

Introduction to the New York State Environmental Quality Review Act

New York Department of State Division of Local Government Services

Welcome to the New York State Department of State's online course, *Introduction to the State Environmental Quality Review Act*. The goal of this course is to provide a broad overview of the purpose of the review, the process itself, and to demystify the local official's role.

Instructions

Before we start, here are a few basic instructions. Please click each item on the left.

Please notice a few features on your screen that will help you move through the course.

On the bottom right, use the navigation buttons, "*PREV*" and "*NEXT*," to advance after you have reviewed all the information on a slide.

On the top right, are the *Resources* and *Glossary* tabs.

On the top left, is the *SEQRA Flowchart* tab.

On the left, the *Menu* tab shows the course outline, and the *Notes* tab shows the course script.

Blue underlined text indicates that a [hyperlink](#) is present. Please click on the text to be directed to additional online sources of information throughout the course.

This course should take approximately one and a half hours to complete.

There will be an assessment at the end of the course. You must score at least 70% to pass.

You may print a report at the end of the course.

We are ready to begin.

Introduction

The State Environmental Quality Review Act, otherwise known as SEQRA, will be introduced in this section. Please continue to learn about what constitutes environmental protection and procedural basics.

Statutory Authority

The SEQRA regulations may be found in Environmental Conservation Law Article 8, and implemented by Title 6 of the Codes, Rules, & Regulations of New York (NYCRR) Part 617. State and local agencies must follow the procedures contained within when

charged with making a discretionary decision that has been identified by the regulations as an “action.”

SEQRA provides an opportunity for communication between local and state agencies, citizens, and project sponsors that may not have otherwise occurred. The SEQR process is not a permitting process or one that results in an “approval” per se. Rather it provides a comprehensive assessment of proposed actions in order to mitigate significant adverse environmental impacts while meeting the social and economic needs of a community.

The SEQRA regulations are not overseen or enforced by the NYS Department of Environmental Conservation (NYS DEC); the exception being a role in resolving disputes over lead agency status in special cases. As there is no enforcement entity named in statute, SEQR challenges are settled by the court, most often beginning with the State Supreme Court. Significant factors in SEQR legal challenges include, standing of litigants, statute of limitations, and the timing of challenges.

Basic Purpose

The basic purpose of the SEQRA regulations is to incorporate consideration of environmental factors into an agency’s planning, review and decision making process at the earliest possible time. This would be early enough to affect all decisions which could impact the environment, but far enough into the planning process that the range of available choices can be defined.

In the case of land use decisions, application submission for local approval typically triggers a review pursuant to the SEQRA regulations. Examples could include a subdivision application to a planning board, or a use variance application to a zoning board of appeals. Land use matters requiring local legislative action of a governing board, such as comprehensive plan adoption by a town board, may also be subject to the SEQRA regulations.

Resources or characteristics affected by an action

“Environmental factors” are resources or characteristics affected by the action that is subject to the SEQR regulations. The statute defines the “environment” very broadly. The examples shown here demonstrate components of our environment which is to not only include natural systems, but also human and community resources. Physical resources, such as, land, air, and water are most commonly what come to mind. However, don’t forget to consider the human and social resources that may be impacted. Consider impacts to features of historic or aesthetic significance, such as historic sites or view sheds. It’s important to remember that SEQRA is intended to achieve balance between the physical environment, social and economic resources.

Environment

Environmentally sensitive areas, such as wetlands are increasingly being encroached upon from new development. As impervious surfaces from development increase, the opportunity for water to naturally recharge through filtration is lessened. Manmade

changes to topography may also re-direct water settlement to an undesirable location, such as, a neighboring property.

Also to be considered are plants and animals and whether they are losing their habitats and becoming endangered or being forced to relocate in developed areas. Wildlife, such as this bog turtle, are classified as endangered in New York State and threatened by federal standards. Further reduction of habitat could someday cause extinction of this species.

Changes to population patterns, increase or decrease, may be beneficial or harmful depending on the situation; for example, the community may desire more people residing in their downtown and less people in the suburbs.

Impacts to community character could mean many things to many people. Consider whether new development would mean less opportunity for parkland, increased traffic, or noise generated during construction or once the project has been established.

Actions

All activities that qualify as “actions” under the SEQR regulations, are subject to environmental consideration. Please continue for a more in depth explanation of what constitutes an action.

What are “actions”?

Actions may include direct actions where a government agency is the sponsor, such as physical construction, planning, policy making, or adopting rules, regulations and procedures. Actions may also include granting approval or funding. Actions are discretionary decisions which may have one or more impact on the environment. Discretionary, as used, essentially implies the ability of an agency to say “yes,” “no,” or “only if.”

