

State Environmental Quality Review Act (SEQRA): Overview

AKRF, Inc.

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Discussion Outline

- Intent of the State Environmental Quality Review Act (SEQRA)
- Application of SEQRA
 - Typing an Action
 - Establishing Lead Agency
 - Determination of Significance
 - DEIS Scoping
 - DEIS Completeness Review
 - DEIS Public Hearing
 - FEIS Preparation
 - Findings Statement
- Other SEQRA Concepts and Best Practices

What is SEQRA?

- New York State Environmental Quality Review Act
- Article 8 of the Environmental Conservation Law passed in 1975
- Regulations set forth in 6 NYCRR Part 617

What is the intent of SEQRA?

- Primary purpose is to **incorporate environmental planning into government decision-making** (§617.1(b))
- To allow for **public/agency participation and coordination**
- To find a **suitable balance of environmental factors** (§617.1(d))
- Take a **“Hard Look”**

What is a “Hard Look”?

- Based on case law (H.O.M.E.S. v. NYS Urban Development Corporation, 1979)
- Identify relevant areas of environmental concern
- Establish a “reasoned elaboration”
- Clearly written elaboration of key facts and rationale for determination

When does SEQRA apply?

The SEQRA process must be applied whenever an action is:

- Directly undertaken by an agency;
- Involves funding by an agency; or
- Requires discretionary approval from an agency or local board (i.e. approval of a site plan, special permit, wetland permit, etc.).

What is “environment”?

SEQRA (§617.2(l))

- The physical conditions that will be affected by a proposed action, including:
 - Land, air, water, minerals
 - Flora, fauna
 - Noise
 - Resources of agricultural, archaeological, historic or aesthetic significance
 - Existing patterns of population concentration, distribution or growth
 - Existing community or neighborhood character
 - Human health

Areas of environmental assessment can include...

- Socioeconomics
 - Direct/Indirect Displacement (“Gentrification”)
 - Provision for Affordable Housing
- Community Facilities
 - Police/Fire
 - Schools
- Traffic and Transportation
- Visual Impacts
- Community Character
- Public Health

SEQRA Compliance

- Who has to comply with SEQRA?
 - State agencies
 - Local governments – including all of their Boards
 - Financing agencies (IDA's)

- How is SEQRA enforced?
 - Self-certifying law: no SEQRA police
 - NYSDEC issues regulations: only steps in if dispute on Lead Agency
 - Article 78 (administrative challenge)
 - Involved agencies can dispute Lead Agency Findings

How/When Does SEQRA Begin?

- SEQRA process runs concurrent with an application for development
 - Require submission of an Environmental Assessment Form with all applications
- SEQRA should be initiated concurrent with the circulation of draft local laws or comprehensive plan amendments

Step 1: Classify the Action

- Type I – Action is presumed to have the potential to result in environmental impacts
- Type II – Action is presumed to have no potential for environmental impacts
- Unlisted – Action is not identified on either list and may have the potential for environmental impacts

Type I Actions (617.4)

- Big(ger) Projects – more likely to have significant adverse environmental impacts (but not all require an EIS)
 - Project size thresholds based on community population
 - Ex: In a city, town, or village having a population 150,000 persons or less, 200 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works
 - Note: Prior to 2018 amendments, this specific threshold was 250 units
 - Unlisted actions exceeding 25 percent of any other Type I threshold that are located within or contiguous to S/NR listed or eligible districts/properties
 - Note: Prior to 2018 amendments, any Unlisted action (regardless of size) located within or contiguous to S/NR listed or eligible district/property was considered Type I.
 - Adoption of Comprehensive plans
 - Zoning change for 25 or more acres
 - Non-residential projects physically altering 10 or more acres
 - Unlisted action that includes non-agricultural use within an Ag-District

Type II Actions (617.5)

* = Recently added to list by NYSDEC through 2018 SEQRA amendments

- Smaller Projects “exempt” from SEQRA
 - Maintenance, replacement
 - Actions of ministerial nature (“routine or continuing agency administration/management”)
 - Agricultural practices
 - Educational projects less than 10,000 gsf
 - Certain area variances
 - 1-3 Family Homes on an approved lot
 - Construction of non-residential buildings less than 4,000 gsf
 - *Reuse of a residential and/or commercial structure, where the use is a permitted use under zoning, including permitted by special use permit
 - *Retrofit of an existing structure to incorporate green infrastructure
 - *Installation of solar arrays on structures, provided the structure is not a listed or eligible historic resource
 - *Installation of solar arrays involving 25 acres or less, if site meets specific characteristics (closed landfills, remediated BCP sites, disturbed areas zoned industrial, parking lots, etc)
 - *Installation of telecommunications cables in existing highway or utility rights of way
- Agencies can (but rarely do) adopt their own Type II lists

