

(g) A local agency may designate a specific geographic area within its boundaries as a critical environmental area (CEA). A state agency may also designate as a CEA a specific geographic area that is owned or managed by the state or is under its regulatory authority. Designation of a CEA must be preceded by written public notice and a public hearing. The public notice must identify the boundaries and the specific environmental characteristics of the area warranting CEA designation.

(1) To be designated as a CEA, an area must have an exceptional or unique character covering one or more of the following:

(i) a benefit or threat to human health;

(ii) a natural setting (e.g., fish and wildlife habitat, forest and vegetation, open space and areas of important aesthetic or scenic quality);

(iii) agricultural, social, cultural, historic, archaeological, recreational, or educational values; or

(iv) an inherent ecological, geological or hydrological sensitivity to change that may be adversely affected by any change.

(2) Notification that an area has been designated as a CEA must include a map at an appropriate scale to readily locate the boundaries of the CEA, the written justification supporting the designation, and proof of public hearing and, must be filed with:

(i) the commissioner;

(ii) the appropriate regional office of the department; and

(iii) any other agency regularly involved in undertaking, funding or approving actions in the municipality in which the area has been designated.

(3) This designation shall take effect 30 days after filing with the commissioner. Each designation of a CEA must be published in the ENB by the department and the department will serve as a clearinghouse for information on CEAs.

(4) Following designation, the potential impact of any Type I or Unlisted Action on the environmental characteristics of the CEA is a relevant area of environmental concern and must be evaluated in the determination of significance prepared pursuant to Section 617.7 of this Part.

§617.15 Actions involving a federal agency

(a) When a draft and final EIS for an action has been duly prepared under the National Environmental Policy Act of 1969, an agency has no obligation to prepare an additional EIS under this Part, provided that the federal EIS is sufficient to make findings under section 617.11 of this Part. However, except in the case of Type II actions listed in section 617.5 of this Part, no involved agency may undertake, fund or approve the action until the federal final EIS has been completed and the involved agency has made the findings prescribed in section 617.11 of this Part.

pursuant to regulations implementing SEQRA adopted by [DEC] shall constitute a Type II action hereunder."^{174.1}

[7] Critical Environmental Areas

A critical environmental area is "a specific geographic area designated by a State or local agency" that possesses "exceptional or unique environmental characteristics."¹⁷⁵ The procedure for establishing a critical environmental area is set forth at 6 N.Y.C.R.R. section 617.14(g) [old 617.4(h)].

Prior to the 1996 amendments to the regulations, unlisted actions that were proposed for critical environmental areas (CEAs) automatically became Type I actions.¹⁷⁶ Although this seems to be only a minor procedural matter, such a reclassification had a profound impact on affected agencies' collective workload by mandating that the agencies take the additional procedural steps required for all Type I actions.¹⁷⁷ In the 1996 amendments to part 617, DEC eliminated from the Type I list actions occurring within or adjacent to critical environmental areas and instead included critical environmental areas as a relevant criterion of environmental concern in determining environmental significance.¹⁷⁸

^{174.1} 21 NYCRR § 461.3(t).

¹⁷⁵ 6 N.Y.C.R.R. § 617.2(i).

¹⁷⁶ Old 6 N.Y.C.R.R. §§ 617.2(i) and 617.4(h) (1987).

See also Watch Hill Homeowners Ass'n v. Town Bd. of Town of Greenburgh, 226 A.D.2d 1031, 641 N.Y.S.2d 443 (3d Dept. 1996) (discussion of 1987 and 1996 versions of SEQRA regulations relating to CEAs); Chase v. Board of Educ. of the Roxbury Cent. Sch. Dist., 188 A.D.2d 192, 593 N.Y.S.2d 603 (3d Dept. 1993); North Fork Envtl. Council, Inc. v. Janoski, 196 A.D.2d 590, 601 N.Y.S.2d 178 (2d Dept. 1993); City of Yonkers v. County of Westchester, 183 A.D.2d 823, 584 N.Y.S.2d 69 (2d Dept. 1992) (basis for classifying action as Type I was its theoretical potential for affecting a CEA); Flynn v. Harris, No. 91-16060 (Sup. Ct. Suffolk Co. Nov. 26, 1991); Palermo v. Haugh, No. 682/91 (Sup. Ct. Rockland Co. Sept. 6, 1991).

