

# EIS PRIMER

## A GUIDE FOR REVIEWING ENVIRONMENTAL IMPACT STATEMENTS



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## **INTRODUCTION**

This publication was prepared to assist citizen volunteers and public officials who must work with the State Environmental Quality Review Act (SEQR) and review environmental impact statements. The purpose of this Primer is to present the fundamentals of SEQR, discuss municipal responsibility under SEQR and, most importantly, describe how to review the central document called an Environmental Impact Statement (EIS).

The Primer offers suggestions on initiating an EIS review and on how to assess the adequacy of the document. If you know what to look for and can recognize deficiencies in an EIS, a more relevant, specific review of adverse impacts will result, and public concerns can be addressed.

There are numerous publications devoted to the details of SEQR such as the SEQR Handbook and SEQR Cookbook, prepared by the New York State Department of Environmental Conservation (DEC), which are periodically updated by the Department of Environmental Conservation (DEC). The Handbook and the Cookbook should be consulted for a more detailed discussion of the SEQR process.

## **SEQR**

The State Environmental Quality Review Act established an environmental review process that is used in New York State. The NYS Department of Environmental Conservation developed the regulations that implement the Act, 6 NYCRR Part 617. DEC's Division of Environmental Permits is responsible for overseeing the SEQR process. Each regional office and the Central Office in Albany have staff devoted to working with SEQR and answering questions for the public. Copies of the regulation may be obtained from any regional office, and is available on NYSDEC website <http://www.dec.state.ny.us>.

SEQR is intended to incorporate the consideration of environmental factors into the existing planning review and decision-making process of government agencies at the earliest time possible [Sec 617.1]. Protection of the environment should be given appropriate weight, along with social and economic considerations. SEQR is intended to assure that each project is designed to minimize adverse impacts on the environment. SEQR sets specific procedures for reviewing actions that may have environmental impacts. It was designed to identify potential adverse impacts, improve projects, mitigate potential adverse environmental impacts, and identify reasonable alternatives to the proposal. The regulation was not meant to stop projects or completely to restrict development. Municipalities may adopt their own SEQR-type regulation, but it must be consistent with, and may not be less stringent than, the State law. The SEQR regulations were adopted in 1976 and revised in 1987 and in 1996. Municipal procedures must be consistent with the most recent version of SEQR.

## WHO'S INVOLVED

During the initial stages of the SEQR process, agencies that are involved in the procedures for review in a specific action are identified. Of the agencies identified, those that approve, fund, or directly undertake an action are defined as involved agencies [617.2(s)]. Examples of possible involved agencies are town boards, planning boards, or the zoning board of appeals. A conservation advisory council can be an interested agency as can any other group that has concern for the project. Examples of other interested agencies might include The Nature Conservancy, a homeowners group, or the County Environmental Management Council.

For Type I actions and coordinated review of unlisted actions by these involved agencies, a lead agency is established to direct the procedure. All involved agencies must agree, within 30 days, on which agency will act as lead agency. If there is not unanimous agreement, the Commissioner of DEC can be petitioned to designate the lead agency. It is the lead agency's responsibility to ensure that SEQR procedure is followed and completed. The lead agency assumes administrative responsibility for the documentation of the review procedures. The lead agency issues the determination of significance, which is binding on all other involved agencies. At the end of a full EIS, the lead agency, as well as all involved agencies must issue "findings." The findings statement considers the environmental impacts as well as all other relevant factors and provides the rationale for the agency's decision.

## PROJECTS SUBJECT TO SEQR

All projects that are directly undertaken, funded or approved by a state or local government agency are subject to SEQR. If there are any permits required, formal approvals, grants, matching funds, or other funding from a government agency specific to the proposal, SEQR review is required. This includes not only physical projects such as building a garage, but also includes actions such as adopting or revising a municipal zoning ordinance. There is no definitive list of projects, subject to SEQR. In a municipality that has a tree preservation ordinance, the cutting of a single tree may require a permit and therefore, may be subject to SEQR. Conversely, in a municipality that does not have a tree ordinance, and hence no permit requirement, the cutting of a single tree is probably not subject to SEQR.

## SEQR CLASSIFICATION

Under SEQR, there are three separate categories in which to classify a project. These include Type I and Type II actions as listed in SEQR [617.4] and [617.5], respectively. A project that is not included in either of these lists is an Unlisted Action.

A **Type I** project is defined as a project which is likely to have a significant environmental impact and therefore likely to result in the preparation of an environmental impact statement. Type I actions require the preparation of the full environmental assessment form (full EAF). The applicant or project sponsor completes Part I of the full EAF, the

reviewing agency completes Part 2 and, if necessary, Part 3. The full EAF, which gives greater detail than the short Environmental Assessment Form (short EAF), will provide the basis for determining the need for an EIS. Not all Type I actions require an EIS.

