



**Making SEQRA Work for
You**

**By: Danny Lapin, Environmental
Planner**

Quick Overview

OVERVIEW

Who I **AM:**

- *Environmental Planner with the **Otsego County Conservation Association.***
- *Specialization in **SEQRA Review, agriculture and farmland protection, climate adaptation, and environmental policy.***

WHAT IS
SEQRA?

TRUSTING the
PROCESS

HOW to MAKE
SEQRA WORK
FOR YOU

NOTABLE
COURT
DECISIONS

GROUND RULES

OVERVIEW

WHAT IS
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1) Don't be afraid! SEQRA is confusing for ***EVERYONE.***

2) You don't have to **agree** with me, but remember this is a process you should follow.

3) Questions are **welcomed**, but **project specific questions** can be addressed at the **end** of the training.

- 1. Get more comfortable with SEQRA.**
- 2. Know how to make SEQRA work for you.**
- 3. Be able to better protect your community.**

Objectives:

What is **SEQRA**?

Statute

- **Article 8 of NYS Environmental Conservation Law, Chapter 43, Consolidated Laws of New York.**

Regulations

- **Part 617 of Title 6 of the New York Codes, Rules and Regulations (6NYCRR).**

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What is **SEQRA** *cont'd.*

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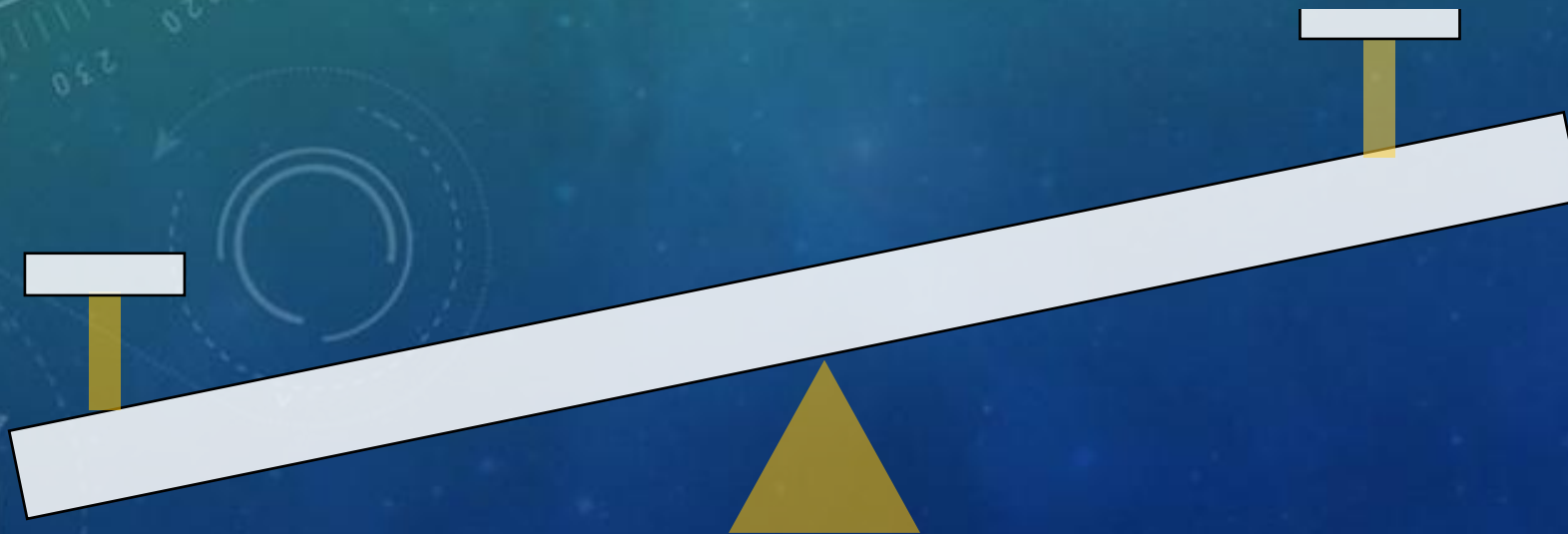
SEQRA IS...

A tool that helps agencies examine the **environmental effects** of their actions.

Activated when agencies undertake a **discretionary decision**.

The **SEQRA** Seesaw

SEQRA is a balancing act between *Environmental* and *Socio-economic* factors...



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What is an *Agency*?

OVERVIEW

Part 617.2 of SEQR defines an *agency* as a: STATE or LOCAL agency.

WHAT IS SEQRA?

EXAMPLE

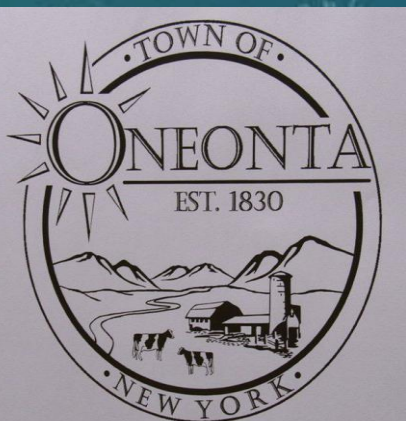
- State agencies
- Town/Village Boards
- Planning Boards
- City Councils
- Zoning Boards of Appeals
- County Legislatures
- School Boards

TRUSTING the PROCESS

HOW to MAKE SEQRA WORK FOR YOU

Are “*agencies*” under SEQRA.

NOTABLE COURT DECISIONS



What is an **Action**?

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Action - when an agency undertakes:

- **Discretionary decision (judgment call);**
- **Sponsors, undertakes, or approves a project;**
- **Engages in planning or policymaking that may commit the agency to a future course of action; or**
- **Adopts a rule.**
- **Or *any combination* of the *above*.**

Examples

- **Site Plan Review**
- **Subdivision Review**
- **Funding a project**
- **Rezoning**
- **Use Variances**
- **Purchase of Land**
- **Adoption of a local laws/policies**

REGULATORY CITATION: *6NYCRR Part 617.2(B)*



Step 1

Subject to SEQRA?

Step 2

Type 1 Action

Step 3

Full EAF

Step 4

-Inform Agencies
-Select lead agency

Step 5

Pos. Dec.

