

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

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

February 8, 2010

DRAFT REPORT AND RECOMMENDATIONS

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Dialog Co-Chairs

Jonathan Drapkin, President, Pattern for Progress &
Ned Sullivan, President, Scenic Hudson

with

Willie Janeway, Regional Director
NYS Department of Environmental Conservation (DEC) Region 3

and the

Region 3 SEQR Dialog Core Working Group
(see page 6)

Executive Summary

As a result of a Hudson Valley Catskill regional dialog about ways to improve the State Environmental Quality Review (SEQR) review process without compromising environmental protection or opportunities for stakeholder input, a number of recommendations that appear to have the potential for wide spread, diverse support on a trial basis in the region have been suggested. These are summarized below. Greater detail is provided in subsequent pages, along with information on other suggestions. Comments and reaction to this draft are encouraged, and can be submitted to R3SEQRworkgroup@gw.dec.state.ny.us. We request comments by March 12, 2010.

“There is great benefit to periodically bringing (SEQR) stakeholders together for dialogue and to discuss problems and frustrations. Understanding each others perspectives and positions is useful.” Larry Wolinsky, frequent SEQR attorney

At the initiation of this dialog in the fall of 2009 it was specified that the focus would be on identifying recommendations that can be accomplished in the region within a short time frame without legislative or regulatory changes. It was recognized that the dialog may also include suggestions that will necessitate legislative or regulatory review, but that those are not the focus. As part of an aggressive schedule, the goal was to develop recommendations by the end of the year. The Department and the State have not endorsed any proposal to amend SEQR.

An exceptionally diverse number of organizations, state and local agencies, developers, citizen activists, attorneys, planners, engineers, environmental advocates, economic development professionals and other stakeholders have contributed to this effort. Many have provided comments and suggestions via email, letter, and as panelists or interested stakeholders at one or more of the public meetings held on November 20th, December 4th and December 18th. A list of the core working group, panelists and those who provided comments is attached. All these contributions are appreciated, as is the spirit in which they were offered – helping to try and identify ideas around which there might be consensus among the many diverse interested stakeholders.

“There need not be walls between developers and environmentalists, consultants and locals, industry and aesthetics, or the biota and the businessman. Openness, mutual respect, dialogue, and an underlying goal of finding common ground are forging a new paradigm for encouraging growth and environmental protection at the same time.” Vern Benjamin, Town of Saugerties

Many who have participated have recognized that the state and DEC face real and unprecedented fiscal pressures. Others recognize DEC used to do some things we suggest. Budget realities are one of multiple factors impacting the degree to which or the timing of any DEC efforts to implement finalized and accepted recommendations. These recommendations are offered with a view towards the long-term, with the hope that as situations change suggestions that are resource dependent may be considered for implementation in the future, if not now.

On behalf of all participants and contributors, the co-chairs and the working group thank DEC for the opportunity to engage stakeholders in the dialog and prepare these draft recommendations:

- 1) **Incentivize Planning:** Recognize that SEQR is not a substitute for good planning. Incentivize regional and local planning and use of Generic Environmental Impact Statements. Prioritize development and resource protection opportunities.
- 2) **Expand SEQR Education and Training:** Expand SEQR educational training opportunities in partnership with other agencies and private stakeholders. Increase use of DEC website and modern Information Technology (including the web).
- 3) **Produce Regional SEQR Guidance:** Develop regional best management practices for all SEQR Practitioners with regard to substantive and procedural issues, including timelines, scoping, public hearings, mitigation, assessment methodology, reasonableness and other issues.
- 4) **Increase Availability of DEC Staff to Provide SEQR Advice and Help to Communities:** Establish a “DEC SEQR Circuit Rider,” “Specialist” or “Ombudsman,” and SEQR phone number to provide communities with guidance and advice regarding implementation. Provide resources for State and local Agencies enabling DEC and others to be more proactive, involved and responsive to coordinating agencies and stakeholder requests.
- 5) **Emphasize Timelines in the SEQR Review Process:** At the earliest possible stage, lead agencies should publicly discuss and set forth regulatory and anticipated timeframes based upon comparable projects in the region for review with appropriate stakeholder input and a reasonable time period for adequate review.
- 6) **Encourage early Dialog among Stakeholders:** Explore providing new incentives to encourage early dialog among project proponents, review agencies and key stakeholders, including improved use of scoping.
- 7) **Employ Greater use of Mediation to Resolve Disputes:** Explore having DEC or another party provide Alternative Dispute Resolution (ADR) options.
- 8) **Designate a Point Person for Large Regional Priority Project Reviews:** For larger scale State recognized regionally important “priority green projects” designate a senior level staff person from the state to convene and host a pre-application meeting with all involved agencies, the applicant and key stakeholders.
- 9) **Establish a DEC Regional Hudson Valley Catskill Working Group:** Establish a diverse voluntary DEC Regional Working Group to assist with implementation of recommendations, including but not limited to development of a SEQR Guidance Manual and evaluation of any changes that are tried.

Everyone with an interest is encouraged to comment on these draft recommendations and draft report. Comments will be considered by the working group before final recommendations are provided to the DEC Commissioner. Comments can be submitted until March 12, 2010 to:

R3SEQRworkgroup@gw.dec.state.ny.us

Introduction

Hudson Valley Catskill Region State Environmental Quality Review (SEQR) Dialog

September 17, 2009 New York State Department of Environmental Conservation Commissioner Pete Grannis announced a Hudson Valley Catskill regional effort to identify opportunities to improve the State Environmental Quality Review (SEQR) process. The Commissioner's full remarks are attached. Willie Janeway, DEC Regional Director, Jonathan Drapkin, Pattern for Progress President, and Ned Sullivan, Scenic Hudson President lead the effort. DEC established R3SEQRWorkgroup@gw.dec.state.ny.us as an email-box to receive suggestions.