A **Type II** project is defined by DEC as one which has no significant environmental impacts, and which therefore never requires the preparation of an EIS. When a project qualifies as Type II, the SEQR procedure is complete; the agency should document in the file that the action was classified as Type II. However, if at any time the scope of the project changes and the potential for a significant adverse environmental impact is identified, the project should be reevaluated for a classification change.

Two actions under the Type II list that are sometimes not well understood are explained below:

1. A **Ministerial Action** is one that is undertaken without the use of any discretionary decision. The issuing of a hunting or fishing license is ministerial because there is no discretion used: if you qualify, you get the license. Many actions of a building inspector are ministerial. An inspector follows rules and regulations and is responsible for assuring compliance. Discretionary judgment may not be necessary and, if so, the action is ministerial.
2. An **Emergency Action** must be, in fact, an emergency action. Examples of projects that could be considered emergency may include:
  - a. Clearing a fire line to stop a forest fire,
  - b. Constructing a small temporary bridge to provide access to an area that has had its sole source of access lost due to fire or flood,
  - c. Using a school as a temporary shelter for people affected by a natural disaster.

Examples of projects that would not be considered emergency may include:

- a. Construction of a low or moderate income housing project because a municipality does not have enough housing units,
- b. Construction of a firehouse because an area is not served by its own company,
- c. Approving construction on a capital project because the bonds are about to expire.

An **Unlisted Action** is a project that does not meet or exceed the thresholds contained on the Type I list and is not found on the Type II list. Unlisted Actions require that at least the short EAF be completed. The questions on the short form define the environmental significance of the project. The applicant or project sponsor completes Part I; the reviewing agency completes Parts 2 and 3. If the potential for a significant adverse environmental impact is identified, then either the full EAF may be required or the process could go directly to an environmental impact statement. A lead agency or involved agency may request additional information to be provided with an EAF before a determination of significance is made.

It is important to understand that virtually ANY action that requires an approval or discretionary decision from a state or local government agency is subject to SEQR. Generally, the significance of the project and the classification identify the level of review that is necessary to complete the SEQR procedure.

Model SEQR forms (the full and short EAF and Visual Addendum) are included as appendices in the 1996 revised regulations (617.20). Any SEQR forms used should be consistent with the State model.

## DETERMINATION OF SIGNIFICANCE

For Type I and Unlisted Actions, a determination of significance must be made – that is, based on the environmental assessment form, the lead agency must decide whether the action may have a significant impact on the environment (see Section 617.7 for criteria). The determination must be made in writing and contain a reasoned elaboration with reference to any supporting documentation.

A **Negative Declaration** is issued if the action is found to have no adverse impacts or if any adverse impacts identified will be insignificant. Following a negative declaration, the SEQR process is complete, and the agency may proceed with approving the action.

A **Positive Declaration** is issued if the action is found to have the potential for at least one significant adverse impact. The positive declaration essentially requires that an EIS be prepared to evaluate more fully the project's impacts.

Each involved agency must prepare a findings statement for projects for which a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) have been completed. The findings statement is the documentation that SEQR has been complied with and supports the involved agency's determination to approve or disapprove a project.

## PROCEDURAL COMPLIANCE WITH SEQR

There are many publications available on the New York State Environmental Quality Review Act. The use of any of the resources, many of which are listed in the back of this guide, can be helpful in understanding and interpreting the regulation.

As with any regulation, it is sometimes difficult to understand the principles and procedures. It may be necessary to consult individuals that are more knowledgeable. Familiarity with SEQR will make it easier to understand and pick out inadequacies in the procedure.

There are certain parts of the procedure that are most likely to be incomplete. Examples of this may be the failure to distribute notices such as the notice of lead agency, or the

failure to sign any of the notices or environmental assessment forms. These types of omissions are readily identifiable, and easy to resolve. However, either could stop or delay a project or even require the procedure to be completely redone.

SEQR documents (lead agency notices, determinations of significance, etc.) are public documents. The public has the right to request copies of this documentation and can question the accuracy or completeness of the lead agency's procedure. Very often, when a controversial project is submitted, the environmental analysis required under SEQR is questioned to try to delay the project. This has given SEQR a bad reputation by developers because it is one of the easiest ways to attack a project. If the procedure is handled properly, a project is less likely to be stopped or delayed; therefore, it is in the interest of all concerned to comply with the regulation. A good reputation as a reviewer is established through consistent and competent review of these documents

## SEQR VS. NEPA

The State Environmental Quality Review Act is based on the National Environmental Policy Act (NEPA) (42 U.S.C. & 4321). This point can cause some confusion. Any project that requires a federal permit has federal funding, or otherwise comes under the jurisdiction of a federal agency, is required to comply with NEPA. This does not, however, replace compliance with SEQR. If the compliance with NEPA does not satisfy all SEQR requirements, any additional procedure required to comply with SEQR must be completed. An EIS can be written to satisfy both SEQR and NEPA. Compliance with both NEPA and SEQR is mandatory.

