

Chapter 85

ENVIRONMENTAL QUALITY REVIEW

- § 85-1. Statutory authority.
- § 85-2. Short title.
- § 85-3. Purpose; intent.
- § 85-4. Definitions.
- § 85-5. Exempt actions.
- § 85-6. Determination of environmental significance.
- § 85-7. Actions likely to have significant effect upon environment.
- § 85-8. Contemporaneous or subsequent actions.
- § 85-9. Significance of consequence.
- § 85-10. Filing procedures for determining environmental significance.
- § 85-11. Processing of environmental statement.
- § 85-12. Actions proposed by village.
- § 85-13. Notification of determination of environmental significance.
- § 85-14. Results of determination of environmental significance.
- § 85-15. Designation of lead agency.
- § 85-16. Determination of lead agency.
- § 85-17. Lead agency to notify applicant.
- § 85-18. Responsibilities of agencies other than lead agency.
- § 85-19. Conduct of additional studies permitted.
- § 85-20. Preparation of draft environmental impact statement; contents.
- § 85-21. Procedure upon completion of draft environmental impact statement.

WINDSOR CODE

- § 85-22. Determination of necessity of public hearing.
- § 85-23. Notification of public hearing.
- § 85-24. Time frame for conduct of public hearing.
- § 85-25. Determination of necessity of final environmental impact statement.
- § 85-26. Contents of final environmental impact statement.
- § 85-27. Filing of final environmental impact statement.
- § 85-28. Timing of decision making.
- § 85-29. Statement of findings to be made.
- § 85-30. Filing of final determination.
- § 85-31. Fees.
- § 85-32. Amendments to provisions.
- § 85-33. Consistency with state law.
- § 85-34. Procedures for questioning final determination.
- § 85-35. Effective date.
- § 85-36. Type I actions.
- § 85-37. Type II actions.

[HISTORY: Adopted by the Board of Trustees of the Village of Windsor 10-4-77 as L.L. No. 1-1977. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction - See Ch. 67.
Floodplains - See Ch. 98.
Zoning - See Ch. 200.

§ 85-1. Statutory authority.

This chapter of the Code of the Village of Windsor is adopted pursuant to Article 8 of the New York Environmental Conservation Law, providing for environmental quality review of actions which may have a significant effect upon the environment.

§ 85-2. Short title.

This chapter shall be known and may be cited as the “Village of Windsor Environmental Quality Review Law.”

§ 85-3. Purpose; intent.

A. The purpose of the Village of Windsor Environmental Quality Review Law is to incorporate the consideration of environmental factors into the planning and decision-making processes of the Village of Windsor. In adopting the Village of Windsor Environmental Quality Review Law, it is the intent of the Village of Windsor that all agencies operating within its jurisdiction conduct their affairs with an awareness that they are the stewards of 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.

B. It is the intent of this chapter that, in the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in public policy and that those factors be considered together in reaching decisions on proposed activities. It is the intention of the Village of Windsor that, through implementation of this chapter, a suitable balance of social, economic and environmental factors shall be incorporated into the decision-making processes of the Village of Windsor. It is not the intention of the Village of Windsor Environmental Quality Review Law that environmental factors be the sole consideration in decision-making.

§ 85-4. Definitions.

As used in this chapter, unless the context otherwise requires, certain terms and words are herein defined as follows:

ACTION - Any activity of an agency, except an exempt action as defined in § 85-5 of this chapter, including, without limitation:

A. Physical activities, such as construction, or other activities which change the use or appearance of any natural resource or a structure.

- B. Funding activities, such as approving, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions, or other forms of direct and indirect financial assistance.
- C. Licensing activities, such as the proposing, approval, or disapproval 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, approval or disapproval of a master or long range plan, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities.
- E. Policymaking activities, such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines.

AGENCY - Any state department, agency, board, public benefit corporation, public authority or commission or any local agency, including any village, town, city, county, board, district, commission, governing body and other political subdivision of the state.

APPLICANT - Any person making an application or other request for action by the Village of Windsor.

ENVIRONMENT - The physical condition 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 IMPACT REPORT - A document prepared by an applicant to assist the municipality in its preparation of an environmental impact statement. The contents of the report shall be prescribed by the Village of Windsor, although it may include additional information.

ENVIRONMENTAL IMPACT STATEMENT - A written document prepared in accordance with §§ 85-20 through 85-24 of this chapter. An "environmental impact statement" may either be a draft or be final.

ENVIRONMENTAL SIGNIFICANCE STATEMENT - A written description and analysis of the environmental impact and effect of a proposed action which addresses in detail the considerations listed in § 85-6 of this chapter.

