

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 C

Comments and Suggestions Received Regarding the

February 8, 2010  
DRAFT REPORT AND RECOMMENDATIONS

## Individuals/Groups submitting written comments

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>>> "Steve Eckler" 12/29/2009 10:29 AM >>>

Mr. Janeway - we are responding to your email dated 11/19/09 soliciting feedback on the SEQR process. Thank you for the opportunity to participate. Our feedback is provided below. Please call or email me if you have questions or comments regarding our responses.

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

Response

A time limit should be established for filing of SEQR findings by Involved Agencies in a coordinated SEQR review.

-Provide guidance as to what agency would more appropriately serve as SEQR Lead Agency for certain types of projects with multiple type of permits/approvals (i.e., it may be more appropriate for the municipality to act as SEQR Lead Agency for local rule issues such as site plan approval, subdivision even if an air permit is required).

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

Response

-During coordinated SEQR reviews, Involved Agencies generally do not participate in the process, then try to manage aspects of environmental issues after the fact.

-SEQR needs a better description of non-discretionary or ministerial actions, including a listing with examples. Some agencies are inappropriately requiring some level of SEQR review at the cost of the applicant, usually in response to public comment.

-Generic EISs are poorly understood and, therefore, not used as often as may be warranted. This section of the regulations should be revisited for clarification. For example, there is no guidance regarding thresholds with respect to significant changes. Therefore, applicants are leery of using a GEIS process where the need for a supplemental EIS is very subjective.

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

Response

-See above.

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?

Response

We don't think SEQR-related problems are necessary inherent to an agency, but more related to individual staff perceptions/opinions of specific projects. Our experience (once is too often) is that if agency decision-makers do not like an applicant or a project, the SEQR process is often used as a time-delaying and expensive roadblock. SEQR is often misused such that it is now perceived as an obstacle for development in New York State. Real or not, the perception does preclude potential development. At the roots of it, SEQR was meant to be a tool; a partner with the permitting process to ensure that the project implemented/constructed appropriately mitigated potential significant adverse impacts. It was not suppose to be and should not be a roadblock. Decisions should be left to the permitting process.

5) Other comments:

Response

We have been successful in using an expanded EAF (what we call an EAF+ vs. an EIS) in providing a "hard look" SEQR review. It would be nice to see this process formalized in SEQR regulation and/or guidance. If the decision-makers think it is appropriate that the information included in the EAF+ (i.e., identification of potential impacts and mitigation to reduce or eliminate impacts) provides the requisite hard look, then it should be appropriate for that agency to issue a Negative Declaration, without requiring preparation of an EIS. Some agencies view this process as somehow circumventing the process or intent.

Steven M. Eckler  
Senior Managing Scientist

Hudson Valley Catskill Regional SEQR Dialog  
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To: William Janeway, DEC  
Jonathan Drapkin, Pattern for Progress  
Ned Sullivan, Scenic Hudson

From: Kathleen (kt) Tobin Flusser, SUNY New Paltz  
Assistant Director, Center for Research, Regional Education and Outreach (CREEO)

As part of federally sponsored research on measuring Regional Well-Being, our research team at CRREO under my direction has made extensive use of SEQR filings in our region. As a result of this work, we wish to bring the following six ideas about producing greater efficiency in the SEQR process to your attention:

- Address issues of access
- Increase utilization of comprehensive/master plans
- Create standard reporting formats
- Establish standardized local measures
- Increase usage of the DEC Code and Ordinance Worksheet
- Clarify “green” commitments and promote the Climate Smart Community Program

**Address Issues of Access**

While our original research charge did not include an analysis of ease of access to SEQR filings, it immediately became apparent that access was an issue. In order to assemble a database of EIS’s submitted from 2004 to 2009, our researchers visited all the municipal websites in our four-county study area, sent emails to village and planning board clerks and chairs, and made at least one phone call to each of the 116 municipalities in Dutchess, Orange, Sullivan, and Ulster counties.

Using these methods – web searches, emails, and phone calls – we have thus far collected all EIS’s from 9% of these municipalities. In 19% of these places there have been no EIS’s filed in the past five years. We have been informed by 21% of these municipalities that FOIL or on-site research is required to get this information. For the remaining 51% of places, there are no EIS’s on their websites (or links to other websites hosting EIS’s) or we have been unable to definitively determine whether or not those posted on their website, if any, comprise all the EIS’s filed in the five year time period. In total, we have collected 50 individual EIS’s, including different versions of the same project.

<b><u>116 Municipalities</u></b>	<b><u>Number</u></b>	<b><u>Percent</u></b>
All EIS’s	10	9%
No EIS’s in time period	22	19%
FOIL or on-site research required	25	21%
None on website, status unknown	59	51%
116		100%

<b><u>50 Individual EIS's</u></b>		
Building projects	37	74%
Comprehensive plan, zoning, etc	13	26%
50		100%

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A proper assessment of ways to bring greater efficiency to the SEQR process is dependent on open access to EIS's. **In order to resolve these issues of access, we suggest enforcement of §617.12.b.3 in SEQRA and of the 2005 "EIS on the Web" requirement (detailed below).**

### **Increase Utilization of Comprehensive/Master Plans**

Comprehensive plans are underutilized. Current comprehensive plans (which need to go through SEQR) created with community buy-in are essential to guiding decision-making. Less than half of the statements we have reviewed reference compliance with a local comprehensive plan. Only one mentioned a county master plan. **We suggest communities regularly update their master plans with significant community involvement, and that these plans be better incorporated into the SEQR process.**

### **Create Standard Reporting Formats**

While these EIS narratives are guided by specific questions, there is wide variety and inconsistency in how these documents are organized and formatted. In order for planning board members or lead agency evaluators to gain familiarity with the process, to better evaluate projects, and to make comparisons across projects, something as simple as having standard formatting, headings, information, and data in all the same places consistently in statements would be very helpful. **We recommend setting and requiring standard reporting formats.**

### **Establish Standardized Local Measures**

There are many different formulas and models utilized in EIS's to predict a variety of impacts. Examples:

⌚ **Impact on the School-Age Population:** Rutgers and ULI multipliers are the most commonly used to predict the number of children expected to move into a school district based on a development project. These formulas utilize much too broad a geography, e.g. the Northeast. Sometimes Census data is used, but detailed data is only available every ten years. Even county level data is too broad; to make an accurate assessment one needs to know about the local school district. We suggest an inventory be included in municipalities' comprehensive plans with data from a survey of current housing, e.g. in Marlboro, on average 1.15 children reside in two bedroom apartments.

⌚ **Tax Impact:** Clear parameters and systems in place are needed to get data and information from fire, police, emergency services, etc., across the municipality for input into standard formulas that reliably calculate realistic tax impacts.

**Rather than this somewhat random assortment of measures, what is needed is a standard set of agreed upon measures that are guided by local parameters and trends.** It is critical that local data inform these calculations – and comprehensive plans should include the baselines for these measures.

### **Increase Usage of the DEC Code and Ordinance Worksheet**

There are a variety of environmental documents/studies that could be integrated into master plans and referenced in EIS's: local wetlands maps, viewshed maps, stream monitoring studies, carbon and water footprint audits, biodiversity and habitat assessments, soil tests, NRI's, open space indices, etc. The DEC Code and Ordinance Worksheet already covers many of these things. This worksheet (attached), developed by the DEC 1 Hawk Drive New Paltz, NY 12561 Phone: (845)257-2901 Fax: (845)257-6918 [www.newpaltz.edu/crreo](http://www.newpaltz.edu/crreo)

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Hudson River Estuary Program and NYS Water Resources Institute in cooperation with the Center for Watershed Protection, “allows an in-depth review of the standards, local laws, ordinances, and codes (i.e., the development rules) that shape how development occurs in your municipality.” To date, only a handful of communities in our region have completed this worksheet. **We recommend municipalities work with DEC to complete these worksheets and that the resulting information be referenced in the SEQR process.**

### **Clarify “Green” Commitments and Promote the Climate Smart Community Program**

The level of commitment to “green” elements in EIS documents is more often than not unclear, e.g. a developer *may* include Green building parameters such as LEED. Some communities in the region have adopted the Climate Smart Community Program (Kingston, Saugerties, Rosendale, Beacon, Red Hook, and thirteen municipalities in Westchester). Doing so provides a commitment to developing as per the guidelines of this program which can also be referenced in EIS’s. **We suggest the Climate Smart Community Program be promoted as a tool that can help firm up developers’ and communities’ commitments to green development.**

Additionally, but not directly based on the analysis of our EIS database, we make the following two suggestions:

- Serious study of how to incorporate the public and stakeholders
- Engagement of more planning board members in this review process

### **Serious Study of How to Incorporate the Public and Stakeholders**

There have been recommendations that including the public and/or stakeholders earlier in the environmental review will reduce the conflicts currently experienced in the SEQR process. SEQR public hearings (and public hearings in general) are often criticized as primarily representing the voice of project opponents. Enhancing engagement requires much more than just having public hearings earlier in the schedule. **A serious study is warranted in order to assess how to incorporate the full spectrum of viewpoints in a community.**

Note that if a comprehensive master plan is created with community participation and buy-in, then SEQR projects may proceed more smoothly. There are many models to consider. To cite just two examples, we suggest a look at:

- ⌚ Citizen’s assembly model: [www.worldchanging.com/archives/008504.html](http://www.worldchanging.com/archives/008504.html)
- ⌚ Charrette model: [www.charretteinstitute.org/charrette.html](http://www.charretteinstitute.org/charrette.html)

### **Engagement of More Planning Board Members in this Review**

There were a few, but not many, planning board members at the review process event on 12/18/09. **We suggest more planning board members be part of this conversation, and recommend a survey of planning board members in the region about their experiences with the SEQR process.**

Thank you for consideration of our comments and suggestions. If you have any questions, please contact me via email at [tobinflk@newpaltz.edu](mailto:tobinflk@newpaltz.edu) or by phone, 845.257.2901. For more information about CRREO, visit [www.newpaltz.edu/crreo](http://www.newpaltz.edu/crreo).

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### About Article §617.12.b.3 in SEQRA and the 2005 "EIS on the Web" Requirement

According to §617.12.b.3 in SEQRA, "All SEQR documents and notices... must be maintained in files that are readily accessible to the public and made available on request." The 2005 amendment to the law known as the "EIS on the Web" requirement requires that every EIS - draft or final EIS - be posted on a publicly accessible Internet website. DEIS's are to be posted when accepted and until a FEIS is accepted; EIS's, once finalized need to remain on the web for a minimum of one year. Under the law, there are exceptions. If it is deemed "impracticable" an agency may receive an exemption. What is "impracticable" is not specified in the law.

### About the Regional Well-Being Project

The Center for Research, Regional Education and Outreach (CRREO) at SUNY New Paltz is currently conducting the Regional-Well Being Project. This U.S. Department of Education funded study is focused on developing measures of the Mid-Hudson Valley communities' social, economic, and environmental character that are broadly accepted and allow the tracking of change over time. The research team includes members of the CRREO staff, SUNY New Paltz faculty and students, and community leaders recruited from among business persons, professional practitioners, environmentalists, economic developers, local governmental officials, and educators. This group has participated in extensive deliberations in order to articulate shared values, to prioritize them, and identify how to best measure well-being. Of particular interest has been the nexus between environment and economy, and SEQR has been identified as a process that reflects this nexus, revealing how communities define and seek community well-being.

## ***CAMARDA REALTY INVESTMENTS LLC***

*1699 Route 6, Suite 1 Carmel, New York 10512 (845) 228-1400 FAX: (845) 228-5400*

December 31, 2009

### **VIA EMAIL**

Mr. William C. Janeway  
New York State Department  
of Environmental Conservation  
21 South Putt Corners Road  
New Paltz, New York 12561

Dear Mr. Janeway:

We would like to thank the DEC for the opportunity to speak before the December 18<sup>th</sup> panel. In addition, we applaud the DEC for undertaking the effort to streamline the SEQRA process and recognizing the fact that streamlining the SEQRA process is sorely needed in order to encourage investment in New York, which is being lost due to the excessive regulatory burden, delay and expense currently reflected in the SEQRA process.

As you requested, I am following up with an email detailing the recommendations Camarda Realty Investments has proposed with respect to this streamlining effort.

### **Streamlining Suggestions**

As I discussed during my presentation, we have two suggestions – one general and one specific – regarding how to streamline the process within the current regulatory framework.

The general suggestion is that the DEC advise lead agencies to take a “holistic” approach to the SEQRA review process. A holistic approach to a process is defined as “emphasizing the importance of the whole and the interdependence of its parts.” The primary goal of the SEQRA process, which after all is an “environmental” review, is to insure that when a lead agency approves a project, it does so in manner which “to the maximum extent practicable, minimize[s] or avoid[s] adverse environmental effects, including effects revealed in the environmental impact statement process.” ECL, § 8-0109(8).

Lead agencies should be reminded that the SEQRA process is an “environmental” review, primarily concerned with minimizing and avoiding to the maximum extent practicable

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any identified adverse environmental impacts of a proposed project. Many SEQRA reviews involve applications to use property in a manner consistent with applicable zoning laws and master plans. In such instances, the lead agency should be reminded that many of the impacts to be reviewed in the SEQRA process have *already* been carefully and thoroughly addressed in those municipalities through their zoning codes and master plans. The SEQRA review process should recognize and respect those municipal findings, and the lead agency should not treat a proposed use consistent with zoning and master plans as a “blank slate” which needs to be justified in painstaking and exhaustive detail.

The more specific recommendation, which operates in conjunction with the “holistic” approach, is to remind lead agencies that when a scoping document is prepared (which we suggest should be required), the document should perform its function as set forth in the regulations by “focusing” on the “potentially significant adverse impacts.” 6 NYCRR 617.8.

This focus is often completely lost in the scoping document, which in turn dooms the DEIS and FEIS to take on a nearly encyclopedic review of every remotely possible environmental and societal effect. The result is SEQRA documentation that appalls the sensibility of any reasonable person, *i.e.*, thousands and thousands of pages of exhaustive analysis for proposed uses which in many cases are consistent with zoning and master plans. In addition, many of the applications subject to an EIS reflect projects that have been built hundreds of times in New York and thousands of times nationally in a manner, with the proper mitigation of a few potentially significant environmental impacts, without significant adverse environmental impact.

### **Suggested Regulatory Changes**

First, I would like to address one point regarding possible regulatory changes which, due to the time constraints, I did not have the opportunity to raise when I spoke before the panel.

As was pointed out by many speakers, including Al DelBello on December 18<sup>th</sup>, the SEQRA process is sorely in need of more definitive timelines. We concur. By way of example, in many municipalities in Connecticut (where review procedures are handled by rules established on the municipal level), the review process is generally completed within approximately 2 years. The municipality then approves or denies a project.

In New York, the SEQRA review process can take four to eight years. This obviously creates undue delay which has allowed opponents of the proposed projects to “filibuster” the process and inflict death by a million cuts. In addition, and just as problematic, the delay creates uncertainty. Investors and companies are extremely adverse to becoming involved in a multi-year review before a lead agency even rules on an application. Instead, investors and companies seek the security of knowing that a proposed project will be approved or denied within a reasonable period of time. The risk of spending years seeking the conclusion of SEQRA review with no end in sight creates uncertainty which many investors and companies simply cannot afford to undertake.