## ENVIRONMENTAL IMPACT STATEMENTS

The purpose of an environmental impact statement is to document that all potential impacts have been identified and all adverse impacts have been mitigated to the greatest extent possible. It must be demonstrated that the need for the proposal outweighs all adverse impacts. Feasible alternatives to the project must also be included in the EIS along with justification for choosing the preferred alternative.

SEQR states that an EIS should be written clearly and concisely so that the general public can understand the information presented [617.9(b)]. Frequently, impact statements are overly verbose. Technical data used to support the information in the EIS should not be in the main text, but rather in an appendix.

The nature of SEQR and the titles of SEQR documents are sometimes confusing. For example, the term "environmental assessment" can refer to either the general analysis of a project, or the long or short environmental assessment form under SEQR. Under NEPA, an environmental assessment is much like the environmental impact statement in that it is a detailed analysis of the project. A full EIS can also be required under NEPA.



Generally, the term “environmental assessment” refers to the environmental assessment form that is used to determine if there is the potential for adverse impacts and, in fact, to determine if they are significant enough to warrant the preparation of an environmental impact statement.

SEQR allows a lead agency to charge the developer a fee to recover costs for either preparation of an EIS, or for review of the EIS, but not for both [617.13]. It is the responsibility of the lead agency to see that an environmental impact statement is prepared. The applicant is not necessarily required to prepare the EIS. There is no reason that the lead agency cannot commission this statement to be prepared by its staff or by a mutually acceptable third party. Since many municipalities do not have the professional staff to properly review or prepare an EIS, this provision may be a useful option to consider.

## SCOPING

The lead agency is charged with identifying all relevant issues that should be addressed in a draft EIS (DEIS). This includes all issues that have the potential for significant environmental impacts. This identification process is known as scoping and any formal scoping process is optional. It is usually advisable, particularly in large or controversial projects, to conduct some type of public scoping. This provides an early indication of those issues that the public believes important. If issues are identified early in the process, it is more likely that the draft EIS will be complete. A majority of municipalities in Westchester now routinely require public scoping for all large or controversial projects.

In addition to identifying the issues, the scoping process also identifies the extent or quality of information that should be provided in the EIS and the methodology (ies) that should be used to obtain such information.

## WHEN IS AN EIS COMPLETE?

A difficult task, which is the responsibility of the lead agency, is to determine whether an EIS is complete before it is accepted. The legal requirements for the content of an environmental impact statement are stated in the regulation [Part 617.9(b)]. The lead agency is responsible to ensure that these items are included in the draft EIS. The lead agency must also ensure that all relevant and substantive issues, including those identified in the scope, have been adequately addressed before the draft EIS is accepted and distributed. Adequately addressed does not mean that all issues are exhaustively discussed but that there is enough information presented to allow a review of the proposal to commence. Areas that are often neglected include alternatives, mitigation of potential impacts, aesthetic issues, and secondary and cumulative impacts. (See explanations later in this booklet). For projects that have undergone formal scoping, completeness of the draft EIS is based on the final written scope.

Acquire as many reference materials as possible. A list of suggested references is included at the end of this Primer, along with a brief glossary of common acronyms. These resources can be very useful and can make the review of an EIS much simpler and the resulting comments more relevant.

## RECOMMENDED WAYS TO REVIEW AN EIS

The first thing to do when starting to review an environmental impact statement is to skim through the document, read the table of contents and the summary in the beginning and find the maps. (Often the maps are not well reproduced and are hard to read; the lead agency should not tolerate this.) An initial skim through the entire document will give you some idea of what to expect and what to look for when going through the EIS in detail. It is best at this point to take the common sense approach – step away from the details and the tremendous amount of information that is given and take an overall look at the project. Think about what is being presented and whether it makes logical assumptions in a clear manner. How do the conclusions made in the EIS compare with the logical assessments from your observations and local knowledge?

It is useful to attempt to visualize the proposal as a whole, to get a feel for the project and its possible impacts. Site visits are essential to analyzing all aspects in detail and may vary from simply driving by the site to walking a site. This will depend on the magnitude of the project. Review the project information thoroughly before going out in the field. Know what you will be looking at, and what you are looking for. It is important to remember that SEQR does not give the right to trespass. Permission must be granted prior to entering private property.

It is advisable to bring along as much documentation about the project as possible on a site visit, particularly site plans. This will assist in visualizing what the project will look like. Aerial photographs are often very useful in getting an overall view of the area. Ask yourself questions such as, "Where will the buildings be located? How tall will the buildings be? How much vegetation will have to be eliminated? Will wetlands be disturbed? What will the effects be during construction -- dust, blasting, noise, erosion? Would a change in the project lessen an impact? Are there significant traffic impacts? Will natural vistas or aesthetically valuable views be obstructed or changed?"

