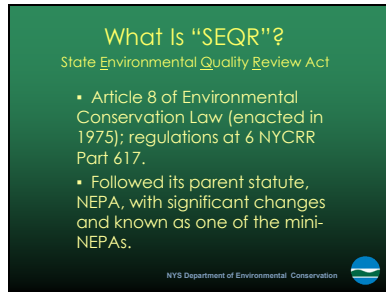
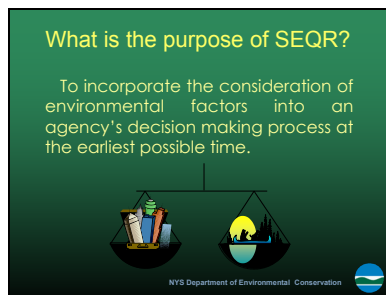


Slide 1



- SEQR is a New York statute that became law on August 1, 1975.
- The text of SEQR is found in Article 8 of the New York Environmental Conservation Law.
- SEQR directs the Commissioner of the New York State Department of Conservation to develop regulations to guide NYS and local government agencies in their implementation of the statute.
- The SEQR regulations thus provide a detailed set of rules to guide officials in complying with the statute.
- The regulations are codified in Part 617 of the New York Code of Rules and Regulations and are freely available through DEC's website as well as on Westlaw and Lexis and in the NYCRR ("Green Books").

Slide 2



- SEQR fundamentally changes government decision making by requiring that environmental considerations are integrated within the planning and approval processes of State and local agencies.
- SEQR is not a separate permit but is instead an additional layer of review which is triggered when a state or local agency must make a discretionary decision with certain exceptions discussed later on.
- SEQR is a component of the larger review and decision, not the primary act.
- Must be completed before final decision can be issued.

-Does not have any specific enforcing body. The public is the primary enforcing body.


Slide 3

What are "environmental factors"?

SEQR defines "environment" (617.2(l)) broadly to include:

- Land, air, water, minerals
- Flora, fauna, noise
- Features of historic or aesthetic significance
- Population patterns
- Community character

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-The SEQR statute defines the term 'Environment' broadly [see ECL 8-0105.6].

-Environment does not just pertain to natural resources, but also includes how people use, and relate to, their surroundings


-The SEQR regulations [see 617.2(l)] define Environment as: "...the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health."

Slide 4

What is an agency?

- A public body which has jurisdiction by law to fund, approve or directly undertake an "action."
 - Examples include: State agencies; local legislative bodies; industrial development agencies; zoning and planning boards.

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-The SEQR statute also defines "agency" broadly, and explicitly includes state departments, boards, public authorities, as well as local boards, districts, and governing bodies [see 8-0105, and 617.2(c)]

- "Jurisdiction by Law" means that an agency's underlying authority has been granted by NYS statute, local law or ordinance.

-Because land use decision-making occurs at the municipal level and most of the discretionary decisions happen at the local government level, local governments are responsible for the majority of SEQR transactions

-Other local government agencies include, but are not limited to, school boards, fire districts, independent library boards, and special purpose districts

-No agency can delegate its SEQR responsibility. While it is acceptable for advisory boards to provide input in support of SEQR reviews and determinations, the agency with the discretionary decision-making authority is the only one responsible for the final decisions

-State agencies are subject to SEQR, however, there are some limited statutory exceptions, including specific decisions made by the Adirondack Park Agency, the Public Service Commission, and a few other state entities [see SEQR Handbook:

<http://www.dec.ny.gov/permits/6473.html>]


-Federal agencies are not subject to SEQR. They are subject to the National Environmental Policy Act of 1969 (NEPA)

Slide 5

How does SEQR work?

- An "agency" proposes an "action" or receives an application
- The "action" is classified* **and** a "lead agency" is established
- The lead agency determines the "significance" of the action*
- Preparation of an EIS, if required; findings and agency decision *

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Slide 6

What is an "action"?

- An "action" occurs when an agency makes a discretionary decision *that may* have an impact on the environment.
 - Actions can include: "direct actions" where agency is sponsor; construction; planning and **policy-making, or adopting rules, regulations or procedures**; or
 - Indirect actions: Permit approvals or funding.