Step 6

Formal Scoping Option

Step 7

Draft EIS For Lead Agency Review

Step 8

Draft EIS Accepted for Public review

Step 9

Public Comment

Step 11

FEIS

Coordinated Review

Uncoordinated Review

Determine significance

Neg. Dec.

End Review

Draft EIS Changes If Necessary

Step 10

SEQR Hearing Option

Step 12

Agencies make findings

End Review

CND See Later Slides

Type 2 Action

End Review

The SEQRA Process

The SEQRA Process: **Getting Started**

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Review should start as soon as application is received.

Process should start early enough to identify all environmental impacts, but late enough to know what the action is.

Agencies can undertake actions themselves.
EX. Comprehensive Plan Update

Agencies can also receive applications.
EX. Application to build a Wal-Mart.

The SEQRA Process: **Getting Started**

OVERVIEW

WHAT IS
SEQRA?

*When it's time to **start** your
SEQRA Review, you **must**:*

1. Classify the Action

**2. Notify other agencies who
may have jurisdiction**

- a) NYS DEC;**
- b) NYS DOT**



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Step 2

Type 1
Action

Step 1

Subject
to
SEQRA?

Unlisted
Action

Type 2
Action

***The SEQRA
Process***

Classifying the *Action*:

STOP!

Remember, it is **CRITICAL** that an agency looks at the **WHOLE** action. That means looking at all components, phases, or aspects of the proposal.

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Classifying the *Action*:

Type 1 Actions: Actions that are *likely* to have a significant environmental impact.

Unlisted Actions: Actions that are *less likely* to have a significant environmental impact.

Type 2 Actions: Actions that are *not likely* to have a significant environmental impact.

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Type 1 Actions:

- Type 1 Actions are listed in Part 617.4 of SEQRA. It is important to note that the list is **not** all-inclusive.
- There **are** review requirements:
 - Must use the Full **E**nvironmental **A**ssessment **F**orm (EAF)
 - Must **coordinate** review with agencies who may have jurisdiction over the proposed action

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Type 2 Actions:

- Type 2 Actions are listed in Part 617.5 of SEQRA. It is important to note that the list is not all-inclusive
- Classifying an action as Type 2 under SEQRA concludes the review process

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Unlisted **Actions**:

- Unlisted actions are those that are **not** listed in Part 617.4 or 617.5.
- There **are** review requirements:
 - May use either the Full EAF or the Short EAF.
 - Use Full EAF – ex. 5 acre solar farm
 - Use Short EAF – ex. Small zoning change
 - Lead agency can choose whether to **coordinate** review with agencies who may have jurisdiction over the proposed action.

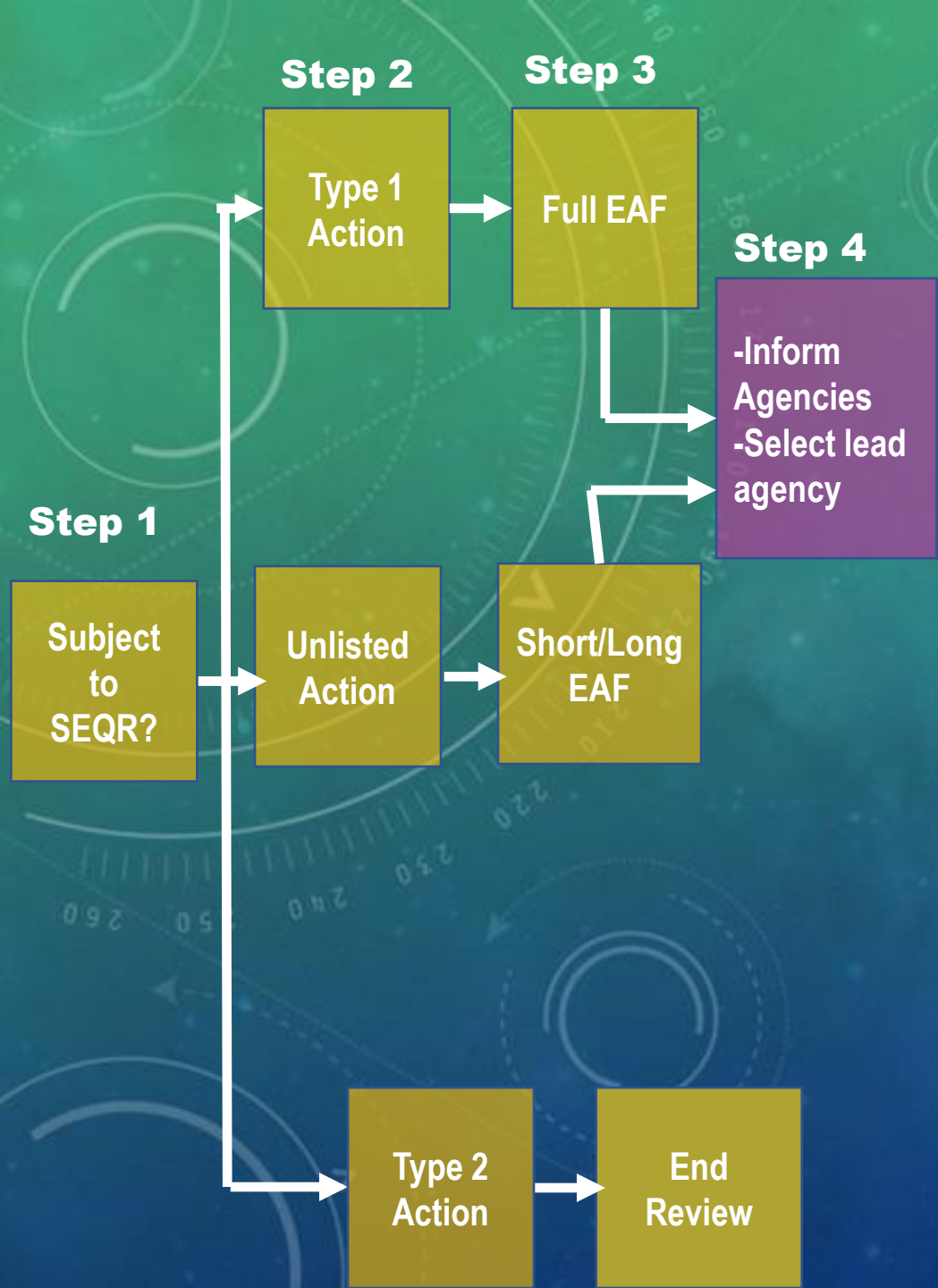
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*The **SEQRA** Process*

Selecting a **Lead** Agency

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Involved Agency

Public body which is **directly undertaking** the proposed action or has jurisdiction by law to fund or approve it.

