SEQRA: The Construction of Effective Change

A Stakeholder Analysis of the
New York State Environmental Quality Review Act (SEQRA)

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Abstract

The New York State Department of Environmental Conservation is in the process of creating a set of proposed revisions to the documents associated with the New York State Environmental Quality Review Act (SEQRA). We conducted a stakeholder analysis to evaluate the effectiveness of the SEQRA process. We then compared our findings with the proposed revisions to determine if these changes are addressing the identified inadequacies within the SEQRA process.

Introduction

The New York State Department of Environmental Conservation (DEC) is in the process of creating a set of proposed revisions to the documents associated with the New York State Environmental Quality Review Act (SEQRA). We conducted a stakeholder analysis to evaluate the effectiveness of the SEQRA process. We then compared our findings with the proposed revisions to determine if DEC's changes are addressing the identified inadequacies within the SEQRA process.

In New York State, SEQRA requires that both state and local governmental agencies consider the environmental impacts of development projects prior to their commencement. "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" (DEC 2011). SEQRA was enacted in 1975 by the New York State Department of Environmental Conservation (DEC) and was designed to closely align the National Environmental Protection Act (NEPA), which strictly deals with federal agencies.

The goal of SEQRA is to find the appropriate balance between environmental, social and economic effects of all development projects. If citizens or groups feel that the lead agency is not abiding by the proper SEQRA procedure then they can take legal action through Article 78 of the New York State Civil Practice Law and Rules in court (DEC 2011). It is important to note that SEQRA does not directly alter plans or permits being reviewed, rather it's meant to identify issues that need to be considered further. In general SEQRA is viewed as more of a "procedural than substantive" act (Schachner 2006). Although the EAF process is intended to provide a comprehensive environmental review, many planning boards merely require that the SEQRA forms be completed and tend not to scrutinize the information provided in the documents during the approval process.

SEQRA Procedure

In New York State, the DEC and designated local agencies are responsible for enforcing SEQRA. Most commonly, local planning or zoning boards assume the role of "lead agency". It becomes the responsibility of these lead agencies, at the local level, to evaluate the environmental affects of all development projects. The SEQRA process involves environmental assessment forms designed to identify and consider the mitigation options of a proposed project. The environmental assessments are standardized by action type and require the use of one of the DEC's Environmental Assessment Forms (EAF). These forms outline the necessary steps for completing a comprehensive analysis of a specific project's impact on the surrounding environment. This local review may then require the completion of an Environmental Impact Statement (EIS). An EIS is an all-inclusive environmental audit that goes into extreme detail in an attempt to fully determine the impacts of a project on the environment. On most occasions, the EIS process requires the assistance of multiple professional "third-party" consultants to review the project details and provide professional opinions for the planning board to consider.

SEQRA Flow Chart

SEQRA FLOW CHART

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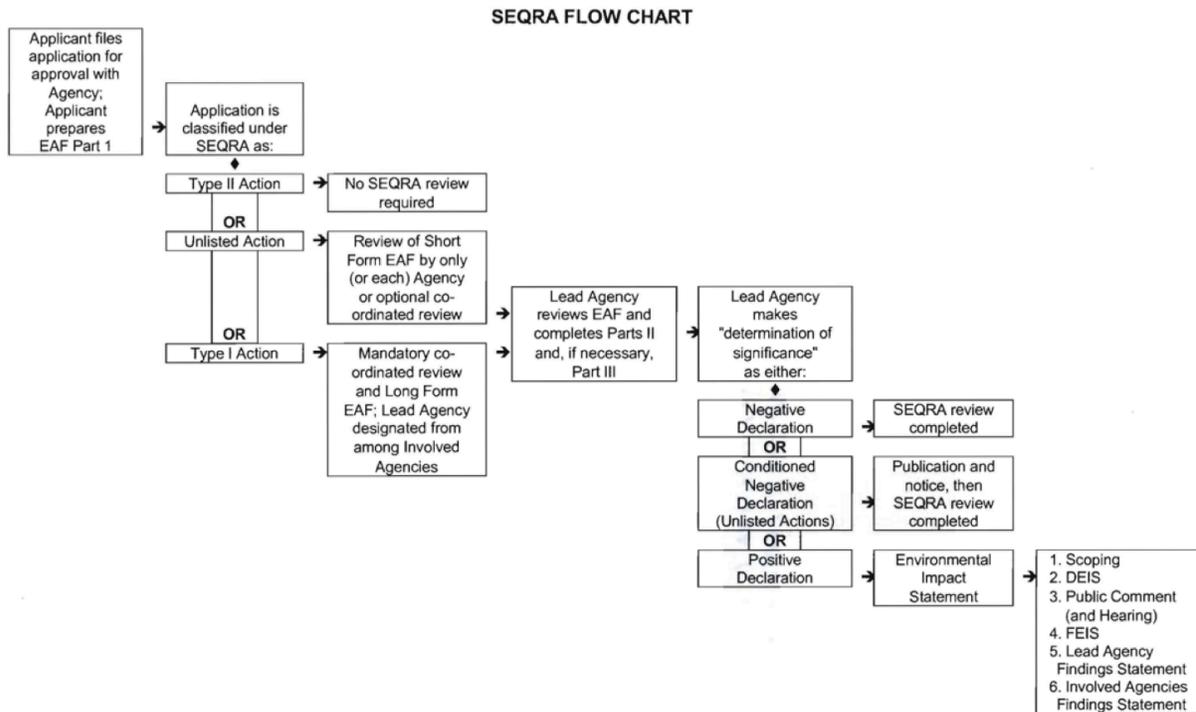
When the SEQR process identifies an action with potential adverse impacts to the environment, the action is prescribed to the following review process. "An action is subject to review under SEQR if any state or local agency has the authority to issue a discretionary permit, license or other type of approval for that action" (SEQRA text). SEQR also applies if an agency funds or directly undertakes a project, or adopts a resource management plan, rule or policy that affects the environment." (SEQRA Cookbook) All actions subject to SEQRA review are then classified by type. Actions are classified as: Type I, Type II or Unlisted. A Type I classification is an action that meets or exceeds a threshold indicated in section 617.4. These types of actions generally apply to large projects that are more likely to have significant adverse impacts on the environment. Type II classifications are for actions listed in section 617.5 and are determined to have little to no significant impact on the environment and are otherwise precluded from environmental review. Any action that does not meet the threshold for Type I classification or is not listed in section 617.5 is declared unlisted. Unlisted classifications are given to actions where the significance of the action has yet to be determined. These actions are reviewed further, with their impact on the environment ultimately assessed.