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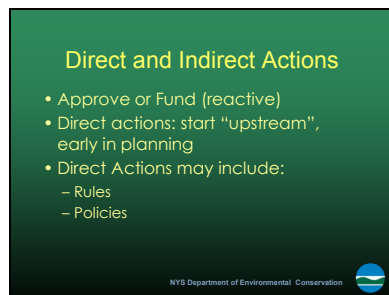
-Discretionary means that the decision maker will have choices that will determine whether, or how, an action may be undertaken. Examples include zoning change, site plan approval, variances, special use permits and many grants of funding

-Non-discretionary decision are sometimes known as "ministerial" decisions since they are based on facts, with outcomes prescribed by law or regulation without the use of judgment. Routine building permits are typically ministerial decisions

-Actions may include:

1. Physical Actions that may affect the environment by changing the use, appearance, or condition of any natural resources or structures, whether those actions are directly undertaken by an agency, involve funding, or require approvals
2. Planning or Policy making activities that may affect the environment and commit the agency to a definite course of future decisions, such as adoption or significant amendment of Comprehensive Plans
3. Adoption of rules, regulations and procedures, including local laws, codes, ordinances, executive orders, and resolutions, that may affect the environment.
4. Or, any combination of the above, such as approval of a site plan where a zoning variance or change is also required


Slide 7



Direct and Indirect Actions

- Approve or Fund (reactive)
- Direct actions: start "upstream", early in planning
- Direct Actions may include:
 - Rules
 - Policies

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Slide 8

When is the earliest possible time to begin SEQR?

- Early enough to affect all decisions
 - which could impact the environment,
 - choice of alternatives, location as well as project design.
- But far enough into planning that the range of available choices can be fully considered.

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-When reviewing, the earliest possible time is generally when one receives the application! Therefore, in the regulatory arena, the trigger to initiate SEQR is generally the first time any involved agency sees the project.

-On the other hand, where an agency is the sponsor, the SEQR review should begin early in the planning phase so that issues and concerns may be identified, and plans changed more readily.


-If there is more than one agency involved, the SEQR review should start either when the first involved agency receives a request for approval or funding or begins to plan a direct action.

Slide 9

How does an agency start the SEQR process?

- Initiating agency or first agency to receive an application is responsible for commencing the SEQR process
- First agency must "classify" the action as Type I, Unlisted or Type II.
- First involved agency must also identify other "involved" agencies.

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-SEQR begins when an agency initiates a direct action or when it receives an application for review.

- The first agency to receive the application must preliminarily classify the action as Type I, Type II, or Unlisted. This does not necessarily mean that the receiving agency will become the Lead Agency.

-Identification of other Involved Agencies is required for Type I actions and all coordinated reviews.

-Tips for identifying other potentially involved agencies:

Use EAF list of approvals required
Create standardized lists of recurring co-approvals that can be used as a check list for each application


-The regulations state that every reasonable effort must be made to identify other involved agencies

Slide 10

Classifications

- Type II (actions or classes of actions identified in 6 NYCRR 617.5)
- Type I (actions or classes of actions identified in 6 NYCRR 617.4)
- Unlisted (all "actions" that are not classified as Type I or Unlisted)

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Type II Actions

- "...actions or classes of actions which have been determined not to have a significant effect on the environment ... The Commissioner shall make a finding that each action or classes of action identified does not have a significant effect on the environment." ECL 8-0113(a)(2)(c)(ii). Plus statutory exemptions.

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Overview of the Type II list

- Prior to 1995, the regulations contained three lists of actions that did not require review under SEQR. Those were actions that were "excluded" (ECL 8-0111[5]), "exempt" (ECL 8-0105[5]), and "Type II" (actions classified by the Commissioner). In 1995, these were all merged into one Type II list.

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Classification: Type II

- The current Type II list contains 46 actions or classes of actions (2018 amendments added 9 more).
Examples:
 - Emergency actions
 - Preliminary Studies
 - Replacement in kind

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-It is easier to understand classification by backing in from the least significant class of actions, the Type II list [see 617.5]. The statewide Type II list includes actions which the SEQR statute excludes or exempts from review as well as classes of activities that have been designated by regulation

-These are actions which categorically do not require EISs. Any impacts of these actions listed as Type II can be managed by attaching conditions based on the agency's underlying authority. For example, setbacks from highways or wetlands may be specified under site plan review.

-Anything listed as Type II in the regulations requires no further processing under SEQR. No procedural requirements, environmental assessments, or determinations, are required

-One should keep records for one's own protection. A brief note to the file will suffice as long as it states that the project was considered under SEQR, that it met the requirements for a Type II, and

includes the specific item number from 617.5

-An agency can create its own Type II list. However, an agency's Type II list must be no less protective of the environment than the existing statewide Type II list in 617.5 and cannot include items from the statewide Type I list in 617.4. NYC has its own list as well as DEC and certain other agencies.

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Type I Actions

- More likely to have significant adverse impact on environment; therefore, more likely to require EIS. Not an automatic EIS requirement but EIS is more likely for such actions.
- Generally, actions are on the Type I list either because of size or location.

