

The State Environmental Quality Review Act (SEQRA)



What is SEQRA?

- Article 8 of the NYS Environmental Conservation Law
- Carried out through Part 617 of the New York Codes of Rules and Regulations
- Became law on August 1, 1975



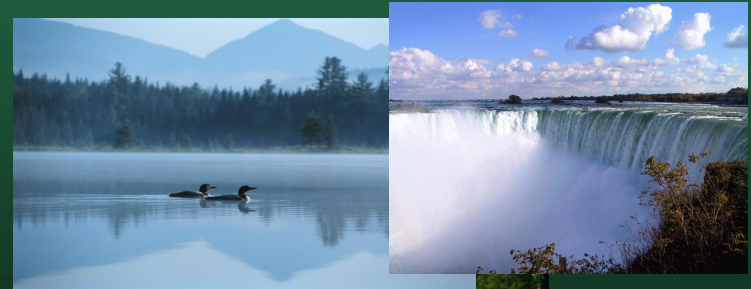
Purpose of SEQRA

- Incorporate consideration of “**environmental factors**” into an agency’s decision making process at the earliest possible time



“Environmental Factors”

- SEQRA Defines “Environment” Broadly
 - Land, Air, Water
 - Flora, Fauna
 - Noise,
 - Minerals, Historic, Archeological Features
 - Community Character
 - Agricultural Resources
 - Aesthetic Resources



What Does SEQRA Say?

- “No agency involved in an “action” may undertake, fund or approve the “action” until it has complied with the provisions of SEQRA”
- What is an “Agency” as defined here?
 - A public body- elected and appointed
 - Includes state departments, local boards, districts, governing bodies and public authorities



Specific Examples of Agencies

- County Legislatures
- Planning Boards
- Zoning Boards of Appeal
- School Boards
- Industrial Development Agencies
- City Councils
- Town Boards



What is an “Action?”

- Undertaking
- Funding or
- Approving a discretionary action or decision
- May include a combination of actions
- Examples:
 - A town constructing a new town hall (directly undertaking an action)
 - A state agency funding a local housing project (funding)
 - A planning board approving a subdivision



Non-Discretionary Actions

- Not subject to SEQRA
- No decision process involved
- Example: issuing a fishing license
- Issuing a building permit



How Do you “Start SEQRA?”

- Initiating agency or first agency to receive an application is responsible for initiating SEQRA
- That first agency must “**classify**” the action.
- First involved agency must also identify other state or local agencies who may have one or more jurisdictions over the project
 - for example:
 - Highway access
 - Natural resource-based permits
 - Local land use approvals



How Do You Classify an Action?

- Three types of Actions Under SEQRA
 - Type II
 - Type I
 - Unlisted



Type II

- Not subject to SEQRA
- List available in Part 617 to help determine if “action” is a Type II
- Classification as Type II concludes SEQRA
- Examples:
 - 1, 2 or 3-family homes on approved lots
 - Issuance of an area variance
 - Most maintenance or repair to buildings



Type I

- More likely to have adverse impacts on environment
- More likely to require an environmental impact statement (EIS)
- List available in 617 NYCRR
- Must continue with SEQRA process



Type I

- Examples of Type I Actions:
 - Purchase, sale or transfer of more than 100 acres by state or local agency
 - New zoning ordinance or comprehensive plan
 - In a municipality of 150,000 persons or less, a non-residential facility with more than 100,000 square feet of gross floor area



Unlisted Actions

- Not on Type 1 or Type 2 lists; fall below Type 1 threshold
- Require that SEQRA continue
- Largest category of actions subject to SEQRA
- Actions range from minor use variances to complex construction activities



Unlisted Actions

- Examples of Unlisted Actions:
 - Parking for less than 1000 cars
 - New non-residential use of 10 acres or less
 - In a municipality of less than 150,000, construction of less than 250 housing units to be connected to community sewer and water systems
 - In a municipality of less than 150,000, construction of a facility with less than 100,000 square feet



Type I Versus Unlisted Actions

- Type I Actions
 - Must “**coordinate**” with other involved agencies
 - Single review done for project
 - Must use the full/ long environmental assessment form (EAF)
- Unlisted Actions
 - Initiating agency chooses whether to coordinate; not required
 - Each agency can conduct its own SEQRA review
 - Agency may allow short EAF or require full/long EAF



Lead, Involved and Interested Agencies

- **Involved Agency** -public body which undertakes, funds or approves proposed action
- **Lead Agency** - involved agency which coordinates the SEQRA review
 - responsible for determining whether an environmental impact statement will be required.
- **Interested Agency** -public body not undertaking, funding or approving the proposed action
 - wishes to participate in the process because of its expertise or specific concerns
 - Sierra Club, Audubon, Conservation Advisory Council etc.