Each classification has its own review requirements. Type I actions require the completion of part 1 of the *full* environmental assessment form (EAF), while unlisted actions require completion of part 1 of the *short* EAF, or in certain cases part 1 of the *full* EAF. The full and short forms obviously differ in length but more importantly reflect the quantity and quality of information requested of the different classifications. The lead agency reviews the provided information and is responsible for completing the 2nd part of an EAF. Once the action enters the review process the agency approving, funding or

directly undertaking the project assumes the role of lead agency. The lead agency is in charge of assessing the significance of an action's impact on the environment within 20 days of receiving the EAF, including the collection of all information needed to make such an evaluation. If the lead agency determines that the proposed action will not have a significant adverse impact on the environment the action is given a negative declaration. Upon an agency's negative declaration, the lead agency (the same agency that conducted the evaluation) must make the action's file readily accessible to the public. If the lead agency determines that the proposed action will have significant adverse impacts on the environment, the action is given a positive declaration and requires an Environmental Impact Statement (EIS) to be completed.

An EIS consists of: a description of the proposed action; a description of the environmental setting; a statement and evaluation of the potential significant adverse environmental impacts; a description of mitigation measures and; a description and evaluation of the range of reasonable alternatives to the action. The EIS is conducted by the lead agency, often with the assistance of consultants paid for by the applicant. These third party consultants guide the lead agency in conducting a comprehensive assessment to further evaluate the full effects of a project on the environment. Upon completion, the lead agency has 45 days to determine if the document includes adequate mitigation plans. If the EIS is approved by the lead agency, it's released for public comment for a period of 30 days. The public comment period allows subsidiary stakeholders to express their concerns and opinions to the lead agency. When the public comment period has concluded, the lead agency determines if the draft EIS needs to be reworked or is acceptable and therefore complete. However, if the draft EIS is rejected by lead agency, it must then be revised until it is approved and submitted for public opinion. Once all approvals have been achieved, the lead agency must prepare written report on SEQR findings for review before making its final decision.

The purpose of SEQRA is to review development projects with regard to their environmental impact and maintain consistency with social and economic considerations in order to fully understand the consequences of such actions, with the intent of maximizing the benefits to all and avoiding or minimizing adverse effects regarding such actions (Caffery, 2001). SEQRA is governed solely through self-regulation, however, and many major decisions are made by the very agency initiating the action. This type of system is perhaps cost effective in the short term and timelier but is vulnerable to project bias issues. "Lead agencies often allow applicants to ignore or gloss-over serious problems with projects evaluated in EIS's prepared by applicants and/or their consultants" (Caffery, 2001). It has been documented that consultants have purposely failed to disclose information regarding environmental problems to avoid dealing with SEQRA mitigation requirements. Case studies have shown that if an involved agency strongly favors the project, there is a higher probability that SEQRA will fail to achieve its purpose. The courts rarely overturn these types of substantive review failures as the court sees its role as not to substitute their judgment for the agency, which SEQRA assigns its responsibility, but rather to determine if the agency has fulfilled its obligations to SEQRA (Caffery, 2001).   A stakeholder analysis will identify areas of the SEQRA process that are currently being ignored or ineffective. Such information can then be compared to the proposed revisions to the act to determine if the NYS DEC is addressing the necessary issues.