EXEMPT ACTION - Any action for which an environmental review is not required in accordance with § 85-5 of this chapter.

MINISTERIAL ACTION - Any 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 the law may require in some degree a construction of its language or intent, including all acts listed in Appendix A of this chapter.*

MUNICIPALITY - The Village of Windsor, Broome County, New York.

PERMIT - License, lease, certificate, grant or permission or other entitlement for use or permission to act given by the Village of Windsor.

PERSON - Any agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

PLANNING BOARD - The Village of Windsor Planning Board.

SEQR - The State Environmental Quality Review Act constituting Article 8 of the Environmental Conservation Law and any amendments thereto.

TYPE I ACTION - The actions or classes of actions that are likely to require preparation of environmental impact statements because they, in almost every instance, have a significant effect upon the environment, including all those actions or classes of actions listed in §§ 85-28 through 85-30 of this chapter.

TYPE II ACTION - The actions or classes of actions which have been determined not to have a significant effect upon the environment and which do not require environmental impact statements under the law, including all those actions or classes of actions listed in §§ 85-28 through 85-30 of this chapter.

TYPICAL ASSOCIATED ENVIRONMENTAL EFFECTS - Effects upon the environment which are commonly the result of an activity.

VILLAGE - The Village of Windsor, Broome County, New York.

§ 85-5. Exempt actions.

The following actions are exempt from the Village Environmental Quality Review Law, provided that all requirements contained herein have met with compliance:

- A. Actions involving federal participation. Where there has 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 village shall have no obligation to prepare an environmental impact statement or make findings under this chapter with respect to the action, so long as the environmental impact statements either contain or are supplemented by the items concerning growth-inducing aspects and energy use and conservation as described in § 85-20B(3)(g) and (h) of this chapter.

* Editor's Note: Appendix A is on file in the office of the Village Clerk and may be examined there during regular office hours.

B. The following actions are exempt from the Village of Windsor Environmental Quality Review Law pursuant to Section 617-13 of Title 6 of New York Codes, Rules and Regulations (NYCRR).

- (1) Enforcement or criminal proceedings or exercise of prosecutorial discretion in determining whether or not to institute such proceedings.
- (2) Ministerial actions.
- (3) Maintenance or repair involving no substantial changes in an existing structure or facility.
- (4) Actions requiring a certificate of environmental compatibility and public need under Articles VII and VIII of the New York State Public Service Law and consideration, grant or denial of any such certificate.
- (5) Actions undertaken or approved prior to June 1, 1977, for local agencies and September 1, 1977, for applicants. An action shall be deemed to be undertaken or approved prior to the respective above date if, in the case of construction activities, a contract for substantial construction activities has been entered into or if a continuous program of on-site construction or modification has been engaged in.
- (6) Actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources.
- (7) Actions of the Legislature of the State of New York or of any court of law.

C. Type II actions. Type II actions, as listed in § 85-37, are exempt from this chapter.

§ 85-6. Determination of environmental significance.

If an action is not exempt, as defined in § 85-5 of this chapter, determination will be made by the Village of Windsor Planning Board as to whether the action may have a significant effect upon the environment.

§ 85-7. Actions likely to have significant effect upon environment.

The following actions, in addition to those actions listed as Type I in § 85-36, are likely to have a significant effect upon the environment.

- A. A substantial adverse change to ambient air quality or water quality or noise levels or in solid waste production, drainage, erosion or flooding.

- B. 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 upon critical habitat areas or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such species.
- C. 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.
- D. The creation of a material conflict with the community's existing goals or plans as officially approved or adopted by the Windsor Village Board.
- E. The impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.
- F. A major change in the use of either the quantity or type of energy.
- G. The creation of a hazard to human health or safety to any individual or group.
- H. The creation of a material demand for other actions which would result in one (1) of the above consequences.
- I. 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 an action has been included in broad program statements, master or area wide statements or statements for comprehensive plans for which environmental impact statements have been prepared. 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 provisions 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. Actions undertaken or approved in conformity with this chapter shall require no further review under this chapter.
- J. Changes in two (2) or more elements of the environment, no one (1) of which is substantial, but when taken together result in a material change in the environment.
- K. Where there has duly been prepared, under the National Environmental Policy Act of 1969, a negative declaration or other written threshold determination that the action will not require a federal impact statement, the Planning Board shall determine whether or not the action may have a significant effect upon the environment pursuant to the Village of Windsor Environmental Quality Review Law.

§ 85-8. Contemporaneous or subsequent actions.

For the purpose of determining whether an action will cause one (1) of the consequences included in § 85-7 of this chapter, the action shall be deemed to include other contemporaneous or subsequent actions specified as follows.

