

Understanding and Applying the State Environmental Quality Review Act

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Presented by:
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SEQR Overview

What is SEQR?

New York State regulations more formally known as the “State Environmental Quality Review Act.”

It requires governmental agencies to balance the potential adverse environmental impacts of an action against the social and economic benefits of the action.

When to Complete SEQR?

Prior to any determination on an action subject to SEQR (i.e., prior to Site Plan Approval, Subdivision Approval, etc.)

SEQR Overview – First Steps

1. Does SEQR Apply? Is it:

An action directly undertaken by an agency; or
Funded by an agency; or
Requiring discretionary approval by an agency?

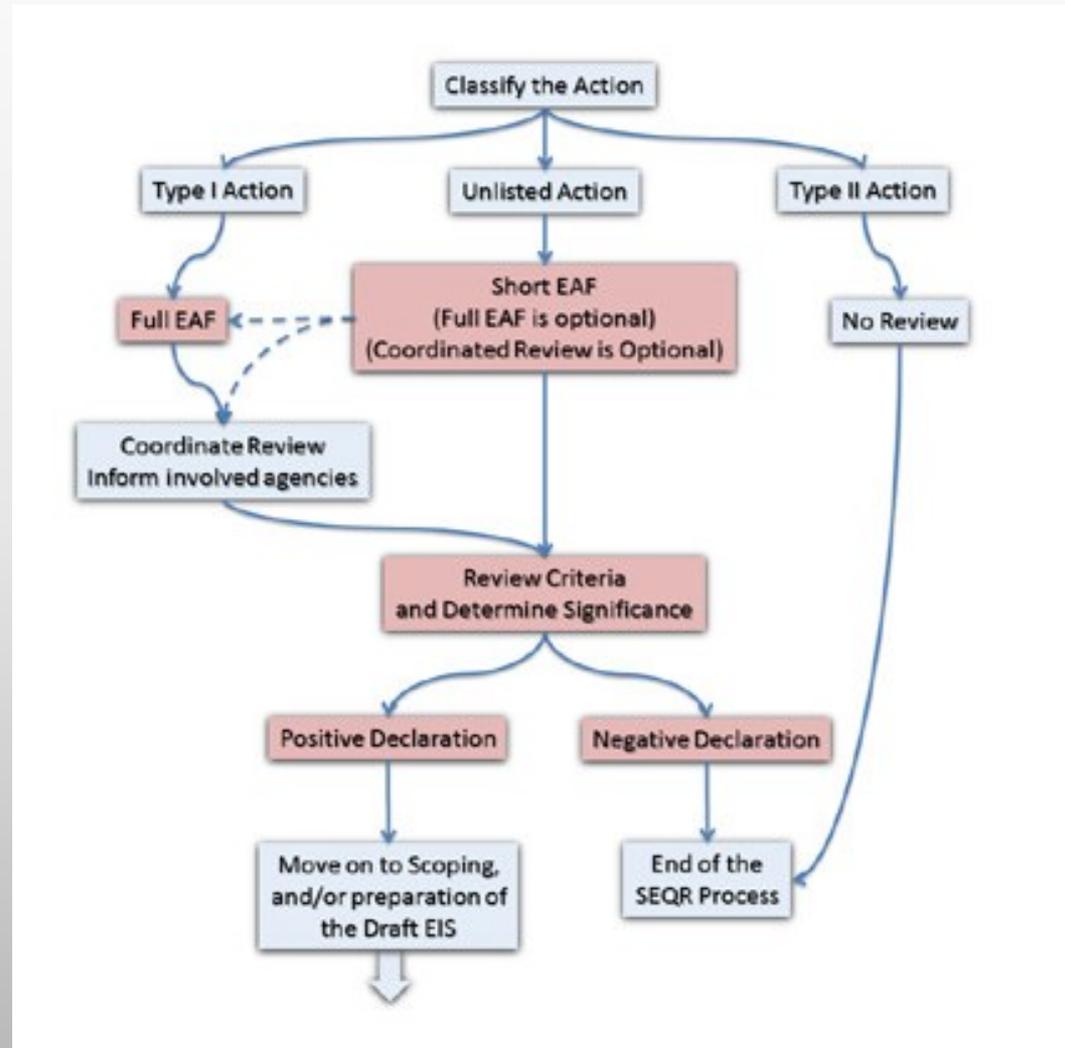
Examples include:
Site Plan Approval,
Subdivision Approval,
Variance Application,
Comp. Plan Change,
Local Law / Zoning Code Update, and
Town Building Projects.

