NYSBA Environmental Law Section
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Environmental Impact Review 101 for Planning and Zoning

Guidance for Municipal Agency Attorneys

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Introduction

- ✓ Authority
- ✓ Purpose
- ✓ Trigger
- ✓ Environmental Factors

Overview

1. Agency proposes an action or receives an application
2. Classification of Action
3. Lead agency and Coordinated Review
4. Determination of Significance of Action
5. Environmental Impact Statement (if needed)
6. Findings and Agency Decision
7. Conclusion of SEQR Process
8. Surviving a SEQR Challenge

Procedural Requirements – *Strict, Literal and Mandatory*

- Literal compliance with SEQRA procedures is essential.
- Courts will annul a municipal decision for failure to strictly adhere to SEQRA procedural requirements.
- Some courts have taken a more lenient view.

Substantive Requirements – *Discretionary and Flexible*

- Balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve a project.

- Weigh the environmental factors, along with social, economic and other relevant considerations to determine whether or not an action should be approved or undertaken

- In contrast to procedural requirements, courts are more deferential to substantive decision-making by governmental agencies.

GUIDANCE FOR MUNICIPAL AGENCIES
EIGHT ESSENTIAL SEQR STEPS

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3. Coordinated Review
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Step 1: Beginning the SEQR Process

- ✓ Types of “actions”
- ✓ *What is an “agency”*
- ✓ “Earliest possible time”

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Step 2: Classifying the action

Type II

- Statutory exemption
- Ministerial actions
- Conclusion of SEQR -- No further environmental review required (no EIS)

Step 2: Classifying the action, *Continued*

Type I

- Type I actions listed in *6 NYCRR 617.4*
- Often supplemented by local regulations
- Full EAF required to Determine Significance
- Presumption of significant adverse environmental impact
  - Lead agency must conduct coordinated review among involved agencies
  - Failure to properly classify the action can result in nullification of decision on the underlying application

Step 2: Classifying the action, *Continued*

Unlisted

- Not on statutory Type II or I lists; remember to check municipal code
- EAF required (full or short form, at lead agency's discretion)
- Coordinated or uncoordinated review, at lead agency's discretion

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Step 3: Coordinated Review

- Distinguish lead agency from interested agencies and involved agencies
- Lead agency is required to identify all potentially involved agencies and conduct a single, integrated environmental review of proposed action
- Lead agency reliance on applicant's determination could be an improper abdication of its responsibility.
- Failure to adequately coordinate with involved agencies may nullify lead agency's decision.
- In contrast, in an uncoordinated review, each agency acts independently and conducts separate environmental reviews

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Step 4: Determination of Significance

- Determination of significance based on analysis of EAF plus application
- Hard Look
- Reasoned Elaboration
- Time Frame

Determination of Significance, *Continued*

Positive Declaration

- Potential to cause or result in at least one significant adverse environmental impact
- Generally leads to preparation of Environmental Impact Statement

Negative Declaration

- The action as proposed will not result in any significant environmental impacts
- No EIS required
- SEQR process is complete with negative declaration

Conditional Negative Declaration

- Only in connection with unlisted actions
- A negative declaration may not be impermissibly conditioned

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STEP 5: Environmental Impact Statements

The Heart of SEQRA

SEQRA requires the preparation of an EIS for any action that may have a Significant effect on the environment (i.e., positive declaration)

Purpose of EIS:

- To provide detailed information about the effect that the proposed action is likely to have on the environment
- To list ways in which any adverse effects of such an action might be minimized and
- To suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action.

STEP 5: Environmental Impact Statements, *Continued*

Scope

- Public scoping is not required, but helps identify significant issues, alternatives and potential mitigation and provides an opportunity for public input.
- Identification of potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS
- No statutory or regulatory minimum time frame

STEP 5: Environmental Impact Statements, *Continued*

Draft EIS (DEIS)

- Prepared by lead agency or applicant; lead agency reviews to determine if satisfactory
- Circulation to agencies with jurisdiction and the public
- Public Comment
- For contents of EIS *see 6 NYCRR 617.9(b)*

STEP 5: Environmental Impact Statements, *Continued*

Final EIS (FEIS)

- The FEIS is the DEIS and any revisions based on comments received on the DEIS
- FEIS must include lead agency responses to all substantive comments
- Attach or append to FEIS any relevant data, reports or summaries which may become the basis of a Finding
- Time Frame

STEP 5: Environmental Impact Statements, *Continued*

Supplemental EIS (SEIS)

The lead agency may require a SEIS limited to the specific significant adverse
environmental impacts not addressed or inadequately addressed in the EIS
that arise from

(a) changes proposed for the project;
(b) newly discovered information; or
(c) a change in circumstances related to the project.

Fact-intensive determination

STEP 5: Environmental Impact Statements, *Continued*

Generic EIS (GEIS)

- Broader and more general than a site-specific environmental impact statement.
- It is used to identify environmental conditions and to develop standards and review thresholds to insure that future development is compatible with or protective of those conditions
- The preparation of a GEIS may allow for a more efficient and cost-effective review of the environmental consequences of future development projects
- Municipal agency prepares GEIS but a portion of preparation costs can be charged to developers of later projects as development projects are submitted.

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STEP 6: After the FEIS – Statement of Findings

- "Findings" are the rationale for each agency's decision
- Findings must be sufficiently explicit to demonstrate that SEQRA requirements have been met and that adverse environmental effects have been minimized or avoided to the maximum extent practicable
- Findings must be made by lead agency and not delegated.
- Imposition of conditions
- Agency decisions must comport with Findings.

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STEP 7: Conclusion of SEQR Process

The following will conclude SEQR:

- Classification of an action as Type 2
- Determination of non-significance—i.e., Negative Declaration
- Findings and Agency Decision

An agency may not render a decision on the underlying application (e.g., to fund a project or grant its approval) until conclusion of SEQRA.

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STEP 8: Surviving a SEQR Challenge

Documentation of agency actions is essential to protect against SEQR challenges to nullify a municipality's decision.

The paper record is critical

FEIS is the authoritative statement of the project's impacts

The H.O.M.E.S. test involves three questions:

1. Did the agency identify the relevant areas of environmental concern?
2. Did the agency take a "hard look" at those areas?
3. Did the agency make a reasoned elaboration of the basis for its determination?

Transparency and public participation

Fatal errors

Standard of review