This is different from a ministerial act, which is the act performed according to statutes, legal authority, established procedures or instructions from a superior, without exercising any individual judgment. An example of a ministerial act would be the issuance of a building permit by a governmental employee.

One of three classifications

The first step is to classify discretionary actions as being either Type II, Type I, or Unlisted actions. Actions must be given one of these three classifications in order to determine whether or not SEQRA is applicable. Furthermore, classification will determine which review options are available or required to evaluate the environmental impacts that could result from the SEQRA action.

The thirty-seven actions enumerated on the Type II list have been pre-determined to not result in any significant adverse impacts on the environment. Therefore, these actions have been granted exemption from SEQR. Classification of an action as Type II,

concludes the SEQR process and normal agency processes may resume. The SEQRA regulations do not provide associated paperwork for Type II determinations. A note or memo to the relevant file helps to document that SEQRA was considered and that the action was not to subject to further review.

Classification of an action as Type I requires that the review move on to the next step-determination of significance-positive or negative.

Those actions identified on the Type I list carry the presumption that they will result in at least one significant adverse impact on the environment. Therefore, the likelihood of an involved agency issuing a positive declaration is greater than for other actions. A positive declaration requires the preparation of an Environmental Impact Statement (EIS).

Unlisted actions are aptly named, because they have not been identified on any statutory list. These actions exceed the thresholds identified on the Type II list, yet fall below those on the Type I list. Unlisted actions enjoy some procedural flexibility over Type I actions, because they are not presumed to result in at least one significant adverse impact on the environment. However, similarly to Type I actions, SEQR must continue to the next step, which is to make a determination of significance.

Agencies

Now that I have explained which activities need to be reviewed, we will now go on to discuss who has a role in the review. The public bodies having a stake in an action would be considered “agencies.”

Agency

For the purposes of SEQR, an agency refers to a state or local agency. Please click each section of the pyramid for some of the more common examples:

Involved agencies are those state and local agencies that have regulatory jurisdiction over an action in some way. In the case of land use matters, the planning board, zoning board of appeals, governing board, or some combination thereof, are often involved agencies.

Interested Agencies are state or local agencies or entities acting in advisory roles, such as a county planning board in its capacity of conducting General Municipal Law §239-m review.

Those agencies not classified as SEQRA agencies, or those exempt, include federal agencies, such as, the Army Corps of Engineers. Private property owners making transactions involving no governmental review or funding, are also exempt from SEQRA.

Involved:

State or local agencies that have decision making authority over the action:

Planning board

Zoning board of appeals

Town board, village board of trustees, or city council

School board

Industrial development agency

Historical & architectural review board

NYS Historic Preservation Office

NYS Department of Environmental Conservation

Interested:

State or local agencies acting in an advisory role:

County planning board or regional planning agency in the role of GML

§239-m review

Environmental management or conservation advisory councils

Exempt:

Not classified as SEQRA agencies:

Federal departments or agencies

Private entities

Some reviews require a lead agency

Once all of the involved agencies have been identified, a lead agency may need to be established. A lead agency is an involved agency responsible for “taking the lead” on the review. However, not all SEQR reviews will require a lead agency. The lead agency is most easily established when only one agency exists, but in most cases there will be more than one involved agency.

When more than one involved agency exists, lead agency must be delegated if the intent is to coordinate the review. Usually the agency having the greatest jurisdictional power over the underlying regulation will volunteer or self-appoint. Consensus by the other involved agencies will be need to be achieved.

In the case that multiple involved agencies have the option and choose not to coordinate the review, delegation of a lead agency is not necessary. Each agency will act independently to review and a declare a determination of significance. The next

topic of discussion will include the differences between coordinated review and uncoordinated.

Establishing lead agency

The agency to propose the action, or first receive the application, must contact all involved agencies indicated in the Environmental Assessment Form (EAF). A coordination package must be sent to the other potentially involved agencies. It should include a cover letter indicating that lead agency must be established, the proposed classification of the action, Part I of the EAF (or draft Environmental Impact Statement if prepared in lieu of an EAF), and the application received by the initiating agency. The package should include enough application materials, plans, and maps that responding agencies can clearly understand the proposed action.

The agency that initiates coordination is not necessarily best suited to take lead agency status. Another agency may have greater jurisdictional power over the project and/or more expertise to conduct a more thorough review. These agencies must build consensus to establish lead agency within 30 calendar days of the date that the EAF (or draft EIS), was transmitted to them.

