

# Local Role in Planning and Permitting

Understanding the State-level siting processes for major wind energy facilities,  
as well as the State Environmental Quality Review Act (SEQR).



**NYSERDA**

Wind Energy Guidebook for Local Governments  
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# Overview

The process through which a wind energy facility will be permitted – and therefore the local municipality’s role in approving the project – can vary depending on the project size. Major renewable electric generating facilities equal to or larger than 25 megawatts (MW) are required to seek permit approvals through one of two comprehensive State-level review mechanisms: the Article 10 process, and the Office of Renewable Energy Siting (ORES). Most wind projects under 25 MW will instead be subject to the State Environmental Quality Review Act (SEQR) and will be permitted at the local level.

The well-established Article 10 process will continue to serve as the main vehicle for siting major wind projects in New York State, given the many existing applications under the purview of the New York State Board on Electric Generation Siting and the Environment (Siting Board). ORES, as created by the Accelerated Renewable Energy Growth and Community Benefit Act in April 2020, will serve as the future forum for siting large-scale projects once up and running.

This Guide provides an overview of the Article 10, ORES, and SEQR processes in order to help local officials understand and distinguish between the three review mechanisms. It is important that municipalities familiarize themselves with these processes in order to remain engaged and participate fully, in the event that a project is proposed in their community.

## 1. Article 10 Siting Process

In 2011, the process for siting wind projects underwent a major revision. By Chapter 388 of the Laws of 2011 (Article 10 of the Public Service Law, or PSL Article 10), the Legislature created a new State-level permitting process under the auspices of the Siting Board. The Legislature gave the Siting Board exclusive authority to certificate—authorize building, repowering, or operation—all electrical generating facilities of 25 MW or more, and existing electric generating facilities seeking to increase capacity by more than 25 MW. Through the Siting Board, Article 10 established a single forum to evaluate the environmental impacts and need for such electrical generating power plants, including wind projects that meet or exceed the threshold. Additionally important for local governments, Article 10 preempts the requirement for local land-use approvals with some important caveats.

While Article 10 applies to the certification process for all electrical generating units of 25 MW or more, the focus of this discussion is on the local role in planning and certifying wind projects under Article 10.

Before the new siting law took effect, all wind projects, regardless of the amount of electricity they proposed to generate, were subject to local land-use jurisdiction (e.g., Article 16 of the Town Law and Article 7 of the Village Law) and coordinated review under New York’s State Environmental Quality Review Act ([SEQR]; Article 8 of the Environmental Conservation Law). The lead agency authority under SEQR (the agency or board leading SEQR) for those projects was most often the local planning board. Generally, the State’s role in approving the siting and construction of wind projects was specific to the jurisdictions of individual agencies (e.g., natural resource permits from the New York State Department of Environmental Conservation and certificates of Public Need and Convenience from the New York State Public Service Commission). Wind projects proposing to generate less than 25 MW remain subject to local land-use jurisdiction and SEQR—rather than Article 10.

While projects undergoing review under Article 10 are exempt from SEQR, Article 10 was in many ways modeled on SEQR. Despite the preemptive effect of Article 10 on the local land-use process, the Siting Board is required to give effect to local laws. The Siting Board must find (in certifying a wind project under Article 10) that the facility will operate in compliance with local laws concerning the environment and public health and safety. The Siting Board has power to override local laws; however, where it finds their application may be unduly burdensome, the Siting Board must explain its decision to override a local law. To ensure local voices are heard, the Legislature provided for local representation on the State’s Siting Board, intervenor funding for local governments and others, and public participation throughout the siting process. In the hearing process, which follows the pre-application process, both the potential wind project host community and neighboring municipalities that may be affected can participate as parties.

# Article 10 Siting Process

Public engagement

Project scoping and  
development of  
Preliminary Scoping  
Statement

Develop and submit  
Application; Siting  
Board determines  
completeness

Public hearing, public  
comment process;  
Siting Board decision

Siting Board issues  
Certificate of  
Environmental  
Compatibility and  
Public Need

## The Article 10 process has multiple steps as illustrated.

In general, the Article 10 process differs from SEQR in that it contains extensive filing and public outreach requirements that precede the filing of an application. Once an application is filed, the application has a one-year time clock for a decision. Therefore, affected local governments should involve themselves at the pre-application phase.

Generally, the Article 10 certification process has the following phases: the pre-application stage, the application stage, the administrative hearings stage, the decision-making stage, and the compliance stage. Local governments have a unique role to play in each of these stages.

