

# 239 Review Guide

## **Municipal Guide to NYS General Municipal Law §239-l, m & n: Required Planning, Zoning and Subdivision Referrals**

**September 2018**

### **Tompkins County Department of Planning and Sustainability**

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## Introduction

This *239 Review Guide*, prepared by the Tompkins County Department of Planning and Sustainability, was developed to provide clarity to the referral and review process required by New York State General Municipal Law §239-l, m & n. This law, commonly referred to as GML §239, was established to encourage and coordinate inter-community and county-wide planning and zoning decisions between local municipalities and county planning officials.

This Guide consists of three sections. Section one provides an overview of the basic GML §239 legal requirements of referral, review, and the types of projects for referral. Section two provides the guiding policy documents and recommendations that are typically used by the Tompkins County Department of Planning and Sustainability during the review process. Finally, section three addresses the process used by Tompkins County to accept, review, and complete referrals.

## Section One - General Municipal Law §239 l, m & n Basics

GML §239 requires that cities, towns, and villages in Tompkins County refer particular development applications, proposed zoning changes, and comprehensive plan adoption or amendments to the Tompkins County Department of Planning and Sustainability (County Planning) for review, comment, and recommendation prior to taking final action. The purpose of this law is to bring relevant inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. This guide uses the terms “referring body” and “municipality” interchangeably throughout the document.

### Which Projects Require Review?

There are two criteria that must be met for projects to be subject to review. The first relates to the type of proposed development/action and the second is linked to its geographical location.

Types of Projects: GML §239 states that the following proposed actions shall be subject to referral:

1. Adoption or amendment of a comprehensive plan;
2. Adoption or amendment of a zoning ordinance or local law;
3. Issuance of special use permits;
4. Approval of site plans;
5. Approval of subdivisions;<sup>1</sup>
6. Granting of use or area variances; or
7. Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

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<sup>1</sup> GML §239-n states that the local board must refer applications for preliminary and/or final subdivision approval. Sketch plans are also referable if the local board votes to approve them. Even if sketch plans are not required to be referred, County Planning encourages local Boards to refer sketch plan applications so that we may offer comments early in the review process.

Geographical Locations: GML §239 states that local projects must be referred only if they affect real property within five hundred feet (500') of any of the following<sup>2,3</sup>:

1. The boundary of any city, village or town;
2. The boundary of any existing or proposed county or state park or any other recreation area;
3. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
4. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
5. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
6. The boundary of a farm operation located in an agricultural district<sup>4</sup>.

### **May a Municipality Modify the Types of Projects County Planning Reviews?**

County Planning and any municipality may enter into an agreement to identify certain proposed actions that are of local, rather than inter-community or county-wide concern, and are not subject to referral. County Planning has such an agreement with many municipalities in Tompkins County. The standard intergovernmental agreement used by Tompkins County is included in Appendix E.

### **What Constitutes a Complete Application (Full Statement)?**

GML §239 requires that the municipality submit a “full statement” (or a complete application as required by local regulations) for a proposed action before County Planning begins its review. This includes:

- All materials required by and submitted to the municipality as an application on a proposed action.
- A completed Environmental Assessment Form (EAF)<sup>5</sup> and all other materials required by such municipality in order to make its determination of significance pursuant to the State Environmental Quality Review Act (SEQRA).
- For adoption or amendment of a zoning ordinance or local law: the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any.

If it is discovered at any point during the County review process that any of the required information has not been provided and that the referral does not comprise a complete application, County Planning will notify the municipality that the submission is incomplete. Please note that GML §239 requires that any additional items that the municipality receives as part of the application be forwarded to County Planning for review.

Please also note that County Planning does not review or accept materials regarding any referral that are sent from any other source than the municipality. All GML §239 Review communications flow directly between the municipality and County Planning.

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<sup>2</sup> GML §239-n states that if any portion of the property meets one of the geographical locations then the project must be referred, even if the developed portion of the property would not be within 500 feet.

<sup>3</sup>County Planning has developed maps showing properties that are subject to GML §239 Review (Appendix C).

<sup>4</sup> As defined by article twenty-five-AA of the Agriculture and Markets Law. Note that the exception to this subparagraph is that it shall not apply to the granting of area variances.

<sup>5</sup> Each project should include the environmental assessment that summarizes the project information (SEQR Environmental Assessment Form Part 1).