As the review continues, think about what information has been presented and whether it is logical. Be aware that much general information may be disguising an important impact. A common statement, seen in many an EIS, is that the erosion control measures will conform to the Best Management Practices Manual (BMP). There may, however, be no specific measures identified. It is impossible to review such a plan without having necessary specific information. BMPs are manuals published by Westchester County and NYSDEC. These manuals are technical guides on specific subjects such as erosion and sediment control, construction related activities, highway deicing and storm water management. They should be used as a guide to those reviewing or designing a project to incorporate appropriate protective measures into the project plan.

Another method of reviewing an EIS without reading the entire document is to take an issue that may have been identified from the initial procedures, and follow that issue throughout each section of the document. As an example, there may be steep slopes identified within a project site. A reviewer must decide whether the occurrence of these steep slopes has been properly addressed. Reference to this issue might start with the description of steep slopes within the environmental conditions section of the EIS. The extent of the slopes, and whether they have been identified as potential problems, can be noted.

Referring to the anticipated impacts of the proposal should determine whether treatment of steep slopes has been considered. If steep slopes occur in the area of construction, potential problems include the use of explosives in excavation, the extent of erosion both during and after construction, and the method of removing the material from the site. Check the maps to see what impact the development will have on slopes, and determine the relationship of the slopes to the entire project. It is suggested at this point to look through the subsequent sections of the impact statement that discuss unavoidable adverse environmental impacts, and mitigation of adverse impacts, to determine if steep slopes are discussed and adequately mitigated. Make sure that what is stated seems logical. The reviewer should then have some idea how significant the impact on steep slopes will be, and whether a different alternative might mitigate this impact.

The alternatives section of an EIS should be reviewed to see if the document provides alternatives that mitigate the impact of steep slopes. Simple rearrangements of structures will sometimes mitigate this type of impact. Once the steep slope issue is resolved, additional issues can be handled in the same manner.

A second example of a possible issue is the occurrence of wetlands. The preliminary review and the review just completed for steep slopes may have identified areas of the site that are wet. The impact statement should establish whether wetlands or related drainage problems are relevant issues. The wetlands may be regulated at either the state or local level, and permits to disturb them may be required. Approvals at one level do not necessarily supersede approvals at other levels. For example, issuance of a statewide wetlands permit may not satisfy a local ordinance and further procedure may be required.

Not all projects will have issues of steep slopes or wetlands. These two categories were used here only for illustration purposes. Aspects of a project not addressed in an EIS may indeed not be relevant. The reviewer should consult other resources to help in making this determination.

## SECONDARY AND CUMULATIVE IMPACTS

Secondary and cumulative impacts are very often disregarded in environmental impact statements. Secondary impacts result, not directly from an action, but from consequences of that action. They arise from changes that occur because of a project. They occur because new conditions created by the project start to affect it and its outcomes. An example is the construction of a movie theater in a previously undeveloped area that may

act as a catalyst to other commercial enterprises, such as fast food restaurants or nightclubs, to locate in the same area. In this case, the theater did not directly cause the impact of these subsequent proposals but created a more attractive condition for further development of the area. Another example is the setting of a precedent for a specific action. Issuing a permit to undertake an action not previously allowed may lead to the issuance of such permits on a regular basis.

Cumulative impacts are a series of actions or components of actions that, if considered separately, may not have a significant impact. However, if considered together, the actions could lead to a significant impact. An example of cumulative impact might involve a drainage basin that is partially developed and prone to flooding conditions. There may be several additional development proposals, each of which separately would not significantly increase runoff. If combined, however, the cumulative impacts of these projects could cause more substantial flood conditions.

These impacts may exist within one proposal. For example, a proposal to construct a small residential development on a lake with a small marina may have a significant impact if all impacts are considered concurrently. A common tactic in an EIS is to state that each component of the project will not have a significant individual impact. The reviewer must determine if the combined impacts of the entire project will have a significant adverse impact.

Many a major project has an EIS stating that there will be no significant adverse environmental impact. This is a question of judgment. A proposal that has a significant impact can be approved, but only after it is determined that the need for the project outweighs the detrimental effects. Consultants and developers may be reluctant to state that there will be a significant impact. The obligation, however, is to provide accurate and precise information with which to assess the impact of the project. Concealing significant issues can delay the process. Note that this dilemma can be avoided if lead agencies use a third party as the preparer of the EIS.

## ALTERNATIVES

SEQR states that an EIS must include “a description and evaluation of the range of some feasible and reasonable alternatives to the action, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed” [617.9(b)]. An EIS must include the “no action” alternative, and will often include a denser or higher magnitude alternative. This may not be reasonable depending on the specific project. A short explanation of each alternative is common in an EIS. This is rarely acceptable given the above-referenced statement on the level of detail required for each alternative. The more reasonable alternatives will need more information to justify why the alternative was not chosen.