When it enacted SEQR the New York State Legislature stated that its intent was:

"...to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state."

SEQR, implemented by regulations most recently updated in 1996, establishes a process to systematically consider environmental factors early in the planning stages of actions that are directly undertaken, funded or approved by local, regional and state agencies. By incorporating environmental review early, projects can be modified as needed to avoid adverse impacts on the environment. SEQR requires the agencies consider environmental impacts equally with social and economic factors during discretionary decision-making and to balance the environmental impacts with social and economic factors when deciding to approve or undertake an "action."

The Commissioner asked that the Hudson Valley Catskill SEQR dialog focus on identifying recommendations that can be accomplished in the region within a short time frame without legislative or regulatory changes. While the dialog also included suggestions that would necessitate legislative or regulatory review, those are not the focus. As part of an aggressive schedule, the Commissioner asked for recommendations by the end of the year. The Department and the State have not endorsed any proposal to amend SEQR.

Commissioner Grannis, when making the announcement, noted we need to improve the implementation of SEQR, a state statute...

"...meant to facilitate good decision-making by local communities and other public agencies. By encouraging disclosure, avoidance and mitigation of environmental impacts, SEQR can prevent pollution and avoid poor design to help shape sustainable and successful land use in our communities."

Co-Chair and Pattern for Progress President and CEO Jonathan Drapkin said:

"Enacted in 1976, SEQR has not undergone serious review in more than a decade. A growing variety of interpretations, through local understanding as well as court interpretations makes an already difficult web of requirements much more daunting to local government officials who must insure balance in the process. We want a dialog among officials, developers, attorneys and environmental advocates as to how SEQR could be revised or applied more efficiently, without hurting the environment while supporting the recovery of our regional economy."

Co-Chair and Scenic Hudson President Ned Sullivan said:

"The State Environmental Quality Review Act is New York's seminal law ensuring that environmental impacts of development proposals are subject to careful public review and mitigation of impacts. Many projects have benefited, and adverse environmental impacts have been avoided, as a result of the thoughtful public input that has been provided through SEQRA reviews. With terrific public input, and a committed working group of diverse stakeholders, we are confident that we can provide DEC Commissioner Grannis recommendations to more effectively implement SEQRA in the Hudson Valley, while ensuring it continues to protect the environment and provide for public input."

DEC Regional Director Willie Janeway said regarding the SEQR dialog:

"With input from and discussion among a diverse number of stakeholders we hope to develop consensus regarding changes that might be made with regard to SEQR implementation in the region. These would be recommendations that maintain or improve protection of clean water, clean air, open space, public health and the environment, that enhance public transparency and effective stakeholder input and reduce the time required to transition from development concept to final agency decisions for good "green" smart, sustainable economic development."

The DEC website at <http://www.dec.ny.gov/permits/357.html> provides additional information on SEQR. In summary, in New York State (NYS), most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government, require an environmental impact assessment. SEQR requires the sponsoring or approving governmental body to identify and mitigate the significant environmental impacts of the activity it is proposing or permitting. DEC has standardized environmental assessments with the Environmental Assessment Form (EAF) and by providing special guidance documents which are available to be downloaded with instructions using the links on the web page. On completing an EAF, the lead agency determines the significance of an action's environmental impacts. The agency then decides whether to require (or prepare) an Environmental Impact Statement and whether to hold a public hearing on the proposed action. DEC's web site provides additional information, links to technical information and support, forms and guidance publications.

SEQR Dialog Core Working Group

(12/16/09)

Chairs:

Jonathan Drapkin and Charlie Murphy, Pattern for Progress

Ned Sullivan and Jeff Anzevino, Scenic Hudson

Willie Janeway, Regional Director, and John Parker, Regional Attorney, NYS DEC

Core Working Group: (alphabetical)

Albert Annuziata, Building and Realty Institute of Westchester and Mid-Hudson Region

Mary Beth Bianconi, Delaware Engineering

Dave Church, Orange County Planning

Robert Elliott, former DOS, Greenway

Glenn Hoagland, Mohonk Preserve

Sean Mahar, Audubon*

Phillip Musegass, Riverkeeper

Stuart Mesinger, Chazen

Marc Moran, Beacon Institute

Graham Trelstad, AKRF

Larry Wolinsky, attorney

Assisting:

Jim McIver, C.T. Male

Bruce Wurz and Ingrid Carr, NYS GORR

Allison Epstein, Governor's office regional representative

Panels on November 20, 2009:

1:00 Frank Bifera
Mike Sterthous
Hope Choen
Mark Gerstman
~~Lisa Garcia~~

2:30 Nat Parish
Tim Miller
John Behan
Stu Turner
Jim Bates

* Withdrew

SEQR Dialog

Panels on December 4, 2009:

1:00 Cara Lee, The Nature Conservancy
~~Mark Castiglione, Hudson Greenway*~~
John Caffry, attorney
Steve Filler, Hudson River Clearwater
~~Julie Widdowson*~~

2:00 Rick O'Rourke
Richard Hyman
Ann Gallelli

3:00 Vernon Benjamin
Tom Madden
Chris Petterson

4:00 Janet Burnet
David Porter
Lonnie Coplen
Kate Hudson
Doreen Tignanelli

Panels on December 18, 2009:

1:00 Al Delbello
Lou Heimbach
John Nolan, Pace
Neil Woodworth, ADK

2:00 Jenn Grossman, OSI
Neil Halloran,
Patsy Wooters
Charles Pound
~~Mike Torelli*~~
Andrew Brodnick

3:00 David Steinmetz
Lorraine McNeil
Warren Reiss
~~Nancy Schneideweld*~~
John Lavelle
John Marwell

4:00 John Lyons
Karen Roux, OC Land Trust
Simon Gruber
Jacob Billig
Paula Medley

December 18, 2009 Sally Ball, from NYS Department of State and Mark Castiglione, Executive Director of the Hudson Valley Greenway, also attended and provided comments.