## 1.1 Local Participation on the Siting Board

Article 10 guarantees local membership on the Siting Board. The Siting Board is composed of the department heads or chairs of various State agencies and two ad hoc (temporary) public members, both residing within the municipality of the proposed wind project. As to the two ad hoc local representatives, the president pro tem of the New York State Senate (the majority leader) appoints one member and the speaker of the New York State Assembly appoints the other—both from a nominating list provided by chief executive officers of the town, village, or county. If the project is located in a town, the chief executive officer of the town and the chief executive officer of the county both nominate four people. If the project is located in a village within a town, the mayor of the village, the town supervisor, and the chief executive officer of the county would each nominate four people. The ad hoc members serve until the Siting Board makes a final determination on the application. An ad hoc member cannot hold another state or local office, and must be 18 years or older, a citizen of the United States, a resident of New York State, and (for towns) a resident of the municipality of the proposed wind project. Ad hoc members are compensated two hundred dollars per day that they are engaged in the performance of their duties pursuant to Article 10, plus related expenses.

### Siting Board Members

- Chair of the Department of Public Service (DPS) — serves as Chair of the Siting Board
- Commissioner of the Department of Environmental Conservation (DEC)
- Commissioner of the Department of Health (DOH)
- Chair of the New York State Energy Research and Development Authority (NYSERDA)
- Commissioner of Economic Development (Empire State Development)
- Two ad hoc public members who reside within the municipality of the facility's proposed location

## 1.2 Local Participation in the Article 10 Process

### 1.2.1 Public Involvement Program

The Article 10 process also differs from SEQR in that the first step in the overall process requires applicants to engage in public outreach regarding the project. The Legislature constructed the Article 10 process to encourage local government and public participation in the siting process. “The primary goals of the citizen participation process shall be to facilitate communication between the applicant and interested or affected persons.” Well before an application can be filed, a Public Involvement Program (PIP) Plan must be filed at least 150 days prior to the submittal of any preliminary scoping statement. The PIP Plan encourages the applicant to speak directly with the community and affected agencies. The applicant can then consider the potential issues raised in these discussions in the early stages of project planning and development. This program will include a written plan addressing:

- Consultation with local affected agencies and interest groups (including municipalities and boards)
- Pre-application activities to encourage stakeholders to participate at the earliest opportunity in the process
- Activities designed to educate the public to specifics of the Article 10 review process
- Activities designed to encourage participation in the certification and compliance processes

PIP Plans are subject to a 30-day Department of Public Service comment period followed by a 30-day period for submittal of a revised PIP Plan by the developer. Local governments should familiarize themselves with the draft PIP and provide comments as necessary. The Siting Board published a [guidance](#)<sup>1</sup> on preparing PIPs, which local officials may also use in evaluating a particular PIP.

The Siting Board also established an office of [Public Information Coordinator](#)<sup>2</sup> within the Department of Public Service to provide assistance with public participation. The Public Information Coordinator’s job includes ensuring full and adequate public participation in matters before the board and responding to inquiries from the public for information on how to participate in matters before the board.

### 1.2.2 Intervenor Funding (Pre- and Post-Application Stages)

An intervenor is a third party that joins an ongoing case or proceeding. Local governments and other intervenors can be at a disadvantage in their ability to pay for experts and legal assistance in the siting process. The issues in an Article 10 proceeding are scientific, technical, and sometimes legal, making it costly for municipalities to hire experts and lawyers to represent their views in the siting process. Under SEQR, municipalities can charge applicants the cost of preparing or reviewing an environmental impact statement, but because Article 10 projects are exempt from SEQR, municipalities do not have this ability. In place of SEQR funding, the Legislature created, as part of Article 10, an intervenor fund referred to in the Article 10 regulations (16 NYCRR §1000.10) as the “Fund for Municipal and Local Parties.”

At the time a preliminary scoping statement (PSS) is submitted, the applicant is required to create a fund amounting to \$350 for each proposed MW of generating capacity, up to \$200,000. The Siting Board may disburse monies from the intervenor fund to enable local governments and other parties to hire consultants, experts, and legal counsel to participate in the scoping phase (as well as in the application phase). The notice and summary of the PSS must state the amount of pre-application funds available for municipal and local parties, and the process for applying for such funds. The presiding examiner must reserve at least 50% of the funds for potential awards to municipalities.

Potential intervenors requesting funds must submit their requests to the presiding examiner within 30 days after the issuance of the notice by filing the request with the secretary to the Siting Board and submitting a copy to the presiding examiner and other parties to the proceeding. The Siting Board has posted an [application form](#)<sup>3</sup> for intervenor funding on its website. Potential intervenors are encouraged to consider consolidating their requests with similar funding proposals made by other parties.

**Potential intervenors can find more about intervenor funding in the form of a [FAQ](#) and [guidance](#) on the Siting Board’s website. Applicants for intervenor funding should consult the [FAQ](#) and [guidance](#) before submitting an application for funding.**

Potential intervenors should be prepared to discuss their funding applications and the award of funds at the pre-application conference. The presiding officer must convene a pre-application meeting no less than 45 days but no more than 60 days from the filing of a PSS. At that time, the presiding officer or officers (administrative law judges [ALJs] assigned to the application from the Department of Public Service and the Department of Environmental Conservation) will also discuss the stipulations process. The presiding officers convene the pre-application conference in the community where the applicant proposed to locate the wind project. The presiding officer will award pre-application intervenor funding on an equitable basis so participants can provide early and effective public involvement.

