

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) DIALOG
NYS Hudson Valley Catskill Region (DEC Region 3)

*A regional effort to identify opportunities
to improve the SEQR process*

Appendix B

<u>Written Comments Index:</u>	<u>Page</u>
1. Clif Schneider	4
2. Karen Schneller-McDonald	5
3. Vernon Benjamin	8
4. Nancy Schniedewind (w/ letter to Congressman Hinchey)	10
5. David Porter	12
6. Neal Holloran	13
7. Glenn Hoagland	14
8. Graham Trelstad	18
9. Mary Beth Bianconi	19
10. Dave Church	21
11. Ned Sullivan and Jeff Anzevino, Scenic Hudson	22
12. Albert Annunziata	24
13. David Porter (2 nd comment)	25
14. Nancy Scniedewind (2 nd comment)	26
15. Frank Collyer	27
16. Dave Colavito	29
17. Mark Doyle	30
18. Steven White	31
19. Jim Bates	33
20. John Nolan, Pace School of Law, Land Use Law Center	34
21. Jolanda Jansen	42
22. Drayton Grant	43
23. Michael Baden	44
24. Ann Gallelli	48
25. Michael Edelstein	50
26. Joel Russell	51
27. Barbara Warren (with SEQR portion of EJ comments included)	53
28. Vernon Benjamin (2 nd comment)	58
29. Karen Schneller-McDonald (2 nd comment)	61
30. Kate Hudson	64
31. Marian Rose	69
32. Nancy Proyect	72
33. Nancy Schniedewind	73
34. Robert Pucca	75
35. Chad Murdock	75
36. David Porter (2 nd comment)	76
37. Mark Castiglione	79
38. Michael Klemens	83
39. George Potanovic, Jr.	85
40. Neal Halloran	88
41. Adelaide Cami	93
42. Karen Roux	94
43. John Lyons	96
44. Rachel Lagodka	98
45. Doreen Tignanelli	101
46. Cara Lee	103
47. Philllip Musegaas	108
48. Robert Roth	110
49. Carol Smith	111

Written Comments Index (continued).....

50. Anonymous	112
51. Anonymous	113
52. Anonymous	114
53. Anonymous	115
54. John J. Behan, AICP	116
55. Cudder & Deder, LLP (Anthony Morando)	118
56. Proposed Legislative Change from Albert Annunziata (2005 Senate Bill 5411)	Attached

>>> Clif Schneider 10/2/2009 4:06 AM >>>

Chuck,

I think it is clear that the State wants to streamline the SEQRA process so that development can proceed more quickly (i.e., remove burdensome regulations). They are suggesting, I believe erroneously, that New York's economic problems are caused in large part from an overprotective, protracted environmental review process. I think some administrative officials have the view that once the SEQRA review process is "streamlined" New York will do an economic about-face and then all will be well.

I have a friend who was the sole American engineer to accompany Mercedes-Benz officials on their tour years ago to select the location for their first American auto manufacturing plant. I asked him if they considered any sites in New York and he said no. I asked for what reason, suggesting tight environmental laws. He said no again. The Germans indicated that it wasn't New York's environmental laws that eliminated us from consideration, rather it was New York's political process. Initially I was surprised at his response, but given what's been going on in Albany lately I can understand why the Germans headed south to Alabama. From this example I'd suggest New York legislative officials better look beyond fixing something that ain't broke and fix something that is obviously broken -- New York's political process.

Wouldn't it be a shame if a new, revised SEQRA gutted environmental protections while doing nothing to help New York's economic demise. Regrettably, this may be the only thing the administration accomplishes in the end.

Clif

To: Willie Janeway, DEC Region 3 Director
From: Karen Schneller-McDonald, Hickory Creek Consulting LLC
Re: SEQRA process streamlining
Date: October 2, 2009

The SEQR Process: EAF to EIS

In many places, the current practice of developing and reviewing an EIS has evolved into a process that is all too often long and costly and that produces voluminous information that is difficult for the public to review and often overlooks significant impacts. As such it really does not serve the best interests of municipalities, the public, developers, or the natural resources it is supposed to protect.

In working with different towns throughout the Hudson Valley, I've often been challenged to figure out how to improve the impact assessment and review process, in terms of both effective use of time and dollars spent, and effective natural resource protection/mitigation of impacts. The following are some of my observations and suggestions and I'm offering them in the hope that they may be helpful. As context, most of my recent work has been conducted in the interests of various townships in the Hudson Valley, with some past experience in developing environmental impact assessment guidelines for a county in Colorado.

The EIS review process is often set up to be reactive; however, I believe it has the flexibility and potential to be more proactive, greatly increasing the potential for better resource protection, better site design for development, less contention during the process, and more effective minimization of impacts. A proactive approach reduces review time, clearly identifies impacts so the discussion can focus on effective mitigation, and has great potential for reducing conflict and delay during the process.

Evaluation of information: Town residents and Boards have often been confused about how to determine what constitutes 'good information'. When a developer's team presents scientific information from an expert, and a municipality's professional consultant, CAC or informed resident challenges that with information from another expert or credible source, planning boards and project applicants sometimes see this as simply a 'difference of opinion'. There is a real need to base decisions on good information. Along with other agencies and research groups, the DEC has many information resources that could help to resolve such issues, but often they are underutilized when EIS's are prepared.

Environmental Assessment Forms: As an early step in the review process, the EAF part 2 is important for informing negative and positive declarations. Often the EAF is not reviewed and

verified by the appropriate professionals, representing the Town; when the EAF part 2 does not flag all significant impacts for subsequent review in a DEIS, this missing information may be requested later in the process, leading to costly and time consuming revisions of the DEIS. For example, questions 8 and 9: Impacts on Plants and Animals is usually checked off as ‘no impact’ but this finding is rarely documented at the EAF stage. Thus the information needed may not be included in the scoping document. Or, a ‘negative declaration’ is issued based on insufficient information, and if there are in fact significant resources that may be affected, that issue may emerge later in the process. In at least one case, this omission has led to litigation against a municipality. Since litigation represents a very high cost in time and dollars, facilitation of the SEQR process is best served when it can be avoided.

Scoping: When scoping documents are vague or incomplete, time is wasted later in the process as different interpretations of the scope conflict. The development of a clear, detailed scoping document, based on comments from the range of stakeholders, that covers all the pertinent issues (for example watersheds, biodiversity, indirect impacts to wetlands, etc.) would reduce time and cost of review, and hopefully lead to the production of DEIS’s that can more readily be deemed ‘complete’. In my experience, most developers appreciate knowing ‘up front’ what the natural resource issues are likely to be. A detailed scope serves all parties in this regard, and saves time by avoiding later ‘additions’, i.e. significant impacts that were left out of the scope, and that may require a supplemental EIS or lengthy project revisions.

For example, at later stages in the SEQR process the applicant has likely incurred significant cost in drawing up detailed site plans. When pertinent information is missing from the DEIS, and must be provided later in the process, it is likely that those site plans will need to be altered to some extent depending on mitigation requirements. For example, if Better Site Design principles for mitigating the impacts of stormwater runoff on wetlands and streams are considered in project design at the scoping stage, there may be less likelihood of project design changes to accommodate these principles later in the review process. Too often the production of a SWPPP is used as the sole mitigation for (indirect) impacts to wetlands and streams, and in these cases the application of Better Site Design principles does not occur until later in the process, when there is often less flexibility for project design change.

Significant Impacts: Guidance for municipalities in identifying or defining ‘significant impacts’ before the SEQRA process is initiated would ensure that these impacts are identified consistently from one project to another. This would create a more equitable review for applicants, and also provide a more consistent approach to protection of a locality’s most significant natural resources. It would also streamline the SEQR process because the decision as to what is ‘significant’ would not have to be made for each project. In the absence of clear direction from a municipality, the definition of a significant impact is often provided by the project applicant. This is a universal problem: everyone grapples with it and agrees that it is difficult, but there really is no clear guidance for planning boards. Probably a real solution here would require the development of guidelines for how to determine what is or is not a significant impact at the township level. This is a feasible project, and would be extremely useful, but is probably beyond the scope of the SEQRA streamlining project at hand. (A pilot project to provide developers with local significant impact information in Larimer County, CO was wellreceived-most of them wanted to know sooner rather than later what the significant issues were). In my experience, no one, including developers/applicants, is well served by minimizing or omitting significant impacts early in the process.

The development of Habitat Assessment Guidelines as part of the Shawangunk Ridge Green Assets program, and adoption and use of these guidelines by several towns, provides an example of how the impact assessment process can be streamlined and still provide the information necessary for adequately describing impacts and developing effective mitigation for them. These Guidelines were first developed by the Town of Milan in Dutchess County to provide consistent information on both protected and non protected plants and animals pursuant to EAF Part 2 questions 8 and 9: Impacts on Plants and Animals. The DEC's Wildlife Action Plan, and the very clear definition of species of conservation concern provided in DEC's "Conserving Natural Areas and Wildlife in Your Community" publication provide information (used in Habitat Assessment Guidelines) that would greatly facilitate the process of describing impacts and mitigation in the SEQR process, but they are generally not used.

Information in the EIS: organization and content. The DEIS should be clearly organized and presented, addressing all points identified in the Scoping Document. The easier it is to review, the less time that review will take, and subsequently the less it will cost. I have reviewed many DEIS's where impacts, existing conditions, and mitigation are mixed together and pertinent information on one issue is scattered throughout the document. It has been my experience on multiple occasions and in a variety of townships that when an EIS is poorly organized or otherwise serves to obscure and minimize discussion of real and significant impacts, the process becomes drawn out and more expensive than it would be if significant impacts were clearly identified up front so that time and effort could be focused on development and evaluation of effective mitigation. When a DEIS does not present the information needed to make an adequate assessment of **all** impacts, the DEIS process can drag on for a long time especially if the information is not readily provided by the applicant's team, and the municipality and its team have to acquire it bit by bit. When some impacts of a project are minimized or ignored in the SEQRA process (a frequent occurrence), mitigation is not provided and resource protection does not occur to the best extent possible—and, the applicant winds up paying more for multiple rounds of project review as the pertinent information is sought by town representatives and the public. In sum, the worth of an EIS is not determined by its size. Specific guidance for EIS preparation to encourage production of a well organized document that minimizes unnecessary information and maximizes the pertinent information would serve to streamline the process.

Municipal authority

Despite a municipality's inherent authority (i.e. home rule) in the SEQR process, developers often determine the impacts and specifics of a proposed development. Across townships there is a wide range in understanding what municipal authority allows a township to do. At times this is by default—many planning boards lack resources or simply do not realize their authority. Some planning boards support poorly planned development, often at the expense of the local environment, increasing the potential for long term costs to the municipality in the future. Information for all municipalities that would clarify this authority would be helpful by minimizing time-consuming conflicts regarding what a town can or cannot ask a developer to do to minimize impacts, and thus contributing to streamlining the review process.

-----Original Message-----

Subject: SEQRA group

For Jonathan Drapkin---

Greg Helsmoortel, the Saugerties town supervisor, asked me to get in touch with you about the new partnership with DEC that Pattern is developing concerning SEQRA and the best ways to improve that and streamline the process.

I think we can have some good input into this because of the success the community has had in working on the Winston Farm project. Hudson Valley Economic Development Corporation initiated a Feasibility Study and hired IDC Architects, a subsidiary of CH2M Hill, to work with the owner, HVEDC, Central Hudson, and the Town of Saugerties and its community in preparing the 800 acre Winston Farm for high technology development designed to create a campus-like park to attract nanotech, solar, or other suitable clean-and-green world-class industries. HVEDC worked with Helsmoortel in creating a Steering Committee that has guided the Study through a series of community workshops in which the townspeople have been able to input specific issues and desires into the planning for the Winston Farm. The process has worked amazingly well. Helsmoortel augmented the Steering Committee with local organizations that had worked against supposed solutions for the Winston Farm in the past (Friends of the Winston Farm and Saugerties No Casinos)--they even contributed to the cost of the Feasibility Study--and brought a naturalist onto the team who has helped ensure the project's success. The project upon completion is expected to employ between 2,500 and 4,000 in relatively well-paying jobs. The project also will be undertaken in a way that not just saves open space and heritage and other resources on this valuable and unique property, but incorporates these areas as essential elements. All buildings will be LEED eligible or certified. The early stages of the Study involved a community survey that resulted in an 84% positive response to continue to work out the best potential uses for the property--and that from a community that has been very protective of this property in the past. The Feasibility Study will result (at the end of this month!) in a Master Plan scenario and the initiation of a Generic Environmental Impact Statement that will then be subjected to a full SEQRA review. There is nothing like this in the Hudson Valley, or elsewhere in New York State to my knowledge. No formal completion date has been established, but given the progress to date I have been suggesting that we may be in the ground

in under four years--a remarkable feat for such a large project, I believe.

Greg wanted to find out how we can "plug in" through my representation on the SEQRA group that Pattern and the DEC are creating. I am the Special Operations Coordinator for the town. My background includes significant SEQRA involvement over the years as well as, in the last two years, successful economic development here in Saugerties. I am also an expert on Hudson Valley history (including archaeology) and have used my knowledge and contacts to help move our various projects along. We are also doing the Kings Highway Enterprise Corridor, a light industrial area that will ultimately complement the Winston Farm's presence over time. The town created and found funding for water and sewer districts for Kings Highway--construction should begin within a month--and is about to go through the SEQRA process on a GEIS for the Corridor. The districts are financed by an EPA grant (\$2.3 million), a grant from NYSEFC (\$1.55 million), and two grants from Ulster County through its Shovel Ready program (\$1 million total). The U. S. Army chose the Kings Highway Corridor for a major training facility partly because of the infrastructure we are bringing to the table.

Anthony Campogiorni is intimately involved in the Winston Farm project, and of course Marissa Brett at HVEDC. I am sure that they can vouch for Saugerties' involvement and approach, and the ways in which we are successfully marrying SEQRA with economic development. I don't think I overstate the case when I state that we are creating a model or best-practice scenario in this very interesting project.

Vernon Benjamin
Special Projects Coordinator
Town of Saugerties

>>> "nancy schniedewind" 10/11/2009 8:42 PM >>>

Dear Mr. Janeway,

Fall greetings!

I write to share the concern of Save the Lakes regarding a report in the press about the development of a Working Group to modify the SEQRA process. If such a group is forming, we believe a variety of stakeholders should sit at the table, including grassroots environmental groups.

We believe it is inappropriate that Patterns for Progress appears to be playing a very prominent role in the group, rather than being one of a number of stakeholders with equal power and responsibility. We also are eager to learn how members of the Working Group are being chosen and how the public will be able to give input to it.

As you know the Mid-Hudson area has numerous citizens and organizations who have decades of experience working to preserve the environmental integrity of our area. We trust the process you are developing will be inclusive of their expertise. Also we would hope they and the public will be apprised of the development of the Working Group, its goals and its process.

Please see the attached correspondence we recently sent to Congressperson Maurice Hinchey. It notes our concern about the way in which the public is already at a major disadvantage compared to developers in the SEQRA process and that a streamlined SEQRA process could weaken the public's important role even more.

We look forward to your response to our queries and concerns.

Sincerely,

Nancy Schniedewind
on behalf of Save the Lakes

Dear Maurice,

I'm not sure if you're aware of an apparent plan, reported two weeks ago in local papers, by DEC Commissioner Grannis to "streamline" the New York State SEQRA process. At a meeting on SEQRA at SUNY/New Paltz sponsored by Patterns for Progress, Commissioner Grannis apparently agreed with that organization that the SEQRA process should be modified to enable more "shovel-ready" sites around the state to be developed more quickly. He then proposed that Region 3 Commissioner Janeway form a committee with Patterns for Progress to come up with proposals on how the SEQRA regulations could thus be modified.

Knowing of your own important role in developing the original SEQRA statutes and your continuing commitment to maintaining serious environmental protection in the state, we would like you to share your own opinion about this matter. To us with the Save the Lakes organization, we know how valuable the present SEQRA regulations and process are for assuring substantial public participation in the review process, even though we sometimes see that the public, because of limited resources and time pressures, is at a major disadvantage compared to developers. We are very concerned that a "streamlined" process to facilitate faster development will weaken the public's important role that much more. Furthermore we are concerned that the proposed committee will be composed of DEC and Patterns for Progress representatives, while no representatives from environmental groups are included.

We much look forward to hearing your position in this matter.

With all good wishes,

Nancy Schniedewind
for Save the Lakes

>>> David Porter < 11/1/2009 2:12 PM >>>

Understanding that you are collecting ideas for possible modifications of the SEQRA process, I think one of the most important would be to guarantee that the public has access to all correspondence and expert statements in the lead agency file throughout the entire SEQRA process and that the public have the right to respond with its own letters and expert submissions to any and all responses by the developer and other agencies' submissions responding to a DEIS. Such response submissions by the public and its experts must be considered as part of the official public record which must be considered as part of the FEIS and findings statement. This would close one of the most important gaps in the SEQRA process which leaves the public in a very disadvantageous position. Far too often, the public and its experts are left out of the loop when developers submit inadequate or flawed responses to the DEIS.

Please keep me informed of SEQRA workgroup activities in the weeks to come.

David Porter
546 Albany Post Rd.
New Paltz, NY 12561
845-255-8004

>>> "Neal Halloran" 11/9/2009 9:24 AM >>>

I haven't heard anything for a while so I'm wondering what I should be doing.

My preliminary thoughts about SEQR is that it functions or dysfunctions widely throughout the region and no doubt the state. I work in Goshen, Orange County and I am on my hometown planning board in Cochection, Sullivan County. They are worlds apart. In Cochection SEQR is totally dysfunctional. The rest of the planning board does not understand the requirements or even the reason for having to do SEQR. This would work against anyone in front of the board if someone else filed an Article 78, because they just don't do their job.

In Goshen we have varying degrees of success and the response is much more complex. We have reviewed numerous EIS documents, some up to nine inches thick, yet at times I'm certain that some of the information is nothing but unnecessary paperwork. Other times we are left with the feeling that we do not have the information needed to make the decisions or the information provided is inadequate due to incompetence or the lack of knowledge on our part to get and review the information we need.

In an ideal world, I think it would be much beneficial for the DEC to get involved in projects at the scoping level, suggesting what should be included so the applicant can prepare the information needed in a form that can be reviewed for accuracy at the local and regional levels. We are still learning when certain studies need to be done for threatened and endangered species, etc.

If very little work, the process could be helped by getting guidelines from the Region similar to what has been provided for visual and noise impacts. If the concern about threatened and endangered species is the public trying to collect specimens then we need to figure a way to get the information to the local officials. Recently we learned that we have a project that has cricket frogs on and adjacent to the project site. There was no need for a coordinated review because, from the information we had there would be no permits required from the DEC beyond the storm water.

This will delay the project , but some of that is the fault of the applicant who claimed to have done a threatened and endangered species study but found no suitable habitat. Had the applicant moved more quickly getting approvals from the DOH, the damage would have been done .

Please let me know if there is something I should be doing.

Neal Halloran

Building and Zoning Inspector
Town of Goshen
41 Webster Avenue
P.O. Box 217
Goshen, New York 10924

Dear Initial Core Working Group:

At the suggestion of the co-chairs, I am sending along more detail on my comments of October 30 cited in Charlie Murphy's notes from the meeting. These are some ways I see that SEQR could be streamlined while not compromising the environment or outcomes that can be supported by a majority of citizens involved in a process:

Improve Scoping:

Scoping is a key opportunity for including public participation. We have participated in efforts through the Shawangunk Ridge Biodiversity Partnership "Green Assets" initiative and Hudson River Estuary Biodiversity program to present substantive information based on known science or already-studied areas to elucidate significant natural communities, species, and habitat viability issues that may rise to a level of impact. This information is most-often derived from prior field study and existing data sources for developers and approval bodies to weigh in addressing impacts. In this way potentially relevant information is identified, and the need for specific new information not already available is also cited. If done thoroughly at the outset using credible data, scoping can be a focused, efficient process that doesn't leave open the door for extraneous or irrelevant information not identified in scoping to be introduced later, causing delays. The use of "technical guidance documents" (e.g. Habitat Assessment Guidelines) to focus discussion on the key issues and on standards for addressing key resources can help streamline scoping and EIS's. Furthermore, if scoping is consistent with findings and provides a sufficient basis for either neg-dec or pos-dec it can reduce the threat of litigation from either proponents or opponents of a project.

Reasonableness Standard:

Approval bodies can be better trained to adhere to this standard in the SEQR law. While they have to ultimately certify in adopting the Final EIS (or neg-dec) that reasonable alternatives have been considered, that adverse impacts identified have been reasonably avoided or minimized/mitigated, the approval body should have enough latitude, after thoroughly addressing citizen input, to make a decision on firm ground without the looming threat of litigation. Perhaps there should be an "appeal" process added to SEQRA that is an intermediate step to redress in the courts.

Expand Use of Conditioned Negative Declaration for Negotiated Development:

Currently under SEQR only for Unlisted Actions may a lead agency prepare a "Conditioned Negative Declaration" (CND) after completing an EAF and after certain conditions have been met. This "streamlining" could be expanded so that CNDs could be used for Type I and Type II actions that meet community goals. As noted above, where there is a fair scoping process that fleshes out key issues and uses accepted technical guidance documents to implement mitigation, in some cases there may be enough community consensus to grant a CND. For example if site plan adaptations/concessions are made to redistribute/average allowable density in patterns that result in viable size and configuration of retained functional open spaces, such a "limited development" outcome can be a win-win for community and developer. The developer can use such design, siting and useful open spaces as marketable

amenities, while the community retains scenery, biodiversity, connectivity, healthy landscapes or potential food production lands. Concessions such as overall density reductions or substantive site plan reconfigurations, use of permanent statutory conservation easements, dedications of parkland, or gifts of land to create functional open space linkages with neighboring properties, could result in granting a CND.

Pre-Submission Dialogue/Charrettes to Achieve Consensus:

Often preliminary plans for development are submitted that create a material conflict with a community's current plans or goals, and may also require a zone change. Even those consistent with plans, policies and zoning often start with "as of right" plans that are opening gambits but not realistic and marketable plans for balanced development with amenities. Often citizens are ready to fight to stop all development before they have even seen and studied what is proposed. They take a hard line against as-of-right density when appropriate location and design within a tract can trump density in a good site plan that wins popular support. Some successful developments have been the product of advanced community charrettes where the proponents are willing to involve the community in "visioning" sessions or concept planning before formal submission. Such processes require a high degree of trust and mutual respect and a suspension of polarizing attitudes, but can result in lowered anxieties/hostilities, a better design and diverse community allies going into a formal planning approval process. This can result in a neg-dec, shorter and less costly approval process, and quicker return on investment.

For further consideration, I attach a draft I had previously done called "Conservation Goals" which is an outline of some of the key considerations that can be scoped with respect to site planning, design, amenities, and community public benefits of any project.

I hope these are helpful.

From Glenn D. Hoagland:

Conservation Goals

Does the project respect and protect critical environmental areas as well as other areas of regional significance?

- areas recognized in local, regional or state plans or designations, including: Critical Environmental Areas (CEAs), Scenic Area of Statewide Significance (SASS), State-Designated Scenic Byways, “Major Resource Areas” in NYS Open Space Conservation Plan, Significant Biodiversity Areas (SBA) in the Hudson River Estuary Conservation Framework, areas identified /mapped as conservation targets in special overlays, etc., in municipal, inter-municipal, or county open space plans.
- areas adjacent to established parks, nature preserves, historic sites, historic landmarks, or historic districts;
- areas adjacent to established public-benefit conservation easements on private lands.

Will the economic impacts on tourism be positive or negative?

- contribute to/advance/detract from opportunities for ecotourism (outdoor recreation or wildlife-related recreation e.g. hunting, fishing, boating, bird watching, hangliding, hiking, biking, rock-climbing, geocaching, etc.);
- heritage or scenic tourism (historic site or corridor access, agricultural tourism, travel along designated scenic byway routes, canals, rail-trails, greenway trails, etc.);
- will there be positive or negative economic impacts on local/regional businesses from tourism to/from the project?

Will the project impact valuable agricultural land, forest land, water resources, or high functioning wetland complex?

- Preserve viable size and configuration of farmland, or farmland potential (“Prime or Statewide Important” Soils) wherever possible;
- Site-specific strategies that contribute to goals for preserving large, intact, contiguous tracts of unfragmented forest and/or biologically significant “stepping stone” forests whenever possible;
- Site-specific strategies to maintain habitat connectivity/migration corridors/links with adjacent lands to support recognized important ecological community/wildlife habitat/support high biodiversity/stem the loss of species;
- Minimize alteration of drinking water supplies/aquifers, maximize potential of natural groundwater recharge, and surface water quality and flows, natural spillways and floodplains;
- Reclaim the best possible minimum thresholds of habitat connectivity through restoration efforts where fragmentation has already occurred.

Does the project clean up a brownfield?

- Promote appropriate redevelopment of post-industrial sites, previous commercial sites, or other previously altered sites;
- mitigate or remediate pollution to restore a site for redevelopment or conservation.

Does the project maximize natural resource and energy conservation?

- use energy-efficient building design and technology;
- use energy-efficient siting maximizing solar access, shading, maximizing other thermal elements of the natural terrain (undergrounding, geo-exchange heating and cooling, green roofs, mitigating wind exposure, etc).;
- concentrate development so as to minimize the amount of new roads, sewer extensions, parking lots, impervious surfaces, and so as to maximize on-site runoff retention and infiltration, groundwater recharge, and surface water quality and flows;
- use low site lighting for energy conservation and to mitigate light shed impacts off-site;
- preserve natural disturbance processes such as fire, flood, tidal flushing, seasonal drawdowns, etc.
- minimize alteration of natural terrain features including vegetation, soils, bedrock, slopes, waterways;
- restore and maintain adequate buffer zones of natural vegetation along stream banks, shorelines, wetlands, and at the perimeter of other sensitive habitats;
- allow nature to provide free “ecosystem services” such as soil and slope retention, carbon sequestration water storage, watershed and flood control, clean drinking water, etc. through retention of natural forests, waterways and wetlands.

Is there an attempt to integrate a “greenway or green belt” within the project area?

- locally or regionally planned/recognized recreational greenway, trail network, linkage or corridor;
- site-specific strategies to design for inter-connection to town-wide or inter-municipal open space infrastructure for recreation and/or to maintain habitat connectivity/migration.

>>> Graham Trelstad 11/12/2009 11:34 AM >>>

Group,

Here are a couple brief notes on some issues rattling around in my brain.

Determination of Significance/Scoping

Can we develop screening tools or defined thresholds for defining when more detailed analysis is required, or when it is not and it is "safe" to move on?

Short of creating an upstate version of the NYC CEQR Technical Manual, can we create an "EAF User Guide" that might step the user through the form with relevant links to sources of information or background information about the specific information being requested and its relevance to a project.

