

APPENDIX 5 – SEQR GUIDE

I. Introduction

This Appendix is intended for use only as a limited guide to the Review Board and the Board of Appeals as to their respective responsibilities in regard to the "State Environmental Quality Review Regulations" {6NYCRR PART 617}. The Boards in their review of Applications should refer to "The SEQR Handbook" and the " SEQR Cookbook" (Appendix 6) both of which are published by the New York State Department of Environmental Conservation.

II. Applicability

A. Local government decisions which are subject to SEQR:

1. Adoption of Zoning Ordinances
2. Zoning changes
3. Conditional Use Approvals
4. Subdivision Approvals

B. The SEQR process should be integrated with other project review procedures. SEQR should be handled as expeditiously as possible by combining public review periods and hearings with other required reviews. The following principles, based on rules of reason and supported by numerous court decisions, should be applied when integrating SEQR with other established local Land Use and Development review procedures:

1. Look at the entire action
2. Coordinate review with all other involved agencies
3. Initiate review processes as early as possible and before any commitments are made / determined regarding the project/use
4. Interrupt timeframes for other mandatory review procedures when necessary in order to complete the SEQR process
5. Integrate those aspects of other review procedures which are common with SEQR so that all may be carried out as expeditiously as possible

III. Type I Projects

The following example of actions is to identify, for the Boards, project sponsors, and the Public those actions and projects that are more likely to require the preparation of an EIS.

The following are examples of actions that require the preparation of an EIS:

- A. Construction of new residential units that meet or exceed the following thresholds:
 - 1. 50 units not to be connected [at the commencement of habitation] to existing public water and sewerage systems
 - 2. 250 units to be connected [at the commencement of habitation] to existing public water and sewerage systems.
- B. Activities, other than the construction of residential facilities, that meet or exceed the following thresholds:
 - 1. A project or action that involves the physical alteration of 10 acres
 - 2. A facility with more than 100,000 gross feet of floor area

IV. Type II Projects

The following examples of actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, Article 8.

The following are not subject to environmental review:

- A. Maintenance or repair involving no substantial changes in an existing structure or facility;
- B. Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes {unless such actions exceeds the thresholds in Section 617.4 of the SEQRLaw}.
- C. Agricultural, farm management practices, including construction, maintenance and repair of farm buildings and structures and land use changes consistent with generally accepted principals of farming.
- D. Maintenance of existing landscaping or natural growth. Construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in Zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities.
- E. Construction or expansion of a 1, 2 or 3 family residence on an approved lot including provision of necessary utility connections and the installation, maintenance and/or upgrade of a drinking water well and a septic system.
- F. Construction, expansion or placement of minor carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density.
- G. Granting of individual setback and lot line variances.
- H. Granting of an area variance[s] for a 1, 2 or 3 family residence.

- I. Minor temporary uses of land having negligible or no permanent impact on the environment .
- J. Official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or non-compliance with the relevant local building code.
- H. Interpreting an existing code, rule or regulation.

V. SEQR and the Review Process

A. Application

SEQR applies to subdivision and site plan/conditional use review. Discretionary approvals of land subdivisions are subject to review under SEQR. Site Plan/Conditional Use approvals are also subject to review via SEQR.

- 1. SEQR does not apply to the Sketch Plan review process. However, the reviewing board at the Sketch Plan stage should preliminarily classify the action, provide the Applicant with an EAF (Environmental Assessment Form) and identify other involved agencies.
- 2. The reviewing board should also alert the Applicant to any potential environmental concerns including site limitations.
- 3. The reviewing board does not, at the Sketch Ptan Phase, make decisions in regard to Lead Agency status or make determinations of significance.

B. SEQR Incorporation into the Subdivision Review Process

- 1. Subdivision Preliminary Plat Phase - An essential part of the Application is a completed Part I of an EAF. Based on the information in the Application and the EAF the reviewing board must make a decision if coordinated review is required and must further:
 - a. Establish Lead Agency status.
 - b. Make a determination of "significance".
 - c. Items 2 and 3 of Section A above are to be addresses before a decision is made regarding the completeness of the Application.
- 2. The determination of 'complete application' is a critical decision that results in the start of the Subdivision approval time clock.
 - a. If the reviewing board determines that the subdivision will not have a significant environmental impact, a negative declaration is issued and SEQR compliance {process} is complete.
 - b. If all other parts of the Application are complete/adequate, the reviewing board can determine the Application complete and proceed with its decision on the preliminary plat.
 - c. If the reviewing board determines that the development may have a significant environmental impact, a 'positive declaration' is issued and the preliminary plat

application may not be deemed, complete until the reviewing board, acting as the lead agency has accepted a draft EIS {Environmental Impact Statement}.