Article 10 provides for a second round of intervenor funding at the application stage, after the stipulations process and with the formal filing of the Article 10 application. At the application stage of the proceeding, an Article 10 applicant is assessed an intervenor fee equal to \$1,000 for each MW of generating capacity of the subject facility, but no more than \$400,000. The process for noticing and obtaining intervenor funding follows a similar process to the pre-application process. An intervenor may use the application-stage intervenor funds to defray expenses incurred by municipal and local parties for expert witnesses, consultants, administrative costs (document preparation and duplications costs), and legal fees. As with intervenor funding at the pre-application stage, the presiding examiner must reserve at least 50% of the application-phase funds for potential awards to municipalities. With the awarded funds, intervenors can contribute to a complete record leading to an informed decision about the appropriateness of the site and the facility. Prospective intervenors are encouraged to consult the FAQ and Guide to intervenor funding on the Siting Board's website for more particulars of application-stage intervenor funding.

## 1.3 The Scoping Process

### 1.3.1 Preliminary Scoping Statement

After the allotted 150-day period for the Public Involvement Program, the applicant will file a PSS with the Siting Board. The PSS sets the stage for detailed analysis to be included in the application. The PSS must include a description of the potential facility and its environmental surroundings; environmental and health impacts expected to result from the construction of the facility; proposed ways to mitigate impacts; appropriate alternatives to the proposed facility; and identification of all federal and State permits and certifications needed to begin construction, operate, and maintain the proposed facility.

In addition to publishing a newspaper notice of the availability of the PSS (containing a plain language summary of its contents), the applicant must provide the PSS to the chief executive officer of any other agency or local government (village mayor, town supervisor, or equivalent) that would have approval authority absent PSL Article 10. The applicant must also make the PSS available online. The public has 21 days to submit comments on the PSS (counted from its filing with the secretary to the Siting Board) and the applicant has 21 days to respond to those public comments. Comments on the PSS can be filed electronically through the DPS Matter Management (DMM) website or by mail. While 21 days seems like a short period, it's useful to think of the PSS as a synopsis of the application that sets the stage for the stipulations process and the full application. The mayor or town supervisor should seek the input of their boards, building official, and consultants in submitting comments on the PSS within the time period provided.

**To keep track of the process and receive all filing related to a particular wind project, local officials should subscribe to the DMM website and then subscribe to receive notices on a particular matter or to request party status. The DPS PSS notice provides instructions on doing so.**

## 1.4 The Stipulations Process

After the PSS comment process is complete, the applicant can consult and seek agreement with any interested persons or parties about any facet of the scoping statement and any studies made in support of the application (referred to as the stipulations process). Stipulations are agreements among parties that concern matters before the Siting Board.

Any parties to the proceeding can enter into a stipulation, setting forth an agreement on any aspect of the PSS and the scope of studies or program of studies that will form the basis for the application. Intervenors should consider what needs to be studied. Local governments can focus their queries on the up to 41 exhibits that make up an Article 10 application. (For example, Exhibit 4 covers land use, Exhibit 19 covers noise and vibration, Exhibit 25 covers effect on transportation, and Exhibit 31 covers local laws and ordinances). They may request studies that support the information required to complete these exhibits. Local governments may ask applicants to address such subjects as availability of adequate infrastructure to support construction of the wind project (i.e., roads), a decommissioning plan, and conformity of the wind project with adopted comprehensive plans and zoning. The [Article 10 regulations](#),<sup>4</sup> posted on the Siting Board’s website, contain a complete list of exhibits in the appendices. Local governments may wish to review stipulations entered into for previously filed wind projects.

It may be in the interest of applicants and other parties to agree, in advance, to the content and methodology for conducting studies. In addition to the formal project review process, it’s common for an applicant to engage directly with wildlife agencies, local governments, and others to address project concerns.

The applicant may not commence negotiations for agreements on proposed stipulations until the presiding officer has allocated the pre-application intervenor funds. This is to ensure that intervenors have the wherewithal to participate in the stipulations phase of the Article 10 process. Within 60 days of the filing of a PSS, the presiding examiner or ALJs will convene a meeting of interested parties to initiate the stipulation process (and meet on intervenor funding).

**Stipulations may address site-specific or project-specific information not otherwise called for by the regulations.**

Before the parties sign a stipulation, the presiding officer must provide notice of the proposed stipulation to the public and other parties and provide a reasonable opportunity for the public to submit comments on the proposed stipulation. A party that’s a signatory to the stipulation may not object to any aspect of the PSS, and the methodology and scope of any stipulated studies or program of studies covered in a stipulation, unless the applicant fails to comply with the stipulation. Non-parties to a stipulation are not so bound.