Could the Region create a web page with easy links to other DEC web pages or other agency web pages with information on key regulatory programs or resources for completing the EAF. The web page could be organized like an annotated EAF form to facilitate understanding.

Technical Manual

The CEQR Technical Manual is a great source of information and I use it on a regular basis for guidance. However, I'm always careful not to impose city standards on non-city projects -- that's the "sliding scale" and "rule of reason" that case law talk about.

But wouldn't it be nice if we had a document that was a definitive guide to how to conduct environmental impact analysis, but that was also sensitive to scale and context and user-friendly?

A lot to ask for in a 3 month evaluation, but certainly something to shoot for in the long run. And DEC already has a couple of pieces in the Visual Impact Assessment and Noise Impact Assessment guidance documents.

Perhaps there is more in the SEQR Handbook that could be mined for a technical manual.

Final Environmental Impact Statement format

Can we all agree that an FEIS need not repeat verbatim every word of the public hearing or pages upon pages of written comments?

Can we create a guidance document that identifies best practices for preparing an FEIS that follows a NEPA format where similar comments are summarized without necessarily direct attribution to a speaker?

I think that would facilitate Lead Agency (and public) understanding of the issues, streamline the production of the FEIS, and move Lead Agencies closer to being comfortable with making a decision.

Generic Environmental Impact Statement for Comprehensive Plans and Zoning actions

Some guidance needs to be developed on what is relevant to a GEIS on a Comprehensive Plan or Zoning action. I see too many communities hesitating to undertake planning projects because of the perceived complexity and cost of preparing an EIS. Or, on the other side, preparing incredibly complex documents to hopefully withstand the barrage of lawsuits against the Plan or the Zoning. The guidance could provide a clear description of what would constitute a "hard look" for these types of actions.

I'm sure more thoughts will pop up as I drive to New Paltz tomorrow.

Look forward to seeing you all and to a lively discussion.

Graham

>>> "Mary Beth Bianconi" 11/12/2009 2:46 PM >>>

With our charge to focus on streamlining the SEQR process, encouraging stakeholder input and maintaining or improving appropriate environmental protections within the context of a three month, non-legislative effort, we have our work cut out.

In working with a multitude of planning boards throughout the Hudson Valley, I have seen varying levels of sophistication and understanding of the implementation of SEQR. One observation is that of the total number of projects larger than minor subdivisions that are reviewed by local agencies, very few are the subject of a Positive Declaration and preparation of an EIS. While the "mega-projects" generally gain a great deal of attention from regional and state regulatory agencies, the public and environmental advocacy groups, the impact of the multitude of medium to large projects (e.g. residential subdivisions and commercial development comprising 10 to 200 homes or equivalent) may in total have greater impact on the environment than the few mega-projects that are the subject of so much scrutiny.

When a mega-project is proposed, it has been my experience that the applicant as well as the local agency and all involved parties generally agree from the outset that a Positive Declaration will be issued and an EIS prepared. That is not the case with medium to large projects that are not obviously "mega." Perhaps there is value to our group looking at two different SEQR paths. One path would be for "mega" projects where the comments regarding enhanced scoping, reasonableness standards, technical manuals, and FEIS formats could be the focus. The other path could focus on ensuring that a quality SEQR review is conducted for non-mega and non-EIS project reviews.

For the mega projects, streamlining the process while integrating stakeholder input and maintaining environmental protections is the focus. With medium to large projects, streamlining is rarely an issue; however, public input, agency coordination, and ensuring appropriate environmental protection is often a challenge to local boards acting as lead agency for SEQR.

Topics for consideration in assisting local agencies in implementing SEQR for medium to large SEQR reviews are:

- . Resources - Studies and documentary materials are available to assist local boards with areas of review including wetlands; rare, threatened and endangered species; drainage/soil conditions; cultural resources, etc. Many local boards are unaware of the existence of this information and do not know how to use and apply this information. Can outreach and training be improved? Is there a one-stop-shopping list of these resources?

- . Guidance and Coordination - Local lead agencies struggle with how to interpret the recent court decision that an agency letter stating "no known occurrence" cannot necessarily equate to no impact on rare, threatened and endangered species. In addition, local agencies could benefit greatly from DEC staff input regarding wetland impacts and stormwater issues during the SEQR process for projects that are not going to be subject to an EIS. Can guidance be developed for local lead agencies regarding rare, threatened and endangered species reviews? How can DEC get involved in reviewing site

plans for impacts to wetlands and/or stormwater management plans BEFORE permit applications are submitted, which is often after a Neg Dec is issued?

. Public Input - Often, when a review by a local board results in a Negative Declaration, there is no formal public input in the process nor are comments sought from agencies or advocacy groups. While the deliberations of the lead agency are conducted in regular public meetings, the only opportunity for public input is in the form of "privilege of the floor" which is not conducted by every board. In addition, the onus is on the public to keep track of meeting agendas and public comments can be unfocused and/or not given a great deal of weight in the review process. Agency input is only sought in circulation for lead agency if the project is Type I or Unlisted and treated as a Type I. Often agency input is a form letter and not particularly helpful to the local board. Can guidance be provided to encourage stakeholder and DEC involvement in the early stages of project review? At what point is involvement useful and can DEC respond to the anticipated demand for assistance?

Mary Beth

>>> "Church, David E" 11/12/2009 2:55 PM >>>
I concur with Graham" suggestions.

In summary:

Scoping - needs to be commonly and consistently used. I would advocate should be mandatory, not optional.

Guidance Documents. More printed and on-line guidance documents, ideally bundled together and similar in application and success to the NYC CEQR technical manual.

GEIS. Getting more, and quality GEISs done - with municipal plans, with agency policy documents, with regional study areas such as watersheds, transportation corridors etc. Too often (an NYS leads on this approach) GEISs are minimal, light documents designed more to complete the procedural requirements for non-site specific reviews. These have little meaningful application when later implementation or site specific actions come on.

Guidance and clarity on how to pay for GEISs may be critical - as agencies and municipalities are expected to upfront all costs.

Fees and SEQR.

David E. Church, AICP

Scenic Hudson Memorandum

To: Willie Janeway
From: Jeff Anzevino, Ned Sullivan
Date: November 13, 2009
Subject: SEQRA recommendations

We believe the charge to the workgroup is excellent -- investigating potential opportunities to streamline SEQRA without compromising the environment or the public's opportunity to participate in public review of projects.

Specifically, following are suggestions we would like the group to consider:

Earlier and more meaningful public involvement

Much of the delay and conflict in SEQRA processes is caused by a lack of early and meaningful public involvement. In our experience, projects that are fully designed without prior discussion with members of the public – and an openness to make modifications – are the most likely to experience lengthy delays. Early, pre-application dialogue among applicants, lead agencies, and stakeholders offers the best chance to head off delay and opposition during the formal SEQRA review. Once a project applicant has made heavy investments in the design and engineering of a project he or she is understandably unwilling to make costly changes. Yet members of the public are likely to be angry if they only learn about projects as fait accompli. The developer and lead agency often believe the plans are “perfect” only to learn at a late stage that the community has problems with the plan.

We would like to discuss with the work group, incentives that can be offered to applicants that will meaningfully motivate them to hold informal pre-application dialogue with the community and, equally important ways to attract the public to get involved early on -- before there are actually elements of the project that offend them.

SEQRA already requires this, but in many cases it's not happening:

617.3d The lead agency will make every effort to involve project sponsors, other agencies, and the public in the SEQRA process. Early consultations initiated by the agencies can serve to narrow issues of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

More comprehensive scoping

More comprehensive scoping, including biodiversity, habitat, natural communities, and areas subject to rising sea levels from climate change can help identify and resolve potential pitfalls early in the process.

Public scoping should be mandatory—not optional.

Better training for local officials.

At the September 19th forum, many participants suggested better training of local officials as a critical need. Related to our recommendation above, local officials need training in understanding the need for and methods of early public involvement. This group should work toward the other areas of need. John Nolan's Land Use Law Center provides just such training, and state grants have in the past provided scholarships for local officials. With cutbacks in state resources, we may want to explore alternative funding sources.

DEC As Repository for Information Critical to SEQRA Reviews

We recommend that the DEC regional office become a user-friendly repository for data that will be helpful to project applicants, local lead agencies, and citizens during the SEQRA process. Among the data that should be made readily accessible both on-line and through visits to the regional office are the following:

Scenic Areas of Statewide Significance under the Coastal Program

Biologically Important Areas

Floodplains or areas subject to storm surges

Natural Heritage Area database

Habitat for threatened and endangered species

In addition, DEC could establish a help-line for all of the above parties on the workings of SEQRA.

Elimination of Discrepancies between SEQRA and NYS Coastal Policies

Projects proposed in the coastal zone require the completion of a Coastal Assessment Form (CAF) as a component of the Environmental Assessment Form (EAF). These are required only when a state agency is the lead agency for SEQRA. For consistency, all lead agencies should be required to complete CAFs, and training should be provided by the NYS Coastal Management program, both throughout state government and for other lead agencies, such as local planning boards. Furthermore, even now, the CAFs do not address all of the state policies relating to the coastal zone. Thus, later in the review process discrepancies in review standards may emerge as a problem and cause delays and conflict.

Completion of Local Waterfront Revitalization Plans, Comprehensive Plans and Zoning

LWRPs, comprehensive plans and zoning consistent with these local visioning documents can be effective tools in accelerating SEQRA reviews and development proposals. If these documents are kept up-to-date to reflect local values and goals, they provide a blueprint for where development is desirable and what areas are targeted for protection. Thus development proposals that fit within LWRPs, comprehensive plans and zoning should by their very nature achieve rapid review and approval. We should brainstorm incentives that can be provided to localities to advance these processes. We know that lack of staff at the Department of State coastal management program is a major obstacle to approval of LWRPs. Last time we checked, there were roughly 1.5 staff members for the entire Hudson Valley!

PROPOSED CHANGES TO THE
STATE ENVIRONMENTAL QUALITY REVIEW ACT
(SEQRA)
AND ITS IMPLEMENTING REGULATIONS

Albert A. Annunziata, Executive Director
Building and Realty Institute of Westchester and the Mid-Hudson Region

October, 2003 (see attached)

From David Porter: I'm responding to the letter of November 16th about SEQRA.

Question #1

Administrative measures: easy, rapid and guaranteed full public access to project files kept by the lead agency; assured *continuous* opportunity for community comments to be added to the lead agency's official record *after* the official DEIS public hearing

Regulatory/Statutory measures: public funding for community experts

Question #2

(a) Lack of consistent opportunity for meaningful public participation after the official DEIS public hearing (and immediate comments) period; (b) Lack of consistent and meaningful DEIS critiques by involved agencies such as DEC and DOT and Health Departments; (c) inadequate DEISs which should not be accepted as "adequate" for outside comments, thus beginning a process of critical review at a much lower and skewed level

Question #3

(a) See response to 1a; (b) required meaningful and timely DEIS critiques as part of the "outside comments" process instead of absent or shallow critiques and frequent deferral to the post-SEQRA phase when public participation is impossible; (c) welcome opportunity for public to review and critique draft DEISs *before* the "adequacy" decision is made by the lead agency

Question #4

The New Paltz Planning Board during SEQRA review of the proposed Wal-mart-anchored megamall in the mid-90s was very problematic, until the planning board chair was replaced, because of constant hostility toward and marginalizing of public input; even afterwards, planning board members with opinions differing from his replacement were cut off arbitrarily and not allowed to pursue their inquiries; the same planning board suffered significantly from lacking a forthright professional planner willing to express independent opinion; even with the wording of the findings statement, the chair attempted to formulate a finding which contradicted the anti-approval straw vote of the board majority

Question @5

Too often, the SEQRA process is viewed as a formalistic set of obstacles that must be maneuvered through instead of a serious consideration of a project's important potential negative environmental impacts. Because the public senses this reality, the whole process becomes far more adversarial (and inefficient) than it need be.

Yes, as a retired SUNY political science professor, co-author of a book about SEQRA and the SEQRA process and co-chair of a local environmental advocacy organization with 25 years of experience, I would be glad to speak at one of the gatherings.

Hello,

Here are a few brief responses to your questions.

1.

Administrative

It would make the process more effective for the public to have easy access to the lead agency's files both before and after the DEIS public hearing.

Regulatory

SEQR is less effective and efficient than it should be because of the public's disadvantage in not having money to hire experts. The most beneficial change that could be made would be to provide public funding for community groups to hire experts to gather and present their data.

2.

Often DEISs are accepted before complete and with inadequate data.

There are not opportunities for the public to participate after the DEIS public hearing part of the process.

3. The public should be allowed to provide comment on a draft DEIS in progress, all the way up to the time it is accepted as adequate.

The public should be allowed to provide comments to the official record after the public hearing on the DEIS.

Nancy Schniedewind

>>> FRANK COLLYER < 11/20/2009 10:37 AM >>>

On Nov 20, 2009, at 8:18 AM, _____ wrote:

> To begin to better understand what many consider the most pressing
> issues as well as potential remedies to issues some have with the
> SEQR process, we ask that you respond to the following broadly
> stated questions. You can email your answers to these questions,
> and any other comments or suggestions you wish to provide toR3SEQRWorkgroup@gw.dec.state.ny.us

>
> 1) What measures could be taken to make SEQR run more efficiently?
> * Administrative:

A "designated" local agent, from the county or town/village that can be an intermediary between local residents and the DEC to quickly ascertain whether a problem exists, and suggest a remedy.

>
> * Regulatory/Statutory:

#617 assumes that all parties want to do what is best for the community. In most cases, this is observed more in the breach than in the spirit. Currently, the only "remedy" for a violation is for individuals to file an Article 78 at their own expense. As this can be quite expensive, it generally doesn't happen and the violation goes uncorrected; in fact, as in our town (Stony Point), it becomes part of Town Law.

>
> 2) In your view, what are the three most significant weaknesses in
> the way SEQR is implemented?

It is subject to greed, ignorance and indifference. Most residents have never heard of it; local officials indebted to local developers seek to subvert it; and there are no real penalties for violating it.

>
> 3) Can you provide suggestions to address these specific problems?

Better enforcement by the DEC, penalties that are greater than the "cost of doing business" for violators.

>
> 4) In your experience, who was Lead Agency in a review that was
> either very successful or unusually problematic? Can you diagnose
> the contributing factors to that success or analyze issues that
> caused trouble and delay?

Some years ago a local developer bought property in a Superfund site in Stony Point. Seeking to substantially increase the value of the land, he got the Town Council to grant a Special Permit that would allow retail uses in the Light Industrial Zone where this property is located. To adopt the "Special Use" permit law that would allow this retail use, the town had to conduct a SEQRA review. The Town Planner (a paid town contractor/employee) simply filled out an EAF long form although this affected well over a 300 acre Light Industrial Zone. Needless to say the town board adopted the Special Use law. This was clearly a Type 1 Action under 617. Our subsequent lawsuit was dismissed because of an error committed by our attorney; we did not have the money to continue the suit. SEQRA clearly failed here due to the financial ability of the town and the developer to squash the lawsuit.

>

> 5) Other comments:

None fit for mixed company.

>>> <> 11/20/2009 12:54 PM >>>

Thank you for the opportunity to provide input. Answers to suggested questions follow.
Dave Colavito

1) What measures could be taken to make SEQR run more efficiently?

* Administrative: Have scope, EIS and related materials readily available to the interested public on a website.

* Regulatory/Statutory: Include provisions that acknowledge, and requirements to deal with, impacts to lands and waterways accessible to the public (including, but not limited to publicly owned lands). Impacts to these lands should require not just mitigation, but quid pro quo requirements or deed modifications to eliminate de facto "takings" from the commons.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

- a. Lead agency determination
- b. Use of the letter of the law to create loopholes around the spirit of the law
- c. Legally permissible conflicts of interest among participants of lead agencies

3) Can you provide suggestions to address these specific problems?

- a. Require some level of training in basic land-use considerations for lead agency participants
- b. Consider binding arbitration alternatives to court proceedings
- c. Establish common-sense baseline regulations to avoid egregious conflicts of interest. For example, if I am a realtor who has just benefited directly and financially from the sale of property to a developer, I should not be permitted to serve in either a lead agency, or lead agency advisory capacity (eg. Town Board, in the case where the Towns Planning Board is lead agency), for a project involving that developer (let alone, a project targeting the specific piece of property for whose transaction I've receive remuneration).

4) In your experience, who was Lead Agency in a review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay?

- Lead agencies comprised of people without land-use training and/or with obvious financial conflicts of interest have almost always been problematic. An understandable reaction from some interested parties sensing unethical behavior is to dig heels in, creating delay and costly litigation. In my opinion, the avoidance of even the perception of impropriety would go a long way towards addressing much of the vitriol in these contentious situations. Here is where additional regulation could help. I'm not a believer that more regulation is always the answer, but smarter regulation would be very helpful here.

5) Other comments:

>>> Mark Doyle <> 11/22/2009 11:28 AM >>>

1) What measures could be taken to make SEQR run more efficiently?

* Administrative:

* Regulatory/Statutory:

Prior to the "scoping" a public comment phase should be introduced in order to bring to the attention to the developer, the interests, vision and creative ideas of members and interest groups in the community. The "scoping" section of SEQR presently works only as a way to "throw spaghetti" at the project and does not in any way provide guidance from the public. In a perfect world, good guidance should/could come from the initial meetings with the municipal Planning Board, but in practice members of the boards tend to keep their opinions to themselves so as not to be seen as prejudiced later in the process.

Secondly: SEQR does not presently require a "systems" approach to environmental impact. For example, there is currently no requirement to enumerate the cumulative impact of all proposed developments on a particular watershed/ aquifer. Another example would be the cumulative impacts of existing and proposed developments on the bio-systems of large forested tracts.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

The biggest weakness is that the process requires a great deal of expense on the part of the developer in up-front analysis of their plan. Public and Planning Board desires for alterations to the plan are consequently met with resistance because so much money has already been expended on the initial plan.

3) Can you provide suggestions to address these specific problems?

My feeling is that the SEQR process requires the developer to put a huge amount of money and effort into the DEIS and only then does it go before the public for comment. I would really like to see a proper public comment at an early conceptual phase...just sketches and a description of the project and its goals. This would be followed by the "scoping" and the "DEIS".

This might avoid the perennial problem of developers feeling that they've devoted so much to the particular plan that they're unwilling to make any fundamental changes..

4) In your experience, who was Lead Agency in a review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay?

5) Other comments:

Mark Doyle 320 S. Amenia Rd. Wassaic, NY 12592 Former Chair of the Town of Amenia Comprehensive Plan Implementation Committee.

>>> "Steve W." <> 11/22/2009 1:37 PM >>>

1) What measures could be taken to make SEQR run more efficiently?

* Administrative: DEC should review every EAF to ascertain that the local agency has done its own research and is not just relying on the applicant for information.

* Regulatory/Statutory: NY State should commission a database of SEQR applications from every agency which will automatically generate a summary of all possible interactions between actions subject to SEQR. Separate actions which have a cumulative effect should be treated the same as segmentation of a single action.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented? #1- there are not enough resources allocated to investigating the possible impacts of actions. #2- it is too difficult and expensive for the public to be involved #3- There is insufficient mechanism to crossreference actions that may have cumulative effect and to identify and deal with applicants who have records of bad faith dealing with agencies and the public on SEQR matters.

3) Can you provide suggestions to address these specific problems? #1- there should be more and better state oversight of agencies such as planning boards, whose members can be overworked and underpaid; undertrained or incompetent; political patronage jobs or even favors to developers who contribute to political campaigns. #2 there should be a community advocate at the DEC with contact information prominently published on all public notices. That advocate should be available to assist the public in providing input to the process. The advocate should receive a copy of every notice and view it as suspicious if a notice does not result in a member of the public contacting him/her. #3 There should be an automated database that generates red flags for any application that may interact with others through a similar or synergistic effect on the same ecosystem. The system should also generate red flags for any applicant who has a record of environmental, zoning or health code violations. Agencies should be empowered to hold up applications while previous violations are resolved, and repeat offenders should have a fee for extra research involved in clearing their application.

4) In your experience, who was Lead Agency in a review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay? The village board of Spring Valley has declared itself lead agency in several actions which were not recommended by the county planning board and vigorously opposed by community groups. These actions included downzoning and use variances which increase mixing of residential and light industrial areas. At the same time that they obtain hundreds of millions in grants and use eminent domain to take land which is then handed over to a private developer, supposed to combat "urban decay", they relaxed zoning codes which further contributed to the problem. Also, the planning board and the ZBA routinely approve applications for projects by applicants who are repeat violators of zoning and health codes.

5) Other comments: My comments are based on my experience as an activist with a community group whose main concern is environmental justice. Lower income residents, especially immigrants with young children and the elderly, are negatively impacted by bad zoning decisions disproportionately compared to the general population. I think the framing of the question "What measures could be taken to make SEQR run more efficiently?" implies that there is some regulatory burden on the applicant which should be reduced; this is an unproven assumption. I believe that in the vast majority of actions the applicant is allowed to define the agenda and actually fills in part two of the EAF. That is the current "streamlining" which results in a rubber stamp process 99% of the time. Changes should give agencies the tools and the oversight they need to make SEQRA work the way it was intended in every community.

Steven White
Vice-chair, Spring Valley Concerned Citizens Coalition

>>> "Jim Bates" <> 11/25/2009 12:24 PM >>>

Willie,

Thank you allowing me to sit on the panel. As an environmental consultant, I have always thought that it was a partnership with The NYSDEC so project have the least environmental impacts possible.

I have one more suggestion that I did not get to during the discussions.

It is my opinion that the NYS should license Wetland Delineators and other professional as other states do. This would still allow the DEC the final word as the submissions would still need final approval from DEC, however the staff at DEC would have the option of which sites they want to field verify and which sites that they would just sign off on. This would also give DEC something to hold over the professionals, for accountability reasons. If a "licensed or Certified" professional is consistently not doing the field work according NYSDEC policy and protocols, the agency would have the ability to revoke that persons license. Similar to engineers. I believe that this would help the agency with the allocation of your personnel recourses so staff would not have to go check or delineate every wetland submitted by the consultants or property owners for review.

I have attached a new letter from the Association of State Wetland Managers on this subject for your review.

Sincerely,
James A. Bates CPESC, CPSWQ
President

Wetlands, Ecology, Planning, Stormwater
Project Management, Permitting, Aquaculture Consulting

The State Environmental Quality Review Act

Environmental Review of Local Land Use Decisions

LIST OF PROBLEMS AND POTENTIAL REFORMS

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Pace School of Law - 2009

The Land Use Law Center has collected several published reports on reforming SEQRA, listed the problems addressed and the reform solutions proposed, circulated a list of them for comment to various experts in the development industry, planning and legal community and environmental movement, completed a survey of attorneys, and, based on this input, prepared this consolidated draft for further review and discussion.

Analysis:

Three types of problems arise in the local SEQRA process that frustrate applicants, review agency officials, and affected parties alike:

1. **Lack of context:** SEQRA project reviews tend to isolate on the impacts of specific projects and fail to recognize or take place within a larger development and conservation context. The solutions listed below tend to encourage and enable localities to make policy decisions as to where they want development and how they are going to support it and where they want conservation and how they will enforce it.
2. **Procedural flaws:** The SEQRA process is complex, hard to master and subject to manipulation allowing reluctant lead agencies to delay and impose great costs on applicants and allowing receptive agencies to move precipitously to project approval. The solutions emphasize education and certification, predictable time periods and reasonable costs, interim appeals, and non-prejudicial error.
3. **Delayed involvement:** SEQRA encourages classic and counterproductive positional bargaining. The applicant becomes invested in its proposal early in the process and spends great time and money advancing and studying it. Interested groups and neighbors, in most instances, are left out of the process until the DEIS is circulated and the public hearing is held, if there is one. This

prevents productive interchange of ideas between the applicant and those affected by the proposal and nearly guarantees hostile reactions to proposals when solicited late in the process. The solutions emphasize techniques for involving all interested parties much earlier in the process.

Initial Statement of Problems and Solutions:

Lack of Context:

1. Problem: SEQRA involves project-by-project environmental reviews and does not encourage lead agencies to review proposals in the context of what is happening in broader geographical areas. As a result the cumulative impacts of proposals over time are not considered and the way for development, where it is needed, is not prepared. Solution: Conduct **Generic Environmental Impact Studies** (GEIS) in critical geographical areas, both development and conservation districts, that project impacts of, and provide for mitigation, build out under current zoning. Mitigation in development districts should emphasize provision of infrastructure to handle development. In conservation districts, mitigation should emphasize avoidance of impacts on identified environmental landscapes. State could encourage this by establishing a revolving loan fund for local GEISs to be repaid by applicant fees paid when individual projects are proposed. (See also point 2 below.) Differing view: this type of community planning should be done as part of the comprehensive plan preparation and amendment process, lead to changes in zoning, and greatly simplify individual environmental reviews as a result. Possible response: GEIS studies and findings regarding critical areas can be adopted as amendments to the comprehensive plan if designed for that purpose and lead to zoning changes.
2. Problem: Redundant environmental studies completed by multiple applicants in same geographical area. Solution: Conduct **Generic Environmental Impact Studies** (GEIS) in critical growth and conservation areas and exempt specific projects from EIS completion, requiring a detailed and carefully completed long-form EAF submission with individual issue reports where a potential impact was not covered by the GEIS. State could encourage this by establishing a revolving loan fund for local GEISs to be repaid by applicant fees paid when individual projects are proposed.

Procedural Flaws:

3. Problem: High cost of lead agency's consultants who review DEIS. Creates an incentive for lead agency consultants to lobby for extensive studies and supplemental reports. Solution: DEC regulation requiring a **fee setting and monitoring process** with appeal to board of experts. Alternative solution: create guidelines for reasonable fees based on an analysis of comparable types of projects. Other solutions: make invoices submitted by consultants discoverable under the Freedom of Information Law; adopt a regulation preventing consultants from charging more for environmental review work than they charge for other work paid for directly by municipal governments.

