



# Warren County EDC Southern Adirondack Planning & Zoning Forum

Advanced SEQRA

October 6, 2016



# Session Agenda

- Introductions
- SEQRA –  
    Why  
    How  
    When
- Test Your Knowledge

# Presenter - Chuck Voss, AICP

- Senior Land Use Planner – Barton & Loguidice
- 24 Years Experience in Land Use & Environmental Planning
  - ❖ 7 Years in Municipal Planning
  - ❖ 17 Years in Professional Planning Consulting
- Master's Degree in Urban & Environmental Planning
- American Institute of Certified Planners (AICP) certification since 2000.
- New York Planning Federation – Board of Directors Member
- Planning Board Chairman – Town of New Scotland, NY



# Pressures on the Boards

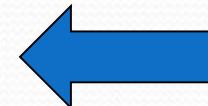
Residents –

- Stop this or I'll move!
- Not in my backyard!
- I'll sue the Village!



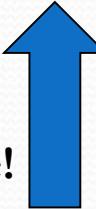
Developers –

- I need it now!
- I can't compete unless!
- It is costing me \$!
- I'll revert to the 'worst case' option!



Elected Officials –

- Build the tax base!
- Efficient & cost-effective delivery of services!



# **What is SEQRA and why was it created?**

# State Environmental Quality Review Act

## The SEQRA Regulation

- Established by act of the NYS Legislature on November 1<sup>st</sup>, 1978
- Found in 6 NYCRR PART 617 of the Environmental Conservation Law
- Intent that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.
- Purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time.
- NYS is one of only 16 States with more broadly applicable, comprehensive environmental review laws.

# State Environmental Quality Review Act

## The SEQRA Regulation

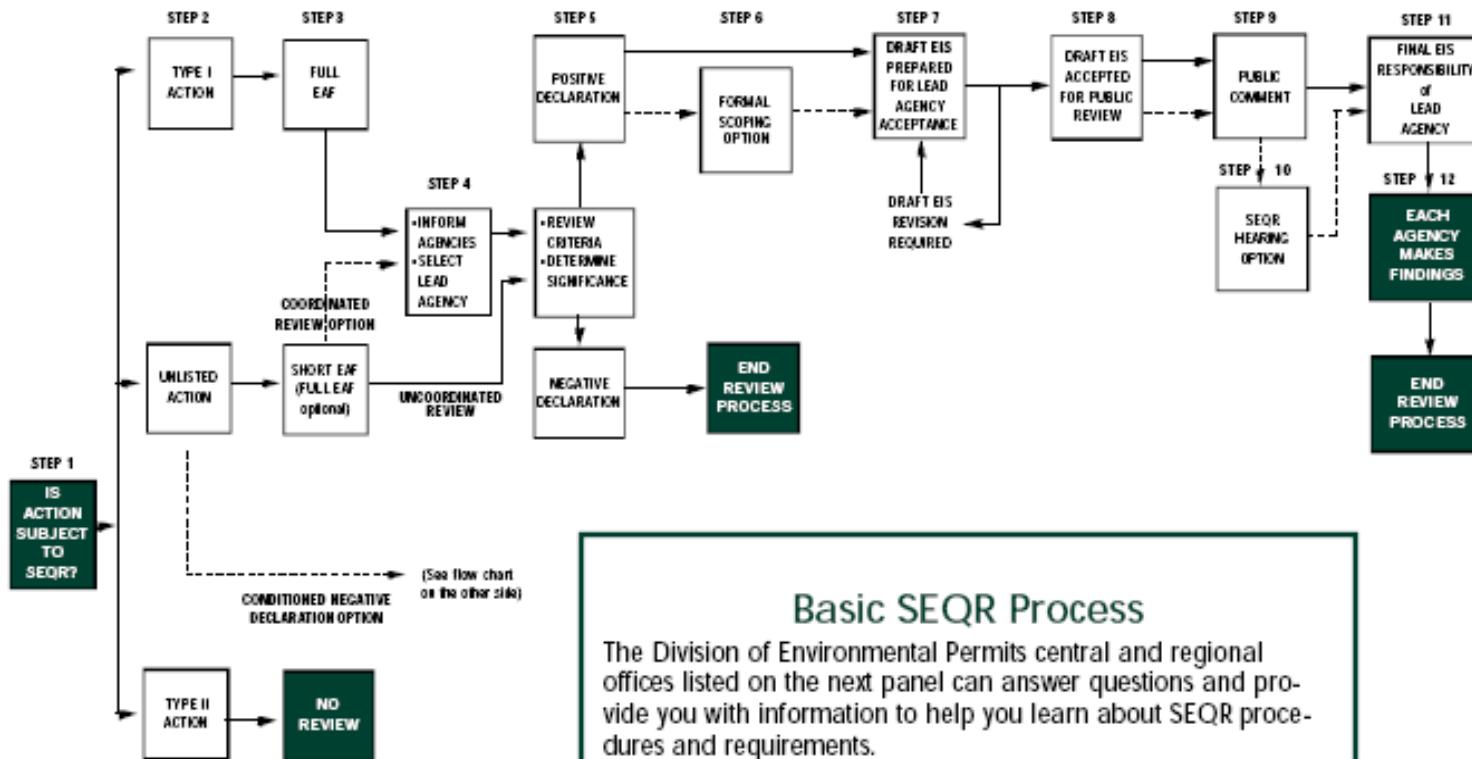
- To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.
- 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.