But see Friends of Harbor Island Park v. Village of Mamaroneck, N.Y.L.J., Aug. 2, 1990, at 20, col. 6 (Sup. Ct. Westchester Co. 1990) (court suggests that Type II or exempt actions might also become Type I actions if located within a CEA depending upon the language used by the agency creating the critical environmental area. Note, however, that the authors believe that this distinction is not valid since the SEQRA regulations expressly provide that a critical environmental area designation only affects "unlisted actions" [*see* old 6 N.Y.C.R.R. §§ 617.4(h), 617.12(b)(12) (1987)]).

¹⁷⁷ These steps included coordination of the selection of a lead agency, preparation and review of the full environmental assessment form, and preparation and filing of a notice of negative declaration if no EIS was required.

¹⁷⁸ 6 N.Y.C.R.R. §§ 617.7(c)(1)(iii) and 617.14(g). *See* Riverhead v. State of New York, N.Y.L.J., Oct. 3, 2001, at 23, col. 2 (Sup. Ct. Suffolk Co. 2001) (noting that area to be mined was designated a CEA). *See also* DEC, Final Generic Environmental Impact Statement on the Proposed State Environmental Quality Review Act Regulations, 6 NYCRR Part 617 (Sept. 6, 1995), at

The full EAF has been revised to reflect this new criterion and to pursue consideration of potential impacts within or "substantially" contiguous to a CEA.¹⁷⁹

The steps for establishing a critical environmental area under the part 617 regulations are reasonably straightforward. The applicable regulation provides:

(1) To be designated as a [critical environmental area], an area must have an exceptional or unique character covering one or more of the following:

(i) a benefit or threat to human health;

(ii) a natural setting (*e.g.*, fish and wildlife habitat, forest and vegetation, open space and areas of important aesthetic or scenic quality);

(iii) agricultural, social, cultural, historic, archaeological, recreational or educational values; or

(iv) an inherent ecological, geological or hydrological sensitivity to change which may be adversely affected by any change.¹⁸⁰

In order to be designated as critical by a local agency, the specific geographic area must be within the agency's jurisdictional boundaries. In order to be so designated by a state agency, the specific geographical area must be either owned or managed by the state agency, or under its regulatory authority. (State agencies were given authority to establish critical environmental areas in the 1987 amendments to the SEQRA regulations.¹⁸¹)

Before the area can be designated as critical, written public notice must be given and a public hearing must be held.¹⁸² However, the regulations do not specify the period for public notice or the type of hearing required.

Following the hearing, the state or local agency must provide notification that

93-100; *Angiolillo v. Town of Greenburgh*, 21 A.D.3d 1101, 801 N.Y.S.2d 629 (2d Dept. 2005) (court discusses planning board's action in rescinding conditional negative declaration after determining project was in a CEA). *But see* *Stutchin v. Town of Huntington*, 71 F. Supp. 2d 76 (E.D.N.Y. 1999) (court erroneously noted that designation of Lloyd Harbor as CEA resulted in an action affecting harbor as Type I, apparently relying on 1987 version of SEQRA regulations); *Riverkeeper, Inc. v. General Electric*, N.Y.L.J., May 12, 1998, at 29 (Sup. Ct. Westchester Co.) (court noted that project's location within CEA elevated project to Type I status, apparently relying erroneously on the 1987 version of the SEQRA regulations); *In re Belleayre Resort at Catskill Park, Towns of Shandaken and Middletown* (DEC Comm'r Determination, Mar. 20, 2000).