Regulatory Citation:
6NYCRR Part 617.2(s)

Selecting a **Lead Agency**: to **Coordinate** or **not to Coordinate**

Coordinated Review

- **Required for Type 1 Actions, but is optional for unlisted actions.**
 - **Regulatory Citation: 6NYCRR Part 617.4 (a)(2)**
- **Lead Agency is typically established by **consensus**.**

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Selecting a **Lead** Agency: cont'd.

If your municipality receives an Application...

You must:

1. Identify **all potentially** involved agencies
2. Let them know that a **lead agency must be established**
3. Send them the EAF and supporting materials

Regulatory Citation: 6NYCRR Part **617.6(3)(i)**

Remember, lead agencies
must be established by
consensus.

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SEQRA Pro-Tip: Coordinated Review

When undertaking a coordinated review, remember your ABC's.

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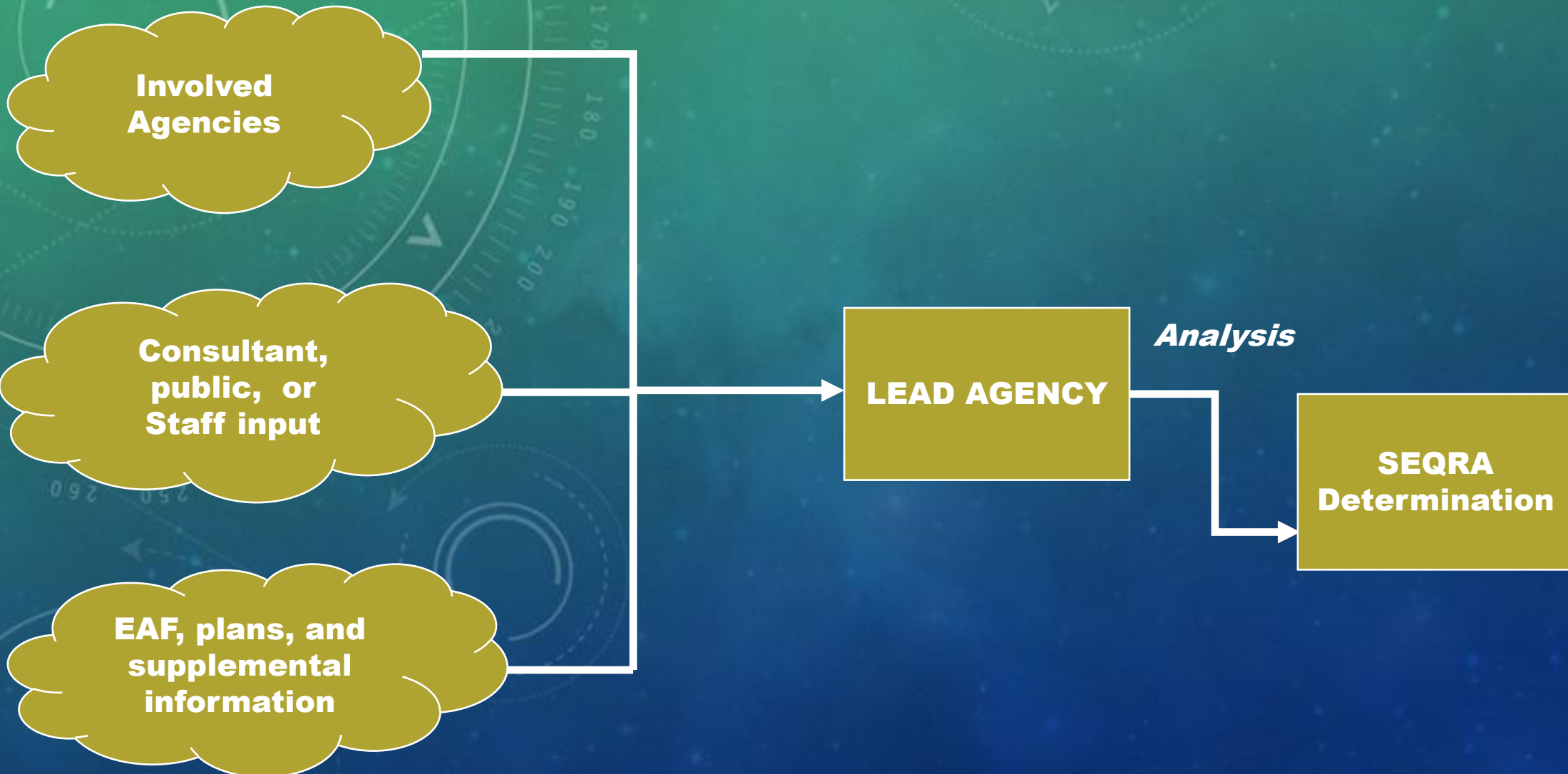
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Selecting a **Lead** Agency: cont'd.