## How Much Time Does County Planning Have to Conduct its Review?

After receiving a complete application, County Planning has 30 days<sup>6</sup>, or longer if agreed upon by County Planning and the municipality, to provide its recommendations to the municipality. If County Planning fails to provide its recommendations within the 30 days, or agreed-upon time, the municipality may take final action on the proposed action without input from the County. However, any County Planning recommendations received after 30 days, or agreed-upon time, but at least two business days prior to final action by the municipality, must be considered as if the recommendations were received within 30 days.

## What are Typical County Planning Responses?

County Planning typically makes one of four responses as part of its review process. Two of them require a supermajority vote to override recommendations. In other words, if County Planning recommends that a proposal be modified or disapproved, the municipality must either, follow the recommendation or override the modification or disapproval by a majority plus one vote of the full municipal board. The municipality, in its report on the final action, must further state the reasons for overriding County Planning's recommendation. In some cases, County Planning may include advisory comments for the municipality to consider during deliberation.

- 1. Local Decision – No County Impact:** County Planning has determined that the proposal will not create significant inter-municipal or county-wide impacts and is primarily of local concern.
- 2. Approval:** County Planning has determined that the proposal would result in meaningful progress towards achieving officially adopted County principles and policies and will not create significant negative inter-municipal or county-wide impacts. A recommendation for approval is non-binding and no supermajority is needed to override this recommendation.
- 3. Modification:** County Planning has determined that the proposal does not adequately meet the guidelines outlined in this 239 Review Guide or may otherwise create significant negative inter-municipal or county-wide impacts. However, County Planning believes that these impacts could be addressed through modification of the proposal. A recommendation for modification is binding, so a supermajority is needed to override this recommendation if the modifications are not made.
- 4. Disapproval:** County Planning has determined that the proposal does not adequately meet the guidelines outlined in this 239 Review Guide or may otherwise create significant negative inter-municipal or county-wide impacts and that these impacts could not be addressed through a simple modification of the proposal. A recommendation for disapproval is binding and a supermajority is needed to override this recommendation.

## What Does the Municipality Need to Do After County Review?

Within 30 days of its final action, under GML §239 the municipality is required to inform County Planning about the final action taken.

## What Are the Legal Implications of GML §239?

Case law in New York State has shown that the failure of local municipalities to follow the referral requirements of GML §239 may invalidate any final city, town or village decision in a development proposal. Thus, it is crucial

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<sup>6</sup> Typically, County Planning spends less time than the allowed 30 days for review, however it sometimes requires the full 30 days. It is helpful if the referring body include in its submittal any key dates for project review, including public hearing dates, dates for agenda packet distribution, etc.

that local planning and zoning municipal staff, as well as the governing body, planning and zoning boards, municipal attorneys and enforcement officers, be aware of the state law requirements.

### **Which Entities are Subject to GML §239?**

All municipalities in Tompkins County are subject to the provisions of GML §239.

### **What Issues Can Be Considered by the County?**

The intended purpose of GML §239 is to bring pertinent inter-community and county-wide matters into consideration by individual municipalities in their review of planning, zoning, and development applications. It is the intention of the GML §239 guide that the County be able to provide consistent, transparent reviews of each project and law considered by each local municipality. As new information becomes available this guide and its recommendations will be reviewed and updated.

While conducting reviews, County Planning will consider the following items as defined in GML §239-I:

1. Compatibility of various land uses with one another;
2. Traffic-generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed roadways;
3. Impact on existing and proposed County or State uses;
4. Protection of community character as it relates to predominant land uses, population density and the relation between residential and nonresidential areas;
5. Drainage and watershed;
6. Community facilities;
7. Official municipal and County development policies as may be expressed through comprehensive plans, capital programs or regulatory measures; and
8. Such other matters as may relate to the public convenience, to governmental efficiency and to the achieving and maintaining of a satisfactory community environment.

As needed, County Planning will work with various county, state, and federal agencies to analyze projects for potential inter-community and county-wide impacts. Agencies that County Planning regularly works with include the Tompkins County Environmental Health Division, the Tompkins County Highway Department, the Tompkins County Department of Emergency Response and the New York State Department of Transportation.