4. Problem: Failure to close SEQRA public hearings. Solution: DEC regulation **requiring public hearings to be closed** when comments from the public cease. Related problem: failure to hold SEQRA hearings in tandem with other hearings required by state statutes. Tandem hearings are recommended but not required in various state statutes prescribing them and in the SEQRA regulations. Solution: require such hearings to be held in tandem.
5. Problem: Multiple failures in local lead agency management of SEQRA process. Solution: Establish **training manuals and educational programs** and encourage/require lead agency representatives to participate in educational programs. Note: this will address only the problem of lack of education not improper motivation. Alternative solution: require that chairs of local lead agencies that review full environmental impact statements take a course and pass an examination on local SEQRA practice. Comment: this would require the preparation and distribution of a course book and exam and a means for its administration.
6. Problem: Great disparities and lack of predictability in individual lead agency practice and consultant competence and practice in general. Solution: Require **certification of staff and consultants** who serve lead agencies, those who regularly prepare EISs, and those who regularly advise groups that comment on EISs. To qualify for certification consultants must demonstrate understanding of environmental science and DEC approved SEQRA procedures and assessment methodologies. Manual developed for this certification process could also be used for lead agency member training.
7. Problem: Appeals of abuses of process are not legally allowed until there is a final decision on the merits. Solution: establish a **State Environmental Review Board** responsible for reviewing complaints regarding determinations of significance and conditional negative declarations and abuses of process. Decisions of the SERB would be either (a) binding or (b) instrumental in later litigation. [Note: sanctions should be developed to discourage excessive use of review board by applicants or opponents.] Alternative Solution: SERB should train mediators to work out voluntary solutions to controversies arising in the SEQRA process. Alternative solution: amend statute allowing judicial challenges to certain final decisions on procedural aspects of project review. Other solution: provide for the review of the reasonableness both positive and negative declarations by the County or Regional Planning Agency commissioner.
8. Problem: Lack of deadlines for steps in SEQRA process. Solution: DEC regulation that established **fixed deadlines**. If deadline is missed, applicant can give lead agency notice requiring agency to meet deadline within ___ days or application is deemed approved environmentally. (Washington state has such a default provision. It allows citizens to challenge the default determination, however.) Alternative solution: if a deadline is missed, require agency to refund fees charged to applicant.
9. Problem: Because the courts have required literal compliance with all SEQRA steps and processes, and because the penalty for noncompliance is invalidation of any permit given, applicants can be severely penalized for minor procedural errors of their lead agencies. Solution: State legislative amendment to SEQRA adopting a “significant error rule.” The significant error rule would require the party challenging the permit issued to demonstrate that the error was prejudicial to an interest protected by the statute.

Delayed Involvement:

10. Problem: Applicants have no way of planning a project in advance with requisite agency and public input that would allow them to adjust proposal to minimize environmental impact and, thereby, have a more streamlined process. Solution: DEC develop and publish a recommended **pre-submission process** that allows all involved parties to collaborate in reviewing various options for the proposed project leading to a revised project that has less environmental impact and thus moves through the process more expeditiously. This should be a voluntary step to be effective and avoid further lengthening of the process. (See following related suggestion)
11. Problem: Interested groups and individuals have no way of influencing projects early in the process. Unless a formal, collaborative scoping session is held, after a positive declaration by the lead agency, they are not invited to comment on the proposal until the applicant has invested great time and money in preparing a DEIS on the project. Solution: Amend the state regulations or local SEQRA practice to provide for a **pre-submission proposal review session** among all interested parties, the lead agency, involved agencies and the applicant. Alternative solution: provide for a process of **circulating a pre-submission document** that could be circulated for written comments from involved agencies and interested parties.
12. Problem: Failure to hold scoping sessions involving all key players denies lead agency and applicant the benefit of needed input early in the process and leads to much of the delay experienced in SEQRA. This failure explains, in part, why new issues are added for study later in the process, why DEIS submissions are found incomplete, and why the DEIS generates much public comment when circulated for comment and discussed at public hearing. This failure also explains why DEISs tend to be so extensive and why lead agency board members tend to become overwhelmed with too much information to conduct an effective review of the submission. Solution: DEC regulation defining a **scoping process that involves all interested parties**, leads to definitive scope of DEIS including only clearly relevant studies. Set up board to which claims that scopes are unreasonably burdensome can be appealed by applicant. Same board could hear appeals from project opponents that a scope is inadequate and should be expanded. Alternative solution: **make scoping mandatory** for all Type I actions or projects that meet other established thresholds. Provide for personal notice to key groups and agencies and public notice of scoping session. Allow scoping sessions to remain open until all interested parties have had a chance to identify truly significant issues that need to be studied. Make it particularly difficult for parties who do not involve themselves in the scoping process to raise new issues during the DEIS process.

Analysis of the Elasticity in SEQRA Regulations That Leads to Some of these Problems:

The State Environmental Quality Review Act (SEQRA) requires local administrative bodies to consider and mitigate the environmental impacts of proposals for land development that project sponsors submit for their review and approval. In addition to giving these administrative agencies substantive authority to impose conditions on such projects, SEQRA and regulations issued by the Commissioner of the Department of Environmental Protection prescribe certain procedural steps these agencies must take and establish time frames within which these steps are to be taken. Under SEQRA,

the administrative agency with principal authority for approving a private landowner's project is called the lead agency.

When the lead agency has determined that a proposed project may have a significant adverse impact on the environment, an Environmental Impact Statement (EIS) must be prepared, usually by the project sponsor. The Commissioner's regulations, found in Part 617 of the New York Code of Rules and Regulations, require lead agencies to make a determination as to whether a draft Environmental Impact Statement (DEIS) submitted by a project sponsor is adequate within 45 days of its receipt. This deadline, and several others like it in the regulations, give the initial impression that the movement of a project proposal through the SEQRA review process is regimented and predictable.

A closer examination of the SEQRA regulations leads to a different conclusion. NYCRR § 617.3, for example, states that "time periods in this Part may be extended by mutual agreement between a project sponsor and the lead agency." In addition, the lead agency can decide that a DEIS has failed to adequately address a particular environmental issue. This has the effect of suspending all deadlines and time frames until the project sponsor has adequately studied and addressed this issue. A search of the regulations reveals no guidelines for determining the adequacy of a DEIS or for evaluating the appropriateness of a lead agency's finding that a DEIS is not adequate.

When a project sponsor's application for a local administrative approval is required to go through the full environmental review process, the regulations require that at least 20 separate steps be followed. The time frames for the completion of these steps, when aggregated, require at least 230 days, approximately eight months, for a project to move from the date of application to the filing of a Final Environmental Impact Statement (FEIS). There are countless examples of project proposals that have taken from one to three years to complete the process. This reality reveals the considerable elasticity built into the SEQRA review process.

When SEQRA was first implemented, the considerable time required to move through the local environmental review process came as a great surprise to project sponsors. Prior to its enactment in 1975, state statutes required local land use agencies such as planning and zoning boards to review projects and come to a decision on them within a few months. If the application was for the approval of the subdivision of land to allow the development and sale of residential lots, the local agency had to hold a public hearing within 45 days of receiving the project sponsor's subdivision application and make its determination on the project within 45 days of the public hearing. A local board's failure to decide within the time allowed enabled the sponsor to proceed with the project as proposed.

The obvious conflict between these preexisting statutory time frames and those established under SEQRA was considered in *Sun Beach Real Estate Development Corp. v. Anderson*, 469 N.Y.S.2d 964 (2d Dep't 1983), *aff'd*, 62 N.Y.2d 965 (1984). The court held that an application for preliminary approval of a subdivision plat was not complete until the procedural steps required under SEQRA have been taken. It accorded priority to environmental review deadlines over subdivision approval deadlines "because the legislative declaration of purpose in [SEQRA] makes it obvious that protection of the environment for the use and enjoyment of this and all future generations far overshadows the rights of developers to obtain prompt action on their proposals."

The statutory deadlines for subdivision approval were added to the law in 1966 because the state legislature believed that applications were being subjected to unreasonable bureaucratic delay. Similar delays in the SEQRA review process have given rise to proposals from some quarters that fixed time periods be established for the steps required in performing environmental reviews. In fact, the *Sun Beach* court recognized the need to consider such action. In its 1983 decision, the court wrote, "in

reaching our conclusion, we are quite aware that SEQRA and its regulations have set no time limits within which a planning board must accept a proposed DEIS. The danger, of course, is that planning boards may utilize the absence of SEQRA time limitations to resume the type of bureaucratic delay that resulted in the enactment of the 45 day time limitation in 1966. If such consequences are to be avoided, the Legislature and the Commissioner of Environmental Conservation should turn their attention to the problem."

Curiously, any problems regarding the time frames required for local environmental review arise almost exclusively from the Commissioner's regulations rather than the SEQRA statute itself which contains only one reference to a procedural deadline. The statute, found at §§ 8-0101 - 8-0117 of the Environmental Conservation Law, in fact, mandates that environmental reviews be conducted as expeditiously as possible. It states that lead agencies "shall carry out [SEQRA's] terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined and consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review."

The regulations, on the other hand, are replete with time frames and discretionary power to extend or suspend them. A sampling of these provisions follows:

- There is the blanket provision contained in § 617.3 that allows all time periods to be extended by mutual agreement between the project sponsor and the lead agency. Some argue that, since SEQRA provides significant discretionary authority to lead agencies to impose conditions on or deny applications for agency approval of proposed projects, few project sponsors will refuse an agency request to extend a deadline.

- Section 617.6(b) states that the lead agency must determine the environmental significance of a proposal within 20 days of its receipt of the project sponsor's application which normally will include an Environmental Assessment Form (EAF) or a DEIS. It further stipulates, however, that the 20-day period may begin when the lead agency receives "any additional information reasonably necessary to make that determination." This allows a lead agency to require sponsors to submit any additional information deemed "reasonable" by the lead agency and to suspend the running of the 20-day period until such information is submitted. The statute and regulations define the "environment" that may be impacted by a project to include "resources of agricultural, archeological, historic and aesthetic significance, existing patterns of population concentration, distribution of growth, existing community or neighborhood character, and human health" in addition to "land, air, water, minerals, flora, fauna, and noise." The breadth of this definition gives lead agencies great latitude to decide that the information contained in the sponsor's application is insufficient to enable it to make a determination as to the "environmental significance" of the proposed project.

- Section 617.6(b) also requires that a lead agency must be established before a determination of significance can be made. The regulations allow 30 days for a lead agency to be established. Where more than one agency is involved in funding, undertaking or approving a proposal, which happens often when significant projects are involved, it is possible that they will not agree which one of them should be the lead agency. In such a case, § 617(b)5 allows them to submit this dispute to the DEC Commissioner to determine which agency should be the lead agency. The Commissioner is given 20 days from the receipt of such a request and supporting documentation to determine the lead agency. Here again the regulations contain a suspension clause allowing the Commissioner to request more information if needed to make the determination. The 20-day decision period runs from the date the Commissioner receives "any supplemental information" needed.

- Under § 617.8, the lead agency may decide to develop a scope of the DEIS which begins with the project sponsor submitting a draft of that scope. There is no time period established for the lead agency to determine that "scoping" will be done or for the sponsor to prepare and submit a draft scope. This allows for another suspension of the overall SEQRA review schedule. After a draft scope is submitted, the lead agency must provide an opportunity for public input and the comments of other involved agencies. A final written scope of the DEIS must be prepared by the lead agency within 60 days of its receipt of the draft scope from the sponsor. Any agency or person who fails to raise an issue that should be considered by the DEIS during this 60 day period may raise it later, however. The regulations require that agency or person to explain the relevance of that issue and why it was not identified during scoping and why it should be included in the environmental study at the later date. To insure that such later issues do not arise and cause delays further along in the process, the project sponsor will likely agree to any extension of the 60 day scope preparation period needed to allow all interested agencies and persons sufficient time to raise their issues and fix the scope of the study.

- Section 617.9(a) allows the lead agency 45 days from the receipt of the DEIS to determine whether it is adequate with respect to its scope and content. If the DEIS is not adequate, as measured against the content of the scope prepared or the extensive standards contained in nearly five pages of the regulations, the lead agency must notify the sponsor in writing of the inadequacies. Here, again, a suspension in the schedule occurs while the sponsor amends the DEIS in accordance with this notice. When an amended DEIS is submitted, the lead agency has 30 days to determine whether it is adequate. There is nothing that prohibits subsequent findings of inadequacy and repetitive amendments of a DEIS.

- This same section further stipulates that following a finding that a DEIS is adequate and a filing of notice of completion of the DEIS, a "minimum public comment period" of 30 days must be provided. The use of the word "minimum" implies that a longer public review period can be established in the agency's discretion.

Section 617.9(a) also allows the lead agency to hold a public hearing on the DEIS if that will "aid the agency decision-making process." Where a public hearing is to be held, it must be conducted within 60 days of the filing of the notice of completion of the DEIS. New York law allows public hearings to be continued at the next regularly scheduled meeting of the agency when necessary to give interested parties adequate time to comment. The more controversial a project, the more likely the public hearing is to be held over for one or more subsequent meetings of the agency. Public comments may be received by the lead agency for ten days following the close of the public hearing.

- Section 617.9(a) also requires that a Final Environmental Impact Statement (FEIS) must be prepared within 45 days after the close of the public hearing. It further stipulates, however, that "the last date for preparation and filing of the FEIS may be extended: (a) if it is determined that additional time is necessary to prepare the statement adequately, or (b) if problems with the proposed action requiring material reconsideration or modification have been identified." In addition, a Supplemental Environmental Impact Statement (SEIS) can be required of the sponsor at this time addressing significant adverse environmental impacts not addressed adequately in the EIS that arise from "newly discovered information or a change in circumstances related to the project."

- Section 617.14 of the regulations recognizes the authority that local governments have to adopt stricter environmental review procedures and standards, "no less protective of environmental values." It states that a local agency may "vary the time periods established in this Part for the preparation and review of SEQR documents, for the conduct of public hearings, in order to coordinate the SEQR environmental review process with other procedures relating to the review and approval of actions."

Any additional procedures or time periods established under local agency regulations of this type must also be followed.

- Once an FEIS is prepared and filed, under § 617.11, the lead agency has 30 days to file its written findings statement and decide whether or not to approve the action. Because of the many provisions that allow for the suspension, extension, and rolling over of time periods, several years could pass from the date of initial application to the date of this final decision.

>>> "Jolanda G. Jansen, P.E." <> 11/30/2009 11:24 PM >>>

Dear Willie,

Developers may experience SEQRA as the obstacle that slows them down, but some of that is because that is the point where the community has a chance to get involved and object and the developer has already committed himself in many ways, and has already done his financial calculations.

It would be extremely helpful to developers to gather environmental data and community feedback before entering a contract with the existing owner (seller).

If there was a process that allowed earlier community input on the condition that if the developer incorporated those concerns into the project he would have been deemed to have addressed community concerns and could avoid certain unnecessary studies later.

It may not be possible to do this, but it is one of the reasons why they resist new environmental information during the review and approval process.

As you can see from my resume I've been representing developers in Dutchess County and projects that involve waste water treatment facilities for the last 20 years.

If we want to encourage more cluster subdivisions to protect the environment, it is not enough to have cluster regulations at the local level. Many towns already have that. We need to streamline and expedite the approval of small scale (25 - 250 lots) wastewater treatment facilities. Even with the best agency cooperation the process can add two years to the project. Most developers fear extra time like the plague, the economy may turn (like it just did).

You may not be able to fit me in to your hearings, but I would be happy to sit down with you some time and elaborate on the above and anything else that may be helpful in expediting more environmentally friendly construction by our development community.

Thank you for your hard work.

Jolanda G. Jansen, P.E.

Jansen Engineering, PLLC

>>> "Drayton Grant" <> 12/1/2009 11:06 AM >>> Willie, Jonathan and Ned:

It is exciting to be asked how I would change SEQR to improve it without legislative changes. I have tried to suggest improvements to the review process for both the developers and the project opponents. In some ways, the two sides have similar problems with the process, even if they do not realize it. I may have further ideas that come to mind as the days pass, but I wanted to submit these four ideas now. Each of them can be implemented by Region 3 without a change to the regulations or the law, though a regulatory change would be useful for 3 and 4.

1. DEC should add a question to the EAF forms for all the projects it sees, asking about the presence of dams that might be compromised by the project, say by blasting, or dams upstream of the project that could impact the project if they fail. This is a serious omission, especially in light of the age and condition of most of the dams in New York. A planning board should not be in a position to approve a subdivision that is subject to flooding by dam failure without having ever known there was a problem.

2. No applicant should be allowed to conduct informal scoping in which DEC participates. Our region is not given to this habit, but DEC Central Office was doing this the year before last, and upstate lawyers told me this was a regular practice in the Albany area. The problem with the practice is that project applicants are abused into thinking their project could be approved as proposed by their consultants, who keep the process in motion and run up charges with the developers, only to run aground as soon as the public is finally allowed to know that a project is proposed and have an opportunity to present the problems with the project. The sooner the public is included, the easier it is to assess the viability of the project, and to design a project that will be approved. And if the project is inadequate, the developer is not spending useless money on the consultants for the project.

3. A GEIS checklist to clarify which projects will need further review should be required for any later project that will rely on that GEIS. Often years pass between a GEIS and the project that relies on that GEIS. No one who worked on the GEIS may still be involved. This tool makes it very easy for the planning board or other involved agency to understand exactly where the GEIS stopped in its analysis. Region 3 should promote this and then require it of any project it reviews. Tim Miller uses a very good form for this.

4. Region 3 should advise all planning boards that, for projects with complete applications that do not have a SEQR determination within 90 days for Type I projects, it will seek lead agency status. The regulations call for the determination to be made within 20 days of a complete application where only one agency is involved. 617.6(a)(6)(b)(1)(ii). Three months is not unreasonable for coordinated projects. Too many planning boards wait until the project review is complete to make the SEQR determination. Developers are kept dancing to the planning board member's every whim to avoid a positive declaration. And the public is excluded from too much of the planning without the correct use of SEQR.

The main problem with SEQR is that planning boards get lost in all the welter of often irrelevant information unless scoping is carefully done, that the consultants are often the only ones making money, and that the public is kept out too long from the development of the reviewing agency's thinking about the project. The process is too long, slow, nerve racking and expensive, both for project applicants and for project opponents.

If we are serious about wetlands and endangered species protection and still want to have economic development sufficient to replace all the lost industry ever since Rockefeller was Governor, we need to find a way to map the areas we want to protect now, not after the developer appears. It is too expensive to force most project applicants to undertake a multiyear investigation for an endangered species, one site at a time. We also need to have clear maps for the areas that serve as the viewshed for significant historic resources or other sites we want to protect from aesthetic destruction. We need clear design criteria. And we need shovel ready areas for development, with water and sewer already provided, like the Town of Saugerties. We need to help local governments consider how their zoning supports or undermines their goals. SEQR would have less to do if we had all this in place.

Thanks for asking me to participate. Best of luck putting this together. Drayton

To all concerned:

I appreciate the opportunity to be a part of the Pattern for Progress SEQR discussion. I will highlight some areas I have witnessed and experienced issues with over the years of participating in SEQR in my comments. As a member of the public, as a Planning Board member, and as the chair of a committee tasked with rewriting 40 year old Zoning and Subdivision Laws and Comprehensive Plan, I have been personally involved with SEQR process. I have extensively studied this section of State legislation and stay current with court land use decisions because proper and consistent procedure is important to me. Arbitrary application of procedure is useless and leads to the appearance of favoritism. In my comments I will outline each section with some suggestions in a summary. Some suggestions are just good practice, while others are ways of better review, I believe.

First, before conducting any SEQR review, I believe it's important for that agency who is conducting the SEQR review to go back to the first section of the SEQR legislation and remember why they are doing this in the first place. This part is too often forgotten during the course of a review. Appropriate weight is the key terminology for me. And the last sentence as well. It's about balancing all factors. The implementation of this paragraph alone would go a long way toward improving the SEQR process.

617.1 (d)

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. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.

Process

- The SEQR process seems to me to be broken. SEQR is more than a good idea, but what I find time and time again is it is badly managed and implemented by the reviewing agencies. I believe the process is unclear as to what needs to occur and, more importantly, when it needs to be done. As written SEQR appears to be very circular. The recent case in Liberty demonstrates the circular reasoning that is incorporated in SEQR. The regulations need to be streamlined in the extreme.
- This "brokenness" partially can be attributed to lack of concern or care by some reviewing agencies. But I also have seen agencies attempt to do due diligence and fail miserably. I think a start to resolving the problems needs to be mandatory training for any official who sits on an agency which may or may not be called upon for SEQR review. But before training, must come a clearer vision of the steps taken and, more importantly, at what point in the process they should occur. A clearly written and defined handbook is a necessity for all agencies. I believe the current legislation as written leaves quite a few questions unanswered and left to opinion.
- For example, it needs to be made clear when public hearings must be held (or if at all). When a project must be typed. When other agencies are involved agencies and to what degree those agencies are involved. Are they peripherally involved or are they a major source of information? These questions need to be asked but waiting 30 days for comment which

sometimes never comes seems like a waste of time. Perhaps that timeframe needs to be looked at or perhaps other agencies need to be made more proactive in stating they have no concerns. Perhaps joint meetings need to be held with the applicant and all agencies involved so issues can be resolved with all parties involved at the same table.

- I think one regulatory part of the process that needs fixing is the local agency should always be the first and foremost reviewing agency UNLESS there are significant regional or statewide concerns. The interface with Town Law is particularly problematic with unending narrative explanations. Needs to be clearer and more concise. Generally, towns need more freedom to do it their way.
- I see too often (like in DEC mining applications, for example) where the local agencies review is mostly stripped. While I understand the regional aspects of this industry, it is ultimately the local level population that is impacted the greatest. In fact, the DEC has a policy where a mining application must move forward even if this is not an allowed use on a local level. Certainly a waste of time, manpower, and more importantly, a waste of money for all involved. SEQR has to get back to what it was intended to be.
- Environmental review and how can the issues be mitigated should be foremost concern. But the review needs to become more expeditious. There is no reason a reviewing agency cannot, for example, conduct a Site Plan review and conduct SEQR simultaneously.
- Perhaps one suggestion would be to create a fourth level of classification for typing. Reserve Type 1 for the projects which require serious mitigation and study. But have some other classification for projects which fall somewhere between Unlisted and Type 1. And agencies should be allowed to not be so quick to declare a Positive Declaration or require an EIS be drafted. Perhaps an applicant could submit an expanded EAF form which addresses issues and concerns. There should be a requirement for analysis of economic benefits of projects and the costs associated with mitigation. The goal shouldn't be reports, but rather effective mitigation. Consultants and experts and studies cost money that can often end worthwhile projects during the planning process.
- Another suggestion would be to have an independent arbitration council which could resolve disputes or mediate in the case of vast differences of opinion between an applicant and an agency.

Identification of Impacts

- It is important impacts are identified early in the process. It is the responsibility of applicants to submit complete applications which detail what is being proposed. But it is equally important for the potential issues or impacts to be identified early in the process by reviewing agencies. And it must be stressed that when issues are brought up in public comment there must be compelling evidence before further studies (and costs) are involved. We see too often one person standing up at public hearing and saying "I remember when that property flooded" or something along those lines. This certainly should not warrant more extensive study by an applicant.
- The burden of proof needs to be in proving the impact, not to the applicant in disproving. Certainly all impacts need to be considered and touched on, but to what degree is the key. I see time and time again study after study, expert after expert, consulted with no real basis or evidence except a memory or hearsay. There needs to be protection for applicants against unreasonable requests based merely on speculative concerns.

Mitigation of Impacts

- SEQR has been allowed to become a tool for people to stop projects. This can't be allowed to occur. Yes, impacts need to be identified, but mitigation needs to become the goal of review. We have allowed the review process to be hijacked sometimes where it seems this goal has been forgotten. Mitigation has to be the first and foremost goal. It should be focused on redesign and mitigation with the burden of proof on protestants not proponents. It needlessly politicizes land use issues and increases the power of money and special interests to stop needed economic development in rural New York.

Summary: Responsibilities for good SEQR review

- Applicant
 1. Submit detailed, complete applications. Electronically when possible to save costs.
 2. Answer all EAF form questions thoroughly or submit an expanded informational report.
 3. Admit where issues exist and try to find solutions. Don't try to hide them or pretend they don't exist. Make proposals. Be proactive.
 4. Be reasonable and open-minded to seek mitigation. It will speed up the process and save on costs.
 5. Realize the reviewing agency is doing their job. Co-operate and work as a team to effectively resolve issues.
 6. Understand changes to applications may mean a re-review.
- Reviewing Agency
 1. Understand what SEQR is and why you are doing it. And how to do it.
 2. Have a copy of the SEQR law on hand at every meeting for reference. And the guidebook too. Don't go by somebody's memory (even your attorney). People are human and forget sometimes.
 3. Type applications early in the review process but wait for completed applications. Accept electronic information. Get involved in preliminary discussions.
 4. Let applicants know what constitutes a completed application and put it in writing. Declare applications complete by resolution and vote so recorded in minutes. Ask questions early and often. Clarify so no item is left as a "gray area".
 5. Be able to know the differences between SEQR review and local agency approval review. Sometimes these intersect and overlap. Don't revisit these things if not necessary.
 6. Identify and seek out information from other involved and interested agencies.
 7. Seek public comment and give it the degree of review it deserves.
 8. Get the information out to the public and other agencies. Use websites (either agency or applicant driven). Share information via email. Use electronic means of communication more effectively.
 9. Identify concerns and seek to mitigate those with specific solutions.
 10. Don't seek to create issues that don't exist. Creates unnecessary animosity between the two parties.
 11. Be realistic in review and move forward. Don't rush, but don't linger once a solution is found. Do so by resolution so the answers are "on the record".
 12. Always document concerns and resolutions in writing. Don't rely on memories of people. Ask for all information from applicant in writing or electronic form.

13. Be open to new ideas and suggestions. Seek innovative solutions.
14. Ask for more information if it is warranted, but not needless, endless expert study and reports which add costs.
15. Seek to update land use regulations in general to keep them current. Make sure no inconsistencies exist. Flexibility needs to be written in rather than one size fits all regulations. Allow Planning Board to do their job.
16. Keep current in training.
17. Treat SEQR as an important part of the review process as opposed to just another regulation to put a tick next to when it is completed.

Please feel free to contact me at any time with questions or comments.
Thank you for the opportunity to be involved,

Michael Baden
Town of Rochester Planning Board member
Ulster County Planning Board member designee (01/10)

SEQRA Suggestions from Ann Gallelli

1. What measures could be taken to make SEQR run more efficiently? See #3 below.
2. Three most significant weaknesses in the way SEQR is implemented?
 - a. Lead Agency boards at the local level often have little understanding of the process and how to use it effectively.
 - b. It is prone to being misused by opponents to slow down and stop applications they don't like.
 - c. Between Scoping and public hearing on EIS, legitimate public input is often limited.
3. Suggestions for improving process.
 - a. Education and communication. Perception of SEQR is different depending what position you are in. The DEC needs to make clear how it is intended to be used aside from its environmental intentions. Is SEQR meant to enable projects or derail them? Generally opponents see it as a way of derailing projects. Lead Agency boards (especially local Planning, Zoning, Village and Town Boards) see it as a way to cover themselves from local opponents and also to be sure they are thorough in their review by addressing every possible item. Applicants see it as a lengthy and costly process conducted by untrained people unable to identify or weigh important aspects from less important ones and who are swayed by their local public. While SEQR's essence is environmental protection, its implementation is often charged or motivated by political forces.