- A. Contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part.
- B. Contemporaneous or subsequent actions which are likely to be undertaken as a result of the action under consideration.
- C. Contemporaneous or subsequent actions which are dependent upon the action under consideration.

§ 85-9. Significance of consequence.

The significance of a likely consequence as enumerated in §§ 85-7 and 85-8 (i.e., whether it is material, substantial, large, important, etc.) should be assessed in connection with its setting (i.e., urban or rural), its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude.

§ 85-10. Filing procedures for determining environmental significance.

- A. For the purpose of assisting the Planning Board in the determination of whether an action may or will not have a significant effect upon the environment, applicants for permits or other approvals shall file a written statement with the Planning Board setting forth:
 - (1) The name of the applicant.
 - (2) The location of the real property affected, if any.
 - (3) A description of the nature of the proposed action.
 - (4) The effect it may have upon the environment.
- B. Such statement shall be filed simultaneously with the application for action.
- C. Form. The statement provided herein shall be upon a form titled “Application for Determining Environmental Significance,” prescribed by resolution by the Planning Board, and shall contain relevant information, as shall be required in the prescribed form. Such statement shall be accompanied by drawings, sketches and maps, if any, together with any other relevant explanatory material required by the Planning Board.

§ 185-11. Processing of environmental statement.

A. Upon receipt of a complete application, the Planning Board shall cause notice thereof to be posted on the signboard, if any, of the Village of Windsor, maintained by the Village Clerk, and may also cause such notice to be published in the official newspaper of the village. The notice shall describe the nature of the proposed action and state that written views thereon of any person shall be received by the Planning Board no later than a date specified in such notice.

B. Written determination on action. The Planning Board shall render a written determination on such application within fifteen (15) days following receipt of a complete application and statement; provided, however, that such period may be extended by mutual agreement of the applicant and the Planning Board. The determination shall state whether such proposed action may or will not have a significant effect upon the environment. The Planning Board may hold informal meetings with the applicant and may consult with any other person for the purpose of making a determination on the application.

C. Time limitations. The time limitations provided in this chapter shall be coordinated with, to the extent practicable, other time limitations provided by statute or local law, ordinance or regulation of the village.

§ 85-12. Actions proposed by village.

Actions proposed by the village shall be assessed to determine whether or not the action may or will not have a significant effect upon the environment.

A. Statement of environmental significance. The statement provided herein shall be upon a form as provided in § 85-10C of this chapter.

B. Processing of statement. The statement of environmental significance shall be processed in the manner prescribed by § 85-11 of this chapter.

§ 85-13. Notification of determination of environmental significance.

The Planning Board, upon determining whether an action proposed, either by the village or an applicant, to the Planning Board may or will not have a significant effect upon the environment, shall immediately file such a determination as follows:

A. One (1) copy with the appropriate regional office of the New York State Department of Environmental Conservation.

B. One (1) copy with the Commissioner of the New York State Department of Environmental Conservation.

C. One (1) copy with the office of the Municipal Clerk of the village or the person whose jurisdiction most closely corresponds with the Village Clerk's.

§ 85-14. Results of determination of environmental significance.

A. If it is determined by the Planning Board that the action will not have a significant effect upon the environment, the proposed action may be processed without further regard to this chapter.

B. If the municipality determines that the proposed action may have a significant effect upon the environment, the proposed action shall be reviewed and processed in accordance with the provisions of §§ 85-15 through 85-20 of this chapter.

§ 85-15. Designation of lead agency.

Upon receipt of a complete application for an action which the Planning Board determines may have a significant effect upon the environment pursuant to §§ 85-6 through 85-14 of this Article, the Planning Board shall immediately notify all other agencies which may be involved in the proposed action. All involved agencies shall, to the fullest extent possible, coordinate their environmental reviews through a lead agency, to the end that the requirements are met by a single draft environmental impact statement, a single final environmental impact statement and, if conducted and practicable, a single hearing process. In order to expedite this coordination, the Planning Board shall require applicants to specify in their applications which other agencies, to the best of the applicant's knowledge, will have jurisdiction by law over proposed actions. The designation of the lead agency shall be made within thirty (30) calendar days following the filing of a complete application.

§ 85-16. Determination of lead agency.

A. If a question arises between (or among) two (2) or more agencies as to which agency is the lead agency in an action, the agencies shall resolve the question themselves and designate a lead agency in writing on the basis of the following.

- (1) The agency first to act upon the proposed action.
- (2) A determination of which agency has the greatest responsibility for supervising or approving the action as a whole.
- (3) A determination of which agency has more general governmental powers as compared to single or limited powers or purposes.
- (4) A determination of which agency has the greatest capability for providing the most thorough environmental assessment of the action.
- (5) A determination of whether the anticipated impacts of the action being considered are primarily of statewide, regional or local concern.