2. Classify the Action:

Type 1 (zoning changes > 25 acres, 250 R units, I project > 10 acres, etc.), or

Unlisted (industrial project @ 5 acres, zoning changes for 10 acres), or

Type 2 (repair of a building, construction SFH, setback variances, studies, purchase of equipment).



SEQR Overview – First Steps

3. Coordinated Review vs. Uncoordinated Review:

Type 1 – Coordinated Review required.

Unlisted – Coordinated Review optional.

Lead Agency Determination

Involved vs. Interested Agency

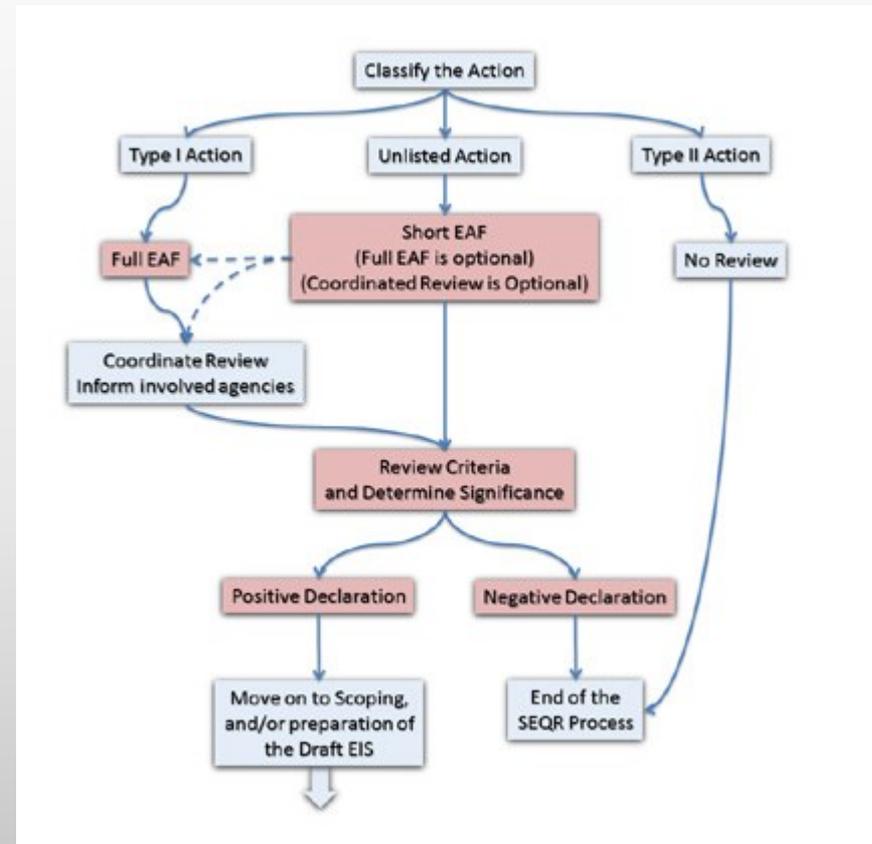
Declare Intent w/30 waiting period.

Be wary **Segmentation**, esp. where Project requires multiple approvals.

Segmentation = Dividing a SEQR review into smaller portions.

Generally improper, but sometimes permissible.

Generally, the various approvals required for a single project should be reviewed as a single SEQR action. Thus, where a project requires a special permit, a site plan and a subdivision approval, it will not be subject to three separate SEQR reviews (this would be illegal “segmentation”), rather, all three applications would be reviewed under a single SEQR process as a single action. Segmentation occurs when actions that are tied together are unbundled for SEQR review, which could result in a declaration(s) that does not appropriately examine all environmental impacts together, as a whole.



