

STREAMLINING SEQR

*How to Reform New York's
"Environmental" Planning Law*

by

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EXECUTIVE SUMMARY

Major residential, commercial and industrial developments throughout the country are subject to an array of federal and state laws designed to protect the environment, buttressed nearly everywhere by local land-use regulations addressing the community impacts of such projects.

In New York, however, these regulations are wrapped in the added red tape of the State Environmental Quality Review Act, or SEQR.

In this, as in so many areas of regulatory policy, the Empire State is an outlier. Less than one-third of all states have similarly comprehensive environmental review statutes—and fewer have laws as broadly applicable as New York’s SEQR.

Nearly 40 years after its enactment, can SEQR be reformed to strike a better balance between environmental protection and economic growth? That’s a crucial question when much of New York, especially upstate, is suffering from what could be described as a severe development deficit.

While it would be difficult to quantify SEQR’s role in discouraging investment and job creation in New York, the added regulatory imposition certainly does little to expedite the building of new homes, businesses, factories and civic facilities. As currently written and interpreted, SEQR can be exploited to produce costly delays and uncertainty for the kind of job-creating projects New York desperately needs. Several of the state’s regional economic development councils have identified SEQR as an obstacle to development.

SEQR has been cited as a development obstacle by several of the state’s regional economic development councils.

Governor Andrew Cuomo has responded to these complaints by allowing his state Department of Environmental Conservation (DEC) to float proposed rule changes designed to improve SEQR in response to years of complaints from private-sector developers. DEC says it is aiming to make the process more efficient and predictable “without sacrificing meaningful environmental review,” but the ideas it is considering don’t go far enough to achieve this goal.

This paper suggests that further changes are needed to truly streamline SEQR. At a minimum, the law should be revised to:

- Reduce the potential for undue delays by imposing hard deadlines and incentives to ensure the process can be completed within a year.
- Mandate “scoping” of environmental impacts at the first stage in the SEQR review process, but also more tightly restrict the introduction of new issues by lead agencies later in the process.
- Eliminate the law’s reference to “community and neighborhood character” as an aspect of the broadly defined environment potentially affected by projects, since the concept already is defined by local planning and zoning laws.

Industry groups have proposed other, more specific changes that also deserve enactment as part of any meaningful SEQR reform process.

CONTENTS

1. ORIGINS AND BACKGROUND	1
When, Where and How SEQR applies	2
The SEQR Process.....	3
<i>SEQR and the one that got away in Niagara County</i>	4
2. SEQR'S SELECT COMPANY.....	5
Comparing Comprehensive Environmental Protection Laws (table)	6
<i>Rinse, repeat, same result</i>	7
3. JUDICIAL REVIEW OF SEQR.....	8
<i>SEQR trumps worship in Westchester</i>	8
<i>SEQR process costs Hudson Valley 1,000 Jobs</i>	9
<i>Making a local library more expensive</i>	10
4. REFORMING SEQR	12
Delay	12
Unpredictability.....	13
The "community character" issue.....	13
DEC weighs SEQR changes	15
Private industry concerns.....	15
5. RECOMMENDED REFORMS.....	17
1. Reducing delay	17
2. Increasing predictability.....	18
3. Redefining "character"	18
Conclusion.....	19

1. ORIGINS AND BACKGROUND

The peak of America's postwar economic boom in the 1960s coincided with a growing public awareness of the increasingly troubling environmental impacts of untrammelled industrial, commercial and residential development.

The health hazards of air pollution in major metropolitan areas had been highlighted by incidents such as a four-day temperature inversion blamed for dozens of deaths in New York City in 1965. Water pollution was also a serious problem; in the nation's industrial heartland, portions of the Great Lakes were literally dying — becoming uninhabitable by fish or plant life. Stretches of storied major waterways such as the Hudson River had become seriously polluted. During the same period, perceived assaults on the built environment of neighborhoods and communities had led to a grassroots backlash against major highway expansion projects in some cities.

These concerns led to the enactment of the National Environmental Policy Act (NEPA), signed by President Richard Nixon on January 1, 1970. NEPA required federal agencies to prepare assessments and impact statements of proposed major projects and policy changes affecting the "human environment," broadly defined to include both "the natural and physical environment and the relationship of people with that environment."¹

NEPA would be the primary model for laws in states including New York, whose State Environmental Quality Review Act (SEQR) was enacted in 1975.

SEQR, like the federal law that inspired it, defines "environmental impacts" broadly, going well beyond actions affecting the natural ecology of air, water, flora and fauna.

While NEPA applies only to federal executive branch agencies, SEQR applies to the actions of state and local agencies in New York. In relatively rare cases where the two jurisdictions overlap, the respective reviews can be coordinated, so that the impact statement required by NEPA can be used to fulfill obligations under SEQR.²

It's important to note that these laws were not designed as government's primary line of defense against pollution — a purpose served by other statutes and regulations largely adopted after NEPA in the 1970s.³

NEPA's overarching goals extend well beyond protecting the natural ecology of air, water, plants and animals to encompass the regulation of "aesthetic, historic, cultural, economic, social, or health [impacts], whether direct, indirect, or cumulative."⁴ In similarly broad language, SEQR defines environmental factors to also include "noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth."⁵

New York's law goes a big step further by also regulating potential impacts on "existing community or neighborhood character" — an amorphous concept that, in some cases, has been construed broadly enough to block projects otherwise permissible under existing local land-use ordinances.⁶

NEPA and SEQR also differ in several other significant respects.

Federal courts have determined that NEPA mandates for federal agencies are “essentially procedural.”⁷ In other words, the law’s principal effect is to describe the process federal agencies must follow to implement a major new policy or project—but not to shape outcomes consistent with its lofty aims.⁸

New York’s SEQR, by contrast, can be used to force changes to “mitigate” environmental impacts—not only dictating how a project is built, but effectively deciding whether it gets built at all. Perhaps even more importantly, SEQR requires an Environmental Impact Statement (EIS) if the project “may” cause a significant adverse environmental impact, whereas NEPA effectively requires an EIS only if a proposed action *will* “significantly affect the quality of the human environment.”⁹ This further expands the scope of actions covered by the state law. And before a project can win final approval, SEQR requires that adverse environmental impacts be “minimized to the maximum extent practicable.”¹⁰

SEQR’s broader scope and its requirement for “maximum extent practicable” mitigation as a condition for potential approval make it more expansive and stringent than its federal counterpart, NEPA; indeed, as will be shown below, it is among the most expansive and stringent laws of its type in any state.

Where, When and How SEQR Applies

In addition to development projects, actions that may affect the “environment,” as broadly defined in the SEQR statute, include the adoption of new land-use laws, rules and regulations, bond financing resolutions for public projects and other required permits for private projects. In those instances, SEQR “requires the sponsoring or approving governmental body to identify and mitigate the significant environmental impacts of the activity it is proposing or permitting.”¹¹ As further explained in the state’s *SEQR Handbook*:

In order for SEQR to be applied to any proposed action or related series of actions there must be at least one discretionary decision required by an agency. Often there are several such decisions necessary in order to carry out the action. For example, the “action” of developing a residential subdivision may require separate approval decisions by a town planning board for the subdivision plat, town board or zoning board of appeals if there is a zoning decision, or county health department if on-lot sewer and water facilities are required, and, possibly by the state Departments of Transportation or Environmental Conservation, if highway access or stream or other environmental permits are needed. No decision to approve, fund or directly undertake any part of an action should be made by any of these agencies until SEQR requirements are met. This SEQR review of an action may be done as part of a coordinated review process that involves several governmental agencies.¹²

Whether a specific project¹³ will actually be subject to SEQR depends on which of three categories it fits into: Type I, Type II, or Unlisted. Type I generally includes large projects involving significant changes that the law considers more likely to have significant “adverse” impacts on the environment.¹⁴ Sponsors of Type I actions must file a more detailed “full” version of an Environmental Assessment Form, or EAF.¹⁵ This form, in turn, is used by the lead agency as the basis for determining whether the project or proposal requires an EIS.

