

Memo

To: Hon. John Orfitelli, Chair  
and Members, Town of New Paltz Historic Preservation Commission  
From: George Lithco  
Date: May 15, 2015  
Re: Mohonk Preserve/Testimonial Gateway  
Certificate of Appropriateness

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Mohonk Preserve has applied to the Commission, pursuant to Section 140-143 of the Town Code, for a Certificate of Appropriateness . The Certificate is required to allow certain work to be undertaken on the Testimonial Gatehouse, which is a locally designated historic landmark.

The Gatehouse is also located within the Lake Mohonk Historic Landscape, which has been placed on the National Register of Historic Places.

The application for a certificate of appropriateness is supported by the documentation required by Section 143, including an architectural survey of the Gatehouse structure which documents parts of the exterior of the building that require repair or rehabilitation.

The proposed work consists of replacing the existing deteriorated roof with identical tiles, repairing deteriorated masonry on the building's exterior in a manner consistent with the original work, and replacing deteriorated windows with similar, but not identical, windows.

The Commission is aware that Mohonk Preserve is also undertaking the Foothills project, which involves various improvements on the Preserve's property, including the development of parking areas and other improvements in the vicinity of the Testimonial Gateway.

Mohonk Preserve has applied to the Town of New Paltz Planning Board for site plan approval, and the Planning Board has circulated notice of its intent to act as Lead Agency for that action.

For that reason, you have asked me to advise the Commission on the appropriate level of SEQRA review that is required by the Commission in considering the certificate of appropriateness.

SEQRA

SEQRA "actions" commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole, or to only a part of it.

It appears that there are two actions involving the Gatehouse: one being the repair and rehabilitation of portions of the structure to keep it in good repair, and one being the activities proposed on the Mohonk Preserve property, including activities in the vicinity of the Gatehouse.

Each of those actions requires SEQRA review. The HPC is the only agency with discretionary authority over the certificate of approval. It therefore acts as lead agency, and is responsible for determining what type of SEQRA action before it. The Planning Board is lead agency for the Foothills project. It has determined that the Foothills action is a Type I action.

### Consideration of related actions.

In making its determination of significance, an agency must, in determining whether an action will have any of the consequences listed," consider reasonably related effects 'including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon' (6 NYCRR 617.11 [b]; 17 NYCRR 15.11 [b])." *Westbury v. Department of Transp.*, 75 NY2d 62, 68 (NY 1989).

If one action has "independent utility" without the related action, each action may be considered by itself.

### Discussion.

1. Type II designation. Based on the available information provided by the applicant, it appears that the proposed work should properly be classified as repair or rehabilitation of the existing historic structure. Accordingly, such work should properly be classified as a Type II action, which are certain actions that have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review. That designation is flexible: for example, it was considered appropriate even when different materials were used in replacement construction. *Mtr of Coney-Brighton Boardwalk Alliance v. New York City Dept. of Parks & Recreation*, 122 AD3d 924, 925 (2d Dep't 2014).

When an action is determined to be Type II, no further SEQRA review is required.

2. Ministerial action. In circumstances where an agency has limited discretionary authority, an agency determination may not be subject to SEQRA.

When the Commission determines that it is appropriate to issue a certificate of appropriateness for the work, the Commission would simply find that the work is consistent with the historic character of the Gatehouse building.

I note that the Town Code requires the owner of a local landmarked structure to undertake various activities to keep the structure in good repair, including the replacement of roofs, maintaining masonry and repairing deteriorated part of the exterior. To the extent the proposed work is necessary to comply with requirements of the Town Code, and consistent with the requirements for a certificate of appropriateness, it appears the Commission would have limited discretionary authority over a certificate of appropriateness issued for that purpose.

In similar circumstances, courts have held that the issuance of a certificate of appropriateness is not an action subject to SEQRA:

The Commission's determination with respect to a COA application, limited to the appropriateness of the proposed building's exterior architectural features and narrowly circumscribed by the architectural, aesthetic, historical and other criteria specifically set forth in the Landmarks Preservation Law (see Administrative Code of the City of NY § 25-307), was "ministerial" for SEQRA purposes (see *Mtr of 67 Vestry Tenants Assn. v Raab*, 172 Misc 2d 214, 223 (Sup. Ct. NY Co. 1997)).  
*Citineighbors Coalition of Historic Carnegie Hill v. N.Y. City Landmarks Pres. Comm'n*, 306 AD2d 113, 114 (1st Dep't 2003)

3. The conclusion that work to repair or rehabilitate a historic building is a Type II action is consistent with the regulatory criteria for Type I actions. Actions on or adjacent to historic properties are generally defined as Type I actions, but actions designed for the preservation of a historic facility or site listed on the federal or state historic registers are specifically excluded. 6 NYCRR 617.4(b)(9).

#### Conclusion

The application before the Commission appears to show that the proposed repair work on the Gatehouse is independent of the Foothills project, and would be undertaken by the Preserve whether or not the Foothills project goes ahead, in order to preserve the existing structure.

Approval of the actions that would be authorized by the Certificate of Appropriateness would not further the Foothill action in any respect, limit the SEQRA review being undertaken by the Planning Board, or preclude the Commission from conducting its review of the proposed Foothills project and providing its recommendations to the Planning Board.

For the reasons discussed above, it appears appropriate for the Commission to determine that its approval of the Certificate of Appropriateness authorizing the proposed work is a Type II action, and that further SEQRA review is not required.