B. If such agencies are unable to resolve the question within the prescribed thirty calendar-day period, they shall submit the question in written form to the Commissioner of the New York State Department of Environmental Conservation, who shall, within five (5) business days, on the basis of the criteria specified in Subsection A of this section, designate the lead agency.

§ 85-17. Lead agency to notify applicant.

Once the lead agency has been identified, the lead agency shall immediately notify the applicant in writing that it is the lead agency and request the applicant to prepare a draft environmental impact statement.

§ 85-18. Responsibilities of agencies other than lead agency.

The other agencies involved in the action shall have no further obligations under this section with respect to the action being considered except:

- A. To provide their reviews, where appropriate, and, to the extent practical, appropriate technical analysis and support.
- B. To make the finding required by §§ 85-28 through 85-30 of this chapter.
- C. Not to approve, commence or engage in such action until the procedures set forth in §§ 85-28 through 85-30 of this chapter have been completed.

§ 85-19. Conduct of additional studies permitted.

Nothing in this chapter shall prevent the Planning Board, an agency or an applicant from conducting a contemporaneous environmental, economic, feasibility and other studies and preliminary planning and budgetary processes necessary for the formulation of a proposal for action which do not otherwise commit the Planning Board or the agency to commence or engage in such action or granting approval 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 unless and until all requirements of this chapter have been fulfilled.

§ 85-20. Preparation of draft environmental impact statement; contents.

A. Following a determination that an action may have a significant effect upon the environment, the Planning Board shall in the case of an action not involving an applicant, prepare a draft environmental impact statement in accordance with the procedures outlined in this section or, in the case of an action involving an applicant, immediately notify the applicant to prepare an environmental impact report to assist the Planning Board in carrying out its responsibility under this chapter, or the Planning Board may request the applicant to prepare a draft environmental impact statement, except where the action involves more than one (1) agency, in which case, the procedures outlined in §§ 85-15 and 85-17 of this chapter shall be followed. If the applicant refuses to submit a draft environmental impact statement or the environmental impact report, the Planning Board shall prepare or cause to be prepared the draft environmental impact statement, or, in its discretion, notify the applicant that the processing will cease and no approval will be issued.

B. Contents.

(1) Cover sheet of the draft environmental impact statement. All draft environmental impact statements shall be preceded by a cover sheet stating:

- (a) That it is a draft environmental impact statement.
- (b) The name of other descriptive title of the action.
- (c) The location (county, municipality) of the action.
- (d) The name and address of the municipality or agency which requires its preparation and the name and telephone number of a person at the municipality or agency to be contacted for further information.
- (e) The identification of individuals or organizations which prepared any portion of the statement.
- (f) The date of its completion.

(2) Table of contents. If the draft environmental impact statement exceeds ten (10) pages in length, it shall have a table of contents following the cover sheet.

(3) Contents of the body of the draft environmental impact statement. The body of all draft environmental impact statements shall contain at least the following:

- (a) A description of the proposed action in its environmental setting.

8512

§ 85-20

ENVIRONMENTAL QUALITY REVIEW

§ 85-21

- (b) A statement of the environmental impact of the proposed action, including its short- and long-term effects, and typical associated environmental effects.
- (c) An identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented.
- (d) A discussion of alternatives, including the null alternative to the propose action, and the comparable impacts and effects of such alternatives.
- (e) An identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action, should it be implemented.
- (f) A description of mitigation measures proposed to minimize the adverse environmental impacts.
- (g) A description of any growth-inducing aspects of the proposed action.
- (h) A discussion of the effects of the proposed action on the use and conservation of energy.
- (i) A list of any underlying studies, reports and other information obtained and considered in preparing the statement.

- (j) Any other requirements which the Planning Board deems necessary for adequate assessment of environmental impact.

(4) Incorporation of other documents by reference. A draft environmental impact statement may incorporate by reference all or portions of the other documents which contain information relevant to the statement. The reference document shall be made available to the public in the office of the Village Clerk. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

§ 85-21. Procedure upon completion of draft environmental impact statement.

A. Upon completion of a draft environmental impact statement prepared by or at the request of the Planning Board, the Planning Board shall issue a notice of completion containing the following:

- (1) A brief description of the action covered by the statement and the location of its potential impacts and effects.
- (2) A statement indicating where and how copies of the statement can be reviewed or obtained.

8513

§ 85-21

WINDSOR CODE

§ 85-23

- (3) A statement that comments pertaining to the draft environmental impact statement are requested and will be considered by the Planning Board at the Windsor Village Hall, in care of Village Clerk, for a period not less than thirty (30) days from the first filing and circulation of the notice of completion.