In reviewing alternatives, it is important to make a logical determination as to whether the EIS is adequate. The most important aspect is to assess what other impacts would result

from any change or mitigation of the project. In some cases, mitigation of one impact can inadvertently make another impact worse. As an example, a developer proposes to build homes on the fringe of a wetland but a wetland ordinance requires the structures to be built outside the buffer area of the wetland. The homes may have to be built on steep slopes if no other flat land is available. The impact from excavation of the steep slope may be far greater than the impact from construction close to the wetland. Impacts such as these must be judged on a case-by-case basis. Mitigation often costs money and the results must justify the expense.

Once a number of environmental impact statements have been analyzed, the review process will become less time-consuming. EIS quality varies a great deal and, in fact, an EIS that is prepared by various consultants may not always be consistent. It is sometimes difficult to establish the credibility of the information presented in an EIS. If this is the case, information on the qualification and experience of the preparer may be useful. Outside consultants, hired by the municipality, can be helpful in ensuring that the applicant has thoroughly explored all alternatives.

## FEIS

The purpose of a final EIS (FEIS) is to answer any questions raised during the review of a draft EIS (DEIS), and to present additional or new information which is necessary for the lead agency, or an involved agency, to make a final determination on whether to approve the project. A final EIS must incorporate or reference the draft EIS [617.9(b) (8)]. It is important to remember that the review of a project is not complete when comments are submitted on a draft EIS. Any substantive question or issue raised during the review process must be addressed in the final EIS. If these are not addressed, the procedure is not complete.

If the final EIS is inadequate, it is important to bring this to the attention of the lead agency and all involved agencies before their Statement of Findings is prepared. An outside consultant may be hired by the municipality, at the applicant's expense, to evaluate the completeness of the FEIS, and the validity of the conclusions contained therein. The findings statement is the final step in the SEQR process. This statement is a written record of an agency's consideration of all relevant impacts and factors. The findings statement certifies whether the action chosen avoids or minimizes adverse environmental impacts to the maximum extent practicable. The findings require that all mitigation measures identified as practicable be followed. Findings must be made by each involved agency, as well as the lead agency, prior to the final decision. These statements must be distributed among all involved agencies. It is important that all documentation, including the DEIS and FEIS, are kept on file and readily available to the municipality through the period of construction of a project. It may be necessary to refer to these documents if a problem of compliance is identified during construction. These documents should also be available for public access.

## **PUBLIC COMMENT**

The SEQR process provides several opportunities for lead agencies to seek public input for an application. Timely public response is important since each stage of the SEQR process has specific periods for completion.

In the earliest stages, the lead agency should consider public input when determining whether a proposed action will have a significant adverse impact. If the lead agency, with public input and scrutiny, determines that there will be no significant adverse impacts, it could end the SEQR process with a negative declaration, and therefore not require an EIS. Meaningful public input is necessary to ensure that a negative declaration is not made prematurely or inappropriately.

With a positive declaration, it is strongly recommended that the process go forward to scoping, although this is not strictly required by SEQR. If scoping is conducted, the lead agency must provide an opportunity for public participation through meetings, written exchanges or other methods.

During scoping, when the range of issues to be covered in the EIS is determined, residents and other affected parties can check to be sure that their issues are addressed. If they are not addressed, the parties can seek to have them added to the scoping document. Issues not listed in the scoping document may not be included in the EIS, which makes public participation extremely important in this early stage. A minimum 20-day period is suggested for public review of the draft scope.

Once the draft EIS (DEIS) is accepted by the lead agency and a Notice of Completion is issued, there is a minimum 30 day period for public comment. It is common for lead agencies to respond to public concerns and require hearings to review the DEIS. The hearing must start within 60 days from the date of the Notice of Completion. The public comment period must continue for at least 10 days following the close of a public hearing.

One important value of public comment is that all questions and issues raised in the public hearings must be answered in the FEIS to the satisfaction of the lead agency. Interested parties should note that they do not have to be present or speak at public hearings. Written questions are given the same weight as questions posed during the public hearing. The FEIS must include a summary of the substantive comments received as well as the applicant's response to the comments.

Public comment provides a record of issues and objections that may have later use as well. The lead agency's final decision and findings will determine whether an action may proceed and, if it is approved, the mitigating actions that are necessary.

## **MONITORING AND ENFORCEMENT**

Monitoring has always been a problem because not all municipalities have adequate resources to inspect project sites during construction. There is no enforcement procedure

in SEQR to ensure that a project is built in accordance with approved plans and procedures. There is no method within the SEQR regulations to assure that the established mitigating measures set forth in the environmental impact statement will be adhered to once construction begins. Monitoring construction or the implementation of measures identified in the EIS is thus left to the local building code enforcement officer and, in many cases, to interested neighboring residents. Municipalities frequently use a third party to monitor environmental impacts at the developer's expense for several years after the project has been completed, e.g., for a golf course, flood control project, or a toxic waste cleanup site.

It is the responsibility of the developer or sponsor to make certain that the contractor conforms to the provisions set forth in the EIS, particularly with reference to construction related activities such as truck traffic, working hours, noise, dust control, etc.