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-In contrast to Type II actions, Type I actions [617.4] are more likely than other classes of activities to require the preparation of an EIS. This does not mean that all Type I actions must receive an EIS, but that, instead, the need for an EIS must be individually determined based on a Full Environmental Assessment Form (EAF) plus coordination with all other agencies having jurisdiction over the project

-Many of the Type I items are based on numeric thresholds, for example, alteration of more than 10 acres

-Some physical locations may also trigger a Type I classification, such as proximity to a state or federal historic site, publicly owned parkland, open space, or national natural landmark; or wholly or partially within an Agricultural District

-Agencies may create additional, local Type I items, provided that a local Type I list is no less protective of the environment than the statewide list, and that items from the statewide Type II list cannot be locally listed as Type 1. An

individual agency's designation of an action as Type 1 requires that all involved agencies coordinate their SEQR review

-Classification of an action as Type I means preparation of the Full EAF, coordination among all state and local agencies with jurisdiction over the project, and establishment of a lead agency. The lead agency will then determine whether an EIS must be prepared

Slide 15

Unlisted Actions

- The universe of actions that may affect the environment that are not Type I or Type II
- Rules and policies almost always fall under this classification

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-Unlisted actions are any proposals or actions not specifically included on either the statewide Type I or Type II lists

-This is the largest category of actions subject to SEQR review. Specific items are not listed since it is impossible to identify in advance every potential project or decision which an agency may need to consider

-Unlisted actions include a wide range of activities ranging from minor zoning variances to complex construction activities. Thus, while 10 acres or more of physical disturbance is classified as Type I, new physical disturbances ranging from 9.9 acres to as small as 0.1 acres are all Unlisted actions.

Each individual agency may proceed with its own uncoordinated SEQR review of an unlisted action. However, if any other agency with jurisdiction over the project decides that an EIS must be required, uncoordinated review must cease and coordinated review initiated.


-The SEQR regulations allow an agency to choose to apply the Type I initial review process to any unlisted action. Therefore, it may be reasonable to treat any large or complex project that has been classified as Unlisted, as a Type I.

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Why does classification matter?

- Type I Actions must "coordinate" with other "involved agencies"; must use Full EAF.
- Unlisted Actions: Coordination is optional; Agency may allow Short EAF or require Full EAF
- Type II Actions: No further review required

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-Classification matters because an agency needs to know if it should coordinate, which forms to use, and what level of environmental review is appropriate

-Uncoordinated reviews can save time because each agency may act immediately as lead agency. Each agency's determination of significance will thus be based only on the application and related information received from the project sponsor, including a Full or short EAF. Any agency with jurisdiction over an unlisted action may require preparation of a Full EAF


-Coordinated reviews are based on input from all agencies who have jurisdiction over a project or decision, and a single determination of significance is made by the SEQR lead agency

-Failure to follow appropriate procedures can be reversible error. Courts require strict and literal compliance with the procedures of SEQR.

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Involved and Interested agencies

- An involved agency is a public body which is directly undertaking the action, or has jurisdiction to fund or approve it.
- An interested agency is a public body which does not have jurisdiction but wishes to participate in the process because of its expertise or specific concern(s).



-The SEQR regulations define an “involved agency” as one “that has jurisdiction by law to fund, approve or directly undertake an action” [see 617.2(s)]

-” Interested agency” means “an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action” [See 617.2(t)]


-An interested agency has the same ability to participate in the review process as a member of the public.

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Lead Agency

- The Lead Agency is the involved agency which is responsible for determining whether an EIS will be required, and, if so, for its preparation and filing.

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- “Lead agency” is defined as the agency “principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required” [see 617.2(u)]
- In coordinated review, where two or more agencies cannot agree on which agency should be lead agency, the disputing agencies or the applicant can submit the dispute to the Commissioner for resolution. The Commissioner has decided hundreds of disputes since SEQR came into effect in the 70s. DEC posts the decisions on its website. They are also available on Westlaw and Lexis.