SEQR– The EAF

The Environmental Assessment Form (“EAF”)

Part 1 – Identifies and organizes info relevant to the environmental review.

Part 2 – Initial Assessment. Used to identify the categories / magnitude of a range of potential impacts.

Part 3 – Reasoned Elaboration and Determination. Used to examine significance of moderate/large potential impacts.

Long Form (for Type 1 Actions)

Short Form / Long Form (Unlisted Actions)

Part 1 of the EAF

Submitted by Applicant – Contains Information required to Complete SEQR. Required for a Complete Application.

Short Environmental Assessment Form Part 1 - Project Information

Instructions for Completing

Part 1 - 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. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:		Telephone:		
		E-Mail:		
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO	YES
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO	YES
3. a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____				
<input type="checkbox"/> Parkland				

EAF – Part 1

Purpose: Identifies and organizes info relevant to the environmental review.

Long Form Divided into Five Main Parts:

- A. Basic Project / Applicant Info. *(p. 1)*
- B. Required Approvals. *(p. 2)*
- C. Planning Zoning – Existing Plans, Zoning and Programs/Services. *(p. 3)*
- D. Detailed Project Information *(p. 3)*
 - Re: Development *(p. 3)*
 - Re: Operation *(p. 4)*
- E. Site Information *(p. 9)*
 - Land Uses *(p. 9)*
 - Natural Resources *(p. 11)*
 - Designated Resources *(p. 12)*



EAF Mapper:

- Results using EAF Mapper cannot be changed.
- Examples of EAF Mapper Qs which will be automatically answered:
 - Critical Environmental Area,
 - Historic Sites,
 - Archaeological Sensitive Area,
 - Regulated Wetlands and Significant Natural Communities, and
 - Endangered Animals.

EAF – Part 2

Agency Use Only [If applicable]

Project:

Date:

The purpose of Part 2 is to use the information from Part 1 to answer the questions in Part 2, to help the reviewing agency **identify** what, if any, impacts may occur as a result of the project, and their **magnitude**.

Part 2 incorporates elements of SEQR Regulations into individual Qs.

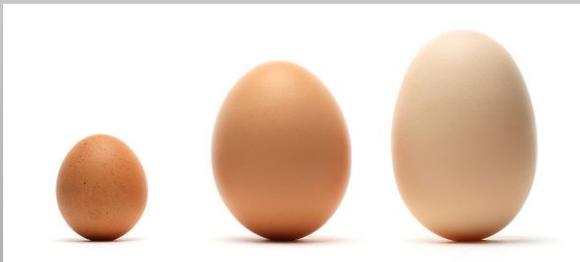
Part 2 is used to decide whether those impacts will have no impact or a small impact, or a moderate to large impact.

Short Environmental Assessment Form Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing: a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		



EAF – Part 2

Who Completes Part 2?

Lead Agency responsible for **approving**.

Often, **Planning Staff and Engineering** will fill in for Board's consideration.

Sometimes applicant will offer a Draft Part 2, along with a narrative explaining the rationale for the Part 2 (which can form the Part 3 Narrative).



The EAF Part 2 will inform the EAF Part 3, ultimately directly impacting whether a "Neg. Dec." is issued.

Note: Many of the sub-questions contain thresholds for impacts. For example, 1 (d) asks if the proposed action may involve the excavation and removal of more than 1,000 tons of natural material. The 1,000 tons establishes a threshold. **If the numeric threshold is exceeded in a question, the reviewing agency should check "moderate to large impact may occur".** If not, check "no or small."