## Section Two - County Review: Guiding Principles

### Comprehensive Plan Principles and GML §239 Review

The [Tompkins County Comprehensive Plan](#) seeks to encourage management and preservation of our resources for the equitable benefit of current and future generations. County Planning uses the principles and policies of the 2015 Comprehensive Plan as the underlying basis for its review of development proposals.

### Key Guidelines Used to Review GML §239 Proposals <sup>7</sup>

All the documents referenced below may be found at <http://tompkinscountyny.gov/planning>. If you cannot locate a document, please contact County Planning at 607-274-5560.

#### A) Common Topics: Potential Negative Impacts

Below are the main aspects of proposals that have historically been deemed to have potential negative inter-community or county-wide impacts and have resulted in recommendations to modify or disapprove a project.

1. **Wetlands:** For projects that would disturb land within a State or Federal mapped wetland, County Planning would likely recommend that the municipality require applicants to redesign the project so as not to disturb the wetland or, if that is not possible, to **document** that the functions of the wetland were **considered** and elaborate on how their proposal will not negatively impact those wetland functions. These modifications are recommended to help preserve and protect water quality and other wetland functions.

In addition to State and Federal mapped wetlands, there are other sources of information about the existence and extent of wetlands on particular sites. The Cayuga Lake Watershed Network (CLWN) has generated a map of wetlands throughout Tompkins County based on information that is more current and more sophisticated than the original DEC and National Wetland Inventory maps. In addition, some project developers hire professionals to delineate the extent of wetlands on their site. State (DEC) and Federal (National Wetland Inventory) wetlands, as well as CLWN wetlands, can be viewed and mapped using the online mapping tool, the [Tompkins County Natural Resource Inventory](#).

2. **Stream Buffers:** For projects that would disturb land within 100' (from edge of bank) of a perennial stream, or 50' (from stream centerline) of an intermittent stream<sup>8</sup>, County Planning would review the project's potential impacts on water quality.

For communities that have not established stream buffer regulations that protect water quality, County Planning would likely recommend that the municipality require applicants to redesign the project so as not to disturb the 100' or 50' buffer and vegetate that buffer if it is not currently vegetated (Reference: [Enhancing Water Resources in Tompkins Co: Benefits of Riparian Areas & Stream Buffers](#)).

In locations where communities rely on municipal storm sewer systems, County Planning would likely recommend that the municipality require applicants to **document** how the project would impact water

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<sup>7</sup> This is not an exhaustive list of topic areas or the exact language that could be used in review of projects as each development proposal requires its own unique review. County Planning will be guided by all the Principles and Policies in the Tompkins County Comprehensive Plan (2015), as well as current research on specific topic areas, as supported by County Planning's topical plans and strategies. The resources referenced throughout this section are available on the County Planning [website](#).

<sup>8</sup> Perennial and intermittent streams, and their recommended buffers, on a specific site in Tompkins County can be mapped using the [Tompkins County Natural Resource Inventory](#).

quality and quantity through the use of that system. These modifications are recommended to help preserve and protect water quality.

3. **Floodplain Development:** For projects that would disturb land within the 100-year floodplain, County Planning would likely recommend that the municipality require applicants to eliminate the need for any building or fill within the floodplain or, if that is not possible, to prepare a hydraulic analysis of the impact of localized flooding both upstream and downstream of the project (Reference: [Tompkins County Hazard Mitigation Plan \(2013\)](#)). These modifications are recommended to help reduce flood risk to property up and downstream of the proposed site. 100-year floodplains on a specific site in Tompkins County can be mapped by using the [Tompkins County Natural Resource Inventory](#) and selecting the “Flood Zones” layer.
4. **Unique Natural Areas:** For projects that would disturb land within a designated Unique Natural Area (UNA), County Planning would likely recommend that the municipality require applicants to redesign the project so as to not disturb the UNA or, if that is not possible, to **document** that the factors contributing to the designation of the UNA were **considered** and elaborate on how their proposal will not negatively impact the resource (Reference: [Tompkins County Environment Management Council \(EMC\) Unique Natural Area \(UNA\) Inventory](#)). These modifications are recommended to help preserve and protect the distinct properties of the UNAs. A countywide map of UNAs may be found [here](#).<sup>9</sup>
5. **Public Health:** For projects with Onsite Wastewater Treatment Systems (OWTS), County Planning may consult with the Tompkins County Health Department (Reference: [OWTS \(Sewage\) Systems: Procedure for Obtaining a Permit](#)) to identify any regulatory issues. Should any issues be identified, County Planning would likely recommend that the municipality condition its approval upon the applicant receiving appropriate permits from the Tompkins County Health Department. These modifications are recommended to ensure the protection of public health and safety and of water quality.
6. **State/County Roads:** For projects with curb cuts on any County or State road, County Planning would likely consult with the Tompkins County Highway Department or the New York State Department of Transportation to identify any concerns. Should any issues be identified, County Planning would likely recommend that the municipality require applicants to redesign the project to address site-specific concerns. These modifications are recommended to ensure protection of public health and safety and to safeguard the functions of state and county highways.
7. **Traffic Impacts:** For projects expected to generate more than 1,000 trips per day based on traffic generating estimates from the Institute of Transportation Engineers’ *Trip Generation Manual*, County Planning would likely recommend that the municipality require applicants to conduct a Traffic Impact Analysis. However, in places where there are existing traffic concerns County Planning may recommend a traffic study for smaller projects. These modifications are recommended to ensure a safe and efficient transportation network.
8. **Sidewalk Access:** For projects that are located in, or adjacent to, areas with a sidewalk network, County Planning would likely recommend that the municipality require applicants to provide safe connections to the sidewalk network. These modifications are recommended to help promote safe, healthy and active communities.