Violations should be brought to the attention of public officials, and those in violation should be identified. It is always advisable to document violations with the use of photographs and letters to municipal officials. Often the people responsible for construction are unaware of any mitigating measures or even that an environmental assessment procedure is required. Therefore, the developer should assure that the contractors abide by requirements stipulated in the EIS or in any permits.

It is important to remember that SEQR does not give the right to trespass. It is not advisable to go on private property without permission. This may lead to serious conflict. Depending on visibility, a general site review can frequently be completed from nearby roads, making trespassing unnecessary.

It is also important to recognize favorably and/or compliment projects that are handled correctly. Reviewers' reputations and credibility can be easily compromised if they are perceived as antagonists or always against development projects. Remember people have a right to use their property. It is the job of public officials to make sure that the use does not negatively affect other people. Be fair, consistent and objective.

## **SEGMENTATION<sup>1</sup>**

### **WHAT IS SEGMENTATION?**

In 6 NYCRR Part 617.2(ag), segmentation is defined as the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance. Except in special circumstances, considering only a part, or segment of an overall action, is contrary to the intent of SEQR.

There are two types of situations where segmentation can occur. One is where a project sponsor attempts to avoid an EIS by splitting a project into two or more smaller projects. The second is where activities that may be occurring at different times or places are

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<sup>1</sup> NYSDEC SEQR Handbook.

excluded from the scope of an EIS. By excluding subsequent phases or associated project components from the EIS, the project may be more acceptable to the reviewing agencies and the public.

#### HOW DOES AN AGENCY ADDRESS UNCERTAINTY ABOUT LATER PHASES?

All known phases of a project should be considered in the determination of significance. If later phases are uncertain as to design or timing, their environmental significance should be examined as part of the whole action by considering the potential effects of total build-out. If, after completion of the review, it can be determined that the subsequent phases will cause no significant adverse impacts or that the impacts can be mitigated, initial phases can be approved and no further analysis under SEQRA will be necessary. Later, if substantial changes to the project are proposed, such changes should be evaluated and a new determination of significance made. If an EIS was produced for earlier phases, a supplemental impact statement or revised SEQRA findings may be needed.

#### WHAT IS THE BASIC TEST FOR SEGMENTATION?

When trying to determine if segmentation is occurring agencies should consider the following factors:

- Purpose: Is there a common purpose or goal for each segment?
- Time: Is there a common reason for each segment being completed at or about the same time?
- Location: Is there a common geographic location involved?
- Impacts: Do any of the activities being considered for segmentation (while not necessarily significant individually) share a common impact such that, if the activities are reviewed as one project, they may result in a potentially significant adverse impact?
- Ownership: Are the different segments under the same ownership or control?
- Planning: Is a given segment a component of an identifiable overall plan? Will the initial phase direct the development of subsequent phases or will it preclude or limit the consideration of alternatives in subsequent phases?
- Utility: Can any of the interrelated phases of various projects be considered functionally dependent on each other?
- Inducement: Does the approval of one phase or segment commit the agency to approve other phases?

#### IS SEGMENTED REVIEW EVER ACCEPTABLE UNDER SEQRA?

There are only limited circumstances where a segmented review is justified. However, such justification must be clearly noted in the determination of significance and in any subsequent EIS by providing supporting reasons and demonstrating that such review will be no less protective of the environment.

For example, the following circumstances, when considered together, may warrant segmentation when a project has several phases:

- Information on future project phase(s) is too speculative;
- Future phase(s) may not occur;
- Future phase(s) are functionally independent of current phase(s).

*See the SEQRA handbook for more information and examples of segmentation.*



## **GENERIC EIS<sup>2</sup>**

### **WHAT IS A GENERIC EIS?**

A Generic EIS is a type of EIS that is more general than a site-specific EIS, and typically is used to consider broad-based actions or related groups of actions that agencies are likely to approve, fund, or directly undertake. The generic EIS can examine the environmental effects of:

- A number of separate actions in a geographic area, such as several petitions to rezone residential areas to commercial;
- A sequence of actions by an agency or project sponsor such as zoning change, followed by a road improvement, followed by the construction of a shopping mall;
- Separate actions having common impacts such as several separate projects impacting the same groundwater aquifer; or
- Programs or plans that have wide application or restrict the range of future alternative policies, such as agency regulations or permit programs, master plans, or resource management plans.

### **HOW DOES A GENERIC EIS DIFFER FROM A SITE OR PROJECT-SPECIFIC EIS?**

A Generic EIS differs from a site or project specific EIS by being more general or conceptual in nature, often addressing issues through hypothetical scenarios. The broader focus of a generic EIS also aids in the identification and analysis of the cumulative effects of a group of actions or a combination of effects from a single action.