* Withdrew

Individuals/Groups submitting comments to the working group

(In addition to comments made by panelists)

1. Clif Schneider
2. Karen Schneller-McDonald
3. Vernon Benjamin
4. Nancy Schniedewind (w/ letter to Congressman Hinchey)
5. David Porter
6. Neal Holloran
7. Glenn Hoagland
8. Graham Trelstad
9. Mary Beth Bianconi
10. Dave Church
11. Ned Sullivan and Jeff Anzevino, Scenic Hudson
12. Albert Annunziata
13. David Porter (2nd comment)
14. Nancy Scniedewind (2nd comment)
15. Frank Collyer
16. Dave Colavito
17. Mark Doyle
18. Steven White
19. Jim Bates
20. John Nolan, Pace School of Law, Land Use Law Center
21. Jolanda Jansen
22. Drayton Grant
23. Michael Baden
24. Ann Gallelli
25. Michael Edelstein
26. Joel Russell
27. Barbara Warren (with SEQR portion of EJ comments included)
28. Vernon Benjamin (2nd comment)
29. Karen Schneller-McDonald (2nd comment)
30. Kate Hudson
31. Marian Rose
32. Nancy Proyect
33. Nancy Schniedewind
34. Robert Pucca
35. Chad Murdock
36. David Porter (2nd comment)
37. Mark Castiglione
38. Michael Klemens
39. George Potanovic, Jr.
40. Neal Halloran
41. Adelaide Cami
42. Karen Roux
43. John Lyons
44. Rachel Lagodka
45. Doreen Tignanelli

Individuals/Groups submitting comments to the working group

(continued...)

46. Cara Lee
47. Phillip Musegaas
48. Robert Roth
49. Carol Smith
50. Anonymous
51. Anonymous
52. Anonymous
53. Anonymous
54. John Behan
55. Anthony F. Morando
56. Albert Annunziata

Draft Recommendations for Improving the SEQR Process

On behalf of all participants and contributors, the co-chairs and the working group thank DEC for the opportunity to engage stakeholders in the dialog and prepare these draft recommendations.

As Scenic Hudson has noted, there have been recurring themes expressed by Working Group members and meeting participants alike. In fact, many ideas were also recommended during the September 19th Pattern for Progress forum that initiated this process. These ideas include incentives for more effective comprehensive planning; training and guidance, that could be advanced in part with establishment of a regional “circuit rider” or “SEQR specialist” at DEC, and a SEQR guidance manual; improved cooperation with new alternative dispute resolution options, and earlier public involvement in the whole process.

SEQRA has been part of my everyday life for the last 25 years and I have certainly experienced all the ‘good and the bad.’ The dialogue to date has been extremely beneficial and we have elicited good commentary and ideas from a broad stakeholder spectrum.”

Larry Wolinsky, Attorney

“The SEQRA process is complex, hard to master and subject to manipulation allowing reluctant lead agencies to delay and impose great costs on applicants and allowing receptive agencies to move precipitously to project approval. The solutions emphasize education and certification, predictable time periods and reasonable costs, interim appeals, and non-prejudicial error.” John Nolan, Pace School of Law, Land Use Law Center

“SEQR has to get back to what it was intended to be.” Michael Baden (Town of Rochester Planning Board member and Ulster County Planning Board member designee, as of 01/10), and others, including Al Delbello (former NYS Lt. Governor)

“SEQRA works. Poke at it, toy with it, tidy it up as needs be, but also look toward the larger picture to see if perhaps the problem is not with the law, but its implementation.”

Vernon Benjamin, Saugerties special projects coordinator

“SEQR is NOT a substitute for good planning.” Anonymous

Quotes, including those above and below, are included to provide the reader with perspective or background but do not represent consensus recommendations or the position of anyone other than the individual and/or organization quoted.

1. **Incentivize Planning:** Recognize that SEQR is not a substitute for good planning. Incentivize regional and local planning and use of Generic Environmental Impact Statements. Prioritize development and resource protection opportunities.

“The problem isn’t SEQRA, its lack of adequate investment, leadership, coordination and funding for local and regional land use planning.... SEQR is an inadequate substitute for good local and regional land use planning.... Until the state provides real guidance and support for comprehensive land use planning consistent with regional, state interests, then SEQR will continue to be an open ended replacement that includes inherent uncertainty.”
Mark Castiglione, AICP and acting Executive Director Hudson Valley Greenway

“The relationships between SEQR sponsored environmental assessment and ‘planning’ at the municipal level has been a recurring theme at every meeting (of the SEQR dialog). Generally, I have heard four (4) comment focal points that have helped create unpredictability in land use and development approvals and policies. They are: (1) the too dominant emergence of project-by-project based SEQR assessment as an inappropriate or poor substitute for community-based planning, (2) the overall need for increased local government planning that includes early, public involvement as well as environmental resource inventorying and protection policies, (3) the overall need for professional guidance on and use of GEISs and/or quality environmental resource assessment as a complement to such planning, and (4) increased education and support by State agencies and others – including the provision of incentives – for completion of plans and plan-related GEISs.”
Dave Church, AICP and Orange County Commissioner of Planning