EAF – Part 2 – DEC Guidance on Impacts

Determining Magnitude (Small, Mod. or L):

- Total physical size in feet / acres,
- Scale (i.e., 10 Unit Apartment Building in neighborhood of 1000 SF ranch style homes)
 - Size of Site; Size of Structures; # of Buildings; Size of Parking Lot; Height; Traffic; Forest to be Cleared
- Context / Severity (commercial shopping mall in residential neighborhood)
 - Similarity with adjacent Land Use
 - Type of Impact (i.e., displace a single bird, but it's a Bald Eagle)

No Impact (NONE):

- * Consistent with the community's adopted plan and zoning;
- * No change in the intensity of land use;
 - * No change to community character;
 - * No impact to environmental resources;
 - * No hazard to human health

Small Impact (MINOR):

- * Limited to small area;
- * Isolated / Limited in Size
- * Short in duration (days to weeks);
- * Does not affect rare or unusual species, habitats.

Moderate Impact (MORE):

- * Larger part of parcel;
- * Extending to a small area beyond parcel;
- * May be of regional concern (in a larger area).
- * Longer lasting (weeks or several months)
- * Reversible
- * Addressed by Mitigation Measures

Large Impact (SEVERE):

- * Irreversible
- * Difficult to mitigate
- * Wide regional scale
- * Long duration.
- * Often involve resources / activities that are regulated by government.

EAF – Part 2

Agency Use Only [If applicable]

Project:

Date:

Workbook is immensely helpful for Part 2. Use it to your advantage and refer Board to it if needed.

Very little of what is in the workbook is directly found in the actual regulations. The workbook is a tool to help Identify, take a Hard Look and Reason. However, note that **DEC created the SEQR Regulations and DEC created the Workbook.**

While the EAFs need to be completed according to the regulations, **interpretation on the significance of an impact is at the discretion of the reviewing agency** → So long as Identify, Hard Look and Reason. Courts will defer to the Lead Agency.



Short Environmental Assessment Form Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

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10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

SEQR Overview – The EAF Part 3

Board to make a Determination of Significance (i.e., Complete Part 3 of the EAF)

The Part 3 is used to further explore those moderate to large impacts identified in Part 2 and informs the following: Whether the Action is **likely** to create at least one **significant** adverse environmental **Impact**.

In Sum:

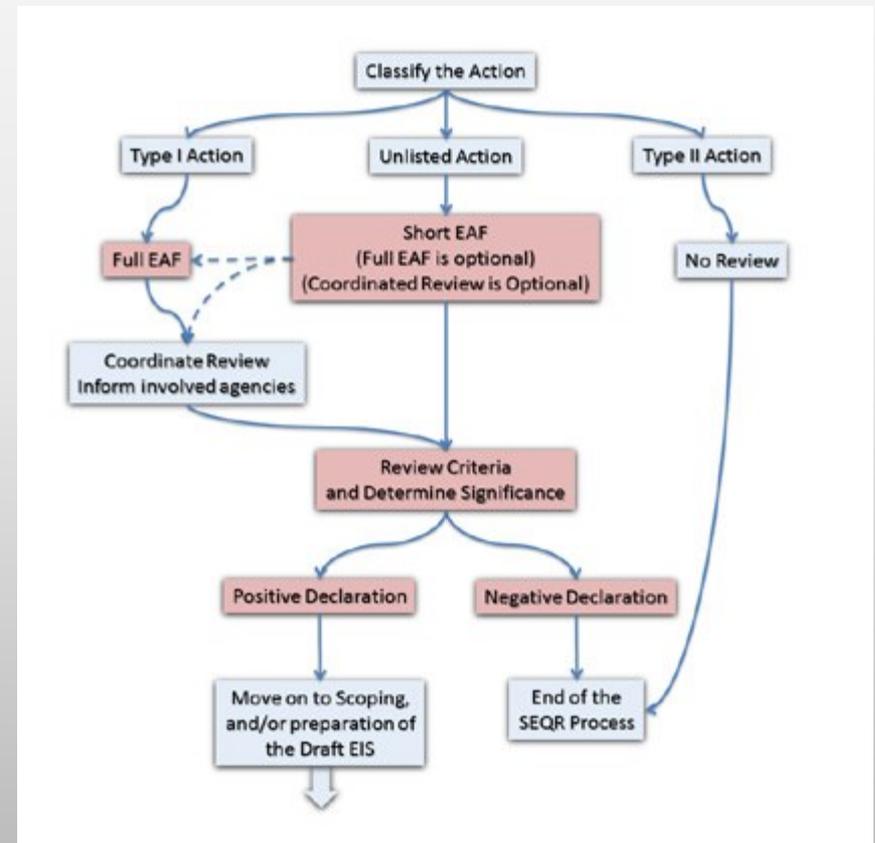
Identify the relevant areas of environmental concern (P1/P2);