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<sup>9</sup> Background information on the UNA Inventory is available at the noted links; full details of UNAs are available in the full inventory documents available for review at County Planning, municipal offices and local libraries.

9. **Communication Towers:** For communication tower projects, County Planning will consult with the Tompkins County Department of Emergency Response (DOER) to ensure the proposed use will not conflict with the County's public safety communications system. Should conflicts be identified, County Planning would likely recommend that the municipality require applicants to work with DOER to address any conflict. These modifications are recommended to help ensure that public safety communications systems are maintained.
10. **Building Energy Use:** For residential projects of more than 10 units or for any non-residential project, County Planning would likely recommend that the municipality require applicants to consider ways to reduce energy demand and/or reduce the use of fossil fuels. For municipalities that have not established their own process for addressing the energy impacts of proposed developments, the County would likely recommend that the municipality require applicants to use the *Tompkins County Energy Recommendations for New Construction (2018)*<sup>10</sup> to **document** that each of the energy items were **considered** and elaborate on why they chose to incorporate or not incorporate the recommendations. These modifications are recommended to help reduce greenhouse gas emissions.

The County has a new program which offers free energy evaluation and assistance to help business owners save energy in new construction and renovation projects. Please contact County Planning if such assistance is desired.

11. **Large-Scale Renewable Energy Systems:** For large-scale solar and wind energy systems, County Planning has prepared the [\*Tools to Promote and Regulate the Deployment of Renewable Energy Systems \(2017\)\*](#)<sup>11</sup> to help promote the development of renewable energy sources in the County while addressing their potential negative impacts. For municipalities that have not developed local renewable energy regulations that address the most common impacts of renewable energy developments, the County would review the proposal using the *Tools* document and would likely recommend that the municipality require the applicant to conform to its recommendations. These modifications are recommended to help promote development of local renewable energy systems while addressing concerns with quality-of-life issues related to renewable energy development.
12. **Distinctive Views:** For residential projects of more than 10 units, non-residential projects covering more than 10,000 square feet of land, or projects taller than 50' and that are located within the one-mile viewshed of a Distinctive View, County Planning would review the project for potential impacts on that Distinctive View. The [\*Tompkins County Scenic Resources Inventory\*](#) identified 25 Distinctive Views in the County. Fourteen of the 25 Distinctive Views are of the area's gorges, six include Cayuga Lake, and ten are located in one of the four State Parks. Distinctive Views can be found in all of the towns: Caroline (2), Danby (1), Dryden (1), Enfield (2), Ithaca (6), Lansing (2), Newfield (1), and Ulysses (3); in villages: Lansing (1) and Cayuga Heights (1); and in the City of Ithaca (5).

For projects where County Planning thinks there may be an impact on one of these Distinctive Views, County Planning would likely recommend that the municipality require applicants to prepare a visual impact assessment that includes these specific views. These modifications are recommended to help preserve and protect scenic resources. A map of Distinctive Views in the County may be found [here](#).