- a. **Promote Effective Comprehensive Regional Planning & Consolidation of Services:** Encourage and support greater local participation in regional comprehensive planning processes. This could include opportunities to benefit from consolidation of services. In addition, develop science based information regarding the region’s most sensitive environmental resources and the region’s best candidates for sustainable, smart economic development.
- b. **Provide Incentives for Municipal and Intermunicipal Planning:** Incentives for municipal and intermunicipal planning complemented with completion of genuine GEISs (see below) and implementation of consistent zoning and other land use regulations should be a priority.
- c. **Expand Greenway program type “indemnification:”** Expand State indemnification for a municipality against challenges to its plan, GEIS or regulations so that local governments are rewarded as are the public and private sector players active in those places where planning updates are completed and implemented.
- d. **Expand use of Generic Environmental Impact Statements (GEISs):** In Training and Guidance (see above), provide information on the advantages of addressing issues associated with a particular area in a GEIS to produce a framework for more timely SEQR review for proposed actions that avoid identified environmental issues. Provide guidance and information on how to pay for and recoup funding needed to complete GEISs.

- e. Provide Guidance on Planning: Guidance needs to be provided to local officials on the technical and financial realities and benefits of local and regional planning and GEISs.
- f. Expand Shawangunk Ridge “Green Assets” initiative to other areas: This program improved planning and helped focus the scope on relevant issues for actions proposed in this area of the Region.
- g. Advance completion of Local Waterfront Revitalization Plans (LWRPs): These include local comprehensive plans and zoning, in coordination with multiple agencies and planning efforts. Provide incentives to localities to advance these processes.
- h. Secure State Funding to Support Planning: State leadership in the form of matching funds for local municipalities to encourage proactive planning is recommended. See recommendation #3. Promote currently available planning and “smart growth” grants.
- i. Reward Local Governments who Proactively and Comprehensively Plan: Incentivize good planning that includes both strong environmental resource and economic components. That reward should be the forbearance or minimization of further SEQR review when specific plans are proposed which conform to the community plan. The SEQR GEIS provisions already provide for this.

Additional Discussion regarding the need to develop Incentives for Planning:

In NYS “comprehensive planning” is the preparation and adoption of policy plans by local governments consistent with NYS guiding statutes. Planning in NYS also includes the preparation of similar but more focused policy plans including Local Waterfront Revitalization Plans (LWRPs) and Greenway Plans as administered by specific NYS programs.

Note should be made that a large majority of municipalities in the NYS DEC Region 3 have adopted comprehensive plans (according to survey of such from the NYS Legislative Commission on Rural Resources), and many of these plans are high quality, thoroughly researched policy documents. Unfortunately, many others suffer from being vague or out of date policy statements; others lack essential research; many others fail to set concurrence or a foundation for land use regulations such as zoning or site plan reviews. Additionally, LWRPs and Greenway Plans, although directly supported by State agency initiatives and periodic financing, remain relatively rare or too often detached from the more fundamental “comprehensive plan”.

There are many reasons, related and unrelated, to explaining the recurring call for more planning – or to reverse the declining reliance on planning. Once a national leader in both state and municipal planning, New York State has slipped for years in its commitment to planning as an essential public policy function at both the state, regional/county and municipal levels. Indeed, under the theme of *leading by example*, State and regional agency planning is rare or limited to important but focused exceptions such as the State Open Space Plan or State Energy Plan or other functional plans required under Federal regulation or aid

programs. This slip in commitment continues, as most recently NYS is on a path to cut further the already limited education and training programs for municipal officials via NYS DOS.

Fiscal constraints alone also have conspired against expending resources on planning or updating existing plans. Government is inclined to “do” or “act” and not “plan” when funds are tight. Agencies are also compelled to focus on essential functions, and planning rarely is included. As such, too often environmental assessment, as mandated by SEQR, has become a dominant or replacement activity against genuine planning at all levels of government – because it is mandatory and is financed not by the public sector but primarily by a motivated private sector. This is particularly acute at the local government level where unpredictable finances and politics coupled with the pragmatic realities of day to day management can conspire against even the best planning efforts in favor of activities that are mandated or more likely to result in quicker or more tangible outcomes.

Land use planning and SEQRA have become increasingly interwoven in recent years. While intended to be complementary activities, each activity is distinctly different. Local government land use planning (legally termed “comprehensive planning”) is by definition a proactive, analytical effort designed to set public policy and to guide implementation tools such as zoning, subdivision regulations, capital financing and others. The best plans are also consensus-based and positive in policy. In New York State such planning is also generally non-mandatory (some basic procedures such a public hearing and compliance with SEQR are required IF a locality chooses to complete and adopt a “plan”).

Environmental assessment on the other hand is also analytical but is reactive triggered by a distinct, proactive action, be that a proposed plan, a rezoning, or one or more discretionary development permits. Such assessment is also rarely if ever voluntary but is mandatory as defined in State rules and regulations. As noted by some presenters, this assessment is also not about positive policy setting but about “proving negatives” that there will NOT be any significant, adverse environmental impact from certain proposed action.

Greater local government comprehensive planning would help to address – and in turn partially shift reliance on SEQR relevant to:

- ✓ Public involvement – given that essential early involvement is a necessity along with the availability of a significant range of effective consensus-building techniques;
- ✓ Environmental resource inventorying and identification – also an essential aspect of any quality plan; and
- ✓ Marketplace and fiscal predictability where desirable and undesirable development activities and locations are defined.