DEC needs to undertake an education program for all local board members, letting them know that SEQR is intended to improve applications, especially those with economic development implications, and not derail them. It should be an enabling process to achieve a better result. Programs could be developed aimed at these boards and either presented at DEC-organized invitational meetings or through cooperation with County Planning Federations. For example, Westchester County has a Planning Federation (WMPF) which holds an annual Training Institute for three evenings. Many issues and topics of land use interest are presented and attendees receive their training credits for attending.
 - b. A new form developed. The Short EAF is useless for identifying impacts. The Long form EAF is fine for projects that may result in need for further study. Many projects in front of local boards fall somewhere in between. Not wanting to just sign off on a SEAF, the only alternative is to go with the Long form EAF where a Part 3 addendum may be required. A new form in the middle might assure boards that they have a record that they actually identified and discussed small impacts but not burden them with Part 2 and possibly Part 3 responsibility.
 - c. Developing regional impact statements for use. Rather than have local boards require studies of issues and topics that are generally the same over a large area or the same over similar circumstances, the DEC could encourage Counties or regions to develop generic studies for these issue which could then be incorporated by reference into individual applicants' EIS's. Geologic information, noise impacts, water resources, waste management resources, air quality, transportation, etc. might all be evaluated in a GEIS for an area. These issues would not need to be addressed again by an applicant as long as their project falls within some average criteria as shown in the GEIS.

- d. Create an appeal process. For those applicants who feel that “book is being thrown at them” unnecessarily by a local Lead Agency Board either as part of the Scoping process or in the DEIS review, there could be an appeal to the DEC as to the need for these studies. This would tend to make the local Lead Agencies more responsible in their demands and would give the applicant a sense of not being totally at the mercy of local whims.

SPIA (Sustainability Planning and Impact Assessment) is a process developed by Michael R. Edelstein, Ph.D. to simultaneously meet the requirements of federal and state impact assessment rules and complete sustainability plans for a community in a manner that is affordable and implementable. The basic idea is simple:

1. The community does a generic environmental impact statement focused on a particular site or even on the entire community.
2. The Generic Study is done with an underlying premise that the community be made sustainable, defined broadly. Thus, unlike conventional impact statements that have no point of view or goal, this study serves as a plan for making the community sustainable.
3. Like all impact studies, this one has a scope that can be narrowed or broadened.
4. Unlike most impact studies, this one is done by the municipality with experts that are chosen to be neutral and not connected with any development agenda other than fostering the sustainable basis of the community.
5. The initial costs of the study are paid by the community from a dedicated fund.
6. The resulting plan and body of data on which the study is based are then used for future planning decisions in the community.
7. Developers making proposals to the community for projects will make use of this generic impact study, plan and data in their proposals and will pay a fee for the use of this information, thus repaying the outlaid costs. Over time, the use of this study may even bring a profit to the community which can then be employed for updates. Eventually the fund will become a revolving fund used to assure a current data base and plan.
8. Developers will benefit because the generic impact assessment is completed and core data is available up front. If their proposals fit the overall sustainability plan and generic study, then they can be reasonably assured that their project will be approved and because they will not face the prospects of doing their own environmental impact assessment with the unknown threats implied, they can have reasonable assurance of what they are getting into before they leap. The removal of this uncertainty is a major development selling point. Also, because the data exists upfront and only small site and project specific updates are needed, there is substantially less delay in the project decision than would occur otherwise. The expense of studies required normally is avoided even if an equivalent expenditure is collected for repayment into the revolving community fund. In sum, this is a developer friendly process that should attract appropriate investment to help the community achieve objectives it has made clear and vetted with research already.
9. SPIA requires an initial investment of time and money. It allows a community to create a sustainable plan within the context of a generic impact assessment. It allows for a proactive approach to community development. And it is a process for attracting developers to invest in community designated projects that is win-win for community and developer alike.

For further information, contact Dr. Edelstein.

>>> "Joel Russell" <> 12/3/2009 7:33 AM >>>

Dear Willie,

Thank you for contacting me about the SEQR Region 3 Working Group. I cannot attend your meetings, but I would like to make the following comments and suggestions:

1. The biggest flaw in the SEQR process, in my view, is that in practice it does not adequately take into account the difference between localized and broader area impacts. Let me explain. Suppose someone wants to develop a high-density mixed-use "smart growth" project in an appropriate location (convenient to transit and other infrastructure). The environmental analysis required by SEQR focuses on site-specific impacts of the project. The more intensive the project is (in terms of dwelling units, commercial floor space, traffic generation, etc.), the greater the impacts will be. A more intensive project has a more significant adverse environmental impact on its site. Mitigation then takes the form of reducing project intensity (fewer units, less commercial space, less traffic). SEQR therefore has the effect of reducing the localized impact of the project on its site. However, because it focuses on the site level, it neglects to consider the fact that a less intensive project in this kind of place will inevitably lead to more development in the wrong places, and a low-density sprawl pattern will result. At the broader scale, then, the mitigation of the localized impacts has a serious adverse impact on the environment as a whole. This is a perverse result, which commonly occurs, and unintentionally makes SEQR a tool of environmental degradation rather than environmental protection.

The remedy for this can be implemented at an informal level as DEC guidance, at a more formal level by revising the SEQR regs, and/or by a statutory change. The more "formal" the remedy, the more effective it is likely to be. However, the essence of the remedy is to allow and/or require, as part of a SEQR analysis, a discussion of trade-offs between greater localized impacts and reduced area and regional impacts. If a project proponent can show that more intensive development in a "smart" location will likely reduce broader environmental impacts, that should in itself be considered to be a kind of "avoidance" or "mitigation" of impacts. Indeed, it should be able to be seen as a beneficial impact rather than an adverse impact, despite the greater localized impact. DEC should encourage SEQR analysis to be more regional and holistic and not so focused exclusively on a project site.

2. Related to the above point, the EAF and standard SEQR analysis does a poor job of encouraging the adoption of better land use regulations. I have spent 20 years writing zoning codes in NY state that have beneficial impacts on the environment (sometimes by concentrating development in "smart locations" as described in (1) above). Many municipalities find themselves stymied by having to do an EIS on such zoning changes. This raises the costs and increases the time it takes to make these changes, which is a serious disincentive to making protective changes to land use regulations. During the time it takes to go through the EIS process, some REALLY BAD PROJECTS can end up being approved under the old rules. I have made a practice of relying on a long-form EAF and Neg Dec to try to solve this problem, but it is often resisted as an "end run" around SEQR. The courts have consistently upheld this approach, but it would be helpful if DEC would

explicitly endorse this approach in any of the 3 ways mentioned in (1) - (guidance, changes to regs, or changes to the statute). The path to environmentally benign regulatory changes should be as smooth and quick as possible and the SEQR process should not impede such changes. Some kind of "free pass" should be available for this - perhaps even making them eligible for Type 2 designation upon a proper showing of environmental benefit.

3. Finally, I think it would be useful, if DEC or a university or research institute could ever get funding to do this, to do a sampling of various EISs done over the years, comparing what was projected in the EIS to what actually happened on the ground. My guess is that there would be significant discrepancies between what was predicted and what actually happened. Finding out the patterns and the reasons for what happened would provide valuable lessons to improve the art of environmental impact assessment, and might lead to better quality work and good ideas to for changes in SEQR regs and practice.

I hope that these comments are helpful. I would be happy to follow up by telephone or email. If you would like me to present at a meeting, I would be happy to do so if it fits into my schedule.

Good luck with this project.

Best wishes,

Joel Russell

Joel Russell, Land Use Attorney and Planning Consultant

>>> Barbara Warren <> 12/3/2009 1:28 PM >>>
Charlie,

As discussed I am forwarding our written comments to the Governor's Interagency Task Force on Environmental Justice. You'll note that Sustainable South Bronx joined us in those comments.

Section II talked about the need for Major Reform of SEQRA and this was expressed by many people from the EJ community. Section IV addresses how economic development funds can be used in a way that can be harmful.

Thanks for your time.

Barbara Warren
Executive Director
Citizens' Environmental Coalition

II SEQRA Reform: We recommend major reform related to the implementation of SEQRA at the State Level. We believe many of these important changes can be made through amended guidance from Commissioner Grannis.

Critical environmental areas: The DEC has designated critical environmental areas in the past related to natural settings or ecological features. We note that DEC has recently amended the definition of a critical environmental area to include a feature that is a benefit or threat to human health. We believe this expanded definition can facilitate the identification of communities that need extra protection because of cumulative or multiple impacts.

The DEC and DOH should investigate and designate any critical environmental areas in order to protect the environment and human health and prioritize actions necessary in critical environmental areas. Such designations could include air, soil and water pollution that threatens human health or the ecosystem directly or indirectly. Multiple environmental burdens could be used to designate an EJ community as a critical environmental area. This could facilitate consideration of cumulative and multimedia impacts as well as bringing resources to bear on the remediation of existing environmental degradation.

Critical thresholds: We recommend that DEC and the Department of Health (DOH) pull together existing information related to contaminants, pollutants and environmental media in order to establish critical thresholds for the protection of the people of this state and the environment. As part of this effort, health-based and other types of standards and guidance values shall be considered along with multi-media, total and cumulative human exposures, including impacts on sensitive populations.

Pursuant to Section 8-0103 of the ECL, "The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached;" and

Air Quality Example: The federal government has done extensive work in relation to setting health based standards for air quality (although there have certainly been lapses in judgment). However we do have health- based standards for criteria pollutants. In that regard over 40% of the population in the

State is breathing air that does not meet these standards – in other words they are breathing unhealthy air. This has enormous implications for illness, disease and premature death as well as for health care costs. We are suggesting that areas of the state in non-attainment for the federal health based standards – be considered to have exceeded critical thresholds. The relevant paragraph in the ECL is loaded with meaning—the capacity of the environment is limited, the govt. should take immediate steps and all coordinated actions necessary, etc.

Critical thresholds could also apply to water quality contaminants, and most importantly should be applied to levels of PBTs, persistent bioaccumulative toxins in former industrial areas, etc.

Consideration of alternatives: Section 8-0109 of the ECL specifies that “Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, and to the maximum extent practicable, minimize or avoid adverse environmental effects...” The DEC can require all permit applicants to explore the environmentally-preferable alternatives to the proposed action including alternate sites, alternate technologies and equipment, alternate methods and chemicals, and best practices in the industry including pollution prevention techniques and programs.

The DEC should clarify and enhance important requirements in the State Environmental Quality Review Act (SEQRA) to ensure that the full intent of the law to facilitate full democratic participation in environmental decisions is realized in practice. This will include, but not be limited to the following provisions.

A) Full and comprehensive information: All applicants for permits to DEC must submit full and comprehensive information about their proposed project and the environmental and community setting in which the project is to be undertaken. DEC cannot fulfill its obligations related to the laws of this state and make responsible judgments where the applicant supplies minimal and inadequate information to understand the project and its potential for impacts. Failure to supply accurate and sufficient information is grounds for denial of the permit. Applicant’s statements about the absence of environmental impacts will be used to establish enforceable permit conditions. The decision that an action is Type II should be based on full and comprehensive information about the project. A full Environmental Assessment Form should be required for all projects, since it is not an onerous requirement and supplies important information. The full environmental assessment form should contain the final assessment or determination by the agency and a signature of the reviewer. The public notice for the project should reflect the final determination and no agency public notice should be issued until it is complete. No negative declarations or conditioned negative declarations should be issued where only minimal project descriptions have been provided. NDs and CNDs will be used only where there is NO POTENTIAL for adverse impacts to the environment.

A review of all Negative Declarations over the past year should be done to identify problems associated with failure to appropriately identify the threshold for more in depth environmental review. That threshold as clearly stated in the Environmental Assessment Form is only the POTENTIAL for adverse impacts.

B) Environmental setting/ Existing conditions: All new projects are proposed to be placed somewhere in the state where the environmental setting and all existing conditions must be fully described. No project shall proceed where the description of existing conditions is inadequate for the average prudent person to make an informed decision. Environment is defined under SEQRA law to include “existing patterns of population concentration, distribution, or growth, and existing community or neighborhood

character.” This definition enables environmental justice considerations to be part of the description of the environmental setting and existing conditions.

C) Public participation and access to information: When an applicant files a project description and an EAF with DEC, the applicant will be required to notify the public. If the action is clearly a Type II Action, the applicant will print a public notice in local newspapers and provide evidence of outreach to affected members of the public. If the action is Unlisted or a Type I action, the applicant will print a public notice, conduct a public information meeting, with notice to DEC, and distribute written materials on the project. The requirement for a public informational meeting should be met by the applicant prior to finalization of DEC’s review of the project. The applicant should be required to indicate what they have done to outreach to the community. Once an application is received by DEC, the agency will ensure that the public has access to information about the project. Each DEC office will maintain a public access room for review of documents and a public access officer in each region will arrange for access to the relevant documents. It will not be necessary to file a Freedom of Information Letter during any publicly noticed review period. Upon request, members of the public will receive a printed list of documents related to the project under review, including the application, Environmental Assessment Form, supporting materials and draft permits.

D) Health Impact Statement for Proposed Facilities

DEC working with DOH should establish requirements for Health Impact Statements (HIS) for all new projects that could pose an increased public health risk. The HIS would be a new supplement to the EIS to comprehensively assess health risks, especially for overburdened communities, and actions that can be taken to avoid, eliminate or mitigate such risks. This could be done through regulation and guidance.

E) Enforcement proceedings: Enforcement proceedings can be utilized as an immediate, short term mechanism to bring permit violators into compliance and to ensure that corrective action is undertaken expeditiously. Enforcement actions should not be used to limit the legitimate need for public input on a major environmental problem and its long term remediation, where the DEC has considerable discretionary authority to choose among a variety of remedies. The DEC will avoid placing associated discretionary projects and actions (consistent with Type I Actions) in an enforcement proceeding such that the affected public is unable to be involved in appropriate environmental review.

F) Permit Renewals: DEC should ensure that all permit holders comply with environmental laws and regulations. Renewals of permits will require a review of any past history of non-compliance by the facility and development of a plan to permanently remedy the noncompliance. Renewal periods can be shortened when the DEC determines it is necessary to more effectively monitor a facility’s compliance.

G) As of Right Zoning: We believe that incorrect and inadequate information is given out by local officials to project developers related to as-of-right zoning. Educational materials on this topic prepared by the state should be made available to all county and local governments in the state, so that they can properly convey the requirements for SEQRA and permit reviews.

IV Special Category: Economic Development Grants

Economic Development Grants and incentives are particularly problematic in relation to the fair allocation of benefits; they represent a double-edged sword. EJ communities have often received more than their fair share of ESD benefits and it has led to the environmental degradation of EJ

communities. Empire State Development has enormous resources it conveys for economic development. ESD in general is part of the power structure that is at the root of major inequities and which throws money at almost any kind of economic development. Benefits don't go to communities but to developers or companies. There are few criteria related to environment and social benefits and even in relation to the promised job benefits; there are no strings attached to the monies, tax breaks and other incentives. As a result after receiving state money a facility can decide to move to Mexico or elsewhere, or the promised number of jobs was overestimated and is never realized. Economic development money can go to really Bad actors, who injure workers or pollute the environment. Low income communities are often targeted by state and other agencies for economic development. While some of this may be appropriate, we have seen terrible uses of economic development monies. In NYC, these monies were used to encourage waste transfer stations to locate in communities already overburdened with waste facilities. Another stark example of gross inequities is the huge Hunt's Point Market in the South Bronx where thousands of trucks converge on this food distribution center for the metro area. How is it that the community in the South Bronx doesn't ever see a green leafy anything from this \$8 billion dollar operation. Given the magnitude of this operation couldn't someone have ensured that the community receives some benefits, rather than just extraordinary air pollution – maybe a market offering fresh food at lower prices should have been part of the deal. The fish market also moved there recently and I don't know that anyone has seen a single fish either.

Given the amount of economic development resources, reform at ESD could do extraordinary things for New York State and EJ communities particularly. In contrast the larger agency, the Environmental Services unit has been doing very constructive work by promoting more sustainable projects in the state. Their unit could be expanded and their expertise could help lead the agency toward more sustainability. Instead the recent pattern has been to shrink this unit, despite the allocation of funding for 4 new positions under the Pollution Prevention Act. So while this small unit brings us to the forefront of sustainable economic development, it is terribly underfunded.

Communities should be consulted and active participants regarding appropriate economic development. Businesses that follow the rules, work with communities, offer community benefits and demonstrate environmental responsibility could receive more attention from the state. And we could attract those kinds of businesses by offering incentives, with strings attached. We could promote sustainable business practices and the hiring of more minority workers. We could attract new businesses or expand old ones where we see market niches or opportunities to fill the demand for more green products. For example consumers are very leery about toys from China. We could ensure safe children's toys that are made in NY.

In general ESD needs to adopt sustainability goals and criteria for measurement of success beyond dollars put into economic development. The eventual success of a particular business or CEO should not be at the expense of the community and the environment where the company resides, or of workers and their well being. We recommend that the Department of State play a role here since they maintain a database of corporations. For our purposes we need to differentiate those businesses and corporations that operate sustainably and provide social, environmental benefits in addition to economic ones. A database of important information regarding state assistance received and compliance with state laws would be very useful to state agencies and the public.

Creating Jobs: Equity in Allocation of Economic Development Dollars

Millions of dollars in benefits and incentives are provided to single projects in the state – as much as \$500 million. We want to raise the question: what if a percentage of these funds was instead dedicated to creating a Green Jobs Corp in NY? What if 5% of the entire pot of economic dollars was devoted to

those at the very bottom of the economic ladder, providing training, beginning job skills and creating entry level jobs and pathways out of poverty? What if we dedicated those jobs to environmental projects we desperately need – energy efficiency, retrofitting homes for energy efficiency, building deconstruction, recycling, reuse and composting? What if we collect food scraps and compost at more community gardens, create greenhouses in urban communities to grow some fresh vegetables year round and eliminate food deserts? What if we dedicated a portion of those jobs to public health and prevention?—we might make significant progress on eliminating health disparities and keeping people healthy. What if DEC worked directly with a Green Corps to conduct environmental monitoring, observations and reporting and to plan community improvements?

What would be the result? We would not only help those directly trained or employed, but entire communities experiencing the most limited economic resources. We would be stimulating the economy from the bottom up, where we know it does the most good. We know that Trickle down is a complete failure; it's time to try Trickle up.

TO: SEQRA WORKING GROUP

FROM: VERNON BENJAMIN
Special Operations Coordinator
Town of Saugerties
845-399-4978

I appreciated the opportunity to participate on the municipality panel at the Working Group's December 4, 2009, workshop at the DEC in New Paltz. This is an elaboration on my comments that day.

The specific message I imparted in my comments was the need for municipalities to “reg up,” if you will, to the standards that SEQRA projects inevitably must address. I will elaborate on that further, but the larger message that I had in mind was to suggest that all the parties involved (municipalities, state and county agencies, developers, consultants, and the public) need to move up as well. SEQRA may need tinkering, but there is a lot else that can be done to help streamline the process.

In my remarks, I used as an (imperfect) example the Town of Saugerties, which has created or applied modern standards to land use regulatory practices in certain regards. The use of sensitive overlay districts and aquifer and aquifer recharge protection overlays standardized to some extent the attention that must be expended on biological needs and processes in SEQRA reviews in Saugerties. The town is imperfect in this regard (more work on zoning, planning practices, historic review, and wetlands and biological diversity protection are needed), but it seems to be moving in the right direction. Models that encourage the use of part-time wetlands experts working one-on-one with developers are helping to “humanize” environmental issues in ways that should enable SEQRA in the long run. My point is that an adequate regulatory framework can preclude major arguments in the SEQRA process by already resolving the questions beforehand, or at least by better focusing on what the ultimate arguments would be.

The principle of “regging up” applies to the business community in terms of their being empowered with better knowledge about why biology matters. I attended the Biodiversity Assessment Team annual meeting at DEC on the Tuesday following the Working Group session—none of the Working Group attendees were there (except of course the regional director). Biodiversity assessment training has empowered more than 200 individuals in Region 3 to date—are any of them members of the business or developer community? Perhaps a similar antipathy exists in the opposite direction—how many environmentalists really want to see economic development succeed?—but I think that at least environmentalists can see the tide coming, and its coming their way, not the developers'. My personal goal is to advance economic growth in my town within a context of full environmental integrity; I don't think there are any other options in the long term. The notion that real businessmen don't have time for that stuff is retro, old-fashioned, and gets pretty expensive once they find out what it costs to face the SEQRA music.

Pre-planning is a policy that any developer should pursue, large or small; at least find out what the picture looks like. All too often, developers take a cursory look at the situation, rely on unprincipled or uninformed consultants, and then show up with fully realized plans and concepts based on pre-modern notions of their rights and privileges that ultimately are not sustained by the town's rules, the true nature of the property, or the process they must undergo. Pre-planning can eliminate all the extra costs that such ignorance engenders—and cut down on the need to use SEQRA as well. Currently, SEQRA calls only for scoping as a pre-planning technique, yet scoping occurs far down the process when one considers what a developer has gone through to get there. I see no need to add rewards for pre-

planning to SEQRA because the biggest reward is the reduced costs that careful preparations engender, but agencies like DEC should be there to help in the pre-planning process.

Knowledge is empowerment, but that is also a sword that cuts both ways. There are instances of engineers, consultants, and property owners changing the biology of parcels to try and eliminate impediments to unfettered use. There actually is a kind of culture of impropriety that has developed in some areas as a result of this attitude—and it is often abetted by insidious political and governmental support that all too often seems to quietly applaud such practices instead of admonishing them. SEQRA can work better if prohibitions on this type of bad growth scenario are strengthened and the bad practices outlawed. Engineers and lawyers should be penalized for this kind of unethical work, and even charged with criminal intent when it is done deliberately and with malice aforethought. Also lacking are legal standards for consultants generally. Cracking down on the cheaters should be a goal that all parties deem appropriate because the atmosphere of distrust and antagonism that such practices provoke only make it harder for the next SEQRA review to get through without problems.

In addition to municipalities, developers, businesses and consultants “regging up” to the standards that society wants, the Department can help to create efficiencies and economies that make SEQRA more tolerable for all involved. Standardizing the knowledge that regulators must have to properly address proposals can save time, money, and frustrations as these processes unfold. Some of this is already in place; DEC has, for example, guidelines for communities to screen proposals for potential impacts on threatened and endangered species. A SEQRA Handbook would be helpful. Bring a team to my town and talk about how it works. Other information sharing, and perhaps staff involvement as communities look to better their own regulatory frameworks, would help lessen the complexities of SEQRA.

The public sector is the other major player in the SEQRA process. This is not a uniform, consistently enlightened, or knowledge-empowered element in the whole SEQRA scheme, and admittedly some elements in the public sector have agendas that are completely anathema to accommodating economic growth. Some can be expected to act as badly or even worse than the bad developers and consultants I alluded to, but there’s one thing about the public when it comes to SEQRA: you can’t ignore them. The public also brings an annoying insistence to the table—their saving grace—that makes it virtually impossible to put one over on them in most cases.

A case in point is the Winston Farm in Saugerties—identified by the Hudson Valley Economic Development Corporation as the best virgin “green” site for high technology growth in a nine-county area. That moniker impressed the town when a feasibility study was undertaken this past year, but what impressed them more was the willingness of the agency that conducted the study to work with the community on what the community wanted. It wasn’t the community’s property—it was private—but the history of badly conceived attempts to use the property in ways that would be decidedly harmful to the public drew them in and made them essential players. As a result of the interface and dialogue that developed, if all goes as forecasted a large biological corridor will be protected, infrastructure will be done in ways that advance biology instead of retarding it, historic and prehistoric archaeology will be saved and to a certain extent re-used, the open space of the 800-acre property went from 42% to 73%, and 2,000-3,000 jobs will be accommodated when all is said and done. SEQRA hasn’t begun there—pre-planning was the key, and pre-planning actually began by asking the community in a formal survey if it even wanted anything along a high technology industry line to happen there.

The response was 85% in the affirmative. Although a huge GEIS-Master Plan-Scoping-SEQRA undertaking remains for the Winston Farm, the message that I derived from this unusual cooperative process was that there need not be walls between developers and environmentalists, consultants and

locals, industry and aesthetics, or the biota and the businessman. Openness, mutual respect, dialogue, and an underlying goal of finding common ground are forging a new paradigm for encouraging growth and environmental protection at the same time.

As I said at the conclusion of my remarks on Friday, SEQRA works. Poke at it, toy with it, tidy it up as needs be, but also look toward the larger picture to see if perhaps the problem is not with the law, but its implementation.

Vernon Benjamin
December 9, 2009

Hickory Creek Consulting LLC

SEQRA Comments Dec. 10, 2009

The following are provided in response to the general questions posed by the working group.

I. Measures to make SEQR run more efficiently:

Administrative

- Involve local /municipal representation at meetings between DEC and project applicant, to ensure that local concerns are part of the discussion as early as possible in the process.

Regulatory/statutory

- Facilitate and clarify identification of significant impacts; eliminate the current examples of significant impacts that are listed in the EAF part 2 form as they do not match the scale of many smaller or rural municipalities and are often used as definite parameters by applicants.
- EIS outline. The DEC needs to update the suggested EIS outline so that it includes more recent information on biodiversity, watersheds, and cumulative impacts.
-

II. Weaknesses in the way SEQR is implemented, and suggestions to address them:

A. The most significant weakness is the consistent production and review of poor quality EIS's. When an EIS is prepared poorly, the result is often a longer, more costly review process and ineffective protection of natural resources.

Most EIS's do not use newly available research information and resources; they are often produced the same way by the same consultants as part of a routine process that minimizes or incompletely identifies significant impacts, leading to ineffective mitigation. Incorporation of new information (eg recently produced biodiversity and watershed information), even when requested by a municipality, is often resisted. The preparation of a quality EIS depends on:

- accurate EAF part 2 information
- better scoping

- ask/answer the right questions in the EIS to identify all significant impacts and effective mitigation
- rigorous review of EIS information by local municipalities
- mitigation early in the process, while there is still maximum design flexibility (need to encourage pre application meetings, early identification of all significant impacts)

The SEQR process currently functions as a mostly reactive process. However, it would be more efficient and more effective if it was a more proactive process; this would increase the potential for better resource protection, better site design for development, less contention during the process, and effective minimization of impacts.

By producing guidelines and/or recommended references (not regulations) DEC has an opportunity to improve the quality of EIS's. The following guidelines would give municipalities and boards a basis for asking the right questions about impacts and evaluating information, and make environmental impact review more consistent. The same information would also be made available to project applicants and their consultants and they would be encouraged to use it in EIS preparation.

1. Habitats

Habitat assessment guidelines. Developed in several towns to streamline the impact review process by asking for the same information for every application under SEQRA, very early in the review process.