## 1.5 Application Phase

After the stipulations process is complete, the applicant completes the analysis required by the Article 10 regulations along with any adopted stipulations and submits the application to the Siting Board’s secretary. The applicant is required to publish notice of the filing of an application in local newspapers with directions on how to obtain a copy. The applicant must also post the application online and make it available at local public libraries. The application must include the following elements:

- A description of the site and facility
- An evaluation of the health, safety, and environmental implications of the construction of the facility
- The facility’s pollution management systems; a safety plan for the construction and operational phases of the facility
- A study of the significant and adverse disproportional environmental impacts of the facility (if any)
- A detailed economic, physical, and demographic description of the community in the affected municipality

The applicant must additionally prove that the facility will be reasonably consistent with the New York State Energy Plan, analyze its impact on power generation markets, and review its potential impact on birds and other avian species.

As previously noted, an Article 10 application includes up to 41 exhibits—many of particular interest to local governments involved in the siting process. For wind projects, some exhibits are generally not applicable.<sup>5</sup> As indicated, local governments can qualify for intervenor funding to participate in the application phase of the Article 10 process.

## 1.6 Hearings

The Siting Board's chairperson has 60 days from application submission to determine if the application is complete. To be complete, the application must comply with any previously entered stipulations and filing requirements of the regulations. Once an application is determined to be in compliance with filing and content requirements, the chairperson and hearing examiners will set a pre-hearing conference to identify intervenors, award intervenor funds, identify issues for hearing, and establish a case schedule.

**Article 10 uses the term “party” both generally and as a special term for purposes of the hearing. Intervenor should note that to become a party to the hearing (as opposed to a party to the proceeding generally), requires the filing of the notice and determination of the hearing examiners regardless of whether they were referred to as parties during the pre-application proceedings.**

**Article 10 provides that “Any municipality entitled to be a party herein and seeking to enforce any local ordinance, law, resolution or other action or regulation otherwise applicable shall present evidence in support thereof or shall be barred from the enforcement thereof.”**

There are three kinds of parties to the hearing: automatic statutory parties; parties with a right to be a party merely by giving notice; and parties that may be permitted to join. Municipalities fall into the second group. The affected municipality, municipalities within a five-mile radius of the wind project, and their citizens may become parties to the hearing simply by filing a notice within 45 days after the date given in the published notice as the date for the application filing. The Siting Board has provided a [form](#)<sup>6</sup> to file such notice.

Unless waived by all parties, the initial public hearing must start within 45 days after the prehearing. The presiding examiner must designate the hearing location within two miles of the proposed location of the wind project. The hearing examiners must allow sufficient time for direct comment and rebuttal from residents of the area affected by the proposal. Community members and affected agencies can submit comments at any time up to the hearing. During the hearing, the hearing examiners must give community members and affected agencies an opportunity to submit written or oral comments for the project record. The host municipality should be prepared to place into the record evidence of local laws that apply to the wind project.

After the public statement hearings, the parties can engage in discovery to seek additional information or clarifications and can also proceed to settlement through the preparation of a joint proposal or to an adjudicatory phase.

Except for appeals, the Siting Board must complete all proceedings within 12 months from the date the Siting Board determines the application is complete and compliant with Article 10 provisions (unless parties agree to waive the deadlines). The Siting Board can extend the deadline for six more months in extraordinary circumstances.

## 1.7 Effect Given to Local Laws in Board Decisions

To grant a certificate to a wind project, the Siting Board must find that the applicant has designed the facility to operate in compliance with applicable State and local laws and regulations on the environment, public health, and safety. An applicant may request a waiver of local zoning laws or ordinances. Upon review, the Siting Board may waive any local law it finds to be unreasonably burdensome: either given the state of current technology (e.g., where technological limitations make compliance impossible or impractical), where costs to consumers outweigh the law's benefits, or where the needs of consumers for the facility outweigh impacts to the municipality. The Siting Board must provide the municipality an opportunity to present evidence in support of its ordinance, law, resolution, regulation, or other local action.



# 2. Office of Renewable Energy Siting (ORES) Process

In April 2020, New York State passed the Accelerated Renewable Energy Growth and Community Benefit Act (the Act), a landmark piece of legislation in support of the State’s ambitious climate, energy, and environmental justice goals. A major component of the Act was the creation of ORES, which would serve as a central forum for siting and permitting new large-scale renewable energy facilities in New York State. Whereas the existing Article 10 review process was charged with permitting all major electric generators greater than or equal to 25 MW, including both renewable and traditional electric generating facilities, ORES was tasked with establishing a comprehensive yet streamlined review process specifically tailored to new renewable energy projects. Within one year of the Act’s passage, ORES will draft and finalize regulations and uniform permit standards and conditions for siting these facilities, working with involved State Agencies to consider potential environmental impacts and necessary mitigation efforts.