Unlisted Actions

- Everything else...
- Most Common “Unlisted Actions” include:
 - Minor subdivisions
 - Residential developments with less than 50 units
 - New commercial buildings under 100,000 gsf with less than 10 acres of disturbance (i.e. CVS, gas station, Dunkin Donuts)

Step 2: Establish Lead Agency

- If Type I or Unlisted Action:
 - Agency Declares Intent to be Lead Agency
 - Circulate EAF to “Involved and Interested Agencies”
- If Type II Action, SEQRA complete
 - Best Practice: Adopt a resolution or memo to file indicating the reasoning for this decision based on Part 617.5

Lead Agency Circulation

- Circulation should include:
 - EAF Part 1 (minimum)
 - Copy of application
 - Location map
- Allow 30 days for response
- Lead Agency may provide form to send back
- Lead Agency Disputes resolved by NYSDEC Commissioner

**RESPONSE TO REQUEST THAT THE
TOWN OF SOUTHEAST PLANNING BOARD
SERVE AS LEAD AGENCY FOR
Bob's Bait and Tackle Shop**

On behalf of _____ (Involved or Interested agency), I acknowledge receipt of the Lead Agency notice in this matter.

The above named involved agency hereby: (Please check one)

- CONSENTS that the Town of Southeast Planning Board serve as lead agency in this application, and requests that the undersigned continue to be notified of SEQR determinations, proceedings and hearings in this matter.
- DOES NOT CONSENT to the Town of Southeast Planning Board serving as lead agency in this application and wishes that _____ serve as lead agency.
To contest lead agency designation, the undersigned intends to follow the procedures outlined in 6 NYCRR 617.6 (e).
- TAKES NO POSITION on lead agency designation.

Date _____ Signature: _____
Printed: _____
Agency: _____

PLEASE RETURN TO: Planning Board Secretary
1 Main Street
Brewster, NY 10509
Phone: (845) 279-7736
Fax: (845) 279-8572

Step 3: Review Environmental Assessment Form

- Part 1-Short Form (Unlisted)
 - 2.5 pages of Project information
- Part 1-Full Form (Type I)
 - 13 pages of Project Information
- Part 2
 - Lead Agency answers Yes/No questions to guide finding of significance
- Part 3
 - Determination of Significance
 - Reasoned Elaboration
- EAF Mapper: <http://www.dec.ny.gov/eafmapper/>

Supplementary Information

- Can be (and usually is) required for non-EIS projects
- Local concerns
 - Exterior site lighting
 - Visual resources - Photosimulations
 - Traffic & Parking
 - Natural Resources (trees and 'undeveloped' land)
- Agency Concerns
 - Traffic (state and county roads)
 - Natural Resources (Threatened/Endangered Species)
 - Historic Resources
 - Wetlands and Waterbodies

Supplementary Information (cont.)

Example: Visual Simulation Supplemental Study
Canisteo Wind Farm - Steuben County, NY



Supplementary Information (cont.)

Example: Visual Simulation Supplemental Study
Mohawk Solar Project - Montgomery County, NY



Supplementary Information (cont.)

Example: Traffic/Transportation Supplemental Study
Complete Street Design – New Rochelle, NY



Step 4: Determination of Significance

- When making a determination, the Lead Agency considers the potential for the proposed action to result in
 - **A substantial adverse change** in existing environmental conditions (i.e. air quality, water quality, traffic or noise levels; flooding, etc.)
 - **Natural Resources:** Removal or destruction of large quantities of vegetation or fauna; substantial interference with migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species;
 - **Critical Environmental Areas:** The impairment of the environmental characteristics of a CEA;
 - **Adopted Land Use Plans:** Material conflict with a community's current plans or goals as officially approved or adopted;

Step 4: Determination of Significance

- **Historic, Archaeological, Cultural Resources:** Impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- **Energy:** a major change in the use of either the quantity or type of energy;
- **Human Health:** The creation of a hazard to human health;
- **Land Use:** A substantial change in the use, or intensity of use, of land;
- **Population:** A large increase in the number of people to a place or places for more than a few days.