There are instances where the involved agencies are not able to agree which one of them will become the lead agency. If this happens, any of the involved agencies or the project sponsor can request the Commissioner of the Department of Environmental Conservation to designate a lead agency. Past decisions are available online and may be useful in setting precedent for similar situations.

Review Methods

The terms Coordinated and Uncoordinated refer to the two review methods that involved agencies must choose from when reviewing a proposed action under the SEQR regulations. Those actions subject to the SEQR regulations, will appropriately be reviewed by the involved agencies, and more specifically the lead agency in the case of a coordinated review.

Uncoordinated review

Uncoordinated reviews are an option for Unlisted actions only; an Unlisted Action is less likely to result in significant adverse impacts, not having reached the threshold of a Type I Action. When there's no coordination, each agency reviews the project independently, so the establishment of lead agency is unnecessary. Each agency will conduct independent reviews and issue their own determination of significance.

While reviewing without coordination, if one agency issues a positive declaration, any and all negative declarations by the other agencies are superseded. However, if one agency has already granted local final approval, while at the same time or prior to another agency's issuance of a positive declaration, that approval is not void. In that case, the agency's decision stands and it is not necessary for that agency to rejoin in the coordination process.

Coordinated review

The coordinated review method provides for a single integrated environmental review. One review agency serves as the lead agency to conduct the review even though there may be multiple involved agencies. Once selected as Lead Agency the responsibility lasts until the SEQR process is complete. The lead agency must be an agency with decision-making responsibility for an action. This role cannot be delegated to an advisory board, sub-committee, or agency with no part in approving, funding or undertaking an action. The other involved agencies are encouraged to assist the lead agency by providing information and comments.

Environmental Assessment Form

So far I've covered what gets reviewed by whom, and the framework for the review. Let's take a detour to explore the environmental assessment form, or EAF. Both the Short and Full forms, are not applications, but rather instruments intended to collect data and evaluate potential adverse environmental impacts.

EAF revision update

The NYS Department of Environmental Conservation somewhat recently revised its environmental assessment forms (EAFs), which became effective on October 7, 2013. The revised forms are a general update to the existing forms, and incorporate consideration of areas of environmental concern that have become more prominent since the previous forms were last amended in 1978 and 1987. The new forms have replaced the previous forms, in addition to eliminating the supplemental visual assessment form. The statement of significance is now located within Part 3, rather than existing as a separate document.

New online workbooks contain information to guide project sponsors and agencies in the preparation and review of an EAF. The new Geographic Information Systems (GIS) "mapper" uses spatial data to populate some answers in Part I; conversely, the tool may be used to verify answers given to those same questions if not used by the project sponsor initially. The online resources should make it easier for the reviewing agencies to determine the size and potential significance of an impact.

Environmental Assessment Form

The information contained in an EAF may prove helpful in classifying an action. For this reason, requesting completion of an EAF for all, even Type II Actions, may reduce misclassification down the line. Most commonly the Short EAF, will be used for Unlisted Actions; however, the Full Form may be required at the discretion of the Lead Agency. All Type I actions require completion of the Full EAF.

The revised forms have been lengthened to accommodate new areas of environmental concern that may not have been recognized at the time of last revision. For example, questions pertaining to multi-modal forms of transportation, such as pedestrian and cyclist accessibility, have been added.

The Short EAF has been expanded from 2 to 4 pages, with a much improved Part 2 that better allows for the evaluation of potential impacts. It is expected that the revisions will result in the Short form being favored over the Full form for Unlisted Actions because of the additional questions having greater depth. The Full form continues to be substantially longer than the Short, and is now 25 pages in length.

EAF: Three-part form

Both forms are laid out in three parts, with the first being the responsibility of the project sponsor or applicant, and the second and third that of the lead agency.

Part 1: Project Sponsor, Project information: The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Completion of Part 1 should be based on information currently available. The applicant may attach supplemental information which will be needed by or useful to the lead agency, such as, project designs, studies, maps, applications or other documents available to date.

The newly revised Part I now considers whether a proposed action involves only the legislative adoption of a plan, ordinance, local law, administrative rule, or regulation. In such cases, a narrative is required rather than answering the Part I questions, as many of the questions pertain to location specific projects or actions.

Part 2: Lead Agency, Systematic analysis to identify potential impacts & their magnitude: The Lead Agency is responsible for completion of Part 2. Part 2 is based upon the information from Part 1 to identify potential adverse impacts that need further consideration by the reviewing agency. Part 2 is also used to decide whether those impacts will have a small, or a moderate to large impact. Interpretation on the size or significance of an impact is at the discretion of the reviewing agency.

