

Using SEQR to Protect Nature in Your Community

The **New York State Environmental Quality Review (SEQR)** process applies to most land development projects that come before a municipal planning board, town board, or zoning board of appeals for review, including site plan and subdivision approvals, and issuance of variances and special permits. When used effectively, the SEQR process can be a powerful tool for gathering information and evaluating potential environmental impacts of a proposed development project.

Useful as it is, however, SEQR is not a substitute for good planning. Natural resource inventories, open space protection, master plans, zoning, and other municipal plans and policies can empower communities to direct new development to the most appropriate places and *proactively* preserve their priority lands and waters. A community is more likely to achieve its goals for natural resource protection by using those formal planning instruments in conjunction with SEQR, instead of simply reacting in a piecemeal fashion to land development proposals.

Although SEQR is designed to address many kinds of environmental impacts, this fact sheet provides guidance especially on **how to use SEQR to incorporate biological and water resource information into land-use reviews.**

Early in the SEQR process, the lead agency classifies the proposed project or “action,” as **Type 1**, **Type 2**, or **Unlisted** according to the magnitude of expected environmental impacts (see inset at right).

Classification of the action determines the type of assessment form required to evaluate the project, a **Short or Full Environmental Assessment Form (EAF)** or an **Environmental Impact Statement (EIS)** (see inset below).

PROJECT CLASSIFICATION

- **Type 1 Action:** Expected to have significant adverse impacts on the environment. NYCRR 617.4 lists Type 1 Actions, and a municipality may also adopt a list with additional actions.
- **Type 2 Action:** Pre-determined by the state to have no significant adverse impacts—examples: maintenance or repair of an existing structure, or repaving an existing road or driveway. These actions require no further review under SEQR.
- **Unlisted Action:** Neither Type 1 nor Type 2. Unlisted actions require a determination of significance by the lead agency conducting the environmental review, such as the planning board.

Find more information on classification at 6 NYCRR 617.4 and 617.5.

WHICH KIND OF ASSESSMENT IS REQUIRED?

- **Short EAF:** Unlisted actions expected to have lesser impacts.
- **Full EAF:** Type 1 actions and, at the lead agency’s discretion, certain Unlisted actions for which more comprehensive or detailed information is needed.
- **EIS:** Type 1 and Unlisted actions expected to have at least one significant adverse environmental impact.

Find more information on choosing the kind of assessment at 6 NYCRR 617.6 and 617.7.

EAFs are designed to help lead agencies reach informed decisions about potential effects on the environment, but they are often completed in a perfunctory way. **To make the most effective use of an EAF, the lead agency should insist on thorough and accurate responses to each of the EAF questions.**

The “**Short EAF**” is the form typically employed for the environmental review of a small-to-medium-size project, and is the focus of this fact sheet.

Part 1 of the Short EAF is completed by the applicant, and **Part 2** by the lead agency, but **the lead agency should withhold acceptance of the document until both sections meet a high standard of thoroughness and accuracy.**

Short EAF, Part 1 (to be completed by the applicant)

Part 1 of the Short EAF has seven questions that directly address biological or water resources. Each is listed below with guidance on how to review the applicant's responses and ensure that the lead agency has the information necessary to complete Part 2, to understand the scope of the proposed project, to identify and analyze potential environmental impacts, and to make an informed decision on the project. Both the applicant and the lead agency are encouraged to obtain additional information or expert assistance, as needed, to answer some of these questions.

Question 7. Is the site of the proposed action located in, or does it adjoin, a state-listed Critical Environmental Area? A Critical Environmental Area (CEA) is an area formally designated by a state or local agency to draw attention to important natural, cultural, or hazardous features. If your municipality has designated CEAs, they will be depicted on an official municipal map. You may also check the NYSDEC webpage at <http://www.dec.ny.gov/permits/6184.html> to view maps of all the CEAs in the state. (To learn how to designate a CEA, visit <http://www.dec.ny.gov/permits/45500.html>.)

Question 13a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state, or local agency?

The first step to determine whether regulated wetlands occur on and near the site is to consult the National Wetland Inventory (NWI) maps and New York State Freshwater Wetland Maps. These maps are known to be incomplete and inaccurate, however—they omit many wetlands and show inaccurate wetland boundaries—and the NWI maps also include some wetlands that are not regulated by the federal government. Furthermore, the State and Federal maps do not necessarily depict all the wetlands that may be regulated under your community's local (municipal) law. Similarly, the National Hydrography Dataset—the most widely used stream data shown on publicly available maps—omits many of the small streams that are jurisdictional under the federal Clean Water Act. If the reviewing agency believes the site may have additional wetlands, ponds, or streams not depicted on these public maps or reported in the EAF, they may 1) consult locally-produced maps, if any, that are more comprehensive; 2) ask the applicant to survey the site carefully for additional wetland areas or intermittent streams not shown on state or federal maps; and 3) visit the site themselves to look for unmapped wetlands or streams. Good local information is often superior to that obtained from remote sources.