In summary the process includes:

- Describe all habitats-upland, wetland, and aquatic-on and adjacent to the site (according to standard references) including size/extent and quality
- For streams, use Stream Biomonitoring protocol (EPA, DEC, Hudson Basin Riverwatch) to standardize descriptions of stream habitats
- List all species of conservation concern that are associated with each of these habitats (at some stage of their life cycle) with a possibility of occurrence in that Town. Use standard references and definitions (eg NYS Wildlife Action Plan and Species of Greatest Conservation Need)
- Determine which of these species are likely to be using the site, based on observation and on probable presence, and describe their habitat needs. Tailor field surveys to specific species or groups.
- Develop mitigation that includes adequate buffers, corridors and connections between habitat areas and matches protected open space with the most significant/sensitive species' habitat needs.

2. Biodiversity

- Provide a commonly accepted definition of biodiversity to make it clear that this includes much more than only threatened or endangered species
- Describe the site within the larger landscape context
- Include discussion of species diversity/variety, habitat for rare or protected species and species of conservation concern, and extent of non-native/invasive species on the site.
- Use Hudsonia's Biodiversity Assessment Manual and MCA technical papers, and DEC resources to develop specific guidelines
- Assessment of cumulative impacts
- Support the role of CAC's in all towns, to provide town boards with information useful to SEQRA review, eg Natural Resource Inventories, Important Areas assessments, impact assessment guidelines, and any other pertinent natural resource information specific to a particular municipality.

3. Watersheds

- Provide Watershed Assessment Guidelines that parallel the Habitat Assessment Guidelines. Provide a clear definition of watersheds
- Describe the site's location in terms of watersheds/subwatersheds, and wetland contributing drainage areas.
- Include pre-and post-project percent impervious surface forested cover within each watershed, subwatershed, and contributing drainage area.
- Delineate/map all wetlands and watercourses onsite regardless of jurisdictional status (the watershed approach includes all water resources)
- Describe cumulative impacts by watershed
- Use the above mentioned stream biomonitoring protocol as a standard for describing stream condition (basic physical, chemical, biological conditions)
- Incorporate climate change information into the impacts assessment process
- Include assessment of full range of indirect impacts on wetlands, lakes and streams
- Include discussion of groundwater as it affects/is affected by, surface water resources.
- Use the stormwater BMPs (DEC's 28 Better Site Design Principles) as early in the process as possible
- Provide checklist for impacts/
- Provide guidance for buffers to be sized appropriately so that water quality and supply are protected

Significant Impacts

- The development of practical guidelines to help Towns determine what is or is not a significant impact would be very helpful. It would not be necessary to require a lot of 'numbers' but rather a system for using existing information including the thresholds we already know about, and how this can be applied to communities of various sizes and degree of development.
- Guidance (training or discussion groups, or written guidelines) for municipalities in identifying or defining 'significant impacts' before the SEQRA process is initiated would ensure that these impacts are identified consistently from one project to another. This would create a more equitable review for applicants, and also provide a more consistent approach to protection of a locality's most significant natural resources.

B. The SEQR process is often only as effective as those (municipal board members) who are reviewing it, and this varies widely from town to town. Some Towns scrutinize everything, from EAF to EIS, and others accept the applicant's conclusions and scrutinize very little. To even the reviews, DEC can play a unique role by providing information, training, technical support, and encouraging partnerships. Some suggestions:

- Provide training for CAC's and Planning Boards in Natural Resources impact assessment and mitigation evaluation (how to evaluate an EIS). This includes how to evaluate information from 'experts' who may not agree. Provide training for municipalities on how to assess significant impacts on natural resources, what to include in a scoping document, etc.

Region 3 SEQR Working Group Citizen Panel, December 4, 2009
Comments from Kate Hudson

I. Early involvement of interested parties/ stakeholders has potential to contribute significantly to streamlining environmental review of proposed projects under SEQR.

A. 1. Early involvement of potentially impacted stakeholders may avert complete opposition to the project, and use of SEQR to that end, simply by making information available about what the project is, and isn't. Avoids fears and opposition building because of an absence of information.

2. Best possible scenario – if project proponent/ applicant seeks input from / works with the community, on the scope, scale and nature of the project. Provides an early opportunity for community feedback and project alterations in response.

3. At a minimum, project sponsors should attempt to seek feedback as early as possible on project concept, from permitting agencies/ governments, from community, from potentially impacted stakeholders, so that large amounts of time and resources are not invested in project design and engineering before realizing issues, hurdles, opposition raised by the project that could have been avoided.

B. 1. If there is consensus on the value of earlier involvement of interested parties, SEQR and the processes that it sets forth can be viewed not as a problem, a burden, an impediment, but rather an opportunity.

2. If all participants can view SEQR as a collaborative rather than a combative process, SEQR and its implementing regulations, in conjunction with the regulatory provisions found in the State Uniform Procedures governing the processing of environmental permit applications, do provide the framework and the information necessary to allow dialogue to happen.

3. The challenge is presented by the timing of that dialogue: how can notice, involvement, information exchange and dialogue, with the aim of taking issues off the table, focusing the discussion, permitting project re-design and possible compromises on both sides, be facilitated to occur early enough in the process to allow a project to move forward with less delay, and can this be accomplished using the laws and regulations and guidance we currently have in place?

C. 1. This is not a new goal for SEQR. See 6 NYCRR 617.3(d):
“The lead agency will make every reasonable effort to involve project sponsors, **other agencies** and **the public** in the SEQR process. **Early consultations** initiated by agencies can serve to narrow issues of significance, to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.”
Emphasis supplied.

2. Certain existing regulatory provisions could be used to accomplish this goal, to carry out SEQR's direction, potentially without the need for regulatory revision, in four critical areas: Notice, Flow of Information to Interested and Involved Agencies and the Public, Early Convening of all Parties, and Creating Opportunities for Dialogue, Compromise and Consensus-building.

II. Notice

A. How do we get early notification to interested agencies, stakeholders and the general public in the early stages of a project proposal which will be subject to environmental review under SEQR?

1. Project sponsor-initiated early notice:

a. Project sponsor may request an optional preapplication conference under 6 NYCRR 621.10. That conference should ideally involve all agencies that may have approval authority over the proposed action, not just DEC. The meeting could also be expanded to include representatives of stakeholders and the general public.

(This conference is currently encouraged but only at the prospective applicant's option. Should be available at request of DEC staff as well).

b. A project sponsor could elect to convene his/her own meetings with interested local and environmental groups creating an opportunity to provide information, calm fears and build consensus so project opposition doesn't develop because of lack of information.

c. A project sponsor could request that DEC (the regional permit administrator) conduct a "conceptual review" of the project pursuant to 6 NYCRR 621.11. If DEC decides to conduct a conceptual review, notice is required to be published in the ENB and DEC may decide to hold a public hearing. (Conceptual review occurs before the actual filing of applications and the initiation of application and SEQR timelines.)

B. All involved agencies should elect "coordinated review" even for Unlisted actions, to encourage early notice and flow of information from lead agency to all others. See 6 NYCRR 617.6(b)(3) et seq.

C. Provide additional notification to the public, beyond publication in the ENB, whenever ENB publication is required. ENB notification is not readily accessible to small communities or potentially impacted stakeholders. See 6 NYCRR 617.12(c)(3). Explore feasibility of additional forms of notification:

1. Regional office postings – hard copy bulletin board in publicly accessible area of the regional office and/or regional web postings?

2. Postings in other public venues – post offices, Town and village office bulletin boards?

3. Publication in local papers?

D. Provide notification to the public earlier than the first ENB notice is currently required, i.e., initial determination of significance. See 6 NYCRR 617.12(c). (Could be guideline issued by DEC without need for regulatory revision).

III. Facilitate/ Improve Flow of Information to Agencies and the Public

A. Environmental Assessment Form (EAF)

1. Lead agencies should routinely require applicants to fill out the full EAF for Unlisted Actions to ensure sufficient information on which to base their determination of significance. Also require additional information whenever deemed necessary (EAF with attachments). See 6 NYCRR 617.6(a)(3).

2. Applicants should fill out the EAF clearly and accurately, taking advantage of the opportunity to identify potential issues early on, rather than attempt to obscure them, hoping they won't be caught, only to have them surface late in the game. This only leads to extending the time that the SEQR review process will entail.

3. Consider either re-designing the EAF form or allowing it to be customized for particular types of projects so that pertinent information can be elicited as quickly as possible.

B. Conduct coordinated review with all unlisted actions that involve more than one agency with approval authority.

1. The current standard is uncoordinated review for small to medium sized projects, even with multiple involved agencies. The result is seriatim, fragmented review, where information is not shared among agencies in a timely manner, resulting in uninformed or only partially informed decision-making by individual agencies and show-stoppers or issues that require substantial project modification late in the game, after some agencies have already issued their approvals. This does not help either the process or the applicant.

2. SEQR expresses a strong preference for early and active coordination, and information sharing, among agencies, lead, involved and interested. See 6 NYCRR 617.3 (e).

3. Achieving this goal would be facilitated by convening an early, face-to-face meeting of all known involved, and interested, agencies to share information, to discuss lead agency coordination, to identify representatives within each agency with responsibility for tracking the application, and to set up an on-going, information sharing protocol. This would begin to meet SEQR's direction that agencies "avoid unnecessary duplication of reporting and review requirements by providing, where feasible for combined or consolidated proceedings . . ." 6 NYCRR 617.3(h).

C. Expand the use of SEQR fees to aid/ support the lead agency's scoping and review of a DEIS, particularly important for municipalities. See 6 NYCRR 617.3.

D. Use a mechanism similar to that used in Article X proceedings to give resources to groups participating in the proceedings that need technical assistance to present their position.

IV. Early Convening of All Parties to Facilitate Information Exchange and Dialogue

A. Expanded use of the Preapplication Conference provided for under 6 NYCRR 621.10, at DEC's option as well as the applicant's. With consent of the applicant, involve other involved and interested agencies and/or potential stakeholders.

B. Use of the Conceptual Review Process authorized by 621.11.

1. Advantages: if conceptual review conducted, there is public notice and potentially a public hearing with respect to the proposed project, at a time that is a bit further down the road in terms of project design, but still pre-application. See 621.11(d) and (f).

2. Although DEC's post-conceptual review decision is not a permit, it is intended to provide potential applicants with a binding decision as to the general acceptability of a project, after which applications for necessary permits will be processed "as expeditiously as possible." See 621.11(j) and (k).

3. Potential drawbacks: it is currently a very structured and formal process, which can only be initiated by the applicant and will only go forward if approved by the Regional Permit Administrator.

Question - Can this process be modified or simply used in a more flexible way to provide an early convening of interested parties (i.e., pre-application).

C. More Frequent Use of the "Legislative" or when appropriate "Adjudicatory" Public Hearing provided for by 6 NYCRR 621.7.

1. Advantage: provides interested parties an "on the record" opportunity to be heard regarding a particular project, which could lead DEC to impose significant conditions or deny the requested permit(s).

2. Disadvantages: as currently provided for, these hearings can only happen after an application is complete (i.e., a negative determination of significance has been issued or a DEIS has been accepted, see 617.3(c)). This means that the public would not have the opportunity to participate in a hearing on the project under Section 621 until the environmental review of the project was finalized.

Question – could a "public hearing" be convened earlier in the process, prior to a determination of significance? Probably not under 621.7 without regulatory revision. Is there any "agency discretion" that could serve as the basis for such a hearing under 617?

D. Routine Use of Scoping in the Case of a Positive Declaration as provided for in 617.8.

1. Advantages: scoping can be initiated either by the project sponsor or the lead agency.

2. Opportunity for public participation is required, either through written comments or use of meetings and other means, vesting the lead agency with the authority to convene interested parties around the issue of the scope of the DEIS. See 617.8(e).

3. Disadvantage: This convening would still occur after the determination of significance.

Question – Could a more informal scoping – an attempt to focus and narrow the issues – be initiated earlier in the process, before the determination of significance so scoping really does afford "an opportunity for early participation by involved agencies and the public in the review of the proposal." See 6 NYCRR 617.2(af), the definition of scoping.

V. Opportunities for Dialogue, Compromise and Reaching Consensus

A. Goal – to provide both 1) real time, accurate feedback to the applicant from involved and interested agencies and the public regarding the proposed project and 2) opportunities to make project revisions in return for some certainty regarding the outcome of the application and environmental review process.

B. Possible Use of existing regulatory provisions and procedures to achieve that goal.

1. Expanded use of the preapplication conference (621.10), at DEC's not just the applicant's option, to facilitate bringing together the applicant, involved and interested agencies, and stakeholders at an earlier point in the environmental review process, before a significant amount of time and resources have been spent by the applicant on project design and engineering.

2. Use of the conceptual review process (621.11) in a more flexible way that would provide the project sponsor with early feedback from not only DEC, but also other involved and interested agencies and the public, on the consistency of the project with State environmental policy and standards and also with more local environmental goals and concerns.

3. A broader and earlier use of scoping, not solely focused on the preparation of a DEIS, but more generally on a narrowing of potential issues with the project, by both agencies and stakeholders, with the goals of taking some of those issues off the table and of obtaining consensus/ buy-in from interested parties.

4. Creative use of the "Settlement Conference" model laid out in 6 NYCRR 621.8.
a. Now only available to DEC and the applicant, post complete application (i.e., after determination of significance) as an alternative to an adjudicatory hearing. Uses the resources of DEC's Office of Hearings' administrative law judges, trained in alternative dispute resolution techniques.

b. Recommend investigating the use of this model, expanded to be available at other points in the application/ SEQR process, structured to allow for a broader group of interested parties to participate.

c. As described by 621.8, "a settlement conference is an opportunity for a frank and open discussion between parties in the presence of an ALJ that may result in the resolution of outstanding issues. The purpose of the conference is to allow both parties to participate in good faith in the process of narrowing and resolving issues." 621.8(a). To the extent that "both parties" could be expanded to all interested parties, the process could result in dialogue, compromise and consensus, and an ALJ report presenting recommendations for further actions, that could ultimately streamline the application and SEQR review process and at the same time, provide the project sponsor with some certainty regarding the outcome of that process.

>>> Marian <> 12/16/2009 1:34 PM >>>
December 16th, 2009

To: Willie Janeway, Jonathan Drapkin and Ned Sullivan:
I am resending the comments sent earlier today due to a mistake in the last sentence. Please ignore the first version sent today.
Thank you for the opportunity, as stated in your invitation, for "presentations, questions, discussion and public comments." I would appreciate the opportunity to speak at the December 18th meeting in New Paltz, on the topic presented below.
Sincerely,
Marian H. Rose, Ph.D.
Croton Watershed Clean Water Coalition

EXECUTIVE ORDER #25 AND THE STREAMLINING OF SEQR

The aim of Governor Paterson's Executive Order #25 is to streamline the process through which businesses and developers can obtain the necessary state permits to carry out their enterprises.

It is significant that environmental protection is nowhere mentioned. For example, under #1 of the Resolution, the Regulatory and Review program calls for diminishing the burden of rules and paperwork requirements "while maintaining appropriate protections for the public health, safety and welfare and the conduct of business." And under #3, the Review Committee will conduct "outreach to interested parties and affected constituencies, to identify unsound and unduly burdensome or costly rules and paperwork that can be eliminated or reformed to accomplish the goals of the Order."

The parties and constituencies that the Governor has in mind and that are supposedly affected by "unsound or unduly burdensome or costly rules" are clearly the developers and businesses. The opinions and advice of the environmental community are secondary, and effectively being ignored.

Unfortunately, the intention of this Executive Order to eliminate the "unnecessary costs, burdens and inefficiencies" that are "inconsistent with the ongoing effort to reduce local property tax burdens" will produce the opposite result when applied to the SEQR process. The present seemingly slow process for obtaining development permits is not due to the SEQR process itself but has everything to do with suitable land for development no longer being available. The remaining land, in order to be suitable for housing or commerce, often requires an elaborate system of stormwater devices, the building of roads on steep slopes and the serious blasting of rock to level the ground. Delays are not caused by the permitting process; they are caused by the difficulties of construction on unsuitable terrain.

Where land is buildable, a developer's profit margin

causes a project to be proposed at a magnitude and scale that overwhelms the host community's resources and pattern of incremental development.

Rather than reduce taxes, such construction foists the financial burden on maintaining elaborate stormwater systems and community impacts on the municipality or a homeowners' association - not on the developer. Any increase in tax revenue is rapidly offset by such expenditures.

In addition, a development consisting of single-family homes often entails the need to expand the school system including more teachers, the expansion of classroom and other facilities, and even the need for new buildings. The increase in school taxes is borne by the community, not the developer.

If the developer were required to share some of the burden by means of Impact Fees, there would be far less opposition and the process would take less time. Unfortunately, there is a mistaken notion that Impact Fees are illegal in New York State. That notion is entirely erroneous. There is nothing to prevent the imposition of Impact Fees in New York State.

There is no doubt that the SEQR process could be much improved and we offer some suggestions. 1996 was the most recent year that changes were made to SEQR!

We believe that the following proposed changes will not lengthen the process. Instead, they will speed up the process by (1) making it more transparent; (2) hastening the gathering of information on which the lead agency bases its decision and (3) insuring that comments by the public are fully taken into account.

(1) Scoping should be mandatory. Local residents who live close to a proposed development often have a unique familiarity with the area and can offer valuable information that others do not have. Furthermore, at this early stage, it is important to know of any unique ecological features that may exist on the property - not discovered late in the process and causing delays. Contrary to the prevailing conduct by developers, it would be to their advantage to allow well-certified experts, paid for by citizens' groups, to walk the property in search of any unusual ecological features and/or historical artifacts.

(2) Comments by all the involved agencies should preferably be available to the lead agency and the public prior to the issuance the DEIS, and certainly prior to the lead agency issuing its Findings. In order to perform due diligence, the lead agency should have all pertinent information available before making its final decision. For example, we have often encountered cases where the lead agency has issued its Findings prior to receiving the Stormwater Pollution Prevention Plan (SPPP), a vital component of any development plan. Another recent example is Patterson Crossing in Putnam County, a huge

project for which the lead agency issued SEQRA findings in July 2008. Now, a year and a half later substantive review of the project's water supply and sewage disposal of (tens of thousands of gallons) is just beginning as part of DEC's permitting process.

(3) The public gets seriously involved in SEQR at the late stage of commenting on the DEIS which, as we have pointed out, does not necessarily include all important information. Comments by the public are mostly pertinent and well-researched, and add valuable questions and information to the DEIS. The developer responds in the FEIS. Often, those responses skirt the more searching comments or do not answer them at all. Following the FEIS, the public has only a minimal opportunity to respond to frivolous or inaccurate answers. Sometimes, a lawsuit is the only response - something to be avoided if at all possible, and a sure way to drag out the permitting process. We strongly urge, therefore, that the public be given the opportunity to respond to the developer's FEIS narrative which often are non-responsive to the public's DEIS comments. In our opinion, this will insure a more satisfactory, smooth and ultimately more rapid process.

Thank you for this opportunity to comment.

CWCWC

Please visit newyorkwater.org.

Thursday, December 03, 2009: Notes from today's meeting

Need early public input so that the developer has not already invested hundreds of thousands of dollars in the project by the time it gets to the first public hearing. This will allow for major changes and better communication upfront.

Re-education of SEQRA's purpose. DEIS should be detailed enough for public discussion, not so detailed that engineering and municipal approvals can be based on it solely. SEQRA has become the foundation for the municipal approval process rather than a component of the municipal approval process.

Nancy Proyect
President
Orange County Citizens Foundation

December 18, 2009

Members of the Working Group on SEQRA and Others Meeting Attendees,

I appreciate the opportunity to make three brief comments regarding improving the SEQRA process that are based on both my experience in community-based environmental groups and on the comments that have been made in this dialogue to date. I am a member of the Steering Committee of Save the Lakes, an organization that provides information to decision-makers that will contribute to protecting the natural resources of the Williams Lake property in Rosendale.

1. Many panelists have commented on the problems in the SEQRA process caused by the imbalance of power where developers and professional consultants have significantly more resources and influence than do community-based environmental groups.

That problem is reflected in the composition of the present Working Group itself. Therefore I would urge, now that the Dialogue is ending and the Group will begin its distillation of commentary, that representatives of community-based environmental groups be added to the Working Group to rectify this imbalance in the group assigned to recommend improvements the SEQRA process.

2. To follow through on the inclusive and participatory nature of this series of Dialogues, I urge that when the Working Group has a draft document it should post it on line and notify Dialogue attendees so participants can submit feedback before a final draft is completed.

3. I would like to ask members of the Working Group to take a minute to get into the shoes of community environmental groups that want a voice in the SEQRA process. We are small business owners, IBMers, postal workers, professors, social workers and teachers, and most of us work full-time jobs.

We spend countless hours above and beyond our jobs doing research, offering public forums on environmental issues, and talking with local citizens and officials. But most of all we spend countless hours fund-raising so we can pay experts to testify in the SEQRA process. Imagine yourselves giving up 100s of hours in your non-working days to plan and host bake sales, film screenings, concerts, wine and cheese receptions and kids programs TRYING to raise money to equalize the playing field. It is very frustrating!!

Therefore I urge that you take the lead from the former New York state power plant siting process and make a recommendation to the SEQRA process as is included there. Please urge that funds from SEQRA escrow accounts be provided to community environmental groups with standing for the hiring of professional experts. This will bring a greater degree of equity and critical scientific perspective to a process that should be serving the public good.

Thank you,

Nancy Schniedewind
Save the Lakes

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>>> robert puca <robpuca@gmail.com> 12/17/2009 10:43 AM >>>
SEQR is the primary tool New Yorkers have to participate
> in the review of development projects and to influence the future of our
> communities and environment.
We can use this opportunity for strengthening public
> participation in EIS reviews!

The more public input the better.

Robert Puca

>>> Chad Murdock <kcmurdock@gmail.com> 12/17/2009 2:56 PM >>>
Dear Mr. Janeway, et al.,

Please resist efforts to "streamline", deregulate and weaken the SEQRA process. New York's environment is under continuous assault by money-hungry interests.

New Yorkers are lucky to be protected by SEQRA and the DEC. We thank you for your good work.

Sincerely,

K.C. Murdock, Ph.D.

My name is David Porter. I'm a retired SUNY political science professor, co-author of a book about the theory and practice of SEQRA [*Megamall on the Hudson: Planning, Wal-Mart and Grassroots Resistance*, 2003] and co-chair of a local environmental advocacy organization [AFFIRM] concerned primarily with local land-use decisions. I've actively monitored many dozens of SEQRA reviews in this area and elsewhere in the state for over 25 years.

I want to begin my remarks with several relevant quotations from several SEQRA experts:

1. (Attorney Michael Gerrard, co-author of the basic SEQRA case-law manual): Although SEQRA and the Freedom of Information Law are “premised on the idea of full and open disclosure,” in fact “the practice, in contrast with the theory of impact review, is suffused with secrecy.” Because local lead agency boards rely heavily on initial EIS presentations, because these are biased in favor of the developer and because of obstacles to the critical public’s timely access to analytical documents for their own intervention, the basic assumptions and data behind technical statements in the EIS are rarely discussed and “project critics are relegated to the periphery on the key substantive issues.” (“The Dynamics of Secrecy in the Environmental Impact Statement Process,” *New York University Environmental Law Journal*, vol. 2 [1993], no. 2)
2. (Gerrard): “Provided that other binding standards are not violated, an agency may approve a project that will be environmentally destructive, if the agency has followed all necessary procedures and made a formal finding as to the reasons for its decision.” “Municipal Powers Under SEQRA,” *New York State Bar Journal*, December 1997)
3. (Attorney John Caffry, Glens Falls, remarks at 25th SEQRA anniversary conference, 2001, Albany Law School): “[projects] which are represented by experienced legal counsel and by consultants who will write anything in an EIS regardless of its accuracy, will successfully withstand legal challenge, so long as the procedural i’s are dotted and t’s are crossed. This will occur even if one or more significant adverse environmental impacts goes virtually unanalyzed in the EIS or unmitigated in the SEQRA findings process.”
4. (Frank Fish, planning consultant, NYC, Buckhurst Fish & Jacquemart, remarks at 25th SEQRA anniversary conference): “When you [the developer] have money and you have the experts, you can create a juggernaut and get whatever you want.”
5. (Marc Gerstman, ex-Chief Counsel, DEC): referred at the first session to the problem of SEQRA documents, especially the EIS, written by developers themselves—defensive documents not meant to reveal full story: like the fox guarding the chicken house; nobody’s looking at the issues analytically; too many discussions in the initial stages without the public

In summary, what these remarks emphatically underline is that far from the supposed model of an increasingly sophisticated collection of data and serious analysis, with the public as important participants, SEQRA is a frequently superficial, defensive and almost always process-oriented exercise. When it adheres, though sometimes not, to a very loosely-defined standard of “hard look” at environmental issues and conforms to outlined procedures, it provides a legal cloak of environmental legitimacy to a proposed project however low the threshold of rational review. Essentially, most often, the public (with limited resources) and its several experts (at best) are relegated to the cheap seats in the bleachers, unable to view much of what transpires, and considered more a nuisance than a legitimate part of an ongoing analytical review team. This description of SEQRA conforms well to my experience and my studies over the past 25 years.

Some have complained that SEQRA, as presently experienced, is too inefficient; it slows unnecessarily and sometimes prevents good projects from going forward. As David Church said last time, some projects are stupid and deserve to be stopped. However the record shows that only about 1% of projects actually *are* stopped by SEQRA disapproval. My guess is that a substantial amount of SEQRA delay, when it occurs, is either because the environmental issues involved *deserve* close scrutiny or, at a later stage, because judges most often take many months to render decisions.

But I suggest that much of the inadequacy and inefficiency of the SEQRA process is because the supposed round table of participation is severely slanted to exclude the public. The result of such exclusion is to force huge amounts of extra time and energy of the working public to have to be devoted to community fundraising and searching for relevant documents. This forced additional activity is on top of the justified frustration and aggravation felt from being marginalized--despite legitimate interests, useful perspectives and often intense sentiments about the environmental issues at stake. Far more transparency, encouragement of public participation and resource equity are needed if the inefficiencies of SEQRA dynamics are to be lessened.

Some suggestions to improve SEQRA quality and/or efficiency given the above critique:

1. As done now with DEISs, post all documents from developers, lead agency consultants and involved or interested agencies on-line—from the time of first conceptual proposal and application to the FEIS itself.
2. Accept and encourage active public participation (including the opportunity for verbal remarks and written comments for the official record) in the entire review process, from the pre-application stage to the FEIS. This would assure an earlier and more engaged and responsive rational review.
3. Give responsibility for preparing the DEIS as well as the FEIS to the lead agency, with optional advance advisory documents from the developer, the public and any involved or interested agencies. (Obviously, money for the agency’s review would come from the SEQRA-mandated escrow fund.) This was part of the original 1975 SEQRA legislation, though changed two years later due to heavy lobbying from the pro-developer community.
4. The DEC should assemble special task forces, including representatives of the environmental community, to develop detailed guidelines for protocols on data collection and levels of analysis in each of the SEQRA impact realms to make the “hard look” and

“worst-case analysis” standards more consistent and meaningful. (In the traffic realm, for example, it is common practice among many developer traffic consultants to use the “lowest volume weekday” instead of “highest volume weekday” traffic volumes for their baseline “existing traffic” figures.)