Uncoordinated Review

- Only permitted for Unlisted Actions
- Agency that receives application makes decision to coordinate or not coordinate
- Each agency then acts independently
- Each conducts a separate environmental review



Uncoordinated Review- Problems

- If one agency finds an environmental impact, all agencies must begin coordinating the review
 - Other uncoordinated environmental reviews are superseded
- Agencies often don't communicate well with uncoordinated reviews
- Lack of sharing of information and resources



Coordinated Review

- Required for all Type 1 Actions
- Also used for many Unlisted Actions
- Lead Agency responsible for conducting and coordinating SEQRA process



Coordinated Review

- Establish Lead Agency
 - Identify all potentially involved agencies
 - Advise them via mail-- lead agency must/will be established
 - Include Part I of Environmental Assessment Form (EAF)
 - Include supporting maps and other related materials
 - Must establish lead agency within 30 days
 - Chosen by consensus of all involved agencies



Lead Agency

- Involved agency with the most interest, involvement and concern about the proposed action
- Responsible for reviewing environmental assessment form (EAF)
- Responsible for determining if an environmental impact statement must be prepared
- Must determine significance within 20 days of being named “lead agency”



Environmental Assessment Form (EAF)

Key to SEQRA Review

- Three parts to EAF
 - Part 1
 - Site and Project Descriptions
 - Project Sponsor/Applicant Completes
 - Part 2
 - Potential Impacts and Magnitudes
 - Lead Agency Completes
 - Part 3 (may be optional)
 - Importance of Impacts Identified in Part 2
 - Lead Agency Completes, if necessary



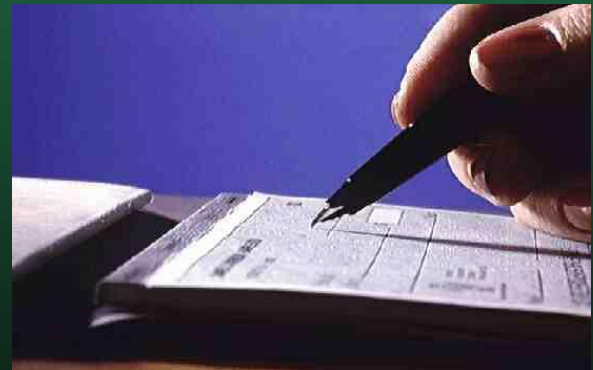
Environmental Assessment Form

- Two Types-Short and Full/Long Environmental Assessment Forms (EAF)
- **Type I Actions**- must complete full EAF
- **Unlisted Actions**- may use short form, but lead agency can require applicant to use full/long form
- Both have Parts 1, 2, and 3
- Lead agency can require supplemental information to EAF if needed to make determination of significance



Part I of EAF

- Applicant must provide accurate, complete information for Part 1
 - May need to provide supporting information to verify answers provided
- Lead agency responsible for reviewing EAF and verifying accuracy of info with materials submitted for project
 - Should flag any problem
 - Identify missing information
 - Request revisions if necessary



Part 2 of EAF-What's Affected?

- Lead Agency identifies what resources will be impacted (by category) by proposed action
- Categories: Land, Water, Air, Plant and Animals, Agricultural Land, Aesthetics, Historic and Archeological, Open Space and Recreation, Critical Environmental Areas, Transportation, Energy, Noise and Odor, Public Health, Growth and Community Character



Part 2 of EAF- How Big an Impact?