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Review starts with the EAF

- Part 1: (Prepared by project sponsor)
 - Site and project descriptions
- Part 2: (Prepared by lead agency)
 - Potential project impacts and magnitudes
- Part 3: (Prepared by lead agency)
 - Importance of impacts identified in Part 2

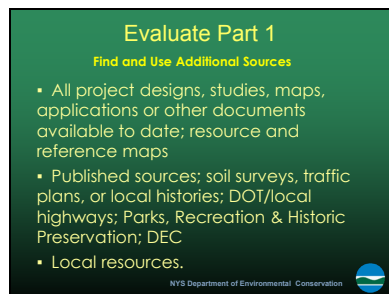
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- Under SEQR, the determination of significance begins with Part I of the EAF. The lead agency should ensure that the project sponsor has submitted the correct version of the EAF. Remember, the lead agency classifies the action, NOT the project sponsor. Also, use the version on DEC’s website, which as a result of a 2013 rulemaking, is electronic and connected to DEC’s spatial databases.
- There are two versions of the EAF available for use:
 - Full Form: Must always be used for Type I actions and, at the discretion of the lead agency, may also be used for unlisted actions. Use of

the Full EAF is recommended for projects where the short form will not provide enough information
Short Form: A form designed for use with small, unlisted actions.
-Both the full and short EAF are composed of the same three parts
-The lead agency can require that supplemental information be added to the EAF if that information is needed to decide significance.
-The EAF plus any such additional information, combined with the application materials submitted to the lead agency, should all be considered in identifying and evaluating potential project impacts
- The new (2013) EAFs come with Workbooks keyed to each question in the forms. You will regret not using them.

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Evaluate Part 1
Find and Use Additional Sources

- All project designs, studies, maps, applications or other documents available to date; resource and reference maps
- Published sources; soil surveys, traffic plans, or local histories; DOT/local highways; Parks, Recreation & Historic Preservation; DEC
- Local resources.

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-Part 1 asks the sponsor to provide three main classes of information: Site description, project description, and zoning and planning information.
-It is the responsibility of the applicant to provide accurate, complete and comprehensible information when completing Part 1. Project sponsors may need to support some responses by providing the lead agency with additional information
-The lead agency is responsible for reviewing the EAF, which includes verifying congruity between the project application and the information provided by the sponsor in Part 1 of the EAF. The lead agency should review all Part 1 responses, flag any problems, identify missing information, inform

the project sponsor, and request revisions

-Additional information may be provided voluntarily by the applicant or requested by the lead agency. The purpose of the additional information is to support and expand upon the subject matter identified in the EAF and to ultimately decide of Significance

-Part 1 should be checked against any resources that you have at your disposal, including internet resources like the NYS Office of Parks, Recreation and Historic Preservation's web-based Geographic Information System (GIS), County GIS web sites, and DEC's Environmental Resource Mapper [see


<http://www.dec.ny.gov/animals/38801.html>]

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Part 2: Impacts?

- Land, water, and air; plants and animals
- Agricultural land
- Aesthetics, historic, Open space and recreation
- Transportation, energy, noise and odor
- Growth and community character, Critical Environmental Areas

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Part 2: How Big an Effect?

- Identify potential impacts of action and their size.
 - "Yes" if any impact possible.
 - "Maybe" should be treated as "Yes".
- Compare elements of proposed action to examples and thresholds.
 - Size only: small to no
 - Moderate to large impact but will not always = significant impact.

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-Based upon the information in Part 1, the application, and any relevant additional sources, the lead agency must first identify potential adverse impacts, and then estimate their likely size and extent

-Remember that at this stage, the lead agency is being asked only to identify likely impacts and generally estimate their probable magnitude. The assessment of importance will be done in Part 3

-A moderate to large impact will not always be a significant impact.

"Large" relates to spatial extent and should not be literally equated to meaning significant. That said, however, moderate to larger potential impacts will generally warrant a more in-depth assessment of significance factors

-Where a project design includes mitigating measures for one or more potential impacts, the lead agency should consider those measures in evaluating likelihood of occurrence and magnitude of potential impacts


-For example, where a competent stormwater management plan is included in the project design, the lead agency may reasonably conclude that the probability of large erosion impacts has been minimized

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Part 3: Assessing Impacts

- Lead Agency must complete Part 3 if one or more potentially moderate to large impacts are identified in Part 2.
- Describe impacts identified in Part 2;
 - Include design features which avoid or reduce potential impacts.

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Assessing Impacts (2)

- Decide if any of the impacts identified as "potentially moderate to large" are important:
- Consider probability, duration, reversibility?
- Broader effects?

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- The Part 3 is essentially the organizational tool which will help the lead agency articulate its Determination of Significance, that is, the decision whether or not to require an EIS

-Significance is weighed using two key elements:

Magnitude: relates to more quantitative factors such as size, extent, or severity of a potential impact

Importance: relates to the valuation of those impacts, and should be based on factors including the likelihood of the impact occurring, probable duration of impacts,

the nature and quality of the resources likely to be affected, the potential for the action

to affect resources beyond the project site, and the consistency of the proposal with any

existing local or regional land use plans and implementing ordinances


-The lead agency should assess any mitigating measures already incorporated into the project design, including their probable effectiveness

-The SEQR regulations require that Part 3 be completed if one or more potentially moderate to large impacts were identified during the Part 2 impact identification step;
 -In completing Part 3, the lead agency should describe all potential impacts, being as specific as possible given the level of information available at this stage of assessment. The lead agency must include its assessments of all anticipated adverse impacts, including a description that links specific project elements with the identified potential adverse impacts.


