

# Navigating SEQR

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# What is SEQR?

- Article 8 of the State Environmental Conservation Law – Regulations promulgated by DEC – 6 NYCRR Part 617.
- Act requires that all State and local agencies assess environmental effects of discretionary actions:
  - before funding or approving the action, unless the action falls within certain statutory or regulatory exemptions.



# Purpose of SEQR?

- Enhances the consideration of environmental factors in planning and decision-making;
- Evaluation and notification process - not a direct decision-making process;
- Requires all agencies to evaluate the environmental consequences of proposed actions and to consider alternatives; and
- A multidisciplinary approach to considering environmental effects in decision-making.

# When Does SEQR Apply?

## Actions subject to SEQR:

(1) projects or physical activities that:

- are directly undertaken by an agency; or
- involve funding by an agency; or
- require one or more new or modified approvals from an agency or agencies;

(2) agency planning and policy making activities that commit the agency to a definite course of future decisions;

(3) adoption of agency rules, regulations and procedures; and

(4) any combinations of the above.



# Types of SEQR Actions: Type II

- Type II – Actions not subject to review under SEQR (46).
  - For example:
    - *Maintenance or repair involving no substantial change in an existing structure;*
    - *Construction of a single-, two-, or three-family home;*
    - *Granting of an individual setback and lot line variance/adjustment;*
    - *Adoption of a moratorium on land development;*
    - *Installation of traffic control devices; and*
    - *Environmental, planning, engineering or economic studies (not formally adopted)*



# Types of SEQR Actions: Type II

- New Type II actions as per January 2019 revisions:
  - *Upgrading building to meet energy codes;*
  - *Retrofitting structure to include green infrastructure;*
  - *Installing telecom cables in existing highway/utility ROW;*
  - *Conveyance of land associated with construction/expansion of single-, two- or three-family residences;*
  - *Installing up to 25 acres of solar energy arrays in certain areas;*
  - *Adaptive reuse of structures;*
  - *County or regional planning board advisory recommendations;*
  - *Acquisition/dedication of up to 25 acres of parkland;*
  - *Sale/conveyance of real property by public auction; and*
  - *Constructing anaerobic digester at an operating municipal landfill.*

# Types of SEQR Actions: Type I

- Type I – An action that meets or exceeds a threshold contained in SEQR (11).
  - For example:
    - *Adoption of a Comprehensive Plan;*
    - *Rezoning of more than 25 acres of land;*
    - *Construction of residential units above certain thresholds based on municipal population size and public water/sewer connection;*
    - *A non-residential project involving the physical alteration of 10 or more acres of land; and*
    - *Actions located within or adjacent to a National Register-listed historic resource.*

# Types of SEQR Actions: Type I

- Impact of January 2019 Revisions:
  - *Lower thresholds for Type I residential projects;*
  - *New numeric category threshold for construction of parking in smaller communities; and*
  - *Clarifications on when projects in or near historic resources trigger Type I threshold, to include properties determined eligible for listing.*