Until ORES has established and promulgated its rules, regulations, and permit standards and conditions, major renewable energy projects will continue to be permitted through the Article 10 review process.

## 2.1 Applicability and Timeline

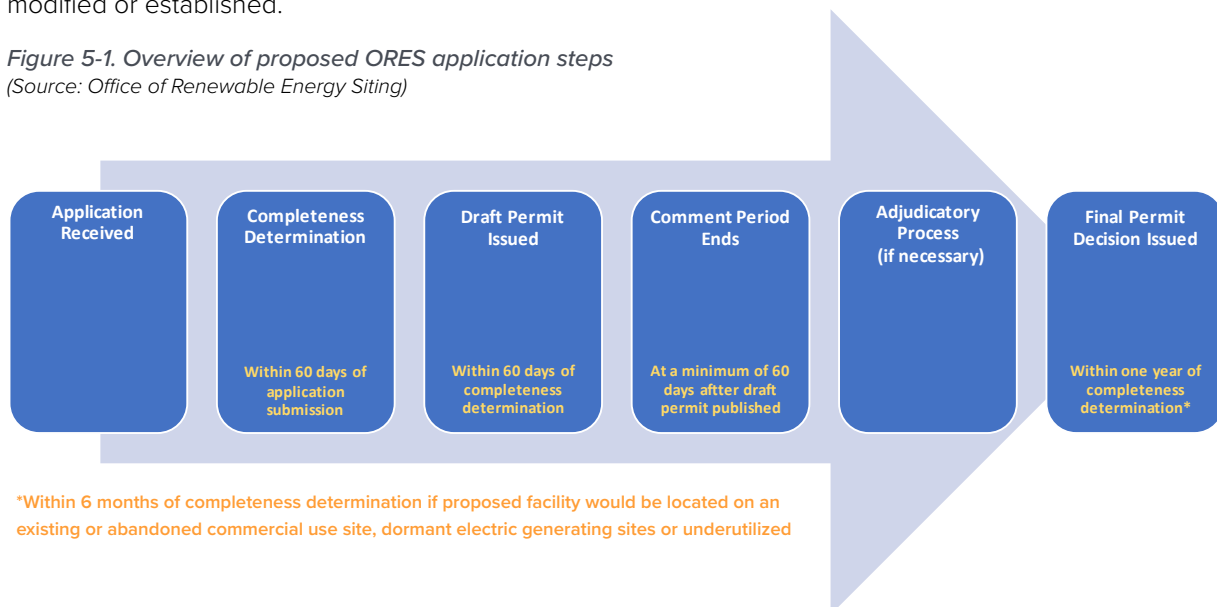
Like the existing Article 10 process, all new major renewable electric generating facilities greater than or equal to 25 MW will be required to seek a permit through ORES. However, there are additional circumstances under which a renewable energy project may opt-in to ORES review:

- New renewable facilities between 20-25 MW may choose to seek permit approval through ORES, rather than being permitted in accordance with otherwise-applicable local laws and the SEQR process.
- Existing project applications in the initial stages of the Article 10 review process may elect to instead seek a permit through ORES.

The ORES review process is designed to accelerate the timeline under which proposed projects are sited, approved, and constructed, relative to the existing Article 10 review process. Once deemed complete, applications for a permit through ORES must be acted upon within one calendar year, or within six months if the proposed project is to be built on an existing or abandoned commercial location, such as a brownfield, landfill, or other underutilized site. Should ORES fail to issue a determination within the required timeframe, the draft permit for the project will be deemed approved, and the project will proceed towards construction and operation. In addition, all final permits issued by ORES shall include a provision requiring the applicant to provide a host community benefit for the municipality.

Figure 5-1 identifies some of the key stages and milestones which make up the ORES process. As ORES continues to draft and finalize the rules and regulations governing its application review process, existing and additional milestones may be modified or established.

Figure 5-1. Overview of proposed ORES application steps  
(Source: Office of Renewable Energy Siting)



\*Within 6 months of completeness determination if proposed facility would be located on an existing or abandoned commercial use site, dormant electric generating sites or underutilized

## 2.2 Opportunities for Local Participation

There are a number of key opportunities for local engagement throughout the ORES review process, spanning pre-application activities to late-stage participation in any necessary hearings. Figure 5-2 addresses some of these opportunities and indicates where they occur in the various stages of ORES review.