Slide 25

The "Hard Look Test"

- Review the "Whole Action"
- Identify all relevant impacts
- Analyze / Take a "Hard Look" *
- Provide "reasoned elaboration" explain why impact may, or will not be, significant



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- One of the first cases concerning SEQR led to a standard for review that is now echoed in the SEQR regulations:
 The lead agency must demonstrate that it has examined all phases, aspects, components or elements of a proposed action or program, even when some of those elements are separated by time or distance, to satisfy the requirement to assess the **"whole action"**;
 The lead agency must identify **ALL** relevant areas of environmental concern, regardless of whether those areas or resources are within the immediate jurisdiction of the lead agency;
 The lead agency must systematically assess, or **"take a hard look"**, at every potential impact; and
 The lead agency must articulate, in writing, not only its conclusions as to the significance of possible

impacts, but also the process by which it reached those conclusions, that is, make a "**reasoned elaboration**"

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Determination of Significance

Positive Declarations

- Lead agency determines that the action has the potential to cause at least one potentially significant adverse environmental impact.
- "Low threshold" for requiring an environmental impact statement.

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-A Positive Declaration occurs where the lead agency decides that an action may result in one or more significant environmental impacts and so will require the preparation of an EIS to explore means to avoid or minimize likely impacts. EIS preparation and review must be completed before any involved agency issues a final decision regarding the action. The Positive Declaration starts the EIS process


-Courts have used the "low threshold" concept to reinforce the need to prepare an EIS even if only one potentially significant adverse impact has been identified

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Deciding Significance
Negative Declarations

- Lead agency must conclude that project will have no potentially significant adverse environmental impacts, because: no likely impacts were identified; or no identified impacts are significant; or identified significant impacts are avoided by design of the project.
- Requirement for "reasoned elaboration."

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-A Negative Declaration is a determination by the lead agency that an action will not result in any significant adverse environmental impacts, and so no EIS is necessary

-For a negative declaration issued by a lead agency to satisfy the "hard look" test, the lead agency must demonstrate that the project design will ensure that the potential adverse impacts will not be significant.

-A Negative Declaration must contain:

A statement that it is a Negative Declaration for purposes of Article 8 of the Environmental Conservation Law

The name and address of the lead agency

The name, address and telephone number of a contact person representing the lead agency who can provide further information

The SEQR classification for the action

A brief and precise description of the nature, extent and location of the action

A brief statement of the reasoning that supports the determination

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After the Determination of Significance; negative declaration

Planning, design or review continue using underlying jurisdiction (e.g., site plan review).

Agency may issue final decision after negative declaration.

After a negative declaration, SEQR has been completed.

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-A negative declaration means that the lead agency has concluded its SEQR review. Following issuance of the negative declaration, the lead agency, and all involved agencies, will resume review of the proposed action based on their underlying jurisdictions. No further SEQR review or process are required

-A positive declaration means that the SEQR review must continue with preparation of a draft EIS. The lead agency must use scoping to ensure that issues of relevance will be discussed in the EIS. Scoping allows public and other agency input as to the necessary contents of the EIS. After a positive declaration, SEQR will not be concluded until the lead agency accepts the Final EIS and each involved agency issues its own findings (with one exception)

-A lead agency may re-examine a negative declaration at any time before its decision to approve, fund, or directly undertake an action, if it determines that a significant environmental impact may result from project modifications; from a change in circumstances other than those which were previously addressed; or based on relevant new information which was not previously available. The project sponsor and all involved agencies must be notified when a lead agency intends to reconsider a prior negative declaration

-The lead agency may amend or rescind the original negative declaration to address the changes. If the Negative declaration is rescinded, the lead


agency must require preparation of an EIS by issuing a positive declaration.

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**After Deciding Significance;
positive declaration**

After a positive declaration, SEQRA review continues.
Next step is defining content of the EIS called scoping.
Integrates with underlying jurisdiction when draft EIS is accepted.
Leads to findings in support of decision.

