Making SEQRA Work for You

By: Danny Lapin, Environmental Planner
Quick 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.
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.
Objectives:

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

OVERVIEW

WHAT IS SEQRA?

TRUSTING the PROCESS

HOW to MAKE SEQRA WORK FOR YOU

NOTABLE COURT DECISIONS
## What is SEQRA cont’d.

### 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...

**Environmental Factors**
- Land, air, and water resources
- Wildlife
- Agricultural resources
- Noise

**Socio-economic Factors**
- Community Character
- Economic impacts
- Visual Character
What is an Agency?

Part 617.2 of SEQR defines an *agency* as:

- **STATE** or **LOCAL**

**EXAMPLE**

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

Are “agencies” under SEQRA.
What is an **Action**?

**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)
The SEQR Process
The SEQRA Process: Getting Started

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.
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
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.
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.
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 Environmental Assessment Form (EAF)
  - Must *coordinate* review with agencies who may have jurisdiction over the proposed action

Note: Thresholds are LOWER in certain districts like an agricultural district or a historic district.
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.
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.
The SEQRA Process
Selecting a **Lead Agency**

**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**.
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.**
SEQRA Pro-Tip: Coordinated Review

When undertaking a coordinated review, remember your ABC’s.
Selecting a **Lead Agency**: cont’d.

- Involved Agencies
- Consultant, public, or Staff input
- EAF, plans, and supplemental information

**Analysis**

**LEAD AGENCY**

**SEQRA Determination**
Subject to SEQR?

Step 1
- Unlisted Action
- Uncoordinated Review

Step 2
- Type 1 Action
- Coordinated Review

Step 3
- Full EAF
- Short/Long EAF
- Uncoordinated Review

Step 4
- Inform Agencies
- Select lead agency
- Determine significance

Step 5
- Pos. Dec.
- Neg. Dec.
- End Review

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**).

**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**

**Part One: Project Information**
- Prepared by project sponsor
- Describes the site and project
Determining **Significance:**

**Checking the EAF**

- **Look over the EAF**
- **Flag issues by page/section**
- **Identify missing information**
- **Notify Applicant and request revisions**
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
Determining **Significance:** Evaluating Impacts

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

**Stuff to watch out for:**
- Likelihood of impact;
- Duration of impact;
- Quality of resources to be affected;
- Communitywide impacts;
- Growth inducing impacts; and
- Consistency with existing plans and ordinances.
Determining Significance: Evaluating Impacts

SEQRA case law establishes a “standard” for review:

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**

**Negative Declaration**
- Project, as proposed, will have no significant environmental impact
- Written determination **IS** required (Part 3 EAF)
- For **Type 1 actions**, negative declaration must be filed with the state
- SEQRA review **concludes**
Determining **Significance:**

Time to make a **Choice**

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

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

**Subject to SEQR?**

**Step 1**
- Subject to SEQR?
- Unlisted Action
- Short/Long EAF
- Coordinated Review
- Uncoordinated Review

**Step 2**
- Type 1 Action
- Full EAF
- Inform Agencies
- Select lead agency

**Step 3**
- Short/Long EAF

**Step 4**
- Determine significance
- Pos. Dec.
- Neg. Dec.

**Step 5**
- End Review

**Type 2 Action**
- End Review

**NOTABLE COURT DECISIONS**

**WHAT IS SEQRA?**

**TRUSTING the PROCESS**

**HOW to MAKE SEQRA WORK FOR YOU**

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

For Unlisted Actions, issuing a CND involves several steps:

1. CND's must be based on a Coordinated Review.
2. Applicant should use Full EAF.
3. Conditions must be stated up front.
5. 30+ day public comment period.
6. Notice and filing requirements for Type 1 actions.
7. Lead agency must consider ALL comments.

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?

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.