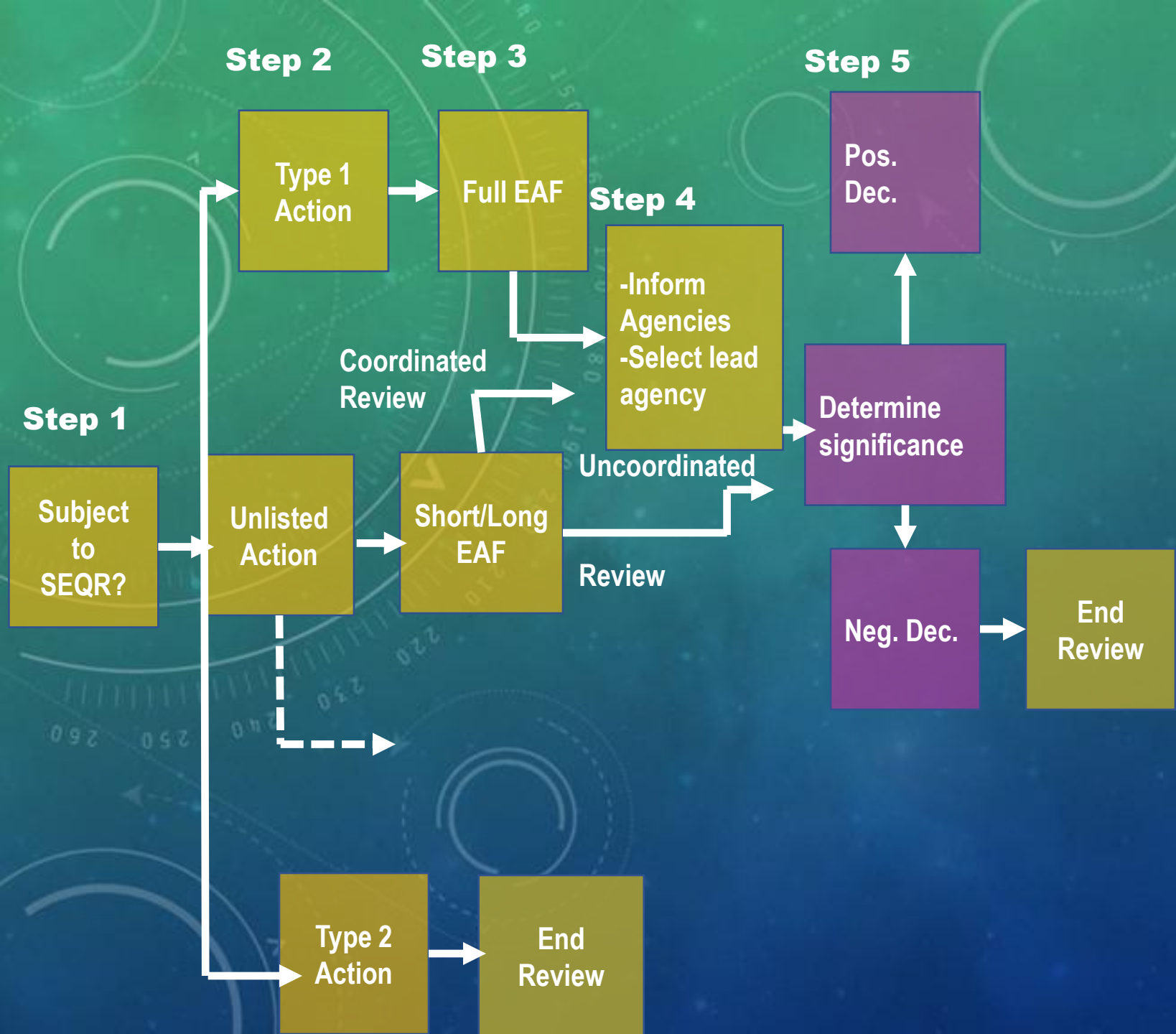
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The SEQRA Process

Determining **Significance**: the **EAF**

If you have not done so already, **bookmark** the EAF Workbook Webpage <http://www.dec.ny.gov/permits/90125.html> (it'll make your **life easier**).

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SEQR Pro-Tip: Remember, do not be shy about requesting more information. It is in your best interest to have all of the information you need.

Determining **Significance**: the **EAF**

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Part One: Project information

- Prepared by project sponsor
- Describes the site and project

Determining **Significance**: Checking the **EAF**

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Look over the
EAF

Flag issues by
page/section

Identify
missing
information

Notify
Applicant and
request
revisions



Determining **Significance**: EAF

Part 2

Part 2 guides the Lead Agency through the identification of environmental impacts and their magnitude.

Impacts can be classified as:

- “No impact or small impact” -OR- “moderate to large” impact”
- Remember to be **REASONABLE**: Lead agency should examine whether proposed mitigation measures ***actually mitigate*** potential environmental impacts

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Determining **Significance**: Evaluating Impacts

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When evaluating the impacts of an action, the Lead Agency must:

1. Evaluate all potential impacts of a project and link them to specific project components
2. Decide if any of the “**moderate to large impacts**” are relevant
3. Determine the magnitude of impacts
4. Determine the importance of the impacts

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Determining **Significance**: Evaluating Impacts

SEQRA case law establishes a **“standard”** for review:

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**Case Law Citation: H.O.M.E.S. v. NYS Urban Development Corporation 69AD
2d 222, 418 NYS 2d 287 (4th Dept., 1979)**

Determining **Significance**: Time to make a **Choice**

Positive Declaration

- Action has the **potential** for at least **one** significant adverse environmental impact.
- Requires an **Environmental Impact Statement (EIS)**
- The **threshold** for a “Pos Dec” is low
- Must be **filed** with the State
- **SEQRA continues**

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Determining **Significance**: Time to make a **Choice**

If the lead agency issues a negative declaration, is their choice **set in stone**?