# State Environmental Quality Review Act

## Recent Trends in SEQRA Review

- New Forms (Short & Long EAF)- Effective 10/2013.
- The “Short” form is now long, and the “Long” form is now even longer.
- NYS DEC has developed a 500 page Workbook to assist.
- Increased focus on making sure decisions are more consistent with local zoning and Comprehensive Plans.
- New forms attempt to ask the hard questions about development.
- Applicants are now required to engage in more pre-planning thru new, more detailed questions in the forms.
- A new “Environmental Mapper” is now available to assist with locating resources.

# The SEQRA “Process”



## Basic SEQR Process

The Division of Environmental Permits central and regional offices listed on the next panel can answer questions and provide you with information to help you learn about SEQR procedures and requirements.

These references are available:

- The statewide SEQR regulations, 6 NYCRR Part 617 (the latest revision effective July 12, 2000)
- The SEQR Cookbook—a step-by-step discussion of the basic SEQR process
- What is SEQR—An introductory brochure
- Applicant's Guide to SEQR
- Citizen's Guide to SEQR
- Local Official's Guide to SEQR
- DEC SEQR website: [www.dec.state.ny.us/website/dcs/seqr/index.html](http://www.dec.state.ny.us/website/dcs/seqr/index.html)

# SEQRA Terminology

- **SEQRA** - State Environmental Quality Review Act.
- **Action** – Physical activities or regulatory procedures.
- **Agency** – A Federal, State or Local agency.
- **Applicant** – A person or entity making an application or seeking an approval.
- **SEQRA Classification** – How an action is classified (Type I, Type II or Unlisted).
- **Involved Agency** – An agency that has jurisdiction by law to fund, approve or directly undertake an action.
- **Interested Agency** – An agency that lacks the jurisdiction to fund, approve or undertake an action but wishes to participate in the review process.
- **Lead Agency** – The agency that is principally responsible for undertaking, funding or approving an action.

# SEQRA Terminology

- **Negative Declaration** – A written determination by a lead agency that the action will not result in any significant adverse environmental impacts.
- **Positive Declaration** - A written determination by a lead agency that the action may have a significant adverse impact on the environment.
- **EAF** – A form (short or long form) used by an agency to assist in determining the environmental significance of nonsignificance of an action.
- **EIS** – A written “draft” (DEIS) and/or “final” (FEIS) document that allows agencies to consider significant adverse environmental impacts, alternative and mitigation measures for a proposed action.
- **Findings Statement** – A written statement prepared by the lead agency that considers the relevant environmental impacts, and provides a rationale for the agency’s decision and certifies that the SEQRA process has been met.

# SEQRA Terminology

- **Mitigation** – A way to avoid or minimize adverse environmental impacts associated with an action.
- **Segmentation** – The division of the environmental review of an action such that various activities or stages are addressed as independent, unrelated, or separate entities.
- **Type I Action** – An action or class of actions listed in Section 617.4
- **Type II Action** – An action or class of actions listed in Section 617.5
- **Unlisted Action** – All actions not listed or identified as Type I or Type II actions.
- **SEQRA Review** – The process of reviewing an action according to the formal steps and timelines prescribed by the SEQRA regulations.