Regulatory Citation: 6NYCRR Part 617.8
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*
The SEQRA Process

Step 1: Subject to SEQR?
- Unlisted Action
- Short/Long EAF
- CND See Later Slides

Step 2: Type 1 Action
- Full EAF
- Inform Agencies - Select lead agency

Step 3: Coordinated Review
- Determine significance

Step 4: Uncoordinated Review
- Pos. Dec.
- Formal Scoping Option

- Draft EIS For Lead Agency Review

- Draft EIS Accepted for Public review
- Draft EIS Changes If Necessary

Step 7: End Review

Step 8: End Review

The SEQRA Process
The Draft Environmental Impact Statement (DEIS)

Who Prepares the DEIS?
• Applicant, typically with help of a consultant.

What should DEIS contain?
• Description of the action
• Definition of the location and setting
• Evaluation of potentially significant impacts
• Potential mitigation measures
• Discussion of reasonable alternatives
The Draft Environmental Impact Statement (DEIS) Cont’d

- 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
Subject to SEQR?

Step 1

Unlisted Action

Short/Long EAF

CND See Later Slides

Type 2 Action

End Review

Uncoordinated Review

Coordinated Review

Type 1 Action

Full EAF

Inform Agencies
-Select lead agency

Determine significance

Neg. Dec.

End Review

Pos. Dec.

Step 5

Step 4

Formal Scoping Option

Draft EIS For Lead Agency Review

Draft EIS Accepted for Public review

Draft EIS Changes If Necessary

Public Comment

Step 6

Step 7

Step 8

Step 9

Step 10

The SEQR Process
The **Public Comment** Phase

Regulatory Citation: 6NYCRR Part 617.9

**OVERVIEW**

**WHAT IS SEQRA?**

**TRUSTING the PROCESS**

**HOW to MAKE SEQRA WORK FOR YOU**

**NOTABLE COURT DECISIONS**

If a lead agency chooses to conduct a public hearing, what are requirements?

1. Notice must be provided a minimum of 14 days before hearing.
2. Hearing must start no less than 15 and no more than 60 days after Notice of Completion is filed.
3. Public comment period must last a minimum of 30 days.
4. Public comment period must last for another 10 days after the public hearing closes.

Regulatory Citation: 6NYCRR Part 617.9
Subject to SEQR?

Type 2 Action

Type 1 Action

Full EAF

Short/Long EAF

CND See Later Slides

Pos. Dec.

Neg. Dec.

End Review

Draft EIS For Lead Agency Review

Draft EIS Accepted for Public review

Draft EIS Changes If Necessary

Public Comment

SEQR Hearing Option

Final EIS

The SEQR 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**.
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**

Regulatory Citation: 6NYCRR Part 617.9
The SEQRA Process

Step 1: Subject to SEQR?
- Type 1 Action
- Unlisted Action

Step 2: Type 1 Action
- Full EAF

Step 3: Full EAF
- Short/Long EAF
- Inform Agencies - Select lead agency

Step 4: Inform Agencies - Select lead agency
- Determine significance

Step 5: Determine significance
- Pos. Dec.
- Neg. Dec.

- Formal Scoping Option
- End Review

Step 7: Draft EIS For Lead Agency Review
- Draft EIS Accepted for Public review

Step 8: Draft EIS Changes If Necessary
- Draft EIS

Step 9: Public Comment
- FEIS

Step 10: Agencies make findings
- SEQR Hearing Option
- End Review

Step 11: FEIS

Step 12: SEQR Hearing Option
- End Review
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.
Questions?
Making **SEQRA** Work for You: A note on Compliance

- **Citizens and the Courts**
  - Lead Agency Review must be **substantive**
  - Lead Agency must follow SEQR provisions **literally**
  - No enforcing **entity named in the statute**
  - Citizens can challenge decisions through an **Article 78 proceeding**

- **OVERVIEW**
- **WHAT IS SEQRA?**
- **TRUSTING the PROCESS**
- **HOW to MAKE SEQRA WORK FOR YOU**
- **NOTABLE COURT DECISIONS**

*Lead Agency must follow SEQR provisions literally.*

*No enforcing entity named in the statute.*

*Citizens can challenge decisions through an Article 78 proceeding.*

*Citizens and the Courts*
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.
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
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
Online Tools: For those who can’t afford the Thousand Dollar ESRI License

Does your municipality have access to GIS?

NO?

OVERVIEW

WHAT IS SEQRA?