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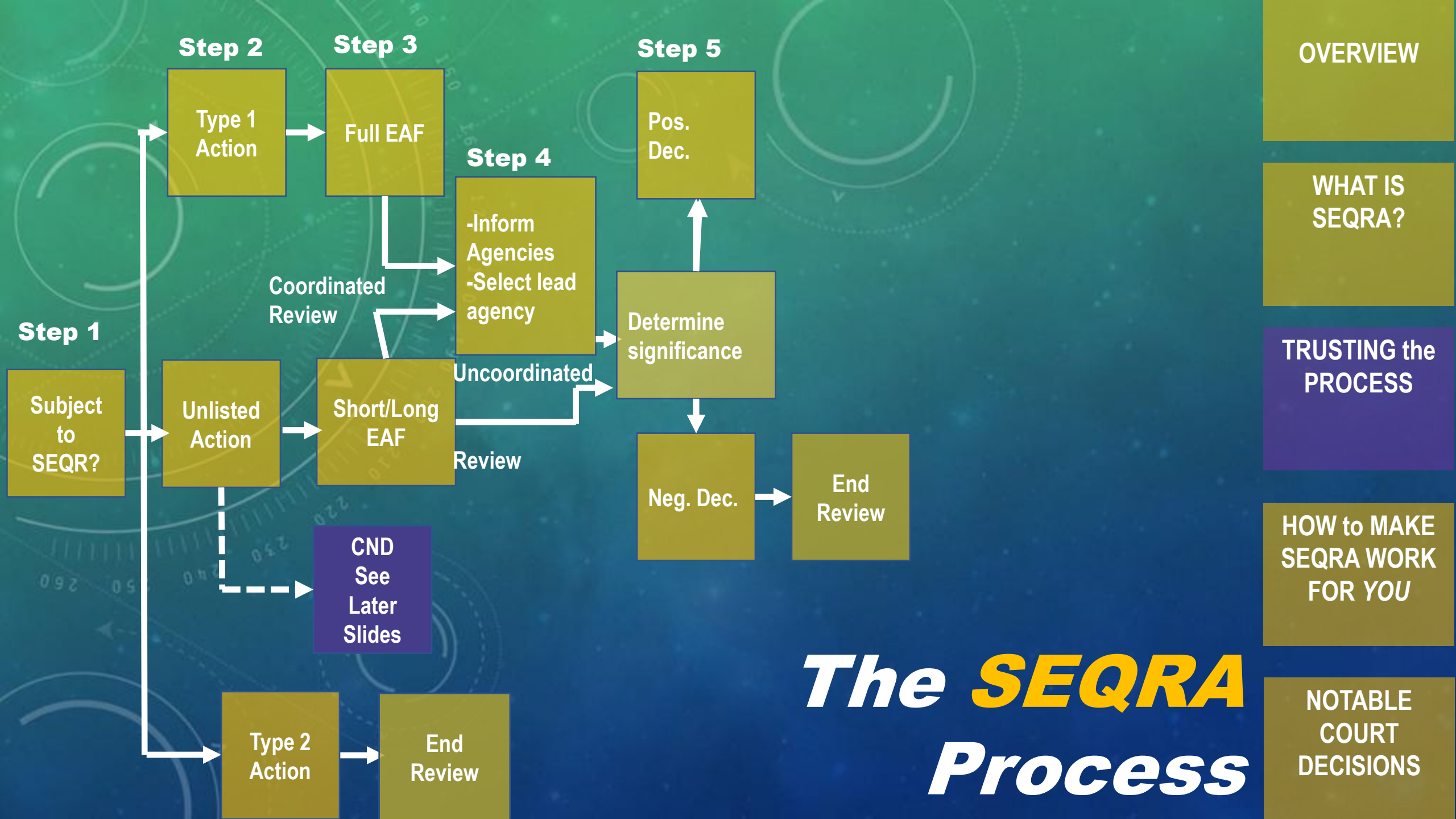
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Regulatory Citation: 6NYCRR Part 617.7(e) & 617.7(f)



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The **SEQRA** Process

The Conditioned Negative Declaration (CND): What is it?

Lead agency concludes that an action that may have a significant impact can be mitigated or eliminated by **conditions imposed** by the lead agency, without the need for additional study.

CND's **CANNOT** be issued for a **Type 1 action** or where the lead agency is the applicant.

Regulatory Citation: **6NYCRR Part 617.2(h)**

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So, you want to **issue** a **CND**?

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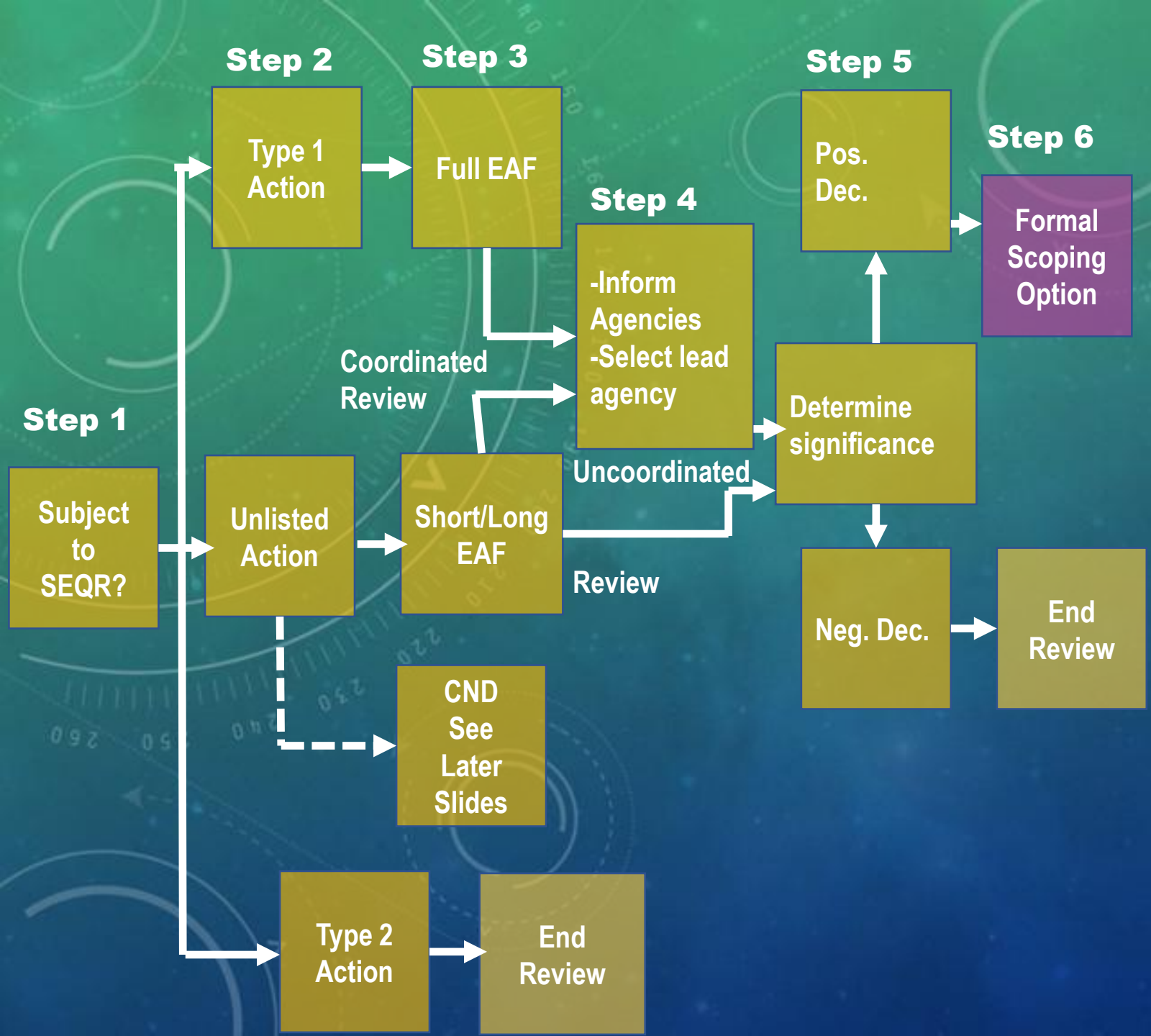
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For Unlisted Actions, issuing a CND involves several steps:

Remember: CND's can be **rescinded** if warranted by public comments.

Regulatory Citation: 6NYCRR **Part 617.7(d)**



*The **SEQRA** Process*

Scoping, why do it?

Regulatory Citation: 6NYCRR
Part 617.8

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Scoping is ***optional***, but recommended for the following reasons:

- Focuses the EIS on the ***most*** relevant environmental impacts;
- Ensures public participation;
- Allows for open discussion of public concerns; and
- The most relevant issues get included in the final scope.

Scoping: Preparing your *Research Arsenal*

Scoping can be a *challenging* and *time-consuming* endeavor. So be sure to have:

Primary Resources

- A copy of the **pos. dec**;
- Supporting information contained in the **EAF**;
- Local or regional **plans** showing the community's characteristics;
- Newspaper **articles**; and
- Natural Resource **inventories**

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The Draft **E**nvironmental **I**mpact Statement (DEIS)

Who Prepares the DEIS?

- **Applicant**, typically with help of a consultant.

What should **DEIS contain?**



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The **D**raft **E**nvironmental **I**mpact **S**tatement (DEIS) Cont'd

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- Remember, Lead Agency can require **SUPPLEMENTAL EIS** at any time.
- Lead Agencies must also file a “**Notice of Completion**” with **DEC** after accepting the **DEIS** for purposes of public review

Regulatory Citation: 6NYCRR **Part 617.9**



The **SEQRA** Process

The *Public Comment* Phase

Regulatory Citation:
6NYCRR Part 617.9

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The **SEQRA** Process

The *Final EIS* : What goes into it?

The lead agency is responsible for:

1. **ALL** content
2. The **accuracy, relevance, and quality** of all of FEIS' content.

The FEIS must contain...

1. **DEIS** and any **revisions**.
2. All **comments** received.
3. Lead Agency **responses to substantive comments**.

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It's the *Final EIS* Countdown!

When completing Final EIS, Lead Agency should be aware of the **following time frames:**

45 days →

60 days →

10 days →

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The **SEQRA** Process

The Final EIS: The Light at the End of the Tunnel

Regulatory Citation: 6NYCRR Part 617.11

Each Agency Must...

- Issue a **“findings statement.”**
- Use well-reasoned information from FEIS itself.

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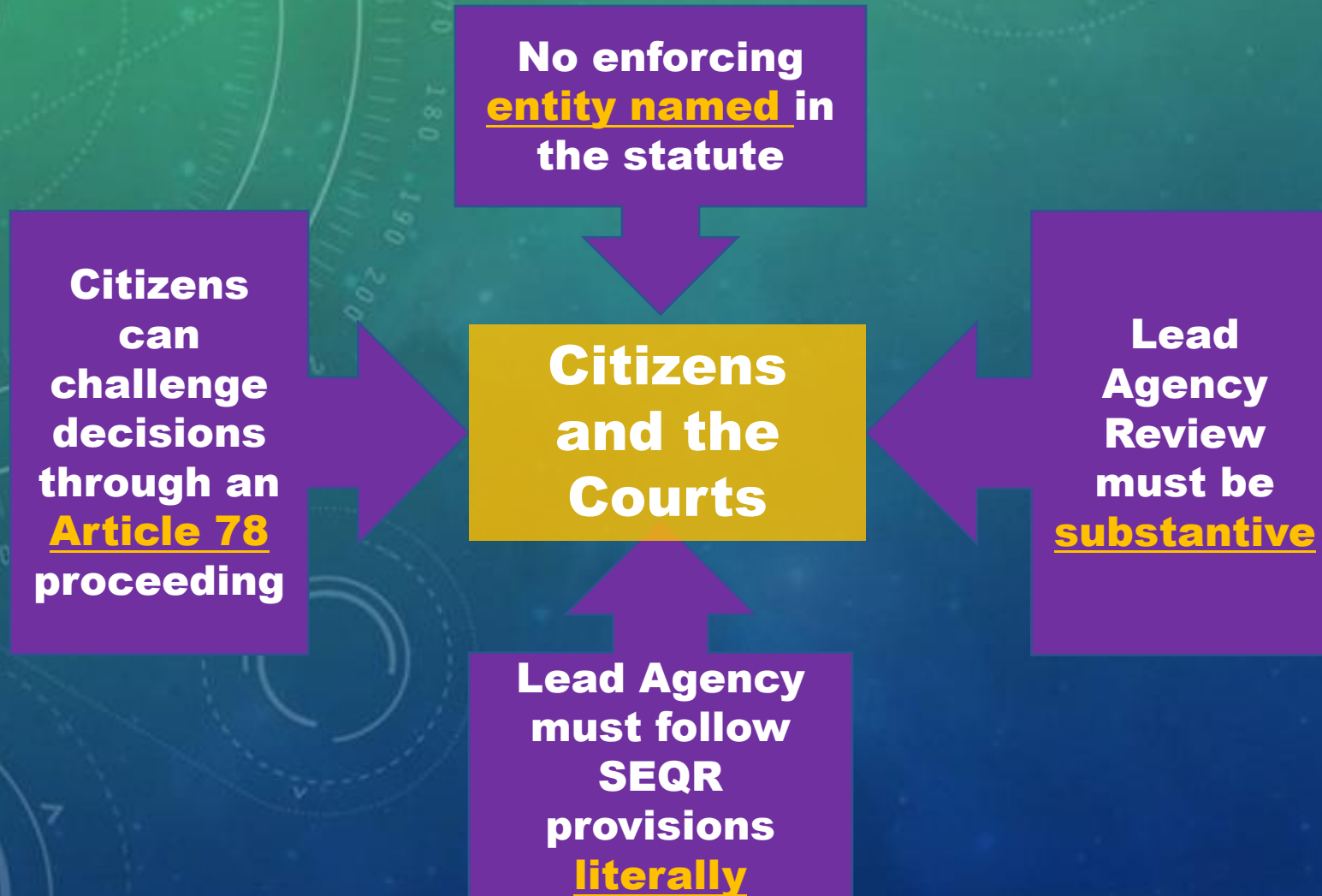
HOW to MAKE SEQRA WORK FOR YOU