# Types of SEQR Actions: Unlisted

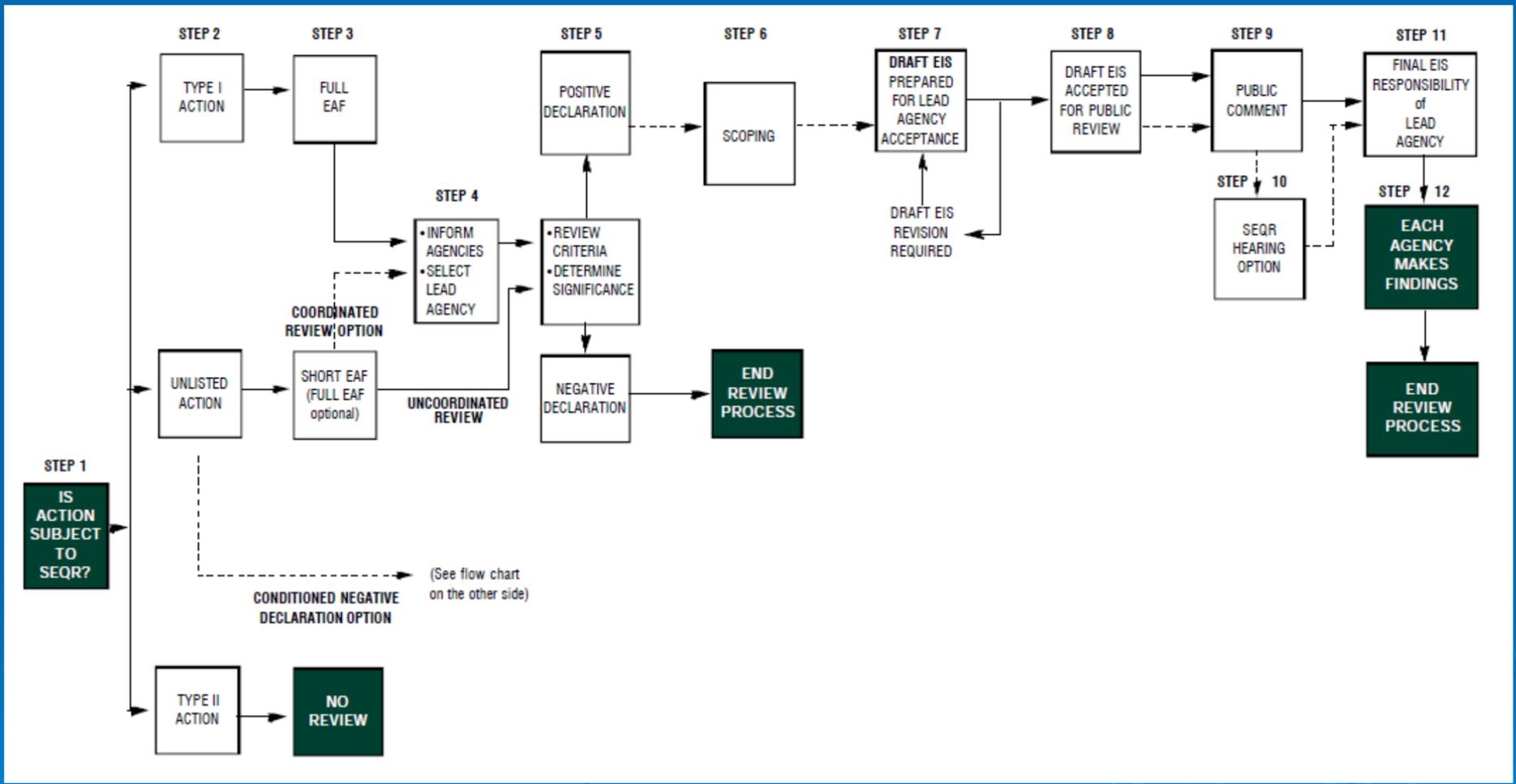
- Unlisted – An action that does not meet or exceed the thresholds contained in SEQR.
  - An Unlisted action requires a determination of significance and may require the preparation of an EIS.
- Type I actions are more likely to have a significant adverse impact on the environment than Unlisted actions and may require the preparation of an EIS.

# Initial Review and Establishing Lead Agency

- Prepare EAF Part 1
  - Short Form (Unlisted Action) versus Long Form (Type 1 Action)
- Establishing Lead Agency
  - An involved agency principally responsible for undertaking or approving an action.
  - The Lead Agency must be determined before determination of significance.
- Coordinated versus uncoordinated review
  - Must conduct coordinated review for Type 1 Actions.
  - 30-day coordinated review.

# Determining Significance

- Prepare EAF Parts 2 and 3 (responsibility of the lead agency)
  - Negative Declaration
  - Conditioned Negative Declaration
  - Positive Declaration
- Criteria for determining significance: (Examples)
  - *A substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels.*
  - *Substantial increase in potential for erosion, flooding or drainage problems.*
  - *Inconsistency with an adopted Comprehensive Plan.*
  - *Growth inducement.*
  - *The creation of a hazard to human health.*



# The EIS

- Site specific vs. Generic EIS
- Scoping
  - Early coordination with agencies and public
  - Defines scope of EIS/Identifies issues to be addressed
- Draft EIS - Circulated for public comment
- Final EIS - Incorporates responses to all comments received on a DEIS
- Findings Statement - Published notification of the final decision on a project



# SEQR Changes on EISs

- Scoping now required except for supplemental EISs:
  - Mitigation of climate change and associated impacts of flooding/sea level rise now considered in EISs
  - Scoping documents now required to be publicly published
  - Lead agencies must provide consultant invoices upon request
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# Outline of a Draft EIS

- Cover Sheet
- Project Description
- Purpose and Need
- Environmental Setting, Impacts and Mitigation
- Alternatives
- Other Environmental Impacts
  - Relationship between short-term & long-term impacts
  - Unavoidable adverse impacts
  - Cumulative and Growth-inducing impacts
  - Irreversible/irretrievable commitment of resources
  - Energy use and conservation of energy
- Future Actions (GEIS only)



# Outline of a Final EIS

- Cover Sheet
- Changes to the Proposed Action
- Response to Comments (both written and verbal)

## SEQR Findings

- Findings must:
  - Consider the relevant environmental impacts disclosed in FEIS.
  - Weigh and balance relevant environmental impacts with social, economic and other considerations.
  - Provide the agency's rationale for the decision and certify that SEQR requirements have been met.
  - Certify that the selected proposed action (preferred alternative) avoids, minimizes and mitigates to the maximum extent practicable adverse environmental impacts.