Methods

        Our goal is to perform a comprehensive stakeholder analysis of the SEQRA process to determine its effectiveness. SEQRA's main initiative is finding a balance between the environmental, social and economic effects of all development projects. By comparing the information we gathered from interviewing stakeholders involved in the SEQRA process, with the main goals established by SEQRA, we will be able to identify inconsistencies within the SEQRA process that prevent it from attaining its central goals. We then compared these existing issues with the revisions currently proposed by the DEC. We analyzed these issues to see if the proposed revisions will satisfy the stakeholders' main concerns. This should provide an understanding of whether these changes will subsequently improve the effectiveness of these documents.

        We approached data collection by creating a comprehensive group of individuals who work closely with SEQRA and who have opinions on the document's overall usage and its faults. When selecting the various stakeholders, we targeted key individuals from local municipalities with views and perspectives that covered the entire SEQRA process. Our participants varied in their roles within the SEQRA process as well as their perspective and expertise. For our study, we had in-depth interviews with eight individuals including planners, consultants, legal advisors and planning board members from various communities within the Saratoga Lake watershed. Below is a brief description of each of the interviewees, accompanied by their applicable professional experience. The data acquired from these interviews was then used to draw conclusions about the overall effectiveness of SEQRA and how the current revisions relate to the inefficiencies most frequently identified.

Planning Board Members

        The first stakeholder we interviewed is a member of the City of Saratoga Springs planning board. Amy Durland has approximately 7 years of experience on the Saratoga Springs planning board with an additional four years of experience on the zoning board of appeals. She provided excellent insight into a city's planning board utilization of SEQRA. Ms. Durland's board meets twice a month and consists of seven planning board members. She has extensive experience working with SEQRA and was a great resource due to her experience and ability to identify issues within the SEQRA process.

        The next stakeholder we interviewed was Mike Dobis. Mr. Dobis has been a Planning Board member for the town of Wilton since 1985 and chairperson for the last 18 years. His role in the SEQRA process is to review and ensure that a project will not have a significant adverse effect on the environment and/or human health. He has previously been heavily involved in the commercial planning and development of shopping district development, which required him to oversee the completion of multiple Environmental Impact Statements. In addition to his first hand experience with SEQRA, the town of Wilton requires that all members of its planning board attend annual SEQRA training to ensure constant familiarity with the SEQRA process. Mr. Dobis's knowledge and personal

experience with SEQRA makes him an excellent interview candidate for understanding the perspectives of a planning board member.

The final planning board member we interviewed was Matthew Rogers. As chairperson for the Village of Corinth Planning Board and Director of Planning and Economic Development at Saratoga Associates we felt Mr. Rogers would provide an excellent perspective into how SEQRA is utilized in smaller communities. With over 15 years of experience working with SEQRA in both public and private sector, Mr. Rogers was the ideal candidate providing us with a perspective of a village planning board member.

Legal Counsel for Lead Agency

Mark Schachner has specialized in SEQRA review since the 1980's, representing both municipalities and applicants. His current role in the SEQRA process is to guide, counsel and represent, local zoning and planning boards. The majority of his work is specific to EAF completion, ensuring the cities, towns and villages he represents follow the legal protocol associated with SEQRA. Within Saratoga County, Mr. Schachner currently represents multiple planning boards as a legal counsel. His level of involvement varies with each municipality, depending on the number of projects and legal needs of each community. His experience and knowledge of how local agencies utilize SEQRA is a great resource and is just one of the many reasons we decided to interview him.

Professional Planner for Lead Agency

The next stakeholder we interviewed was Kate Maynard. Ms. Maynard is the Principle Planner for the City of Saratoga Springs. She primarily works with the long term initiatives in the municipality, while assisting applicants with the development review process, providing the general public with information about zoning issues and keeping the public informed about the status and schedule of applications being reviewed. Ms. Maynard also has experience working with multiple municipalities as a professional planner. These reasons and her day-to-day work with SEQRA make her an excellent resource for our analysis.

The next stakeholder we spoke with was Jason Kemper, the Director of Planning in Saratoga County. Mr. Kemper's primary role as county planner is as to ensure that the county's 19 towns, two villages and city comply with all SEQRA related projects. The county acts as an involved agency on various projects providing necessary assistance as needed but never as a lead agency. Before working as the Director of Planning in Saratoga County, Mr. Kemper held the positions of the Director of Planning and Environmental Specialist for the Town of Clifton Park. His experience working closely with SEQRA's lead agency and other involved agencies provides excellent insight to the overall view each group has of SEQRA. For the aforementioned reasons we felt Jason Kemper was an ideal interview candidate.

Consultant for Applicant

The first consultant we interviewed was Travis Mitchell who works as a Civil Engineer for a consulting firm. His firm primarily focuses on residential and commercial land development in the Capital Region and is frequently involved in the SEQRA process through the act of filling out EAF documents for applicants and developers. Speaking with Mr. Mitchell added scope to our understanding of the role and perspective of the contractor/consulting side of the SEQRA process.