5. Encourage use of GEISs to establish caps on cumulative impacts (as with traffic, etc.) so as to avoid continuous incremental development impacts with no individual developer taking responsibility.
6. Greater attention to “social impact” analysis as one of the two realms of information to be used in the “balancing test” required for the FEIS. (This is especially important concerning health impact issues, as from development-caused stress and pollution, as they particularly affect more vulnerable populations.)
7. Pass legislation to provide public or developer funding for community environmental groups to hire expert consultants (as in the former Article 10 provision for proposed power plant sites).
8. Pass legislation to decrease the present over-dependence on local property tax; this would be a major step toward releasing the incessant pressures on local government of “growth machines” and thus permit more balanced municipal recognition of environmental values.

Remarks Presented by David Porter to the December 4, 2009 Meeting on SEQRA, at DEC Region 3 Headquarters, New Paltz

1) What measures could be taken to make SEQR run more efficiently?

The problem isn't SEQRA, its lack of adequate investment, leadership, coordination and funding for local and regional land use planning.

*Administrative:

- Encourage comprehensive plans to be adopted as a GEIS.
- Encourage EIS or GEIS when plans and land use regulations are adopted.
- If a GEIS has been completed or comprehensive plans are adequate, require the lead agency to limit the scope of any further studies to specific points.
- Section D of the long EAF can be the most important part of the form. Is should be earlier.

* Regulatory/Statutory:

- Comprehensive plan elements as defined in law should be revised to include elements that would satisfy the standards for a GEIS.
- Establish a dedicated fund for regional planning that will provide local governments with the resources and tools to conduct land use planning that incorporates "adequate" environmental review.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

A) Lack of Strong Connection to Land Use Planning and Regulations

In the absence of land use regulations or plans in place, SEQR is often the only tool communities have to properly evaluate a project. However, SEQR is an inadequate substitute for good local and regional land use planning that consider long range impacts and seek to mitigate those impacts by through land use regulations. Until the state provides real guidance and support for comprehensive land use planning consistent with regional, state interests, then SEQR will continue to be an open ended replacement that includes inherent uncertainty.

Reactionary

While SEQR may facilitate the examination of alternatives through an EIS, the process is inherently reactionary, time consuming expensive and often results in several variations of the same project. This context often leads to confrontation and often does not lead to a creative alternative. In these scenarios SEQR minimizes negative impacts of bad developments but is not designed to maximize the positive potential of good projects.

Land Use Planning is a better forum to assess Cumulative Impacts

Through the EIS process, SEQR often provides a microscopic look at an individual project's impact on the environment without considering cumulative impacts within a land use planning context. There is an inadequate connection to land use plans, policies and regulations.

Duplication

When projects must receive approval under local land use codes in addition to undergoing SEQRA, potential for duplication exists. Perhaps one of the underlying reasons for adopting SEQRA in the first place was to fill the void left because planning failed to consider environmental impacts of planning policies. Regional plans or local comprehensive plans include studies and impact assessments that may not be considered in an EIS process. Further, the environmental protections provided by local land use regulations may not be considered. Nonetheless, SEQRA may assess environmental impacts already addressed or considered during the comprehensive planning process or mitigated through the adoption of appropriate land use regulations.¹ Having to consider the same impacts more than once may increase delays in development review and increase the costs for environmental review.

B) Lack of Adequate Local Land Use Planning:

SEQRA is an inadequate substitute for land use law reform. In order for comprehensive land use planning to adequately consider environmental considerations, the revision of the standards by which local plans are created may be required. Currently, comprehensive planning is optional and its content is variable even though legislation includes some suggested content.

Whether incorporated as a function of land use planning or not, communities themselves often lack the resources to conduct the level of environmental review that plans or regulations would require in order to be thoroughly vetted. To develop adequate studies and alternatives analyzes in comprehensive plans or generic environmental impact statements requires resources that many local governments do not have.

“Front loading” the environmental review process to conduct adequate environmental resource review as part of the comprehensive planning process, costs money. One of the benefits of project level review is that the environmental review costs can be shifted from the local government unit to the developer.

Process

The failures that are often blamed on SEQRA are really failures that stem from lack of stakeholder engagement. Whether this deficiency occurs at the comprehensive planning, or the development review level, it results in a lack of clear expectations for the developer and it exacerbates a lack of trust among stakeholder groups who feel their concerns have not been addressed. This often results in SEQRA functioning to delay projects as expectations that should have been addressed in comprehensive plans, land use regulations, or through a proactive development review process are being developed on the fly.

¹ Melding State Environmental Policy Acts with Local Planning

C) Lack of Regional Coordination and Consistency

If we are serious about reforming the process, then the lack of a regional context is a critical issue to examine. Using existing tools to integrate comprehensive land use planning and regulation with SEQR, requires a mechanism or forum in which shared goals for development and environmental protection can be articulated and supported on a regional level.

3) Can you provide suggestions to address these specific problems?

A) Connecting Land Use Planning and SEQRA

According to the American Planning Association's *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*, in states like New York that require state environmental review of land-use decisions, integration with land use plans and regulations is crucial.

The Guidebook suggests three ways to integrate environmental review and land use planning.

- Include alternatives analyses in comprehensive plans.
- Require a through GEIS or EIS to be completed with the adoption of comprehensive plans. This would provide a basis for environmental review of development projects and allow any subsequent EISs address specific items not included in comprehensive plan's GEIS or EIS. A
- Eliminate SEQR for local projects that would be already subject to land use regulations which would adequately address and mitigate environmental impacts.

Supporting detailed comprehensive land use planning in a way that satisfies the intent of SEQRA is a win-win. Environmentalists will get the kind of regulations that ensure environmental quality and reviews that consider cumulative impacts and developers will get the certainty. Comprehensive plans can offer a forum to examine alternatives to the regulations they propose and assess the various degrees of environmental impact or benefit of the various alternatives. Addressing cumulative impacts and alternatives in a regional plan, GEIS or comprehensive plan will help to show that certain project types should be the preferred alternative when considered against others.

Including more thorough environmental analysis of comprehensive plans and zoning ordinances can be used to satisfy the many EIS requirements for development thereby helping the project level review to focus on specific points.

B) . Supporting Local Land Use Planning

The best way to protect our environment is through land use planning. The built environment is a primary contributor to climate change and greenhouse gas (GHG) emissions. According to the American Planning Association, promoting compact development, high density development arranged to encourage pedestrianism, bicycle and transit use, transit oriented development, and mixed-use development can significantly reduce vehicle miles traveled and associated GHG emissions

The intelligence that is implied but using the word 'smart' in 'smart growth' is the intelligence of the local comprehensive planning process.¹ Smart growth must be implemented

at the local level. Local decision makers must be given the tools they need to update local plans and codes to reinforce regional and statewide policy goals.

Coordinated state support and incentives for undertaking the type of planning that will clearly articulate community's vision, coupled with an environmental review that adequately considers alternatives upfront, can serve to streamline the development review process by satisfying certain elements that would be the subject of future review.

The Hudson River Valley Greenway can be used as a vehicle to provide the communities in the Hudson River Valley the tools they need to protect what they value and grow in ways beneficial to both the individual community and the region as a whole. The incentive-based voluntary focus of the Greenway Compact process, the role it can play in building consensus across diverse stakeholder groups, municipalities are the keys to its potential.

C) Supporting Regional Coordination and Consistency

Smart growth requires coordinated decision-making. This kind of coordination demands leadership at the local, county, state and federal levels. Whether it is building sustainable communities; competing in the global marketplace; minimizing and mitigating the impacts of global climate change; or protecting and celebrating our natural and cultural resources, the Greenway has been and can continue to be the vehicle used to coordinate decision-making in the Hudson River Valley.

The foundation of any healthy relationship is trust. Relationships take time to develop and bear the fruit of commitment over time. This Greenway's regional vision is founded in the very home rule powers our communities enjoy. This is no accident. Communities need to be a full partner in developing the regional plans they will be asked to implement at the local level. The Greenway Compact process strikes a balance between regional coordination and the traditional home rule powers that New York State communities enjoy. While participation in the Greenway Compact is voluntary, the bottom up framework provides the mechanism for communities and diverse stakeholder groups to share common values and serves as the conduit for dialogue which facilitates intermunicipal cooperation.

Today, over 250 communities trust the Greenway process and have returned the state's commitment to this process by agreeing to be participants in developing a voluntary regional vision for the Hudson River Valley. New York State can support more streamlined environmental reviews by investing in the Greenway's regional compact framework which fosters coordination and consistency across all levels of government.

The Greenway Compact process also offers the opportunity to coordinate State level priorities and target funding to projects consistent with these regional visions and overall environmental protection and smart growth goals.

Greenway provides one of the best approaches for fostering locally driven regional solutions that promote environmentally sound land use outcomes. There is no "quick fix" for SEQR but in our home rule state this strategy of "grass-roots regionalism" stands to be the most powerful solution to regional growth, environmental protection, and economic development.

TO (via email): Willie Janeway, Jonathan Drapkin, and Ned Sullivan
Dear Messrs. Janeway, Drapkin, and Sullivan:

I was recently forwarded your email request for input concerning SEQRA. In my capacity as an environmental advisor to many communities in the Hudson Valley, as well as citizen's groups and developers, I am well acquainted with SEQRA, especially the issues of how it is being implemented in many jurisdictions. Several years ago I was an invited speaker at the New York Bar Association's Environmental Section and was specifically asked to address the question of whether SEQRA was an effective piece of legislation from the perspective of someone concerned with natural resource protection and management. The answer that I gave to that group of lawyers, including some of the framers of the SEQRA legislation, is the same I will provide to you today. SEQRA is an inspired and comprehensive law, which, if consistently and correctly applied, can provide broad protection to natural resources and community character while allowing for reasonable and balanced land-use. And, herein lays the challenge.

While SEQRA is a comprehensive law, it is too often administered by lead agencies that lack the desire, training, or vision to use its provisions effectively. Instead, SEQRA reviews devolve into time-consuming adversarial engagements, often viewed by environmentalists as ineffective and by developers as a costly impediment to progress. The end result is that all parties begin to question the utility of SEQRA, which leads to calls for modifications (a.k.a. "streamlining") to the law. What is needed is a large infusion of technical support to communities so as to enable them to use SEQRA effectively. Two not-for-profit programs have spent considerable resources in the Hudson Valley addressing this issue from two perspectives. The Pace Land Use Law Center's "Community Leadership Alliance" has worked with municipalities to develop both an understanding of the law, but also to train local leaders on how to engage stakeholders on all sides of a controversy in a manner that all voices are heard. The "Metropolitan Conservation Alliance", headquartered at the Cary Institute for Ecosystem Studies, brings scientific information into the land-use decision making process and works with communities to improve both their technical knowledge of resource issues, as well as how to use SEQRA effectively to protect the interests of all parties in the natural resources of the State of New York.

Pre-application meetings are an essential ingredient of a SEQRA review. All-too-often project sponsors go through complex and expensive design processes without the benefit of community input. The project sponsor then goes public with well-designed plans that are the result of a large investment of dollars and time. The beginning of the SEQRA process is often the first time that the community is exposed the details of the project. To the average citizen, these plans, quite correctly, seem almost cast in stone. This begins the all-to-familiar oppositional SEQRA battle, with the project sponsor financially and psychologically invested in the submitted plan, while the community feels disenfranchised by being brought in to comment on a project that they view as largely immutable. While projects can, and do, evolve in such a process, it is difficult for all parties. The active encouragement, possibly even requirement, of facilitated pre-application meetings between project sponsors and the community at large would go a long way in bringing stakeholders together in a more collegial and creative process, while also sparing project sponsors considerable expenses in drawing up designs that are ultimately rejected.

Lead agencies make critical initial mistakes in their use and evaluation of the Environmental Assessment Forms. The EAF is a critical document that not only lists potential impacts but assigns a ranked importance to those impacts and the ability of the project to mitigate those impacts. This document has a profound and direct impact on determining significance of an action, yet often the lead agency spends little if any time going through the EAF line by line

and having a thoughtful discussion about the project sponsors answers to the EAF questions.

In my practice, I have identified three important SEQRA benchmarks that rarely receive sufficient attention or thought. Scoping is critical to the successful preparation of a DEIS that gives the lead agency and the public sufficient data to evaluate impacts. It is critical that scoping be an open and inclusive process. It is equally critical that the scope be clear and unambiguous. For example, if one asks a project sponsor to evaluate wildlife resources on a site, there is broad latitude given to the project sponsor to decide how much and what type of study is needed. This generally leads to the woefully inadequate treatment of wildlife and other natural resource issues in the DEIS. However, if a lead agency is specific in stating the types of studies they want, and the methodologies to be used, including references to published survey methods that they require, they eliminate the discretionary ambiguity given to the project sponsor, and are far more likely to receive the data they need to make an informed decision.

The second important benchmark that is insufficiently used is the completeness review. If the DEIS preparers have not completed the document to the accuracy and detail that was required in the scope, the DEIS should be rendered incomplete. It is not a kindness to the public interest to accept an incomplete DEIS and commence public review. It is essential to get the DEIS right before public review commences. The practice of allowing poor DEIS documents to move forward, with additional information being added as a Supplemental DEIS, or worse, as part of the FEIS, works against the public interest. Yet, all too often, in an effort to appear reasonable or accommodating, lead agencies allow an incomplete DEIS “out of the barn” with disastrous consequences.

The third significant weaknesses in the manner that SEQRA is implemented are the inability of lead agencies to effectively use the provisions of SEQRA that deal with cumulative impact analyses. Cumulative impact analyses are generally weak, conjectural, or non-existent. With the advent of GIS, and a variety of modeling techniques, the science of cumulative impact analysis is well developed. Lead agencies need far better training on how to address cumulative impacts within the SEQRA framework.

Lead agencies that are open to engaging the public, and view their role as being stewards of the commons while simultaneously promoting reasonable and balanced development, are those most successful in executing proper SEQRA reviews. Many of these lead agencies retain, through SEQRA charge-back provisions, adequate technical counsel to assist them with their project reviews, including scoping, completeness review, and cumulative impact analyses.

As a rule of thumb, lead agencies that abuse their authority, excessively curtailing and stifling development, or those lead agencies that ignore their statutory responsibilities to protect the community’s natural assets, are unable, because of their prejudices, to conduct the impartial balancing required by SEQRA. While one often bemoans the ever-changing make-up of local lead agencies due to the electoral and appointment processes, some of the most egregious misapplications of SEQRA and other land-use regulations that I have witnessed occur in jurisdictions where there is little, if any, turn-over among lead agency members over extended periods of time.

I hope that these comments are useful to you. Please contact me if you require any more information or clarification.

Sincerely, Michael W. Klemens, PhD, Founding Director, Metropolitan Conservation Alliance

STONY POINT ACTION COMMITTEE FOR THE ENVIRONMENT

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**To: Willie Janeway, Director
NYS DEC Region 3**

RE: SEQRA Dialog Meeting December 18, 2009

1) What measures could be taken to make SEQR run more efficiently?

Administrative:

A. **SEQRA Review Board or Arbiter:** Appointment of an impartial review board or arbiter to identify possible legal issues or violations of SEQRA process in order to avoid unnecessary and expensive Article 78 litigation as the only available option. While Article 78 litigation would be available as a last resort, the intermediary process could help to resolve legal issues that can lead to delays.

Regulatory/Statutory:

A. **Dispute resolution alternative needed:** SEQRA (Section #617) assumes that the Lead Agency will accept its responsibility to act on what is best for the community and the project being reviewed -- within the spirit of the law. While good people can disagree on the best implementation of town codes and environmental review, the only current "remedy" for a Lead Agency that does not follow SEQRA is an Article 78 lawsuit – an expensive alternative for citizens and not the most effective way to address violations of NYS environmental law. Municipalities also routinely ignore the findings or denials of the County Planning Board by simply a "majority plus one" vote.

Recognizing the NYS policy of "home rule," there needs to be a way to hold a local municipality, acting as Lead Agency, accountable for its findings other than the expensive and not always possible Article 78 legal action. We suggest a county or state intermediary to quickly ascertain whether a problem exists and suggest a remedy.

B. **Energy & Water Conservation:** SEQRA review on the EAF should emphasize the need to incorporate water and energy conservation practices as part of the environmental review process. Best practices should include the most energy efficient construction and appliances. Stormwater management best practices should identify water capture and reuse to avoid flooding, erosion and drainage problems with conservation.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

A. **Training:** SEQRA seen as an obstacle or "road bump" to circumvent and the "hard look" is not understood or used as a tool for better land use planning. Planners are trained to do what is legally necessary to "avoid litigation" i.e. emphasis is placed on how to sufficiently document its decision but not on good, well considered land use planning practices.

B. **Coordination:** Earlier public input would allow the applicant to incorporate the public's concerns and ideas into the plan before formal public hearings. Agencies involved in the review do not always have the most current and complete set of documents to review. The system often lacks a "coordinated" effort that allows the applicant to easily dance between agencies, telling them what they want to hear while "playing" the system.

C. **Enforcement:** Developers looks at fines and penalties simply as a "cost of doing business"

3) Can you provide suggestions to address these specific problems?

A. **Better training of local municipal officials:** Planning / zoning board members, town planners, town engineers need better training on how to use the SEQRA process, not to unnecessarily delay projects but to exercise the authority and responsibility that SEQRA provides to the Lead Agency in order to avoid negative environmental and financial impacts AND to plan better for the community.

B. Applicant is responsible to provide needed documents: Too often we have seen the applicant complain about the length of time it takes to review a project. But, in fact, the applicant, more often than not, causes delays by not supplying documents in advance, with enough time for agencies to review properly. Earlier public input would allow the applicant to incorporate the public's concerns and ideas into the plan before formal public hearings.

C. Fines and penalty enforcement: Filling in wetlands, polluting our land, water and air should be treated as crimes with costs to the community. Let the DEC enforce its regulatory authority against polluters. It is the best way to keep the process honest

4) In your experience, who was Lead Agency in a review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay?

A. PROBLEM: Towns and villages that become Lead Agency in the review of projects that it owns or has a vested financial interest in seeing approved, have an inherent conflict of interest that makes a successful SEQR review difficult or impossible.

EXAMPLE: Stony Point Town Board declared itself Lead Agency to review the construction of a 200-acre municipal golf course, a TYPE 1 ACTION. The supervisor resisted holding public hearings until publicly confronted by the citizens. Despite public hearings and review by county and state agencies, stormwater drainage problems, concerns about groundwater contamination and soil inconsistencies were never resolved by the town during the SEQR planning and the long form EAF review. An Article 78 action resulted in a NYS Appellate Court decision (SPACE v. Hurley) ordering the town to complete a Full EIS, now two-years into the project, after 90 acres of trees had been cleared and major grading was well underway.

RESULT: Town completed the court-required EIS. Investigation into soil types detected significant inconsistencies that were corrected, along with some of the drainage problems. However, once the municipal golf course was completed, a development of expensive homes located downgrade, were severely impacted by flooding problems that were not corrected. The town was subsequently sued by homeowners and forced to repair faulty drainage. Supervisor was also convicted and jailed for taking bribes from golf course contractors. SPACE supported the use of the property as a golf course from the start. However, we also wanted to see it planned properly. Unfortunately, instead of being a positive revenue source for the town, the golf course went \$6 million over budget and the town is still burdened by paying high finance charges for a golf course that cost more to construct and correct problems than it is worth.

B. PROBLEM: Lead Agency ignores cumulative impacts of its zoning decisions

EXAMPLE: SEQRA review of a request to modify town zoning code in the LO (Light Industrial-Office) Zone by permitting certain retail uses by Special Permit failed to identify well over 300 acres of LI property in other parts of the town that would be affected by the modification to the zoning code.

RESULT: This decision leads to the likelihood of adjacent non-compatible uses – retail mixed with industrial since the needs for both are very different. In this case, the Special Permit process is was a poor substitute for a much-needed modification to the town's 14-year old Comprehensive Plan.

C. SUCCESS: Town, as Lead Agency, finds Positive Declaration during SEQRA review of an Electrical Substation proposed in residential area -- requiring utility company to find another location.

EXAMPLE: Orange & Rockland Utilities applied for a Zoning Use Variance in order to construct an electrical substation in a residential zone and adjacent to a 16-inch natural gas main. SPACE worked with the Town of Stony Point to identify expert testimony, hire experts at the expense of the utility, test the EMF output of the line, question the fire and safety issues and economic impact of devaluation of residential property values.

RESULT: The positive declaration issued by the town resulted in an Article 78 lawsuit by the utility

company, which was defeated in the NYS Supreme Court -- resulting in a negotiated settlement with the utility for a land swap -- to relocate the needed substation on a more suitably isolated townowned property, located farther away from residential property and in close proximity to a main road and to fire protection.

5) Other comments:

The State Environmental Quality Review Act (SEQRA) is an important tool for land use planning in New York State that should not be eliminated or weakened at this time. While we recognize the goal of not overburdening businesses with unnecessary regulations, we should also maintain our vigilance and not abandon an established system of environmental review and regulation that requires the "hard look" necessary to ensure best land use planning practices and the protection of our limited natural resources. -- air, water and land. To do otherwise, would simply shift the real cost of pollution from industry to the public -- both in terms of health impacts and the expense of cleanup. The years of deregulated industrial pollution spewing into Hudson River is not too distant a memory for the many environmental activists that have fought for the last 50 years to reclaim the majestic Hudson River and its valley -- resulting in the increased value of riverfront real estate and the quality of life that we all enjoy.

Thank you for your work and the opportunity to provide these comments today.

Sincerely,

George Potanovic, Jr.

Region 3 SEQRA consideration panel

December 18, 2009

Neal Halloran

I am looking at this differently from most of the prior panelists because I have a different background and different experiences with SEQRA. I live in a small town on the western side of Sullivan County along the Delaware River. It is approximately 37.4 square miles with 1328 residents, or approximately 36 people per square mile. Almost no one on the planning board knows much about SEQRA and therefore they are not concerned about the formalities of applying it. So for that town these questions about streamlining SEQRA are irrelevant. You can't get much more streamlined. This has not been catastrophic for us because nothing of significant size has been brought to us. The one development that exceeded more than 6 lots was fought by neighbors, who hired their own attorney, presented their ideas on scoping, and the developer moved to easier pickings, just as he said he would. A neighbor ultimately bought the property.

I am currently working in the Town of Goshen, in Orange County, where my experience with SEQRA is much different. We have an attorney, planner, and engineer at each meeting. We have an environmental consultant, hydro-geologist, telecommunications expert, and a traffic engineer available as needed. We have in our subdivision law that each subdivision must put a conservation easement on at least 50 percent of the land that land with the most conservation value. This would seem to have us sitting in a pretty good position, but in practice it is not as good as it should be.

We have occasionally gone through SEQRA with an EAF with an expanded part three. Our attorney does not suggest such a process because there are no time constraints. And we have seen nightmares that can result. After having completed such an EAF, we had a public hearing for a subdivision of 40 houses, and after hearing some other concerns; the project received a positive declaration, and subsequently did an EIS.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented? **A)** Trying to anticipate all of the possible impacts, the fact that there is only one shot makes people throw in everything just to cover themselves, **B)** It depends on the knowledge and experience of the board involved, **C)** Interaction between involved agencies during the process is minimal or nonexistent.

3) Can you provide suggestions to address these specific problems?

I think many of the ideas expressed at the last two meeting have merit and I have no doubt plagiarized when doing this presentation:

1. Certainly some issues can be covered by a generic EIS. A good example is that of radio waves for cell towers. That discussion has been removed from the table and is not subject to review with each tower proposed. While I am very concerned about the proposed drilling for oil in the shale deposits, the hydro-fracing process must be reviewed generically and can't be left to the patchwork review of the various municipalities

But generic approval is not always complete approval and should not be because there are other issues to consider. In the case of cell towers there is the aesthetic, which was recognized in the state GEIS. With hydrofracing of shale for gas, site specific issues still need to be addressed, i.e. light, noise, traffic, local water sources, wetlands, etc.

One suggestion made during the first meeting was that storm water could also be granted a waiver of review if it met the minimum standards of the states manual. On this I would disagree, because that state storm water manual is not written for, and the state's review of the plans does not consider, the other issues of storm water, such as the temperature of the discharges, the quality of the water being discharge, the habitats being impacted, and the impacts of extra volume leaving the immediate area. Indeed if I were to suggest a change in the Regions review of material, I would suggest that a multi department review should be held on many projects because a SWPPP is not reviewed by habitat, wetlands, or groundwater personnel, and should be.

So I urge caution if considering a "presumption" of adequacy just because a project complies with federal or state guidelines. In fact a court decision arising out of a Sullivan County case reached just such a decision.

2. I think that if done properly SEQRA and the approval of a subdivision should not be tied together so much in time. It is my understanding that the acceptance of the FEIS and the approval or denial of a subdivision are to be only 60 or 62 days apart. This gives no time for an applicant to make any changes to mitigate, and if they do it gives no ability for the board to consider if that is better or worse. Most often we have applicants who are aware of this and voluntarily waive this time requirement.
3. The subject of timelines has been brought up repeatedly and with some justification. They are not realistic for anyone. A fourteen day notice to the public that an FEIS is available to be read is much too short of a time period. These timelines need to be considered and modifications made and then adhered to. But I caution you to consider the impacts of the changes. We have had applicants hand us two large DEIS within days of each other and it is impossible to do justice to both. Nor is it reasonable to expect an adequate and timely review if you were to hand in an EIS at the beginning of December or in August. Board members and consultant's have lives also.
4. The submission of an EAF should be with letters from the appropriate outside agencies, SHPO, DEC wetlands, T&E, ACOE, DOT, DPW, etc., not just a simple check off of the box that it will not have an impact. Some developers and board members have no real knowledge to make or judge such answers and not all applicants should have to pay for consultants in all the possible fields.
5. The question as to what is the level of a "significant impact" could be defined better. Significant impacts are not universal throughout the state or even throughout the municipality. The levels on the EAF should be considered the absolute top before review is mandatory. Perhaps something along the line of a percentage number may be appropriate. A 500 space parking lot expansion next to a Galleria Mall will not be, by itself as significant as the same size parking lot might be in the rural parts of many of our towns. Zoning usually guides us by suggesting or requiring that larger project by in area

I, while smaller projects should be in area R. But significant needs to be defined in usable terms.