“Municipalities that have already mapped and inventoried their natural resource systems are the best equipped to streamline SEQRA. Applying up-front knowledge and expertise toward specific natural protection goals already identified should enable more successful early consultation, community input, and narrowed scoping that identifies only those issues for specific study using standard scientific approaches.” Glenn Hoagland, Executive Director of the Mohonk Preserve

2. **Expand SEQR Education and Training:** Expand SEQR educational training opportunities in partnership with other agencies and private stakeholders. Increase use of DEC website and modern Information Technology (including the web).

“Some planning boards do not understand the requirements or even the reason for having to do SEQR.” Neal Halloran

- a. **Expand SEQR Education and Training:** Establish and implement a training program for Region 3 stakeholders; agencies, developers, applicants, citizen groups, etc. Developing meaningful and useful training materials. Utilize recommended SEQR Guidance Manual (see below) as a principal training tool. Clarify authority and responsibilities of lead and involved agencies and board members. Consider co-hosting with partners a “SEQR Training Academy.”

“I am advocating that lead agencies be encouraged to (1) reacquaint themselves with SEQRA's goals and (2) take a proactive role in the SEQRA process. I think that a proactive approach by lead agencies will lead to a process that will yield more effective environmental protection, while at the same time producing a more efficient process.”
Attorney John F. Lyons, Grant & Lyons

- b. **Create a DEC Region 3 SEQR Web site:** DEC’s website could and should serve as a repository and resource center for technical assistance. Already-existing resources currently on the DEC website worthy of note to aid in site design that should be actively promoted and made readily available to SEQRA practitioners (in electronic and text) potentially include publications such as:

- *Legacy: Conserving New York State’s Biodiversity System* (A collaboration of the American Museum of Natural History, NYS Biodiversity Research Institute, DEC, The Nature Conservancy, and the NYS Natural Heritage Program);
- DEC, OPRHP, DOS: *New York State Open Space Conservation Plan;*
- DEC’s *Wildlife Action Plan;* and other publications including: *Conserving Natural Areas and Wildlife in Your Community; Hudson River Estuary Wildlife Habitat Conservation Framework; Woodland Pool Conservation: Amphibian Migration and road Crossing Fact Sheet; Tools for Watershed Protection: Better Site Design Fact Sheet; and Tools for Watershed Protection: Stream Buffers Fact Sheet;*
- *Watershed Consensus of Local Site Planning Roundtables:*
 - a) *Town of Wappinger: Recommended Model Development Principles for Conservation of Natural Resources in the Hudson River Watershed;*
 - b) *Town of Clinton: Recommended Model Principles for Consensus of Local Site Planning Roundtable*

- c. **Create a Regional Online SEQR Library:** Improve digital access to information. Post online relevant documents from developers and lead agencies, as is required for a DEIS. A web based library of SEQR documentation hosted by DEC for the region to facilitate public access to EISs and related information for proposed actions.

- d. Use the Web to Disperse Environmental Information: Assemble an inventory of all biodiversity studies and habitat assessments prepared for municipalities with regard to various sites in the region. Make the information available online, catalogued by geography and/or species so those proposing and reviewing new proposed actions can take advantage of existing information without needing to recreate data.
- e. Support Creation of an Annotated Environmental Assessment Form (EAF): Include production of an updated “EAF user guide,” plus screening tools or defined thresholds to assist with determination of significance.

“Too often, the SEQRA process is viewed as a formalistic set of obstacles that must be maneuvered through instead of a serious consideration of a project’s important potential negative environmental impacts.” David Porter

Additional discussion regarding SEQR Education and Training:

By some estimates, as much as a third of all local government officials turn over every two to three years. This presents a staggering learning curve for individuals likely to be serving on boards as Lead Agencies. Deliberations under SEQRA have earned the reputation of being divisive, contentious and litigious. Understandably, the lay people upon whom decision-making responsibilities fall are fearful of making mistakes. As a result, decisions (including “getting to no”) are put off and local practices have been compared to “Defensive Medicine” where the universe of all possibilities must be considered before a diagnosis is made -- or the patient succumbs.

It has been said that “Training and planning go hand in hand.” This certainly has been the philosophy of the Local Government Division at the NYS Department of State. Land Use Training Specialists (LUTS) are planners tasked with training duties by DOS. Not too long ago DOS had three trainers with the depth of experience and approval of Counsel’s Office to conduct SEQRA training modules at Local Government Conferences and regional training events. DOS trainers usually went into the classroom with one of three land use attorneys from DOS or a colleague from DEC. Recent staffing changes, reductions and budget cuts including reductions in funds available for travel have diminished SEQR training.

Because most of the municipalities within Region 3 are within a one to two hour drive from Albany, the region might be a good candidate for a special pilot program with DOS & DEC. With a very modest travel budget, Region 3 could be a test lab for new State training programs for local officials as well as a “train the trainers” program to develop a cadre of people from the region who are equipped to provide “circuit rider” style training that goes directly to the Towns and Villages.

Commissioner Grannis is committed to updating the Environmental Assessment Form to “improve its flow and organization, including removing obsolete questions (hasn’t been updated in 30 years) and adding relevant new ones, and making it clear that certain projects can skip certain sections that are not relevant to the proposed activity.” Plans include publishing an online SEQRA EAF Workbook to help preparers work through the form. With something “new” such as this being developed, this is an ideal time to plan for improved training opportunities.