Completing Part 2 will help identify any topics that need to be discussed further in Part 3. Taken together, Part 2 and Part 3 will help the reviewing agency determine if a negative declaration is appropriate, and if not, formulate a list or 'scope' of environmental topics that will need to be addressed further in an environmental impact statement.

Part 3: Lead Agency, Evaluation of potential impacts to determine significance: The Lead Agency is responsible for completion of Part 3. In this part the reviewing agency is meant to evaluate the moderate to large impacts identified in Part 2. Part 3 is where the reviewing agency evaluates each of the potential impacts for significance. The context, probability of occurrence, duration of impact, irreversibility of impact, geographic scope, magnitude, and cumulative impacts should all be considered.

Part 3 is important because it will help the reviewing agency determine if impacts are not significant, if they have been mitigated by some aspect of the project, or if additional evaluation needs to be done through an environmental impact statement. Taken

together, Parts 1, 2, and 3 will create a strong record of the 'hard look' required by SEQRA.

See Lead Agency Responsibility under Notable Court Cases.

Evaluating Impacts

After the review board has received an application, classified the action, and selected the method for conducting the SEQRA review, an evaluation of potential adverse impacts must be made. This is the time to analyze the data and information provided in the EAF and other materials, and to assess whether or not there are possible environmental consequences.

Evaluate impacts in context

Part 3 of the EAF is the tool to address moderate to large impacts. Consideration of these impacts will influence the determination of significance issued. However, the term 'significant' is somewhat subjective. That is because the significance of an impact is decided by evaluating the magnitude, duration, and likelihood of an impact occurring within the context (geographic scope, setting, and scale) of the project and project area. Magnitude reflects both the area of land as well as the amount of a particular resource or the number of people being impacted. Duration speaks to the time frame the impact may occur, including irreversibility. Given the nature of the projects, some impacts may be very likely to occur while others may possibly occur, and others are unlikely to occur.

Each impact must be judged and weighed by these different characteristics. It may be useful to organize decisions using a tool similar to the chart on this slide. For example, circling or highlighting one choice in each column for each impact evaluated could keep a review board on track. The reviewing agency may decide that unlikely impacts may be of large magnitude or long duration but are ultimately not significant because they are so unlikely to actually occur. In other cases, an unlikely impact may carry such a high risk that the reviewing agency may decide it is very significant.

Context

It's important to review actions in the context in which they are proposed on a case by case basis. This is true for all actions, not just construction projects. Notice the two major franchise retail stores side by side. The urban setting versus rural will most likely have different parking and infrastructure needs, impact on the landscape, economic impacts, ectera.

Determination of Significance

To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria contained in the regulations. The determination of significance, sets the path for the remainder of the environmental review.

Criteria

Title 6 NYCRR Part 617.7 (c) outlines the criteria for determining significance. The following list is illustrative, and not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

- Adverse changes to the environment
- Reduction of wildlife habitat
- Hazard to human health
- Substantial change in the use of land
- Creating a conflict with adopted community plans or goals
- Impairment of “community character

Timing of issuance

When a single agency is involved or multiple agencies using the uncoordinated method, the agency(s) must determine the significance of the action within 20 calendar days of its receipt of the application, an EAF, or any additional information reasonably necessary to make that determination, whichever occurs later.

When more than one agency is involved and coordinating the review, the lead agency must determine the significance of the action within 20 calendar days of its establishment as lead agency, or within 20 calendar days of its receipt of all information it may reasonably need to make the determination of significance, whichever occurs later.

You may notice that each option includes a provision to extend the 20 day period if additional information is needed by an agency to make a determination of significance. Also, mutual consent between the agency and applicant may extend that timeframe for other reasons.

The timeframes outlined here have no bearing on the 30 day period given to a county planning board or regional planning agency to issue a recommendation pursuant to General Municipal Law §239-m. The SEQR and county review processes may likely be paralleled, but are not dependent on each other. It has been determined through case law that the “full statement” required for county referral must minimally consist of the EAF part I and all other materials submitted.

Will action have at least one potential significant adverse environmental impact?

There are generally two courses of action that the lead agency may take once rendering a determination of significance. Ask yourself, “will the action have a potentially significant adverse environmental impact?”

If “yes,” a positive declaration should be issued. This means that SEQR continues, and scoping will take place to make sure that issues of relevance will be discussed in the Environmental Impact Statement.