¹⁷⁹ See 6 N.Y.C.R.R. § 617.20, app. A, part I.A., question 19; part II, question 14; 6 N.Y.C.R.R. § 617.20, app. C, part 2.D.

¹⁸⁰ 6 N.Y.C.R.R. § 617.14(g) [old 617.4(h)].

¹⁸¹ Old 6 N.Y.C.R.R. § 617.4(h) (1987).

¹⁸² 6 N.Y.C.R.R. § 617.14(g) [old 617.4(h)].

an area has been designated as a critical environmental area. This notice must be filed with the DEC Commissioner, with the DEC regional office covering the region in which the critical environmental area is located, and with any other agency regularly involved in approving, undertaking or funding actions in the municipality in which the area has been designated.¹⁸³ The notification must contain a map of an appropriate scale to readily locate the boundaries of the area.¹⁸⁴ DEC is required to publish notice of the establishment of critical environmental areas in the ENB and to serve as a clearinghouse for information regarding such designations. The designation of a critical environmental area takes effect 30 days after completion of the required filing.¹⁸⁵

From a procedural perspective, unless an area has been formally designated as a critical environmental area or falls within one of several other special classes of resources afforded recognition in the Type I list,¹⁸⁶ otherwise environmentally important or sensitive lands in or near the project will not receive special attention in the environmental review.¹⁸⁷ However, the courts have not been reluctant to recognize SEQRA's broad definition of "environment" and, where there are sensitive areas, to afford them the necessary protection.¹⁸⁸

[8] Statutory Determinations of Significance

Numerous state statutes explicitly mandate that an environmental impact statement must be prepared for particular kinds of actions. These include the

¹⁸³ 6 N.Y.C.R.R. § 617.14(g)(2) [old 617.4(h)(2)].

¹⁸⁴ 6 N.Y.C.R.R. § 617.14(g)(3) [old 617.4(h)(3)].

¹⁸⁵ 6 N.Y.C.R.R. § 617.14(g)(3) [old 617.4(h)(3)].

¹⁸⁶ See, e.g., lands comprising an agricultural district, listed historic buildings or sites and park lands. 6 N.Y.C.R.R. §§ 617.4(b)(8), (9), (10) [old 617.12(b)(8), (9), (10)], respectively.

¹⁸⁷ See, e.g., *Nanaa v. Rockefeller*, RJI No. 28-1-90-69 (Sup. Ct. Montgomery Co. Mar. 13, 1990), *aff'd*, 166 A.D.2d 789, 563 N.Y.S.2d 149 (3d Dept. 1990).

¹⁸⁸ See, e.g., *Save the Pine Bush, Inc. v. City of Albany*, 70 N.Y.2d 193, 518 N.Y.S.2d 943, 512 N.E.2d 526 (1987); *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499, 502 N.E.2d 176 (1986); *Shawangunk Mt. Env'tl. Ass'n v. Town of Gardiner*, 157 A.D.2d 273, 557 N.Y.S.2d 495 (3d Dept. 1990); *Kahn v. Town of Mamaroneck Planning Bd.*, No. 7740-94 (Sup. Ct. Westchester Co. June 21, 1995); *Jem Realty v. Town of Southold*, No. 14588/94 (Sup. Ct. Suffolk Co. Aug. 25, 1994); *First Taxing Dist. of Norwalk v. Lewis*, No. 1708/89 (Sup. Ct. Westchester Co. Sept. 18, 1989).

But see *Long Island Pine Barrens Soc'y, Inc. v. Planning Bd. of Brookhaven*, 80 N.Y.2d 500, 591 N.Y.S.2d 982, 606 N.E.2d 1373 (1992); *North Fork Env'tl. Council v. Janoski*, No. 19838/89-12097/89 (Sup. Ct. Suffolk Co. Mar. 27, 1990). See also *Village of Tarrytown v. Planning Bd. of Village of Sleepy Hollow*, No. 8425/00 (Sup. Ct. Westchester Co. Sept. 26, 2000) (court noted petitioners' claim that impacts could affect a watershed CEA).