The next stakeholder we met with was Mike Ingersoll. Mr. Ingersoll is the founding principle of the LA group, a contracting landscape architecture and engineering firm in Saratoga Springs. He is a licensed landscape architect and has been involved in many land use development, adaptive re-use and planning projects within the Capital Region. As contractors, his firm is directly involved in writing impact statements and reviewing projects. We spoke with Mr. Ingersoll because of his frequent involvement with projects that involve SEQRA. Mr Ingersoll was an excellent candidate to provide the perspective of an applicant on the SEQRA process.

Results

Planning Board Members

Amy Durland discussed SEQRA review as an essential aspect of all project reviews, which provides a skeletal look at the environmental issues associated with development. She stated that SEQRA provides the basis for further environmental review wherever it is needed. Ms. Durland believes that although SEQRA is completed thoroughly in her municipality, it still has obvious weaknesses.

"SEQRA represents the same problem as the development application process...to a large extent, not exclusively, but the boards representing the city are relying on the "experts" or consultants provided by the applicants for their information. In [her municipality], we have a planner and an engineer who are great but we do not have botanist, wildlife expert, ecologist, traffic engineer, etc. In terms of an environmental review, we are almost exclusively relying on whomever the applicant presents as their lead informant."

Ms. Durland went on to discuss the idea that since the applicants have a vested interest in the outcome of the project, and are paying the consultants themselves, then the question arises of how authentic the information and objectivity of the contractors' information actually is. The process in general gives the board the ability to scrutinize the quality of information provided by the applicant, but the board has to want to do so. If there's a predisposition to accepting the application even if it's arguably not a good application then that scrutiny won't happen, SEQRA or no.

Ms. Durland's primary concern when discussing SEQRA's inefficiencies pertains to the idea that SEQRA reviews can lack the necessary thoroughness of review as a result of a lack of environmental expertise throughout the process and the absence of critical examination by the planning board. When asked about how others within their agency view SEQRA she responded saying that they are accepting of the process and they are willing to do the level of analysis that they are presented with, but again what that level of review is, is highly variable depending on who is appointed to the planning board. She then stressed that even though SEQRA has the potential to properly identify and mitigate significant environmental issues related to a proposed project, it needs the planning board commitment to do so effectively.

Mike Dobis described the SEQRA process as being overwhelmingly positive, stating that the process is very effective at identifying and putting emphasis on environmental issues. The checklist approach of SEQRA allows board members to take one criteria at a time, and individually assess it while ensuring that nothing is overlooked. While Mr. Dobis praised the process, he stressed that "You have to want to use it." This quote encompasses many of the key points that were made in our interview, acknowledging that many board members are at first turned off and confused by the process. Mr. Dobis explains that a certain level of education and experience is necessary for SEQRA to be used adequately. While some board members view the process as laborious and unnecessary, it is key to educate and train these people so they understand the purpose and benefits of completing SEQRA.

Matthew Rogers believes SEQRA is an effective tool for identifying environmental issues, if used properly. However, he also stated that the process is in need of much improvement,

"The long-form does a pretty good job of at least getting the planning boards to think about [environmental issues] but that's only if the planning board actually goes through the complete process"

Mr. Rogers sees scoping as a technique that benefits both the applicant and lead agency by identifying and addressing the critical issues associated with a specific project. Although scoping is not mandatory under SEQRA, Mr. Rogers believes using scoping would greatly reduce the length of the SEQRA process and allow the review to focus more extensively on actual environmental implications of a specific project. The other major issue that Mr. Rogers has with the process is the lack of understanding most stakeholders have of SEQRA. Most communities see SEQRA as another checkbox. With so few projects in small towns that require SEQRA review, many stakeholders don't feel the need to understand it and often look to give the responsibility off to someone else. Even if you were interested in understanding SEQRA, most training sessions don't offer an in depth look at how the process is meant to and should work.

Legal Counsel for Lead Agency

Mark Schachner views SEQRA as a beneficial process that effectively identifies the potential environmental issues surrounding a project. Though the process is effective at indicating potential issues, it only puts a reasonable amount of emphasis on the importance of mitigation opportunities. Mr. Schachner points out that SEQRA is most successful in dealing with "traditional" or "tangible" environmental issues such as endangered species violations. Using SEQRA to address more unusual concerns has proven to be quite difficult, creating more confusion than benefit. Mr. Schachner sees the EAF as a major source of confusion, "The forms are extremely confusing and the directions associated with them are often inconsistent." The involvement of a professional planning staff is crucial for allowing SEQRA to function far more efficient, effective and painless than without. Professional assistance plays a pivotal role in familiarizing board members with SEQRA.

"The less experienced and the less savvy, and sophisticated a board member is with SEQRA, the more frightened by it, the more intimidated by it, the more likely they are to wish and act as if it wasn't there."

Mr. Schachner believes creating a more straightforward, comprehensible form would allow for the process to work more effectively and efficiently.

Professional Planners for Lead Agency

When asked about her personal experience with SEQRA, Kate Maynard responded saying the following:

> "Quite honestly I've seen some planning boards who see SEQRA as a necessary check mark. So in some communities you will see people doing SEQRA because they have to and they are not fully utilizing SEQRA as that step and that overall umbrella aspect pertaining to the review of a project and all of its aspects."