# Actions subject to SEQRA Review

- Any Federal or State Funded Action
- Any Action Requiring any State, Federal or Local Permit
- Any Action Requiring any State, Federal or Local Approval
- Any Action under which a policy involves the Environment

# Actions that do not require SEQR

Activities that do not meet the definition of "action" or that are classified as **Type II** actions do not require SEQR review. As for the **Type II actions**, included among them are some typical local government activities such as:

- Construction or expansion of a single-family, a two-family or a three-family residence on an approved lot;
- Granting of individual setback and lot line variances, granting of area variance(s) for a single-family, two-family or three-family residence;
- Official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits whose issuance is predicated solely on the applicant's compliance or noncompliance with the relevant building or preservation code(s);
- Collective bargaining activities;
- Adoption of a moratorium on land development or construction;
- Designation of local landmarks or their inclusion within historic districts.

# SEQRA Steps

1. Action proposed
2. Action is classified: Type I, Type II, or Unlisted
3. Complete and submit EAF\*
4. Circulate application and EAF to Involved Agencies
5. Lead Agency is established
6. Determination of significance is made by Lead Agency (Pos Dec or Neg Dec)

*\*(For Planning Board matters, the short or long EAF is usually completed by the applicant and submitted with their application in step 1)*

# SEQRA Steps

7. If an action is Pos Dec'd then Scoping may occur
8. Draft Environmental Impact Statement is prepared
9. Final Environmental Impact Statement is prepared
10. Finding Statement is prepared
11. Proposed project is approved, approved w/ conditions, or disapproved

# Classification of Action

- **Type I** – On the Type I list or exceeds any threshold in §617.4
- **Type II** – On the Type II list in §617.5,  
No Further Review Is Required for Type II
- **Unlisted** – Action is not Type I or Type II

# EAF's Required

- **Unlisted Actions** – Short EAF or Full EAF
- **Type I Actions** – Full EAF

Application Completes Part 1 of the EAF,  
Involved Agency or Lead Agency completes the Rest

# Using the EAF's

- Part 1: Identifies basic factual information about the project.
- Part 2: Evaluate the information to ascertain probable environmental impacts.
- Part 3: Evaluate magnitude and importance of environmental impacts and determine significance.
- Lead Agency is responsible for preparing the EAF:
  - Applicants completes Part 1, Lead Agency completes Parts 2 & 3

# EAF “Rules of Reason”

- The EAF must be completed in a “reasonable” manner considering the scale and context of the project.
- SEQRA contemplates that the lead agency may have little or no formal knowledge of the environment.
- People preparing the EAF need not be environmental experts. NYS DEC has rejected the suggestion that an EAF must be prepared by a licensed professional or consultant.
- The EAF is a tool to assist the lead agency in evaluating environmental impacts.
- The EAF can never be substituted for the lead agency’s deliberate evaluation of specific environmental impacts.

# EAF Legal Risks

- Failing to adequately and carefully complete the EAF can result in a court annulling the lead agency's approval of the project.
- If the lead agency ignores potentially important issues or facts in the EAF, its action(s) may be annulled by a court.
- Eg's:
  - *Yellow Lantern Kampground v. Town of Cortlandville*, 279 A.D.2d 6 (3d Dept 2000)
  - *Zambito v. Planning Board of the Town of Marlborough*, 99-2933 (Sup. Ct. Ulster County, 2003)

# Review Coordination

**Coordinated Review** – A Lead Agency is established among involved agencies.

**Uncoordinated Review** – All involved agencies act as Lead Agency.

- **Type I Actions** – Coordinated Review is Required
- **Unlisted Actions** – Review can be either Coordinated or Uncoordinated

# Conditioned Negative Declaration

- **Unlisted Actions Only** – When significant impacts can be mitigated with conditions, CND process may be used as follows:
  - Full EAF is Prepared
  - A Coordinated Review is made
  - The conditions eliminate or reduce to insignificant, significant impacts identified
  - A 30 Day Public Comment Period has been provided.