6. There should be more guidance for various studies where much of the expertise is within the department and even other departments of the State (DOT, SHPO, etc.)
7. There should be a consolidation of reviews up front. Involved agencies should get information and contribute during the process as opposed to sitting back until after approval by the local officials. We have done this with some success with the county planning department and 239 M reviews. The county planner we work with gets regular updates on projects as they progress, in the hope that any problem areas are recognized sooner and can be addressed, prior to the completed application and all the work that has gone into it by the applicant, and the planning board. After working on a project for 1-3 years or longer, board members feel a part of the project and want to support it.
8. Defer some of SEQRA or be able to segment it for appropriate projects. We have done this with some projects where the ultimate answer to a particular part of the project still needed to be decided by political entities (waste water to go to a project system, new municipal, or existing municipal).
9. There should be guidance on the cumulative impacts.
10. The ideal might be to have some numeric way to review. The ICC/NAHB National Green Building Standard has made some attempt at a numeric review of project site design and development, lot design etc. I have been told that it is similar to LEED certification, or any of a number of other programs. If the state is to adopt a national standard I would hope that all state departments would adopt the same one so I don't have to review the project site work under Leeds, and the building construction under Energy Star, etc.
11. DEC should provide administrative review if there is a conflict about what is to be reviewed and/or how. But should be tempered with a power similar to that of a 239 review sent to a county planning department. That is it could be overturned by a super majority of the lead agency. Mr. Church will no doubt express his frustration with local boards overriding his departments concerns, but I would state to him as I have to his planner for our town, you have a much bigger impact than you realize.
12. Terms used in SEQRA need to be defined.

4) In your experience, who was Lead Agency in a review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay? There were three in Goshen which I think could have gone better. Two of these were failures, or at least minor failures. One project involved a subdivision of 256 acres into 60-90 lots. Scoping was done, and everything went the way it should until the applicant started doing their EIS and proceeding with doing other work required to get approval. In particular, I point out the well testing required to show the adequacy of the available water. The applicant submitted a proposed protocol, it was approved by the town and the applicant built access roads into the areas to be drilled. After the fact we became concerned that they may have disturbed wetlands. When the DEIS was released, the applicant revealed that they not only built access roads through wetlands, in one case they drilled in the wetland, and the wetland is/was bog turtle habitat. To which the applicant's consultant stated, well the damage is already done.

During the same time we had another project on approximately 100 acres with 30 proposed lots, which did an EAF with an expanded part three and reports that there is no habitat for any threatened or endangered species. Two years after we neg dec it and the applicant is still trying to get approvals from the DOH for septics, we discover that the DEC has already identified the site as having the northern cricket frog on the property and immediately adjacent to it. Fortunately the DEC is now aware of the proposal and is working with the applicant to mitigate any impacts, but this could just as easily have slipped through a hole in the process.

The third project followed these two and had their scoping session just after our frustration with ourselves and developers in general, over the well in the bog turtle habitat. Their scope was one of significant length, because we were also concerned that we did not address the impacts of temperature and quality on water from storm water and the decrease in the potential recharge on the site. They probably did more work than might have been required; however, I am not certain of that because we have just accepted the EIS as complete for public review. And sitting here today I do not apologize for it, yet.

*** Regulatory/Statutory:**

A. As was suggested by a developer, at the meeting held at New Paltz University, permit fees should be raised to cover the costs of review, it would be an upfront cost of the developer, but with more personnel to review projects it would cut the review time, without cutting the quality and completeness of the review, thereby saving the developer the carrying costs which at least one developer in the town identified as \$10,000 per month and on some larger projects I suspect that cost might be much higher.

In town government we frequently write our fee schedule realizing that it needs to be changed every one or two years, by resolution not law, so it is almost administrative. Building permits and land use board review fees are reviewed and updated to cover the costs of doing the work for the applicant's project. It is, as much as possible a user fee, though not perfect every time in covering the costs, it is better than what the DEC and the citizens must work with now. I would expect that the cost might increase by 5-10 % a year due to raises for personnel.

B. SEQRA needs to be revisited on a regular basis. The New York State Building codes are constantly changing based on the experiences with the existing codes. If there have been no problems then they are loosened some, in response to a catastrophe they get tightened to prevent a recurrence. But this is a rolling three year process that regulators and builders participate in developing the new codes. Existing applications, already permitted, are allowed to build under the code in place when approved.

C. The DEC or some third party should be mandated to step in to a community that is not doing the required SEQRA work. It might be similar to a community's decision to opt in or out of the New York State Building code. If they opt out the county or state take the responsibility.

Comments made that I disagree with the premise or the result.

- (1) Lower the cap on consultant's fees. This might work if it were a level playing field. In SEQRA reviews, just as in building inspections, there is a range in quality in what is presented. Some is good and readily approved or reviewed, but others need to be gone over more slowly, repeatedly, and reworked. This should not be piled onto town consultants. We have had a dog kennel take two years while another took three months and an auto repair facility took only two and a half months, and that has about as many environmental concerns that a use could generate. There can also be no presumption as to the adequacy or honesty of the applicant's consultants. I have seen projects that should have taken 3-6 months take three years, and I've seen others that I would have thought would take a year or more get done in less than three. It was be just as absurd to consider a lottery to determine which consultant would work for the lead agency each different project. We have the responsibility to select those consultants who can best do the work needed to review projects. I tell applicants who come in to my office, to hire a good consultant, and pay them to do the right job.
- (2) No more than one public hearing if everyone is heard. The problem with that is that even if they can speak up at the presentation of the DEIS, they may also have some valuable input at the FEIS to improve the project.

>>> Adelaide Camillo <> 12/18/2009 2:47 PM >>>

Michael,

Thank you so much for sharing this impressive statement. (And thank you to the DEC for launching this important dialogue).

As a citizen and advocate that has stood up to development in the Town of Washington, NY, I could not agree more with the points you make. In fact, I believe that the substantial incompetence, ignorance and unchecked authority of Planning Boards throughout the Hudson Valley are the greatest threats to the Valley's environment. I spent ten months at great expense getting a Planning Board to read their own zoning laws, not to mention apply them. What I endured over many months, simply to protect wetlands, could have been resolved by a competent professional in less than one hour. No taxpayer in New York state should have to pay for the lack of competence on municipal Planning Boards, but that is exactly what is happening all over the Valley. Many of these planning boards have no idea what SEQRA is at all. I was personally paying to educate them from an adversarial position. As a taxpayer who pays substantial New York State taxes, I think there is something very wrong with that picture.

Much more substantial Planning Board training should be mandated by NY State, and they should have term limits, and other measures of accountability. Or perhaps hired professional planners should do this work and not political appointees who lack the political will for protection. I am not sure exactly what the answer is, but I fear that Home Rule and the pro-property rights culture which gives untrained political appointees undeserved authority will eventually destroy the Hudson Valley.

That may sound like an overstatement, but I don't think we have time to dance around the issues when it comes to the environment. I think we need to go to the heart of the problem and identify what needs to be changed, or at the very least, address the real obstacles at hand.

Adelaide Camillo
Millbrook

Comments for Streamlining SEQR
Friday 18 December 2009

- Where they exist, Conservation Boards would review all development applications, comment on those that fall within their “district”, lands identified in the Open Space Index, and be included in site plan review at the very start of the application process.

Conservation Advisory Councils (CACs) are created by local legislatures and manned by volunteers who ostensibly have a stake in maintaining the integrity of the natural resources in their municipality. The CAC’s role is to advise Planning Board members on the development, management, and protection of local natural resources. Conservation Boards fulfill the same purpose as a CAC but is more formally recognized as being included in the application review process. A CAC can become a Conservation Board when members conduct a Natural Resource Inventory (NRI) and Open Space Index (OSI) of their municipality and it is approved by local legislation. The Natural Resource Inventory provides technical evidence for the designation of the OSI priority lands including, but not limited to, geology, soils, surface and groundwater, land-use, known vegetation and wildlife. An Open Space Index would provide known limitations for development so that developers would know which lands to avoid or landowners could navigate environmental restrictions with environmentally sensitive site plans.

The process for including Conservation Board comments in review of development projects currently exists, but few municipalities utilize the Conservation Board to their full potential. If Conservation Board members were included in the application process as early as when applications are first received, they might be able to indicate whether the project is subject to SEQR, a Short or Full Environmental Assessment Form and/or Environmental Impact Statement (EIS) based on information provided in the Natural Resource Inventory and Open Space Index.

If an EIS were deemed necessary, Conservation Board members would be best equipped to indicate which studies would be necessary. In addition, the General Municipal Law that designates the Conservation Board’s responsibilities also states that CBs must submit a written report on their review of each proposed project that falls within the Open Space Index priority lands “The report shall make recommendations as to the most appropriate use or development of the open area and may include preferable alternative use proposals consistent with open areas conservation.” The Conservation Board’s alternatives could be incorporated into discussion at the work session which would help the applicant understand an appropriate direction for development of the property.

Because the role and system of forming Conservation Boards has been defined under legislation only encouragement, support and communication are needed in order to implement Conservation Board involvement as a means to streamline the SEQR process.

Advantages to early involvement of the Conservation Board include:

- Conservation Board members are volunteers and can share staff with the municipality making their involvement low cost for the municipality.
- Conservation Board members are often better trained in evaluating environmental issues and impacts than Planning Board members or other municipal entities tasked with evaluating project proposals.
- Potentially reducing the number of applications subject to SEQR and/or required to submit a full EIS.
- Refining the number and variety of studies requested and submitted as part of an EIS, reducing costs for applicants and time for reviewers evaluating the studies.
- Preparation of recommendations for most appropriate and/or alternative use on priority lands (those identified in the Open Space Index).
- With basic knowledge of the property resources being in the Natural Resource Inventory and priority lands designated in the Open Space Index, applicants may be encouraged to spend fewer funds on prepared reports describing common impacts, and more funds on designing more sensitive plans.

Respectfully submitted,

Karin Roux
Director of Stewardship and Conservation
Wallkill River Task Force Coordinator
Orange County Land Trust

Chair
Orange County Open Space Alliance

Note:

Article 12-F, section 239-y of State of New York General Municipal Law:

General powers and duties of Conservation Boards, which include: “review each application received by the local legislative body or by the building department, zoning board, planning board, board of appeals or other administrative body, which seeks approval for the use or development of any open area listed in the open space index. The conservation board shall submit a written report to the referral body within forty-five days of receipt of such application. Such report shall evaluate the proposed use or development of the open area in terms of the open area planning objectives of the municipality and shall include the effect of such use or development on the open space index. The report shall make recommendations as to the most appropriate use or development of the open area and may include preferable alternative use proposals consistent with open areas conservation. A copy of every report shall be filed with the legislative body.”

Memorandum of Comment

Date: Friday, 18 December 2009

To: Region 3 SEQRA Work Group

From: John F. Lyons, Grant & Lyons, LLP

1. Introduction

- Partner at Grant & Lyons, LLP, practice dedicated to environmental, land use & real estate law
- Practicing environmental & land use law 25 years
- A large portion of practice is counseling clients participating in SEQRA process
- We represent lead agencies, concerned citizens and applicants

2. Your Goal: Streamline SEQRA process without compromising environmental protection and without amending the regulations.

- To me this meant that this was an efficiency exercise. How can we take the tools we already have and use them faster and more effectively.

3. My Comment: Lead Agencies can help achieve your goal by becoming proactive instead of reactive..

- Survey you sent asked responders to identify the three most significant weaknesses in the way SEQRA is implemented?
- To me there is one weakness which stands head and shoulders above all others.
- In my experience, lead agencies often operate in a reactive mode and see themselves, as a court once described it, as an umpire calling balls and strikes in a game being played by others.
- This reactive posture often leads to an inefficient process driven by the push and pull between applicants and concerned parties.
- Time is lost as the lead agency sits back and waits for the applicant, interested agencies and the public to define and refine the impacts of concern
- A reactive posture often results in a disproportionate emphasis on the nuts and bolts of process at the expense of a more comprehensive approach which is focused on accomplishing SEQRA's stated goals, rather than checking boxes.
- A reactive posture, especially as it becomes ingrained, fosters a disconnect between the lead agency and the goals of SEQRA. When appearing before lead agencies, I often begin my comments with a discussion of the State legislature's goals for the SEQRA process. I often quote those provisions of the EeI which state those goals. You would be shocked at how many times members of lead agencies are hearing those sections only for the very first time when I quote them. They do not realize that, as lead agency, they have been specifically been designated by the State as the stewards of our land, air and water. The same is true, although to a lesser degree, regarding the lead agency obligation to take a "hard look" at potential adverse impacts.
- Today I am advocating that lead agencies be encouraged to (1) reacquaint themselves with SEQRA's goals and (2) take a proactive role in the SEQRA process. I think that a proactive approach by lead agencies will lead to a process that will yield more effective environmental protection, while at the same time producing a more efficient process.
-

- To illustrate, consider this suggestion. When an application first comes in, the lead agency should begin thinking immediately in a comprehensive way by taking the following steps
 - At the very outset, learn as much as is possible about the proposed project and project location and generally identify impacts of likely concern based on the information available. Utilize existing resources such as soils maps, wetlands maps, historic resource maps, steep slope maps, agricultural districts maps and biodiversity maps and assessments.
 - Identify likely stakeholders.
 - Identify existing resources which discuss the community vision for the area such as the local comprehensive plan, county or regional plans and IWRP and understand the existing vision which has been documented.
 -
- With that knowledge in hand, hold a SEQRA workshop meeting at the earliest possible opportunity. Invite applicant and stakeholders. Use this meeting to:
 - clarify the goals and concerns of the applicant and stakeholders to flesh out what the lead agency has already been able to learn
 - educate the applicant and the stakeholders about (1) the SEQRA process, (2) SEQRA's time tables, (3) opportunities for public participation, (4) what constitutes effective public participation, (5) the determination of significance, and (5) the "hard rock" standard. Most citizens that come to see me have no understanding about the SEQRA process and often don't seek me out until the process is well under way. Most would be happy to see the process work more efficiently, they just never knew how the process was supposed to work.
 - Thus, on the heels of a workshop session like the one I've described, the applicant and public would go forward knowing how the process worked, what the time lines are and how to fulfill their role in the process in an effective and efficient way. That should make the process run smoother and faster without anyone feeling abused or alienated.
 - From the lead agency standpoint, the lead agency can now embark upon the process with a certain level of confidence which has been bred by its preliminary understanding of the project and location. This will allow the lead agency to formulate its own road map as to how it expects to fulfill its obligations over the course of the project. It keep the lead agency connected with SEQRA's goals and thinking comprehensively.
 - These techniques put the lead agency in the position to conduct a process which adheres to the directives of the original *SEQR Handbook*, that is, to do a great job of taking a hard look at the impacts that matter, and not waste time and money on those that don't. The result should be increased process efficiency and increased effectiveness in environmental protection.
- The idea of a workshop is but one suggestion based on the idea of the proactive lead agency. But I believe that a proactive approach could form the basis of improvements throughout the process. Thank you for the opportunity to participate in this study.

Respectfully submitted,

John F. Lyons, Esq. Grant & Lyons,

LLP 149 Wurtemberg Road Rhinebeck NY 12572

>>> Rachel Lagodka <> 12/22/2009 10:39 AM >>>

1) What measures could be taken to make SEQR run more efficiently?

* Administrative: *

Streamline the interaction between the municipality and the county. If the lead agency is doing an inadequate job of following SEQR, have there be a way citizens can petition to have the DEC take over lead agency for large projects.

* *Regulatory/Statutory:*

Require a GEIS and a review of the property by the local environmental commission or board before the developer even does the conceptual. The developer would file an "intent to develop" form and that would mandate the review. Property that is undevelopable because it is wet or steep should be off the table to begin with.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

1. Boards don't understand how to use it or how to enforce it.
2. Developers make their plans without taking the benefit to the community or protection of the environment into account and then have to do major modifications. They are resistant to green building and habitat sensitive construction processes and landscape choices.
3. There is not enough follow up to see that the plans are followed and sometimes the crew doesn't know how and the developer does not give access.

3) Can you provide suggestions to address these specific problems?

1. More regimented training for planning and environmental boards and DPWs on how to do their jobs so that the environment is protected. There should be a basic course on power and duties. Make them take a test so they have to pay attention and feed them less fattening food at the trainings. Get someone in there to lead them in stretching yoga or jumping jacks. There should be consequences for negligent building inspectors
2. Require the GEIS and a consultation with the CACs before the conceptual stage. Incentivise green building and local employment.

3. Empower and encourage EnCC's to inspect and monitor the area immediately impacted by construction sites and make reports for the DEC. Make sure the construction crew and the manager go through a training make sure that they understand the best practices for watershed protection and tell them they will be fined if they don't follow.

*4) In your experience, who was Lead Agency in a review that was either** very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble and delay?*

The Village of New Paltz planning board was the lead agency for Woodland Pond, a development that was unusually problematic. I got more involved toward the end of the project in 2007 and it started in 2003 and I was very inexperienced and untrained. Since then I have learned more from going to Hudsonia and DEC trainings. This is an informal account.

Woodland Pond is completely surrounded by the town on a 300acre stretch of land that holds the best wetlands and last viable stream in the village. The Open Space Report that was done in 2006 by Beehan called this part of the village "the heart" of New Paltz but now we know it's also the lungs and kidneys. The first plans that the developer submitted did not take the environment into account at all and had the institution sprawled all through the woods and wetlands. Since it is a facility that cares for the elderly, there was a lot of pressure from the elderly people in the village who had bought into it not to have any delays brought on by environmentalists. Because of the environmentalists the developers agreed to cluster and condense the development but not to reduce it. They were still leveling off a ridge and removing tons of contaminated fill. The environmentalists had some serious concerns about this and the steep slopes above the beaver pond and about the road going through wetlands at 2 points. The developers gave them an oral agreement that they would honor the 100 ft buffers from the wetlands and that he would reconsider the road. The planning board voted to approve an FEIS that disregarded this so the environmentalists sued them both. They got a settlement, but the environmental damage was done. This spring we are going to see if any salamanders survived this spring and see if the "critter crossings" put in by the developer as part of the lawsuit settlement get any customers.

The other problems stem mainly for the developer not abiding by the final planning board decision, and the FEIS, and there not being adequate monitoring or enforcement. I'll list a few examples

- The developer did not remove the dumpsites from the property before getting a building permit, or after.
- Truckloads of dirt likely contaminated with pesticides went rattling down Horsenden Road in giant trucks and some of it was used to fill in a wetland behind 123 Main St.
- They refused to allow the village arborist on the property to inspect the planting plan he created for them to control erosion on the steep slopes. A “stop planting” order was given by the building inspector when she could see that something was wrong but it didn't do much good since what was wrong was that the soil hadn't been compacted correctly in the first place and the plantings were supposed to have been done in the spring and not the late summer.
- I wanted to learn how to inspect a site and asked for permission go with someone from the DEC. The liaison said that he would ask permission. When I arrived, I was told that I would be confined to their trailer until they were done with the inspection so I did not get to walk with the DEC.
- No view shed study was done and now people are upset to see an institution jutting out of what was once idyllic forests when they go up by Bonticou Crag.
- They pumped silty water into the woods, the silt fencing was incorrectly installed and poorly maintained. Water still runs off the site into the beaver pond.

5) Other comments: It is incorrect to blame SEQRA for the bad economy in New York. The volatile price of real estate, the high price of labor, the manipulations of the lawyers and consultants, the unsuitability of their projects—these are the real woes of the developer, not SEQRA. A developer who shows a real concern for the environment and the community would not run afoul of SEQRA.

This is a good tool that should implemented somehow
http://www.ucswcd.org/Mgmt%20Plan_dpr.pdf

December 23, 2009

To: Willie Janeway, Region 3 Director, NYSDEC

Subject: Comments regarding SEQRA

1) It is worth noting comments made by Betty Ann Hughes of NYSDEC Environmental Permits at September 17, 2009 SEQRA Conference sponsored by Pattern for Progress. She stated this area was "still growing and you have run out of the easy places to build". She went on to say that many of the sites remaining involve wetlands and/or endangered species and "areas that are left to build have challenges and some stuff is simply going to take a bit longer". Applicants, consultants and lead agencies should be aware of this.

2) My concern with the 'streamlining' of SEQRA is that the business community is using the downturn in the economy as an excuse to weaken environmental regulations. Hard economic times are not likely to last forever, but impacts from reduced environmental review will.

3) Honesty on the part of applicant could speed up the SEQRA process. As part of December 4, 2009 panel discussion, I gave the example of a wetland that was conveniently delineated at 12.3 acres with delineation stopping at the property line even though the wetland continued off the project site. Residents challenged the delineation. Subsequent redelineation showed wetland was actually 15 acres requiring redesign of project to avoid 100 foot wetland buffers. This, of course, lengthened the process.

4) The prior example also brings the role of the consultant into question. It is highly unlikely that the consultant was unaware that the wetland continued offsite. As Tim Miller of Tim Miller Associates stated in the November 20, 2009 meeting, there is the issue of conflict of interest as consultants often have an agenda depending on who hired them. Another example I have witnessed is one environmental consultant in particular does inferior assessments in a municipality where the lead agency is not very concerned with environmental reviews yet this consultant does a very thorough job in other municipalities where lead agencies hold him accountable. Perhaps a lottery system is in order when it comes to hiring of consultants as well as a standardized form for environmental assessments.

5) Just because a project is "small" does not mean there will be no significant environmental impacts. One panelist brought up the issue of a Pos Dec given for just one house on a steep slope in her municipality. One house in an area of environmental significance could potentially have more impact than a large housing project in another area. Pos Dec and EIS should not be dismissed due to project size.

6) There were many comments made at all three work group meetings regarding scoping documents. I think it is important to remember that scoping is not required for the majority of projects going through the SEQRA process. Scoping is one of the few opportunities that the public has to have their comments addressed. Public scoping should be required for all Pos Decs.

7) Early public involvement, before significant time and money have been invested in a project, should be strongly encouraged. Dismissing concerned residents as "NIMBYs" is not helpful and may prolong the process in the long run.

8) The subject of 'ratables' came up several times. Increased development does not necessarily mean reduction in taxes as some groups would like the public to believe. If that were the case, taxes in the Town of Poughkeepsie - which has experienced significant growth - would be going down instead of steadily increasing. The majority of studies show cost of services exceeds revenues. I say majority as a Dutchess County Economic Development Corporation study was publicized in a Poughkeepsie Area Chamber of Commerce newsletter, The Bottom Line, which stated "Contrary to popular belief, residential impact can have a positive impact on communities, with new development contributing more in taxes per household than the cost to jurisdiction". However, former DCEDC Board Member Dr. Ann Davis from Marist College Bureau of Economic Research had concerns about this study that were reported in a Poughkeepsie Journal article including the fact that the study's 10-year time frame was too short to cover all costs in the long run, such as repairs and maintenance.

9) When balancing economic and environmental impacts, benefits of open space should be included.

Sincerely,

Doreen A. Tignanelli
29 Colburn Drive
Poughkeepsie NY 12603
(sent electronically)

Willie Janeway
Director, Region 3
NYS DEC
21 S. Putt Corners Road
New Paltz, NY 12561

December 22, 2009

Re: SEQR Workshop Comments

Dear Willie,

Thank you for inviting me to participate in the series of workshops you held regarding the SEQR law. We appreciate that you and your co-chairs have provided a forum for a balanced discussion of ways in which the SEQR process might be improved and streamlined while providing for adequate environmental review and public participation.

As you know, in my role as the director of The Nature Conservancy's Shawangunk Ridge Program, I have made considerable effort to work with communities in the Shawangunk region on land protection and planning as it relates to habitat protection. I think if there is one clear area of consensus that will emerge from the workshops, it is that communities that have done assessments of their natural resources are best prepared to make informed land use decisions and participate in SEQR reviews effectively. We hope that DEC will continue to provide technical assistance to communities to help them do these assessments, and will recognize the value of this to the SEQR process. The following summarizes my comments at the December 4th workshop.

Hudson Valley Context

The Hudson Valley as the Birthplace of SEQR

- The dialogue about balancing development and natural resource protection has been going on since the 1960's in the Hudson Valley;
- Hudson Valley is the birthplace of both SEQR and parent law NEPA;
- Storm King/Scenic Hudson case provided the foundations for these laws, providing for citizen standing in environmental decisions and by putting energy development on an equal footing with resource protection;

- Reconfirmed last year in the 2nd federal circuit court that NEPA is intended to consider alternatives to reduce impacts and provide mitigation and to evaluate what is in the public interest (Green Island case)

Biodiversity Protection in the Hudson Valley

- Hudson Valley's varied geology creates a wide variety of habitats and makes the region important in terms of biodiversity;
- 13.5% of land area of state, but is home to 85% of the bird mammal, reptile and amphibian species found in NYS;
- Important migratory corridor;
- Globally important in terms of turtle diversity, and nationally in terms of dragonflies;
- 150 species in the region listed by DEC as threatened, endangered or of special concern in NYS.

Development Trends in the Hudson Valley

- Hudson Valley is a fairly densely populated area, an area that is likely to continue to develop rapidly – we can expect land use to change rapidly;
- Rapid land conversion poses a challenge: to find ways to include conservation in the region's growth strategy;
- 90% plus of the suitable habitat that supports biodiversity is found on private lands;
- Bottom line: local biodiversity is dependent on land use decisions and development patterns and SEQR is one of the most important tools we have for protecting the biodiversity of our region.

What does SEQR intended to do?

Legislative intent:

- “to prevent or eliminate damage to the environment, enhance human and community resources and enrich understanding of ecological systems, natural, human and community resources important to the people of the state”;
- “designed to strike a balance between social and economic goals and concerns about the environment”;
- “to ensure that government decision-making consider environmental impacts at earliest possible time”;

- Does not place protection of the environment above all else but requires a suitable balance between environmental considerations and social and economic considerations;
- Is perhaps the most important process which formally allows for public input in environmental decision-making by government;
- Finally, while it relies on the laws and regulations of NYS it is also sometimes messy, because it is often about community values as much as science.

Recommendations

The following recommendations are focused on:

- Opportunities for effective public input;
- Maintaining or improving public transparency;
- Modifications to the process that can be made quickly and are non regulatory.

I. Within Existing SEQR Process

1. Use of Coordinated Review (After EAF is prepared)

- Can be an “early warning system” on issues – IF DEC is lead agency, their review is included. If they aren’t lead agency DEC’s views aren’t included until late in the process or not at all – opportunity missed for catching inappropriate proposals before they go too far.

2. Timing on Determination of Significance

- Prior to determination of significance, pre-application meetings occur without public. Sometimes this process gets drawn out as more information is brought forth – when does public process begin? How can this process be made more transparent and have the benefit of public input early?

3. Scoping

- If there is going to be an EIS, scoping should be mandatory – is currently discretionary unless DEC is lead agency;
- Use scoping to gain clarity about what the issues are;
- Information “arms race” as consultants attempt to gird proposal against any and all challenge;
- “Bulking up” hides the real information;

- Scoping needs to disclose the impacts so that the EIS provides analysis rather than serving as advocacy piece for proposal. The more money spent on unimportant things, the less there is to spend on what IS important;
- Scoping can enrich knowledge – for all including the developer.