If “no,” a negative declaration should be issued. This concludes SEQR for the action. The determination of significance is to be recorded in Part 3 of the EAF. In the regulatory setting,

the filing of a Negative Declaration completes the application pursuant to the SEQR regulations. Normal review processes may begin and the action can be acted upon.

Negative declaration

A Negative Declaration means one of the three scenarios applies: there are no adverse environmental impacts identified; the impacts identified will not be significant; or, any potential impacts are mitigated by project plans. In other words, there is nothing to be gained by further analysis, and the preparation of an EIS will not be needed. The lead agency is expected to be explicit in their “reasoned elaboration” and state whether each potential impact will be likely, significant, or neither. Furthermore, they are to describe any mitigation included in the project plans, and lastly explain in a findings document how cited sources support their conclusions.

The regulations require that the classification and negative declaration be incorporated into any subsequent legal notice required by law. In other words, if the lead agency has an obligation to publish a legal notice about the proposed action after it issues its negative declaration, the notice should include a brief reference to this effect. Only one subsequent notice needs to include this statement, not all subsequent notices.

Changes to negative declaration

There are caveats that apply to issuance of negative declarations. Even if a Negative Declaration has concluded the SEQR process, it may be necessary to revisit it. A Negative Declaration must be amended or rescinded any time prior to undertaking, funding or approving an action, changes are proposed, new information discovered, or changes in circumstances may or may not result in significant environmental impacts.

An amendment to a Negative Declaration does not necessarily result in a Positive Declaration. After considering the new information or circumstances the lead agency may determine that a Negative Declaration is still appropriate, or perhaps even one with conditions. A rescission of the Negative Declaration is in order if it is determined that significant environmental impacts will result from project modifications or from a change of circumstances which was not previously addressed. Prior to any rescission, the lead agency must inform other involved agencies and the project sponsor and must provide a reasonable opportunity for the project sponsor to respond.

Conditioned negative declaration

A conditioned negative declaration, otherwise known as a negative declaration with conditions, or CND, may be issued for those actions that meet certain criteria. First of all, CNDs only apply to actions that are Unlisted—not Type I. Additionally, a coordinated review must have been the selected review method, with the submission of a Full EAF.

This provision allows for an alternative to issuing a positive declaration, where appropriate. For example, in the instance that easily articulated mitigation measures have been agreed upon during a meeting, it may appropriate to proceed with issuing a CND and wrapping up the SEQRA review.

Unlike the negative declaration, the CND requires a notice to be published in the Environmental Notice Bulletin and that a minimum 30-day public comment period be provided. The notice must state the conditions that have been imposed.

Rescission of CNDs

Here is another caveat that applies to issuance of conditioned negative declarations. The lead agency must rescind the Conditioned Negative Declaration and issue a positive declaration (requiring the preparation of a draft EIS) if it receives substantive comments that identify potentially significant adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or a substantial deficiency in the proposed mitigation measures.

After the negative declaration

When a negative declaration has been issued, no EIS is necessary and no public comment period required. Next, each agency may return their attention to the underlying procedure that first triggered the SEQRA process. Each agency is free to render a decision now that SEQRA has been concluded. For example, the planning board may begin to consider the merits of a site plan weighed against local regulations, and the zoning board of appeals may consider the tests for variance appeals pursuant to state law. Other examples of agencies returning to underlying procedures are listed on the slide.

Positive declaration

The SEQRA regulations intend for the lead agency to apply a low threshold for issuing a positive declaration, meaning a single potential significant adverse impact has been identified. Preparation of an EIS will be needed to further evaluate possible impacts. The determination of significance is recorded in Part 3 of the EAF, where there is an attestation by the lead agency of a positive declaration. As previously mentioned, during an uncoordinated review, if any one of the agencies issues a positive declaration the process begins anew with coordination for those involved agencies that have not already issued final decisions. Those agencies must then wait until the final EIS is finished. Next we will further explore what the EIS should include.

Environmental Impact Statement

An Environmental Impact Statement (EIS) is a disclosure document, the drafting process of which provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. The process facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process.

If a project sponsor feels that a positive declaration will likely be issued, they may prepare and transmit a draft EIS in lieu of an EAF to another involved agency in order to initiate the process.

Scoping DEIS

Focus on the potentially significant issue(s) that caused the action to be issued a positive declaration. Narrow down which of those impacts warrants further investigation.

Identify what information or data remains to be analyzed and the sources from which it will be acquired.

Eliminate those impacts which have been demonstrated to be of little to no significance.