NOTABLE COURT DECISIONS

A large, bright orange and yellow fireball or explosion against a black background. The fireball is composed of many smaller, swirling flames, creating a dense, textured appearance. The colors range from deep orange to bright yellow, with some darker orange areas towards the center and edges. The overall shape is roughly circular but irregular, with some smaller flames extending outwards.

Questions?

Making **SEQRA** Work for You: A note on **Compliance**



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Making **SEQRA** Work for You: **SEQRA ABC's Part Deux**

Always be prepared to *ask for help* and always be sure to have your **SEQRA forms** handy.

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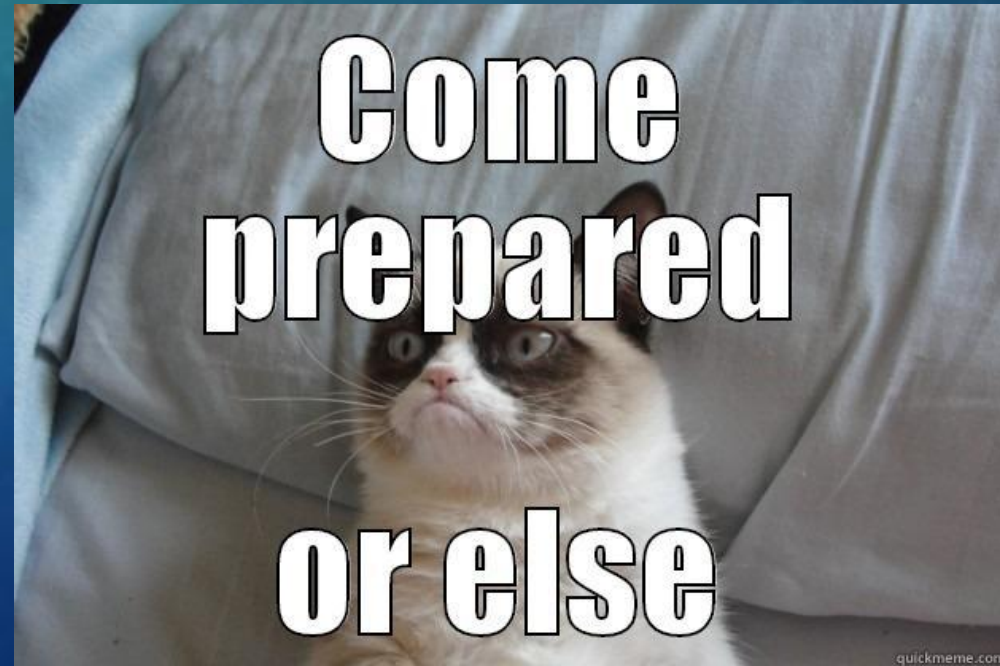
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With SEQRA, It's Okay to have a Cheat Sheet

Or a **SEQRA Binder** that includes:

- The SEQRA Regulations **6NYCRR Part 617**
- The **EAF Workbook**
- The **SEQRA Handbook**
- The **SEQRA Flow Chart**



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Even better than a “**cheat sheet,**” is a well-maintained project file

It is **CRUCIAL** to have well-maintained files when conducting SEQRA Reviews.

- **MINUTES** from relevant Town and Planning Board meetings
- **ALL** relevant votes, resolutions, and motions
- **APPLICATION FILES** sorted chronologically
- **RELEVANT STUDIES** sorted by environmental/economic factor
- **PUBLIC COMMENTS** sorted chronologically

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Online Tools: For those who can't afford the Thousand Dollar ESRI License

