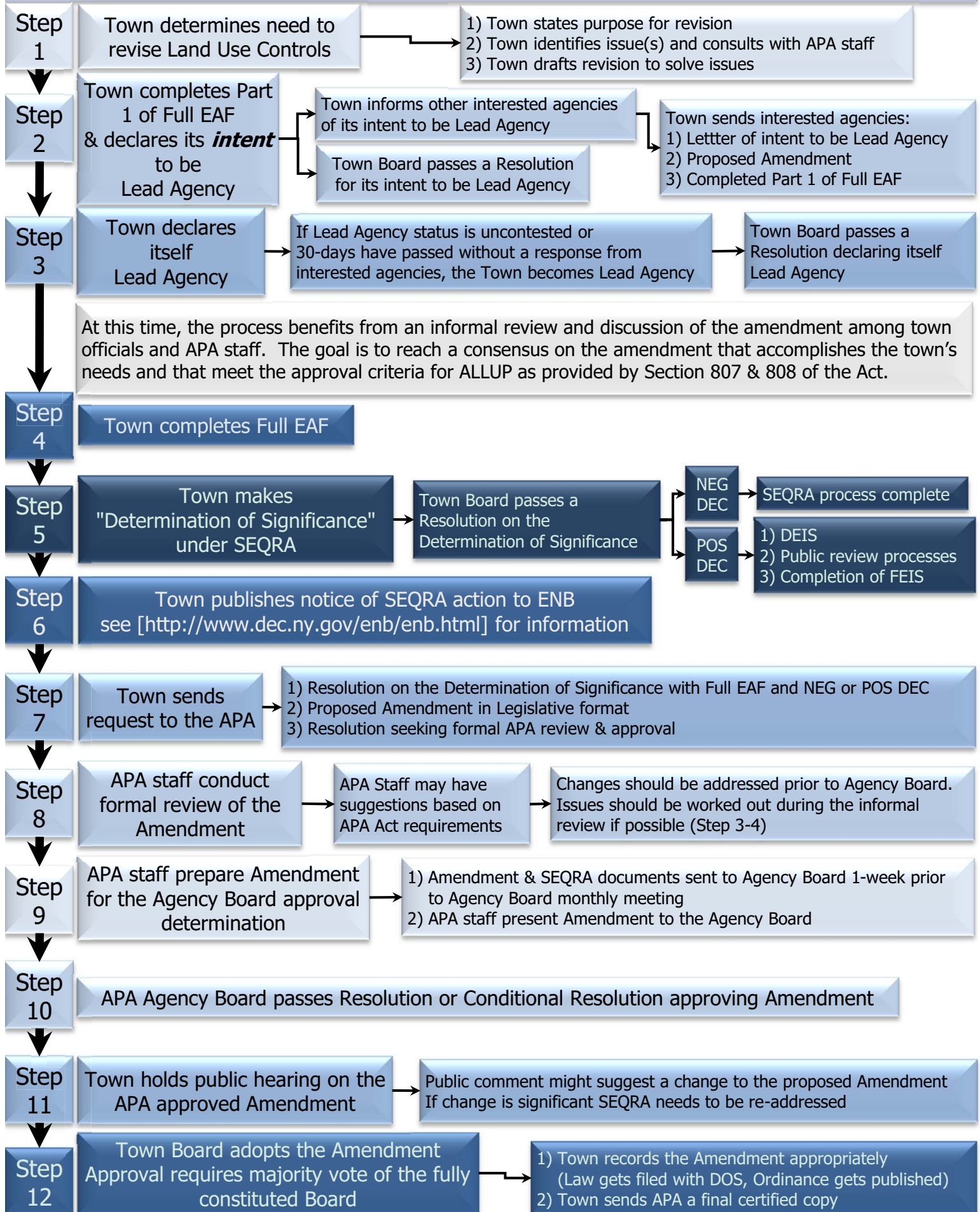


# **Process for Towns with an APA Approved Local Land Use Program (ALLUP)** **Amending Local Land Use Controls - A general guide [10/8/2013]**



# **Process for Amending Local Land Use Controls for Towns with an Agency-Approved Local Land Use Program**

*Staff DRAFT revised: October 8, 2013*

*[www.apa.ny.gov](http://www.apa.ny.gov)*

This summary sheet is a guide for stepping through the necessary SEQR actions and Agency-approved local land use program (ALLUP) requirements for Towns preparing to adopt or revise land use controls including amendments to zoning, subdivision, sanitary, stormwater and signs codes.

Most ALLUP Amendments are SEQR Type 1 actions requiring a Full EAF ([SEQR Forms](#)).

Visit the [NYS DEC website for the complete SEQRA procedures](#) including [list of Type 1 actions](#), [SEQR Handbook](#) & general [SEQR steps](#).

\* Relevant APA references: §807.1 & §807.2 of the APA Act and §582.5 of Rules & Regulations.