### **WHAT ARE SOME CHARACTERISTICS OF A GENERIC EIS?**

A Generic EIS has one or more of the following characteristics:

- It may be a short, broad, or more general discussion of the logic and rationale for the proposed action than an EIS for a specific project.
- It may be a base for conceptual information and general projections for future activity.
- It may identify the important elements of the natural resource base as well as projected manmade features, patterns or character.
- It may discuss, in general terms, the constraints and consequences of narrowing future options.
- It may present and analyze, in general terms, a few hypothetical scenarios that are likely to occur because of a planning or zoning action.

### **ARE THERE SPECIFIC PURPOSES FOR WHICH A GENERIC EIS SHOULD BE USED?**

A Generic EIS is useful when there is need to:

- Account for the cumulative impacts of regional influences and secondary effects of an overall group of actions or overall program;
- Allow for the evaluation of impact-related actions being proposed by unrelated project sponsors;
- Set forth conditions, criteria or thresholds under which future site-specific actions may be undertaken;

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<sup>2</sup> NYSDEC SEQR Handbook.

- Provide sound environmental planning, particularly the consideration of mitigation and alternatives at a time when there is greater flexibility;
- Establish baseline data for reference and scoping of a supplemental site-specific EIS, thus avoiding duplication, reducing costs and paperwork;
- Limit extent of future project reviews by providing early guidance on significance determinations; or
- Provide public disclosure of agency considerations used in environmental decision-making.

## ARE THERE SPECIFIC TYPES OF PROJECTS FOR WHICH A GENERIC EIS MAY BE USEFUL?

A Generic EIS is commonly used for the following types of activities:

- Phased residential development; comprehensive plans;
- Resource management plans;
- Area wide zoning;
- Planned unit developments;
- Industrial/commercial parks;
- Regulatory changes; and
- Development of a broad geographic area.

*See the SEQR handbook for further information, and examples of a Generic EIS.*

## CHECKLIST

A rudimentary aid for those beginning the use of SEQR.

- Do I know the
  - essential purposes of SEQR?
  - basic steps in the SEQR process?
  - major classes of actions/projects?
  - procedures for each class?
- Have we
  - involved the public thoroughly throughout?
  - sought external, expert consultation and advice?
  - envisioned the project as a whole, visited the site?
  - imagined and considered long-term and cumulative effects?
  - considered and evaluated alternatives?
  - mitigated, as much as possible, all adverse effects?
  - assured use of best practices?
  - determined that the alternatives and mitigations are reasonable and specific?
  - valued environmental considerations at all times?
  - reviewed the whole document, Table of Contents, and summary?
  - compared scoping with contents to ensure all is covered?
  - ensured that all questions were answered insofar as possible?
  - focused on and tracked the important issues throughout the document?
  - checked whether the monitoring process will be adequate?
  - been fair to the developer, the public, others affected, future generations?

*See the SEQR handbook for all further information.*

## RESOURCE AGENCIES

The following resource agencies have technical data that may be useful in the environmental review process:

### FEDERAL AGENCIES

#### **Environmental Protection Agency (EPA)**

Region II  
26 Federal Plaza  
New York, NY 10007  
(212)264-2525  
<http://www.epa.gov>

#### **United States Department of the Interior**

U.S. Geological Survey (USGS)  
P.O. Box 1397  
Albany, NY 12207  
(518)472-2808  
<http://www.doi.gov>

#### **U.S. Fish & Wildlife Service**

Northeast Region Office  
One Gateway Center, Ste. 700  
Newton Corner, MA 02158  
(617)965-5100  
<http://www.fws.gov>

#### **Army Corps of Engineers**

26 Federal Plaza  
New York, NY 10007  
(212)264-9113  
<http://www.usace.army.mil>

U.S. Fish & Wildlife Service  
Brookhaven National Laboratory  
Building 179  
Upton, NY 11973  
(516)282-3300  
<http://www.fws.gov>

#### **United States Department of Agriculture**

Natural Resources Conservation  
Service (NRCS)  
Millbrook Service Center  
2715 Route 44  
Millbrook, NY 12545  
(845) 677-3952  
<http://www.nrcs.usda.gov>

## STATE AGENCIES

### **Department of Environmental Conservation (DEC)**

625 Broadway  
Albany, NY 12233  
(518)474-2121

<http://www.dec.state.ny.us>

### **Office of Parks, Recreation and Historic Preservation**

Empire State Plaza  
Albany, NY 12238  
(518)474-0456

<http://www.nysparks.state.ny.us>

### **Department of Environmental Conservation (DEC)**

Region 3 Office  
21 S. Putt Corners Rd.  
New Paltz, NY 12561  
(845)255-5453

<http://www.dec.state.ny.us>

### **Department of Education**

State Geological Survey  
State Museum & Science Services  
Cultural Education Center  
Empire State Plaza  
Albany, NY 12230  
(518)474-5816