She continued to explain that although there are varying degrees of success when using SEQRA, the approach in the City of Saratoga Springs is to make a direct connection between the planning board and the people by going through the SEQRA checklist during the public meetings question-by-question. This approach is due to the overall intent of the board and the legal requirements, which make sure that every project is reviewed through the same lens by the planning board.

As Principal Planner, Ms. Maynard's job is to advise the planning board and also bring awareness of existing city regulations and policies or overall intent while tying in coordination with relevant outside agencies. Ms. Maynard believes that the true worth of SEQRA is in how it is utilized. "It is a tool that if used well, and you have staff and board members who take it seriously as a tool in their toolbox, then it can be extremely useful in mitigating environmental impacts" She continued to discuss, stating the following:

"What I would note again from personal experience, if it is not utilized and only seen as something you need to complete, with that lack of depth and understanding it is at times not reaching its full impact."

Kate Maynard also discussed her experience working with contractors and consultants and how she has grown to respect some contractor work more than others. When asked if there was a difference between the various contractors the municipality works with regularly she responded saying:

"I am of the mind that you always do your job and your part of the application, but there are some whose work you trust more, either in their technical expertise and where they are coming from, the thoroughness of work, or that aspect of being as neutral as they can. There are some people's work that I honestly don't trust and I triple check everything"

It is clear that although Ms. Maynard believes that the use of SEQRA is necessary, but the usage and perspective must be appropriate when dealing with the documents. If SEQRA is fully integrated into the review of all development projects and permits, and taken seriously by all planning board members, then the document carries significance going into project reviews.

Jason Kemper believes that the basic intent and primary functionality of SEQRA works relatively well. He believes that although the process is successful at identifying and putting emphasis on environmental issues, it is well overdue for an update.

"[People are] still filling out the same long and short forms as they were 30 years ago. Any regulation of this magnitude needs to be updated on a frequent basis to keep up with the changes in its industry."

Mr. Kemper points out that a lot of the big environmental issues today aren't reflected in the SEQRA forms we use. The documents are structured for "yes/no" responses, using generic thresholds to assess the impact of a project. Mr. Kemper emphasized the need for more flexibility in SEQRA, acknowledging that a lot of the projects they see today don't fall well within the current SEQRA structure. The inability of the SEQRA process to conform to the individual aspects of each project creates many unnecessary steps and expenses for projects where SEQRA appears to be misapplied. Another big issue Mr. Kemper discussed was the tremendous amount of confusion SEQRA creates for the board members who use it. "There is always a fear in local agencies of SEQRA," many of these members are volunteers with minimal experience in matters like these. The documents need to be tailored for these people and include simple, straightforward language and directions. Mr. Kemper believes these types of changes would make the whole process easier and reduce the concerns of many stakeholders.

Consultant for Applicant

When asked about how his organization goes about reviewing a project and filling out the EAF Travis Mitchell responded saying:

"We are pulling together all the different aspects of a project including the physical features of a project itself, such as the traffic information for which we may have a traffic consultant, archaeological, environmental etc. and if we can pull it together ourselves we will do it and if we need an outside consultant we will include them."

Mr. Mitchell believes that everything is relative, however there is a disconnect because no matter the size of a project, stakeholders are using the same SEQRA form. He noted that towns feel more comfortable with the long form compared to the short while this same form is being required for both a small housing plot as well as a 100 house plot being built. Mr. Mitchell stated that there is a large disparity between the various scales of projects and how the towns deal with the application process. He called upon a desire for better definitions on the town level on when to use which forms, with a clear separation for larger projects, which require increased scrutiny.

A growing positive aspect of this process that they embraced is that as more projects are being completed the state database grows. As more projects are conducted, more studies and information is revealed and made available, whether it be archaeologically significant land plots or better understanding of traffic flow in a city. One of the major concerns that Mr. Mitchell held was with how these forms were approached by the respective planning boards. The worry here resides in the fact that SEQRA is sometimes viewed as a step in the development process that can be glazed over. He highlighted that more work will be done when their firm is filling out EAF or completing an

EIS for a project that they know the planning board will be engaged for, but this is on a case-by-case process and he has experience working with boards on either side of the spectrum.

When reviewing projects and completing reports Mike Ingersoll stated that his firm starts with the design and leaves the EAF form as a secondary thought attempting to reduce its ability to drive the process. He referred to it more as a table of contents, which is used to help guide a project by going through its checklist of guidelines. In his opinion, the assessment SEQRA evaluates a project on was meant to set thresholds for future review and expose issues before they arose. When asked how effective SEQRA was at identifying and putting emphasis on environmental issues Mr. Ingersoll told us that he thinks it is effective at disclosing environmental impacts, but is still only a baseline review. When asked how the new forms can make the process more efficient he shared the following:

> "I am not sure why they had to change it. Most of the municipalities have been working with it and have asked or requested information, as they needed. I think the new forms are going to be onerous and bring a ton of confusion without an accompanied manual. I don't know how effective they are going to be, but they are for sure going to add a lot of hours to the review process."