B. Filing of the notice of completion. The notice of completion shall be sent to all other agencies involved in the action, persons who have requested it, the editor of the State Bulletin, the State Clearinghouse and the Southern Tier East Regional Planning Development Board designated under the Federal Office of Management and Budget Circular A-95. The Planning Board shall maintain a file open to public inspection of notice of completion and draft environmental

impact statements it has requested an applicant to prepare, has or caused to have been prepared.

C. Filing of notice of completion and draft environmental impact statements for public information purposes. Impact statements and notice of completion shall immediately be filed as follows:

- (1) One (1) copy with the Municipal Clerk whose jurisdiction most closely coincides with that of the lead agency.
- (2) One (1) copy with the Broome County office of the New York State Department of Environmental Conservation.
- (3) One (1) copy with the Commissioner of the New York State Department of Environmental Conservation.

§ 85-22. Determination of necessity of public hearing.

Upon completion of the draft environmental impact statement prepared by or at the request of the Planning Board, the Planning Board shall determine whether or not to conduct a public hearing concerning the proposed action. In determining whether or not to hold a hearing, the Planning Board shall consider the degree of interest shown by other persons in the action and the extent to which a public hearing can aid in the decision making process of the Planning Board by providing a forum for or an efficient mechanism for the collection of public comment.

§ 85-23. Notification of public hearing.

If a public hearing is to held, notice thereof 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 sent, filed and circulated pursuant to § 85-21B of this chapter. In either case, the notice of hearing shall also be published at least ten (10) calendar days in advance of the public hearing, in a newspaper of general circulation in the area of the potential impacts and effects of the action, and shall contain a statement that comments pertaining to the draft environmental impact statement will be received and considered by the Planning Board for not less than ten (10) calendar days following the public hearing.

§ 85-24. Time frame for conduct of public hearing.

The hearing shall commence no less than fifteen (15) calendar days or more than sixty (60) calendar days after the filing of the draft environmental impact statement pursuant to § 85-21C of this chapter, except as the Planning Board may otherwise provide where it determines that additional time is necessary for public or other agency review of the draft environmental impact statement or where a different hearing date is required as appropriate under applicable law. When the SEQR hearing is to be held, it shall be incorporated into existing hearing procedures of the Planning Board.

§ 85-25. Determination of necessity of final environmental impact statement.

A. Except as otherwise provided herein, the Planning Board shall prepare or cause to be prepared a final environmental impact statement within forty-five (45) calendar days after the close of any hearing or within sixty (60) days after the filing of the draft environmental impact statement, whichever last occurs. If the proposed action has been withdrawn or if, on the basis of the draft environmental impact statement or hearing, the Planning Board has determined that the action will not have a significant effect upon the environment, no final environmental impact statement need be prepared.

B. The Planning Board may extend the last date for preparation of the final environmental impact statement:

- (1) Where it determines that additional time is necessary to complete the statement adequately; or
- (2) Where problems with the proposed action requiring material reconsideration or modification have been identified; or
- (3) For other good cause.

§ 85-26. Contents of final environmental impact statement.

The final environmental impact statement shall be preceded by a cover sheet as provided in § 85-20B, except that it shall state that it is a final environmental impact statement. The final environmental impact statement shall reflect a revision and updating of the matters required, as provided in § 85-20B(3), in the body of the statement in light of further review by the Planning Board, comments received and the record of any hearing. Copies or a summary of the substantive

comments received in response to the draft environmental impact statement and the response of the Planning Board to such comments shall be included in the final environmental impact statement.

8515

§ 85-27

WINDSOR CODE

§ 85-31

§ 85-27. Filing of final environmental impact statement.

Copies of the final environmental impact statement shall be filed and made available for review in the same manner as the draft environmental impact statement. A notice of completion of the final environmental impact statement shall be sent to all persons and agencies to whom the notice of completion of the draft environmental impact statement was sent. The Planning Board shall maintain a file, open to public inspection, of notices of completion and draft environmental impact statements and final environmental impact statements it has requested or prepared.

§ 85-28. Timing of decision making.

No decision to carry out or approve an action which may have a significant effect upon the environment shall be made until after the filing and consideration of a final environmental impact statement. The Planning Board's decision whether or not to approve an action which has been the subject of an environmental impact statement shall be made within thirty (30) calendar days of the filing of a final environmental impact statement.

§ 85-29. Statement of findings to be made.

When the Planning Board decides to carry out or approve an action which may have a significant effect upon the environment, it shall make the following findings in a written statement.