4. Public Hearings

- Public hearing on DEIS is discretionary except for cases where DEC is lead. All projects that require DEIS should include public hearing;
- Neg Decs - Projects that are being neg-dec'd should be subject to public hearings if they are substantial or controversial

II. Outside the SEQR Box - SEQR and Local Planning

There are 250 towns in Hudson River Valley with a wide variety of conditions and characteristics. One thing that goes for all of them – those that have committed resources to planning and resource analysis or better prepared to participate in SEQR effectively and use it to protect resources appropriately.

The Hudson River Estuary program has assisted scores of towns in mapping resources and setting protection priorities. Setting priorities makes it possible to more efficiently site development. DEC should continue to support this program and consider it a means of doing SEQR more efficiently.

1. **Habitat Studies as part of SEQR Review:** Habitat studies are often necessary and can be costly and lengthy due to seasonality. Underscores need for the need to have good habitat information readily available in advance of SEQR review. (Site specific habitat review may still be necessary);
2. **Encourage use of GEISs** as a planning tool. Communities should be encouraged to develop Master Plans or GEISs that include habitat information and priorities;
3. **Use of CEAs** – a means of designating exceptional local resources. Unfortunately “down-graded – should be maintained as Type 1, requiring full EAF - any impact to CEAs should require EIS;
4. **Habitat Assessment Guidelines** – Several towns have adopted Habitat Assessment Guidelines - creates consistent guidelines and fair process to identify sensitive resources and establishes constraints before sketch plan

stage or start of SEQR. Encourage town boards to meet early and often and use this process to minimize delay and expense. It is a filter which improves projects.

III. Other

1. Guidance Documents

- Complete new SEQR handbook;
- Complete Cumulative Impact Assessment Guidance document;
- Determination of significance – Provide guidance on what is appropriate level of detail;
- Complete guidance on how climate change considerations will be incorporated into SEQR process.

2. Education

- Provide training on SEQR process, use of EAF, significance, conditions that can be imposed, use of GEIS, Biological Site Assessments etc

3. Staffing

- DEC has lost specialized expertise in assessing impacts that needs to be replaced;
- Regulatory review is understaffed

4. Access to Information

- Have all documents placed on the website of lead agency promptly

Again, thank you for the opportunity to participate in the workshop, and to provide comments for your consideration.

Sincerely,

Cara Lee
Director, Shawangunk Ridge Program

December 23, 2009

Draft comments to SEQR Working Group

The following are my initial thoughts on identifying recommendations to improve the SEQR process without administrative or regulatory changes. I want to thank Willie Janeway and Commissioner Grannis for setting this process in motion, I think it has provided an ideal forum to hear a wide range of perspectives on the pros and cons of SEQRA, and what could be done to improve the efficiency and predictability of the statute. Taking a cue from Willie's comments at the December 18 meeting, I have organized my comments into four main areas; Need for training of lead agency/planning boards, adding structure and predictability to timelines, use and dissemination of web-based resources from DEC and others, and improving scoping.

Before I launch into my comments, I also want to share some initial thoughts about the premise of this initiative. At the outset, I was open to accepting the notion that SEQR had potentially become a significant regulatory burden on the business community, and particularly the commercial and residential construction industry in the Hudson Valley. It seemed logical that in this time of deep recession and high unemployment, it would make perfect sense to look for impediments to economic recovery and work on reducing their impacts, so that Hudson Valley businesses could have a clear path to reinvesting in their communities and getting the economy back on track. However, as I listened to the diverse group of speakers over the course of the last few weeks, a much different picture emerged. To be sure, there were, and are, plenty of horror stories about twenty year approval processes, overly broad scoping documents, rabid anti-development community activists and lousy consulting firms. What I did not hear, and perhaps I missed it, was specific empirical data about how the SEQR process is in fact causing or contributing to the continued economic slowdown, or how it is making the Hudson Valley less attractive for developers, and thus hurting the economy.

This is not to say that the anecdotal evidence presented by members of the working group and various panelists is not without merit. My question goes more to the issue of what the norm is – if the norm is truly twenty years for a wide range of projects, then SEQR definitely needs fixing. On the other hand, if the time it takes to approve a project varies widely depending upon its size, site specific impacts, level of local concern, etc. then a different question arises, namely what procedural and substantive issues have an effect on all types of projects? Conversely, as many participants have said, we have to look at large “mega” projects and regular nuts and bolts local SEQR reviews through a different lens. Whatever approach we ultimately decide upon, I think it is essential that we make sure we have the empirical data to back up our fundamental premise, that SEQR needs improving. Without that, this process will not have credibility with the public, and the working group will be unable to arrive at a consensus about what needs to be done. I think it is worth a brief discussion at the beginning of the next meeting before we launch into a debate about what recommendations we can agree upon.

1. Need for Training of lead agency/local planning boards

I absolutely agree with everyone who has commented on the need for better training and familiarization with SEQR for the public officials that often have the responsibility of implementing the law. Again, while there seems to be a variety of experiences among panelists

and participants, the consensus seems to be that a lack of training is a serious impediment to an efficient SEQR process, and results in either bad projects being approved or unnecessary delays that could be avoided. Since we seem to have consensus on the need for training, why don't we work on how to get funding to pay for it, and identify the experts who can best conduct the training? The Land Use Law Center at Pace is well versed in training local officials on land use regulations, and could be an excellent resource for both training program ideas and potential funding sources. The Center may already have published resources that address this need. I would recommend we invite them to submit any information or comments they have on funding and conducting such training, and if valuable we incorporate that information into our recommendations.

2. Adding Structure and Predictability to Timelines

I agree with the commenters who pointed out the need to improve the adherence to timelines in the statute, but I am not sure how this can be done without regulatory or legislative changes. This is particularly true when it comes to the timeframe for the lead agency to issue its finding statement. If the 30 day timeframe in the statute is routinely ignored, then the statute/regulation needs to be changed to either provide for a more realistic timeframe that is longer, or make it more difficult to be allowed an extension of time.

I would not agree to any restriction of timeframes for public comment, because I think public participation is a critical element of SEQR and should not be reduced in any way. That being said, there may be ways to improve the level and tone of the participation that is provided. This is where an improved scoping process, and the need for early, frequent communication between the developer/proponent of a project and the local community is essential.

3. Use and Dissemination of Web-based Resources

I agree that we should make every effort to make the information that is currently out there and potentially available, more easily available to developers, lead agencies and planning boards, attorneys and the public. Rather than remake the wheel every time a new project is proposed, we should look for ways to create a clearinghouse of information that is centrally located, perhaps on the DEC website, and contains the widest possible range of useful information – everything from the SEQR Handbook to every biodiversity and natural resource assessment that's been prepared for communities in the Hudson Valley. If organized in a clear and accessible way, this would provide a great resource to all stakeholders, and could cut down significantly on delays resulting from the need to collect information or conduct studies.

4. Improving scoping

As an initial thought, I support the excellent comments provided by Glenn Hoagland regarding the need to improve scoping.

We are pleased to respond, as follows:

1) With regard to improving the efficiency of SEQR, on the Administrative side it would be good to have a central lead agency such as county planning to try and avoid local politics and border wars. As it is now a fire district can be lead agency and approve its own fire house while a developer has to go before the local politicians who drive the bus. On the Regulatory/Statutory side there should be time limits for lead agency completeness reviews on the DEIS and FEIS, which now can take six months or more of time being wasted.

2) To us, the three most significant weaknesses in SEQR implementation are:

1. Becomes a fighting and delay tool for the opposition of a development project.

2. Can drain an applicant of money being spent on excessive studies that could otherwise be spent on infrastructure and mitigation.

3. Need better definition of what really requires a full DEIS. It's too subjective. There are negative declarations for 100 + unit condominiums and positive declarations requiring a full blown DEIS for a few lot subdivision. It all depends on who's "backyard" it's in.

3) To help address, let's get consistency in applying SEQR and limits on the length of public hearings, which can go on for months and months and months and still get nowhere. The process varies widely from town to town and is used to keep otherwise zoning entitled projects out. It's used differently on public sector projects than on private sector projects.

4) It depends on the political sensitivity of a project and the demands of often small group of outspoken opponents that end up stopping a project (since those in favor usually don't come out to the town hall meetings) that would have otherwise benefited the community at large.

Sincerely,

Robert Roth, PE, CPESC, Senior Associate

I think the biggest problem is that the DEC does not keep to the mandated time frames for reviews. It is obvious that they are understaffed and with the budget issues the state has it is unlikely that any progress in proper level of hiring will be made. NJ, Conn, and Mass and I am sure other states have much higher review fees and use outside, separately licensed personnel to get a lot of tasks done. I'm not sure if this is a good approach for NY but I do think something to break down the logjam of backlogged applications should be the highest priority.

Thanks for stopping by today; I sincerely appreciate your help.

Carol Smith

Vice President Government Initiatives and Special Projects

Orange County Chamber of Commerce

Anonymous

1) What measures could be taken to make SEQR run more efficiently?

Administrative: MAINTAIN A PUBLICLY AVAILABLE CALENDAR OF ALL APPLICANT SUBMISSIONS, REQUIRED DATES FOR ADDITIONAL SUBMISSIONS, PUBLIC HEARINGS, DATES OF PLANNING BOARD RESPONSES AND MEETINGS, ETC.

Regulatory/Statutory: REQUIRE STATUTORY DEAD-END DATES (30,60,90 DAYS MAX.) FOR ALL SUBMISSIONS AND PLANNING BOARD/LEAD AGENCY RESPONSES. ONLY IF BOTH SIDES AGREE CAN A PARTICULAR DEAD END DATE BE LENGTHENED. SET A STATUTORY MONETARY CEILING ON DEVELOPER COSTS FOR PLANNING BOARD CONSULTANT COSTS, BASED ON A SET % OF THE TOTAL DEVELOPMENT COST FOR THE PROJECT, NOT TO BE EXCEEDED UNLESS BY AGREEMENT OF BOTH SIDES.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

a- No checks and balances on one person or entity delaying or halting the entire process without merit via requests for additional studies, revisiting old or addressed issues, frivolous lawsuits, etc.

b- No date-certain set for completion of any part of the application process.

c- No ceiling set on how much a developer can be charged for planning board "consultant fees".

3) Can you provide suggestions to address these specific problems?

See above

4) In your experience, who was lead agency in the review that was either very successful or unusually problematic? Problematic lead agencies are almost always the local planning boards. Can you diagnose the contributing factors to that success or analyze issues that caused trouble or delay? Delays were almost always caused by frivolous requests for more studies, redundant studies and plan modifications on minutiae.

5) Other comments:

The state of Massachusetts has an "Office of Expedited Projects" and an official state "Ombudsman" to oversee development project movement. Why can't NY do this???

Anonymous

In general, the SEQRA review is time consuming and is used as a "weapon" to slow down the approval process. Just to get enough information on the record to document and reach a "negative" determination can take months. All information must be "new" without reference to prior applications on the same site or nearby sites. If a "positive" determination is made, it takes at least 6 months and up to 2 years (and sometimes even more) to prepare the documentation, hold public hearings, and accept the final report. Of course, all this adds to the expense of development.

From my experience, the municipal authority is already aware of most environmental impacts of the site with information gathered from prior applications and/or development on close by sites. Obvious impacts about traffic, noise, contamination, buried tanks, flora and fauna, historical, water, sewer, viewscape, and even economic are known. The purpose of SEQRA is to uncover the impacts and to establish a mitigation plan when warranted. The emphasis should be on mitigation, not time consuming and costly documentation of facts and alternative theories.

I don't have the answer. I find it frustrating for the developers and for a planning board to follow the current process. The time required to complete the environmental review has to be reduced so that projects do not languish and "die on the vine". And, worthwhile smaller projects should not have to die because the cost of development is excessive.

Lastly, if the State of New York is interested in Economic Development then selected sites could have pre-development SEQRA clearance done in a generic manner so that only specific information based on the intended use by an applicant is necessary. This will save both time and cost of development.

Truthfully, I don't know of any successes, only failures that took too long or too costly.

Anonymous

1) What measures could be taken to make SEQR run more efficiently?

Administrative? Cut time line for responses

Regulatory/Statutory? Positive dec only once - at the time a specific physical action is proposed, not at the time legislation will facilitate an as-yet unknown action: Removes costly redundancy in time and money.

2) In your view, what are the three most significant weaknesses in the way SEQR is implemented?

Too political on a local level.

EIS tends to be too expansive.

Vulnerability to litigation.

3) Can you provide suggestions to address these specific problems?

See 1) above

4) In your experience, who was lead agency in the review that was either very successful or unusually problematic? Can you diagnose the contributing factors to that success or analyze issues that caused trouble or delay?

No particular group is responsible for delay. It depends upon the education of the body of the lead agency, and the advice of the municipality's consultants. Better education is the best cure.

5) Other comments:

Find a way to remove politics from the equation.

Anonymous

The main problem is that it is being mis-used.

SEQR's stated purpose in the Statute and Regulations is to promote the balancing of environmental with economic and social factors. That stated purpose reflects the prevailing view in the 1970s, when SEQR was enacted, that governments made their decisions on economic and social grounds while ignoring environmental factors. SEQR was intended to fix that.

As we know, most EIS's take too much time, over-study issues that are not vital, and do their best to gloss over issues that are. In addition, the process is generally adversarial. A proponent prepares the EIS, which the lead agency accepts when it (finally) deems it complete, and the public, in order to attack the proposal itself, attacks the EIS. The lead agency acts as referee, when its role under SEQR is actually to evaluate and balance the competing economic, environmental and social forces of any proposal.

The situation could be much improved with two changes.

First, require the lead agency to prepare the EIS. Second, make the time limits for the various steps much more mandatory.

These two changes would bring on what is sorely lacking: a concentration on the real issues, and a desire to move the process along reasonably.

Dear Willie and Jonathan:

RE: Toward an Enhanced Approach to SEQR Process—A Proposal

Thank you for opportunity to participate in the excellent discussions you convened in New Paltz. It seems there is an opportunity to take the SEQR process to the next level. This does not necessarily mean a change in the enabling legislation or the regulations, rather, enhanced guidance is clearly needed. For some reason, SEQR remains mysterious to many charged with its administration. We often hear board members say that they have to “do SEQR”. This indicates a lack of understanding of what SEQR is—a process for assuring that decisions are made after a hard look at the potential impacts of those decisions. After all of these years, why is SEQR so poorly understood, and so often misused and abused in its application?

When during the planners’ panel discussion, well-respected planner Stuart Turner, AICP, noted a community that conducted 9 (nine!) EIS’s for development projects on one highway corridor alone, that became crystal clear that better guidance would be beneficial. We recognize that the development community is frustrated when this sort of application of SEQR unfolds. Each applicant is spending serious time and money essentially answering the same questions the applicant down the road is answering. And, it is not the SEQR regulations that are inadequate, it is how the regulations are sometimes being (inappropriately) applied.

Similar examples are abundant—protracted, often-ineffective, cell tower siting reviews in every municipality in the state, subdivisions in prime farmland valleys, wind farms in the Lake Erie-Lake Ontario wind shed, and on and on. Each project undergoing SEQR review as if it is the only project affecting our resources. Somehow we are not seeing the forest for the trees in these situations. As we discussed as a panel—the first step in the SEQR process is often mischaracterized—that is, what is the proposed action. In the example of the 9 EISs, perhaps the proposed action should not have been characterized as the development of site 1, or site 2, or Site 9; it should have been; the overall development of the highway corridor including sites 1 through 9 (and 10).

On the other hand, there are many excellent examples of SEQR being applied creatively and appropriately to shape decision making, create better projects and help advance economic development while protecting and enhancing the environment. We discussed the use of the generic EIS as a tool to set the stage for appropriate growth while protecting important resources.

The Town of Clifton Park created a generic EIS to address both the implementation of its open space plan and its potential future development build out. This work, the Western Clifton Park Generic EIS resulted in comprehensive and creative new zoning that included significant incentives for open space conservation as well as set the stage for reasonable and continued development in appropriate (planned) locations. As a testament to this balance, the Generic EIS and the town's planning process was recognized by the *New York State Association of Realtors' Award for Smart Growth Excellence*.

In discussing the SEQR process with an attorney experienced in environmental practiced, we see an opportunity for your initiative to provide some much needed guidance to those who implement the SEQR process. One "deliverable" that would be very helpful right now is a well-written, well-researched guidance document on how to use the SEQR process to make smart decisions. This would supplement the SEQR Cookbook and other similar documents. A good starting point for an example of the kind of document we have in mind is the *Planning and Design Manual for the Review of Wirelless Telecommunications Facilities*.
<http://www.dos.state.ny.us/lgss/pdfs/telecom.pdf>

This document would connect the art and the science of environmental review. We envision a well-illustrated manual that illustrates the elements of creative environmental review. We envision a small team approach to authorship including private sector planning, legal, scientific, and design working with agency representatives and including stakeholder outreach with the development as well as the environmental and other advocacy interests. This is something in which we are interested in developing to help advance your goals and provide a highly useful response to the input received at the panel discussions.

We believe this approach would serve both the immediate needs for attention to the environmental review process and as a long-term guide for the future. Thank you for your consideration of this proposal.

John J. Behan, AICP

TO: Jonathan Drapkin, President and CEO; *Patterns for Progress*
William Janeway, Regional Director; *NYS DEC Region 3*

CC: Alexander B. Grannis, Commissioner; *NYS DEC*

FROM: Cuddy & Feder, LLP

DATE: January 25, 2010

RE: New York State DEC Region 3, Regional Workgroup

Revisions to New York State's Environmental Review Process

As you know, it was the original intention of SEQRA "that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making reiterated that "[e]nvironmental quality and economic progress are inextricably linked" and "[f]or the Hudson Valley and all of New York to flourish - economically and environmentally - we need a balanced approach."² However, reviewing agencies often fail to consider the appropriate balance between social and environmental goals, facilitating a review process that disregards information presented by the applicant, and encourages years of delay.³

SEQRA is a costly process that reduces the potential for affordable development. Applications are often subject to a prolonged environmental review, where the applicant is left "bearing the carrying costs and the risk that market conditions will change."⁴ As a result, soft costs associated with real estate development continue to rise at a time when business development and employment opportunities continue to fall. Since the beginning of the statewide economic decline in July 2008, New York State has lost over 274,000 jobs and an indeterminate amount of businesses to insolvency and relocation.⁵ Yet, social and economic concerns continue to take a backseat to ecological issues. Indeed, it was "not the intention of SEQRA that environmental factors be the sole consideration in decision-making".⁶

Nonetheless, advocates for economic development are not seeking to circumvent SEQRA, but rather are looking for reasonable time management to produce good development and preserve existing businesses in New York State. In its current form, SEQRA lacks, among other things, predictability and necessary timeframes for commencement and completion of environmental impact review. Thus, the deployment of dilatory tactics by development opponents has been encouraged as a method of project "denial" procedurally without actually necessitating the issuance of a formal substantive determination by the lead agency.

¹ See 6 NYCRR 617.1(c).

² See Grannis, Pete, September 17, 2009; "The SEQRA Solution: Striking the Right Balance", New Paltz, New York: 3rd Annual Fall Conference on Local Government Efficiency at SUNY New Paltz

³ See Chase Partners, LLC v. Incorporated Village of Rockville Center, Index No. 15652-04 (Sup. Ct. Nassau Co., June 26, 2006); see also Save the Pine Bush v. Common Council of Albany, 13 N.Y.3d 297 (2009).

⁴ See Schill, Michael, June 4, 2002; "The Cost of Good Intentions", New York, New York: Center for Civic Innovation at the Manhattan Institute.

⁵ See Employment Update, November 10, 2009, New York State Assembly at <http://assembly.state.ny.us/>

⁶ See 6 NYCRR 617.1(c).

Therefore, to honor SEQRA's stated purpose and foster economic development, the DEC together with public and private members of the land use community must improve the unpredictable and open-ended environmental review process by implementing a number of new procedural and substantive approaches:

· **Establish Strict Time Requirements to Conduct SEQRA Review:**

The feasibility of pursuing a real estate development proposal is highly susceptible to significant market shifts and trends. Developers fear becoming entangled in the indefinite web of environmental review. For instance, if a developer files an application in 2009 but does not receive approvals until 2015, it is highly likely that the original proposal will no longer be viable or conducive to the existing market. As a result, applicants are forced to either continue with an infeasible project, amend the original proposal, potentially undergo additional environmental review, and/or abandon the project all together. From a business perspective, this situation is viewed as a risky investment of time and resources. Consequently, SEQRA has had a severe chilling effect on the development and construction industries in the State of New York causing existing businesses seeking to expand, as well as new construction projects to migrate to States with a more predictable environmental review process.

The SEQRA Regulations require agencies to "carry out the terms and requirements" of SEQRA with "minimum procedural and administrative delay, ...avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and ...expedite all SEQRA proceedings in the interest of prompt review".⁷ However, in practice this is rarely the case. Therefore, to facilitate this general rule the Regulations should be amended to require the (A) strict adherence to enumerated deadlines, or in other words, project benchmarks, including but not limited to existing SEQRA time frames such as the thirty (30) day period to establish lead agency, the sixty (60) day (optional) scoping period, and the forty-five (45) day period to accept the Draft Environmental Impact Statement ("EIS"). Benchmark violations would not result in default entitlement to receive the subject approvals. Instead, if the lead agency fails to comply with each deadline the application will automatically move to the next stage in the process.

Additionally, the Regulations should require (B) the issuance of either a negative declaration or a findings statement within 365 days of the date of receipt of Part 1 of an Environmental Assessment Form. Should a lead agency fail to meet this deadline, then a set of findings and/or a negative declaration may be prepared by the applicant and considered presumptively valid as a final determination. Ultimately, this will compel the lead agency to either approve, modify or deny the proposed findings for not having sufficiently mitigated anticipated adverse impacts. At such point, the applicant would have the express right to commence a legal action challenging the reasonableness of such denial in Court, with the remedy that the SEQRA process has concluded and the applicant is entitled to the underlying land use permits. In this scenario, the Regulations would provide a mechanism to encourage the lead agency, to conduct a more efficient environmental review process, thereby providing the applicant with a reasonable and predictable timeframe to obtain necessary land use approvals.

⁷ See 6 NYCRR 617.3(h).

· **Establish a Benchmark Reporting System:**

Absent seeking judicial intervention, which is a lengthy, uncertain and expensive endeavor, an applicant has very few mechanisms for keeping the environmental review process moving towards completion. In many cases, the process becomes stagnant and falls victim to dilatory tactics on behalf of project opponents and/or the lead agency. Therefore, in addition to adding Strict Time Requirements, the Regulations should also be amended to require lead agencies to participate in a Benchmark Reporting System throughout the SEQRA process.

This System would mandate a lead agency to monitor and report the progress of each application in accordance with a designated deadline list that correlates with existing and newly proposed (see above) SEQRA time frames. More specifically, a lead agency would be required to review the status of each major application every sixty (60) days starting from the date upon which the notice of intent to serve as lead agency is circulated, and submit a report to the DEC for review and display on the DEC website in a manner similar to that of the Environmental Notice Bulletin ("ENB"). In the event that an application has not timely met an anticipated benchmark, the lead agency would be required to submit an explanation for such delay. In conjunction with the requirement automatically moving the application to the next stage in the process, the public display of benchmark violations will verify the agencies and municipalities that have a history of impeding development and stalling the SEQRA process. Moreover, such information could also be used as a factor in resolving future lead agency disputes and to encourage lead agency accountability.

· **Establish a Strict Public Comment Submission Deadline:**

Generally, "[t]he minimum public comment period on [a] Draft EIS is 30 days".⁸ However, this period is regularly extended with a deadline for submission coming well after the initial 30 day period. Therefore, to further control the excessive delays in the SEQRA process, the deadlines for submitting public comments on an EIS must be strictly addressed by the public and agencies, including all involved agencies, with comments received after the deadline not being accepted for consideration. This will facilitate a quicker turn around period for the applicant to respond to all public comments and produce the Final EIS within the mandated time frame.

· **Preserve the Intended Purpose of Type II Actions:**

The SEQRA Regulations should be amended to (1) include an expanded list of Type II actions, and (2) to give real effect to the presumption that existing Type II actions "do not

⁸ See 6 NYCRR 617.9(a)(3).

have a significant impact on the environment" and do not require agency review under SEQRA. Recall that the purpose of the establishment of the three categories of actions (Type I, Type II and Unlisted) was to identify those projects that should be subject to the full SEQRA process, as well as to identify those projects that should not. This classification system should provide an applicant with some level of predictability as to the amount of time and resources needed to complete a particular project. However, in practice applicants' expectations are often misguided by the language of the Regulations.

The Regulations expressly provide that "[t]he purpose of the list of Type I actions ... is to identify ... those actions and projects that are more likely to require the preparation of an EIS than Unlisted actions."⁹ Similarly, the purpose of the Type II list is to identify those actions that are deemed not to have a significant impact on the environment and therefore, are not subject to environmental review SEQRA.¹⁰ However, in light of the regulatory morass that exists in New York State, a land use proposal that should be deemed a Type II action is often improperly characterized as an Unlisted or Type I action. This is largely because "[a]gencies may adopt their own lists of additional Type I actions, [and] may adjust the thresholds to make them more inclusive..."¹¹ As a result, applicants seeking approvals for a project that was intended to constitute a Type II action ultimately find themselves within the purview of SEQRA.

For instance, consider a landowner who submits an application to obtain an individual setback variance to construct a small patio off an existing residential structure on property located in a local overlay zoning district. In accordance with the SEQRA Regulations, this proposal would constitute a Type II action and would not be subject to additional environmental review.¹² However, if the subject municipality had previously adopted a local Type I list that characterizes *all* actions regardless of size or impact, within the applicable overlay district as a Type I action then the seemingly minor application would be forced into an unnecessary SEQRA process. Consequently, the municipality hinders an otherwise efficient approval process.

Once again, it must be emphasized that advocates for economic development in New York State are not seeking to have SEQRA repealed or even diluted. We recognize the importance of smart land use planning and environmental review, and some of its positive effects in our State. However, social and economic concerns are rarely reviewed with the same vigilance and importance as the natural environment. New York's economy is currently at a tipping point and unless we create a more competitive landscape for retaining existing businesses and promoting new innovative development the State's current financial crisis will continue to grow.

Thank you for your time and consideration of our views and suggestions. Please do not hesitate to contact us with any questions or further comments.

⁹ See 6 NYCRR 617.4(a).

¹⁰ See 6 NYCRR 617.5(a).

¹¹ See 6 NYCRR 617.4(a)(2).

¹² See 6 NYCRR 617.5(c)(10)&(12)