Three areas have been targeted in discussions with regard to SEQR Education:

Creation of a user friendly Technical “how-to” Manual is among the items around which consensus has been built. This would provide guidelines for items mentioned below in addition to water testing, species data and air quality relevant to the region. A timeline and time-checks tool to clarify standards for lead agencies is included as part of the Technical “how to” package.

Additionally, resources willing, a DEC Region 3 ombudsman (staff person and hotline phone number/email) is considered by many to be a much needed resource for technical assistance, particularly when a community has a very specific question. Such an individual also would be well positioned to assist applicants and consultants by directing them to data and studies already compiled for a particular part of the region, e.g. through the Estuary Program, watershed maps, previously documented habitat studies, etc. Questions raised and answered in this forum could be shared via an online resource (see below).

Due to limited resources, State sponsored training may not be available in the near future. In the event that a pilot program like the one described earlier is not possible, Region 3 may wish to develop a volunteer “Academy” of trainers. Region 3 could work with planners, attorneys and other interested parties to coordinate a group of available SEQR experts and trainers to provide classes at conferences and symposia held periodically throughout the region. The onus, however, would be on DEC to insure that a consistent and balanced message is delivered. Part of the attraction to these classes might be certificates of attendance fulfilling the mandatory four hours of training for local planning and zoning board members. Some recommended that participants be required to take some form of pass/fail test to keep training candidates better engaged.

Online resources that are region specific could be enormously beneficial and relatively inexpensive to maintain. Patty Salkin’s Albany Law School blog, *Law of the Land* (highlighting new court decisions, new state policies & practices, and actions at the local government level that guide land use and community development) and other academic institutions such as Pace provide potential links to relevant SEQR related issues. A website that goes beyond the usual FAQs by indexing the latest information and best practices could prove invaluable.

3. **Produce Regional SEQR Guidance:** Develop regional best management practices for all SEQR Practitioners with regard to substantive and procedural issues, including timelines, scoping, public hearings, mitigation, assessment methodology, reasonableness and other issues.

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

- a. **Produce a SEQRA Best Practices Manual for Region 3.** The Best Practices Manual would contain substantive and procedural issues, including the following general components (which could be produced in sections or chapters, one at a time):
- Citizen participation – required early outreach by agency/applicant to community; guidance on citizen participation throughout the process.
 - Determination of significance: guidance on what is a “relevant area of environmental concern” and how to determine the “significance” of a potential impact.
 - Scoping: Specific guidance on producing relevant but comprehensive EIS scopes. Recommend scoping as a required “best practice.”
 - Information setting forth agreed upon methodologies to assess and evaluate environmental impacts. There should be manuals for cultural resources; traffic; fiscal impact; air; stormwater; wetlands; endangered, threatened and special concern plant and animal species; open space conservation, etc.
 - Guidance and clarity on how to pay for Generic Environmental Impact Statements (GEISs) and guidance on SEQR fees.
 - Best procedural practices; guidance about reasonable timeframes and administration; guidance on what constitutes completeness, etc.

The manual would be periodically updated as necessary by a working group (see below), including opportunities for public input and participation.

Additional SEQR guidance chapters or sections might be titled:

- “How to Facilitate Pre-application Consultation and Dialogue” (this would elucidate how to use such strategies as an “Early Consultation Process,” the “Brochure on Streamlining SEQR” (see #5 below), and pre-application meetings and charrettes.
- “How to Do Effective, Focused Scoping” to identify what is controversial about the project, what is significant to mitigate, reduce, offset or avoid given the resources impacted and the scale of the project, narrow the scope of what is to be studied, establish and agree on the accepted references and methodologies for the

studies, and use the scoping to keep the process and timelines streamlined and under control through leadership of the Lead Agency as it progresses through SEQRA.

- “Dispute Resolution Strategies:” How to Effectively Negotiate Under SEQRA – this might cover the range of effective strategies and case studies for: dispute resolution, use of settlement conferences, multi-party meetings, and consideration of such measures as recommended by many for using existing powers under SEQRA and local laws for dispute settlement. See Alternative Dispute Resolution (ADR) below.
- b. Include in SEQR Best Practices Manual Guidance on Substantive Issues and Techniques in Site Design: In addition to producing guidance on procedural issues, provide guidance on potential substantive topics including visual impacts, climate change, noise, habitat assessments, alternative analysis, cumulative impacts, mitigation options and techniques in site design
- c. Finalize an updated SEQR Handbook: It is recommended that the updated handbook be completed and include cumulative impact assessment guidance, guidance on determination of significance and guidance on climate change.
- d. Promote Development of Habitat Assessment Guidelines by Municipalities:
- e. Provide Information on how to make sure a DEIS is clearly Organized and Presented: Include information on making sure a DEIS and FEIS address all points identified in the scoping document.
- f. Advertise Availability of Information to help define “Reasonableness:” See “What is the Concept of "Reasonableness" as it applies to SEQR?” at the DEC website for a more complete discussion of “reasonableness:” <http://www.dec.ny.gov/permits/57253.html>
- g. Produce Guidance on what DEC considers “green” and “sustainable” development: Help communities define “smart growth,” sustainability and green development.