3. Subdivision Final Plat Review

- a. If the preliminary plat approval is based on a negative declaration or a final EIS, there is no further SEQR review required for the final plat decision.
- b. If a draft EIS is used for preliminary approval, a final EIS must be prepared before the final plat is approved and findings made.

C. SEQR Integration with Site Plan Review.

1. Site Plan procedures are similar to the one-step subdivision review procedure. However, informal preliminary review may also be used. The same three initial SEQR steps should also be used with Site Plans as detailed above.
2. No final approval of a Site Plan approval may be given until either a Negative Declaration or a Final EIS and findings are made.
3. The Site Plan review should cover all environmental issues under SEQR, which are applicable to the application under review.

D. Compliance

Compliance with the SEQR process is one element of subdivision or site plan application completeness.

1. If the reviewing board, acting as the Lead Agency determines that the subdivision or site plan development will not result in a significant environmental impact, a Negative Declaration is prepared and SEQR compliance is complete. If all of the other components of a subdivision plat or site plan application are acceptable, the reviewing board can then determine the application is complete and make decisions on the preliminary and final plats and/or site plan without further SEQR activity. This applies to both to approval of preliminary and final plats and plans.
 2. If the reviewing board, acting as the Lead Agency, determines that the development of the subdivision and /or the site plan may have a significant impact on the environment, the plat /site plan application is not complete until a Draft EIS has been accepted.
 3. The reviewing board integrates SEQR and the time frames for subdivision and site plan review.
- E. SEQR regulations do not require hearings; hearings are optional. If an EIS is prepared for the applications under review, a combined Public Hearing on both the Application and the EIS may be held. SEQR guidelines recommend that separate hearings for the Application and the EIS should be avoided if at all possible.
- F. In the event that another agency is the Lead Agency, the reviewing board may not make a decision to approve the subdivision plat or the site plan application until either a negative declaration has been made or a final EIS has been accepted by the Lead Agency.

- G. Any modifications to the preliminary plat and/or site plan require that a new determination of environmental significance be made by the reviewing board. Should significant environmental impacts be determined by the Review Board, a supplemental EIS will be required and additional findings will be determined by that Board

If no supplemental EIS is required, a supplemental findings statement is prepared which sets forth the basis for the conclusion that no significant adverse impacts will occur.

VI. SEQR, Zoning, and Zoning Variances

- A. Local government decisions to adopt Zoning Ordinances, to create new Zones or to modify the allowable uses or configurations of existing zoning are subject to review under SEQR.
- B. Actions to grant variances are subject to review under SEQR.
- C. Actions to create Planned Development Districts are subject to review under SEQR.
- D. Interpretations by local officials are not subject to review under SEQR.
- E. Zoning related decisions for lot line and set back variances are predetermined never to have significant environmental impacts and once identified, require no further application of SEQR.
- F. Interpretations of the Zoning Ordinance and review of decisions of the Enforcement Officer are not decisions subject to SEQR due to the fact that these actions are "legal functions" and do not result in a decision to approve an action and are Type II actions which are "administrative"
- G. Use Variance requests: The standards for granting Use Variances require an applicant to show that [1] applications of the Zoning Regulations would deprive the applicant of all economic use or benefit from the property; [2] the alleged hardship is unique to that property; [3] that the variance, if granted, will not alter the essential character of the neighborhood; [4] that the alleged hardship is not self-created. Should the Board of Appeals find that the tests 1, 2 and 4 are met, it must apply SEQR before applying test 3, determining what constitutes the minimum necessary variance and determining what conditions should be applied.
- H. Area Variances for individual {single} lots are similar in nature and effect to setback and lot line variances and may reasonably be interpreted as being Type II. For other Area Variances, SEQR should be applied before making a decision whether to approve the variance; the minimum necessary variance, and what conditions should be applied.