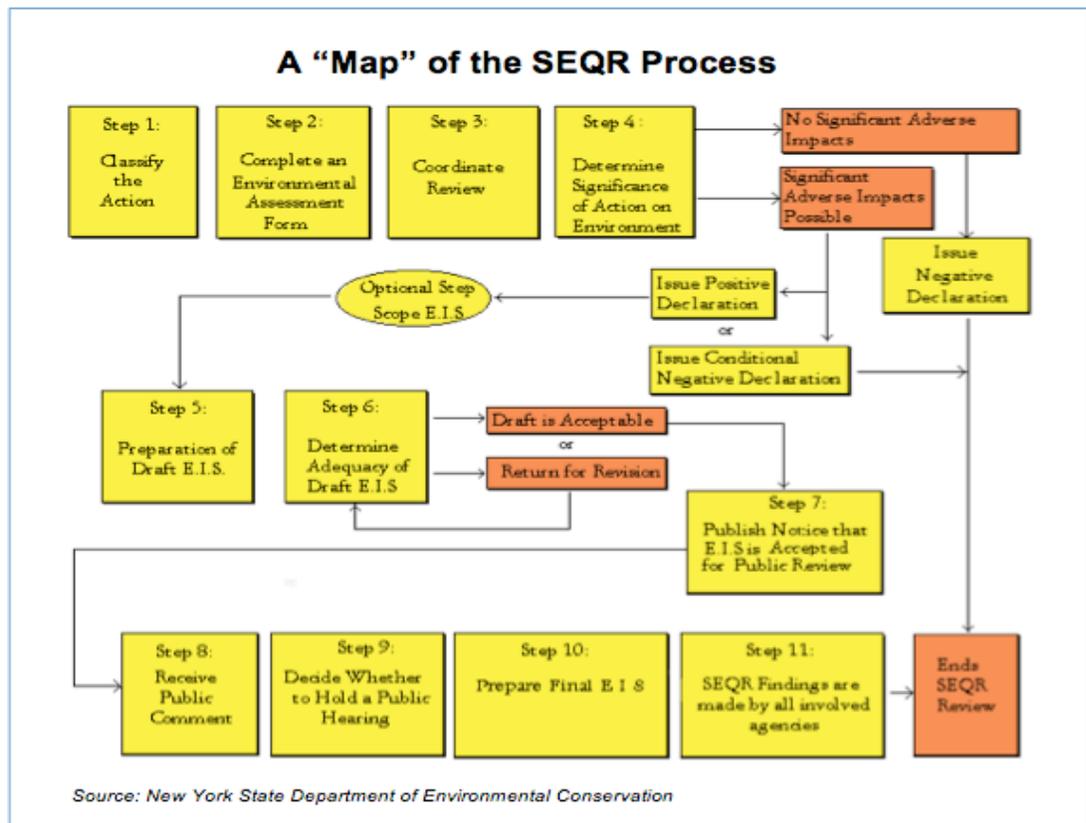
Type II includes smaller projects such as small subdivisions and additions to single-family homes, which are generally considered exempt from the law.¹⁶ Unlisted actions essentially consist of everything else.¹⁷ Sponsors of unlisted projects need to submit at least a "short" EAF.¹⁸

The SEQR process

When a proposal subject to SEQR requires decisions by more than one state or local agency, the law requires that a lead agency be designated to coordinate the SEQR review process, starting with a "significance of action determination" of whether the project may have any "significant adverse environmental impacts."¹⁹ A "negative" or "conditional negative" declaration means the project has no significant adverse impacts or only involves impacts that will be avoided or minimized as much as possible, which effectively ends the SEQR process unless the circumstances change.

If the first stage of the process indicates the project may have significant adverse environmental impacts, the applicant must prepare a Draft Environmental Impact Statement (DEIS) fully describing the impacts along with any proposed mitigation measures.

The lead agency also may add a requirement for "scoping," the goal of which is "to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or non-significant."²⁰ The scoping process must include an otherwise undefined and open-ended "period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means."²¹



Once the lead agency is satisfied that the applicant's DEIS describes a plan to sufficiently mitigate any significant adverse environmental impacts, the lead agency submits the draft for public comment, which can include a public hearing.²² After the lead agency adopts a Final Environmental Impact Statement (FEIS), it has 30 days to decide how to move forward with the underlying action—for example, issuance of a building permit.²³

While the SEQR process does have some timelines, they don't guarantee the process is completed within any particular time period. Most initial steps are given definitive time periods, including appointing a lead agency when multiple agencies are involved (30 calendar days), the significance of action determination (20 calendar days from receipt of application or all information received) and the optional "scoping" process (60 calendar day period for consideration of a draft scope). But while the agency is given up to 45 calendar days to consider a DEIS, or 30 days to consider a resubmitted DEIS, there is no limit on the amount of time it may take to approve it.

Once a lead agency approves a draft impact statement, the clock starts ticking again on the SEQR process, starting with a minimum 30 calendar-day public comment period.²⁴ Any additional public hearing must occur between 15 and 60 calendar days from the approval, with an additional 10 calendar days for comments afterward.²⁵ The lead agency has 60 calendar days from the DEIS approval or 45 calendar days following the public hearing (whichever is later) to issue a final impact statement.²⁶

SEQR and the one that got away in Niagara County

In July 2010, Verizon approached the town of Somerset in Niagara County with an opportunity most upstate communities can only dream of: a proposal to build a \$4.4 billion data center employing nearly 200 people.

Within a few months, the town board fast-tracked the project and expedited the SEQR process, reviewed documents submitted by Verizon, held two public hearings, and determined that the project would not have an adverse environmental impact. While Verizon later said the town was responsive and accommodating, the company still decided to withdraw the proposal citing too many delays and uncertainties. What happened?

Seemingly on a smooth track to construction, the project was delayed when (a) Verizon encountered delays in purchasing the land, and (b) a lone landowner filed a lawsuit challenging (among other things) the town's adherence to SEQR. A state Supreme Court judge ultimately determined that the town's actions and written explanation were sufficient, saying, "there was nothing in the Board's decision that can be found to be arbitrary, capricious or unsupported by substantial evidence." The Court also noted that the "benign" project had economic potential that "far outweighs any inconvenience occasioned to this lone Petitioner who has had difficulty articulating any credible environmental concerns."

By then, however, the opportunity had all but passed. Niagara County's Industrial Development Agency chairman said the lawsuit had pushed Verizon "over the edge."