13. **Trails:** For projects that include, or are adjacent to, trails identified as priorities for the county-wide trails network (Black Diamond Trail, Ithaca-Dryden Trail, South Hill Recreation Way, Cayuga Waterfront Trail, and

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<sup>10</sup> See Appendix B. Note that the County has adopted these energy recommendations for use in its own SEQRA review process.

<sup>11</sup> See Appendix F.

Finger Lakes Trail) County Planning would likely recommend that the municipality require applicants to adequately buffer and provide safe connections to these trails (Reference: [Tompkins Priority Trails Strategy](#)). These modifications are recommended to help promote safe, healthy and active communities. A map of the priority trails in the County may be found [here](#).

## **B) Common Topics: Other Important Considerations:**

Below are the main aspects of proposals that have historically been deemed to be important to consider, but not to rise to the level of having potential negative inter-community or county-wide impacts. These would be expressed in the form of a comment in a GML §239 letter from County Planning.

1. **Natural Features Focus Areas:** For projects located in Natural Features Focus Areas (NFFA), County Planning may comment that larger vegetated stream buffers be provided to help protect wildlife habitat or corridors. (References: [Tompkins County Conservation Plan – Parts I and II](#); [Enhancing Water Resources in Tompkins Co: Benefits of Riparian Areas & Stream Buffers](#)).
2. **Scenic Byway:** For projects located on the [Cayuga Lake Scenic Byway](#) (external link), County Planning may comment on how a project could be improved to enhance the scenic characteristics of the Byway.
3. **Noteworthy Views:** For residential projects of more than 10 units, non-residential projects covering more than 10,000 square feet of land, or projects taller than 50' and that are located within the one-mile viewshed of a Noteworthy View as identified in the [Tompkins County Scenic Resources Inventory](#), County Planning may suggest that the applicant prepare a visual impact assessment that includes specific views. The [Tompkins County Scenic Resources Inventory](#) identified 30 Noteworthy Views in the County. The majority of Noteworthy Views are of Cayuga Lake or another of the County's numerous scenic watercourses. These views are found throughout the County, in the Towns of Ulysses (3), Enfield (2), Newfield (2), Danby (1), Caroline (3), Dryden (4), Lansing (2), Ithaca (8), Village of Cayuga Heights (1), and the City of Ithaca (4).
4. **Invasive Species:** For projects that incorporate the use of an invasive species as noted on the [Tompkins County Environmental Management Council's \(EMC\) Regional Invasive Species list](#), County Planning may comment that the applicant's use of that species could encourage the spread of invasive species in the community and suggest that native species be used instead.
5. **Outdoor Lighting:** For projects including outdoor lighting, County Planning may comment that the applicant's lighting plans could result in adverse ecological impacts and may suggest alternative lighting options. (Reference: [EMC Indoor and Outdoor Lighting Resource \(2017\)](#)<sup>12</sup>).
6. **Outdoor Recreation:** For proposed residential projects of more than 30 units, County Planning may comment that the applicants provide on-site recreational areas or, if the project is located within a quarter-mile of a public park, playground, or other recreational resource, provide a connection to nearby recreational trails or amenities in their project design.
7. **Pedestrian Connections:** For projects that would impact the continuity of pedestrian and bicycle connections, County Planning may comment on the sufficiency of pedestrian/bicycle connections and facilities to support the safe movement of people and maintain and improve the transportation network.

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<sup>12</sup> Reference also included in Appendix F.

- 8. **Transit Service:** For residential projects of more than 30 units, County Planning may comment that the applicant should coordinate with Tompkins Consolidated Area Transit (TCAT) to support the safe movement of people and maintain and improve the transportation network.

## Section Three - Application and Submittal Process

It is important for County Planning to provide an accessible and streamlined process for municipalities to complete and submit referrals. This section outlines that process.