# Determining Significance

Once Lead Agency has all the information it needs to make a determination it has:

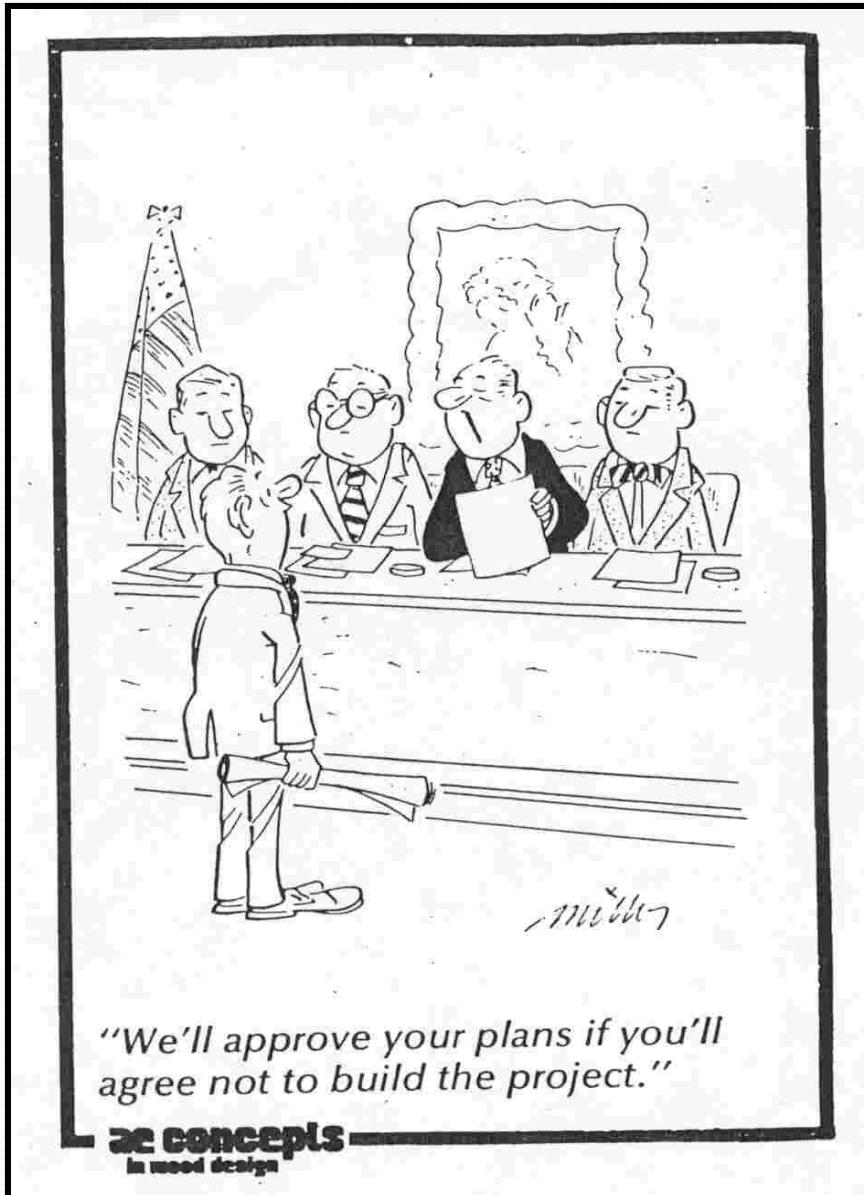
- 20 Days to issue a determination base on
  - The entire action
  - Contents of the EAF
  - Involved Agency Input
  - Public Input (if any)

# Issuing a Negative Declaration

Every negative declaration must:

- identify the relevant areas of environmental concern;
- thoroughly analyze the relevant concerns; and
- document the determination, in writing, showing the reasons why the environmental concerns that were identified and analyzed will not be significant.
- SEQRA Process ends.

# Advanced SEQRA Review



# Positive Declaration

- The proposed action may result in a significant adverse impact;
- Full Environmental Impact Statement is Required;
- Lead Agency prepares and files a notice known as a Positive Declaration;
- Positive Declaration must be prepared, filed, distributed, and published as prescribed in section 617.12 and it must state whether scoping will be conducted

# Optional EIS Scoping

**The scoping process has six objectives:**

- focus the draft EIS on the potentially significant adverse environmental impacts;
- eliminate non-significant and non-relevant issues;
- identify the extent and quality of information needed;
- identify the range of reasonable alternatives to be discussed;
- provide an initial identification of mitigation measures;
- provide the public with an opportunity to participate in the identification of impacts.