SOURCES:

"Verizon withdraws plans for \$4.4 billion call center in Somerset" *Niagara Gazette*, 17 March 2011; available at: <http://niagara-gazette.com/local/x977553971/Verizon-withdraws-plans-for-4-4-billion-call-center-in-Somerset/print>

"Verizon withdraws Niagara Co. data center," *Buffalo Business First*, 17 Mar 2011; available at:

<http://www.bizjournals.com/buffalo/news/2011/03/17/verizon-scraps-niagara-co-plans.html?page=all>

Rizzo v. Verizon CCC LLC, 2011 NY Slip Op 50505(U) (Jan 14, 2011); available at:

<http://law.justia.com/cases/new-york/other-courts/2011/2011-50505.html>

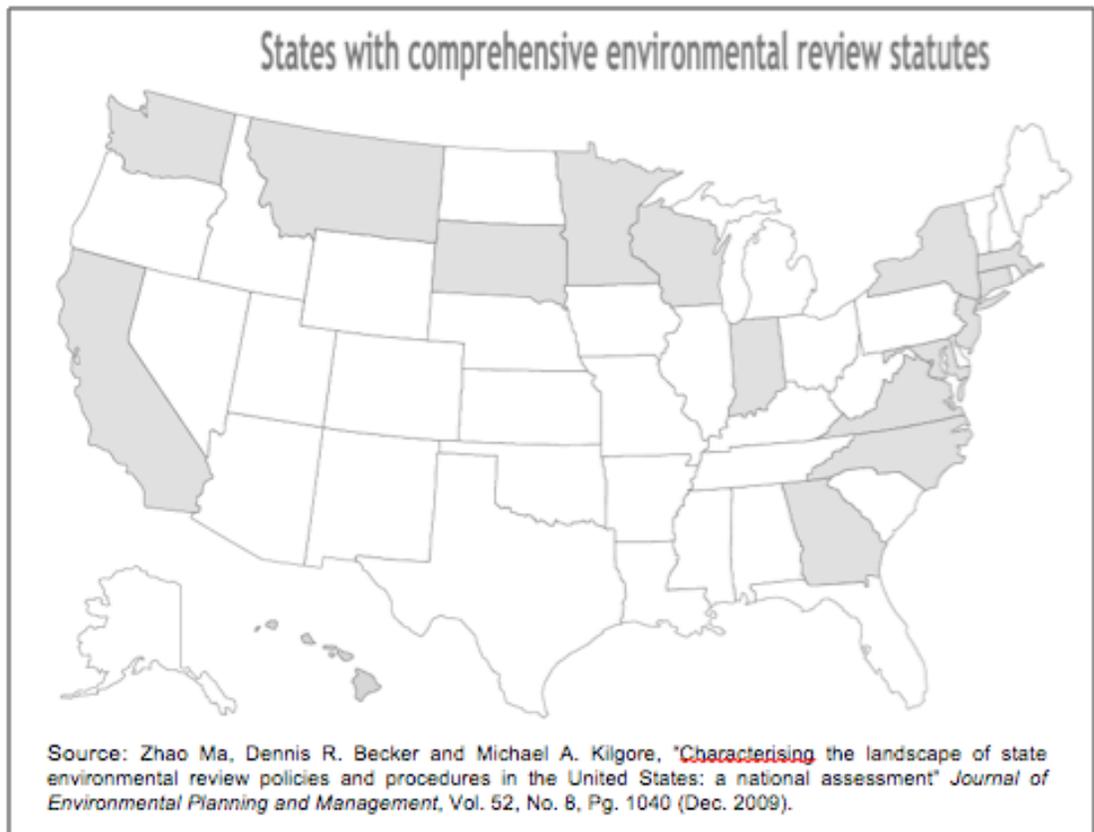
2. SEQR'S SELECT COMPANY

Thirty-seven states have adopted formal environmental review requirements based at least in part on the original federal NEPA statute, according to a 2009 assessment of such laws in the *Journal of Environmental Planning and Management*.²⁷ In 21 of these states, however, environmental review provisions apply only to certain types of development activities, specific natural resource sectors, or particular geographic areas, the article indicates.²⁸

New York is one of only 16 states with more broadly applicable, comprehensive environmental planning laws. These laws generally involve three steps: a determination of whether a proposed action is subject to review, an assessment of the environmental impact, and a detailed review of the action's impacts and measures required to reduce or mitigate that impact.²⁹

In addition to New York, states described as having comprehensive environmental planning statutes are California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New Jersey, North Carolina, South Dakota, Virginia, Washington, and Wisconsin.³⁰

Some of those states adopted portions of the federal act almost verbatim.³¹ Others, the article said, imitate the federal law to varying degree. The most basic differences, (as shown in the table on page 6), include whether the statute applies to undertakings or approvals by local governments, how easy it is to trigger review, whether the statute has an action-forcing requirement, and whether it applies to private projects.



Even in this group, New York’s SEQR stands out among the most expansive and rigorous environmental planning laws in the nation.

Take, for instance, the issue of applicability. All 16 states with comprehensive laws require their state governments to conduct an environmental impact review in some circumstances. But New York is one of only eight states that apply this requirement to county or local government agency actions as well.³²

Likewise, all 16 of the comprehensive environmental laws on the state level apply to development projects proposed or financially supported by state government.³³ However, as shown below, only nine apply to private projects requiring other forms of government permission or approval—for example, zoning variance. In addition, only seven apply to proposed state and local policy changes, such as amendments to local zoning laws.³⁴

Comparing Comprehensive Environmental Protection Laws

State/date of enactment	Applies to actions or approvals at these levels	More likely than NEPA to require EIS?	"Action-forcing" provision?	Applies to fully private projects?
California (1970)	State or local	Yes	Yes	Yes
Connecticut ¹ (1971)	State	Yes	No	No
Georgia (1991)	State or local	Yes	No	No
Hawaii (1974)	State or county	Yes	No	Yes
Indiana (1972)	State	No	No	No
Maryland (1973)	State	Yes	No	No
Massachusetts (1972)	State	Yes	Yes	Yes
Minnesota (1973)	State or local	Yes	Yes	Yes
Montana (1971)	State	No	No	Yes
New Jersey ² (1989)	State or local	Yes	Yes ³	No
New York (1975)	State or local	Yes	Yes	Yes
North Carolina (1971)	State or local	Yes	No	No
South Dakota ⁴ (1974)	State	Yes	Yes	Yes
Virginia (1973)	State ⁵	Yes	No	No
Washington (1971)	State or local	Yes	No	Yes
Wisconsin (1972)	State	No	No	Yes

¹ Separate provision allows counties, cities, and towns to adopt an separate ordinance for review of certain private projects

² New Jersey adopted NEPA-like provisions through an executive order only.

³ Subject to discretion of state environmental agency.

⁴ Process proceeds at agency's discretion.

⁵ Counties, cities, and towns are exempt from requirement, except for certain highway projects.

Source: Zhao Ma, Dennis R. Becker and Michael A. Kilgore, "Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment" *Journal of Environmental Planning and Management*, Vol. 52, No. 8, Pg. 1040 (Dec. 2009).

New York’s state environmental review law is one of only three applying to *every* possible category of action in the article – policy changes as well as physical developments, local as well as state actions, private as well as public projects.³⁵

As another basis of comparison, SEQR is one of 13 statewide review laws requiring preparation of an impact statement for a project or action that “may” significantly affect the environment. The remaining three, like the federal statute, require an impact statement only for projects or actions that *will* have such an effect.³⁶ As noted above, NEPA’s impact is mainly procedural – and while the process it dictates still

can entail substantial expenditures of time and money, the government agencies involved are not *required* to take an action based on its environmental impact review.

New York also is one of only six states whose environmental review laws include explicit "action-forcing" provisions, either requiring lead agencies or giving state agencies discretion to certify that adverse environmental impacts are either sufficiently mitigated or that reasonable alternatives are not available.³⁷

In sum, New York's SEQR is among a handful of comprehensive state environmental laws that are more widely applicable, more likely to impose a project change, and backed up by comprehensive regulatory structure.³⁸ Most of the comparable state laws entail more limited applicability and largely procedural requirements, and thus appear "less dynamic in their relationship with state decision-making," according to one leading environmental economist.³⁹

Rinse, repeat, same result

In 1999, the Good Samaritan Hospital Medical Center in West Islip, Suffolk County, applied for town building permits to move the hospital emergency room to another part of the facility's property. Following a SEQR review of the project, the town determined it would not have adverse environmental impacts and issued the building permits in June 2000. The emergency room opened in April 2001.