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One critical area currently lacks any timeframe whatsoever. An involved agency is not under any time limit in which it is required to issue its findings statement after the lead agency has issued its findings statement. We have had to wait over a year for an involved agency to issue its findings statement. This adds delay over and above the “standard” delay of the SEQRA process, and also permits involved agencies to sit on the sidelines during the preparation of the EIS because they are not required to promptly issue their findings statement after the EIS is deemed complete and lead agency findings are issued.

In addition, we suggest that involved agencies should be bound by the lead agencies findings. It is unduly burdensome to require applicants to have to submit to multiple SEQRA reviews with multiple agencies when the process undertaken by the lead agency is already a four to eight year exhaustive process.

### **Conclusion**

We wish to emphasize that we recognize that protecting the environment is critically important. Our projects reflect that concern.

On the other hand, SEQRA has become unnecessarily burdensome and a tremendous drain on investment activity in New York. As noted above, SEQRA does not require that all adverse impacts be eliminated; SEQRA directs that adverse impacts be mitigated to the maximum extent practicable. Most municipal SEQRA reviews and findings go well beyond this straightforward mandate.

Many lead agencies also require applicants to fix preexisting substandard infrastructure conditions which are not even impacted by the proposed project. Meanwhile, the applicant faces the implicit threat that if it declines to fix those conditions, the review process (which has no time limitations) will be continued indefinitely. These requirements, and the excessive length and expense of the process itself, often render projects -- which could bring investment, jobs, sales tax and real estate tax revenue to New York -- not economically feasible.

In light of these concerns, we welcome the efforts of the DEC to streamline the SEQRA process and appreciate the opportunity to present suggestions towards that end.

Very truly yours,

Andrew D. Brodnick,  
General Counsel

cc: Mr. Jonathan Drapkin  
Patterns for Progress

Willie:

Sorry for not being able to get back to you until now, things have been a bit busy.

After participating in the dialogue, one thing that impressed me was the passion of the on the part of developers and their representatives. They expressed dismay at the sometimes lengthy and burdensome process for getting things approved. In retrospect, while I understand their frustration, I do believe that it is misdirected. While they believe it is the SEQR law and the processes designated by the SEQRA, I believe that is possibly the Lead agencies with which they are dealing. Perhaps some of these lead agencies, planning , town boards etc are not as "conversant" with SEQR and their responsibilities under SEQR and therefore the process doesn't "flow". I would like to suggest that a periodically "email blast" to the chairs of these boards would be in order. For example, one titled: "You can do a Neg Dec" and include a summary of circumstances where it is appropriate. Such a programme would only require a few minutes of your time to compose the email and send out. Perhaps this would alleviate some of the "burden". Just a thought.

The following are my comments as presented at the dialogue/panel.

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PALTZ NY

\*\*\*The SEQR Process flowchart could be more helpful at certain points and might be confusing to SEQR novices. For example in the flowchart at step 4 "Coordinate Review". It may be unclear for a municipality or an applicant as to the exact process required at this point or where they may "fit in".

Also: the process for settling disputes as to who would be lead agency should two or more agencies expect to lead is unclear. This is especially relevant where a project borders or crossed municipal lines. There should be some provision for a co-lead agency. For example, there may be a project where a municipality that has a smaller part of the proposed project may actually have the greater impacts. Conversely this should be clearly defined so that projects would not be improperly defined as needing co-lead status. (To clarify: This should actually be where the project physically crosses municipality lines and have impacts on

both so that it will not become overly cumbersome. Not where it merely borders another municipality)

\*\*\*Re: TYPE 1 actions:

In section 617.4 Type 1 actions:

“Agencies may adopt their own lists of type 1 actions, may adjust the thresholds to make them more inclusive and may continue to use previously adopted lists of Type 1 actions to complement those contained in this section”.

I suggest that more guidance be given in regards to the establishment of these “lists”. While I understand that this is in order for the local municipalities to be able to “customize” their lists to their individual circumstances and provide some discretion, there may be some confusion that could lead to an action be improperly defined. (eg. could be more restrictive and thereby subject a project sponsor to a more burdensome application than needed.)

Additionally, In type 1 actions, Scoping should be mandatory instead of optional. This would actually save time later in the process because issues would be clearly defined and easier to locate in the documents.

\*\*\*Re: Draft EIS:

While it is indicated that the Draft EIS can be flexible (section 617 9 b 5) subsection iii states “a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence. The draft EIS should identify and discuss the following only where applicable and significant:” What is applicable and significant should be more clearly defined.

Secondly, (legislative) Under this section it states: “...any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented” If it is Irreversible and irretrievable, it should be included in the basic components of the draft EIS, not in the section where “ONLY applicable and significant”.

A Standardized format of EIS with appendices clearly labeled should be required. This would help to adhere to the timelines indicated in the flow chart and would make it easier for the public to review the documents

\*\*\*Re time frames

I would like to suggest a system of “time checks”. The DEC could produce and generate standardized forms to municipalities and applicants. They could use these forms as a “spot check” for where they are in the process. They need not

be officially filed with the DEC but would be a good resource for the municipalities and the applicants to utilize. The DEC would only have to have to produce them one time and it would not be too labor intensive. This would help to clarify where an applicant is in the process. (e.g.: “You have just completed step three and have done a, b, c, Now proceed to coordination, step 4 do x, y, z...”) This would also help to ensure that applicants and municipalities have the info in one concise location.

While it is commendable to have EIS available on line, the printed versions should still be made available for those with limited internet access or printing capabilities. They should be located in town/village halls AND also community libraries

\*\*\*Environment and economy are not mutually exclusive. We need to ensure that our environment and natural resources are strongly protected while at the same time ensure that the environmental review process is not overly burdensome for project sponsors. I hope that my suggestions will help to achieve this.

Thank you again for allowing me to be part of the dialogue. If I can be of help, please contact me.

All the best in the New Year!!!

Lorraine McNeill  
Village of Woodbury

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DATE: January 7, 2010

TO: [R3seqrWorkgroup@gw.dec.state.ny.us](mailto:R3seqrWorkgroup@gw.dec.state.ny.us)

Willie Janeway, DEC Hudson Valley Catskill Regional Director  
NYS Dept. of Environmental Conservation

Jonathan Drapkin  
Pattern for Progress

Ned Sullivan  
Scenic Hudson

FROM: Kenneth P. Zebrowski  
Member of the Assembly – Rockland County

RE: State Environmental Quality Review (SEQR)

Thank you for soliciting my comments on the SEQR process. While I certainly support streamlining the procedures to make New York State more business friendly, I want to be sure that by streamlining we don't give up any necessary environmental protections.

A situation that is pending in a village adjacent to my Assembly district has brought the SEQR process more in focus for me. You may be aware of the situation: The Village of New Square currently has a relatively small poultry processing plant within its village. (Due to serious violations, a federal judge ordered that the facility closed last month, but that is another matter.) The Village Board is supportive of having the existing plant demolished and allowing a new, five-times-larger processing plant to be constructed on a nearby site. The Village Board will be, if it has not declared so already, the Lead Agency for that new plant. Also, the Village of New Square has already been preliminarily promised grant money from the State of New York to be used toward the new plant.

The main problem related to SEQR is that the new plant would impact more negatively on the neighboring Village of New Hempstead, rather than on the Village of New Square, since the location of the plant is only about a hundred feet away from homes in that village. Additionally, the project will likewise impact dramatically on the Town of Clarkstown and the County of Rockland in terms of traffic, water, sewage, and odors. Yet, the Village of New Hempstead, the Town of Clarkstown, and the County

of Rockland have no real authority concerning the determinations made about the proposed new plant. Therein lies a serious problem with the SEQR process. My remarks below express the concerns that come to mind when I reflect on the New Square situation.

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- A Lead Agency can be so biased in favor of a project that it might be less than totally candid when it undertakes the SEQR process. Therefore, determinations concerning Environmental Assessment Forms, Negative or Positive Declarations, Scoping, etc. can be skewed in favor of a project.
- Notices to the public in the form of legal notices in the tiniest of newspaper print are archaic in today's world. The public should not be required to buy newspapers and read multiple columns of legal notices each day in order to be informed. A better method – probably via the Internet – needs to be developed. Top elected officials throughout our state and country proclaim the need for transparency in government; this would be a good place to start.
- The actual municipalities that are most affected by SEQR decisions need to have some authority in the determinations. They should not be left with their only option being expensive litigation after a Lead Agency has failed to adhere to due process.
- Answers to Environmental Assessment Forms should be realistic and current. Instead, they are often answered casually based on expectations. For instance, Rockland County routinely has periods of mandated water conservation, yet all EAFs (that I have seen) show that there is access to sufficient water. (The poultry processing plant, for instance, is expected to require hundreds of thousands of gallons of water a day.) The routine answer that “yes” there is sufficient water is based on local water companies being required (although they may not really have the ability – and certainly may not have the ability without negatively impacting ratepayers and water quality) to provide sufficient water. The same situation exists with regard to answers concerning sewage disposal and other major issues.

On the other side of the everyday SEQR situation is that Lead Agencies and Applicants should not be forced to delay projects simply because neighbors object to sites being developed. We all like to see lots of wooded areas, but it isn't fair to developers to hold up their plans – assuming they are consistent with zoning – just because of frivolous objections.

I regret that I missed the meetings that were held in December, but I am very interested in this issue, and I appreciate the opportunity to give this input.



>>> Paul Bray 2/9/2010 2:23 PM >>>

Willie: While you have greater reference to Greenway indemnity and planning on pp 12 & 13, the reference to "greenway compact" Sec. 44-0117 ECL deserves to be highlighted as such section blueprints a process and incentives for "cooperative planning process to establish a voluntary regional compact among the counties, cities, towns and villages of the greenway". Compact worked well for the Long Island Pine Barrens and has been successful in some other national regions. It has been a card weakly played by the HRV Greenway, but has great potential for municipalities to cooperatively develop a regional plan. Paul

# **Habitat Assessment Guidelines**

## **Town of Milan**

Endorsed by the Town of Milan Planning Board  
March, 2005

### **Prepared for the Town of Milan by:**

Karen Schneller-McDonald, Greenplan Inc.,  
CAC members Sheila Buff and Frank Margiotta,  
and Planning Board Chair Lauren Kingman.

Gretchen Stevens of Hudsonia Ltd. provided invaluable guidance.

An electronic retrievable copy (PDF file) of this document may be obtained  
from [www.milan-ny.gov](http://www.milan-ny.gov). Habitat Assessment Guidelines Town of Milan

### **Message from the Planning Board Chairman**

Milan is committed to maintaining its rural character, protecting its environment, and preserving its natural resources. We believe our goals are compatible with the goals of any land development projects within the Town and will result in higher quality subdivisions. Milan's approach uses Habitat Assessment early in the process to establish the environmental constraints and guide the plan before the applicant invests significant time and money in design and engineering.

## **Habitat Assessment Guidelines**

### **Town of Milan**

This planning and development tool for habitat assessments has been developed to foster a cooperative effort between the Town of Milan Planning and Town Boards and project applicants. These Guidelines will:

1. Enable Town boards to better carry out their responsibilities to protect the interests of Milan residents, protect the integrity and value of Milan's natural areas, and protect the Town's watershed and significant biological resources;
2. Streamline the planning process by facilitating New York State Environmental Quality Review (SEQR), site plan review, subdivision review, and other related environmental reviews;
3. Incorporate environmental protection into siting and design of development projects;
4. Provide applicants with notice in advance as to what actions will be required, thus giving them the opportunity to minimize delays and expenses during the review process.

The diverse natural resources of the Town of Milan are vulnerable to the adverse impacts often associated with development and construction. Habitat assessments provide the Town with site-specific baseline information and improve the Town's ability to make better planning decisions, establish consistent standards for development proposals, fulfill regulatory obligations (see below), and protect significant biological resources as development and economic growth occur.

### Environmental Impacts of Development

Land development may affect the environment in many ways. A high degree of biological diversity accompanied by low numbers of invasive species is often indicative of a healthy ecosystem.

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Direct loss of habitat eliminates some species and affects the population size of others. Habitat fragmentation leads to isolation (and reduced viability) of small populations, reduced population dispersal, increased edge effects which in turn may lead to increased predation or parasitism, and decreased breeding success. Healthy ecosystems comprise the landscapes we value; ecological imbalances resulting from improperly sited development and its impacts can lead to degraded landscapes and a proliferation of invasive or nuisance species. In addition, habitat loss is often associated with negative impacts to the watershed, which may result in degraded water quality, reduced water supply, increased pollution, erosion and sedimentation, damage to streams and wetlands, poor drainage, and flooding.

The inclusion of habitat assessment as part of the planning/review process facilitates biodiversity conservation, preserves water resources, helps maintain natural areas, reduces the impact of invasive species, enhances visual resources and recreational opportunities, supports community values, and protects and enhances property values.

It is ultimately more cost effective for the Town to protect significant resources than to attempt to restore them once they have been damaged or lost. This proactive stance intends to guide development--not prohibit it--and influence decisions on how development occurs on a particular site.

### Timing

Habitat assessments must be completed before sketch plan endorsement or initiation of the SEQR process, and before the site's Erosion and Sediment Control Plan and Stormwater Pollution Prevention Plan. This approach minimizes project review delays and expenses.

### Regulatory Basis for Habitat Assessments

The federal Endangered Species Act protects ecosystems upon which threatened and endangered species depend. The federal Clean Water Act regulates wetlands and may require a permit to alter any wetland that is connected to a surface water system.

The Environmental Conservation Law (ECL) of New York State regulates wildlife habitat protection. Section 9 of the ECL is designed to protect rare plants; sections 11-0535 and 11-0536 protect at-risk fish and wildlife. Article 24 gives the NYS DEC authority to regulate wetlands; article 15 regulates disturbance to protected streams.

In addition, New York State law allows communities to use home rule to protect wildlife and habitats when considering zoning ordinances, subdivision regulations, and site plan reviews.

As part of the SEQR review process, Parts 1 and 2 of the Environmental Assessment Form (EAF) contain questions pertaining to potential impacts of a project on both protected species (threatened and endangered) and non-protected species (EAF Part 2). To answer the questions as to whether a project will have significant impacts on these resources, the Planning Board needs a description of habitat types (and their condition) found on or in the vicinity of the site and species (protected and unprotected) that are associated with those habitats.

The N.Y.S. Natural Heritage Program (NYNHP) maintains records of known occurrences of rare species and significant natural communities throughout the state. Because most sites have never been

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surveyed by biologists, however, the presence or absence of rare species or significant communities is unknown. NYCNHP issues letters to applicants in response to inquiries regarding the presence of protected species on, or in the vicinity of, a particular site. If no records exist for that site, the letter states:

The absence of records does not necessarily mean that endangered or threatened species do not exist on or adjacent to the site, but rather that our files currently do not contain any information on the presence of these species. . . . In most cases, site-specific or comprehensive surveys have not been conducted. For these reasons, we cannot provide a definitive statement on the presence or absence of species. Therefore, this information should not be substituted for on-site surveys that may be required for environmental impact assessment [italics added].