Negative Declaration

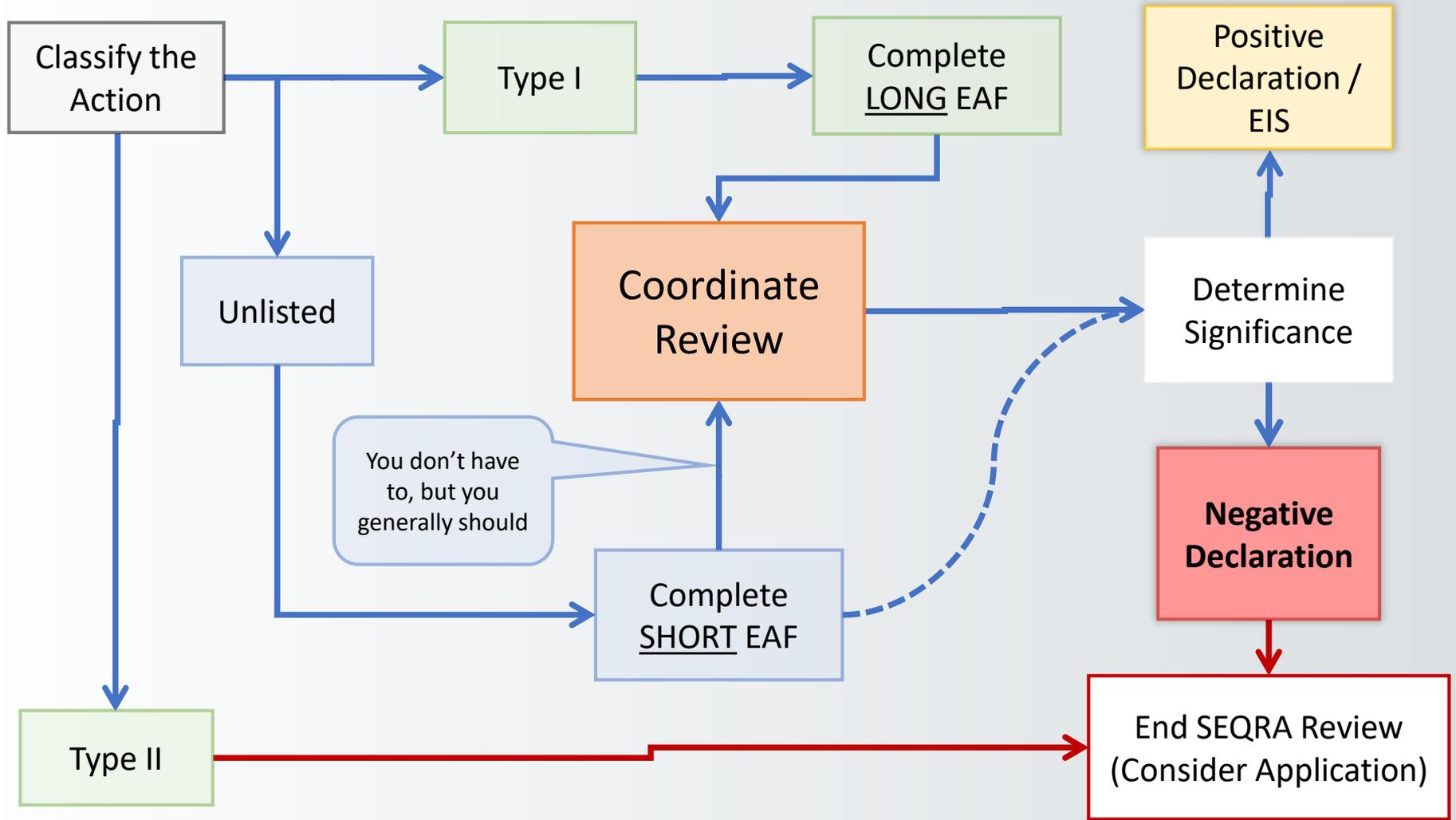
- Projects with no potential for significant adverse impacts, or
- Projects that have been modified during the review process to:
 - Avoid Impacts
 - Minimize Impacts
 - Mitigate Impacts

Negative Declarations for Type I Actions must be published in the Environmental Notice Bulletin (ENB) (ECL 3-03-6(4))

Positive Declaration

- Projects with potential to result in significant adverse impacts
- Projects will require an Environmental Impact Statement (EIS) to evaluate impacts and develop mitigation for those impacts
 - Generally “bigger” projects (i.e. major subdivision, new retail center, large scale multi-family housing development)

Positive Declarations (Type 1 and Unlisted Actions) must be published in the ENB



Step 5: Environmental Impact Statement (EIS)

- **Focuses** on potential significant impacts
- Identifies measures to avoid, minimize, or mitigate impacts
- Is written in concise, plain language
- Presents Alternatives
 - Meet purpose and need of Applicant
 - Reduce potential significant adverse impacts