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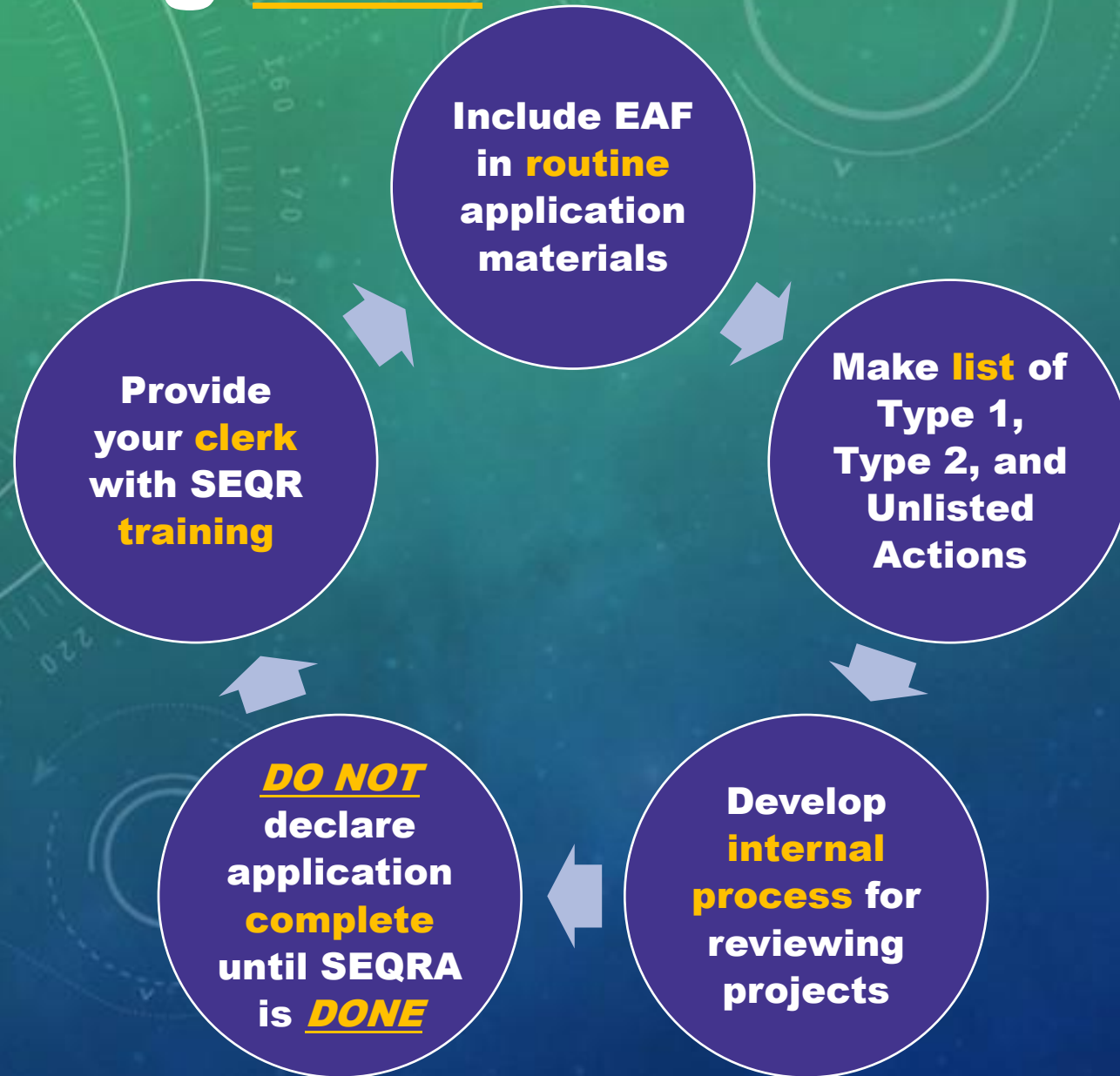
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Does your
municipality have
access to GIS?

NO?

Streamlining Your SEQRA Review



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Streamlining Your SEQRA Review

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Municipal Officials

Citizens

Applicants

- Include status of review and classification in Board Resolutions
- Review Part 2 and Part 3 of the EAF before coming to meetings where SEQRA determinations are made

Notable Court Decisions: “Hard Look”

H.O.M.E.S. v. UDC 6 A.D.2d 222 (1979)

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- Applicant Urban Development Corp (UDC) wants to build **sports stadium** for Syracuse University
- **Planning Commission** declares **UDC Lead Agency**
- **UDC issues Neg. Dec. without analyzing traffic/safety impacts.** Project is approved.
- **Petitioner H.O.M.E.S. sues via Article 78 proceeding**

Notable Court Decisions: “Hard Look”

H.O.M.E.S. v. UDC 6 A.D.2d 222 (1979) Cont’d.

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Three-Pronged
H.O.M.E.S. Test

```
graph TD; A[Three-Pronged H.O.M.E.S. Test] --- B[Prong #1: Examine scope of entire action]; A --- C[Prong #2: Identify all potential environmental impacts]; A --- D[Prong #3 : Take hard look at impacts and make well-reasoned findings];
```

Prong #1: Examine scope of entire action

Prong #2: Identify all potential environmental impacts

Prong #3 : Take “**hard look**” at impacts and make well-reasoned findings

Notable Court Decisions: Procedural Compliance

Town Assn. v. Town of Rye 82 A.D.2d 474 (NY App Div. 1981)

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- Rye Town Board issues permit to developer in 1979 to **build office building** on **17.8** acres of land
- Rye Town Board rezoned in **1973** allowing for Planned Unit Developments (**PUDs**)
- Town Board issues permit **without requiring EIS**
- Neighbors sue via Article 78 proceeding

Notable Court Decisions: Segmentation

Karasz v. Wallace 134 Misc.2d 1052 (N.Y. Misc. 1987)

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- Zoning Board of Town of Moreau grants Applicant permit to build **four-unit** apartment building on **31-acre** parcel
- Zoning Board issues Neg. Dec.
- **Neighbors file Article 78**
- Suit dismissed by lower court
- Applicant seeks to build **second** four-unit apartment on same parcel
- Neighbors file second **Article 78**

Notable Court Decisions: SEQRA Threshold

Inland Vale Farm v. Stergianopoulos 104 A.D.2d 395 (1984)

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- **Town of N. Salem Planning Board issues **Neg. Dec.** for 4.23-acre commercial development**
- **Neighbors file Article 78 contending that **record clearly shows** risk of significant environmental impacts**
- **Board reviews **numerous** environmental factors**

Notable Court Decisions: SEQRA Findings

WEOK Broadcasting Corp. v. Town of Lloyd PB 79 N.Y. 2d 373, 592 N.E.2d 778, 583 N.Y.S.2d 170 (1992)

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- Applicant seeks to build **AM Radio Transmitter** in Ulster County
- Town of Lloyd PB denies Site Plan Application due to “**unavoidable environmental impacts**”
- Applicant files Article 78 alleging PB acted **arbitrarily and capriciously**.
- NY Supreme Court **annuls** PB denial and PB appeals

OCCA's **Circuit Rider Planner** Program

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- **Assists municipalities with:**
 - **SEQRA review**
 - **Comprehensive Planning**
 - **Zoning-related matters**
 - **Other environmental initiatives**
- **Cost:**
 - **50/50 share with OCCA \$35/hour rates for municipalities**
- **Other Trainings Offered:**
 - **Agriculture and Farmland Protection Planning**
 - **Comprehensive Planning**
 - **Zoning**
 - **Town-specific SEQRA review**

***This pilot SEQRA training was provided through a grant from the Community Foundation of South Central New York**



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QUESTIONS?