

AGRICULTURAL DISTRICTS AND THE SEQRA PROCESS

The State Environmental Quality Review Act (“SEQRA”) and its corresponding regulations (6 NYCRR Parts 617 and 618) define those situations in which particular state and local actors must conduct an environmental review as part of their decision-making process. Required review under SEQRA operates under a classification approach: Type I, Type II, and Unlisted Actions. Type I actions are those actions that are most likely to have a significant impact on environmental concerns, and thus require the use of a full Environmental Assessment Form (“EAF”) as part of the review process. Type II actions are those actions that are most likely to have little to no significant environmental impact, and therefore do not require an EAF or any additional review process. Lastly, Unlisted Actions, which are those actions which do not fall within the scope of Type I or II actions in SEQRA regulations, require a short EAF.

In relation to agricultural districts certified pursuant to Article 25-AA of the Agriculture & Markets Law (“AML”), SEQRA applies to the adoption, modification, continuation, consolidation and termination of agricultural districts. County legislative bodies adopt, review, modify and consolidate agricultural districts pursuant to AML §§303, 303-a, 303-b, and 303-c. Local legislative bodies, including these county legislative bodies, are subject to SEQRA.

The Department of Environmental Conservation (“DEC”) has advised in its guidance documents that initial adoption of an agricultural district by a county legislative body is classified as a type of comprehensive resource management plan contemplated as a Type I action in 6 NYCRR § 617.4. (The SEQR Handbook, 3rd Edition 2010, pp. 202-203; available here: www.dec.ny.gov/permits/6188.html). Because the adoption of an agricultural district is a Type I action, completion of a full EAF is required to determine the environmental significance of such actions. 6 NYCRR §617.6(a)(2). County legislative bodies should refer to the criteria contained in the SEQRA regulations, 6 NYCRR Part 617; specifically, §617.6 “Initial Review of Actions and Establishing Lead Agency” and §617.7 “Determining Significance,” as well as DEC’s published SEQRA guidance documents.

Once a county legislative body has prepared its full EAF and made a determination of significance concerning the adoption of an agricultural district, the county legislative body should follow the notice and filing requirements for Type I actions, set forth in 6 NYCRR §617.12 for both negative declarations and for positive declarations of significant impact. As

§617.12 states, notice of all negative or positive declarations for Type I actions shall be published in the Environmental Notice Bulletin in a manner prescribed by DEC. The negative or positive declaration must be filed with the chief executive officer of the political subdivision or subdivisions in which the action will be principally located (the political subdivisions within the agricultural district which is being adopted); in the main office and appropriate regional office, if any, of the lead agency; and with the Department of Agriculture and Markets. In the case of a positive declaration, the procedure in preparing an Environmental Impact Statement (“EIS”) must be followed as outlined in 6 NYCRR §617.9, along with the corresponding notice, comment and public hearing process. For further guidance, DEC has published procedural flowcharts outlining the complete process, available at www.dec.ny.gov/permits/36860.html.

County legislative bodies also undertake review of agricultural districts pursuant to AML §303-a, consider requests for inclusion of land which is predominantly viable agricultural land within certified agricultural districts under AML §303-b and may consolidate agricultural districts under AML §303-c. If an agricultural district is simply continued, with no material change, the recertification of the district is considered a Type II action, and no further environmental review is required. However, if an agricultural district is modified, consolidated or terminated upon its review, the modification, consolidation or termination would be deemed an Unlisted Action under SEQRA, requiring a short EAF to determine environmental significance.

The information provided herein is intended to assist county legislative bodies in fulfilling their obligations under SEQRA and 6 NYCRR Part 617 when adopting, reviewing or consolidating agricultural districts. County legislative bodies are ultimately responsible for ensuring that the requirements of SEQRA have been met and, therefore, should consult their individual county attorneys and the Department of Environmental Conservation for further assistance and information.