However, a 2001 lawsuit by a neighboring landowner successfully challenged the SEQR determination, voiding the site plan and permit, requiring the town to prepare an EIS, and restraining the hospital from conducting business at the new emergency room. In 2004, the Court allowed the hospital to operate its new emergency room as long as there was SEQR progress, despite attempts by neighbors to stop it.

The lawsuit forced the hospital to start all over again with a new site plan, new permit applications, and a new round of public hearings. A DEIS was submitted, reviewed and accepted. Another public hearing was held. In 2005, a completed FEIS was filed that allowed the emergency room to be relocated to the location it had occupied since April 2001.

SOURCE:

Coppola v. Good Samaritan Hospital Medical Center, 2006 NY Slip Op. 30661(U), (28 Nov 2006, Sup Ct. Suffolk County)

3. JUDICIAL REVIEW OF SEQR

Unlike federal anti-pollution laws such as the Clean Water Act and Clean Air Act, NEPA did not include provisions allowing private citizens to file civil suits aimed at enforcing their provisions. Likewise, SEQR also does not contain a citizen suit or judicial review provision. The state Court of Appeals read this omission as reflecting the Legislature's intention that "some limitation on standing to challenge administrative action was appropriate."⁴⁰

Challenges to the outcome of a SEQR process can be filed in state Supreme Court under Article 78 of the state Civil Practice Law and Rules, following the lead agency's final determination or decision.⁴¹ Practically speaking, this means a SEQR challenge must commence at the very *end* of the process, after the lead agency has either approved a final impact statement or made a "negative" declaration (meaning no impact statement is required). All administrative remedies must be exhausted before an Article 78 proceeding can be initiated.⁴²

This "ripeness" requirement usually thwarts challenges to interim agency actions. For instance, anyone challenging an agency for missing one of SEQR's deadlines will find out that "these limitations essentially are unenforceable."⁴³ Even an agency's positive declarations are not considered to be final determinations; therefore, with few exceptions, they have not been held subject to challenge.⁴⁴

SEQR trumps worship in Westchester

In 1998, the Fortress Bible Church of Mt. Vernon submitted plans to build a large new church and school near an intersection in the nearby town of Greenburgh, Westchester County, in an area that included homes, businesses, and other churches. Town board members were able to delay the project for almost 14 years before a federal appeals court ruled they had "acted in bad faith and had used the SEQR review process illegitimately as a way to block the Church's proposal."

Based on the church's original filings concerning environmental and traffic impacts, the town planning commissioner had advised the town board in 2000 that the project posed no adverse environmental impacts, effectively clearing the way for the project.

The board, however, went in the opposite direction, issuing a finding of a "positive" impact requiring a much lengthier SEQR process. After scoping, completing additional studies, and receiving state Transportation approval for a traffic study, the Church submitted a complete DEIS, which the town accepted, followed by a FEIS almost six months later in April 2001. However, the town then asked for additional studies, further delaying the project.

Ultimately, the town denied the Church's application on grounds that a U.S. District Court subsequently determined were either "unsupported, if not wholly fabricated." In fact, despite citing traffic issues as their primary concern, the town had just issued a conditional "negative" impact declaration clearing the way for a separate commercial construction project near the same intersection as the church's proposed site.

On September 24, 2012, a federal appeals court affirmed the lower court decision, finally giving the official go-ahead for a project that was ready to go almost ten years earlier. The church has never been built, and as of mid-2013, Fortress Bible Church was preparing to seek millions of damages from the town.

SOURCE:
Fortress Bible Church v. Feiner, 694 F.3d 208 (2012);
available at: <http://www.leagle.com/decision/ln%20FCO%2020120924061>

In addition, an Article 78 proceeding must commence within four months of the agency's final determination – the only time period when an agency action is subject to challenge.⁴⁵ Some cases suggest that shorter time periods are acceptable if a separate statute governing the agency determination has a shorter statute of limitations.⁴⁶ There is also considerable disagreement over when the statute of limitations period begins, which further complicates matters.⁴⁷

To challenge an agency under SEQR a person or organization must first have "standing," which means they have a right to bring legal action under the statute. Traditionally, New York courts relied on the 1991 decision in *The Society of the Plastics Industry, Inc. v. County of Suffolk*.⁴⁸ Legal scholars note that some lower courts have "simplified and limited [this test] ... into a requirement that a petitioner live in close proximity to the challenged project."⁴⁹

As long as the *Plastics Industry* standing test applied, New York was "effectively one of the most restrictive jurisdictions for environmental plaintiffs," as one legal expert put it.⁵⁰ More recently, in the case of *Save the Pine Bush, Inc. v. Common Council of the City of Albany* the state Court of Appeals held that individuals could have standing to challenge a government action involving a natural resource if they could demonstrate "repeated, not rare or isolated" recreational use of that natural resource.⁵¹

SEQR process cost Hudson Valley more than 100 jobs

In 1999, the parent company of St. Lawrence Cement proposed construction of a new \$300 million facility in Greenport and Hudson, Columbia County, to replace its existing 1960s era facility across the Hudson River in Catskill, Greene County. The company argued that the new plant would be more efficient and productive, generating fewer emissions.

Once the SEQR process began, well-organized groups of local residents condemned the project for its perceived environmental impacts. While there was agreement that the new plant's emissions and pollution control technology were vastly superior to the old, opponents claimed increased production would offset any gains.

Critics also challenged the proposed plant's visual impact, asserting its location and stacks would mar the region's natural beauty—although the Catskill plant had maintained a prominent location six miles downriver for more than 30 years. In response, the company submitted new designs that reduced the facility's stacks by 115 feet and ensured the plant would not be visible from about 90% of the surrounding area – at an additional cost of \$33 million.

After years of delay, the project was ultimately vetoed by New York's secretary of state, who in 2005 issued a determination that it was inconsistent with the state's Coastal Management Program and Local Waterfront Revitalization Programs, which favors tourism. In January 2012, St. Lawrence's Catskill plant was permanently closed and its 100 local employees lost their jobs. While the parent company blamed the closure on falling demand after the recession, it had, in the meantime, built a new, more efficient plant in Missouri.

SOURCES:

"Natalie Merchant joins cement plant opposition," *The Business Review*, 16 Sept 2002; available at: <http://www.bizjournals.com/albany/stories/2002/09/16/daily9.html>.

"St. Lawrence revises plans for proposed cement plant," *The Business Review*, 18 Aug 2008; available at <http://www.bizjournals.com/albany/stories/2004/08/16/daily26.html>.

"Cement plant closure to be permanent," *Times-Union*, 23 Feb 2012; available at

<http://www.timesunion.com/business/article/Cement-plant-closure-to-be-permanent-3357202.php>

Although *Pine Bush* was perceived to broaden SEQR's traditional standing requirements, recent appellate division cases suggest that these broader standards may only apply when the use of natural resources is at issue.⁵² When the circumstances do not involve use of a natural resource, some lower courts have continued to apply the more restrictive *Plastics Industry* standing test.⁵³

For those with standing, Article 78 review is limited to whether the agency's decision was an error of law, an abuse of discretion, or arbitrary and capricious.⁵⁴ Courts interpreted this to mean they should "review the record to determine whether the agency identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination."⁵⁵

Courts in such cases have been deferential to lead agencies, holding that an FEIS does not need to consider every impact and every mitigation measure or alternative to satisfy SEQR.⁵⁶ Consequently, they rarely disturb agency decisions when the challenge is to a FEIS. There were 55 court decisions on SEQR in 2012, including a dozen involving challenges to completed impact statements.⁵⁷ In all 12 cases, the FEIS survived the challenge.⁵⁸ Government agencies were overturned in seven of 34 cases that were challenged for lack of an original or supplemental EIS.⁵⁹

By the same token, courts typically insist on strict compliance with the SEQR process and allow agencies little discretion as to the steps they must complete. However, some cases suggest that this standard might be loosening, given instances where courts allowed minor procedural irregularities as long as the public had full involvement in the process.⁶⁰

Making a local library more expensive

In April 2013, voters in the Monroe County town of Irondequoit approved construction of a new \$13 million central library that would consolidate two smaller branch locations. The project was stalled, however, when some residents filed a lawsuit alleging the town had not adhered to SEQR. They said there should have been a better analysis of the project's traffic, visual and drainage impacts.