Take a **hard look by analyzing** the areas of concern (P2/P3); and

Make a reasoned **elaboration (P3)**.

What is “**Significant?**”

Consider: Magnitude , Extent / Duration, Likelihood / Probability, Importance



EAF – Part 3 - Instructions

- Identify the impact based on the Part 2 responses and describe its **magnitude**. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the **importance** of the impact. Importance relates to the **geographic scope**, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any **design element or project changes**.
- Repeat this **process for each Part 2 question where the impact has been identified as potentially moderate to large** or where there is **a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact**.
- Provide the **reason(s)** why the impact may, or will not, result in a significant adverse environmental impact.

- Complete Part 3 Form / Narrative
- Approve Part 3 via Resolution
- Distribute / Filing
- If Neg. Dec., SEQR Complete!

Agency Use Only (If Applicable)
Project: _____
Date: _____

*Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance*

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:
To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

Determination of Significance - Type I and Unlisted Actions

SEQR Status: Type I Unlisted

Identify portions of EAF completed for this Project: Part 1 Part 2 Part 3

EAF – Part 3 - Significance

Recall → SEQR requires us to Identify,
Take a Hard Look and Explain/Reason.

Part 3 aims at Explain/Reason.

Part 3 specifically aims to determine
“**Significance**” of impacts (mostly
moderate to large), by using Part 2.

Discuss

Significance:

Via Part 3
Narrative

Magnitude: Severity, size, or extent of an impact.

- * Consider whether it affects only the parcel / or neighboring parcels, or beyond.
- * Size of a resource being affected.

Duration: How long an impact may last.

- * i.e, Noise.
- * Reversible?

Likelihood: How probable?

- * i.e., loss of trees.
- * i.e., chemical waste spill.

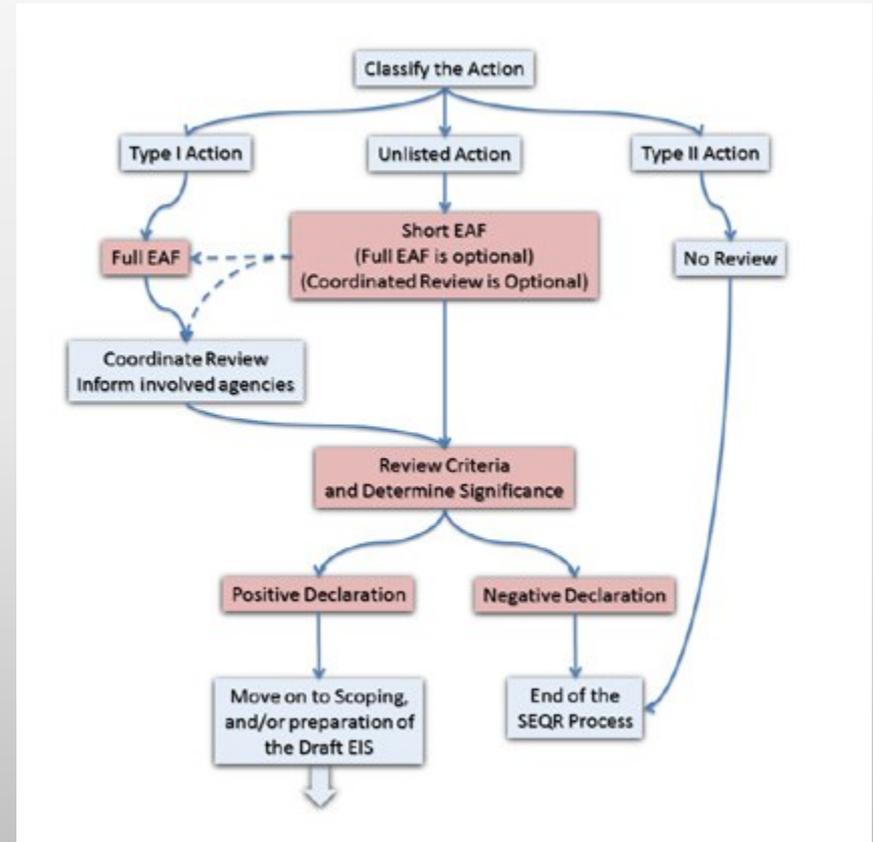
Importance: How many people / Role of Resources impacted?