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Scoping the Draft EIS

- Focus on significant issues
- Identify necessary information
- Identify alternatives or mitigation to minimize impacts
- Enable other agency and public input

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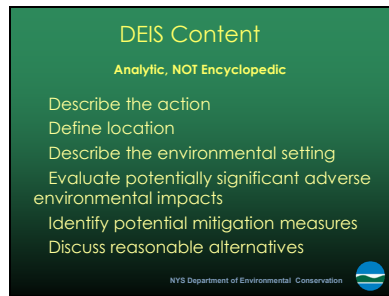


-Scoping allows for public comment on the proposed topics to be covered by the EIS and may additionally allow the lead and involved agencies to reach consensus on studies or methods to be used. Scoping creates a formal outline for the draft EIS

-The purpose of scoping is to focus the EIS on the most relevant issues and potential impacts, including means to avoid or minimize those impacts; the lead agency may thereby ensure that the draft EIS will be a concise, accurate and complete document adequate for public review

- Scoping is mandatory (since January 1, 2019) and may be initiated by the applicant
- There must be an opportunity for public participation in the EIS development process. No specific outreach or participation method is specified, so the lead agency has considerable flexibility in developing a participation method appropriate for the nature and location of the project.
- The lead agency is ultimately responsible for determining which issues and concerns are relevant, substantive potential impacts which should be included in the final written scope. The final scope becomes the standard which sponsor, lead agency and involved or interested entities should use in determining adequacy of a submitted EIS
- The regulations allow 60 days for the completion of scoping [see 617.8(f)], however, it is common practice for lead agencies and sponsors to negotiate extensions. Note that the 60-day period is the only deadline in SEQR, which if missed, is consequential.

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-In developing or reviewing a draft EIS, remember that the fundamental purpose of the draft EIS is to identify alternatives or mitigation measures to avoid or minimize some or all of the potential adverse environmental impacts

-To support the analysis of alternatives and mitigation, the draft EIS must:

- Identify the significant environmental conditions and resources which

 - may be affected by the project;

 - Assess relevant environmental impacts of the project, or any of its components, on those environmental conditions and resources; and

 - Eliminate or de-emphasize irrelevant or insignificant impacts or issues

-Reasonable alternatives for avoiding specific impacts, and further possible measures for mitigating additional potential impacts, must be discussed in the context of the specific impacts to which they are addressed

-Discussions of location, setting and other background information, need only provide enough detail to support the impacts, alternatives and mitigation analyses


-Extensive data sets, if relevant, should be summarized in the main body of the draft EIS, with the full sets included as appendices.

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Public Comment on DEIS
Required Element of SEQR

- Minimum is 30 day public comment period after filing notice of completion of the DEIS
- Hearing is optional under SEQR:
- May run concurrently with any other required hearing on the same project.
- Factors in whether to hold hearing (617.9[a][4]).

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-The lead agency must prepare, file and publish a “notice of completion” of the draft EIS. The notice of completion must contain a statement that the document completed is a draft EIS and must state where the copies can be found. A copy must also be made available on a publicly accessible web site

-The notice of completion must be filed with all required agencies and individuals as listed in 617.12, and notice of completion must be published in the Environmental Notice Bulletin (ENB)

-SEQR does not require a public hearing but allows the lead agency to decide whether to include a public hearing as part of the public comment period

-The decision to hold a public hearing should be based upon:

The degree of interest shown by the public or involved agencies

Whether substantive or significant adverse environmental effects have

been identified

The adequacy of mitigation measures and alternatives proposed

The extent to which a public hearing can aid the agency decision-making processes

-When a public hearing is required by the lead agency’s underlying jurisdiction, SEQR encourages consolidation so that one hearing may serve for both SEQR and the underlying jurisdiction. Where a consolidated hearing is held, the notice period and comment period after hearing must be long enough

to meet SEQR and other statutory rules.

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FEIS: Lead Agency Product

Lead Agency Responsible for Accuracy and Adequacy

- DEIS and any revisions all comments received
- Lead agency responses to all substantive comments
- Update cover page to show final acceptance date

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-The final EIS will be prepared following conclusion of the public comment period on the draft EIS.

The final EIS consists of:

The draft EIS, including any revisions or supplements;

Copies of, or summary of, all comments received; and

The lead agency's response to all substantive comments

-The lead agency decides which comments on a draft EIS must be responded to. Substantive comments are those which relate to impacts, mitigation and alternatives, and the final EIS must contain the lead agency's responses to them. The lead agency does not need to respond to comments that only express support of, or opposition to, a proposed project, although those comments must be included in the final EIS

-The lead agency is responsible for the adequacy and accuracy of all responses in the final EIS, even when the project sponsor has drafted some, or all, of those responses

-When a lead agency has received a large number of comments on a draft EIS, it is acceptable to summarize the contents in the body of the final EIS as long as all comments are included as an appendix. Also, where multiple comments raise essentially the same issue, the lead agency may reply to all in a single response

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FEIS Preparation

- For projects where lead agency is reviewing an application, FEIS should be completed within 45 days after a public hearing;
- OR within 60 days after the DEIS Notice of Completion if there is no public hearing.