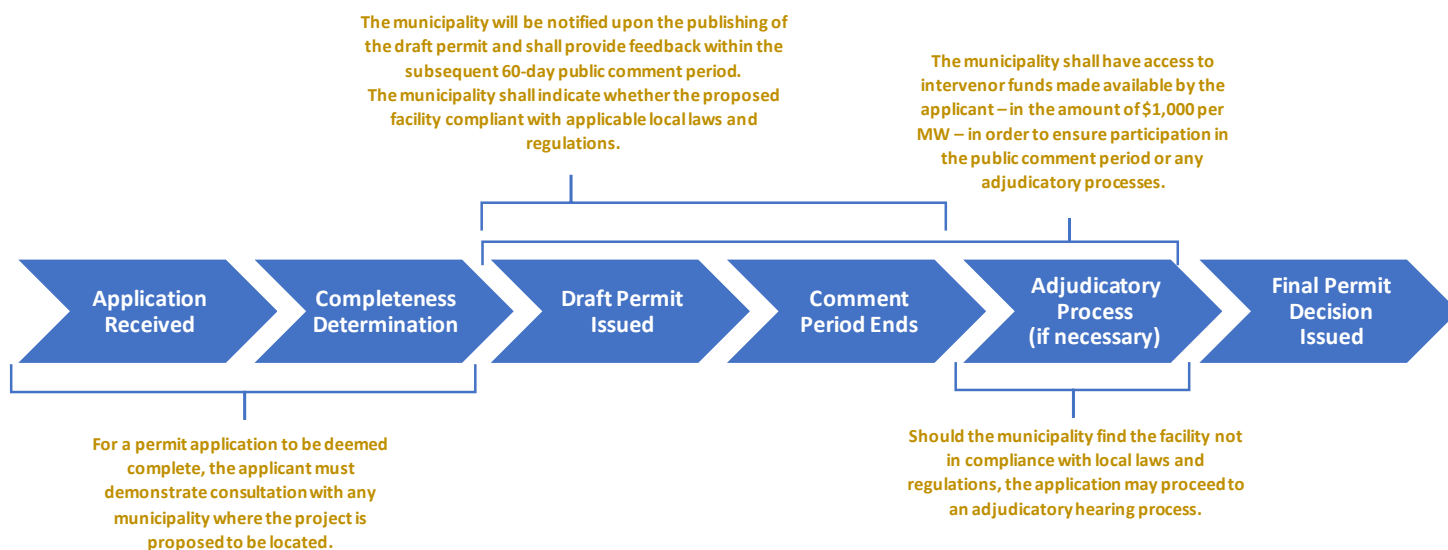
Prior to submitting a permit application to ORES, applicants must demonstrate proof of consultation with the host municipality regarding any procedural or substantive requirements of applicable local laws and regulations. Applications may only be deemed complete if they are able to demonstrate such consultation.

The municipality shall then be notified upon the publishing of an application's draft permit conditions, and shall have an opportunity to provide feedback on these conditions and the proposed facility's compliance with local laws within the subsequent 60 day public comment period. ORES is required to consider any applicable local law when making its determination.

If a municipality's statements raise any substantive and significant issues that require adjudication, ORES may proceed to an adjudicatory hearing process, which could include an evidentiary hearing, submission of expert testimony, or other considerations. If substantive or significant issues are raised and ORES does not hold an adjudicatory hearing, a public hearing will be scheduled in the municipality.

In order to ensure full municipal participation in the process, applicants will supply intervenor funding equal to \$1,000 per MW, paid into a local agency account hosted by NYSERDA. This funding will be made available to host municipalities and community members, subject to ORES regulations, and may be used by eligible intervenors for participation in various stages of the ORES review process, including the 60 day public comment period or any adjudicatory hearings.

Figure 5-2. Local participation in proposed ORES application steps



# 3. State Environmental Quality and Review Act (SEQR) Process

As previously discussed, most proposed wind projects with a capacity under 25 MW are not subject to Article 10 or ORES review. Local governments are entitled to review these projects under their own land-use review authorities (Article 16 of the Town Law, Article 7 of the Village Law and the Municipal Home Rule Law) and in accordance with the SEQR process.<sup>7</sup>

The DEC, which administers the SEQR regulations, provides a considerable amount of information and guidance on the SEQR process on its [website](#).<sup>8</sup> For example, the DEC maintains a [SEQR Handbook](#)<sup>9</sup> that contains FAQs on most aspects of SEQR. Local governments should consult the website for detailed information on the SEQR process. The New York State Department of State also provides advice on local land-use authority, training, and technical support.

SEQR requires the consideration of environmental factors early in the planning stages of any actions an agency funds, approves, or will directly undertake. SEQR is both a procedural and substantive law. It requires an agency to follow certain procedures or steps in the environmental review of an action. It also requires agencies to base decisions or conclusions on substantive information developed in the environmental review of a project. The review process may result in an agency requiring project modifications or could even result in a project denial.

## 3.1 Classification: Type I, Type II, and Unlisted Actions

The lead agency must classify actions under SEQR as Type I or Unlisted. Actions classified as Type II are not subject to SEQR. For wind projects, actions such as placement of a meteorological tower to gather wind data may classify as a Type II action. The classification of an action is important to determine the process an agency must follow to review an action. Type I actions are those projects more likely to require the preparation of an environmental impact statement (EIS) than unlisted actions. The criteria for classifying actions as Type I can be found in DEC's regulations at Title 6 of the Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) § 617.4. Type II actions are those that have been determined to not have a significant impact or are otherwise precluded from environmental review under the Environmental Conservation Law (ECL) Article 8. Type II actions are not subject to review under SEQR, and a list of these actions can be found in 6 NYCRR 617.5. All actions not Type I or Type II are considered unlisted actions. However, an involved agency has the discretion to procedurally treat an Unlisted action as a Type I action.