# SEQR and the Public

When does the public participate?

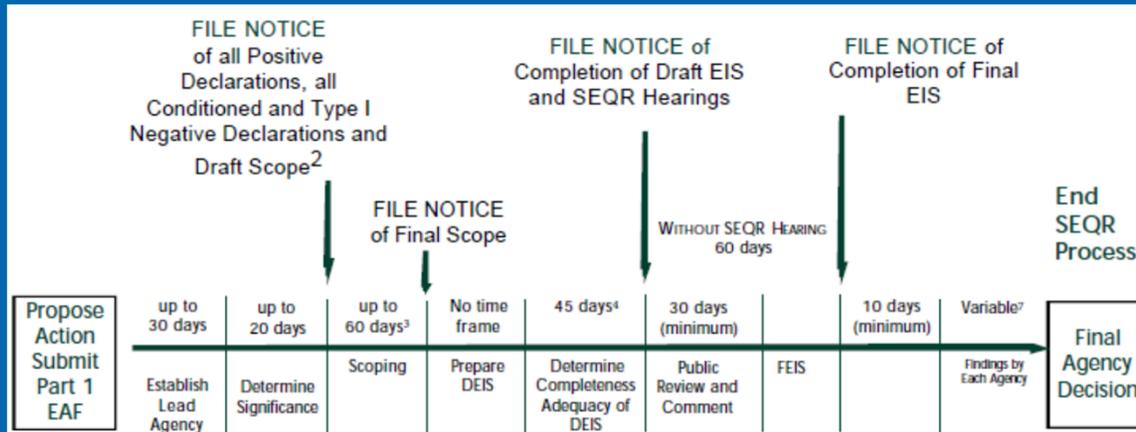
- During scoping
- During DEIS review
- After Findings Statement - Statute of limitations during which the public may bring suit against the lead agency (agency responsible for preparing EIS)



# SEQR Timeframes

- Timeframes are “directory,” not mandatory
  - Timeframes may be extended upon mutual consent
  - No default approval if timeframes are exceeded (except timeframe for Lead Agency’s issuance of Final Scope)
  - Lead Agency should strive to comply with timeframes – especially minimums
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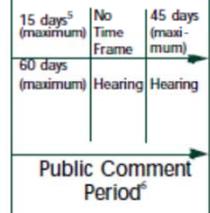
# SEQR Flow Chart



## Footnotes

- 1-All time frames may be extended by mutual consent of involved parties.
- 2-No time frame required for submittal of a draft scope. The lead agency will send notice of the draft scope to the ENB when it receives it from the sponsor.
- 3-Time clock starts with submission of draft scope by applicant
- 4-Thirty days resubmitted DEIS
- 5-Publish hearing in general circulation newspaper at least 14 days before a public hearing. The hearing may commence on the 15th day.
- 6-Public comment must remain open until 10 days after the close of hearing.
- 7-When applicant is involved, lead agency findings and decisions must be made within 30 days of filing the FEIS; otherwise, findings not required until an agency must make a decision on final action.

## If SEQR HEARINGS HELD



# Publication of SEQR Notices

## TYPES OF DOCUMENTS:

- Type I Negative Declaration
- Conditioned Negative Declaration
- Positive Declaration
- Notice of Completion of EIS (and Notice of Public Hearing)
- EIS
- Findings Statement

## WHERE FILED:

- Chief Executive Officer of the political subdivision in which the action is located
- Lead Agency
- All Involved Agencies
- Any person that requested a copy
- Applicant

# Environmental Notice Bulletin

- Weekly, online publication of SEQR notices by the NYS DEC
  - Type I Negative Declaration
  - Conditioned Negative Declaration
  - Positive Declaration
  - Draft and Final Scopes (new requirement)
  - Notice of Completion of EIS
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# Avoiding SEQR Lawsuits

## ➤ Procedural Compliance

- Strict compliance is required

## ➤ Substantive Compliance

- Lead Agency must identify the relevant areas of environmental concern, take a “hard look” at them, and make a reasoned elaboration of the basis for its decision

# Common Grounds for SEQR Lawsuits

- Lead Agency failed to follow proper procedure
- Lead Agency failed to take a “hard look”
- Improper segmentation
- Supplemental Environmental Impact Statement (SEIS) should have been prepared