- Lead agency estimates size and extent of impacts per category
- “Yes” if any impact possible
- “Maybe” should be treated as “Yes”
- Compare elements of proposed action to examples and threshold given in EAF



Part 3 of EAF-Weighing Impacts

- Only completed if one or more **potentially large impacts** identified in Part 2
- Describe design features which avoid or reduce impacts
- Decide if impacts identified as large are important
 - Probability, duration, reversibility?
- Part 3 is a tool which helps lead agency articulate its environmental determination of significance
- Good idea to complete Part 3 even if only small to moderate impacts identified



Determination of Significance

- In writing by the Lead Agency
- Must identify all relevant impacts
- Must look at whole action-even those separated by time or distance (no segmentation)
- Must take a “hard look” at all potential impacts
- Must explain why impact may or will not be significant



Determination of Significance

- Must provide “Reasoned Elaboration”
 - Be explicit
 - Is potential impact likely, significant, or neither
 - Describe mitigation included in project plans
 - Name sources you rely on to reach conclusions
 - Explain how cited sources support your conclusions



Three Types of Determinations

- **Negative Declaration**
 - Action will have no significant adverse environmental impact
 - Ends SEQRA process
- **Positive Declaration**
 - Action has potential to cause or result in at least one significant adverse environmental impact
 - Environmental Impact Statement must be prepared



Three Types of Determinations

- **Conditioned Negative Declaration**
 - Only used with Unlisted Actions, not Type I Actions
 - A full EAF must have been prepared
 - A coordinated review must have been completed
 - Conditions are imposed that eliminate or reduce significant adverse impact(s) to a non-significant level



Negative Declaration-Details

- Lead agency must demonstrative that:
 - No likely impacts were identified
 - No identified impacts are significant or
 - Identified significant impacts were mitigated
- Written determination must include reasons behind conclusions



Positive Declaration-Details

- Courts have used “low threshold” concept for need to prepare an EIS
- Not one positive declaration has been rescinded by courts in over 27 years; many negative declarations have been struck down, though.
- Must note as to whether or not scoping will be conducted to solicit public and other agency input for the EIS.



Scoping the DEIS

- Not mandatory, but encouraged
- Creates a formal outline for DEIS
- Focuses on significant issues; eliminates non-significant issues
- Identifies necessary information
- Identifies alternatives
- Identifies mitigation measures
- Provides opportunity for other agency and public input or mitigation to minimize impacts



Scoping the DEIS

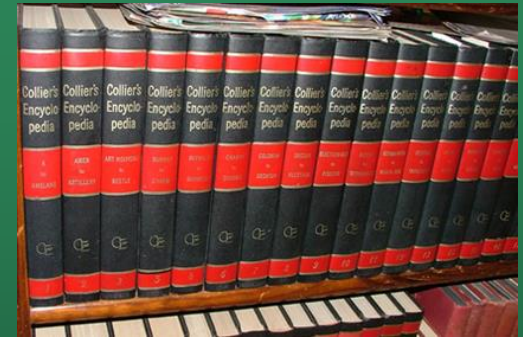
- If scoping is used, must be an opportunity for public participation
- Lead agency is ultimately responsible for determining issues to be included in the scope
- 60 days for completion of scoping
- Negotiation of extensions is common



DEIS Content

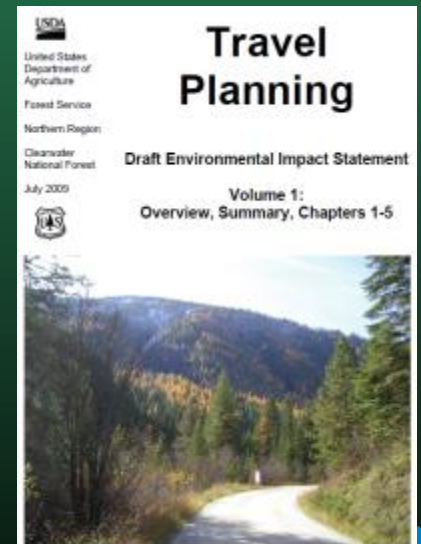
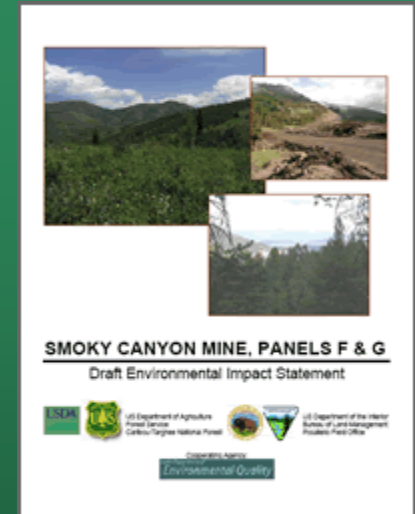
Analytic, not Encyclopedic