Even if a record for a protected species occurs on or near the project site, the NYSNHP letter will state:

For most sites, comprehensive field surveys have not been conducted: the enclosed report only includes records from our databases. We cannot provide a definitive statement on the presence or absence of all rare or state listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment. Habitat assessment guidelines are designed to assist applicants in providing additional information necessary for impact assessment in compliance with SEQR.

Because stormwater management activities may have a significant effect on water resources, including wetlands and streams, compliance with the new DEC Phase II Stormwater Management regulations also will affect, and be affected by, the vegetation and soil characteristics of certain habitats, particularly wetlands, ponds, lakes and streams.

### Role of Habitat Assessments in Environmental Review

The purpose of a habitat assessment in subdivision and site plan review process is to assess the existing environmental conditions, identify any areas of ecological sensitivity, and determine what the impact of the proposed development will be.

Specific areas of concern are:

- water resources (including aquifers, streams, wetlands, and vernal pools, whether or not they are protected by state or federal regulations)
- vegetation
- soil types
- elevation, aspect and slope (including rocky outcrops, steep slopes and ridgelines)
- wildlife of conservation concern, including but not limited to breeding birds, reptiles, amphibians, and mammals
- presence of protected species of plants or animals

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The habitat assessment uses standard methods to define the various habitat types (e.g., shrubby oldfield, cool ravine, mature mesophytic forest, intermittent woodland pool) found on the property and estimate their extent, condition, and ecological sensitivity. It analyzes the presence or potential presence of plant and animal species of conservation concern on the property and estimates the impact the development will have on all plants and wildlife found in the area. The habitat assessment also analyzes the water resources of the property and estimates onsite as well as downstream impact of the development.

When completed, the habitat assessment will be a valuable tool for planning land use that is compatible with the existing habitat, minimizing the possible impacts to habitat, and mitigating unavoidable impacts.

### **Guidelines**

The habitat assessment includes identification of habitats on and adjacent to, the site, identification of species of conservation concern that use, or may use, the habitats, and evaluations of habitat quality for those species.

#### 1. Existing habitats

Assessment of habitats includes two perspectives: site specific and the context, or surrounding landscape. The habitat assessment must first describe existing conditions onsite, and observable habitats on adjacent and nearby properties. Though decisions are made on a site-by-site basis, some of the ecological information that informs those decisions is on the landscape scale. Many species utilize a complex of habitats within the course of their life cycles; development that attempts to avoid disturbance of breeding habitat, for example, may unintentionally destroy foraging, roosting or winter habitat.

Habitat assessment requires the following:

- Soils and bedrock geology
- Habitat descriptions, including approximate acreage for each habitat type, dominant vegetation, and connections with adjacent habitat
- Assessment of habitat quality/condition for each habitat
- Approximate acreage for each habitat type that will be impaired or lost as a result of the project activity
- Quality/condition of each habitat
- Habitat evaluation of all wetlands and streams (perennial and intermittent) onsite regardless of regulatory status or jurisdiction.
- To clarify development impacts on the larger landscape and facilitate siting of conservation easements, habitat assessment includes both onsite and adjacent areas. Offsite areas can be assessed using map and air photo analysis.

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For purposes of habitat description, the Hudsonia Biodiversity Assessment Manual or the latest edition of Ecological Communities in New York State must be used (see Resources). A list of some expected habitats in the Town of Milan is appended to these guidelines.

### 2. Species associated with habitat types

Since the minimum habitat area required to sustain a population will vary according to species, probable species present onsite must first be determined. A habitat patch can then be evaluated as to whether or not it is large enough to sustain that species (see Conservation Thresholds for Land Use Planners in Resources).

Description of probable plant and animal species present should be based on field visits (formal surveys are not required at this stage) and existing information (see Resources list). The possible presence of local, state, or federal threatened, endangered, special concern or rare species is identified based on these lists. Invasive species and their extent onsite must also be identified. Certain birds, reptiles and amphibians, and plants are often good indicators of quality habitat for a variety of other species. Plant species commonly associated with the above described habitat types must be listed, in addition to species actually observed onsite. Assessment of habitat quality or condition must be included. Quality measures, depending on habitat type, may include:

- Extent (e.g., for forests or meadows)
- Connectivity with other habitats or corridors
- Age or size of trees
- Abundance of downwood, standing snags, rocks, organic debris, woody hummocks, and other microhabitat features
- Level of human disturbance (e.g., from logging, ATVs, foot traffic, etc.)
- Abundance of non-native or invasive species
- Diversity of native plant species
- Observable quality of surface water and substrates (for streams)

### 3. Species of conservation concern

For purposes of habitat assessment, species of conservation concern include those listed as:

- Endangered or Threatened under the federal Endangered Species Act
- Endangered, Threatened, Rare, or Special Concern under the New York State Environmental Conservation Law
- S1, S2, or S3 by the New York Natural Heritage Program
- Regionally rare, scarce, declining, or vulnerable in Kiviat and Stevens (2001)

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Many of the species of conservation concern are restricted to specialized habitats with particular physical or biological features. If the appropriate habitat is present onsite, it is assumed that species known to use that habitat are present or could be present in the future.

4. The assessment includes the value of the habitats for non-protected as well as protected species. This includes habitat for breeding, nursery habitat, foraging, seasonal movements, nesting, overwintering, and population dispersal.

Some criteria for evaluating these natural resources (both species and habitat) include:

- Rarity
- Diversity
- Size (critical habitat areas)
- Naturalness (level of disturbance)
- Productivity
- Fragility (susceptibility to disturbance)
- Representativeness (high-quality habitat for a variety of species)
- Importance to wildlife
- Local importance (e.g., only site in the Town with certain undisturbed habitat features)
- Connectivity to adjacent habitats and wildlife corridors
- Habitat fragmentation, both onsite and within the landscape context

The observed presence of habitat specialist species (e.g. wood vernal pool amphibians, interior forest birds) may indicate high-quality habitats where development-related impacts must be avoided, minimized or mitigated. The presence of species that are associated with disturbed habitat, along with the absence of habitat specialists, indicate lower quality habitat that may be more suitable for development.

### **Habitat Assessment Report**

The following format for habitat assessment reports must be followed.

1. Title page  
Name of subdivision, report date, applicant, name and contact information for report preparer
2. Introduction  
Project description; location map using USGS topographic base map.
3. Methods

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Sources of information (existing studies, maps); agency inquiries; aerial photographs; field visits. All onsite field observations must be accompanied by the date, time of day, and general temperature/weather conditions, locations, methods of observation, and seasonal considerations.

Please list scientific names for all species mentioned in the report.

4. Results must include

- Site overview with descriptions of bedrock geology and soils
- Habitat descriptions (see attached list)
  - Indicators of habitat quality (e.g., size of trees, degree of disturbance, invasive species, abundance of species or groups, vegetation characteristics, relationships to offsite or adjacent habitats, extent of habitat)
  - Habitat map of the site including roads, existing structures, habitat labels, contours, topographic features, and soils
  - Soils map
  - Vegetation/Wildlife List with specific locations wherever possible.

Use tables to present results for habitat types and species of special concern, as illustrated in the following examples.

Example 1: Habitat Types

Habitat Type	Size*	% of Total Site Area*	Dominant Vegetation
Mature mesophytic lowland forest	3 Acres	20%	Sugar maple, oaks (red, white, black, chestnut)
Shrubby oldfield	5 Acres	33%	Grey dogwood, orchard grass, goldenrods, bluestem
Intermittent woodland pool	¼ Acre	<2%	Buttonbush, hummocks, duckweed, algae
Perennial stream	Average width: 6 ft.; length 1000 ft.	N/A	Submerged vegetation; vegetation on bars or low banks (see text for details)

\*Approximate

Example 2: Species of Special Concern

We recommend that some of the basic information on species of conservation concern be presented in a table such as the one below. The list of species in the table need not be comprehensive, but it must include representatives of the groups of species that may use the habitats. For example, black-throated blue warbler or ovenbird could represent the interior forest-breeding songbirds; small-flowered crowfoot or blazing-star could represent the rare forbs of calcareous crests, and northern copperhead could represent the snakes of low-to-moderate elevation crests and ledges. More

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complete lists of potential species should be included in the narrative discussion. Any species of conservation concern that are known to occur (recently or historically) on or near the site must be listed in the table.

<b>Species of Conservation Concern</b>	<b>Habitat(s)</b>	<b>Quality</b>
Jefferson salamander, marbled salamander, spotted salamander, wood frog	intermittent woodland pool	High
(same)	upland hardwood forest (15 ac)	moderate (soils in eastern half disturbed by selective logging 15 years ago)
red-shouldered hawk	upland hardwood forest and floodplain hardwood swamp (total = 30 ac)	moderate (too small?)
yellow lady's-slipper	upland hardwood forest (15 ac)	low to moderate (soils in eastern half disturbed by selective logging 15 years ago; invasion of garlic-mustard)

5. Discussion

- Includes species of conservation concern that would use the site
- Overview of biodiversity
- Ecological impacts of the proposed development in the context of the larger landscape
- Relationship of existing or proposed conservation easements to habitats onsite. Conservation easements should include significant habitat and avoid incorporating small or isolated (disconnected) patches of habitat.

6. Potential impacts of proposed project activity

Include cumulative, primary and secondary impacts and stormwater management impacts. Considerations include magnitude, spatial extent, duration, probability of occurrence.

7. Recommended mitigation measures

Include mitigation measures that will minimize impacts to species of conservation concern, maintain biodiversity, limit habitat fragmentation, minimize impacts to water resources, reduce edge effects, and minimize impacts to the surrounding landscape, viewsheds, and adjacent property owners.

8. Summary

9. References cited

**Quality Control and Follow-Up**

A site visit(s) by representatives of the CAC, Planning Board, and Town Planner will be conducted after the habitat assessment is submitted. Mitigation measures for impacts on habitats/plant and animal species will be evaluated.

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The Town may require peer review of the Habitat Assessment Report at the expense of the applicant.

### **Habitat List**

Suggested habitat types for general habitat and biodiversity assessments. Habitats on any particular site in the Town of Milan may include but are not necessarily limited to these types.

#### *STREAM, POND, & WETLAND HABITATS*

##### Habitat Comments

stream Includes intermittent and perennial streams and rivers  
open water Natural ponds and lakes (i.e., undammed, unexcavated)  
constructed pond Dammed or excavated ponds and lakes  
intermittent woodland pool Vernal pool in a forested setting  
wet meadow  
wet clay meadow  
fen Calcareous low-shrub or sedge fen  
kettle shrub pool  
circumneutral bog lake  
acidic bog  
marsh Includes emergent and floating-leaved marshes  
hardwood swamp Includes forested and shrub swamps  
conifer swamp  
springs and seeps

#### *UPLAND HABITATS*

##### Habitat Comments

upland meadow Includes inactive agricultural land, herbaceous oldfields, farmed meadows, pasture, hayfield, and cropland  
upland shrubland Includes shrubby oldfield and other shrub-dominated habitats orchard/plantation  
For example, Christmas tree farm; fruit orchard; young (seedling-sapling size) plantations  
cool ravine Very deep, very narrow ravine, with rocky slopes flanking rocky stream at bottom; creating very cool, shaded environment with unusual plant and animal community  
upland hardwood forest  $\geq 75\%$  hardwood cover  
upland mixed forest  
mature upland conifer  $\geq 75\%$  conifer cover; includes spontaneous conifer stands forest and mature plantations  
crest, ledge, and talus Includes noncalcareous CLT, as well as CLT of unknown bedrock chemistry  
calcareous crest, ledge, and talus  
waste ground Abandoned soil or rock mines, active private dumps, unreclaimed landfills, post-industrial or commercial sites, other areas with stripped topsoil and little vegetation  
cultural Manicured areas lacking structure, pavement, etc.; e.g., ballfields, campgrounds, large lawns, mowed park-like areas under trees

### **Additional Information**

For procedural questions regarding these guidelines, contact Lauren Kingman, Planning Board Chair, at (845) 758 1027 or [kingman@webjogger.net](mailto:kingman@webjogger.net). For technical questions, contact Sheila Buff, CAC Chair, at (845) 758 3035 or [sheilabuff@frontiernet.net](mailto:sheilabuff@frontiernet.net).

### **Document History**

These Guidelines for Habitat Assessments were adopted by the Milan Planning Board in March 2005. They were prepared by Karen Schneller-McDonald, Greenplan Inc., CAC members Sheila Buff and Frank Margiotta, and Planning Board Chair Lauren Kingman.

Gretchen Stevens of Hudsonia Ltd. provided invaluable guidance.

Karen Schneller-McDonald is an environmental consultant to Greenplan, Inc. She holds a BS in Conservation of Natural Resources from North Carolina State University at Raleigh. Her professional training includes jurisdictional delineation of wetlands, functional assessment of wetland and riparian systems, wetland identification, raptor identification, and rare plant surveys.

Sheila Buff is a freelance writer specializing in both medicine and natural history. She is the chair of the Milan CAC. She holds a BA with high honors from Washington Square College at New York University.

Frank Margiotta, MST, MS, was appointed to the Milan CAC in 2004. His professional experience includes science teaching at the secondary and graduate school levels and biological studies of wetlands. The Towns of Huntington and Northport, the Village of Asharoken, and SUNY Stony Brook graduate biology department have utilized his research.

Lauren Kingman was a member of the 2000-2001 Milan Master Plan Committee and joined the Milan Planning Board in 2001. He chaired the Zoning Board of Appeals in 2003. From January 2004 to the present he has chaired the Planning Board. Mr. Kingman holds a BS in engineering from Cornell University and a Certificate in Landscape Design from the Institute of Ecosystem Studies. He has participated in several workshops of the Pace University Land Use Law Center and recently completed the Pace Land Use Leadership Alliance Training Program.

Gretchen Stevens is staff botanist at Hudsonia Ltd. She holds a BS in land use planning and environmental conservation from the University of New Hampshire. She specializes in wetland assessments, wetland boundary delineation, rare plant surveys, habitat evaluations, and other field biology in the Northeast and throughout the U.S.

### **Resources**

Andrie, Robert F., Carroll, Janet R. The Atlas of Breeding Birds in New York. Cornell University Press, 1988.

Edinger, Gregory J., ed. Ecological Communities of New York State, second edition. New York Natural Heritage Program, 2002. Revised and expanded edition of Reschke, Carol. Ecological Communities of New York State, 1990. Copies of this report are available from the New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233. An electronic retrievable copy (PDF file) may be obtained from [www.dec.state.ny.us](http://www.dec.state.ny.us).

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Environmental Law Institute. Conservation Thresholds for Land Use Planners. Environmental Law Institute, 2003. Copies of this report are available from the Environmental Law Institute, 200 L Street, NW, suite 620, Washington, DC, 20036. An electronic retrievable copy (PDF file) may be obtained from [www.elistore.org](http://www.elistore.org).

Howard, Timothy, et.al. 2001. Rare species and significant ecological communities of the significant biodiversity areas within the Hudson River watershed. Cornell University and the New York State Department of Environmental Conservation.

Kiviat, Erik, Stevens, Gretchen. Biodiversity Assessment Manual for the Hudson River Estuary Corridor. Hudsonia Ltd., 2001. Copies of this manual are available from Hudsonia Ltd., Bard College, PO Box 5000, Annandale, NY 12504. [www.hudsonia.org](http://www.hudsonia.org).