- * Value of resource?
- * Geographic scope.
- * Context.
- * Consequences.

The EAF Part 3 Narrative

Substantiate the Facts: Reference, incorporate and attach records in support of your Part 2 and Part 3 conclusions. Wetland studies, DEC correspondence, SWPPP, USACE Determinations, USFWS correspondence, SHPO, etc.

Provide a Narrative that Addresses the Key Issues: Even if not “Mod/Large,” provide narrative for issues that represent key concerns by the public. Be sure to mention mitigation measures incorporated, whether they were identified initially as part of the project (i.e., avoid building on steep slopes), or whether a project was changed to mitigate impacts (i.e., panels moved).



The Part 3 Narrative - Examples

Impacts on Plants and Animals / Flora Fauna

a., b., c., d. and f. **U.S. Fish & Wildlife Service (USFWS) Correspondence indicates that no adverse effects to listed species** are likely to occur as part of the Project. **Additionally, New York Natural Heritage Program (NYNHP) issued indicating no records of rare or state-listed animals or plants**, or significant natural communities at the Site or within its immediate vicinity. As a result, the magnitude and/or importance of this hypothetical impact is so small, limited and remote that it will not result in a potentially significant adverse environmental impact.

g. and h. While the proposed action will result in the removal of greater **than 10 acres of forest (approximately 20 acres), the majority of forested lands on the Site (120 acres) will be preserved**. The Site will be developed in **full accordance with zoning** and will continue to maintain a **substantial forested habitat for wildlife**. It is also notable that there is **no evidence of listed, threatened, rare or state-listed animals or plants on the Site**.

Documentation
/ Importance

Magnitude /
Compliance /
Importance

EAF – Part 3 – Example Reasoning

7(g) (re Plants/Animals): The project site is generally surrounded by residential development and, therefore, contains only an isolated wildlife habitat that does not appear to be an integral part of a larger, more significant wildlife habitat. The project area does not appear to be a significant corridor that would provide connectivity between wildlife areas. Notably, there are no endangered or threatened wildlife species that occupy or use the project site.

Additionally, the potential habitat is very small in size (approximately .4 acres of trees) and is on a parcel which was previously disturbed and was previously (and recently) the home of a significant development (the previous school).

Finally, the project has been modified to save more of the trees, such that only .1 acres of trees will be removed.