- Describe the Action
- Define the Location
- Describe the Setting
- Evaluate potential significant adverse impacts
- Identify potential mitigation measures
- Discuss reasonable alternatives
 - Must include the “no action” alternative



Preparing the DEIS

- DEIS usually prepared by applicant/sponsor and submitted to lead agency
- Lead agency must review to determine if DEIS is “adequate”
 - May be returned to sponsor/applicant for revision
 - Must provide specific written comments or suggested changes- give direction
- Lead agency has 45 days for review; 30 if resubmission
- All DEIS must be posted on the web and remain there until FEIS is accepted



Public Comment on DEIS

- Notice of Completion of DEIS
 - Must be on public web site, filed with all required agencies and published in Environmental Notice Bulletin
- Public Hearing is optional under SEQRA
 - Minimum of 14 days notice of hearing
 - Should run concurrently with other hearings required for the action



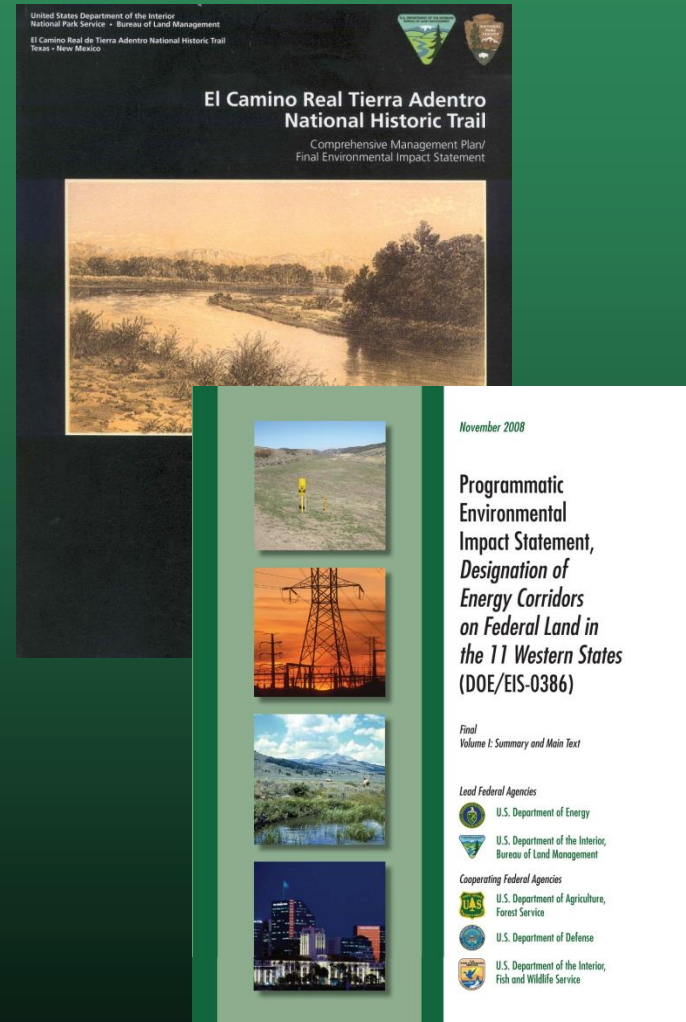
Public Comment on DEIS

- Hold Hearing if:
 - Substantial interest shown by the public or involved agencies
 - Significant adverse environmental effects have been identified
 - Concerns or questions regarding adequacy of mitigation measures and alternatives proposed
 - Public hearing can aid the agency decision making process



Final Environmental Impact Statement (FEIS)

- Prepared after close of comment period on DEIS
- Consists of :
 - Draft EIS, including revisions or supplements
 - Summary or copies of comments received
 - Lead agency's response to substantive comments
- Lead agency responsible for accuracy and adequacy of all responses in the FEIS, even though project sponsor may prepare such



Final Environmental Impact Statement (FEIS)

- Must be completed:
 - Within 45 days after a public hearing OR
 - Within 60 days after the DEIS “Notice of Completion” if no public hearing
- Lead agency must file “Notice of Completion” of FEIS
- All FEIS must be posted on the web and remain there for a year after all permits/approvals made
- Starts a 10 day “consideration” period
 - Not an additional round of public comment



Findings

- Made by lead and all involved agencies after FEIS is accepted
- Reasoned conclusion using information from the FEIS
- Serves as rational for each agency's decision on the FEIS
- Certifies proposed action is one that avoids or minimizes environmental impacts



After Findings

- SEQRA process concludes
- Underlying permits and approvals can be made
 - Funding released for project
 - Special permits or variances issued
 - Zoning amendment approved
 - Law passed by local municipality etc.