New York State Amphibian and Reptile Atlas Project. Various herps taxa reports. New York State Department of Environmental Conservation. Copies of these reports are available from the New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233. Electronic retrievable copies (PDF files) may be obtained from [www.dec.state.ny.us](http://www.dec.state.ny.us).

Nolon, J. Well Grounded: Using Land Use Authority to Achieve Smart Growth. Environmental Law Institute, 2001.

Soil Survey of Dutchess County, New York. Natural Resources Conservation Service, 2002. Available from Dutchess Country Soil and Water Conservation District, Farm and Home Center, 2715 Route 44, Millbrook, NY 12571. (845) 677-8011; [www.dutchess.ny.nacdnet.org](http://www.dutchess.ny.nacdnet.org)

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>>> 2/11/2010 1:58 PM >>>

One very simple recommendation that would make life a lot easier is to make the EAF forms on the DEC website fillable. Marianne Stecich

Marianne Stecich

>>> "George Potanovic, Jr." 2/12/2010 11:57 AM >>>

A 2008 decision that was rendered by the NYS Appellate Division, Third Department, Kittredge v. Planning Board of the Town of Liberty, has been raised at a recent Town of Stony Point Planning Board meeting concerning how SEQRA is implemented. I am bringing this to your attention as it may have some direct affect on how SEQRA is implemented in our region.

The Stony Point Planning Board had recently received advice, from our town planner, referencing this decision (specifically, the second point addressed by the court, below re: timing of public input). Since our land use training programs for planning board members seem to always support the idea of involving the public input early in the process, this decision raises some very disturbing issues. I am currently in conversation with our Stony Point town attorney regarding this decision and any potential change that he plans to advise the board re: how SEQRA is applied concerning public input.

I would be most interested in your thoughts on this matter and as it might apply to the current review of SEQRA process in Region 3.

Thank you.

- George

George Potanovic, Jr.  
President, SPACE  
Stony Point Action Committee for the Environment  
PO BOX 100; Stony Point, NY 10980  
845-429-2020 office

\*\*\*\*\*

It appears that the decision could affect how SEQRA is applied re: two issues addressed by the court:

1. That the Planning Board did not discharge its obligation to take a hard look regarding endangered species when it relied exclusively on two reports provided by the NYSDEC and did not conduct its own investigation.

2. The court interpreted the Town Law 276 provision regarding the timing of a planning board's public hearing on a preliminary plat. In this case, the Liberty Planning Board held its public hearing on the proposed preliminary plat before making its SEQR negative declaration. While most planning boards also wait for public input before making a SEQR determination, the court ruling indicates that the Planning Board should have not have held its public hearing until AFTER it reached a SEQR determination.

See links to the decision and some analysis below:

Kittredge v. Planning Board of the Town of Liberty  
2008 WL 5412272 (N.Y.A.D. 3 Dept. 2008).

<http://decisions.courts.state.ny.us/ad3/Decisions/2008/504955.pdf>

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Law of the Land - Blog:  
Environmental Review, Endangered Species and Timing of Preliminary

Plat Review Addressed by New York Appellate Court

<http://lawoftheland.wordpress.com/2009/01/04/environmental-review-endangered-species-and-timing-of-preliminary-plat-review-addressed-by-new-york-appellate-court/>



>>> Steve W <> 2/12/2010 2:22 PM >>>

Dear SEQR dialogue working group,

I am pleased to see a draft report which reflects such a thoughtful and inclusive process that has taken into consideration the needs of all the stakeholders. The report reflects a method by which concerned parties with different but valid goals may work together to reduce conflict.

However, I believe there is one question which remains unasked and which may throw the entire project into doubt-

\* What safeguard is there against manipulation of the system by those who have a possibility of great financial gain?

I believe that given the huge amounts of money at stake, one must begin with the assumption that there will be well organized and planned attempts to subvert the system for profit. I do not see any check built into the system that recognizes that this is not only possible, it is inevitable.

I wrote to suggest that a statewide database be implemented to track the cumulative impact of actions, and to document the records of individuals and corporations whose actions have caused environmental damage or who have attempted to evade or subvert the process. Absent some mechanism to at least monitor whether our regulations are having an impact, I think we may be putting up curtains when what is needed is a safety gate.

Thanks again for your work; I hope my comments will be helpful.

Sincerely,

Steven White  
Spring Valley Concerned Citizens Coalition

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Anonymous

This was submitted to Jonathan Drapkin with a request to forward to the working group.

One of the major financial aspects related to SEQR was the cost expense relation that a municipal could charge. I have always been told thru the years that the expense could not exceed .5% of the capital cost of a project. I am not sure if this is law, rumor or what? I have been hearing rumors that once the expense hits .5% the municipality tells the applicant we are out of money so the review just stops. The applicant is then forced to pay over and above the .5% as additional costs even thou the law has been over ridden as the applicant is in too deep to back out. I would appreciate if you could run this up the rungs and get to the bottom of the truth in this matter.

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TO: Region 3 SEQR Dialog Core Working Group  
FROM: Helene Goldberger  
RE: Draft Report and Recommendations  
DATE: February 11, 2010

. . . . .

I read with great interest your February 8, 2010 report and found much of the report very accurate and articulate in terms of identification of problems related to SEQR implementation. As a DEC ALJ and an individual who has been involved in my "private" life with SEQRA issues, I am acutely aware of the frustrations and misunderstandings of the public and local town boards in its implementation. I am delighted to see that despite the often cited position of DEC that it is not "the SEQRA police," at least in Region 3, the agency has deemed it appropriate to take the lead in trying to make the environmental review process more effective not only in terms of its own reviews but that of local towns and other lead agencies as well.

I agree wholeheartedly that SEQRA is an ineffective substitute for planning and that planning if done properly and state-wide would save both many dollars and valued environmental resources. I live in the hilltowns outside of Albany and can vouch for the fact that SEQRA is not understood or appropriately implemented in many of areas. Even if there was the will to do so, there are not the resources. Therefore, it is essential that not only is there more training but that there are people that can be called upon on a day to day basis to assist those struggling on the local level with environmental review. And, where citizens are frustrated by the lack of attention or will to properly implement SEQRA, there should be a place on a regional or statewide level that they can turn to. The ideas for DEC SEQR rider, ombudsman, hot-line, office are all good ones though perhaps pie-in-the-sky given the financial shape of our government right now.

The DEC SEQRA process includes the issues conference (assuming DEC staff refers the application for a full hearing) which can and in the past has served as a venue for discussion of objections and agreements. Also, the Office of Hearings and Mediation Services has a staff of administrative law judges trained in mediation who can facilitate discussions to resolve issues related to projects at any stage in the permit process. However, when the lead agency is not DEC, it may be appropriate to have a different entity as referenced in this report though I'm not sure why DEC ALJs could not be called upon in those circumstances either assuming there is time to give, away from other work.

From my perspective as a citizen and as an ALJ, it is very difficult for the average person to have his/her voice heard in the SEQRA process beyond a comment at a legislative/public hearing as there just aren't the financial resources available to fund attorneys, engineers, and other relevant professionals. The Public Service Commission required applications to provide funds for "intervenor" to participate in power plant siting cases. And DEC has made available environmental justice grants that can be used by community organization to address environmental threats. However, these monies cannot be used for attorney's fees or any expenses related specifically to project opposition. But if there was a meaningful way for citizens to express their views early in a project's development, as suggested by this draft report, individuals would no longer have to be shut out unless they were extremely well heeled.

Due to the often ethical conflicts that can arise in small towns, it is critical for citizens to have an office they can turn to when environmental review is cast aside in order to move the agenda of those on the inside ahead.

In terms of education, the Office of Court Administration does a lot of training on many issues. However, I am unclear whether SEQRA is one of the areas that are undertaken. Of course, the point of this report is to attempt to make changes that would avoid judicial challenges. But, where that step is taken, the lower courts in particular should be better armed to address SEQRA in their decisions. If there was a SEQR office established, perhaps it could lend some time to offering the courts some training as well.

Until I reviewed this report, I was not aware of this effort - I hope that there was truly a broad outreach to the public in Region 3 to participate. And, while Region 3 with all the development pressures on it and the recent retirement of some very key and veteran permit reviewers is certainly a good place to start on such a discussion, there should be some statement as to the intentions with respect to the rest of the State.

Of course, these opinions are mine alone and do not necessarily reflect the opinions of anyone in the OHMS or DEC. H.G.G.

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Willie,

For your consideration, I have flagged several small issues in the draft recommendations. These are all very minor but in the interest of putting forth the very best document, I wanted to bring them to your attention.

Jeff

- 1) Page 12... Mark Castiglione quote. At the top if the quote change "its" to "it's a"
- 2) Page 12... Under a) add a hyphen to change "science based" to "science-based"
- 3) Page 13... Middle paragraph (under lettered items) It says "Note should be made that..." You might want to drop that phrase and just start with "A large number of municipalities..." It's just more direct.
- 4) Page 14... first full paragraph. "As such, too often environmental assessment, as mandated by SEQR, has become a dominant or replacement activity against genuine planning...." Not quite sure people will understand this. Perhaps there's a simpler way to say it. Maybe "...has been used as a surrogate for planning."
- 5) Page 14... same paragraph. In the second to last line you might replace "conspire against" with "undermines" (or some other word or phrase) because "conspired against" was also used at the top of the very same paragraph.
- 6) Page 19... top line of the page, change "scoping" to "scoping" Typical thing that spell check misses.
- 7) Page 20... Letter a), consider changing the last word from "issues" to "constraints."
- 8) Page 22 Jeff Anzevino quote. Although this is my quote and was probably transcribed correctly, I suggest that you add "without" as it more clearly articulates our concern. It should read: "In our experience, projects that are fully designed without prior discussion with members of the public--and without an openness to make modifications--..."
- 9) Page 23... Under 8a. change "regional significant" to "regionally-significant"
- 10) Page 24... Under 9a. change "as well as oversee it ongoing activities" to "as well as oversee its ongoing activities"

Jeffrey Anzevino, AICP

>>> Mark Doyle <> 3/8/2010 11:22 AM >>>

Following my previous comment, I'd like to add some detail.

Having attended numerous training sessions over the past 15 years, I can summarize the advice of organizations and individuals such as Hudsonia Inc., Michael Klemens, Dutchess Land Conservancy, Pace Land Use Law Institute and Cornell Cooperative Extension Dutchess County, as the following:

For Major Projects:

In order to avoid parties "digging in" to fixed plans as a result of having invested hundreds of thousands of dollars up-front....there must be a requirement to fully research and assess the current conditions of the site before any official discussion or presentation of plans occur. Furthermore, the results of this research should be assessed and issues prioritized in order to rank the level of importance of integrating any one issue in the planning phase.

The first step would be a form of "scoping", but this would occur at the very beginning of the process. The developer would then gather relevant data and document environmental conditions of the site and surrounding area.

The next step would be a pre-planning/application / design integration meeting with the Planning Board and public in an informal meeting, allowing for public input. Utilizing the information gathered, conceptual layout and overall objectives would be discussed. conservation priorities would be established.

Thereafter a series of conceptual presentations to the Planning Board would narrow major differences between parties.

At this point the Planning Board would establish the alternatives to be studied in the DEIS and allow the developer to proceed with the DEIS.

The existing process follows hereafter.

Perhaps this process can be achieved via SEQR, as it is unlikely that Towns would uniformly implement such a rule.

Thank you for the opportunity to comment.

>>> Laura McDonald <> 3/10/2010 2:22 PM >>>

I have reviewed the draft and want to commend the working group; this had to be a difficult task, with so many viewpoints to consider. The resulting 'report and recommendations' is a good product, a good start.

I have one small comment, regarding the Best Practices manual described on page 18. Under the topics to be further described (a bullet point under 'a. Best Practices Manual'), these follow the current standard topics, which in some cases may limit evaluation of impacts without considering recent research/information. For example, the addition of the following topic updates might be considered: watersheds, biodiversity, and plant and animal species of conservation concern. (Note: a good example of a simple, easily applied working definition of 'conservation concern species' is provided in "Protecting Nature in Your Community", K. Strong, DEC 's HREP).

The consideration of a well-defined but broader spectrum of species of conservation concern would also relate to assessment of impacts on biodiversity. This would help to update the type of information typically considered in environmental impact review, rather than restrict discussion to the more limited 'threatened, endangered, and special concern species'.

Similarly, the consideration of wetlands within the functional context of watersheds, and the evaluation of impacts on watersheds as well, would serve to improve the assessment of impacts on water resources as a whole. A fact sheet or best practices recommendations on these topics would I think be valuable for local municipalities.

Again, good work on a most challenging task!  
Karen Schneller-McDonald

>>> <> 3/10/2010 7:50 PM >>>

Please accept my personal comments on the Draft Report and Recommendations dated February 8, 2010:

1) Recommendation #1 proposes expanded use of GEIS. Expanded use of GEIS could potentially restrict public comment in the long run. If by using GEIS no further SEQR compliance is required, the public is deprived of the the ability to comment on a specific project when details of that project become available. And while an SEIS could be required when a specific project is proposed, that is not likely to occur in the majority of cases.

2) Recommendation #2) proposes to make information on biodiversity studies and habitat assessments available online but should be expanded to make all information relating to a project available online. Every document relating to a project prepared by the Lead Agency, developers and their consultants as well as correspondence to and from interested and involved agencies should be available online in addition to the suggested biodiversity studies and assessments.

Doreen Tignanelli

I would like to elaborate on my Comment #1 to post online all documents relating to a project. The fact that some documents may contain sensitive information is not reason enough to eliminate posting from consideration. The majority of documents will not contain specifics on threatened or endangered species or the location of sensitive archaeological sites. Documents containing sensitive information can have a redacted version posted online.

Doreen Tignanelli

From: Ralph Maffei [□](#)  
Sent: Thursday, February 18, 2010 8:07 PM  
To: Lanigan, Atticus  
Subject: SEQR Dialog Paper

Atticus, I gave members of the BG Planning Board a copy of the subject paper and asked them to convey any comments, suggs, etc to you or Pat Brady our emgineer.

One request I did get is to ask DEC to publish an updated SEQR "Cook Book". Seems that its an indespensible tool for lawyers and other admin folks.

Ralph Maffei

>>> David Porter <> 3/11/2010 1:53 PM >>>

The following are specific comments responding to the draft recommendations produced by the Hudson Valley Catskill Regional SEQR Dialog:

1. Item 1.d. (p. 12): Caution is needed in assuming that a GEIS will always enable “more timely SEQR review.” Quite often, such documents are so broad in nature or so outdated that site-specific detailed review, using the latest methodology will still be needed. GEISs are helpful but should not be assumed to automatically provide “shovel-ready” green lights for sites falling later within their area scopes.
2. Item 1.i. (p. 13): The above comment is relevant for this item as well. It is rare that comprehensive plans are so specific that they negate the need for SEQR examination of site plan details.
3. Item 3.a. (p. 18): (A) Encouragement of citizen participation should include the posting of all project documents on the lead agency web site from the earliest time forward (Problems with FOIL delays, withholdings and citizen aggravation were cited by many panel participants). (B) Information about methodologies should be flexible enough to allow regular updates since more sophistication about issues and analytical techniques occurs as time goes by. (C) Best procedures should include the continued opportunity for citizen (and outside expert) input on impact analysis even after the official public hearing or public comment period, and such input should be included in the official record to be acknowledged and considered when the lead agency makes its findings. This continued participation is essential for assuring reasonable quality of analysis.
4. Item 5.a. (p. 21): Timeline suggestions must be stated as merely suggestive since it is often impossible to determine, at the beginning of the process or even at the scoping stage, how much time may be needed for reasonable levels of analysis on particular issues.