A. Consistent with social, economic and other essential considerations of state 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; and

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

§ 85-30. Filing of final determination.

For public information purposes, a copy of the determination shall be filed immediately in the same manner as the draft environmental impact statement. The Planning Board shall maintain a file, open to public inspection, of all notices of determination prepared by it.

§ 85-31. Fees.

Where an action subject to this chapter involves an applicant, and the Planning Board has been responsible for the preparation of environmental impact statements, the Planning Board may charge a fee not to exceed one half of one percent ($\frac{1}{2}$ of 1%) of the action's total cost to the applicant in order to recover the costs of preparing and/or reviewing environmental impact statements.

8516

§ 85-32

ENVIRONMENTAL QUALITY REVIEW

§ 85-34

§ 85-32. Amendments to provisions.

The Village of Windsor may from time to time, after public hearing, modify the procedures of this chapter, broaden the scope of actions for which environmental review is required, and establish further environmental review criteria. Such amendments shall be no less protective of environmental values, public participation and agency and judicial review than the procedures set forth in Part 617 of NYCRR of the New York State Environmental Conservation Law.

§ 85-33. Consistency with state law.

Upon the written request of any person, the Commissioner of the New York State Department of Environmental Conservation shall review and determine whether any action contained in the village's own list or classification system is consistent with the criteria of Section 617.9 and the actions in Section 617.12 of Part 617, State Environmental Quality Review, of Title 6 of NYCRR. The Commissioner

shall give written notification of the determination to such persons and the village within thirty (30) days of receipt of a request.

§ 85-34. Procedures for questioning final determination.

Within ten (10) calendar days after the filing of a final decision of the Planning Board of the environmental impact of a propose action, the Planning Board will accept a written statement of questions of specific nature pertaining to such decision by any person(s) or agency(s).

A. Establishment of meeting to discuss questions. At the mutual consent of the Planning Board and the person(s) or agency(s), which has caused the statement of questions to be prepared, to the Planning Board, the date, time and location of a meeting of both parties shall be established. Such meeting shall take place not later than thirty (30) calendar days after the receipt of the written statement by the Planning Board. If more than one (1) written statement of questions is received by the Planning Board, the Planning Board may, at its discretion, hold one (1) meeting to address all statements of questions.

B. Notification of receipt of statement of questions. Within ten (1) calendar days of receipt of a written statement of questions, the Planning Board shall cause notice of receipt of such questions to be published in a newspaper of general circulation within the village. Such notice shall state that the questions may be reviewed at the office of the Village Clerk; and the date, time and location of the meeting between the municipality and the person(s) or agency(s) which has caused the statement of questions to be prepared; and that any person(s) or agency(s) that wish to comment upon the statement of questions may do so at such meeting. The cost of such notice shall be paid by the person(s) or agency(s) that caused the statement of questions to be prepared.

C. Purpose of meeting. The purpose of the meeting between the Planning Board and the person(s) or agency(s) that caused the statement of questions to be prepared shall be to discuss the environmental ramifications, social and economic ramifications and other mitigation circumstances which led to the final decision made by the Planning Board on the action. Only those questions

which appear upon the written statement of questions shall be discussed at such meeting.

D. Determination of final decision. Based upon the discussion between the Planning Board and the person(s) or agency(s) that caused the statement of questions to be prepared and with any other person(s) or agency(s) with which the Planning Board may wish to consult, the Planning Board may modify its final decision. No further consideration of questions pertaining to any decision of the Planning Board upon the proposed action as provided in this section will be made. Notice of the final decision shall be made in the same manner as provided in §§ 85-21B and C and 85-29 of this chapter. The Planning Board shall maintain a file, open to public inspection, of all notices of determination prepared by it.

§ 85-35. Effective date.

This chapter shall take effect on June 1, 1977, for any actions undertaken by the village. This chapter shall take effect on September 1, 1977, for any action proposed by an applicant, which requires a permit or other approval from the municipality.

§ 85-36. Type I actions.

Type I actions or classes of actions will require an environmental assessment and 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. The following are Type I actions or classes of actions.

A. Construction of new or expansion by more than fifty percent (50%) of existing size, square footage or usage of existing:

- (1) Airports.
- (2) Public institutions, such as hospitals, schools and institutions of higher learning, and correction facilities and major office centers.
- (3) Road or highway sections, including bridges, which require an indirect source permit under 6 NYCRR Part 203.**

** Editor's Note: A copy of 6 NYCRR 203 is on file in the office of the Village Clerk and may be examined there during regular office hours.