Identify reasonable alternatives to the action as proposed.

Identification of mitigation measures are the core of the EIS and are ideal at this stage.

Provide an opportunity for participation by the public and other agencies. This information sharing is intended to create consensus between the lead agency and other involved agencies, and may bring to light issues or resources that may have been otherwise overlooked.

Preparation of Draft EIS (DEIS)

A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment to all involved agencies. If the applicant declines or refuses to prepare the draft EIS, the lead agency has the option of preparing it on its own, having it prepared by a consultant, or terminating the review of the action.

The draft EIS is most often prepared by the project sponsor and presented to the lead agency. In this case, the lead agency has 45 days to review to determine if the draft EIS is adequate for public review in terms of scope and content. Ultimately, this document will “belong” to the Lead Agency, so adequacy is important. If the draft EIS is found to be unacceptable, the lead agency may be return to the sponsor for revision, but the agency must provide specific written comments and suggested changes. The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt. These time frames are the burden of the lead agency to follow.

When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency must prepare, file and publish a notice of completion of the draft EIS and file copies of the draft EIS in accordance with the requirements set forth in section 617.12 (c) (1). The minimum public comment period on the draft EIS is 30 days. The comment period begins with the first filing and circulation of the notice of completion. Lead agencies are also required to post notice on a publicly accessible internet website and remain posted until the final EIS is accepted. An exception exists if it is “impracticable” to do so.

Draft EIS (DEIS) Content

The Draft EIS should be analytical, not technical, so that the lay person may understand the content. There is no regulatory requirement as to how lengthy the document must be. It is most important that the potential impacts of the action, mitigation measures, and alternatives are fully analyzed and explored.

The range of mitigation measures or alternatives may include, as appropriate, alternative: sites; technology; scale or magnitude; design; timing; use; and types of action. For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to be owned by, a private project sponsor.

Alternatives, such as the “no action,” scenario should be considered. Although adverse impacts may be avoided by the action not going forward as proposed, at the same time there may be positive impacts that go unrealized. For example, there could be a large influx of regional employment by an industrial park or facility being built. Remember that economic impacts are meant to be balanced with other resources and physical characteristics.

DEIS public hearing

The only instance that a public hearing is addressed in the SEQRA process is the point at which the draft EIS is ready for public review. Even still, this hearing is optional at the lead agency’s discretion. When deciding whether or not to hold such a hearing, the lead agency may consider factors such as, the degree of interest shown by the public or involved agencies, and the extent to which a hearing can aid the agency in improving the document. If a draft EIS hearing is held, it should be held concurrently with any other hearings required by state statute, such as for subdivisions, special use permits, appeals to the Zoning Board of Appeals, or as might be required by local regulations for site plan review.

Some municipalities choose to hold an additional public hearing earlier in the process. One reason being that public input may be beneficial to the lead agency’s decision making process when making a determination of significance. If this approach is taken, best practice is to note in the record that it is supplemental. However, a public hearing held before the draft EIS is adequate for public review, should not be considered a substitute for the hearing intended to receive public comment on the completed draft document or for those hearings required by underlying legislation.

Take note that the notice of hearing must be published at least 14 calendar days in advance of the hearing, in a newspaper of general circulation in the area of the potential impacts of the action. This is a substantially longer timeframe than what is required of hearings for most land use decisions. The hearing must start between 15 and 60 days after the draft EIS notice of completion is published in the Environmental Notice Bulletin. The ENB is the official publication of the NYS DEC.

A minimum 30 day public comment period runs after filing the Notice of Completion of the draft EIS. The public comment period continues for at least 10 days after close of the hearing. The SEQR public comment period must continue at least 10 days after the hearing closes. After the lead agency accepts the draft EIS, the lead agency must give public notice and provide for public comment. The lead agency must prepare and file a notice of completion to: DEC, any involved agencies and appropriate local municipal governments.

Preparation of FEIS

For projects where the lead agency is reviewing an application and not funding a project itself, the final EIS should be completed within 45 days after a public hearing; or, within 60 days after the draft EIS Notice of Completion (if no public hearing is held). As is the case with the draft EIS, once the final EIS is completed, a Notice of Completion must be prepared. The Notice of Completion of the final EIS starts the “public consideration” period, between acceptance of final EIS and issuance of the findings statement. No involved agencies can issue findings or final decisions until a reasonable time period, not less than 10 calendar days.

The public consideration period is not the same public comment period for the draft EIS. It is not a review period for additional comment, per se. Should a project modification occur or change of circumstance require a lead agency or involved agency to substantially modify its decision, this can usually be accomplished. But preparation of a supplemental draft EIS is recommended if changes are significant.