### What is the Application Process?

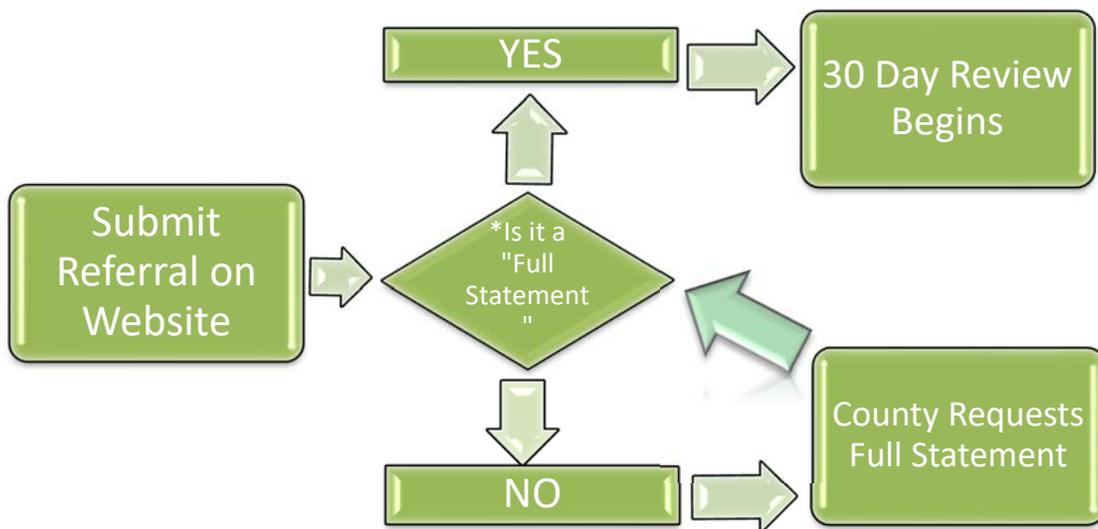
County Planning has developed a “one-stop online shop” for municipalities to upload and submit GML §239 referrals. Municipalities should use the online form to upload project information and supporting files on a single-entry form. When the submission is received, an automated confirmation e-mail will be sent back to the municipality indicating materials have been received and that the 30-day County review period has commenced.

The materials submitted with the online submission form should include all of the project materials required by your municipality for this to comply with the “full statement” requirement of GML §239. This includes all of the SEQR documentation available at the time of project submission.

If at any time after submitting the original review materials new application materials are provided or changes are made, those materials must be provided to County Planning for review and uploaded into the online system.

If a municipality requires assistance in submitting documents through the online system, please contact the Tompkins County Department of Planning and Sustainability.

### What is the process for submitting GML §239 Referrals?



### What Information is Required?

The County’s Submission Form requires several different types of information:

- Municipal information, such as the name of the municipality and municipal contact information for the project.
- Project proposal information, such as the project name, applicant name, tax parcel number, and dates related to the review of the project.
- Project details, such as the type of action being taken and how the project qualifies for GML §239 review.
- Additional information, such as whether the site is served by public water and/or sewer, the number of proposed housing units, the size of proposed buildings, and the presence of floodplains, wetlands, streams, or UNAs on the project site.

The municipality uploads the development proposal and related materials directly via the website.

### **Finalizing the GML §239 Process**

Within the 30-day review period, County Planning examines the project materials and determines if any additional materials are required to evaluate if the proposed project may have a negative inter-community or county-wide impacts. Often County Planning will contact the municipality to clarify aspects of the project. Once County Planning has completed its review, it will send a letter with its recommendations and comments to the municipality.

GML §239 further requires that each municipality inform the County of its decision on the proposed project including if County recommendations were incorporated into the decision. A resolution or follow-up e-mail providing an overview of that decision are appropriate ways to provide that follow up.

### **Questions about the Process?**

It is the intent of County Planning to update this guide on an annual basis or as needed in order to provide a clear and streamlined process to address any questions or concerns about the referral application and submittal process.

Please direct any comments or questions to:  
 Tompkins County Department of Planning and Sustainability  
 121 East Court Street,  
 Ithaca, NY 14850  
 607-274-5560  
 planning@tom-pkins-co.org

### **Appendices**

- Appendix A: Handout Suitable for Developers - 239 Review Guiding Principles
- Appendix B: Tompkins County Energy Recommendations for New Construction (2018)
- Appendix C: Properties Subject to County Planning Agency Review Under GML §239
- Appendix D: New York State General Municipal Law §239-l, m & n
- Appendix E: Standard Intergovernmental Agreement Template
- Appendix F: Recently Developed Planning Documents
  - Summary of Recommendations from Tompkins County Department of Planning and Sustainability for the Deployment of Solar Energy Systems and Wind Energy Systems (2017)
  - Tompkins County Environmental Management Council (EMC)'s Recommendations for Indoor and Outdoor Lighting (2017)