# The Draft EIS

- The applicant has the right to prepare the draft EIS.
- If the applicant refuses, the lead agency has the option of preparing the draft EIS, having it prepared by a consultant, or terminating its review of the action.
- If the agency prepares the draft EIS, or to have it prepared by a consultant, it can charge the applicant a fee to cover the direct costs of preparation (see 617.13).
- The lead agency has the ability to charge a SEQRA fee for the review of an EIS, if it does not charge a fee for its preparation.

# Notice of Completion of Draft EIS

- The lead agency has **45 days to determine if the EIS is adequate for public review** in terms of scope & content.
- If lead agency decides the draft EIS is not adequate, it returns the EIS with written identification of deficiencies.
- The lead agency has **30 days to determine adequacy of a resubmitted draft EIS.**
- If lead agency determines that the draft EIS is adequate, a 'Notice of Completion' of a Draft EIS is issued.
- A 'Notice of Completion' must be prepared, filed, distributed, and published (in the ENB) as prescribed in section 617.12

# Public Comment on the DEIS

- The filing of the Notice of Completion of a Draft EIS starts the **minimum of 30 day public comment period**.
- Concerned parties are encouraged to offer their comments to the lead agency.
- The comment period must continue at least 10 days following the **close** of a public hearing, if one is held.

# Public Hearing on the DEIS

- A SEQR hearing is not mandatory.
- Lead agency must prepare and file a Notice of Public Hearing
- **Hearing must be held between 15 and 60 days from the date of filing of the Notice of Completion.**
- The notice must be prepared, filed, and distributed as prescribed in section 617.12

# Preparation of Final EIS

- The Lead Agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it.
- **The FEIS should be prepared within 45 calendar days after the close of any hearings or within 60 days after the filing of the draft EIS, whichever occurs last.**
- The final EIS must consist of: the DEIS, any revisions and supplements; copies or a summary of the substantive comments received and their sources ; and the lead agency's response to the comments.
- The Notice of Completion of the Final EIS must be prepared, filed distributed and published as described in section 617.12.

# Findings Statement

- Each involved agency must prepare its own written SEQR Findings Statement, after the FEIS has been filed and before the agency makes a final decision.
- A positive findings statement indicates:
  - the project or action is approvable,
  - demonstrates that the action chosen avoids or minimizes adverse environmental impacts
  - weighs and balances impacts with the social, economic and other essential considerations.
- A **negative findings statement** documenting the reasons for the denial must be prepared. (**The Action is Not Approvable**)
- The findings can be **finalized no sooner than 10 days following the filing of the FEIS Notice of Completion**,
- If the action involves an applicant, the **lead agency's findings must be made within 30 days from the filing date.** [617.11(b)].
- Findings of each agency must be filed with all other involved agencies and the applicant at the time they are adopted.
- Findings and a decision may be made simultaneously.

# Test Your SEQRA Knowledge!

**Q:     Most land use decisions made by local land  
use boards are considered “actions” under  
SEQRA?**

**True or False?**

**Q: When a landowner requests a land use approval, the agency that is principally responsible for approving the application is the \_\_\_\_\_ agency and has the responsibilities that SEQRA imposes.**

**Q: What are the three classification choices that a local agency can use to identify a project's potential impacts under the SEQRA regulations?**

**Q: If the action is classified as a Type II Action, no further environmental review is required?**

**True or False?**

**Q: If the lead agency makes a Positive Declaration for a project or proposed action, it means that the agency or applicant must prepare and Environmental Impact Statement?**

**True or False?**

**Q: Which of the following are actions that must be subject to environmental review?**

- a. Subdivision Approval**
- b. Site Plan Approval**
- c. Special Use Permit Issuance**
- d. Use Variance**
- e. Amendment to Comprehensive Plan**
- f. Zoning Law Amendment**

**Q: Actions deemed to be either a Type I action or an Unlisted action are required to go through a coordinated review process to determine the lead agency?**

**True or False?**

# Additional Resources

- NYS DEC web site: <http://www.dec.ny.gov> or <http://www.dec.ny.gov/permits/6191.html>
- Environmental Notice Bulletin (**ENB**)  
<http://www.dec.ny.gov/enb/enb.html>
- Endangered Species Habitat Regulation link:  
<http://www.dec.ny.gov/animals/68645.html>

# Questions & Comments

