SEQR for Glidepath Scoping

The Scope of Work shall require the applicant to:

* consider relevant environmental impacts, facts and conclusions as required under SEQR;
* assess relevant environmental, social, economic and other adverse impacts;
* certify how this project can be consistent with social, economic and other essential considerations
* assess how the action avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable.

This is the “teeth” of SEQRA, and the only provision which clearly takes it beyond a mere environmental full disclosure procedure, and requires substantive results:

* Therefore by including these analyses in the required scope of work the agency will have the information to enable it to consider fully the environmental consequences and to take these consequences into account when reaching a decision whether or not to approve an action.

The scope of work shall include language that requires the applicant to prepare an EIS that must assess:

* the environmental impact of the proposed action including short-term and long–term effects,
* any adverse environmental effects,
* any irreversible and irretrievable commitments of resources,
* and “growth inducing aspects” of the proposed action.[[1]](#footnote-1)

The Scope of Work must require the applicant to consider all viable alternatives:

* .............contain an evaluation of “alternatives to the proposed action[[2]](#footnote-2). The analysis of alternatives has been called the **“driving spirit”** of the SEQRA process. [[3]](#footnote-3) The “range of alternatives must include the no-action alternative,” and “may also include, as appropriate, alternative:
  + sites;
  + technology;
  + scale or magnitude;
  + design;
  + timing;
  + use;

The Scope of work requires the applicant to assess the cumulative Impacts to water, air, wildlife, and quality of life:

What are the cumulative impacts?

* These are impacts on the environment that result from the incremental or increased impact of an action(s) when the impacts of that action are added to other past, present and reasonably foreseeable future actions.
* Cumulative impacts can result from a single action or a number of individually minor but collectively significant actions taking place over a period of time.
* Either the impacts or the actions themselves must be related.
* Cumulative impacts must be assessed when actions are proposed to or will foreseeably take place simultaneously or sequentially in a way that their combined impacts may be significant. Considering the cumulative effects of related actions insures against stratagems to avoid the required environmental review by breaking up a proposed development into component parts which, individually, do not have sufficient environmental significance.” [[4]](#footnote-4)

Because it is often difficult to distinguish between segmentation and the failure to address cumulative impacts and courts often muddle the concepts the applicant must include in its scope of work information to assist the agency in determining whether or not the project will both address cumulative impacts and avoid segmentation:

* SEQRA generally prohibits “segmentation,” which is defined as “the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.[[5]](#footnote-5) Accordingly, “[e]nvironmental review of the entire project is required before ‘any significant authorization is granted for a specific proposal.’[[6]](#footnote-6) The SEQRA regulations prescribe the basic contents of an EIS[[7]](#footnote-7)

In the EIS, the lead agency is required to

* identify the relevant areas of environmental concern,
* take a “hard look” at them,
* and make a “reasoned elaboration” of the basis for its determination. [[8]](#footnote-8)

Additionally because this is a complex process the agency shall require the applicant to provide not just access to all of its consultants work products but funds to assist the agency in analyzing the materials to enable it to make a determination. The agency may use these funds to hire professional engineers, environmental consultants, and for legal advice.

1. ECL§8-0109(2). [↑](#footnote-ref-1)
2. ECL §8- 0109(2) [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. Stewart Park and Reserve Coalition v. New York State Department of Environmental Conservation, 157 A.D.2d 1, 10, 555 N.Y.S.2d 481, 486 (3d Dep’t 1990). [↑](#footnote-ref-4)
5. .” 6 N.Y.C.R.R. §617.2(ag). See Sun Company, Inc. v. City of Syracuse Industrial Development Agency, 209 A.D.2d 34, 625 N.Y.S.2d 371 (4th Dep’t 1995), app. dis’d 86 N.Y.2d 776, 631 N.Y.S.2d 603 (1995); Taxpayers Opposed to Floodmart, Ltd., v. City of Hornell Industrial Development Agency, 212 A.D.2d 958, 624 N.Y.S.2d 689 (4th Dep’t 1995). [↑](#footnote-ref-5)
6. ” Kirk–Astor Drive Neighborhood Ass’n. v. Town Board of Town of Pittsford, 106 A.D.2d 868, 869, 483 N.Y.S.2d 526, 528 (4th Dep’t 1984), app. dis’d 66N.Y.2d 896, 498N.Y.S.2d 791 (1985)(projectmust be reviewed priorto rezoning);see also Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd., 253 A.D.2d 342, 688 N.Y.S.2d 848 (4th Dep’t 1999) (remediation of pre-existing soil contamination must be reviewed). [↑](#footnote-ref-6)
7. 6 N.Y.C.R.R. §617.9(b), [↑](#footnote-ref-7)
8. H.O.M.E.S. v. New York State Urban DevelopmentCorp., 69 A.D.2d 222, 231-2, 418N.Y.S.2d 827, 832 (4th Dep’t 1979); Jackson v.New York State Urban Development Corp., 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 305 (1986). [↑](#footnote-ref-8)