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-In practice, the period to prepare the final EIS must often be extended, which should have the consent of the applicant
-As with the draft EIS, when the final EIS is completed, a notice of completion must be prepared, filed and published.

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FEIS Preparation (2)

- Lead agency must file Notice of Completion of FEIS.
- Starts a 10-day "consideration" period.
- All involved agencies must wait for end of 10 days to make findings and decisions.

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-Under the SEQR regulations, there is no public comment period and no hearing required on the final EIS
-Following issuance of the final EIS, all involved agencies must wait at least 10 days before each involved agency makes its Findings and final decision on the action.

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Using the FEIS

- Following acceptance of FEIS, lead and each involved agencies make findings.
- "Findings" are rationale for each agency's decision, within its specific jurisdiction(s). Findings are reasoned conclusions using information from the FEIS.

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-After the final EIS is accepted, each involved agency must explain how the information revealed in the final EIS affects its final decision within its underlying jurisdiction, specifically explaining how that final decision, including any conditions, avoids or minimizes impacts. If the agency concludes that some impacts will not be fully avoided or mitigated, the agency must explain how it balanced those unmitigated adverse environmental impacts against economic, social, or public needs. It can deny an action if it is unable to favorably balance un-avoided and un-mitigated impacts against social, economic and other essential considerations.

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Findings

- Each agency must certify that selected alternative, or mitigation measures, avoids or minimizes adverse environmental impacts "to the maximum extent practicable"
- FEIS is part of record and agencies must link information in FEIS to limitations or conditions to be included in agency decision

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-SEQR Findings are the articulation of the agencies' balancing and final decisions. Each involved agency must make its own "findings"

-Each agency's SEQR findings must specifically:

- Cite information from the final EIS on which it relied;
- Explain its balancing of environmental with other factors;
- Provide its rationale for its final decisions;
- Certify that all SEQR's rules have been followed; and finally,
- Certify that the alternative chosen, including any conditions attached to an approval, avoids or minimizes adverse environmental impacts to the maximum extent practicable, and incorporates practicable mitigation

measures
-“Practicable” will be a judgment made by each involved agency, and
will be affected by the design and context of an individual project

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GEIS

- May be used to assess the impacts of an entire program having wide application or restricting the range of future alternative policies...
- When an agency is considering a new, or substantially revised ... policy, that will affect a wide range of resources or geographic areas, ...

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Prime example is comprehensive plans. See the SEQR Handbook (on the web) for the discussion.

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More on GEISs

- Generic EISs may be based on conceptual information.
- They may discuss in general terms the constraints and consequences of any narrowing of future options.
- They may present and analyze a few hypothetical scenarios that could and are likely to occur.


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Why and examples?

- A GEIS may reduce the need for individual EISs or negative declarations.
- Examples
 - Discussion

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Overview of Amendments

- Type I List
- Type II List
- EIS Scoping
- EIS Preparation
- Document Preparation
- SEQR Fees

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Type I List

- Added a threshold for parking spaces in smaller communities:
- 500 or more vehicles – pop. of 150,000 or less
- 1,000 or more vehicles – pop. of 150,001 or more

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500 vehicles equate to the number of parking spaces attributable to a 100,000 square foot big box store.

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25% Threshold. On the existing Type I list, under 6 NYCRR § 617.4 (b) (9) any Unlisted action, regardless of size, that occurs wholly or partially within or substantially contiguous to a historic resource is automatically elevated to a Type I action.

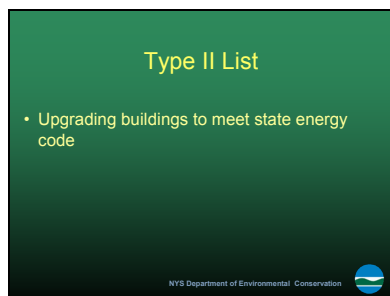
This sometimes results in very minor actions being elevated to Type I and thereby requiring the use of the full EAF.

Other resource-based Type I items in SEQR, such as those addressing agriculture and parkland or open space, currently exist as Type I thresholds that are defined by exceeding 25% of other actions in the Type I category.

This proposed revision will bring the treatment of actions proximal to historic resources in line with the other resource based Type I thresholds (i.e. agricultural districts and parkland).