VII. Concept of Reasonableness

The range of decision making and the comprehensive nature of SEQR continually present new circumstances that require judgment to implement SEQR. SEQR asks the lead agency to decide how many alternatives should be reviewed; how much information is enough; and is the proposed action really "significant"? While there cannot be black and white formula answers to such matters, there is one basic principal/rule that can be used -the **rule of reason**.

- A. The regulations provide support for basing judgments on how to manage the SEQR process choosing the reasonable approach. Starting with the determination of significance, the regulations ask the lead agency to identify and address relevant areas of environmental concern. If a potential impact is too speculative, it should not be addressed. The responsibility is to deal with impacts that are reasonably foreseeable.
- B. The full Environmental Assessment form [FEAF] also recognizes the reasonableness principal: In the Purpose statement at the beginning of the full EAF the instructions recognize that ...frequently there are aspects of a project that are subjective and unmeasurable ...yet those who determine significance may have no formal knowledge of the environment ...Given these practical limitations, SEQR asks that these decision makers identify and consider the relevant potential impacts of an action. The Part I {Project Information} instructions to the project sponsor state that it is expected that ...completion of the EAF will be dependent on information currently available and will not involve new studies, research or investigation.

However, if an impact is judged relevant and significant, a subsequent EIS may require new studies, research or investigation.

- C. The initial instruction to the lead agency in Part 2 {Analysis} of the Full EAF states that: In completing the form the reviewer should be guided by the question "have my responses and determinations been reasonable? The reviewer is not expected to be an environmental analyst. In the instructions for Part III {Evaluation} of the Full EAF, the preparer decides "if it is reasonable to conclude that this impact is important". Following that instruction, a series of questions tests the reasonableness of the decision.
- D. In the scoping procedures, the regulations speak about reasonableness in several ways. "Failure of an involved agency to participate in the scoping process will not delay completion of the written scope of issues". Non-relevant issues may reasonably be removed from further consideration. Scoping should also identify the reasonable alternative to the proposed action.
- E. When the lead agency receives a draft EIS from the project sponsor, its responsibility is to determine whether the document is adequate for public review, in terms of its scope and content. There are reasonable expectations. The regulations do not demand that the draft EIS be perfect, that would be an unreasonable expectation.
- F. In the criteria for determining significance when addressing potentially relevant long-term, short-term and cumulative effects, the lead agency is directed to consider those that are "reasonably related". The criteria also include the following reasonable qualifiers to the indicators of significance:
 - 1. A substantial adverse change
 - 2. Substantial increase or decrease
 - 3. Removal or destruction of large quantities
 - 4. Large number of people
 - 5. Material conflict
 - 6. Impairment of character or quality
 - 7. A major change
 - 8. Creation of a hazard
 - 9. Creation of a material demand
- G. The regulations require that the draft EIS address the range of reasonable alternatives to the action which are ...feasible, considering the objectives and capabilities of the project sponsor. For private applicants it may be limited to parcels owned by, or under option to, a private applicant. To demand otherwise would place an unreasonable burden on most applicants to the control of sites which they do not otherwise have option or ownership.

- H. For supplemental EIS's, the regulations limit further analysis to issues either not addressed or inadequately addressed in the EIS, and only those dealing with significant adverse impacts. To make it easy to supplement or to allow supplements to revisit all issues would be unreasonable.
- I. In preparing its SEQR findings each involved agency must apply the following tests:
 - 1. It must consider the reasonable alternatives and choose one that minimizes or avoids adverse environmental effects to the maximum extent practicable.
 - 2. The findings must incorporate conditions requiring practicable mitigation measures to ensure that the adverse environmental effects of the least damaging alternative will be minimized or avoided.
- J. The principal of reasonableness is supported by the decisions of the courts. In addressing the review of impacts the courts have limited the consideration of impacts to reasonably related potential impacts. The court decisions have also stated that not every conceivable impact needs to be considered; speculative impacts may be ignored.

VII. SEQR Reference Guides

The Review Board and the Board of Appeals should refer to the following publications:

- A. "The SEQR HANDBOOK" published by NYS Department of Environmental Conservation
- B. "The SEQR COOKBOOK: A STEP-BY-STEP DISCUSSION OF THE BASIC SEQR PROCESS" published by the NYS Department of Environmental Conservation and Appendix 6 of these Regulations