Mr. Ingersoll believes that these forms should not be the end all decision on all projects, rather provide leading questions that push municipalities towards environmental decisions and considerations. When it comes down to it, the decisions are still up to the proponent and the municipality in the end. He has seen a shift on this end even during the last ten years with the required training becoming more consistent.

> "Everybody goes through it and reviews it, but it ultimately comes down to the style of the board and whether they have attorneys there, what type of leadership on the board, and community involvement. Most municipalities large or small do the best they can in taking a hard look at each project and that is what they are supposed to do."

Mr. Ingersoll expressed his concern that with the shift of the new forms to more information and leading questions that they will become "bogged down in minutia if the board doesn't have the ability to look beyond the issue at hand and goes strictly by the forms." He believes that a project should be allowed to grow without these restraints, and at times the board will become hung up on aspects of the EAF that are not necessarily pertinent to the overall scope of the project. Although these forms were created to protect regions from mega development, the mega developers are accustomed to the process and know how to adequately deal with it.

General Trends Identified in the Stakeholder Analysis

Our stakeholder analysis has provided us with a nice illustration of the views and opinions of those actively involved in the SEQRA process. The overwhelming majority of individuals who engage in SEQRA see the process as fundamentally important and a crucial step in identifying and considering the environmental impacts of large-scale projects. With that said, our results clearly show the stakeholders discontent between how the associated documents in the SEQRA process are used in conjunction with the overall goals of SEQRA. All parties involved view the complex language in the forms and the directions that accompany them to be overwhelming and confusing. This lack of clarity creates unnecessary complications for the volunteer board members of these local agencies.

Although paid professionals (such as city planners and lawyers) greatly reduce these problems, not all municipalities are in the financial position to afford such personnel. Numerous stakeholders view the lack of understanding as the main deterrent to SEQRA and state that it restricts the comprehensive use of its associated documents. "There is always a fear in local agencies of SEQRA" and without adequate support, these local boards are "paralyzed" by the confusing and at times inconsistent directions that accompany SEQRA. Aside from issues with the "user friendliness" of SEQRA, many feel the process is outdated and does not cover many of the more current environmental concerns. Without being updated since SEQRA was first implemented 30 years ago, it is hard for stakeholders to fully utilize the advances in modern technology and science. The documents lack the ability to address site-specific issues. By requiring all projects to adhere to the very general thresholds in the EAFs, it is extremely difficult for stakeholders to quantify the dynamic impacts of a specific project. The many concerns identified in our stakeholder analysis fall within two prevailing Categories: the structural restrictions of SEQRA and the confusing language used in the accompanying documents. These two topics are seen as the main inhibitors, preventing SEQRA from maximizing its effectiveness.

The first major issue our stakeholder analysis identifies is the ineffectiveness of the documents' strict and rigorous structural demands. Multiple stakeholders mentioned that SEQRA's long and short EAFs threshold demands don't appropriately identify and put emphasis on the potential environmental impacts of a project. One stakeholder deeply engaged in the process gives an excellent example of how the SEQRA threshold system can be misapplied: "...without any background information what's to say a 10 acre project will have a greater significant impact that a project of only one acre." These types of instances are economically costly and can create a lengthy and frustrating experience for applicants. Relying on these thresholds as well as many of the EAFs' "yes or no" questions do not accurately portray the impacts of a project. . Furthermore, without professional opinions the true goal of this process can be misapplied.

Many of the environmental issues that are on the forefront of today's environmental discussions are absent from the current EAFs. Without being updated in a reasonable time frame, these questions cannot possibly reflect the scientific and technological advances seen in the field today. An environmental lawyer actively involved in the process acknowledges this issue, stating that the documents are much more effective at addressing the "traditional" environmental issues that SEQRA was initially implemented to deal with. It is now believed that as environmental research is furthered and more issues are discovered, that these outdated forms require significant adjustments and revision.

Some stakeholders believe that SEQRA's inability to identify project specific issues significantly impairs the effectiveness of the associated documents. The environment and the ecological systems SEQRA is designed to protect consist of complex and interrelated processes. Multiple stakeholders believe SEQRA's lack of specificity doesn't allow for an accurate assessment of these dynamic processes. A professional planner interviewed stated that it is irrational to think each project can be defined by 50 categories of "yes/no" responses. Although it encourages board members to contemplate the effects a project may have on any of the 50 categorical problems, it does not indicate the extent and true impact an action may have on each. For SEQRA to find the appropriate balance among environmental, social and economic effects of all development projects it must acknowledge and judge projects on the individual aspects that make each uniquely different.

The second major issue that we have identified from our stakeholder analysis pertains to the dense and convoluted text of the associated documents. As applications go through the SEQRA process they are frequently completed and reviewed by applicants and board members who lack the appropriate qualifications. This trend was prominent throughout our interviews, as people expressed concerns over the large gap in knowledge between the highly sophisticated EAF forms and the unfamiliar volunteers on most planning boards. One planning board member illustrated this problem with a great example:

"SEQRA represents the same problem as the development application process…to a large extent, not exclusively, but the boards representing the city are relying on the "experts" or consultants provided by the applicants for their information. In Saratoga Springs we have a planner and an engineer who are great but we do not have a botanist, wildlife expert, ecologist, traffic engineer, etc."