Draft Environmental Impact Statement (pDEIS, DEIS) – Preparation and Review

- Scoping
 - Analyzes technical considerations that are focused on potential impacts
 - Responds to public and agency concerns
 - Identifies alternatives

- Lead Agency Review of Preliminary DEIS
 - Tailored to ‘Completeness’ with respect to scope
 - Determined to be ‘adequate’ to understand impacts and mitigation

For a completeness determination, the Lead Agency does not need to agree with conclusions

Circulating the Draft Environmental Impact Statement

- Circulated to Interested and Involved Agencies
- Posted to publically accessible website
- Available for review at municipal building and/or libraries

Collecting and Submitting Comments

■ EIS Public Hearing

- SEQRA EIS public hearing is not mandatory (but generally prudent)
- Public Hearing Requirements:
 - Post Public Hearing Notice in the ENB, on project website, newspaper of record
 - Hold hearing no earlier than 14 and no later than 60 days after publication of Notice
 - Set and communicate expectations to the attendees

■ Collecting (and Submitting) Comments

- Lead Agency sets a comment period for no less than 10 days following the close of the public hearing (if held).
- Written comments (including those from interested and involved agencies) are submitted to Lead Agency
- Public hearing comments are documented via recording or stenographer

Final Environmental Impact Statement

- Presents the Lead Agency's response to all substantive comments
- Includes additional technical review (if necessary)
- Includes Project modification to avoid, minimize or mitigation impacts

FEIS Public hearing not required

Following adoption of FEIS – a minimum 10-day comment period is required before Lead Agency issues Findings

Statement of Environmental Findings

- All involved agencies issue their own SEQR Findings Statement
- Negative Findings Statement
 - Action is not approvable after consideration of the FEIS
 - Reasoning for Negative Findings is DOCUMENTED
- Positive Findings Statement –
 - Project is approvable after consideration of the FEIS
 - Impacts have been minimized or mitigated
 - Social, economic and other considerations - WEIGHED and BALANCED

SEQRA – Environmental Findings Statement

- “Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable **by incorporating as conditions to the decision those mitigative measures that were identified as practicable.**”

Other SEQRA Concepts:

- “Segmentation”: Evaluating an action as though **components** or **phases** are independent/unrelated
 - Complex Applications with related components that may not be presented or applied for concurrently
 - Series of actions for the same project (zoning change, subdivision approvals, extension of sewer service)
 - Phased Projects
 - Separate Project Sites

*SEQRA requires an evaluation of the ‘**whole action**’ - Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action should be evaluated as one whole action.*

Segmentation – How do you know?

- Common purpose?
- Reason to complete segments at the same time?
- Common geographic location
- Common impacts, when taken together, may be significant adverse impacts?
- Common ownership or control?
- Independent utility?
- Inducement: Does the approval of one part or phase commit the Lead Agency to approve the other phases?

If the answer is “yes” to any of the above, segmentation is a possibility

Segmentation – What do you do?

- Prepare a GEIS – with site specific environmental review to follow
 - Master Plans
 - Zoning Map Change
 - Permissible Segmentation
 - Information of future project phases or stages is too speculative
 - Future phases may not occur
 - Future phases are functionally independent of current phase
 - Segmenting review will be no less protective of the environment
- Document the justification for the decision making*

Best Practices Re-Cap

- Document everything!
 - A determination is only as good as the information relied upon
 - Provide concise written reasoning for determinations of significance
 - Express the “balance” between project benefits and potential impacts
 - Establish the “hard look”
- Use your municipality's website to publish project information
- Develop standard forms and be consistent
- Remember the intent of SEQRA
- Vast majority of challenges to board decisions are based on a board’s alleged failure to comply with SEQRA.
 - Compliance with SEQRA is critical to protecting municipalities from court challenges.

SEQRA Guidance

- SEQRA Cookbook (updated January 2019)
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf
 - Uses a flowchart with guidance provided for each step
- SEQRA Handbook (4th edition 2019)
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/dseqrhandbook.pdf
 - Provides more technical guidance and Q&A
- EAF Workbooks
 - URL: <https://www.dec.ny.gov/permits/90125.html>
 - Especially helpful for Long Form and thresholds for Part 2
- DEC Guidance
 - Visual Policy
 - URL: <https://www.dec.ny.gov/permits/115147.html>
 - Noise Policy
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf

Questions?

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*"From the violent nature of the multiple stab wounds,
I'd say the victim was probably a consultant."*