“DEC Guidance and training should emphasize the value of scoping in identifying relevant areas of potential impact. Training should also stress to lead agencies that not every issue that is raised in a scoping session necessarily need to be included in the scope and studies in the EIS. Lead agencies should include in the scoping the issues that can be expected to materially determine the environmental impacts of a project that will require mitigation. “DEC Guidance and training could promote pre-application meetings and charettes.” Scenic Hudson

4. **Increase Availability of DEC Staff to Provide SEQR Advice and Help to Communities:**

Establish a “DEC SEQR Circuit Rider,” “SEQR Specialist” or “Ombudsman,” and SEQR phone number to provide communities with guidance and advice regarding implementation. Provide resources for State and local Agencies enabling DEC and others to be more proactive, involved and responsive to coordinating agencies and stakeholder requests.

”Changes should give agencies the tools and the oversight they need to make SEQRA work the way it was intended in every community.” Steven White, Vice-chair, Spring Valley Concerned Citizens Coalition

- a. Establish (or reestablish) a DEC “SEQR Circuit Rider,” “SEQR Specialist” or “Ombudsman,” to assist and help Communities: DEC, working with DOS, the Hudson Valley Greenway, County and local planning entities, should reestablish a SEQR assistance unit available to provide advice and non-binding suggestions regarding SEQR procedural questions. This office or individual would assist also with training and updating and expanding DEC SEQR guidance. This was done at one time but has been discontinued due to fiscal issues.
- b. Promote use of a regional DEC phone number and email box for SEQR Questions: Fund and maintain a mechanism to provide technical answers and guidance on SEQR.
- c. Expand Resources (Funding) to State Agencies to support SEQR decision making: Recognize benefits of state investment in the form of staffing to facilitate permit processing and SEQR participation by agencies (including DEC, DOS, Greenway, etc.), including state participation in coordinated and more timely reviews during the SEQR process. DEC Permit/SEQR staff, DOS Coastal management program staff, Hudson Greenway are among agencies and programs that need resources directed at SEQR and permit related responsibilities.
- d. Expand Resources (Funding) to Local Agencies to assist with SEQR: Consider options to ensure planning boards have adequate resources. Consider identifying resources available to local community groups (such as former Article X), especially with regard to potential environmental justice communities.
- e. Provide Matching Grants to Support Regional, Intermunicipal and Local Planning: See recommendation #1. Build on past outreach and partnerships with County Planners.
- f. Expand Technical Services DEC provides to the Region’s Municipalities: It is recommended that DEC should continue to provide (and should expand) the technical services it already provides to municipalities and others through the Hudson River Estuary’s Biodiversity and Watershed Programs. This field technical assistance program has been invited into several municipalities with a goal of helping identify and map sensitive natural resources and watershed issues, prepare habitat assessment guidelines, natural resources inventories, zoning overlays and site plan design criteria, to assist with

local open space plans, and help get community consensus. This provides more consistent information and guidance Lead Agencies, applicants and citizens can use when analyzing specific site plans to ensure development is sited so as to balance needed growth with proactive measures for retaining habitat connectivity and continuity of ecosystem services and systems. Currently, this program has limited staff covering both the Hudson Valley and Capital District. Its funding is in jeopardy, yet it has so far served:

- 170 municipalities by assisting with identifying their biological resources and creating local conservation programs; (e.g., open space plans);
- 374 landowners and 39 non-profits (e.g., land trusts) assisted with data, maps, management strategies/guidance, training, education, land assessment, or funds;
- 1,940 community leaders (e.g., planning boards, CACs, elected officials) were provided training in land-use and conservation planning.

“The Hudson River Estuary program has assisted scores of towns in mapping resources and setting protection priorities. Setting priorities makes it possible to more efficiently site development. DEC should continue to support this program and consider it a means of doing SEQR more efficiently.” Cara Lee, Director for The Nature Conservancy’s Shawangunk Ridge Program

5. **Emphasize timelines in the SEQR review process:** At the earliest possible stage, lead agencies should publicly discuss and set forth regulatory and anticipated timeframes based upon comparable projects in the region for review with appropriate stakeholder input and a reasonable time period for adequate review.

“Let us be mindful of the need for affordable, workforce housing in the region.” Albert Annuziata, Executive Director for the Building and Reality Institute of Westchester and Mid-Hudson Region.

- a. **Provide SEQR Guidance and Suggestions regarding timelines:** Develop SEQR guidance documents for lead agencies and others on the subject of timelines. Present examples of anticipated timelines for less complex to more complex projects with emphasis on an adequate public review completed within a reasonable timeframe.. Urge lead agencies to implement SEQR consistent with the spirit of the law, including conducting reviews “as expeditiously as possible.”
- b. **Advertise Options under section 617.14 regarding timelines:** 617.14 appears to be underutilized and could most certainly be beneficial in aiding the SEQR process. Local procedures providing for more sensible and reasonable timeframes could be accomplished under this section; the section explicitly permits a local list of Type 1 and 2 actions; there could also be local agency guidelines for the tough areas, e.g. scoping, determinations of significance and evaluation of impacts;

“any problems regarding the time frames required for local environmental review arise almost exclusively from the Commissioner's regulations rather than the SEQRA statute itself which contains only one reference to a procedural deadline. The statute, found at §§ 8-0101

- 8-0117 of the Environmental Conservation Law, in fact, mandates that environmental reviews be conducted as expeditiously as possible. It states that lead agencies "shall carry out [SEQRA's] terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined and consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review." John Nolan, Pace School of Law, Land Use Law Center

6. **Encourage early Dialog among Stakeholders:** Explore providing new incentives to encourage early dialog among project proponents, review agencies and key stakeholders, including improved use of scoping.