Many thanks for your consideration of these comments.

David Porter

Hudson Valley Catskill Regional SEQR Dialog  
Comments on Draft Recommendations

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George Janes

March 11, 2010

Region 3 SEQR Working Group

Via Email

RE: Comments regarding SEQR Dialog Draft Recommendations

Dear Members of the Region 3 SEQR Working Group:

Thank you for taking the time to develop recommendations for improving the SEQR process. I work in Region 3 as a consultant specializing in Visual Resource Assessments and have worked for lead agencies, applicants and opposition groups in DEC Regions 1, 2, 3 and 4.

I support virtually all the recommendations made in your February 8, 2010 draft recommendations. I offer the following relatively minor comments for your consideration.

**Recommendation 1 Incentivize Planning**

I agree that, “*SEQR is an inadequate substitute for good local and regional land use planning.*”<sup>1</sup> Most professionals recognize that there are rarely enough resources at the local level to do forward-looking, pro-active land use planning and, at times, SEQR has functioned as an awkward substitute.

Sub-points C, D and I under this recommendation seem to be suggesting lowering the SEQR bar or “*streamlining SEQR*”<sup>2</sup> for local governments as an incentive to create local plans. I encourage the working group to consider carefully the possible unintended consequences of such an action.

I believe that both professionals and the public have their confidence in SEQR undermined when it is applied unevenly. Some local governments that are both applicant and lead agency—in practice—already hold themselves to a lower standard when compared to private applicants in the same jurisdiction. For example, a community might recognize that an impediment to economic development is the uncertainty of environmental reviews and as a response they proactively conduct environmental reviews so that they have sites that are “shovel-ready.” This may be in keeping with the community’s vision for itself and consistent with its comprehensive plan, but too often the environmental review conducted by the Lead Agency for itself as applicant is less thorough than the same review sponsored by a private applicant.

I believe that if local governments are rewarded for, “*forbearance or minimization of further SEQR review when specific plans are proposed which conform to the community Plan,*”<sup>3</sup> this forbearance or minimization will make its way to unforeseen actions and many environmental reviews may become less thorough. Perhaps that is the intention of the Working Group, but I hope not.

It is my hope that there is recognition that an uneven application of SEQR—holding government to a different standard than private applicants—while perhaps expedient in the short-run by alleviating resource pressure on governments, ultimately undermines the public’s faith in our system and thereby weakens SEQR in the long-run. I encourage the Working Group to rethink “lowering the bar” for local governments as a carrot to encourage good planning. The environmental impacts of all

## Hudson Valley Catskill Regional SEQR Dialog Comments on Draft Recommendations

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plans need to be evaluated thoroughly, regardless of how they are prepared and their level of community support.

### **Recommendations 2 through 4**

I agree with the recommendations on increasing education and training, providing regional SEQR guidance, and increasing the availability of DEC staff to provide SEQR advice. The major impediment to these recommendations, considering the State's current budget situation, is the high probability of decreasing resources for such activities.

The Working Group should consider calling upon consultants who work in the field to help close the gap. Many of us work at firms that encourage, or even require, some kind of community service and that providing direct assistance to communities, conducting trainings, or otherwise making our expertise available to local governments, or even to small private applicants, would fulfill such public service requirements. As Drayton Grant was quoted as saying, "*consultants are often the only ones making money.*"<sup>4</sup> Perhaps it is time that some of the consultants started to give back to help improve the process. Any private effort to close this resource gap would have to be coordinated by the Working Group or other third party, but regardless of structure, it would likely bring more resources to bear on the expertise gap than any solution that relies upon State funding, considering the realities of the State budget.

For example, my firm has prepared "*Visual Simulation under SEQR*" a primer that describes the various techniques appropriate for producing visual simulations for environmental reviews. It is a highly graphic, unpublished document that I use to help my clients better understand their choices when it comes to developing a Scope, and evaluating visual resource assessments. Many professionals in the field have similar resources, which if centralized and documented could go a long way to adding content to help close the expertise gap.

### **Recommendations 5 through 8**

All are excellent recommendations and have my unequivocal support.

### **Recommendation 9**

I agree with the sentiment of Larry Wolinsky that, "*if we want to improve and enhance the SEQR process in the Hudson Valley we (a coalition of stakeholders including government) must do it ourselves.*"<sup>5</sup>

I also agree that a Voluntary DEC Regional Working Group should be established. The structure of this group needs to be carefully considered, however. I am concerned about the recommendation to have Scenic Hudson, Patterns for Progress and DEC "*oversee its ongoing activities.*"<sup>6</sup> Ideally, such a Working Group would be ad hoc committee of stakeholders that would be responsible for its own membership and oversight. As stakeholders, DEC, Scenic Hudson and Patterns for Progress should be members, but should only oversee the efforts of Working Group if other members select them to do so.

I believe that there is a powerful potential for the professional practice—those of us who produce and review environmental impact statements for a living—to lead change in this arena. Probably better than any other group, professional practitioners know what needs to be done to streamline SEQR for the benefit of all. I am less convinced that Patterns for Progress, Scenic Hudson, and, indeed, even DEC are able to bring the same breadth and depth of experience to this effort. Further, recognize that

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Scenic Hudson is an advocacy organization with a mission that has put it at odds with other stakeholders who are a part of the Working Group. It simply cannot be appointed as one of the organizations to oversee the Working Group. Indeed, regardless of content, I believe that there are many who would immediately question a Best Practices Manual produced by any group Scenic Hudson oversaw, simply because of its mission and history of opposition.

There is enough risk in an appointed leadership that the Working Group should be organized as an ad hoc committee of stakeholders that selects its own leaders. It is only with self-governance that the Working Group will have the legitimacy required for successful acceptance and implementation of a Best Practices Manual. Self-governance also provides the Working Group independence to consider issues that are outside the initial direction of DEC Commission Grannis.

**Close**

Finally, I encourage the Working Group to think bigger. In 2007 Richard Ravitch, wrote:

“The [environmental review] process has lost its connection to good planning. Instead, it has become an expensive and time-consuming annoyance to large projects and a potentially project-ending burden to small ones. Environmental review today is a wide-ranging effort to identify „impacts” for the purpose of legal disclosure only. It is not the planning activity that people commonly assume it to be, nor is it one that New York desperately needs . . .”<sup>7</sup>

Mr. Ravitch really does “get” SEQR, and he is now our Lieutenant Governor. His time in office may be a window that is not soon repeated to initiate bold, legislative change in SEQRA that addresses fundamental issues directly. The efforts of the Working Group are necessary and admirable, but more immediate, fundamental change to SEQR could occur through legislative changes to SEQRA. It is during times of crisis that real change can occur; now is the time to be more ambitious.

Thank you again for all of your efforts and for the opportunity to comment on the draft recommendations of the Working Group. This effort has made me optimistic that many of us share common values on this topic, and it is through these common values where we will find common ground on ways we can make SEQR work better for everyone.

Should you have any questions regarding this letter or require further input or assistance, please do not hesitate to contact me directly.

Sincerely,

George M. Janes, AICP  
Principal

Hudson Valley Catskill Regional SEQR Dialog  
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LAW OFFICES  
**FINGER & FINGER**  
A PROFESSIONAL CORPORATION

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March 10, 2010

Memorandum: Re: SEQRA CORE GROUP DRAFT REPORT AND RECOMMENDATIONS  
dated February 8, 2010

Analysis by Kenneth J. Finger, Chief Counsel to  
The Building and Realty Institute of Westchester & The Mid-Hudson Region  
(BRI)

To: Albert A. Annunziata, Executive Director

Introductory Comments:

We have previously advised the Core Group that we strongly object to the composition of the Core Group which, of necessity, will have an impact on the ultimate determination as well as the recommendations of the Core Group. The failure to have adequate and in fact no real estate, builder and developer representation (other than the one representative from the BRI, a trade organization) not only skews the process but calls into question the credibility of any recommendations from the group. The fact that a co-chair was added to represent one segment of the SEQRA community while again ignoring the building, real estate and development industry exacerbates the one sided nature of the composition of the Core Group.

Additionally, the failure to acknowledge the structural, statutory and regulatory problems inherent in the SEQRA process is a significant problem and leads to our suggestion that there should be recommendations for statutory and/or regulatory reforms and changes in order to return SEQRA to its intended purpose.

We believe that the SEQRA process is “sick” and there is nothing recommended herein that can act to cure it. In addition to the identified problems of lack of timely review, extended and never-ending adjournments and delays and over-reaching and irrelevant scoping, the basic and overarching problem with the SEQRA process is that, as the problems cited emerge singularly or collectively, the developer applicant has no recourse. The lead agency is the prosecutor, judge, jury, and appellate court with respect to all issues, unless and until a finding statement is issued. It means that the developer/applicant is the captive of the lead agency and has no recourse for relief even if a lead agency is unreasonably delaying the project for many

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months or even years, and is unreasonably adding hundreds of thousands of dollars of developer costs to the process.

This is a report which is presumably intended to provide “recommendations regarding potential improvement to the implementations of the State Environmental Quality Review Act (SEQRA) in the Hudson Valley and Catskills” However, the recommendations of this group are not adequate to either address or cure the process and identified problems.

The report is advertised as having been produced by “...a diverse group of citizen practitioners”. In fact, its so called “diversity” is a misnomer inasmuch as it included only token representation of the private and non-profit sector of the development community; i.e., those most affected by the problems of the SEQRA process that the group which was convened was asked to address. Can one imagine a group which was assembled to address problems with say, the State Building Code...and the group did not include a significant number of engineers and architects who daily struggle with the code provisions that were intended to be reviewed?

This report fails to initially identify the problems and why it was deemed necessary in the first place to convene a group that would make “recommendations for improvements to SEQRA.” While the report accurately informs that there were, over a 3-month period, numerous oral and written presentations by many “stakeholders”...what it fails to do is to catalogue the problems with the process that many of these stakeholders had cited, among which are:

- On the whole, SEQRA timeframes are both ignored, and in some cases, unrealistic. They need to be revised in order to provide realistic review periods at each stage, and then to be established as specific requirements which, if exceeded, result in automatic approvals and default to proceeding to the next stage.
- The Scoping process, rather than fulfilling its purpose of narrowing and focusing an EIS to examine in detail those impacts which are potentially adverse and significant...instead becomes a potpourri of requested tasks simply offered up by project opponents interested only in delaying and complicating the process.
- All too often the review process is conducted by lead agencies who wave through projects that are locally popular or which have well connected supporters; and delay, obstruct and eviscerate projects that do not rate high in a local popularity contest.
- The SEQRA regulations are often interpreted in the same way for a minor application such as a subdivision with a small number of lots as they are for major application, whether they be from the private sector or the public, such as the reconstruction or replacement of the Tappan Zee Bridge.
- The delays in the review process are seriously inhibiting economic development...an objective which led the State administration to seek changes which would streamline State regulations and the review processes.
- Virtually, all of those providing testimony agreed that there could be improvements to the process that would not in any way diminish the overall objective of protecting the environment and mitigating to the maximum extent feasible any significant adverse impact resulting from development. Note must be taken of the regulatory status set forth above;

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- Full environmental impact statements are often required for small projects, which will have small impacts which are mitigated by the project plan...with the basic reason for the decision being that nearby neighbors object to the development.
- Projects which are totally “as of right” are asked to consider any number of alternatives without any regard for whether or not there are significant adverse impacts that cannot be mitigated, and which therefore might justify a consideration of alternatives. This frequently occurs in total disregard of the DEC-SEQRA Handbook which advises that in the case of private development applications, the developer can only be asked to consider alternatives which meet his or her objectives and which are within the developers ability to achieve; e.g., a developer cannot be asked to consider alternate sites not under his or her control.
- A developer has no recourse in terms of an appeal if a Scoping Document requires unreasonable or unnecessary studies to be undertaken. Again, the lack of time constraints and inability to have a “final determination” leaves the applicant without judicial recourse.
- The initial review of a draft Environmental Study (DEIS) first submitted by an applicant is too often the subject of multiple review iterations which can take place for as long as several years. Again, often ignored, is the DEC SEQRA Handbook advice that advises that a DEIS does not have to be perfect, or found to fully review every subject, in order to be determined to be sufficiently complete for the initiation of the public review process.
- The public hearing and public comment period is often extended far beyond the SEQRA regulatory timeframes. Numerous stretched out hearings are held despite the fact that the testimony becomes repetitious and primarily focused on basic visceral opposition to the proposal.
- The written comment period is frequently extended far more than necessary, particularly in view of previously long and multiple public hearing sessions.
- There is great confusion as to the appropriate role of the developer applicant and the lead agency with respect to the preparation and review of a Final Environmental Impact Statement (FEIS).
- Lead agencies often ignore the fact that an FEIS is not a de-novo DEIS, and that it should not be reviewed for completeness in that context.
- Lead agencies often fail, at the outset to inform developer applicants of those public comments, and those of agency members and their consultants, which they believe should be the focus of FEIS responses, and consideration of any alternatives or additional mitigation which should be presented in the document.
- Lead agencies, on occasion, add conclusory text to an FEIS which is unsupported by any hard and verifiable information which is in the record, or which has been added to the FEIS. For example, reliance on lay citizens testimony that technically produced projections on traffic generation or public school pupil generation are “too low”, without any facts or data to support the challenged assertion.
- The requirement that an FEIS need only respond to substantive comments is often ignored.
- The SEQRA regulatory timeframe for producing a Findings Statement is often ignored.
- There is often a lack of adherence to the basic premise that a Findings Statement needs to be solely based on hard and verified information which is in the SEQRA environment review record.
- There is no required provision for requiring that a developer applicant be given the opportunity to review and comment at an intial stage on a draft Findings Statement and

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suggest modifications and/or corrections where necessary to assure not only completeness but accuracy.

The above represents a summary of the major difficulties with SEQRA and these problems and difficulties should be identified in the Core Group recommendations at the initial stage thereof to set the framework for the recommendations.

Comments as to the Recommendations:

1) Fax covering note from Janeway, Drapkin and Sullivan

a. First paragraph as to ideas of “streamlining SEQRA without compromising environmental protection or public participation,” note that nothing is stated about “economic development” or “housing needs.”

b. Fourth Paragraph, fifth line down where it states, “improved adherence to timeliness,” the addition of “and timely reviews with default ‘sanctions’” would seem to be in order.

2) Executive Summary of Report dated February 8, 2010

a. See (a) above for first paragraph of executive summary.

b. Draft Recommendations:

i) 4) Is the availability of the “Ombudsman” limited to communities? What about the applicant / developer?

ii) 5) We suggest that in addition to setting “regulatory and anticipated timeframes” that there be a suggestion as to the consequences of not meeting the timeframes, such as

*Strict time frames must be established with a “default” approval in the event that the time frames are not met -----....*

iii) 6) There needs to be a limitation on scoping so as to avoid, e.g., the “traffic study for an intersection miles away....” The necessity for a proper, relevant and limited scoping process is necessary.

