

SEQR - State Environmental Quality Review

EIS - Environmental Impact Study

NY State Park "Landscape Improvements" plan expanding parking lots, food service and bulldozing and fencing off Three Sisters Islands - git 'er done. New Maid of the Mist drydock obliterating a National Landmark site - no problem. New State Police barracks on the Niagara Gorge - a snap. All of the above with massive environmental impacts were exempted from SEQRA overview by our "decisive" governor. So get with the program, Buffalo, you're holding up [Andrew Cuomo's](#) next multi-million dollar bid rigging scheme

New York State believes

SEQR: No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. . A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. An involved agency may not issue its findings and decision on an action if it knows any other involved agency has determined that the action may have a significant adverse impact on the environment, until a final EIS has been filed.

SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies. SEQR provides all involved agencies with the authority, following the filing of a final EIS and written findings statement, or pursuant to section 617.7(d) of this Part to impose substantive conditions upon an action to ensure that the requirements of this Part have been satisfied. The conditions imposed must be practicable and reasonably related to impacts identified in the EIS or the conditioned negative declaration.

The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQR process. Early consultations initiated by agencies can serve to narrow issues of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

- (4) Uncoordinated review for Unlisted actions involving more than one agency.
- (i) An agency conducting an uncoordinated review may proceed as if it were the only involved agency pursuant to subdivision (a) of this section unless and until it determines that an action may have a significant adverse impact on the environment.
 - (ii) If an agency determines that the action may have a significant adverse impact on the environment, it must then coordinate with other involved agencies.

(iii) At any time prior to its final decision an agency may have its negative declaration superseded by a positive declaration by any other involved agency.

(v) The commissioner will use the following criteria, in order of importance, to designate lead agency:

(a) whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (*i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency*);

(b) which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action; and

(c) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

c) Criteria for determining significance:

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- **the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;**
- **(vii) the creation of a hazard to human health;**
- **(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;**
- (3) The significance of a likely consequence (*i.e.*, whether it is material, substantial, large or important) should be assessed in connection with:
 - (i) its setting (*e.g.*, urban or rural);
 - (ii) its probability of occurrence;
 - (iii) its duration;
 - (iv) its irreversibility;
 - (v) its geographic scope;
 - (vi) its magnitude; and
 - (vii) the number of people affected.
- **(2) A lead agency must rescind the CND and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify:**
 - **(i) potentially significant** adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or
 - (ii) a substantial deficiency in the proposed mitigation measures.
- (3) The lead agency must require an EIS if requested by the applicant.

“It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic

considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.”

(l) **Environment** means 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.**

(t) *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. An “interested agency” has the same ability to participate in the review process as a member of the public

Positive declaration means a written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required. Positive declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decisionmaking processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may **have a significant impact on the environment,** and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(d) It was the intention of the Legislature that **the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy,** and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. **It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.**

SEQR Type I applies in this case:

- a project or action that involves the physical alteration of 10 acres;
- (9) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of

Historic Places (The National Register of Historic Places is established by 36 *Code of Federal Regulations* [CFR] parts 60 and 63, 1994 [see section 617.17 of this Part]);

For some issues raised by the proposed action, public comments on a DEIS should include technical reports comparable to the level of expertise reflected in the DEIS. Agencies need not (but may) credit lay comments when they have before them a sophisticated DEIS. **For other issues, such as the effects the action may have on the character of the neighborhood, lay comments are entirely appropriate. The same is true of environmental impacts such as impacts on local wildlife, drainage and water quality for which residents in the area may be as knowledgeable or more so than outside experts.**

Type I actions require the agency to complete a Full **Environmental Assessment Form** (EAF). A Short EAF may be completed for Unlisted actions. Part 617.6(a)(2) and (3). The answers to the questions on both EAFs are designed to determine whether an EIS should be required. Concerned citizens should therefore scrutinize closely how the agency answered those questions. This is an important point in the SEQR review procedure where you may learn how honest the agency is being, and whether it intends to really take a hard look at potential negative impacts of its proposed action. It is difficult to honestly complete the FEAF for a large project without answering some of its questions in a way that determines that an EIS must be required.

An EIS is a substantial study prepared *for* the agency, generally *by* the project sponsor. A draft EIS should address all potentially significant environmental impacts (defined broadly as above), alternatives to the proposed project that would avoid the most significant adverse impacts, and things that can be done to reduce or offset the most significant adverse impacts, called "mitigations." In fact, the most powerful outcome of the SEQR procedure is often to identify specific mitigations, because SEQRA authorizes the decision-making body to deny approval unless it is satisfied everything that can practically be done will be done to reduce or offset significant environmental impacts. These are often things a project sponsor hadn't planned on.