- (4) Parking facilities or other facilities with an associated parking area for two hundred fifty (250) or more cars only if such facility would require an indirect source permit under 6 NYCRR Part 203
- (5) Dams with a downstream hazard of “C” classification under the Environmental Conservation Law § 15-0503 (See attached copy of § 15-05030***)
- (6) Stationary combustion installations operating at a total heating input exceeding one thousand million (1,000,000,000) Btu’s per hour.
- (7) Chemical pulp mills.
- (8) Portland cement plants.
- (9) Iron and steel plants.
- (10) Primary aluminum ore reduction plants.
- (11) Incinerators operating at a refuse charging rate exceeding two hundred fifty (250) tons of refuse per twenty-four hour day.
- (12) Sulfuric acid plants.
- (13) Petroleum refineries.
- (14) By-product coke manufacturing plant.
- (15) Lime plants.
- (16) Storage facilities designed for or capable of storing one million (1,000,000) or more gallons of liquid natural gas, liquid petroleum gas or other liquid fuels.
- (17) Sulfur recovery plants.
- (18) Fuel conversion plants.
- (19) Process, exhaust and/or ventilation systems emitting air contaminants assigned an environmental rating of “A” under 6 NYCRR 212 and whose total emission rate of such “A” contaminants exceed one (1) pound per hour.

*** Editor's Note: A copy of § 15-0503 is on file in the office of the Village Clerk and may be examined there during regular office hours.
**** Editor's Note: A copy of 6 NYCRR 212 is on file in the office of the Village Clerk and may be examined there during regular office hours.

8519

§ 85-36

WINDSOR CODE

§ 85-36

- (20) Process, exhaust and/or ventilation systems from which the total emission rate of all air contaminants exceeds fifty (50) tons per day.
- (21) A sanitary landfill for an excess of one hundred thousand (100,000) cubic yards per year of waste fill.
- (22) Any facility, development or project which is to be directly located in one (1) of the following critical areas:
 - (a) Tidal wetlands as defined in Article 25 of the Environmental Conservation Law.
 - (b) Freshwater wetlands as defined in Article 24 of the ECL.*
 - (c) Floodplains as defined in Article 36 of the Environmental Conservation Law.**
 - (d) Wild, scenic and recreational river areas designated in Title 27 of Article 15 of the Environmental Conservation Law.***
- (23) Any facility, development or project having an adverse impact on any historic or prehistoric building, structure or site listed on the National Register of Historic Places or in the statewide Inventory of Historical and Cultural Resources. (This information can be obtained from the New York State Department of Parks and Recreation, Division for Historic Preservation.)
- (24) Any development, project or permanent facility of a nonagricultural use in an agricultural district, which requires a permit, except those listed as Type II actions.
- (25) Any facility, development or project which would generate more than five thousand (5,000) vehicle trips per any hour or more than

twenty-five thousand (25,000) vehicle trips per any eight-hour period.

- (26) Any facility, development or project which would use ground- or surface water in excess of two million (2,000,00) gallons in any day.

* Editor's Note: A copy of Article 24 of the Environmental Conservation Law is on file in the office of the Village Clerk and may be examined there during regular office hours.

** Editor's Note: A copy of Article 36 of the Environmental Conservation Law is on file in the office of the Village Clerk and may be examined there during regular office hours.

*** Editor's Note: A copy of Title 27 of Article 15 of the Environmental Conservation Law is on file in the office of the Village Clerk and may be examined there during regular office hours.

8520

§ 85-36

ENVIRONMENTAL QUALITY REVIEW

§ 85-36

- (27) Any industrial facility which has a yearly average discharge flow, based on days of discharge, of greater than five-tenths (0.5) MGD (million gallons per day).
- (28) Any publicly or privately owned sewage treatment works which has an average daily design flow of more than five-tenths (0.5) MGD.
- (29) A residential development outside any standard metropolitan statistical area (SMSA) as defined by the United States Census Bureau, that includes fifty (50) or more units in an unsewered area or two hundred fifty (250) or more units in a sewer area, or within an SMSA that includes fifty (50) or more units in an unsewered area or two thousand (2,000) or more units in a sewer area.
- (30) Lakes or other bodies of water with a water surface in excess of two hundred (200) acres.

B. Any funding, licensing or planning activities in respect of any of the types of construction listed in Subsection A above.

- C. Application of pesticides or herbicides over more than one thousand five hundred (1,500) contiguous acres.
- D. Clearcutting of six hundred forty (640) or more contiguous acres of forest cover or vegetation other than crops.
- E. The proposed adoption of comprehensive land use plans, zoning ordinances, building codes, comprehensive solid waste plans, state and regional transportation plans, water resources basin plans, comprehensive water quality studies, area-wide waste water treatment plans, state environmental plans, local floodplain control plans and the like.
- F. Commercial burial of radioactive materials requiring a permit under 6 NYCRR Part 380.*
- G. Any action which will result in excessive or unusual noise or vibration, taking into consideration the volume, intensity, pitch, time duration and the appropriate land uses for both the source and the recipient of such noise or vibration.
- H. Acquisition or sale by a public agency of more than two hundred fifty (250) contiguous acres of land.