Final EIS content

The final EIS contains the original draft EIS and any revisions. This document is the lead agency's product, therefore it is responsible for accuracy and adequacy. Following the conclusion of the public comment period on the draft EIS, the document must be revised, if necessary, and completed. It must consist of the draft EIS, with revisions or supplements; copies or summary of the comments received; and the lead agency's response to substantive comments. General objections to the project need no response. The lead agency decides which comments on a draft EIS must be responded to in the final EIS. Substantive comments are those relevant to any impacts, mitigation and alternatives.

Decision making and findings

Each involved agency must make its own “findings” that relate information in the final EIS to that agency's underlying action. They may borrow from the lead agency's findings, but they must issue their own and, it should be consistent with those of the lead agency. Each Agency's SEQR findings must consider information in the final EIS; balance environmental factors; provide rationale for decisions; certify that rules have been followed; and certify that a chosen alternative avoid or minimize adverse environmental impacts to the maximum extent practicable. A decision of the underlying review process may be made concurrently with findings.

Conditions

The lead agency has the authority to impose substantive conditions that are practicable and reasonably related to impacts identified in the EIS. Link information in the final EIS to limitations or conditions to be included in the agency decision. Imposing conditions as a result of findings in the EIS, is not the same as issuing a Conditioned Negative Declaration as a determination of significance. However, the authority for issuing a CND comes from the same area of statute. As mentioned earlier in the course, a CND is an option only for Unlisted actions—not Type I actions.

Reimbursable costs

The lead agency may charge fees to the applicant to recover the actual EIS costs of either the preparation, if the lead agency prepares, or review, if the applicant prepares, but not both. There is no provision for assistance with fees for the preparation of the EAF or costs incurred in making a determination of significance.

Separate to this provision in the SEQRA, Municipal Home Rule Law (MHRL) also gives local boards implied authority to require reimbursement of legal and engineering expenses incurred in connection with land use application reviews, so long as the expenses to be reimbursed are reasonable in amount and necessary to accomplish the municipality's regulatory functions. Local Law No. 1 of the year 1992 of the Town of Onondaga was upheld by the Appellate Division Fourth Department in *Home Builders Association of Central New York, Inc. vs. Town of Onondaga*. The court found that the municipality's reimbursement scheme was based on specific standards, and not open-ended. Firstly, the fees were audited by the Town Supervisor. Secondly, reimbursement was limited to those fees that were “reasonable in amount and necessarily incurred by the town.”

Filing and Publication

Next, I will address filing and publication requirements pursuant to Title 6 NYCRR Part 617.12. This section of the regulations also requires that the lead agency retain all original SEQRA documents in a file which constitutes the record. The record must be readily accessible to the public and made available upon request. The municipality may require that requests are made in conformance with the Freedom of Information Law (FOIL). In the case that sufficient copies of the EIS are not available to meet public interest, the lead agency must provide an additional copy of the documents to the local public library.

Filing

‘Filing’ simply means providing a copy of a specific document to the appropriate person or entity. The SEQRA documents subject to filing requirements include the determination of significance, EIS, EIS notice of completion, notice of hearing (if one was held), and findings. For Type I actions, Negative and Positive Declarations require filing. Only Positive and Conditioned Negative Declarations are subject to those requirements for Unlisted actions. Part 3 of the new environmental assessment forms, have incorporated a ‘statement of significance’ that may be used for the purpose of filing determinations of significance.

Copies of these documents must be provided to all involved agencies, the applicant (if applicable), any individuals upon request, and the municipal Chief Executive Officer (CEO), which may be a village or city mayor or town board. Additional filing requirements come into play if an EIS has been prepared. A copy of the EIS must be sent to the NYS Department of Environmental Conservation. If a state action is located in a coastal area, another copy of the EIS must be sent to the NYS Department of State.

Environmental notice bulletin (ENB)

The Environmental Notice Bulletin (ENB) is the official notice bulletin of the New York State Department of Environmental Conservation (DEC). Published in the ENB you will find notices of complete applications for environmental permits, and notices produced by state and local agencies for activities that are being reviewed under the State Environmental Quality Review Act. Notices of DEC hearings, proposed and adopted changes to DEC policy, and technical guidance and regulations are among the other contents of the ENB.