3) Introduction

The introduction incorporates the Legislative “purpose” (in italics). However, one should also consider the Regulations, which were adopted pursuant to the regulation and provide as follows:

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6 NYCRR 617.1

N.Y. Comp. Codes R. & Regs. tit. 6, § 617.1

COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
CHAPTER VI. GENERAL REGULATIONS  
PART 617. STATE ENVIRONMENTAL QUALITY REVIEW

Current with amendments included in the New York State Register, Volume XXXII, Issue 4, dated January 27, 2010.

**Section 617.1. Authority, Intent and Purpose**

(a) This Part is adopted pursuant to [sections 3-0301\(1\)\(b\), \(2\)\(m\) and 8-0113 of the Environmental Conservation Law](#) to implement the provisions of the State Environmental Quality Review Act (SEQR).

(b) In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(c) The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(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 SEQRA that environmental factors be the sole consideration in decision-making.

(e) This Part is intended to provide a statewide regulatory framework for the implementation of SEQRA by all state and local agencies. It includes:

(1) procedural requirements for compliance with the law;

(2) provisions for coordinating multiple agency environmental reviews through a single lead agency (section 617.6 of this Part);

(3) criteria to determine whether a proposed action may have a significant adverse impact on the environment (section 617.7 of this Part);

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(4) model environmental assessment forms to aid in determining whether an action may have a significant adverse impact on the environment (Appendices A, B and C of section 617.20 of this Part); and

(5) examples of actions and classes of actions which are likely to require an EIS (section 617.4 of this Part), and those which will not require an EIS (section 617.5 of this Part).

6 NYCRR 617.1

Note should be taken of the underlined portions indicating that there are other factors to be considered, including “economic considerations.” The failure of the Core Group recommendation to consider this is a serious deficiency.

4) “Comments”

It is noted that the comments by various members of the BRI, including Gus Boniello, Susan Fasnacht, Kenneth J. Finger and others were apparently not considered as they are not listed in the section as to “individuals / groups submitting comments to the working group” although each of these individuals identified themselves.

5) Draft Recommendations for Improving the SEQRA Process

Incentivize Planning

While as a general proposition no one either opposes or can oppose comprehensive planning, this ignores the existing statutory and regulatory framework that is already in existence to assure comprehensive planning. What is needed is a commitment to follow and comply with regional and local comprehensive plans, a commitment that is sorely lacking when an unpopular project, within which is consistent with an adopted comprehensive plan, comes before a lead agency.

Also, far too often comprehensive plans are seen as a tool for maintaining the status quo, rather than as a plan that truly provides guidance for future balanced development, installation of public infrastructure in advance of development, and as a positive force addressing affordable and workforce housing as well as special needs housing.

Historically, comprehensive plans have a very short shelf life, have seldom truly influenced sound development and the communities feel free to ignore and modify them to meet the objection of the day. There is nothing in these proposals that would either provide incentives or requirements for municipalities to depart from ad-hoc decision making and to instead utilize comprehensive planning as the basis for sound land use and capital improvement decisions. Moreover, there is nothing in either the testimony nor the suggestions to assume that even if there were good comprehensive planning, or if any or all of the proposals of other plans (i.e., Local Waterfront Revitalization Plans; Guidance on Planning, for example) were to be followed, that it would in any way be a cure for the ills of the SEQRA process unless there were statutory or regulatory requirements to compel compliance.

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a. Promote Effective Comprehensive Regional Planning and Consolidation of Services

While this is a laudable goal, it does nothing to cure the problems identified above as to the administration of SEQRA. Historically, the history of regional plans and regional planning agencies has been that their efforts are mostly ignored. An example is the regional plan developed during the Rockefeller administration by a Pattern for Progress, Regional Plan Association team with considerable funding from the New York State Urban Development Corporation. The plan most intelligently emphasized the desirability of concentrating and strengthening development in the mid-Hudson urban centers: Poughkeepsie, Newburgh, Middletown and Prot Jervis. A brief trip today to the centers of those communities will clearly establish that the plan was mostly ignored, and that the subsequent growth and development occurred in the surrounding communities at a considerable distance from the urban centers. Simply, regional planning without teeth is a purely academic exercise.

Consolidation of services is a concept that without question, merits consideration for any number of good reasons. But, history has shown that municipalities, school districts, and other districts almost uniformly opt to preserve their independence and home rule turf. What is proposed here is an admonition to “be smart” and “be good” and it has little chance of leading governments to the promised land of greater efficiency and lower costs to the taxpayer. Moreover, once again, there is no discernable nexus between these “generic” proposals and the SEQRA process and the ills associated therewith.

b. Provide Incentives for Municipal and Intermunicipal Planning

Once again, reference is made to the probability that local municipalities will not generally agree to give up any element of home rule, particularly as to land use issues. Moreover, while “incentives” are suggested, not one specific is provided as to what incentives. This has no nexus with the objective of improving the SEQRA process.

c. Expand Greenway program type “indemnification”

To suggest “state indemnification,” which presumably is a monetary “incentive” or payment is not realistic in this environment. Moreover, it inhibits recourse to the courts by a concerned citizen or applicant. Also, it is not remotely related to an improvement in the SEQRA process. Finally, it is difficult to fathom how this could be implemented without a statutory or regulatory change thus violating the transmittal letter ground rules which asked only for recommendations that could be accomplished “...within a short time frame without legislative or regulatory changes.”

While this suggestion is not related to the SEQRA process, it also does not appear to be realistic:

- It asks the State to indemnify municipal actions that the State has not reviewed and approved in the first place.

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- In the highly unlikely event that the State legislature would ever consider such a proposal, it would no doubt require State approval as a condition of the “Indemnification”. Thus, the entire process would be significantly extended rather than made more efficient.

- It is not a viable nor laudable precedent as it would appear to relieve an agency for the responsibility for its own actions.

d. Expand Use of GEIS’s

These have been available since the inception of SEQR. They have proven to be of limited value.

The recommendation suggests that an unidentified entity would “provide guidance and information on how to pay for and recoup funding needed to complete GEIS’s.” Again, it is unrealistic that in this economic climate the State would undertake to provide such funding, which in any case would require legislative action. Moreover, if the intent is to require private sector developers to contribute, even if there is statutory authority for same, it must be accompanied by a requirement that, once a GEIS for which a developer had provided funding is completed, a full EIS would absolutely not be required for a subsequent project that was consistent with the GEIS, and that the SEQRA (long-form) review of the project would be, by regulation, limited to internal site design impacts. However, again, statutory relief is necessary for this to be implemented.

e. Provide Guidance on Planning.

This is virtually one of the few recommendation where no legislative or regulatory change is necessary. However, does the local DEC have the manpower to implement this and if so, will it also be available to applicants, and if not, why not?

f. Expand Shawangunk Ridge “Green Assets” initiate to other areas.

Will this serve to assist us in dealing with SEQRA’s problems?

g. Advance completion of LWRP’s

This appears to satisfy some local community’s objectives, but is has no relationship to the improvement of the SEQRA process.

h. Secure State Funding to Support Planning.

This is an absolutely laudable but totally unrealistic goal.

i. Reward Local Governments who Proactively and Comprehensively Plan

Once again, this is laudable but does not address who should provide the reward?

\*\*\*The recommendation claims that SEQRA GEIS provisions provide for a “...forbearance or minimization of further SEQRA review when specific plans are proposed

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which conform to the community plan.” This is not at all clearly spelled out in any SEQRA regulation...and certainly has not been the case in actual practice but if it can be implemented without statutory or regulatory modification, we support this goal as one that might well deal with some of the SEQRA problems identified above.

Further Recommendations:

1. Additional Discussion regarding the need to develop incentives for planning

The entire discussion totally ignores a frank review of the political structure of local government in New York State. A Comprehensive Plan has no meaning unless it is implemented by the municipality’s zoning ordinance and some formal capital budget process. Zoning and capital budgeting are a function of the local elected officials, a body which can change every two years in villages and towns. Thus, a long range Comprehensive Plan has no real meaning other than to be pointed to when it happens to support or oppose a particular project proposal. The quote as to the claim that a local municipality that has already and inventoried its natural resource systems is best equipped to streamline SEQRA does not comport with either the statutory or regulatory requirements. SEQRA can only be streamlined by strict time limits, default advances to the next stage and a requirement that the municipality follow existing comprehensive plans, zoning and building codes and moreover, the assurance that if the proposal is in compliance with those documents and all local laws, rules and regulations, that a full EIS be limited to an examination of internal site impacts and their proposed mitigation.

2. Expand SEQRA Education and Training

Can this guarantee a good faith review with strict compliance with statutory and regulatory requirements to the exclusion of NIMBY objections? While education and training is always useful, it cannot provide a cure to the SEQRA issues without regulations that depoliticize the process. All the training and education in the world will do nothing unless the penchant to waive popular projects through with a minimum of delay while causing unpopular projects to go through a multi-year multi delayed SEQRA process, is eliminated.

A DEC Regions 3 website would be particularly useful if it served to eliminate unnecessary “scoping” and EIS investigations. Similarly, an annotated EAF, if there were a commitment to acceptance, would be a useful tool.

If the Manual which provides important interpretations were to be developed, as well as an Ombudsman were available for the applicant as well as the community and objectants, then it might well meet help to address some of the ills pointed out earlier. The recommendation, however, only appears to indicate that the DEC Region 3 ombudsman would not be available for an applicant – an omission that feeds into the concept that the real estate owner, builder /developer is nothing but an encumbrance to this process.

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3. Produce Regional SEQRA Guidance

Inasmuch as SEQRA is governed by a State statute, State regulations and case law emanating from New York State courts, it is questionable as to whether Region 3 can produce a meaningful manual. Updating the SEQRA handbook and development of technical manuals for State-wide use could be a helpful step forward and, if this is a first step, it is supported. However, in order for it to be useful in dealing with the varied and many SEQRA issues, it is suggested that this manual must provide interpretations which:

- De-politicize the process.
- Streamline SEQRA reviews so that the focus and detail is limited to likely and significant potential impacts.
- Protect the natural environment, while considering human social and economic needs, along with a recognition that development will by its very nature alter the natural environment, and that mitigation must be limited to that which is absolutely necessary and feasible within the means of the applicant.
- \* Inform that while “green” and “sustainable” development are laudable objectives, they are not by either the SEQRA statute, or the regulations, a required topic of examination. Further, the degree to which a project meets these criteria is wholly subjective and thus should not be suggested as a review topic in any SEQRA handbooks, web-sites, training documents etc.
- \* Dispute Resolution. The BRI has, previously, suggested a forum for dispute resolution and a draft of the proposed statutory / regulatory modification was previously provided. ADR can be used not only for dispute settlement, but also as an appeal process during the pendency of the process. While not an item for the “manual,” it could be utilized by the Regional DEC.

4. Increase Availability of DEC Staff to Provide SEQRA Advice and Help to Communities

First, once again, the question is posed as to why is DEC staff limited to communities with guidance and advice? It is submitted that an applicant should also have the ability to request advice as well as advisory opinions which would be provided to a lead agency on particular issues arising during the review process. ADR could also be a useful tool in this regard.

As to the issue of resources, one should consider federal Community Development Block Grant assistance which permits the use of funds for planning activities.

5. Emphasize Timelines in the SEQRA Process

Strangely, this section starts with a quote from Albert Annunziata pointing out the need for affordable, work force housing. The quote is certainly accurate, and was offered in the context of the need to improve the SEQRA process as in many instances it is now is used as a tool for impeding the development of affordable housing. However, what is not included are all the relevant comments by Annunziata regarding timeliness, scoping and the like.

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This timeline section is grossly inadequate. It in no way deals with the fact that in all too many local SEQRA reviews timelines are ignored and the requirement for expeditious review is totally abused. If SEQRA is to be improved, realistic time-lines that must be followed need to be clearly incorporated in the SEQRA regulations, with default approvals automatically applied when timelines are violated. While DEC may not be able to implement these time lines by itself, certainly attention should be paid to the fact that this is the primary issue which was raised by virtually every speaker who has experienced the SEQRA review process in some capacity. Discussing the necessity for same does not serve to provide a meaningful solution to what is a pervasive problem. Rather than suggest that “lead agencies should publicly discuss and set forth regulatory and anticipated timeframes,” we suggest that this group make recommendations as to such regulatory changes and timeframes. Moreover, in addition to time frames, a default sanction should be established providing for automatic approval in the event the time frame is not complied with.

The Nolan quote of the applicable section of the Statute is correct and his conclusion that there should be expedited proceedings is correct. However, what is lacking is the obvious conclusion that, the same regulations which carry out the Statute’s requirements that “reviews be conducted as expeditiously as possible” – have been found to be inadequate. Addressing the timelines issue needs to be a priority recommendation of this body if its purpose is at all to be carried out. It is woefully inadequate in this Core Group draft.

Merely saying that timeliness must be “emphasized” in the SEQRA review process is insufficient given the significance of this issue. Guidelines are all well and good, but must have teeth to be followed. We support guidelines and support compliance with those guidelines. However, we do not see any suggestions as to how these guidelines will be promulgated, by whom and how implemented. The requirement of strict time frames for various stages, including a default provision, would be most beneficial to streamline the process.

6. Encourage Early Dialog among State holders

The recommendations here and the “snippet” quotes are indicative of some fundamental differences in terms of what the SEQRA process should be all about when considered in the context of the presentations of its proponents at the time that it was first considered by the State Legislature, and the fact that it has become an instrument of delay by opponents to a project rather than a tool for the protection of the environment, mitigation of potential problems balance by the consideration of the economic considerations required by the Regulations. As pointed out by many of the speakers, the differences mirror the varied points of view and among others, are:

- There are reviews of major public and utility projects having region and state-wide implications e.g. the Tappan Zee Bridge replacement alternatives; large power plants; gas pipelines etc which should consider the early input of the various stakeholders given the massive size of the project. These projects certainly require the early and continued involvement of all segments of society;

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- There are reviews of projects where the lead agency, is also the developer – e.g NYSDOT highway improvements, School Board projects. These are projects where public funds are to be expended and consequently a good deal of public input from the start is desirable.
- Private Developer Projects where significant land use changes are proposed and which will produce significantly greater impacts than what would be experienced under existing regulations are projects where the input of the sponsor, public and others considering the alternatives and its mitigation proposals should be the subject of early discussions with the lead agency and groups that might be interested in, or affected by its impacts.
- These differ from the private developer projects whose plans requires no zoning changes, variances or other than routine permit approvals: Here, the SEQRA statute was intended to provide a more efficient one-stop review of all impacts prior to an approval decision by the lead agency and involved agencies. These projects do not need extensive and early inputs from individuals and groups who are not truly “stakeholders,” as the only important “stakeholder” is the developer applicant who has invested large sums with an intent to develop a project in accordance with all applicable governmental regulations. The SEQRA review here should simply be focused on an examination of internal site plan impacts and whether they are mitigated to the extent feasible. In such instances the current practice of fostering a process in which there is a long drawn out and grossly excessive public participation is an abuse of the original intent of the state legislature.