Relevant examples of Type I actions include any project more than 100 feet above ground level in a locality without zoning regulations pertaining to height, as well as any project that involves the physical alteration of 10 acres or more. This would include not only alteration from turbine construction, but also lay-down areas, access roads, transmission lines, and any electrical substation improvements. If a project is in an agricultural district, the threshold for physical alteration is only 2.5 acres. Most commercial wind projects under 25 MW exceed these thresholds. They would, therefore, be classified as Type I actions. As described further, Type I actions require certain procedures to be followed, but do not always require the preparation of an EIS.

SEQR requires a project sponsor to complete Part 1 of the Environmental Assessment Form (EAF). The lead agency, as described in the following section, must complete Parts 2 and 3 of the forms. The Full EAF requires the project sponsor to provide more information about a project than the Short EAF. If the lead agency classifies a proposed wind project as Unlisted, the project sponsor should use the Short EAF and supplement it as necessary. The EAFs are available electronically on the DEC's website. The DEC has designed the forms to be self-completing in terms of any information required from their spatial databases (e.g., wetlands).

If a wind developer submits an application to a local government for a commercial wind project and a State or local agency determines that a project is a Type I action, the Full EAF should be included with the application. The project sponsor may choose to supplement the Full EAF with any studies or analyses related to the particular project. For Type I actions, SEQR also requires that the lead agency conduct a coordinated environmental review. This means that all involved agencies with discretion to approve, fund, or undertake an action cooperate to produce one integrated environmental review. It also allows interested agencies with concerns, but without jurisdiction, to participate in the review.

## 3.2 Lead Agency

SEQR requires that one of the involved agencies lead the environmental review. The SEQR regulations refer to this agency as the lead agency. Typically, the involved agencies mutually select the lead. Local governments, through their planning boards, have often assumed the role of lead agency. In some cases, local governments have assumed lead agency by default because no other agency had jurisdiction. If the involved agencies cannot agree on a lead agency, the contesting agencies can file the dispute with the DEC Commissioner to resolve the issue.

## 3.3 Determination of Significance

Once a lead agency is established, it must make a determination of significance. The determination of significance is a declaration of the potential for a project to have significant impacts on the environment. A negative declaration indicates the project will not have a potentially significant impact, whereas a positive declaration indicates the potential for at least one potentially significant adverse environmental impact. A negative declaration ends the SEQR process. A positive declaration requires the preparation of an EIS.

The definition of significance is important. Although a subjective term, the lead agency measures significance by factors such as the magnitude (severity) and importance (relation to its setting) of the impacts. The bigger or more severe the impact, the more a detailed analysis is required. The importance of the impact will depend on the setting and the local community values. A lead agency should consider whether the impacts are short or long term. It should note that a determination of significance is not the point at which to weigh the social and economic impacts of a project. The threshold determination of significance should only be based on whether the action in approving a wind project may have one or more potentially significant adverse environmental impacts. The threshold is low.

For commercial wind projects, the potential environmental impacts can include, but may not be limited to, visual, sound, avian (birds and bats), water quality (wetlands, stream, storm water runoff), historic preservation, agricultural, and community character. The lead agency may regard the construction-related impacts as short-term impacts. Other impacts related to operation of the wind project are long term, such as avian and visual impacts. In either case, the lead and involved agencies must carefully consider them.

SEQR's threshold for requiring an EIS is not based on the number of turbines but on the potential for significant adverse impacts. Therefore, projects with a small number of turbines are not automatically entitled to a negative declaration based on numbers and the reverse is true for larger-scale wind projects (i.e., the lead agency must still assess the impacts enumerated in the EAF).

In its determination of a positive or negative declaration, the lead agency must consider all relevant impacts, not just those within its jurisdiction. The reasons for the decision must be documented in writing. A negative declaration must contain a reasoned elaboration of why the project will not have significant impacts on the environment. The lead agency must base any negative declaration on information obtained at the time of the decision and not on future studies or conditions.

DEC prepared [workbooks](#)<sup>10</sup> for both the short and full EAFs and organized them in a way that corresponds to the questions in the EAFs. They provide detailed guidance on answering the questions that lead to a determination of significance. Lead agencies should be sure to use the workbooks in completing parts 2 and 3 of the EAFs.

## 3.4 Environmental Impact Statement Process

If the lead agency determines at least one potentially significant impact may occur due to the proposed project, a positive declaration must be issued and an Environmental Impact Statement (EIS) must be prepared. Procedurally, the EIS process adds additional steps, with the outcome of a more thorough environmental analysis.