Determinations of Significance (Negative and Positive for Type I actions and Conditioned Negative and Positive for Unlisted actions), and notices of completion of an Environmental Impact Statement must be published here. A specialized form for ENB submissions may be accessed online. Submissions for publication in the ENB are due by close of business Wednesday for publication in the following week's issue. The preferred manner of submission is by e-mail, but notices may also be sent by mail. Faxes will not be accepted.

Legal Considerations

In deliberating over cases in the past three or four decades, New York State courts have determined that both literal and substantive compliance are required. "Literal" review requires that reviewing agencies must follow SEQRA's procedural requirements. "Substantive" review requires evaluation of all potential impacts of a proposed action by reviewing agencies.

Literal compliance

"Literal" review requires that reviewing agencies must satisfy SEQRA's procedural requirements. This includes adhering to deadlines and proceeding chronologically with the steps prescribed in the regulations. There may be other elements of literal compliance that apply as well.

Once the application is complete, meaning a negative declaration issued or draft EIS accepted, involved agencies are charged with integrating underlying reviews with that of SEQRA. For example, once the draft EIS is accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, so long as reasonable time is provided for preparation, review and public hearings with respect to the draft EIS.

Literal requirements include no substitution for or representation of underlying reviews as being equivalent to SEQRA's requirements. Some elements of SEQR may be similar

to review pursuant to local land use regulations (or state regulations in the case of variances); however, they are separate and distinct processes. Notice that SEQRA compliance is noted clearly in the statutes for subdivision, site plan, special use permit, and variance application review.

Substantive compliance

Many local agencies put concerted effort into following the procedural, or “literal,” requirements of the SEQRA, that they neglect to honor the intent of the regulations, which is to consider adverse impacts to the environment. By taking a “substantive” approach to the review criteria, it’s expected that agencies identify all relevant impacts of concern and consider them relative to magnitude, duration, and context. Any impacts identified are to be weighed in making the determination of significance, and will determine whether or not an EIS will be required.

The state courts have also referred to substantive review as taking a “hard look” when analyzing impacts. One landmark case, H.O.M.E.S. v NYS Urban Development Corp (1979), pertained to a negative declaration issued on the proposed construction of a sports stadium in Syracuse, NY. The court upheld the petitioners’ claim that a negative declaration had to be supported by the record showing that the agency considered all relevant areas of environmental concern. Failure to consider all concerns, such as traffic, resulted in the action being nullified. This decision resulted in the expression “hard look.”

The determination of significance, negative or positive, must be in writing and remain part of the record. Reasoned elaborations, which explain how the agency came to their conclusion, should be prepared. Decisions where no adverse impacts are identified often means explanation with some additional narrative discussion. The reasoning does not need to be overly technical, and it is acceptable to re-use well-phrased discussions in subsequent findings documents.

Avoid segmentation

Segmentation divides a project into stages or pieces, as though they were independent activities requiring individual determinations of significance. This practice may be intentional or unintentional, and may occur over time, as is commonly the case with phased development. Either way, segmentation may result in the cumulative environmental impacts of an entire action to be overlooked.

Segmentation is not permitted. However, proposing a project in phases, where each stage is independent of the others, an agency may chose to allow segmented review under SEQRA. A safeguard practice could be to impose the condition that any subsequent development take into account the cumulative impacts of all phases. Standards for permissible segmented review may include: 1) the segmented review being no less protective of the environment; 2) state the reasons for segmenting the review; and 3) identify other segments of the action within the record.

“Complete application”

Agencies may not take action or render a decision on an application, or undertake or fund a private or public action until the application for that activity is complete. An application is considered to be complete and ready to proceed with the underlying review, once the local submission requirements have been satisfied, and one of the following scenarios occurs:

- A negative declaration has been issued and filed; or
- A draft EIS has been accepted for public review and the notice of completion has been filed for a positive declaration. The lead agency will not accept the draft EIS until it is satisfactory with respect to scope, content and adequacy. Once accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, such as a public hearing with respect to the draft EIS.

The primary reason that it is important to observe this concept is because of the implication it has on timeframes for next steps. Once the application is complete, the agency is subject to a 62 calendar day maximum timeframe for holding any statutorily and/or locally required public hearings for subdivision plats, special use permit applications, and site plans.

-----Final Quiz-----

Contact

You have completed the Department of State's State Environmental Quality Review Act course.

Please take note of our contact information and that of the Department of Environmental Conversation.

Local Government staff are available to provide technical assistance to local government officials during regular business hours.

Feedback

Please assist us in evaluating this learning tool by completing a survey. Please click on the hyperlink provided to access the survey. Your comments and suggestions are invaluable to improving this tutorial, and for the consideration of creating new tutorials in the future.

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