Disputing these claims, town officials pointed to the "short" environmental assessment form (EAF) determining the project would have no significant environmental impacts. A town councilman noted that SEQR concerns had never been raised in the 21 public hearings held on the project prior to the vote. In June 2013, the town voted to spend \$9,500 to complete a second study and do a more detailed "full" EAF, which eventually confirmed the town's original determination that the library project would not have significant environmental impacts.

A library supporter complained the additional studies were unnecessary and that concerns about the project "could have been dealt with much more simply for much less time and money." Following the second SEQR study and "full" EAF, the project was exactly the same as the one that had received overwhelming support in April. However, the town had to consider setting up yet another vote to legitimize these very same conclusions.

Meanwhile, the lawsuit continues.

SOURCES:

"Lawsuit could hold up Irondequoit library project; require new vote," Irondequoit Post, 20 May 2013; at: <http://www.irondequoitpost.com/x90718543/Lawsuit-could-hold-up-Irondequoit-library-project-require-new-vote>
"Irondequoit library plan may need second vote," Democrat and Chronicle, 20 Aug. 2013; available at: <http://www.democratandchronicle.com/apps/pbcs.dll/article?AID=2013308200058&gcheck=1>

While New York has relatively restrictive standing requirements and courts that typically defer to agency decision-making, SEQR-related lawsuits have been filed and decided at a fairly steady rate. Between 1975 and 2000, approximately 2,000 such cases were decided, including 700 between 1990 and 2000, or an annual average of 63.⁶¹ In the wake of the Great Recession, which began at the end of 2007, court rulings in SEQR cases declined to 45 cases in 2009, 37 cases in 2010, and 35 cases in 2011.⁶² In 2012, however, the number bounced back to 55.⁶³

In sum, since the 1990s—despite the restrictions on standing and ripeness under Article 78—SEQR has given rise to enough litigation to generate an average of one court decision a year for each of the 57 counties outside New York City.

Statistics have not been kept on the number of SEQR-related lawsuits dismissed or withdrawn before trial—much less the number of development disputes in which a SEQR lawsuit is threatened. Nonetheless, the *potential* litigation related to SEQR can be as significant as any precedents generated by cases pursued through trial.

As seen in the case of the Irondequoit Public Library (see box, page 10), the threat of a lawsuit can have a significant effect on the decision-making process. Although precedent and judicial deference likely would have supported Irondequoit's initial determination, it still decided to spend \$9,500 to complete a second full environmental assessment form.⁶⁴ Such costs can be especially significant to small upstate municipalities.

4. REFORMING SEQR

At best, the SEQR process can help local officials and planners clarify the issues surrounding certain types of projects, especially those with a myriad of potential impacts on their surroundings – although such issues could also be considered through the traditional land-use and permitting process alone, as is done in most states.

But SEQR also can be an obstacle to environmentally acceptable development that would otherwise be permitted by local laws. While some of SEQR's weaknesses are inherent in the statute's structure, others result from abuse of the statute's flexible terms and requirements.

Delay

Since its inception, the most common complaint about SEQR has been the way it can unnecessarily delay a project – which, if the process takes long enough, can be tantamount to denial. This is especially true for small developers or project sponsors who lack the financial wherewithal to pay for repeated rounds of technical changes and studies demanded by lead government agencies.

While SEQR does contain a number of deadlines for agencies and project sponsors, it lacks a timeline for DEIS creation and does not have any final, drop-dead date on which the process must end. Even existing deadlines are effectively unenforceable, since the only legal recourse for project sponsors or applicants is an Article 78 challenge, which can only be filed after the process has ended.⁶⁵

With such limited enforcement mechanisms, the statute's deadlines become nothing more than guidelines – as the Fortress Bible Church learned when the town of Greenburgh delayed its proposed building project for five years (see box on page 8), which led to more years of litigation.⁶⁶ Among other things, the town took more than a year and a half to produce an FEIS – a process that SEQR requires to be completed in under 105 days.⁶⁷

Similarly, the town of Cornwall in Orange County also took advantage of SEQR's weaknesses when it purposefully delayed a determination on whether a developer would be required to file an impact statement for an environmentally benign residential subdivision.⁶⁸ By delaying the project's public hearing for a year, the town managed to wait *just* long enough that it's newly adopted zoning law applied.⁶⁹

Time is money, and the potential for SEQR delays can make projects subject to the law prohibitively costly, especially for small developers.

In contrast, proponents explain that the project sponsor dictates the process' speed because the sponsor controls the DEIS content. This certainly can be true when the agency and sponsor collaborate, as was the case with the Verizon project described on page 9. A developer helps its cause by being organized and responsive, but there is little it can do if the lead agency has no incentive to act quickly.

Unpredictability

Project sponsors value predictability because it allows them to strategically use their time, money, and resources. However, a project sponsor in the SEQR process can spend time and money preparing for one major impact during the scoping stage only to have other concerns arise during later stages. That's because SEQR makes it too easy to allow new concerns to be raised after the scoping process, making it difficult for project sponsors to plan their investments. While a DEIS is the responsibility of a project sponsor, a lead agency can effectively insist that new issues be included in the impact statement, since the agency ultimately decides whether the draft will serve as the basis for a final statement.

This also sets up a scenario where an agency can too easily make its own further requests. In the Greenburgh case, the project sponsor was asked for additional studies and information even *after* it submitted and the town accepted its DEIS as complete.⁷⁰ Even though a court later found the town's request for yet *another* traffic study was in bad faith, it was not a SEQR violation.

"I'm always thinking of things fun for consultants to do," said one board member as the town of Cornwall was stalling a residential subdivision.

In the Cornwall case, a town board member at one point insisted that a public hearing to consider the environmental assessment be kept open because he was "always thinking of things fun for consultants to do"⁷¹—including a report on stonewalls at the development site, which he had not made a priority during initial conversations months earlier.⁷²

While the fluidity of the discovery process makes increased flexibility helpful, any truly important issue would still be admitted under a more stringent standard. Instead, the ease with which new topics are added opens up the procedure for abuse and misuse and increases unpredictability for project sponsors.

The "community character" issue

Among the 37 states with some form of NEPA-like law, some restrict review to purely environmental concerns: impacts on air, land, water, flora and fauna. New York, however, is among those employing a more expansive definition including consideration of "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."⁷³

Of these, the phrase "existing community or neighborhood character" poses particular problems, because the phrase is otherwise undefined in both the statute and the regulations. In reality, "community character" is expressed in master plans and zoning ordinances drafted by elected town boards or city councils.

For example, a locality that opts for minimum one-acre lot sizes has effectively decided, for better or worse, that a residential subdivision calling for quarter-acre lots is inconsistent with the community's character. And, in fact, state courts have suggested as much in SEQR cases.⁷⁴

In practice, however, community character impacts have been given a broader definition through the SEQR process. In the case of the St. Lawrence Cement Co. (see page 9), SEQR’s broad language provided grounds for holding up a project that would have replaced an aging industrial plant with a new, more efficient, environmentally cleaner facility.⁷⁵ State officials and local citizen groups argued that the new plant was not consistent with the surrounding community’s character. Although the old plant already operated and employed residents on the Hudson’s west bank just six miles downriver of the proposed site for a new plant, opponents said the project on the east bank would be out of scope with the “existing mix of business and industries.”⁷⁶

If there is no comprehensive local plan, “a lead agency has little formal basis for determining whether a significant impact upon community character may occur,” the *Handbook* adds.⁷⁷ However, it doesn’t necessarily stop agencies from *informally* reading into the phrase.

