on the environment, the agency shall prepare or cause to be prepared a final environmental impact statement. If the action involves an application, the agency may direct the applicant to prepare the final EIS. Such final EIS shall be prepared within 45 calendar days after the close of any hearing or within 60 calendar days after the circulation of the DEIS, whichever last occurs; provided, however, that the agency may amend this time as necessary to complete the statement adequately or where problems identified with the proposed action require material reconsideration or modification or to coordinate the environmental review process with other procedures relating to review and approval of an action or where mutually agreed to by the applicant and the agency. Where the action involves an application, such final EIS shall be accompanied by a fee, in accordance with § 85-12 herein.
- G. Notice of completion.
- (1) Upon completion of a final environmental impact statement, a notice of completion shall be prepared by the agency which shall state:
 - (a) That it is a notice of completion of a final EIS.
 - (b) The name and address of the agency.

- (c) A brief and precise description of the nature, extent and location of the action proposed.
 - (d) The location and nature of the action's potential significant environmental impacts and effects.
 - (e) Where and how copies of the statement can be obtained from the agency.
- (2) The notice of completion shall be circulated to:
- (a) Any applicant.
 - (b) The official newspaper for publication.
- (3) In addition, the notice of completion and a copy of the final environmental impact statement shall be circulated to:
- (a) Commissioner, New York State Department of Environmental Conservation.
 - (b) Region 3, New York State Department of Environmental Conservation.
 - (c) The Town Supervisor.
 - (d) Any other agencies involved in approval of the action.
 - (e) Persons requesting it. Where sufficient copies of a statement are not available, the agency may charge a fee to cover its costs in making the additional statements available.

H. Approval or disapproval of action.

- (1) No decision to carry out or approve an action which has been the subject of a final environmental impact statement shall be made until after the circulation and consideration of such final EIS.
- (2) Prior to the agency's decision on an action, it shall afford other agencies and the public a reasonable time period, not less than 10 calendar days, in which to consider the final EIS. Where the agency has been the lead agency for an action, it shall make a decision whether or not to approve the action within 30 days of the date of circulation of the final EIS.
- (3) Determination.
- (a) An agency shall not carry out or approve an action which may have a significant effect on the environment unless it determines, in writing, that:
 - [1] Consistent with social, economic and other essential considerations, 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 practicable, including the effects disclosed in the relevant EIS.
 - [2] Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.
 - [3] The requirements of this chapter and Part 617 of Title 6 of the New York Codes, Rules and Regulations have been met.
 - (b) Such determination shall also state the facts and conclusions relied upon in the EIS supporting its decision and shall indicate the social, economic and other factors and standards which formed the basis of its decision.
- (4) No agency shall make a decision not to carry out or not to approve an action until it has prepared a written statement of the facts and conclusions relied on in the EIS or comments provided thereon.

§ 85-10. Actions involving federal participation.

- A. Where there have duly been prepared under the National Environmental Policy Act of 1969 both a draft environmental impact statement and a final environmental impact statement for an action under consideration, the agency shall have no obligation to prepare an environmental impact statement or make findings under this chapter with respect to the action. However, except in the case of exempt actions, no agency may undertake or approve the action until the federal final EIS has been completed and the agency has made the findings required in § 85-9H.
- B. Where there has duly been prepared under the National Environmental Policy Act of 1969 a negative declaration or other written determination that the action will not require a federal impact statement, the agency shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter.

§ 85-11. Preexisting actions.

Actions undertaken, approved or on which substantial work has been undertaken prior to the effective date of this chapter shall be exempt actions; provided, however, that if after such dates an agency modifies an action undertaken or approved prior to that date and the agency determines that the modifications may have a significant adverse effect on the environment, such modification shall be an action subject to this chapter.

§ 85-12. Fees.

- A. When a Type I or an unlisted action involves an applicant, the agency may charge fees in order to recover the costs incurred in preparing, causing to be prepared or reviewing an environmental impact statement regarding the action. Any part of such fee collected by an agency and not used for such purposes shall be returned to the applicant. When requested, the agency shall provide the applicant with an estimate of the fees expected to be charged.
- B. The fees may be in cash or, at the discretion of the agency and subject to the approval of the Town Board as to form and sufficiency, in the form of a bond.
- C. The fees shall be as follows:
 - (1) Accompanying an environmental clearance form: no fee.
 - (2) Accompanying a preliminary environmental review form: \$50, to be submitted at the time of application, as set forth in § 85-8B herein.
 - (3) Submitted prior to the preparation of a DEIS: a fee equal to the maximum allowable according to Subsection D, minus \$50, or such other lesser amount as may be determined adequate by the agency in a particular case.
- D. The total amount of all fees charged an applicant shall not exceed:
 - (1) For residential projects: 2% of the total project cost. The total project cost shall be the cost of the land plus the cost of all site improvements required, not including the cost of buildings and structures.
 - (2) For nonresidential projects: 1/2 of 1% of the total project cost. Total project cost shall be the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common usage, such as Building Construction Cost Data by Means.

§ 85-13. Files.

The agency shall maintain files which shall be open for public inspection of all determinations of need, notices of completion, draft and final environmental impact statements, written comments, minutes of the public hearings and the written determinations resulting therefrom and all other applications.