The absence of professional expertise at the local levels that currently exists within the SEQRA process has direct effects on how projects are being reviewed. This issue appears to cause a large disconnect between the intentions of the board, the applicants proposing projects, and the true intent of the SEQRA documents. Many stakeholders attribute this problem to the lack of professional assistance with the overly sophisticated SEQRA assessment forms. All board members, volunteer or not, are required to undergo four hours of formal training per year. This training is organized by the New York Planning Federation and consists of a large variety of different trainings and lectures. By chance, one of these events was being held during our data collection process, and we were able to attend the 74th Annual New York Planning Federations Planning & Zoning Conference in Saratoga Springs on April 16th 2012. At this conference lectures and group sessions were held ranging from various topics such as site plan review, special use permits, sign regulations, introductions to SEQRA, advanced SEQRA, and rights & responsibilities of board members. Although four hours of training is required per year, it is easy to satisfy this without ever walking into a SEQRA session. Given this, it is very possible that planning or zoning boards will lack the training and the necessary professional help, which will make the group more vulnerable to inefficiencies

It became apparent through our research that the views of respective consultants who complete the SEQRA documents for the applicant vary greatly. There was an

overwhelming agreement among stakeholders that there are certain consultants/contractors whose work is more respected than others. One professional planner, of a large municipality, stated:

> "[I am] of the mind that you always do your job and your part of the application, but there are some whose work you trust more, either in their technical expertise and where they are coming from, the thoroughness of work, or that aspect of being as neutral as they can. There are some people's work that I honestly don't trust and I triple check everything"

This sense of skepticism arises from prior experience with contractors whose efforts are based on pleasing their clients rather than respecting SEQRA and the environmental regulations associated with the review process. The contractors and planning board members must use SEQRA as a tool in their toolbox that if used well can be extremely useful in mitigating the environmental impacts of all development projects and permits.

Although many stakeholders' feel that the current documents are inefficient and cumbersome, there are individuals who disagree. A substantial group of stakeholders believes that SEQRA is successful in its purpose of establishing questions that outline key issues for applicants and planning board to consider when assessing all environmental concerns associated with a project. There was an underlying theme among responses suggesting that the applicants and reviewers have a dichotomous view of the SEQRA process. It appeared that applicants view SEQRA as a procedural step in the process of getting their project approved, while reviewers view SEQRA as a tool for mitigating the environmental effects of development projects and permits. Nowhere was it explicit that developers look to rush through the SEQRA process, rather we observed that reviewers are more likely to use there documents and the review process as effectively as possible.

Discussion Section

Desired Changes with some input by the DEC

Since its enactment in the mid 1970's, SEQRA has had remained essentially unchanged. The Full EAF has remained unchanged since its initial adoption in 1978, while the short form has received minor revisions but none after 1987. These forms have become deeply embedded in the overall SEQRA process. Many believe they are out of date and are in need of a thorough revision. Our results indicated that many stakeholders involved with the SEQRA process are unhappy wit hthe approved changes by the DEC that are set to become effective in October of 2012. They believe that the public feedback and the changes made was not thorough enough in fixing some of the largest inefficiencies currently existing within the process.

The process began in 2007 when the DEC began meeting with subject experts about making changes that are pertinent to new environmental issues that have arisen since the creation of these forms. They were then distributed to the public in 2008 and bounced back and forth between stakeholder input and DEC feedback. Due to the major implications the revisions have on the SEQRA documents, the revision process has continued to be bogged down by the comments from professionals and other stakeholders in the process. The process of feedback and revisions is fundamentally important because SEQRA is the standalone act requiring a hard look at the potential adverse environmental impacts of proposed projects. The public comment process has been completed after multiple drafts of the documents and the final revisions have been posted and are set to be effective as of October 2012.

When the revision process began, a laundry list of goals for the revision process was boiled down into the most important aspects that need to be considered. Two of the most important adjustments to these forms pertained to the length of the forms. Stakeholder comments indicated a strong desire for improvements in the short EAF, so it could become the universal assessment form for most unlisted actions. Another desired change pertains to elements of the visual EAF that require more dynamic information on the aesthetics of projects and how they will affect relevant surrounding sites. Other goals identified by the DEC for the revision process included allowing for more effective information collection, eliminating the separate determination of significance forms and the incorporating the full EAF use of "Gatekeeper Questions" to link Part 2 questions to Part 1 of the long forms. DEC also received requests to develop a companion workbook with links to spatial data as well as creating a PDF or Turbotax-like form on the web.

The DEC has stated that they did their best to target each of these goals while making changes to both the Full and Short EAF while providing comprehensive consideration and feedback to all public comments. The proposed EAFs included numerous additional topics such as brownfields, climate change, energy, environmental justice, pollution prevention, smart growth and better coverage of planning/zoning actions. These changes should eliminate the need for extensive SEQRA review for small insignificant projects while increasing the scrutiny for projects that may have greater adverse effects.