For example, localities can try to define “character” in a way that restricts consumer choices and squelches competition for existing businesses. As the *SEQR Handbook* advises, “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.”⁷⁸ On the other hand, courts have drawn the line at applying a *purely* economic rationale in cases where the proposed development is physically further removed from allegedly affected businesses.⁷⁹

“Community character” impacts under SEQR can include a big-box store’s “displacement” of business in a nearby village.

Similarly, a 2007 state Appellate Division ruling allowed villages located within the Rockland County town of Ramapo standing to challenge a town SEQR process approving a zoning change that would allow student housing *adjacent* to the village.⁸⁰

The *SEQR Handbook* also includes this striking passage on one of the most sensitive issues facing any community:

Examples of actions affecting community character that have been found to be significant include: the introduction of luxury housing into a working-class ethnic community, and construction of a prison in a rural community.

Examples of actions found *not to be significant* include low-income housing and shelters for the homeless proposed to be located within existing residential areas.⁸¹ [emphasis added]

Should state or local laws make it more difficult to build luxury housing in a “working class” community than to build low-income housing or a homeless shelter in *any* existing residential area? It may surprise New Yorkers to learn that, under the “character” clause, SEQR has been interpreted to come down squarely on one side of this politically charged question – classifying low-income housing as having a less significant impact than luxury housing – although it is difficult to see what that has to do with “environmental quality review.”

DEC weighs SEQR changes

Under Governor Andrew Cuomo, New York State's Department of Environmental Conservation (DEC) has begun considering its first major regulatory overhaul of SEQR since the law was last amended in the mid 1990s. "The principal purpose," the agency says, "is to streamline the SEQR process without sacrificing meaningful environmental review."⁸²

Proposed changes include amendments that would lower the size thresholds for a Type I designation, which denotes projects likely to require an Environmental Impact Statement (EIS). At the same time, it would designate more projects as Type II and thus exempt from the law, and would require that lead agencies provide project sponsors with cost estimates for SEQR reviews. To the extent that the new regulations would actually ease SEQR requirements, one of the agency's stated goals is to promote urban redevelopment.

Most significantly, the new rules would mandate the "scoping" of potential issues and impacts early in the process, and would require agencies to determine the adequacy of an EIS based solely on the impacts identified in the final scope. In an effort to forestall delays, the new rules would also require automatic acceptance of an approved DEIS if the agency takes no action for 180 days.

Under Governor Cuomo, DEC also has promulgated new versions of the both the "short" and "full" environmental assessment forms (EAFs), which are the basis for determining whether a project requires a complete SEQR review culminating in a Final Environmental Impact Statement.

The revised full EAF – expanded from 21 pages to 25 pages (in a smaller font size) – requires lead agencies to answer new questions when considering impacts and sponsors to provide greater detail on how their projects affect the surrounding area, air quality, and natural and public resources.

The short form, expanded from two to four pages, now requires sponsors to answer new and more pointed questions, such as whether the project site is home to any endangered species. DEC has indicated that it intends longer forms to identify more issues earlier in the process.⁸³

Private industry concerns

Industry groups have suggested other specific and technical reforms to SEQR that deserve consideration.⁸⁴ While not evaluated in-depth in this report, these ideas include the following:

- DEC should clarify when an application or EIS is deemed "complete" for the purpose of proceeding to public review and comment.
- There should be a new, heightened standard of review to decide when to adjudicate a permit hearing issue – requiring "clear and compelling evidence" to adjudicate where DEC has deemed the permit application complete and issued a tentative determination to approve the application. In addition, there should be fixed timeframes for the steps of the adjudicatory process.

- There should be an expedited SEQR review process to fast-track proposed projects or applications that meet certain criteria, as previously authorized for power plants under Article 10 of the Public Service Law.
- SEQR should not impose project mandates that would exceed other established regulatory or statutory standards such as the Clean Air Act.
- DEC should be given authority over the New York State Coastal Management Program, and any review under the program should be undertaken simultaneously with SEQR review.
- In any instance where a project receives a negative declaration, indicating an impact statement is unnecessary, any additional studies subsequently required by a lead agency should be undertaken at the agency's expense.
- Codify the *Plastics Industry* standard for determining legal standing to challenge an agency action under SEQR, which limits standing to those who can demonstrate injury "different in kind or degree from the public at large."

Regional councils weigh in

Similar concerns about SEQR and project delays have been cited or alluded to in strategic plans submitted by several of New York's Regional Economic Development Councils, which Gov. Cuomo has assigned a more important role in charting state policy to promote economic growth. For example, in its November 2011 strategic plan, the Capital Region council had this to say about the law:

SEQRA is seen as cumbersome, vague, with little certainty on timetables or grounds for determinations. SEQRA was written to protect separation of environmentally sensitive or residential uses of property from industrial activity. But this valuable objective, when implemented in daily practice, can also have unintended consequences -- stymieing redevelopment even on previously industrial property and especially, lessening New York's ability to win important "game changing" projects.⁸⁵

5. RECOMMENDED REFORMS

While supporters and detractors of SEQR might endlessly debate its impact and consequences, the law undoubtedly adds to the expense of any project subject to its requirements, generating ample billable hours for planners, engineers and lawyers who specialize in advising project sponsors and lead agencies on how to navigate its twists and turns. New York's 4,790-word SEQR statute has spawned a bulky 16,850 words of regulations – further explained, along with dozens of notable court precedents applying the law, in the state's 88,000-word, 211 page *SEQR Handbook*.

As noted earlier in this paper, most states manage to seek a balance between economic development and environmental protection without superimposing a law like SEQR on existing environmental regulations and land-use ordinances. Even among the states with generally similar laws inspired by the federal NEPA, New York's approach is among the most stringent and broadly applicable in the nation.

The state DEC's own proposed SEQR rules changes provide a good starting point for further needed reform.

Assuming SEQR stays on the books, changes to the law would create a more efficient process allowing for public input and deliberation while ensuring development does not harm the environment.

DEC's ongoing consideration of proposed SEQR rule changes can provide a starting point for more significant reform. What follows are recommendations for streamlining SEQR for specific projects in three key problem areas identified in the previous section. Some, such as timeline changes, would require statutory amendment, while others could be accomplished through regulatory revisions.

1. Reducing delay

With the submission of an environmental assessment form as the starting point, implement the following new timelines:

- Up to 60 days for a project sponsor to complete a draft scope
- Up to 40 days for the lead agency to consider the draft scope and present the project sponsor with a final scope
- Up to 180 days to complete the SEQR process, including preparation of both a draft and final EIS

Implement these rules to accompany timelines:

- If the lead agency does not reach a significance of action determination within 20 days, a "negative" declaration automatically will be issued for the project, essentially clearing the way for other needed approvals.

- If the lead agency does not approve a draft scope within 60 days of the determination that there are significant adverse environmental impacts, the draft will be deemed the final scope for the purposes of EIS creation.
- If the lead agency does not prepare and file an FEIS within 180 days of approving a final project scope, the DEIS will be deemed the FEIS, as called for in DEC’s proposed draft regulations.
- In line with existing regulations, any extension of the proposed new SEQR deadlines will only be at the mutual agreement of the project sponsor and lead agency.⁸⁶

These changes effectively would divide the SEQR review process into two phases: 120 days for determination of significance and scoping and 180 days for completing both a draft and final EIS.

Barring any mutually agreed-upon extensions, this would ensure that the SEQR process for any project is completed within 300 days—or about 10 months from start to finish, after a project sponsor’s initial EAF submission.