## **Steps for Amendments to Agency-approved Local Land Use Programs:**

1. Town determines need to amend Land Use Controls
  - a. Town states purpose for Amendment
  - b. Town identifies issue(s) that need to be resolved by Amendment
  - c. Town drafts Amendment to solve issue(s)
2. Town completes [Part 1 of Full EAF](#) & declares its ***intent*** to be “Lead Agency”
  - a. Town Board passes Resolution for its intent to be Lead Agency
  - b. Informs other “interested agencies” and potentially “involved agencies” of its intent
    - i. Agencies to include: APA, DEC, DOS, County Planning Office, & others (not all agencies may apply to each situation)
      1. Town sends to all “interested” and potentially “involved” agencies:
        - a. Intent to be Lead Agency,
        - b. The proposed Amendment, and
        - c. Completed Part 1 of the Full EAF.
  - c. If Lead Agency status is contested, the DEC Commissioner designates a Lead Agency.
3. Town ***declares*** itself Lead Agency. If intent to be Lead Agency is uncontested or Town receives no response after 30-day notice from involved agencies, the Town will be the Lead Agency
  - a. Town Board passes Resolution for declaring itself to be Lead Agency

***Meanwhile...** At this time, the process benefits from an informal review and discussion of the Amendment among Town officials, consultants and APA staff. The goal is to reach a consensus on the Amendment that accomplishes the Town’s needs and that meet the approval criteria for ALLUP as provided by Section 807 & 808 of the Act and by Section 582 of the Agency Regulations .*

4. Town as Lead Agency completes [Part 2 of Full EAF](#)
5. Town as Lead Agency makes “[Determination of Significance](#)” under SEQR. [Part 3 of Full EAF](#)
  - a. Town Board passes resolution on the Determination of Significance
    - i. Neg Dec (Negative Declaration) -- Lead Agency determines the proposed action will not have a significant adverse impact on the environment
      1. If Neg Dec then the SEQR review process ends
    - ii. Pos Dec (Positive Declaration) -- Lead Agency determines the proposed action will have a significant adverse impact on the environment
      1. If Pos Dec, DEIS is developed, public review process initiated followed by completion of FEIS (*draft or full environmental impact statement*)

6. Town publishes notice of SEQRA action to [ENB \(Environmental Notice Bulletin\)](#)
  - a. [Notices for publication in the ENB](#) must be filed with the DEC Division of Environmental Permits.
    - i. Submission by e-mail is preferred, to [enb@gw.dec.state.ny.us](mailto:enb@gw.dec.state.ny.us).
    - ii. Any SEQRA notice received by close of business on a Wednesday will be published on the following Wednesday.
7. Town sends to the APA:
  - a. Town Board resolution on the Determination of Significance with attached SEQRA documents including:
    - i. [Part 1](#) & [Part 2](#) of Full EAF and
    - ii. [Neg Dec, or FEIS](#)
  - b. The proposed Amendment (preferably in legislative or *track changes* format), and
  - c. Town Board Resolution seeking formal APA review and approval of the Amendment.

**APA Action:**

8. APA staff review the Amendment for consistency with APA Act and regulation requirements.
9. APA staff present the Amendment to the Agency Board with recommendation for approval (assuming any issues related to APA Act requirements have been resolved). APA staff may also recommend Board approval on condition that necessary changes are incorporated within the final proposal for Town implementation, or as requested by the Agency Board.
  - a. APA staff draft memo to Executive Director outlining the proposed Amendment including:
    - i. Evaluation of all statutory approvability issues addressed,
    - ii. Text of proposed changes,
    - iii. SEQRA documents, and
    - iv. Town Board Resolution seeking formal Agency review and approval.
  - b. Staff draft resolution for APA approval of the Amendment.
  - c. Documents included in mailing to Agency Board 1-week prior to Agency monthly meeting.
  - d. Presentation to the APA Board for Agency determination.
10. If approved, APA Board passes resolution or conditional resolution authorizing the local land use program Amendment.

**Town Action:**

11. Town holds public hearing on the APA approved Amendment.
  - a. Public comment may cause officials to alter the proposed Amendment.
    - i. If the change is significant, it may result in updating the SEQRA and the APA LLUP approvals (*If so, return to Step 5*).
12. Town Board adopts the Amendment by a majority vote of the fully constituted Board.
  - a. If a “Law<sup>1</sup>”
    - i. Town Clerk files the Amendment with the NYS Department of State.
      1. Amendment becomes effective upon filing with the Department of State or at a later date as specified in the local law.
    - ii. [DOS guidance on Adopting Local Laws](#)
  - b. If an “Ordinance<sup>2</sup>”
    - i. Town Clerk publishes the text of the Ordinance in a newspaper published in the Town or widely circulated within the Town (Town Law Article 16, Section 265).

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<sup>1</sup> A **local law** is the highest form of local legislation, since the power to enact a local law is granted to local governments by the State Constitution. In this respect, a local law has the same quality as an act of the State Legislature, since they both are exercises of legislative power accorded representative bodies elected by the people. Indicative of this is the fact that acts of the State Legislature and local laws are both filed with the Secretary of State, the traditional record keeper for State government.

<sup>2</sup> An **ordinance** is an act of local legislation on a subject specifically delegated to local governments by the State Legislature. Counties do not ordinarily possess ordinance powers and the power of villages to adopt ordinances was eliminated in 1974.