* Editor's Note: A copy of 6 NYCRR 380 is on file in the office of the Village Clerk and may be examined during the regular office hours.

§ 85-37 Type II actions.

- A. Type II actions or classes of actions have been determined not to have a significant effect on the environment and do not require environmental assessment impact statements under this chapter.
- (1) Construction or alteration of a single-family or two-family residence and appurtenant uses or structures not in conjunction with the construction, or alteration of two (2) or more such residences and not in one (1) of the critical areas described for Type I actions.

- (2) The extension of utility facilities to serve new or altered single- or two-family residential structures or to render service in approved subdivision.
- (3) Construction or alteration of a store, office or restaurant designed for an occupant load of twenty (20) persons or less, if not in conjunction with the construction or alteration of two (2) or more stores, offices or restaurants and if not in one (1) of the critical areas described in Type I actions, and the construction of utility facilities to serve such establishments.
- (4) Actions involving individual setback and lot line variances and the like.
- (5) Agricultural farm management practices, including construction, maintenance and repairs of farm buildings and structures, and land use changes consistent with generally accepted principles of farming.
- (6) Operation, repair, maintenance or minor alteration [not exceeding fifty percent (50%) of the original size of the building] of existing structures, land uses and equipment.
- (7) Restoration or reconstruction of a structure, in whole or in part, being increased or expanded by less than fifty percent (50%) of its existing size, square footage or usage.
- (8) Reconditioning, preservation and repaving of existing highways not involving the addition of new travel lanes. These projects are essentially maintenance-type work with improvements to correct substandard features. They include minor pavement and shoulder widenings, drainage improvements, resurfacing and repair of deteriorated roadway and structural elements. Minor amounts of additional right-of-way may be required.
- (9) Minor reconstruction of an existing highway, including such work as shoulder widening; adding auxiliary lanes for local utility, such as climbing, weaving, turning and speed change; the addition of not more than one (1) travel lane; and the correction of substandard curves, grades and sight distances. These projects shall qualify as Type II only if the project requires:

- (a) Less than three (3) additional acres of right-of-way per mile.
 - (b) No significant effect on unusual or unique areas, including federal or state registered historic sites, wetlands, parklands and floodplains.
- (10) Spot correction of deteriorated or substandard elements of existing highway. These projects include minor work to accomplish a specific objective, such as rehabilitation, demolition or replacement of deteriorated bridges or culverts, or correction of a substantial feature. Minor amounts of additional right-of-way may be required.
- (11) Installation of new or upgrading of existing roadside appurtenances. These projects are designed to maintain the operational standards of existing highways and include installation of impact attenuators, highway lighting, guide rails, signs, delineators, intersection signals, noise barriers, traffic control devices, traffic surveillance systems, pavement markings, at-grade railroad protective devices, fencing, telecommunications systems and landscaping.
- (12) The expansion of an existing highway maintenance site which will not increase its size or usage by more than fifty percent (50%).
- (13) Snow and ice control, including plowing and the application of salt, sand, cinders, gravel, dirt or similar substances(s) or any combination thereof to paved or other road surfaces.
- (14) Street openings for the purpose of repair or maintenance of existing utility facilities.
- (15) All waterway maintenance activities, including but not limited to:
- (a) Repair and replacement of riprap, concrete and bank protection.
 - (b) Shoreline maintenance.
 - (c) Excavating silt refill to restore channels to design dimensions.

- (16) Mapping of existing roads, streets, highways, uses, ownership patterns and the like.
- (17) Regulatory activities not involving changed construction or changed land use relating to one (1) individual, business, institution or facility, such as inspections, testing, operating certification or licensing and the like.
- (18) Sales of surplus government property other than land, radioactive materials, pesticides, herbicides or other hazardous materials.
- (19) Collective bargaining activities.

8523

§ 85-37

WINDSOR CODE

§ 85-37

- (20) Operating, expense or executive budget planning, preparation, and adoption not invoking new programs or major reordering of priorities.
- (21) Investments by or on behalf of agencies or pension or retirement systems.
- (22) Actions which are immediately necessary for the protection or preservation of life, health, property or natural resources.
- (23) Routine administration and management of agency functions, including new programs or major reordering of priorities.
- (24) Routine license and permit renewals where there is no significant change in preexisting conditions.
- (25) Routine activities of educational institutions which do not include capital construction.

8524