TRUSTING the PROCESS

HOW to MAKE SEQRA WORK FOR YOU

NOTABLE COURT DECISIONS
Streamlining *Your* SEQRA Review

- Include EAF in routine application materials
- Make list of Type 1, Type 2, and Unlisted Actions
- Develop internal process for reviewing projects
- Provide your clerk with SEQR training
- DO NOT declare application complete until SEQRA is DONE

**NOTABLE COURT DECISIONS**

**WHAT IS SEQRA?**

**TRUSTING the PROCESS**

**HOW to MAKE SEQRA WORK FOR YOU**

**OVERVIEW**

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Streamlining Your SEQRA Review Cont’d.

<table>
<thead>
<tr>
<th>Municipal Officials</th>
<th>Citizens</th>
<th>Applicants</th>
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<tbody>
<tr>
<td>• Include status of <strong>review</strong> and <strong>classification</strong> in Board Resolutions</td>
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<tr>
<td>• Review Part 2 and Part 3 of the EAF <strong>before coming</strong> to meetings where SEQRA determinations are made</td>
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### Notable Court Decisions: “Hard Look”

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

<table>
<thead>
<tr>
<th>Overview</th>
<th>Outcome</th>
<th>Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Applicant Urban Development Corp (UDC) wants to build <strong>sports stadium</strong> for Syracuse University</td>
<td>• Planning Commission declares <strong>UDC Lead Agency</strong></td>
<td>• Establishes three-pronged “hard look” test</td>
</tr>
<tr>
<td>• Planning Commission declares <strong>UDC Lead Agency</strong></td>
<td>• UDC issues <strong>Neg. Dec. without analyzing traffic/safety</strong> impacts. Project is approved.</td>
<td>• Elevates standard of SEQRA review</td>
</tr>
<tr>
<td>• UDC issues <strong>Neg. Dec. without analyzing traffic/safety</strong> impacts. Project is approved.</td>
<td>• Petitioner H.O.M.E.S. sues via Article 78 proceeding</td>
<td>• Prevents Lead Agencies from ignoring potentially significant environmental impacts</td>
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</tbody>
</table>
Notable Court Decisions: “Hard Look”
*H.O.M.E.S. v. UDC 6 A.D.2d 222 (1979)* Cont’d.

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

- **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


<table>
<thead>
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<th>Outcome</th>
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</thead>
</table>
| - 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)**

<table>
<thead>
<tr>
<th>Overview</th>
<th>Outcome</th>
<th>Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Zoning Board of Town of Moreau grants Applicant permit to build <strong>four-unit</strong> apartment building on <strong>31-acre</strong> parcel</td>
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<tr>
<td>• Zoning Board issues <strong>Neg. Dec.</strong></td>
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<tr>
<td>• <strong>Neighbors file Article 78</strong></td>
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<tr>
<td>• Suit dismissed by lower court</td>
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<tr>
<td>• Applicant seeks to build <strong>second</strong> <strong>four-unit</strong> apartment on same parcel</td>
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<tr>
<td>• <strong>Neighbors file second Article 78</strong></td>
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</table>
### Overview

- **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**

### Outcome

### Importance

- Court rules that projects which may have significant environmental impact require **EIS**
- Court found that Planning Board failed to account for runoff impacts of proposed project
- Court **annuls** negative declaration, orders EIS to be prepared
- Helps establish "low" SEQRA threshold
- Nests low SEQRA threshold in "literal compliance" ruling of the Rye matter
- Notes that "hard look" involves identifying alternatives that could mitigate environmental impacts

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**Notable Court Decisions: SEQRA Threshold**

### Overview

- 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

### Outcome

**Court ruled that PB failed to provide substantial evidence showing environmental impacts were “unavoidable,” especially with information to the contrary.**

**Court stated that “generalized community objections” do not merit rejection of a project.**

### Importance

- Prevents NIMBYism through SEQRA
- Requires Lead Agencies to rely on factual evidence when making SEQRA-related decisions
- Places high standard of proof on commenters and public during SEQRA review

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**Notable Court Decisions: SEQRA Findings**

OCCA’s Circuit Rider Planner Program

- 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