7. Employ Greater Use of Mediation to Resolve Disputes

Mediation and ADR has been proposed by the BRI in its submission to the Core Group. However, mediation through the courts or a “working group” would merely add a further delay and at this time there is no statutory authority for same. Mediation by other than DEC, or a DEC assigned mediator would be ineffective, and we support DEC’s involvement in this regard.

8. Designate A Point Person for Large Regional Priority Project Reviews

This should be simply a responsibility of the lead agency for the particular project.

9. Establish a DEC Regional Hudson Valley Catskill Working Group

If the intention of this suggestion is that there be a continuing advisory group to assist in dealing with the problems of the SEQRA process, we support same, provided however, that this group is more fairly representative of the varied interests involved in SEQRA, including an equal representation from the real estate industry; the building and development industry; the environmental groups and local government. Only in this fashion can there be an equality of involvement with a credibility to its proposals and effectiveness. Moreover, such an equality of representation would certainly provide the necessary input to assure validity to its recommendations.

Finally, one of the original arguments made for adoption of the SEQRA process was that it would facilitate “one stop shopping”. Experience has been to the contrary. What might be

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helpful is that any impacts which are ultimately the subject of a State permit shall, by regulation, be excluded from examination in a SEQRA review by a non-State lead agency.

In conclusion, we submit that there should be a re-drafting of the Report and Recommendations as set forth herein which should also include regulatory and statutory recommendations.

Respectfully submitted,

**Kenneth J. Finger**

Kenneth J. Finger, Chief Counsel to The  
Building and Realty Institute of Westchester  
& The Mid-Hudson Region (BRI)

kjf/lm

## SEQR Comments

March 12, 2010

To all concerned:

I appreciate the opportunity to be a part of the DEC 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.

First, a bit of a side note. I am very flattered the committee chose to highlight my earlier comments on page 11 of the draft report. I am pleased to announce that should you choose to use these comments \*I hope you do) you should change my title to “Town of Rochester Planning Board member and Ulster County Planning Board member”. As of March 3, 2010 I have received full appointment to the UCPB.

I am heartened by the attendance at the conference where the draft report was presented. But I also have some reservations about some of the comments. For many of the comments presented seem to only be thinking about SEQR from the perspective of the large scale, big public controversy projects. I fear this discussion will become about that part of the SEQR process and not the process as a whole. Please don't forget about the SEQR process on those 5 lot subdivisions and Special Use permit reviews. I would wager the vast majority of SEQR review is for just those types of projects. Don't forget this discussion is about helping correct the issues about the process, not specific projects. I still firmly believe the SEQR process needs an expanded classification process rather than just 3 possible typings. But that would require legislative change and I know that is not the intent of this committee.

I go back to the draft and request that points 2 and 3 be emphasized. Expand education and training and write a very detailed “how to” manual for local boards to seek out answers. Include timelines and be very specific. Show lots of examples. I realize every situation cannot be explained, but SEQR is a large daunting monster to some boards and a little thought about required nuisance to other boards. The largest problem I see in SEQR today is local board's interpretations of how SEQR should be reviewed. With a detailed manual and with proper training local agencies and boards will more efficiently expedite the SEQR process.

I would also like to suggest mandatory SEQR training for any board member who must conduct a SEQR review before that member is allowed to vote on a SEQR declaration. There is a requirement for 4 hours of training a year by land use boards. Make mandatory SEQR training a yearly requirement as well. Board members are being asked to conduct reviews they have very little or no training on. And I believe this situation is leading to the long review processes and huge volumes of information being requested for review because board members are being (perhaps) overly cautious and unwilling to make judgments. Volume does not mean careful review. We need quality of review, not quantity.

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I believe this is also a likely factor in the increasing costs surrounding development. It is unacceptable that some SEQR reviews are beginning to approach and even exceed the costs of the projects themselves. Diligent review is necessary, but I believe the process has become adversarial and not about seeking answers, but rather SEQR has become a tool for opponents to stop projects. Opponents of projects must be required to provide hard facts to warrant further review instead of just making broad generalized statements. The process cannot become a battle of consultants and attorneys. That is not to say developers and project sponsors will be given a free pass. They must be more diligent in providing accurate completed applications for review and local boards need to be more diligent about review and verification of the facts presented in these EAF forms. EAF forms must be filled out in detail and correctly. The proposed revamping of the EAF form is completely necessary in my opinion and local boards should be able to request more information without causing a DEIS to be required.

Finally I would like to request emphasis of point 6, early dialogue among stakeholders. And make every attempt to bring all stakeholders, public and private sector, into this early dialogue. If this is not done the dialogue becomes just an exercise in futility when more stakeholders enter the discussion at a later time. Early dialogue can only lead to identification of impacts resulting in less costs, shorter reviews, and less likelihood of litigation. While on the subject of litigation, I would like to emphasize my earlier suggestion of regional arbitration panels to adjudicated SEQR challenges as a first recourse (providing all parties agree). This panel must be impartial and not include stakeholders or interested parties in any way. But this mediation as first recourse would lessen the costs and time spent in Article 78 proceedings.

I also would like to request better coordination and cooperation from the various stakeholders. Time and time again involved State, County, and local agencies are identified as involved or interested agencies and information is sent to them requesting comments within 30 days. Often no comment is received at all. These agencies have to be more expedient and diligent in their replies, even if they have no comments. A no comment reply effectively ends the mandatory waiting period. I understand in this dire fiscal situation surrounding the State this is not always possible, but a better effort must be made to do this.

I applaud this effort of attempting to solve the issues surrounding SEQR. I still believe some issues will never be solved without legislative efforts, but this is certainly a good first step into helping make the SEQR process be easier, more efficient, allow for a greater understanding, and most importantly be less expensive. Thank you to the committee for your time and efforts and I look forward to continuing however I may assist in this discussion.

Michael Baden  
Town of Rochester Planning Board member  
Ulster County Planning Board member

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Matt Warne, NYC DEP – see attachment

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Comments on:

DRAFT REPORT AND RECOMMENDATIONS  
Resulting from  
SEQR Dialog, NYS Hudson Valley Catskill Region (DEC Region 3)

Submitted March 12, 2010

There is a definite need to review the current implementation and effectiveness of the environmental review (SEQR) process, and the current evaluation initiative is to be commended.

Clearly changes to the process are important, as all around us we see concrete evidence of the shortcomings of SEQR, as sprawl development erases our rural landscapes, while town, city and village centers atrophy, losing their economic and cultural vitality.

Although a stated purpose of the report is to make recommendations that can be accomplished “without legislative or regulatory changes”, it is acknowledged that some suggestions would “necessitate legislative or regulatory review”.

In this connection we argue that SEQRA had certain core deficiencies at its inception. For instance it provided too much discretionary power to local community officials, most especially local planning, zoning and municipal boards. This discretion is embodied in the “neg dec”, which, if declared, completely cancels the environmental review process.

Also most importantly SEQR has no enforcement provisions embodied in its process, which throws the onus for enforcement on the public, who then may mount a legal challenge and bring it to a court system that has historically weakened the statute by deciding generally in favor of developers.

Another serious deficiency is the public’s inability to automatically intervene in the beginning stages of SEQRA. If a project is neg-dec’ed, it is presumably based on a short form EA which is not subject to public comments. The EA often contains inaccurate and incomplete information.

In addition, SEQR does not automatically require a supplemental EIS when changes in the development plans emerge after the public has commented on the project; or when the project undergoes substantial changes years after the original proposal has been implemented.

I submit that these and other weaknesses in the SEQRA are the root causes of the current effort to ‘fix’ the process. Because the statute was never clear in its purpose which included effectively dodging the question of environmental protection per se, never was firm in those factors that necessitated certain reviews, did not have clear standards for an acceptable EIS that would deal with substantive as well as process issues, and did not provide penalties for lack of conformity to the guidelines, all segments of the public have been stuck with a statute that invites protracted struggles over many development proposals. If anything the above problems promote a murky procedure that is unfair to all.

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Having stated the above, what follows are comments on the specific list of action items in the report.

I believe #1, Incentivize Planning, is good, but should specifically call for planning that will minimize sprawl.

The meetings needed to Produce Regional SEQR Guidance, #3, should be advertised and open to the public.

We should add to #6, Encourage Early Dialog among Stakeholders, local citizen input in public meetings.

Mediation, as discussed in #7, is undesirable and innately undemocratic, unless it is specified as non-binding mediation. This current trend to decide action without allowing access to the courts is stifling and allows for heavy doses of coercion.

Regarding #9, if the process of renovating SEQRA is to continue with a semi-permanent working group, then that group should always meet in public and have a process of soliciting and incorporating public commentary in its deliberations. Otherwise a few privileged, not necessarily representative or well-intentioned, nor politically impartial people, are shaping policy for the future of our Hudson Valley environment and ultimately our citizens.

Thank you for this opportunity to offer comments on the draft document.

Sandra Kissam  
President, Stewart Park and Reserve Coalition

## **Hudson River Sloop Clearwater, Inc. Comments for the Hudson Valley Catskill Regional Review of the State Environmental Quality Review Act (SEQRA)**

*"The environment is not a competing interest to be balanced with other interests; rather, it is the playing field, the very foundation, upon which all our interests compete."*

*~ Dr. Michael Klemens, Founder, Metropolitan Conservation*

*Alliance*

Hudson River Sloop Clearwater is a 40 year old membership organization. Our mission is to preserve and protect the Hudson River ecosystem and the well-being of people living in its watershed through education, advocacy and celebration. Clearwater's Sloop, the nation's environmental flagship, was the first on-board environmental classroom, and over 400,000 children have experienced and learned about the Hudson River through our education programs.

Clearwater has a very active Environmental Action Department, which engages the public in mission-related advocacy initiatives that are of great importance to our members and have had a significant impact on environmental protection, regionally and nationally. For example, Clearwater played a key role in the passage of the Clean Water Act and has been a leader in the 25 year ongoing struggle to get General Electric to remove PCB-contaminated sediment from the upper Hudson River. More recently, Clearwater was involved in a campaign to protect bald eagles along the Hudson River, incubated the Hudson River Watershed Alliance, and we are currently involved in campaigns to stop the relicensing of Indian Point, and efforts supporting environmental justice in cities along the Hudson.

As a grassroots organization, Clearwater is grateful for the opportunity to participate in this process.

Clearwater is a true membership organization, with approximately 8,000 members who vote for its Board of Directors. This gives Clearwater its democratic spirit, and keeps Clearwater responsive to its members. Clearwater decides on what actions to get involved in based upon their relevance to our mission and importance to our members.

**"If it's not broken, don't fix it."** Clearwater believes that SEQRA is one of the most important statutes in the State and rejects the premise that there is anything wrong with the current SEQRA process or that it needs revision. However, we also acknowledge that the consideration undertaken by this review of SEQRA may result in some valuable insight and constructive suggestions.

SEQRA is a very simple statute. It doesn't mandate results, but requires consideration of environmental impacts from the perspective that, as Justice Brandeis said, "Sunlight is the best of disinfectants." NEPA on a federal level, and SEQRA in New York, were enacted in response to an era when governments made land-use decisions in smoke-filled rooms – when, for example, prisons, hospitals, malls and housing projects could be build on wetlands with impunity, and when people like Robert Moses could operate with the principal that "Once you sink in that first stake ... they'll never make you pull it up."

NEPA is often considered the most important federal environmental statute by requiring government to consider environmental impacts. NEPA requires an Environmental Impact

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Statement for actions that “significantly impact the environment.” SEQRA goes further by requiring Environmental Impact Statements for projects that “MAY significantly impact the environment.”

**SEQRA demonstrates that New York has a serious commitment to environmental review.** New York’s abundant natural resources are critical to New Yorkers' health, well-being and New York’s economy. All of New York is rich in history, tradition, and wild natural beauty. The Adirondack Park, for example, is one million acres larger than Yellowstone, Yosemite, Grand Canyon, Glacier and Olympic National Parks combined. This is especially important in the entire Hudson Valley, which has some of the greatest biodiversity in the world, but is under substantial development pressure. SEQRA is an important tool to support ecosystem-based management. It was enacted, and should remain in full force, to assure New York retains its outstanding natural beauty and intact ecosystem services.

**Pre-application process -- use it early and often:** Area environmental groups are very wary of streamlining SEQRA and are universally concerned about the possible erosion of hard-earned protections for environmental quality. There are far better ways to promote sustainable development than to streamline SEQRA -- and they occur BEFORE an application is ever submitted and the SEQRA clock starts ticking. If there is room for improvement, we believe it is not in how SEQRA was drafted and is operating, but in how it is approached.

The best way to improve the SEQRA process and streamline any development project is for developers to meet with the neighboring community and other interested groups early and often, before and during the SEQRA process, and to perform a thorough biological, hydrological and geological assessment -- not for the purpose of building as much as regulations permit, but first for the purpose of defining habitat and other resources and protecting them, then building on what is left, usually in a clustered and otherwise green manner (see Randall Arendt's work, etc.). Utilizing habitat assessment guidelines, such as those in use in Milan, New Paltz, and other places will speed things along and can prevent costly revisions of expensive designing, engineering and environmental research. Truly sustainable projects streamline themselves and don't try to avoid thorough consideration.

Informal public pre-application meetings are key, and developers should seriously listen to what the community has to say. Developers can avoid expense and problems if they meet with stakeholders before they have invested tens of thousand of dollars in planning, design and engineering studies. If developers initially take a careful look at the natural resources and habitat value of the property and ask the community how to develop in a way that truly protects those resources and enhances the surrounding community (ecosystem-based management), the process would be smoother, more efficient, less costly overall, and result in better projects in the long term. Problems arise when developers spend large amounts of money to design and develop the proposal before consulting with the surrounding community, and then have to defend their investment against community resistance, which is usually raised on very valid grounds. If developers consulted with interested parties first and truly took a careful look at the natural resources and habitat value of the property and asked the neighboring residents and businesses how to develop it in a way that would truly protect resources and enhance the surrounding community, they would save themselves a lot of cost and grief. Sophisticated developers understand this, and they also understand that it is not a good idea to come into the process by proposing, say 400 units, when all they really expect to build is 200. Oversized proposals that are designed to be negotiated down create distrust, contentiousness and unnecessary expense.

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We suggest the review committee look carefully at sustainable development work like Karl Kehde's work on Collaborative Land Use Planning ([www.landuse.org](http://www.landuse.org)), which can be used before, during or after SEQRA, but works best before. Pace Land Use Leadership Alliance of the Pace Land Use Project and all wise land planning specialists agree that the best way to streamline a development proposal's application process is by meeting with ALL the stakeholders early and often before the SEQRA process. Clearwater believes in collaborative approaches with a genuinely positive attitude about how a project can protect resources, community character and enhance human and natural communities.

We also think there is opportunity for government to do a better job in educating people about SEQRA. Across the state, one third of the people who administer the process at the local level can change each year. Although many no-cost SEQRA training programs are available, with approximately 1,600 units of local government in the state, there is simply not enough training for the approximately 30,000 municipal officials and volunteers who work with the law.

Agencies, including DEC, could help by making decisions more expeditiously. When an applicant requests something, the second worst answer is “no”. The worst answer is no answer, and that happens all too frequently.