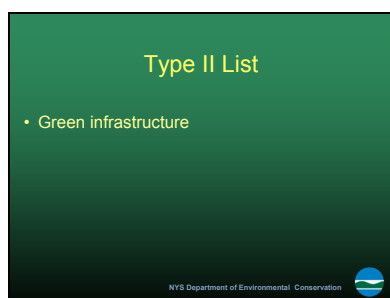
Eligible. Resource eligibility has not previously been a criterion for this Type I listing and is now being included in this revision to the Type I list to more closely reflect the way that the New York State Office of Parks, Recreation and Historic Preservation treats resource eligibility decisions under State and Federal Historic Preservation Law (National Historic Preservation Act Section 106), wherein listed and eligible properties are given equal treatment under the regulations. There are presently 36,971 eligible properties in NYS as opposed to 98,911 properties that are listed.

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Previously included fire and building codes, but not energy codes.

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New definition: “Green infrastructure’ means practices that manage storm water through infiltration, “evapo-transpiration” and reuse including only the following: the use of permeable pavement; bio-retention; green roofs and green walls; tree pits and urban forestry; storm water planters; rain gardens; vegetated swales; downspout disconnection; or storm water harvesting and reuse.” The definition is exhaustive and related solely to stormwater.

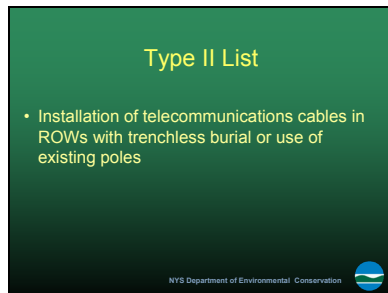
Green Infrastructure is a good way for municipalities to reduce the

amount of water that flows into their storm sewers and can have additional positive effects for building efficiency.

Installation of green roofs or other green infrastructure techniques can substantially improve energy efficiency, reduce generation of runoff and result in the improvement of water quality on a site-specific basis. Since this proposed Type II action will only allow retrofits to an existing structure it will result in minimal or no additional site disturbance or construction impacts – hence inclusion on the Type II list.

New Type II: “retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure;” 6 NYCRR 617.5 (c)(3).

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Plow-line methods is called out in the EIS, because it is not exactly trenchless (a small trench is made, the cable placed within it, and immediately backfilled). It is very common and has no significant impacts, so we included it.

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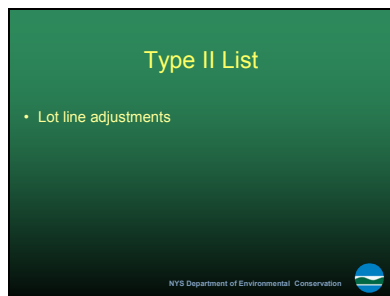
Previously construction of 1-3 family residence was Type II, and this is a matching item for the existing type II.

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For industrial areas, as well as wastewater treatment facilities, we added a caveat that the area must be currently disturbed. We wanted to avoid the potential that a greenfield might fall within this Type II category, as that was not intended.

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Verbatim language: (18) Reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part.

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Verbatim language: (39) An agency's acquisition and dedication of 25 acres or less of land for parkland, or dedication of land for parkland that was previously acquired (no acreage limitation), or acquisition of a conservation easement (no acreage limitation).

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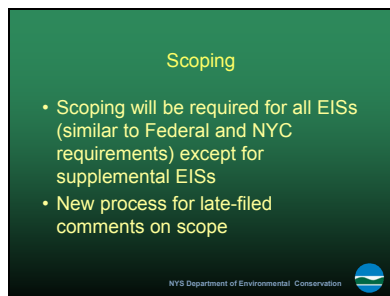


Verbatim language: (40) Sale and conveyance of real property by public auction pursuant to article 11 of the Real Property Tax Law.

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Eliminated DEIS "in lieu of" EAF option.

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EIS Preparation

- Clarify procedures to define when a DEIS is adequate for public review
- Addition of requirement, where relevant, to evaluate measures to avoid or reduce an actions impact on climate change and associated impacts of flooding and sea level rise.

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Actual language: 617.9 (a)(2) - “A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope, sections 617.8 (g) and 617.9 (b) of this Part, and provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures. Climate change, formal memorialization of what competent practitioners are already doing. “

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Document Preparation and SEQR Fees

- Draft and final scopes must be noticed in the ENB
- Draft and final scopes, as well as draft, final and supplemental EISs must be posted on a publicly available website

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The ENB is electronic and free but requires a week’s notice to DEC prior to publication.