The EIS also provides formal opportunities for public participation throughout the process. These include scoping of the draft EIS and a 30-day (minimum) public comment period on the draft.

A key component of the EIS is the requirement to consider alternatives. For wind projects, these alternatives may include different turbine locations, a reduction in the number of turbines, and must include review of the no action alternative. An EIS does not have to address every possible impact. The process is set up for the lead agency to identify those potentially significant adverse impacts and the EIS should focus on those impacts. Through the process of scoping a draft EIS, the lead agency can limit the issues to be addressed.

## 3.5 Findings

The EIS process ends with the preparation of a findings statement following acceptance of a final EIS. A findings statement is a written document that identifies the social, economic, and environmental considerations of the lead agency in approval or disapproval of an action. A positive findings statement means that, after consideration of the final EIS, the lead agency can approve the project or action, and the action chosen is the one that minimizes or avoids environmental impacts to the maximum extent possible. An agency's findings statement must articulate the balancing of adverse environmental impacts against the needs for and benefits of the action. If the action cannot be approved based on analyses in the final EIS, a negative findings statement must be prepared to document the reasons for the denial.

Each involved agency, not just the lead agency, must prepare its own SEQR findings following acceptance of a final EIS. Findings provide "the teeth" in the SEQR process because they articulate the basis for each agency's decision, including supporting any conditions that the agency may impose. Whether findings support approval or denial of an action, the agency must state its reasoning in the form of facts and conclusions derived from the final EIS.

## 3.6 SEQR Fees

A lead agency has the option to require the project sponsor to provide money to assist in the SEQR process for the project. Project sponsors can establish a fund to allow the lead agency to hire its own consultants, who report directly to them and not the project sponsor. The lead agency cannot require the project sponsor to pay for both the preparation and review of an EIS; however, typically the project sponsor prepares the draft EIS, subject to the lead agency's acceptance, and then provides review fees to the lead agency. The SEQR regulations contain guidelines for how much money the lead agency can charge for a particular project.

# Additional Resources

- SEQR  
<http://www.dec.ny.gov/permits/357.html>
- Board on Electric Generation Siting and the Environment  
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/1392EC6DD904BBC285257F4E005BE810?OpenDocument>
- New York State's Process for Considering Sites for Wind Farms  
<https://www.nyserda.ny.gov/-/media/Files/EERP/Renewables/Wind-Siting-Fact-Sheet.pdf>
- The Next Generation of Wind Farms on Tug Hill  
<https://www.tughill.org/wp-content/uploads/2011/09/2016-UpdateThe-Next-Generation-of-Wind-Farms.pdf>
- Model Ordinances:
  - Columbia Law School model wind siting ordinances  
<http://columbiaclimatelaw.com/resources/model-laws-and-protocols/model-municipal-ordinances/model-wind-siting-ordinance/>
  - US Department of Energy wind energy ordinance database  
<https://windexchange.energy.gov/policies-incentives>

# Questions?

If you have any questions regarding local role in planning and permitting, please email questions to [cleanenergyhelp@nyserda.ny.gov](mailto:cleanenergyhelp@nyserda.ny.gov) or request free technical assistance at [nyserda.ny.gov/CleanEnergySiting](http://nyserda.ny.gov/CleanEnergySiting). The NYSEDA team looks forward to partnering with communities across the State to help them meet their clean energy goals.

## Section End Notes

<sup>1</sup> <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/6FD11CE8DB088A2785257E200054A99B?OpenDocument>

<sup>2</sup> <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/D43928A8EE8BD47585257E200054A998?OpenDocument>

<sup>3</sup> <http://www3.dps.ny.gov/W/PSCWeb.nsf/ArticlesByTitle/0729A9B325D6EB9585257E200054A999?OpenDocument>

<sup>4</sup> <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/143595FA3BE36AEA852579D00068B454?OpenDocument>

<sup>5</sup> These include: Exhibits 7 (gas fired plants), 16 (pollution control facilities), 17 (air emissions), 30 (nuclear facilities), 36 (gas interconnection), 37 (back-up fuel), 38 (water interconnection), and 39 (wastewater interconnection).

<sup>6</sup> [http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/0729a9b325d6eb9585257e200054a999/\\$FILE/Form%20NOIP%204-15-13.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/ca7cd46b41e6d01f0525685800545955/0729a9b325d6eb9585257e200054a999/$FILE/Form%20NOIP%204-15-13.pdf)

<sup>7</sup> A number of wind projects that were under development before implementation of Article 10 are “grandfathered,” and continue to be reviewed under the SEQR process.

<sup>8</sup> <http://www.dec.ny.gov/permits/357.html>

<sup>9</sup> <http://www.dec.ny.gov/permits/6188.html>

<sup>10</sup> <http://www.dec.ny.gov/permits/90125.html>