There is also opportunity for increased efficiency through the use of digital filings, and Clearwater supports whatever can be done to reduce paper waste. Having Environmental Impact Statements on the web has been an excellent development.

Potential impacts of climate change and estimation of carbon footprint should be part of all environmental reviews. Self-sustaining projects should become the goal. If proposed projects cannot demonstrate that they can approach zero net impact – i.e., generate the electricity they consume, acquire water and manage waste and wastewater sustainably on site -- they should be required to demonstrate how they will do so from external sources.

**SEQRA rarely stops projects and often improves them.** Rather, it causes developers and agencies to take a hard look at the impacts of projects and usually results in better, more appropriate and less impactful projects.

An example of a much improved project is Hudson Landing in Kingston. Although Hudson Landing is not yet what Clearwater would like – we believe that it will cause Kingston's sewage capacity to be exceeded and will impose serious traffic burdens on neighboring communities – SEQRA has substantially improved Hudson Landing by:

- 1) Taking into account the ecological and scenic significance of Delaware Ridge
- 2) Providing better public access
- 3) Bringing the project to more sustainable scale with increased walkability, mixed use, and live/work opportunities
- 4) Making the units that will be developed more valuable and marketable.

SEQRA made this possible because the City of Kingston Planning Board retained a team of experts and kept the community actively involved, and because of the coordinated efforts of eight local and regional environmental and community organizations who worked tirelessly to constructively critique the proposal.

**Cumulative Impacts:** There is still not a good way to deal with cumulative impacts of separate projects, and we encourage DEC to work to solve this problem. DEC rules implementing

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SEQRA should be amended to make explicit the requirement that cumulative impacts be considered whenever two or more actions are significantly linked.

**Generic Environmental Impact Statements (GEIS)** by municipalities should not be used to avoid doing a site-specific Draft Environmental Impact Statement (DEIS) leading to a Final Environmental Impact Statement (FEIS), but to provide a sound basis of information from which a sound proposal can be developed. The question for most municipalities, who would like to provide this information to developers, is how to fund it. Currently this cost is borne, project by project, by developers. Can New York State help municipalities find financing for such undertakings? Currently, developers of projects requiring an EIS must start from scratch and, depending on consultants they select, may or may not do an adequate job.

That said, we urge caution with GEIS. Like streamlining SEQRA, increased use of GEIS will reduce opportunities for public input. Many community and environmental groups are finding that developers are using GEIS to avoid performing certain assessments that are not adequately covered generically. This has even happened when they are faced with new and significant information about the scope of the environmental impacts.

On the other hand, if done very well, carefully and thoroughly, a GEIS can let people -- developers and others -- know what natural, historic and cultural resources exist and where to avoid development. In other words, a GEIS can be protective, but only if a municipality really wants to conserve its resources.

Most municipalities are unwilling to undergo such an expense, and do not use ecosystem-based management approaches that New York State recommends.

An alternative is for municipalities to update their comprehensive plans, understand their own resources, and clearly articulate what they need or want to protect, where to develop and what their community will look like at full build-out. If zoning is aligned with an updated comprehensive plan, SEQRA will operate more smoothly.

**Need for Intervenor Funds:** It is important to recognize that the economic playing field between developers and community groups is not balanced. Development projects are typically well-financed and able to afford experts and consultants, whereas community groups are usually volunteers who have to hold bake sales to raise money for filing fees and technical assistance. Even a group like Clearwater, one of the larger environment groups in the region, has an annual budget of less than \$2 million and our budget for Environmental Action is a fraction of that. We have 1.5 staff members to work on EA activities and we are essentially volunteers. If there is an opportunity to provide intervenor funds in appropriate circumstances, so that community groups can pay for expertise and legal fees (as was previously done under Article X for power plant siting), it would be very helpful. A lead agency can require escrow to cover their expenses; other involved or interested agencies need to ask the lead agency to request a study or to get an expert to review a study, or request a voluntary escrow from a developer to do their own, but at present there is no mechanism for citizen groups to fund such undertakings.

**In summary**, as a grass-roots organization, Clearwater has serious concerns about how this working group is framing its question. The question seems to have filtered down to "how can SEQRA be streamlined?" We suggest that this is not a proper question, and if the goal is to make SEQRA work better, the question still needs to be asked: To work better for what?

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The overarching questions that should be asked in the face of any proposed development are: 1) is the project one that should be done; and 2) is the project being done in the most beneficial/least harmful way?

SEQRA was designed to help those questions get answered, and any changes to the SEQRA process should be designed with those goals in mind. Streamlining cannot be a goal in and of itself and is only useful if it helps us make better decisions about which projects should be done, and makes them better.

Sincerely,

Stephen Filler, Member of Board of Directors of Hudson River Sloop Clearwater.

Manna Jo Greene, Environmental Director, Hudson River Sloop Clearwater

Hudson Valley Catskill Regional SEQR Dialog  
Comments on Draft Recommendations

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**Parish & Weiner Inc.**

PLANNING, DEVELOPMENT AND TRAFFIC CONSULTANTS

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March 12, 2010

**MEMORANDUM**

TO: Region 3 SEQR Dialog Core Working Group

FROM: Nathaniel J, Parish, P.E., AICP

RE: Comments on January 25, 2010 Draft Report and Recommendations

Respectfully, I found the subject Draft Report to be disappointing and not at all useful in terms of addressing what I had believed to be the Group's mission statement.

- The Draft Report fails to initially identify and recognize the deficiencies of the SEQRA process. These were cited by many of the expert panelists who made presentations to the Core Group (Disclosure: The writer was among those panelists).
- The Draft Report fails to note or recognize that improvements to the SEQRA process are necessary in order to assist in addressing the economic problems facing New York State, as well as the impediments that the SEQRA process often presents in the development of affordable and work force housing.
- The Draft Report fails to present specific, coherent and useful Draft Report proposals for improving the SEQRA process.
- The Draft Report appears to have been prepared in the context of a ground rule which excluded the introduction of proposals that would require regulatory or statutory amendments. (For unexplained reasons, certain of the proposals unrelated to SEQRA, violated this ground rule.)

This ground rule virtually assured that no meaningful reform proposals could be advanced. I know of no sound reason for such a ground rule.

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- The draft Report includes what in Washington and Albany terminology would be characterized as “earmarks”. In fact, a large segment of the report is devoted to proposals which have no clear, direct, or justifiable relationship to the Core Group’s presumed objective of making proposals which would improve the SEQRA process.

While some, or many, of the proposals may have their own worthwhile objectives, in the context of the Core Group’s mission they serve only to divert attention from the SEQRA improvement proposal objective.

- The Draft Report’s technique of prefacing various sections with snippets of selected quotes is a grossly misleading editorial technique. The reader has no knowledge of the full context of the quote...it is presumed to give sanction or support for the material which follows, when often the nexus does not exist.

**I believe that, on the whole, this document provides no help whatsoever in furthering the objective of improving the SEQRA process. I suggest that it should be scrapped in its entirety and replaced with a draft which clearly and specifically identifies the problems with the SEQRA process, and provides specific proposals for its improvement, including those that can be implemented purely thorough administration, and those which merit consideration for regulatory and statutory amendments.**

I would be happy to respond to questions or requests for clarification or amplification of my comments.

NJP:pd

Hudson Valley Catskill Regional SEQR Dialog  
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Luiz Aragon,  
Sullivan County Division of Planning and Environmental Management

March 17, 2010

Region 3 SEQR Workgroup  
R3SEQRWorkgroup@gw.dec.state.ny.us

Dear Commissioner Grannis,

We applaud the efforts of the DEC Region 3 Working Group to improve the SEQR process. We support all the initiatives to increase the understanding of the SEQR process, facilitate its use without undermining its intent, and promote sound planning efforts. To advance some of these efforts, we encourage DEC to make the on-line SEQR materials more accessible. Currently, SEQR is found under "Permits and Licenses" and we feel it should be a separate category in the index bar.

Again, we thank the working group for its efforts, with a special mention to those leading the group; Willie Janeway, Jonathan Drapkin and Ned Sullivan.

Sincerely,



Luiz Aragon  
Commissioner

Hudson Valley Catskill Regional SEQR Dialog  
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David S. Hamling, President & CEO,  
New York Construction Materials Association, Inc.

VIA EMAIL

TO: Willie Janeway, Jonathan Drapkin, Ned Sullivan  
CC: Commissioner Grannis

Gentlemen:

New York Construction Materials Association (NYMaterials) recently became aware of the Draft Report and Recommendations issued as a result of Region 3's State Environmental Quality Review (SEQR) initiated dialog to advance a regional effort to identify opportunities to improve the SEQR process. While NYMaterials has expressed concerns in the past regarding the SEQR process, we were not notified of this effort and were unable to be part of the dialog.

NYMaterials is the trade association representing the business and regulatory interests of New York State's mining, hot mix asphalt and ready mixed concrete industries. In particular, construction aggregate (sand, stone and gravel) mining is a heavily regulated industry. Consequently, producers in this State are intimately familiar with the SEQR process, including its pitfalls and problems, particularly in Region 3 where opponents to our projects abound. But, more importantly, our members represent an important business component of the State's economy, directly employing some 30,000 people, generating over \$100 million in tax revenue and adding \$5 billion to New York State's economy every year. Moreover, many of our members, in addition to being involved in the SEQR process on their own projects, are often involved in their local governments, sitting on town and village boards. As members of the local regulatory boards, these individuals are involved in overseeing the SEQR process for projects that come before their boards. This provides our membership with a unique and valuable prospective on the beneficial and detrimental aspects of the current implementation of SEQR in Region 3 and elsewhere in the State.

We appreciate the opportunity to comment on the draft report, but must initially voice our serious concerns on the process by which the "core working group" was chosen and the lack of effective public notice, particularly both to those in the regulated community and to the regulators themselves. To our knowledge the only so-called "public meeting" that was open for public comment was held on February 17, 2010, *after* the report was drafted. The only notice of this meeting was an article in the Poughkeepsie Journal, a newspaper that is circulated to only a small fraction of our membership and does not cover all the counties encompassed by Region 3. We have since learned that "public meetings" held on November 20, 2009, December 4, 2009 and December 18, 2009 were not legally advertised and were not posted in the Environmental Notice Bulletin. Some of our members have also been informed by participants of these meetings that the speakers providing comment were by invitation only.

We are deeply concerned about this lack of public notice and comment which eliminated the opportunity for our Association, our members and other members of the regulated and regulatory community to effectively comment on the problems and possible solutions with the implementation of SEQR prior to recommendations being drafted. We believe that the only way an objective, thorough and effective report can be drafted is to involve these entities through legally published notices and public hearings held throughout the many affected communities in Region 3. These hearings must first focus on identifying the problems prior to drafting recommendations.

## Hudson Valley Catskill Regional SEQR Dialog Comments on Draft Recommendations

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That being said, having lacked the opportunity to take part in the focus meetings and drafting of the document, I am providing limited comment on the Group's report, while continuing to urge the Group to hold a truly open, public and transparent process prior to reaching conclusions and recommendations. Before commenting on the specifics of the nine express recommendations drafted by the Group, I would like to note that members of the legal community, some of whom are associate members of our Association, have raised questions about the legality of having one region of a statewide agency adopt changes to the manner in which SEQR is implemented in the seven counties covered by Region 3. The Department is a statewide regulatory agency which is prevented as a matter of basic due process from implementing SEQR in a radically different way in one area of the State. Also, restricting public input to only a limited number of identified groups, associations and individuals within this seven county area on a law with statewide application is a very dangerous proposition. We are extremely concerned that the report recommends a regional guidance be developed setting forth "best management practices" to address issues such as "substantive and procedural issues, including timeliness, scoping, public hearings, mitigation, assessment methodology, reasonableness and other issues." Certainly, this novel regional approach is highly suspect, raises very serious due process and other constitutional and legal issues by its fractional approach to implementation of a State law.

The Group's first draft recommendation acknowledges the importance of proper planning and the fact that SEQR cannot replace good planning. This is an excellent endorsement that NYMaterials fully supports, however, we question the appropriateness of having a "regionally" highly selective group, convened to make recommendations on ways to improve the SEQR process, address this very important and statewide concern.

Other recommendations by the Group to increase the availability of DEC Staff to provide advice and help to communities (#4), use of DEC or another agency to provide alternative dispute mediation options (#7) and designating a point person for large regional projects from the state to convene and host meetings (#8), all fail to recognize that DEC's Region 3 Division of Environmental Permitting Staff (DEP) are not able to timely handle their current workload. While NYMaterials appreciates the amount of permitting that Region 3's staff handle, we continue to express the regulated communities' frustration in the length of time it takes DEP staff to process applications. Region 3 routinely contravenes the time frames of the Uniform Procedures Act, delaying not just new projects, but simple renewal applications for existing businesses. To expect DEC's Region 3 staff to undertake any of the above functions is simply unrealistic.<sup>1</sup> It also appears that the Group has gone beyond its stated focus to avoid areas where legislative reform would be necessary—since its inception, SEQR has clearly stated that the law does not change the jurisdiction between agencies. The Group's recommendations seem to establish DEC as a

super agency, overseeing and directing, through advice and guidance and other potential controls, SEQR reviews throughout the Region.

Similarly, recommendation #2 seems out of touch with the current state budget crisis which by all accounts will not end soon. How would this recommendation be funded, who will administer the website and how can it be assured that documents posted on the DEC website and in the SEQR library have been prepared by qualified, unbiased individuals or organizations, with accurate knowledge of the facts and expertise in the relevant study area. Multiple examples of abuse of such a repository of "SEQR documents" immediately come to mind. For instance, if a posted document is successfully subject to legal challenge in court or a factual challenge at a hearing, how will this be reflected on the website? Invalid conclusions in these documents could lead to erroneous decisions on projects in neighboring towns and municipalities whose boards may lack the expertise to distinguish between these many documents. There have been instances in DEC's own experience where information on one application was used to derail other independent projects where the documents had no relevance.

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Having not been given the opportunity to participate in the Group's dialog, my ability to provide detailed comments regarding their recommendations is limited. Given the Group's focus to identify problems in the implementation of SEQR and make recommendations to address these, the report itself is difficult to judge since it fails to include a discussion of the problems which were identified. The first course of action then is for the Group to go back to step one and list the difficulties being encountered in the SEQR process which should be addressed, as identified by the public, particularly the regulated businesses and regulatory agencies and boards. As a statewide association whose members are heavily regulated on both a state and local level, we urge the Group to restart the process ensuring that those entities, both public and private, most involved in SEQR are included in the dialog, holding properly noticed hearings throughout the State that allows all members of the public to provide comment. Only then, when a comprehensive list of objective problems with SEQR's implementation has been prepared, can valid recommendations be developed. We also strongly recommend that this process occur throughout the State to avoid the legal problems associated with a regional approach to implementation of a statewide statute.

Sincerely,  
  
David S. Hamling  
President & CEO

Hudson Valley Catskill Regional SEQR Dialog  
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Rev. Jim Davis, The Wittenberg Center – attached

Cudder & Feder, LLP – attached

Sustainable Hudson Valley and Project for Public Spaces, Knowledge Network  
Proposal.

Katherine J. Beinkafner, Ph. D., Mid-Hudson Geosciences - attached

Joan Lesikin, Ed. D. - attached