"In our experience, projects that are fully designed without prior discussion with members of the public – and an openness to make modifications – are the most likely to experience lengthy delays. Early, pre-application dialogue among applicants, lead agencies, and stakeholders offers the best chance to head off delay and opposition during the formal SEQRA review." Jeff Anzevino, Scenic Hudson

- a. **Encourage Preapplication Meetings:** Encourage and promote benefits of preapplication meetings and communication between project proponents, review agency (or agencies) and stakeholders early in the process to develop better projects, and potentially more timely and less expensive review processes.
- b. **Encourage Early Outreach to Local and Potential Environmental Justice Stakeholders:** Distinct from preapplication meetings (see above) applicants are encouraged to communicate with local stakeholders and potential environmental justice constituents (where appropriate) early in the process to develop better projects and avoid delays.
- c. **Improve Public Hearings:** Coordinate SEQR public hearings to take place in tandem with other review processes, such as DOS CZMA. Work to avoid repeated adjournments and unnecessarily lengthy hearings while making sure all interested stakeholders have an opportunity to review and comment on relevant information as determined in the scope.
- d. **Place a Greater Emphasis on Effective Scoping:** (see Education and Training, above)

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

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

“SEORA reviews devolve into time-consuming adversarial engagements, often viewed by environmentalists as ineffective and by developers as a costly impediment to progress.... What is needed is a large infusion of technical support to communities so as to enable them to use SEORA effectively.... Pre-application meetings are an essential ingredient of a SEORA review. All-to-often project sponsors go through complex and expensive design processes without the benefit of community input. The project sponsor then goes public with well-designed plans that are the result of a large investment of dollars and time. The active encouragement, possibly even requirement, of facilitated pre-application meetings between project sponsors and the community at large would go a long way in bringing stakeholders together in a more collegial and creative process, while also sparing project sponsors considerable expenses in drawing up designs that are ultimately rejected.” Michael W. Klemens, PhD, Founding Director, Metropolitan Conservation Alliance

7. **Employ Greater use of Mediation to Resolve Disputes:** Explore having DEC or another party provide Alternative Dispute Resolution (ADR) options.

“Appeals of abuses of process are not legally allowed until there is a final decision on the merits.” John Nolan, Pace

- a. **Employ Alternative Dispute Resolution (ADR) options:** Explore greater use of ADR either through the courts or DEC, during the SEQR process. Investigate measures to create greater public awareness of the mediation procedures that DEC and other entities have available, and the potential to expand this to a larger class of SEQR conflicts and parties to the issue, during the SEQR process. This might include an option for parties to appeal interim issues/disputes during the process.
- b. **Consider asking DEC or others to expand ADR services:** One recommendation is that the DEC Regional Working Group (see below) serves as an ADR entity to resolve disputes at any juncture in the process. Services could be by mediated agreement or binding arbitration at the option of parties. There are others who might provide this service too.
8. **Designate a Point Person for Large Regional Priority Project Reviews:** For larger scale State recognized regionally important “priority green projects” designate a senior level staff person from the state to assist but not supersede local agencies and convene and host a pre-application meeting with all involved agencies, the applicant and key stakeholders.
- a. **Designate a Coordinator for the Review of Large Regional Priority Actions:** While the majority of SEQR actions considered are smaller in nature, there are periodic large scale State Recognized regionally important projects that represent State regional environmental, sustainability and economic development objectives. Just for example, regional significant Economic State Development Corporation (ESDC) projects could be candidates for such designation. It is recommended that when the State recognizes a project as such, a senior level executive staff person for the appropriate State agency should be designated to assist, but not supersede local agencies. They should convene

and host a pre-application meeting to get all involved agencies, the applicant and key stakeholders together to facilitate improved communication and coordination with regard to SEQR and respective permit reviews. Local agencies should explore opportunities to appoint a similar “point person” for more typical or regular project proposals.

9. **Establish a DEC Regional Hudson Valley Catskill Working Group**: Establish a diverse voluntary DEC Regional Working Group to assist with implementation of recommendations, including but not limited to development of a SEQR Guidance Manual and evaluation of any changes that are tried.

“I honestly believe that if we want to improve and enhance the SEQR process in the Hudson Valley, we (a coalition of stakeholders including government) must do it ourselves.” Larry Wolinsky, attorney

- a. **Establish a Voluntary DEC Regional Working Group**: Establish a working group with a mission to improve implementation of the SEQR process in the Hudson Valley without compromising environmental protection or public participation. It is suggested that Pattern for Progress and Scenic Hudson work with DEC to structure and coordinate formation of the group as well as oversee its ongoing activities. The composition of the group would be representative of stakeholder interests in the region; environmental, economic, government and citizen. Meetings would be open to the public.

The group would need funds to perform its tasks – particularly the production of the Best Practices Manual and (if appropriate) Dispute Resolution Services. It is suggested that these funds could be raised from both grant sources and private sector contributions. It is suggested that the regulated community would financially support this because it is an effort to make the process more predictable and inject more certainty.

The group’s work would include “Selling” the Best Practices Manual to Hudson Valley Agencies. It would be an objective of the group to have every decision making agency in the Valley adopt the Manual and agree to utilize and follow its guidance. The Best Practices Manual in effect becomes the standard for SEQR compliance in Region 3. It can be relied on by all parties in the event of dispute. Deviations from the Manual would need to be explained and documented. DEC, DOS, The Hudson Valley Greenway, ESD and other agencies would be invited to cooperate and assist with this work, and creation of the advisory manual.

Everyone with an interest is encouraged to comment on these draft recommendations and draft report.

Comments can be submitted to R3SEQRworkgroup@gw.dec.state.ny.us until March 12, 2010.

Comments will be considered by the working group before final recommendations are provided to the DEC Commissioner.