It’s time to add some firmer deadlines to the SEQR process.

2. Increasing predictability

A “scoping” process, resulting in a definitive list of environmental impacts to be considered in the EIS, should be mandatory for all actions or projects unless waived by the lead agency, as called for in DEC’s proposed regulations. In addition:

- Once scoping is complete, new “impact” issues should only be admitted through the existing supplemental EIS procedure, subject to more stringent admission criteria; and
- Such issues must be significant enough that, had the issue been considered during scoping, the project could not have proceeded without mitigation.

While *significant* environmental issues would still be admitted after scoping, this will curb the ability of lead agencies to hold up projects by repeatedly introducing new issues late in the SEQR process.

3. Redefining “character”

The law’s reference to “existing neighborhood and community character” should be eliminated. As broadly defined and applied through the SEQR process, this provision can too easily serve as a vehicle for imposing further restrictions on development, beyond those already found in local land-use laws.

For better or worse, the “character” of a particular neighborhood or community ultimately is reflected in planning and zoning ordinances determined and periodically updated through the democratic process, by locally elected officials.

Conclusion

The proposed reforms outlined above assume that the underlying SEQR statute is not changed. But the issues cited here also point to a bigger question: given the many other environmental protection and land-use laws enforced at the federal, state and local level, is SEQR really essential?

Nearly 40 years after SEQR's enactment, as the Empire State continues to lose large numbers of residents to the rest of the country, it's time to consider whether New York should continue imposing this layer of added cost and complexity on significant residential, commercial and civic developments.

ENDNOTES

¹ 40 C.F.R. §1508.14.

² "The SEQR Handbook: 3rd Edition – 2010," Division of Environmental Permits, New York State Department of Environmental Conservation, pg. 188; available at: http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

³ Federal laws designed to protect the environment include the Clean Air Act (CAA), the [Clean Water Act \(CWA\)](#), the [Comprehensive Environmental Response, Compensation and Liability Act \(CERCLA, or Superfund\)](#), the Endangered Species Act, the Oil Pollution Act, the Resource Recovery and Conservation Act, and the Safe Drinking Water Act, among others. Many of these laws have their counterparts on the state level or are enforced in part by the state DEC.

⁴ 40 C.F.R. §1508.14.

⁵ New York Environmental Conservation Law §8-0105(6).

⁶ *Ibid.*

⁷ *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

⁸ Jeffrey Renz, "The Coming of Age of State Environmental Policy Acts," 5 *Pubic Land and Resources Law Review* 31, pgs. 49-50 (1984) ("that by merely preparing, circulating and reviewing an EIS, an agency satisfies the acts' requirements that the agency consider environmental impacts").

⁹ 42 U.S.C. §4332(c); *see also*: SEQR Handbook, NYSDEC at pg. 188.

¹⁰ Environmental Conservation Law §8-0109(8); *see also*: 6 N.Y.C.R.R. §617.11(d)(5) ("[C]ertify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the *maximum extent practicable*, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decisions those mitigative measures that were identified as practicable").

¹¹ "SEQR: Environmental Impact Assessment in New York State," New York State Department of Environmental Conservation website, (accessed 10/01/13), available at: <http://www.dec.ny.gov/permits/357.html>.

¹² "SEQR Handbook," NYDEC, at pg. 14.

¹³ The discussion throughout this paper focuses on specific projects and project-specific impact statements. However, less frequently, SEQR also can require a "generic" impact statement, or GEIS, "if a number of separate actions are proposed in a given geographic area and which, if considered singly, may have minor effects, but if considered together may have significant adverse environmental impacts; a sequence of related or contingent actions is planned by a single agency or individual; separate actions share common (generic) impacts; or a proposed program or plan would have wide application or restrict the range of future alternative policies or projects," SEQR Handbook, NYSDEC, at pgs. 99-100..

¹⁴ 6 N.Y.C.R.R. §617.4

¹⁵ 6 N.Y.C.R.R. §617.4(a)(2). There is both a 'short' form EAF and a 'full' form EAF, the full form is only *required* when the action/project is defined as Type I (projects types likely to require an EIS). Any lead agency or project sponsor can choose to do a full form EAF.

¹⁶ 6 N.Y.C.R.R. §617.5. Type II actions are excluded from SEQR review - examples include maintenance or repair involving no substantial damage to an existing structure or facility, repaving of existing highways, construction of commercial space less than 4,000 square feet that does not require a zoning change or variance, construction or expansion of single, two-family, and three-family homes on approved lots).

¹⁷ 6 N.Y.C.R.R. §617.2(ak).

¹⁸ 6 N.Y.C.R.R. §617.6(a)(3).

¹⁹ 6 N.Y.C.R.R. §617.7. Agency can determine: "(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact. (2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant." Note that this is different

than the language in New York Environmental Conservation Law §8-0109. §8-0109 states that the agency shall prepare an EIS if the action “may have a significant effect on the environment.”

²⁰ 6 N.Y.C.R.R. §617.8(a).

²¹ 6 N.Y.C.R.R. §617.8(e).

²² 6 N.Y.C.R.R. §617.9.

²³ 6 N.Y.C.R.R. §617.11.

²⁴ 6 N.Y.C.R.R. §617.9(a)(3).

²⁵ 6 N.Y.C.R.R. §617.9(a)(4).

²⁶ 6 N.Y.C.R.R. §617.9(a)(5).

²⁷ Zhao Ma, Dennis R. Becker, and Michael A. Kilgore, “Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment” *Journal of Environmental Planning and Management*, Vol. 52, No. 8, Pg. 1040 (Dec. 2009). States that have no formal environmental review requirements are: Alabama, Arizona, Colorado, Idaho, Iowa, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, West Virginia, and Wyoming.

²⁸ *Ibid* at 1040. Including: Alaska, Arkansas, Delaware, Florida, Illinois, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont). *See also*: Rolf Pendall, “Problems and Prospects in Local Environmental Assessment: Lessons from the United States,” *Journal of Environmental Planning and Management*, 41(1) pgs. 5-23, (1998)(At least three of these 21 states— Texas, Utah, and New Mexico— initially adopted more widely applicable comprehensive environmental review laws in the 1970s but have since repealed them).

²⁹ Ma, Becker, and Kilgore, “Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment,” at pg. 1039.

³⁰ *Ibid* at 1040; *see also*: “State NEPA Contacts,” The White House’s Council on Environmental Quality website; (accessed 1 Oct 2013), available at

http://ceq.hss.doe.gov/state_information/States_NEPA_Like_22June2013.pdf.

³¹ *Indiana State Highway Commission v. Ziliak*, 428 N.E.2d 275, 281 (1981 Ind. App.).

³² The others are California, Georgia, Hawaii, Minnesota, New Jersey, North Carolina, and Washington.

³³ Ma, Becker, and Kilgore, “Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment,” at pg. 1042.

³⁴ *Ibid*.

³⁵ Ma, Becker, and Kilgore, “Characterising the landscape of state environmental review policies and procedures in the United States: a national assessment,” at pg. 1042. The California Environmental Quality Act and Washington State Environmental Planning Act are the others.

³⁶ David Sive and Mark A. Chertok, ““Little NEPAs” and their Environmental Impact Assessment Procedures,” *ALI-ABA: Environmental Litigation*, pg. 9 (June 2005).

³⁷ While South Dakota’s statute has this action-forcing provision, the statute is applied only at the discretion of the agency reviewing the action. Thus, unlike the other states with this provision it is not a purely mandatory.

³⁸ Alan Gilpin, *Environmental Impact Assessment: Cutting Edge for the 21st Century*, Cambridge University Press, pg. 117-118 (1995).

³⁹ *Ibid*.