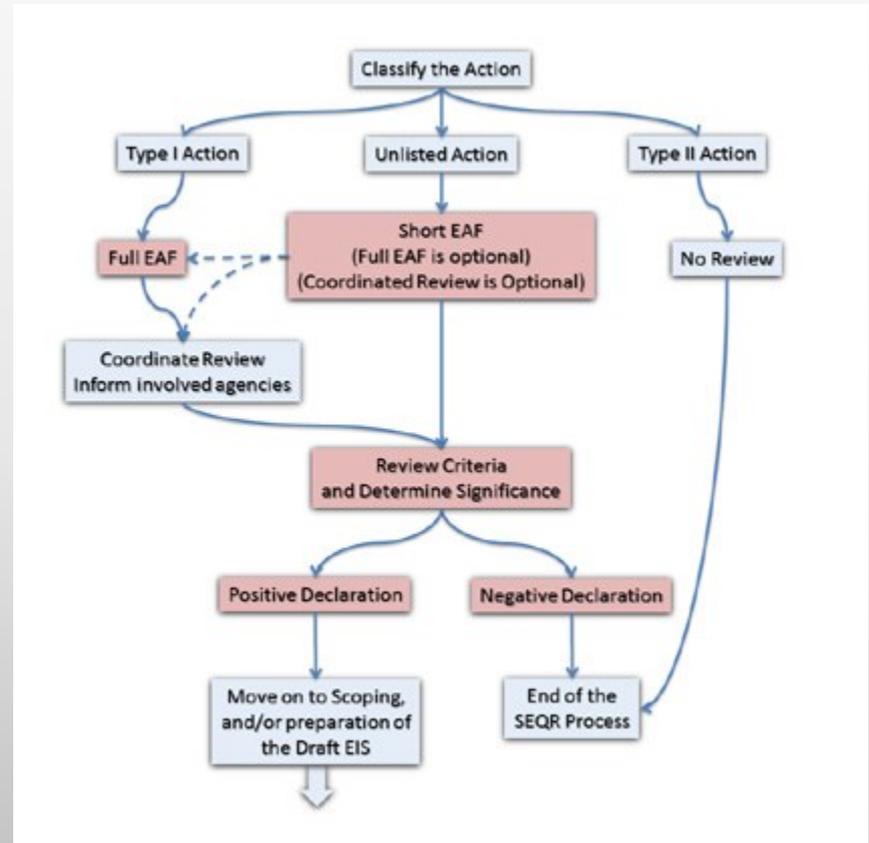
Due to all of the above, the potential impact is exceedingly small, will affect a small, relatively unimportant isolated area of trees in a heavily developed part of Town and does not rise to a potentially significant adverse environmental impact.

SEQR Overview – The EAF Part 3

EAF Conclusion = Negative / Positive Declaration

Negative Declaration – No likely Significant Adverse Environmental Impact. **End of Analysis.**

Positive Declaration – Likely to have Significant Adverse Environmental Impact. **Move on to comprehensive environmental review (EIS).**



SEQR Overview – The EIS

Draft Environmental Impact Statement (“DEIS”)

Informational Document. Provides an in depth analysis of the full range of potential significant adverse environmental impacts.

Requirements: Describe: Action, Adverse Environmental Impacts, **Mitigation Measures, Alternatives.**

Scoping Optional.

May be drafted by Applicant or Lead Agency.

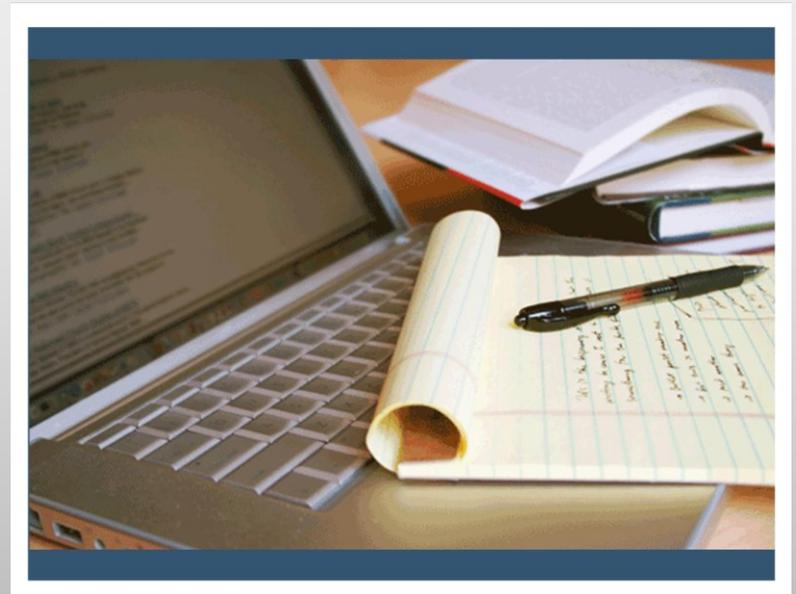
Determine Adequacy of DEIS and Accept for Public Review.