<http://www.nysed.gov> and  
<http://www.nysm.nysed.gov/gis/>

### **Department of State**

162 Washington Ave.  
Albany, NY 12231  
(518)474-4750

<http://www.dos.state.ny.us>

99 Church St., Ste. 204  
White Plains, NY 10601  
(914)949-2027

<http://www.dos.state.ny.us>

### **Department of Education**

Biological Survey  
State Museum & Science Services  
Cultural Education Center  
Empire State Plaza  
Albany, NY 12230  
(518)474-5812

<http://www.nysed.gov>

## COUNTY AGENCIES

### **Environmental Management Council (EMC)**

432 Michaelian Office Building  
White Plains, NY 10601  
(914)995-4422  
<http://www.westchestergov.com/planning>

### **Department of Parks, Recreation & Conservation**

25 Moore Ave.  
Mt. Kisco, NY 10549  
(914)864-7000  
<http://www.westchestergov.com/parks>

### **Department of Health**

145 Huguenot Ave.  
New Rochelle, NY 10801  
(914)813-5000  
<http://www.westchestergov.com/health>

### **Soil & Water Conservation District**

432 Michaelian Office Building  
White Plains, NY 10601  
(914)995-4423  
<http://www.westchestergov.com/planning/environmental/>

### **Department of Planning**

432 Michaelian Office Building  
White Plains, NY 10601  
(914)995-4422  
<http://www.westchestergov.com/planning>

### **Cornell Cooperative Extension**

26 Legion Drive  
Valhalla, NY 10595  
(914)285-4620  
<http://www.cce.cornell.edu>

## SUGGESTED REFERENCES

The following **documents** are suggested to assist in the review of an EIS. This brief list represents some of the more commonly used references.

- State Environmental Quality Review Act (SEQR), 6 NYCRR Part 617. Available from the NYS DEC, Division of Environmental Permits, 625 Broadway, Albany, NY 12233 and on the web: <http://www.dec.state.ny.us>
- SEQR Handbook – A detailed description of the purpose and procedure set forth under SEQR. Available from DEC. See address above.
- SEQR Cookbook – A summary of the procedure set forth in SEQR. Available from DEC. See address and website above.

There may be a variety of sources for the following **references**. For assistance in obtaining these, contact the EMC Office at (914)995-4422.

- Natural Resources Inventory (NRI) – Municipalities may have their own NRI. The County of Westchester has the Environmental Planning Atlas published by the EMC.
- Thematic Maps such as topography, soils, wetlands, historic/recreational sites, etc.
- Regulatory Maps – NYS tidal and freshwater wetlands.
- Aerial Photographs – Both recent and historic photos can be used to analyze and assess surrounding land use.
- Textual references such as field guides for species identification.
- Best Management Practices Manuals (BMPs), which can be used to assess technical and mitigative issues.
- Academic courses at local universities.

These **directories** are useful in identifying environmental agencies and organizations:

- National Wildlife Federation – Conservation Directory  
Available from The National Wildlife Federation  
1412 Sixteenth St., NW  
Washington, DC 20036  
(202)797-6800
- Westchester County Environmental Directory  
Published by the Federated Conservationists of Westchester County  
E House, Pace University  
78 N. Broadway  
White Plains, NY 10605  
(914)289-0537

## **GLOSSARY OF COMMON ACRONYMS**

- BMP - Best Management Practices Manual, NYS and Westchester County
- DEC - New York State Department of Environmental Conservation
- DEP - New York City Department of Environmental Protection
- DOH - State or County Department of Health
- DOS - New York State Department of State
- DOT - State or County Department of Transportation
- DPW - Department of Public Works
- EA - Environmental Assessment, a generic term or a document that is related to the National Environmental Policy Act (NEPA)
- EAF - Environmental Assessment Form, a form that is part of the State Environmental Quality Review Act (SEQR)
- ECL - Environmental Conservation Law
- EIS - Environmental Impact Statement
  - DEIS - Draft Environmental Impact Statement
  - SDEIS - Supplemental Draft EIS
  - FEIS - Final EIS
  - SFEIS - Supplemental Final EIS
  - GEIS - Generic EIS
  - DGEIS - Draft Generic EIS
  - FGEIS - Final Generic EIS
- EMC - Westchester County Environmental Management Council
- EPA - United State Environmental Protection Agency
- FONSI - Finding of No Significant Impact, the NEPA equivalent of a "neg dec."
- "Neg Dec" - Negative Declaration, a determination of significance stating that there will be no significant adverse environmental impact (pursuant to SEQR)
- NEPA - National Environmental Policy Act
- NYCRR - New York Codes, Rules and Regulations
- "Pos Dec" - Positive Declaration, a determination of significance stating that there may be a significant adverse environmental impact (pursuant to SEQR), and that an EIS is required.
- PRC - Westchester County Department of Parks, Recreation & Conservation
- SEQR - New York State Environmental Quality Review Act and its implementing regulations 6NYCRR Part 617.
- SWCD - Westchester County Soil and Water Conservation District

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**NYS  
ENVIRONMENTAL  
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