⁴⁰ *The Society of the Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761, 770 (1991)(stating that the Legislature intended to place some limitations on standing to challenge administrative action under SEQRA by failing to provide for citizen suits explicitly).

⁴¹ N.Y. C.P.L.R. §7801.

⁴² *Rochester Telephone Mobile Communications v. Cole*, 637 N.Y.S.2d 878 (4th Dep’t 1996).

⁴³ Michael B. Gerrard, “Judicial Review Under SEQRA: A Statistical Study,” 60 *Albany Law Review* 2, pg. 378; available at:

<http://www.albanylawreview.org/archives/65/2/JudicialReviewUnderSEQRA-AStatisticalStudy.pdf>.

- ⁴⁴ *Sour Mountain Realty v. N.Y. State Department of Environmental Conservation*, 688 N.Y.S.2d 842, 845 (App. Div. 1999)(holding that a positive declaration is only a step and not a final determination and that the case is not ripe for review).
- ⁴⁵ N.Y. C.P.L.R. §217.
- ⁴⁶ *Haggerty v. Planning Board of Sand Lake*, 166 A.D.2d 791, 792 (3d Dept. 1990)(holding that a thirty day statute of limitation contained in town law applied when town action was alleged to have violated SEQRA).
- ⁴⁷ *Gordon v. Rush*, 100 N.Y.2d 236 (2003)(holding that the statute of limitations started to run when the negative declaration was made); *Stop-the-Barge v. Cahill*, 771 N.Y.S.2d 40 (2003) (holding that the statute of limitations started to run when the positive declaration was made).
- ⁴⁸ *The Society of the Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761, 778 (1991).
- ⁴⁹ Mark A. Chertok and Ashley S. Miller, "Environmental Law: Developments in the Law of SEQRA," 61 Syracuse L. Rev. 721, pg. 726, (2011); see also: *Matter of Sun-Brite Car Wash v. Board of Zoning Appeals of Town of North Hempstead*, 69 N.Y.2d 406 (1987); *Save Our Main Street Buildings v. Greene County Legislature*, 77 N.Y.2d 761 (1991).
- ⁵⁰ Gerrard, "Judicial Review Under SEQRA: A Statistical Study," at pg. 372.
- ⁵¹ *Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 N.Y. 3d 297, 305 (2009); see also: Chertok and Miller, "Environmental Law: Developments in the Law of SEQRA," at pg. 725.
- ⁵² *Peconic Baykeeper, Inc. v. Board of Trustees of the Freeholders & Commonalty of the Town of Southampton*, 2010 N.Y. Slip Op. 30182(U) (Sup. Ct. Suffolk County. 2010).
- ⁵³ *Harris v. Town Board of Town of Riverhead*, 905 N.Y.S.2d 598 (2d. Dep't 2010)(holding that petitioners did not have standing to challenge a construction project where they did not live close enough to the state an injury on the basis of proximity alone and that traffic congestion and negative effects on business are not individual injuries that are different than the general public).
- ⁵⁴ *Akpan v. Koch*, 75 N.Y.2d 561, 570 (1990); see also: N.Y. C.P.L.R. §7803. The SEQRA challenge must be based on one of these four grounds: "1. whether the body or officer failed to perform a duty enjoined upon it by law; or 2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or 3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or 4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence...".
- ⁵⁵ *Akpan* at 570.
- ⁵⁶ *Jackson v. New York State Urban Development Corporation*, 67 N.Y.2d 400, 417 (1986).
- ⁵⁷ Michael B. Gerrard, "Survey of 2012 cases under State Environmental Quality Review Act," 250 *New York Law Journal* 8 (11 July 2013).
- ⁵⁸ *Ibid.*
- ⁵⁹ *Ibid.*
- ⁶⁰ *King v. Saratoga County Board of Supervisors*, 675 N.E.2d 1185, 1188-9 (1996)(SEQRA requires strict compliance with procedural requirements and that anything less than strict compliance offers "the incentive to cut corners"); but see: *Merson v. McNally* 688 N.E.2d 479 (N.Y. 1997)(holding that an agency can determine a conditional negative declaration for a Type I action even though regulations seem to prohibit it, as long as the public is involved).
- ⁶¹ Gerrard, "Judicial Review Under SEQRA: A Statistical Study," at pg. 365 and 366.
- ⁶² Michael B. Gerrard, "Recent Developments Under State Environmental Quality Review Act," 248 *New York Law Journal* 8, pg. 1 (12 July 2012).
- ⁶³ Gerrard, "Survey of 2012 Cases Under State Environmental Quality Review Act," at pg. 1.
- ⁶⁴ "Lawsuit could hold up Irondequoit library project; require new vote," *Irondequoit Post*, 20 May 2013, at: <http://www.irondequoitpost.com/x90718543/Lawsuit-could-hold-up-Irondequoit-library-project-require-new-vote>.
- ⁶⁵ Presuming the lead agency is acting in good faith.

⁶⁶ *Fortress Bible Church v. Feiner*, 694 F.3d 208 (2012), available at: <http://www.leagle.com/decision/In%20FCO%2020120924061>.

⁶⁷ *Ibid.*

⁶⁸ *Downey Farms Development Corp. v. Town of Cornwall Planning Board*, 2008 NY Slip Op 28186, (16 Apr 2008, Sup. Ct. Orange County), available at: <http://law.justia.com/cases/new-york/other-courts/2008/2008-28186.html>.

⁶⁹ *Ibid.*

⁷⁰ *Fortress Bible Church v. Feiner*, 694 F.3d 208 (2012).

⁷¹ *Downey Farms Development Corp. v. Town of Cornwall Planning Board*, 2008 NY Slip Op 28186, (16 Apr 2008, Sup. Ct. Orange County).

⁷² *Ibid.*

⁷³ 6 N.Y.C.R.R. §617.1.

⁷⁴ *Village of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74 (2007, 2nd Dept.).

⁷⁵ "St. Lawrence revises plans for proposed cement plant," *The Business Review*, 18 Aug 2008, available at <http://www.bizjournals.com/albany/stories/2004/08/16/daily26.html>.

⁷⁶ "Secretary of state rejects St. Lawrence Cement plant on Hudson," *The Business Review*, 25 Apr 2005, available at:

<http://www.bizjournals.com/albany/stories/2005/04/25/story5.html?page=2>.

⁷⁷ "SEQR Handbook," NYDEC at pg. 86.

⁷⁸ *Ibid* at pg. 177.

⁷⁹ *East Coast Development Company v. Kay*, 174 Misc.2d. 430 (1996).

⁸⁰ *Village of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74 (2007, 2nd Dept.).

⁸¹ "SEQR Handbook," NYDEC, at pg. 86.

⁸² "State Environmental Quality Review Act – Proposed Amendments," New York State Department of Environmental Conservation website; available at

<http://www.dec.ny.gov/permits/83389.html>

⁸³ "Revised Model Environmental Assessment Forms: Negative Declaration," New York State Department of Environmental Conservation, (11/23/10); available at:

http://www.dec.ny.gov/docs/permits_ej_operations_pdf/eafnegdec.pdf

⁸⁴ See, for example, The Business Council's proposals at

<http://www.bcnys.org/inside/env/2011/SEQRA.pdf>

⁸⁵ <http://regionalcouncils.ny.gov/themes/nyopenrc/rc-files/capitalregion/CREDCStrategicPlan2011.pdf>,

⁷⁷ The other regional councils to cite or allude to SEQR delays were those for Long Island, the Mid-Hudson, Central New York, New York City, the Southern Tier and Western New York.

⁸⁶ 6 N.Y.C.R.R. §617.3(i). "Time periods in this Part may be extended by mutual agreement between a project sponsor and the lead agency, with notice to all other involved agencies by the lead agency."