# Procedural Compliance

- Court nullified Negative Declaration where Town Board used Short EAF instead of Long EAF for review of a Type I Action. Centerville's Concerned Citizens v. Town Bd. of Town of Centerville, 56 A.D.3d 1129, 867 N.Y.S.2d 626 (4<sup>th</sup> Dep't 2008)
- Residents challenged the designation by DEC of a local Solid Waste Management Authority as Lead Agency. Court held DEC properly designated local SWM Authority as Lead Agency since impacts were primarily of local significance. Residents for a More Beautiful Port Washington, Inc. v. DEC, 153 A.D.2d 746, 545 N.Y.S.2d 306 (2d Dep't 1989)

# Procedural Compliance

- Lead Agency must issue its determination of significance within 20 days of its establishment as lead agency, or within 20 days after it receives “all information it may reasonably need to make the determination of significance, whichever occurs later...”  
6 NYCRR 617.6(b)(3)(ii).
- Planning Board took 853 days to issue a determination of significance. Court held that did not violate any timeframe in SEQRA. Nicklin-McKay v. Town of Marlborough Planning Bd., 14 A.D.3d 858, 788 N.Y.S.2d 448, 452 (3d Dep’t 2005)

# Substantive Compliance: The “Hard Look” Standard

- The Lead Agency is required to take a “hard look” at the relevant environmental impacts.
  - **Meaningful review and consideration**
- After its “hard look,” the Lead Agency must make a “reasoned elaboration” of its determination
  - **Detailed explanation of how it came to its conclusion, including the information from the record that was relied upon**

# Reasoned Elaboration

- The lead agency must “set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.” 6 NYCRR 617.7(b)(4)

# Failure to take a “Hard Look”

- Planning Board issued Negative Declaration on a Site Plan application for multifamily housing on 3.4 acre parcel.
- Appellate Division annulled the Negative Declaration as arbitrary and capricious where 2.45 acres of forest was to be removed and the Board’s inquiry into impacts on a historic district was based solely on a SHPO letter.
- Court remitted the matter to the Planning Board for preparation of an Environmental Impact Statement.
- Peterson v. Planning Board of the City of Poughkeepsie, 163 A.D.3d 577, 80 N.Y.S.3d 395 (2d Dep’t 2018)

# Findings Not Supported by the Record

- Upon review of DEIS and FEIS for a 13-lot subdivision on a 14+ acre parcel, Planning Board issued a negative Findings Statement which concluded the application did not minimize or avoid adverse environmental impacts to the maximum extent practicable.
- Court annulled the Findings Statement as unsupported by the evidence in the Record.
- Falcon Group, LLC v. Town/Village of Harrison Planning Board, 131 A.D.3d 1237, 17 N.Y.S.3d 469 (2d Dep't 2015)

# Reasoned Elaboration/ Type I Negative Declaration

- Dawley v. Whitetail 414, LLC, 130 A.D.3d 1570, 14 N.Y.S.3d 854 (4<sup>th</sup> Dep't 2015)
- Tyre ex rel Dawley v. Town Board of Town of Tyre, 2016 WL 443781 (Sup Ct Seneca Cty 2016)

# Segmentation

- Definition: The division of environmental review of an action such that variance activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.

# When can you segment?

- Segmentation is contrary to the intent of SEQR, but not illegal per se
- Review may be segmented *if*:
  - Information on future project phase is too speculative
  - Future phase may not occur
  - Future phase is functionally independent of current phase

# When can you segment?

- If the Lead Agency determines a segmented review is justified given the particular circumstances, the Lead Agency must:
  - State in the determination of significance (and EIS) the reasons supporting segmentation; and
  - Demonstrate the segmented review is no less protective of the environment

# When is an SEIS Required?

- It is within the Lead Agency's discretion to determine whether an SEIS should be prepared.
- Lead Agency may require an SEIS when significant adverse environmental impacts were **not addressed** or were **inadequately addressed** in the EIS...

BUT...



# When is an SEIS Required?

- The significant adverse environmental impacts must arise from:
  - Changes proposed for the project
  - Newly discovered information
  - Change in circumstances related to the project

# Environmental Review Resources

- SEQR – NYS DEC:

<https://www.dec.ny.gov/permits/357.html>

- SEQR Handbook (3<sup>rd</sup> Ed. 2010):

<https://www.dec.ny.gov/permits/6188.html>

- SEQR Draft Revised Handbook (4<sup>th</sup> Ed.

2019):[https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/dseqrhandbook.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/dseqrhandbook.pdf)

# Questions??

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