SEQRA Questions

Q: If a planning board is reviewing a subdivision and they need a 239 review from the county as well as the mandatory public hearing, when do they look at the EAF and make a determination?

- A. After the public hearing
- B. After the public hearing but before hearing back from the County on the 239 recommendation
- C. Before the public hearing and after hearing back from the County
- D. Before the public hearing and before hearing back from the County



Answer

C. Before the public hearing and after hearing back from the County

Why?

Application must be complete before you hold hearing. Gives the public the chance to comment on the entire application. Issuance of a Neg dec. or completed EIS are part of what makes an application complete. County 239 review must be done so public has a right to comment on it as well as the SEQRA neg dec or EIS.



Question

Does a municipal board have to consider environmental impacts occurring in an adjoining municipality when conducting a SEQRA review?

- A. Yes, all the time
- B. No, never
- C. Sometimes, depends on how far the project is from the adjoining community or if they are issuing any permits themselves
- D. None of the above



Answer

A. Yes, all the time

Why?

Environmental impacts don't stop at a political line separating municipalities.

Examples: A cell tower in one town that is visible in another town has an impact on that community. A town planning board reviewing a big box development should consider the impact of the development on the community character of a neighboring village that might suffer business displacement as a result of the approval of the big box development. a community reviewing a shopping plaza that generates traffic on an adjoining community's roadway system. In that case, the host community's review should consider the traffic on the adjoining community.



Question

Is a use variance that changes the allowable uses on 25 or more acres of land a Type I action?

- A. Yes
- B. No
- C. It depends on the situation

(Remember a legislative re-zoning of 25 or more acres is a Type I Action)



Answer

B. No

Why?

The Type I classification for actions that change the uses allowable on 25 acres or more of land **refers to legislative rezonings by either the city council, town board or the village board of trustees. BUT** the effect of a variance that changes the allowable uses of land on 25 or more acres of land may be the same as a legislative rezoning that affected the allowable uses on 25 or more acres of land. Therefore, a zoning board should request the long-form EAF and coordinating review with other involved agencies, if any. Treat the action as if it were a Type I action by your review of it.



SEQRA Tips

- Start SEQRA process early
- Establish good communication with all parties, including the public
- You can charge applicant for review of a DEIS
 - Charge should be in your schedule of fees
- SEQRA gives lead agencies authority to ask for more information from applicant
 - Full EAF, not short EAF
 - Correct information that's missing/wrong in Part I of EAF
 - Additional information if DEIS is incomplete



SEQRA Resources on the DEC Website

- General SEQRA Information
<http://www.dec.ny.gov/permits/357.html>
- Stepping Through SEQRA- Sequential Information on SEQRA
<http://www.dec.ny.gov/permits/6189.html>
- SEQRA Handbook (Updated)
<http://www.dec.ny.gov/permits/6188.html>
- SEQRA Forms - <http://www.dec.ny.gov/permits/6191.html>
- Other SEQRA Publications
<http://www.dec.ny.gov/permits/26860.html>
- Draft Model Short and Full Environmental Assessment Forms-proposed <http://www.dec.ny.gov/permits/70393.html>



For More Information

- NYS Department of Environmental Conservation,
Division of Environmental Permits
625 Broadway, Albany, NY 12233
518-402-9167
<http://www.dec.ny.gov/permits/357.html>
- NYS Department of State
Division of Local Gov't
One Commerce Plaza
99 Washington Ave
Suite 1015
Albany, NY 12231
518-473-3355
518-474-6740 (Legal)
<http://www.dos.state.ny.us/lgss/index.htm>



For More Information

- NYS DEC, Region 7 Offices

615 Erie Blvd. W

Syracuse, NY 13204

315-426-7403 Public Outreach & Education

315-426- 7438 Environmental Permits

<http://www.dec.ny.gov/about/615.html>

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