Public Comment (At least 30 days)

Optional Hearing

Final Environmental Impact Statement (“FEIS”)

Incorporating and addressing Public Comments,
Approval



The Environmental Impact Statement - Detailed

Describe Action: Public Need / Benefits, Social / Economic Consideration, Location, Timing, Relationship to Plans, Approvals Req'd

Address Significant Environmental Issues Identified in Part 3: Short and Long Term Impacts, Cumulative Impacts, Impacts which Cannot Be Mitigated, Growth Inducement, Etc.

Mitigation Measures: Project Changes, Landscaping, Restoration, Monitoring, Erosion Control, Roadway Enhancements, Etc.

Alternatives: Including “No Action,” Alternative Sites, Scale, Design

Technical Disputes between Sponsor / LA should be identified



SEQR Overview – Findings

SEQR Findings Statement

A (positive) Findings Statement concludes SEQR review, and does the following:

Considers the relevant environmental impacts, facts and conclusions disclosed in the final EIS;

Weighs and balances relevant environmental impacts with social, economic and other considerations;

Provides a rationale for the agency's decision;

Certifies that 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.**



A Findings Statement may impose conditions, based upon mitigation measures in the EIS. Could instead find for an Alternative (so long as consideration given to objectives and capabilities of applicant). Often referred to as “teeth” of SEQR.

SEQR approval does not require the absence of adverse environmental impacts. Instead, SEQR requires the balancing of significant adverse environmental impacts against the benefits of the proposed Action, to the maximum extent practicable..

SEQR Timeline

- Lead Agency – Intent ASAP, 30 Days to Object
- Preliminary Classification – “As Early as Possible . . .”
- Determine Significance (Neg. Dec.) – Within 20 Days of Receipt of Completed Application or “Any Additional Info. Reasonably Necessary to Make that Determination, Whichever is Later.”
- Scoping – Within 60 Days After Receipt of Draft
- Prepare DEIS – No Time Frame (Applicant Decides Who)
- Determine Adequacy of DEIS – 45 Days
- Public Review and Comment of DEIS – At Least 30 Days
- Hearing Optional (15-60 Days after DEIS)
- Final EIS (45 Days After Hearing or 60 Days after DEIS)
- Findings Statement (10 – 30 Days after FEIS)
- Only After SEQR Complete, Substantive Application to Proceed



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Donald A. Young, Esq., a Partner with Boylan Code, practices primarily in the Municipal Law and Land Use groups, but also practices in the Firm's Litigation and Real Estate groups. He regularly advises on complex land use and municipal issues, often working with public officials and staff, technical consultants such as engineers and real estate developers. In addition, he has become a popular presenter around the State of New York.

Mr. Young has experience in a wide variety of areas dealing with land use, including, for example, advising on SEQR in relation to a variety of complex developments, counseling on rezoning applications and special permits, addressing site plan and subdivision issues, advising on variance issues, and addressing code enforcement matters.

Furthermore, he has drafted, revised and implemented a wide range of legislation, including zoning ordinances, refuse regulations, wind turbine regulations, sign regulations and moratoria. He has also implemented and assists with managing sewer, water and drainage districts.

Mr. Young has advised local legislative bodies, such as Town Boards, on a variety of municipal issues, including capital acquisition and financing, implementation of planned development districts, open meetings law and ethics. He also represents various Planning Boards and Zoning Boards of Appeals. He serves as legal counsel to a variety of municipalities in New York.

Mr. Young has shared his knowledge and experience in articles published in the *Daily Record*, the *Rochester Business Journal* and the Association of Towns *Talk of the Towns*. Furthermore, Mr. Young is an accomplished speaker, presenting on behalf of the Association of Towns at a variety of summer schools, as well as a numerous annual conferences on behalf of the Association in New York City. Mr. Young has also spoken on numerous occasions on behalf of the New York Planning Federation. In addition, Mr. Young has spoken on behalf of the National Business Institute, and has spoken to and offered training to public officials at various town halls around New York.