The DEC's new revisions of these forms have attempted to satisfy the major concerns of the stakeholders. The primary changes to the short EAF include the addition of

major topic areas and adopted a similar assessment approach as the full EAF, becoming a much more comprehensive document. This new form has doubled in size from its original two pages to the now four pages. The revised Short EAF has the ability to provide a more comprehensive basis for the assessment of environmental impacts. This should allow municipalities to use the short form for the majority of development projects that are reviewed. This shift will allow more smaller projects to fall within the action types that require short EAFs, while greatly increasing the scale of a project that would require the long EAF. While these changes appear to be approved by many, the public comments have identified aspects that are favored and disliked at large.

Among these public comments, there was an overwhelming response that approved of the proposed short EAF, while many disliked the lengthy and too complex long EAF. General comments on the long form showed that in some cases stakeholders felt that the DEC was asking for far too detailed information and analysis at the EAF stage of the project review process. Another major theme that has emerged from the public comments criticizes DEC for including questions that were too DEC-centric (too parochial to DEC's jurisdictions), stating that the information needed to answer many of these questions would be difficult for project sponsors and municipalities to find without the use of expensive consulting services.   Because of this there was a large quantity of questions that commented on some questions that should have been simplified with more leading aspects.

Stakeholders' view of proposed changes

Overall the stakeholders who participated in the comment period for the DEC revisions to SEQRA's long and short EAFs praised the amplification of the short forms and inclusion of current environmental issues. One commenter stated, "If filled out properly, the [new] forms do have the potential to give the lead agency more information so as to reduce time-consuming back and forth between applicant and agency. The forms address many more areas of potential environmental impact that communities are concerned about and this will, we believe, result in better projects." However, many of the issues identified as problematic in the current forms have not been altered. Commenters have agreed the revised long form is now very complex and will require much more time and resources to complete. The new Long EAF has grown from its original seven pages to its revised thirteen pages. Critics identified the "DEC-centric" questions as being too tailored towards DEC specific thresholds and in appropriate indicators of potential adverse environmental impacts. Others criticized the language used in the forms, claiming "The new forms presume knowledge of jargon and technical terms that are not likely to be familiar by most non-professionals, particularly of the ecological or environmental terms used." One commenter even went so far as to state that with the proposed forms, "it is very likely that any project requiring a full EAF will be required to have professional help if they want to accurately and successfully complete it." These are just some of the comments that indicate the major issues the numerous commenters had with the proposed DEC revisions.

<u>Conclusion</u>

      Although DEC's proposed changes are successful in addressing many of the environmental issues in desperate need of an update, these revisions make the process more confusing and may result in the need of additional professional assistance. In addition, these changes fail to make the EAF's more dynamic by including more "DEC-centric" questions and broad thresholds. The aforementioned concerns are the two major issues our stakeholder analysis identified as ineffective ways to find an appropriate balance between environmental, social and economic affects of all development projects. As one stakeholder states, "SEQRA legislation desperately needs an update in itself. Not a wholesale revision, but rather a tweaking of the process and procedures which local boards are currently forced to interpret."

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Kemper Jason. Personal interview. 21 Mar. 2012

Mitchell, Travis. Personal interview. 2 April 2012.

Schachner, Mark. Personal interview. 6 Mar. 2012

Appendix A: List of Interview Questions

How often does your agency meet?

How do you go about reviewing a permit application or development proposal?

What portions of the SEQRA process are most relevant to your agency?

How effective do you feel SEQRA is at identifying and putting emphasis on environmental issues?

How do you think the SEQRA process could be improved to make your job easier?

How do you think the SEQRA process could be improved to more effectively identify and protect environmental issues?

How do you feel others in your agency view SEQRA?

How do you feel other agencies view SEQRA?

Are there certain issues or proposals that apply more directly to SEQRA?

Are there certain issues that SEQRA requires that you feel provide little to no information or are environmentally relevant?

Are you familiar with NEPA?

Apart from the SEQRA document, does your agency require any other similar forms to be completed?

How frequently does your agency require Environmental Impact Statements (EIS) to be conducted?

And when conducted how time consuming and financially taxing is the EIS process?

Are there disputes about lead agencies within your municipality?

What are some of the major contractors, which are employed to complete EIS?

Are there specific contractors whose work you respect more than other contractors?

Appendix B: Interviewees

Mike Dobis
Chairperson of the Wilton Planning Board

Amy Durland
Saratoga Springs Planning Board Member

Kate Maynard
Principal Planner for the City of Saratoga Springs

Matthew G. Rogers, AICP
Director of Planning and Economic Development at Saratoga Associates
Chairperson of the Village of Corinth Planning board

Michael Ingersoll
LA Planning

Jason Kemper
Director of Planning, Saratoga County

Travis Mitchell, P.E.
Environmental Design Partnership
4/2 (phone)

Mark Schachner
Environmental Lawyer and visiting professor at Skidmore College