Question 13b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? See guidance on 13a, above. Onsite observations are necessary to ascertain the presence or absence of wetlands and streams, and a formal wetland survey and detailed engineer's drawing of proposed development features are sometimes necessary to answer this question. Do not rely solely on Federal, State, or other unsurveyed wetland or stream maps to determine the presence or boundaries of jurisdictional wetlands, regulated "adjacent areas," or streams.

Question 14. Identify the typical habitat types that occur on, or are likely to be found on, the project site. This question should be answered by someone skilled at identifying upland and wetland habitats, including those wetlands that are not wet in all seasons. Where available, consult detailed habitat maps.

NEED EXPERT HELP?

At times the lead agency may need expert assistance to evaluate or prepare responses to the EAF questions. New York State law authorizes the lead agency to hire consultants to assist with regulatory reviews of development projects, and pass the consulting fees on to the applicant.

Note

The "EAF Mapper" is an online tool designed to help users answer some of the place-based EAF questions. See the inset (next page) that explains some of the limitations of the EAF Mapper for answering Questions 13a, 13b, 15, and 16.

Question 15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Unless detailed habitat assessments or rare species surveys have been conducted on the proposed development site, the appropriate answer to this question in most cases is “Unknown.” Most sites have never been surveyed for rare species or their habitats, so this question cannot be answered accurately without onsite field observations by knowledgeable field biologists. A *habitat assessment* might serve to eliminate further consideration of some rare species if no suitable habitats are found, but formal surveys in appropriate seasons may be necessary to ascertain the presence or likelihood of other rare species if suitable habitats are present.

An inquiry to the New York Natural Heritage Program (NYNHP) will yield information on *known occurrences of rare species* but, by itself, is insufficient to answer this question. (See inset at right about a related court decision.) If NYNHP has records of rare species on the site, then Question 15 should be answered “Yes.” If NYNHP has no such records, then the answer should be “Unknown” unless adequate habitat assessments or rare species surveys have been conducted.

Note: If the online EAF Mapper is used to automatically answer this question, a “No” answer means only that NYSDEC and NYNHP have no records of threatened or endangered species or associated habitat on or near the site; this neither certifies nor implies that rare species are absent.

Do rare species occur on the site?

Lead agencies are cautioned not to rely solely on NYSDEC or NYNHP records to learn whether rare species occur on or near a site of interest. A New York appellate court (*Kittredge vs. Liberty* 2008) determined that data from those sources are insufficient under SEQR for determining whether endangered or threatened species occur on a site and thus might be potentially harmed by a proposed development project. Further investigation is necessary for the lead agency to determine the potential impacts to rare wildlife species or their habitats.

USING THE EAF MAPPER

The online EAF Mapper (<http://www.dec.ny.gov/permits/90201.html>) is designed to answer the place-based questions in Part 1 of the Short and Full EAFs, and can greatly hasten and simplify the work of completing the EAF.

Several Cautions: For **questions 13a** and **13b** (about wetlands and waterbodies) of the Short EAF, a “No” answer from the EAF Mapper indicates only that the federal or state wetland and stream maps show no wetlands, streams, or other waterbodies on or adjoining the site of interest. Due to the inaccuracies of those maps, however, the lead agency should consider whether additional streams or wetlands are likely to occur on the site, and should obtain additional information as needed. For **Question 15** (about rare species), the EAF Mapper response is based only on data from NYSDEC or NYNHP. A “No” answer from the EAF Mapper should be interpreted as “Unknown” in the absence of further onsite investigation. For **Question 16** (about floodplains), the EAF Mapper response is based on FEMA floodplain data, but for many areas those data are several decades old and do not reflect the flood levels from recent large storms that may be more predictive of future floods. Use local information whenever possible to corroborate or revise your notion of the extent of recent flooding and likely future flooding.

Short EAF, Part 1 (cont.)

Question 16. Is the project site located in the 100-year floodplain? With the frequency and severity of storms expected to increase through this century, the floodplains of many streams will continue to expand. This question should be answered on the basis of the most up-to-date determination of the 100-year floodplain by the Federal Emergency Management Agency or better local sources.

Question 17. a. Will the proposed action create stormwater discharge, either from point or non-point sources? b. Will stormwater discharges flow to adjacent properties? Any project that involves land clearing, land grading, or construction of buildings, driveways, or parking lots is likely to create stormwater discharge unless special measures are taken to ensure that runoff from roofs, driveways, lawns, and other altered surfaces infiltrates the soil instead of flowing over the ground surface into adjacent upland areas, ditches, streams, wetlands, or ponds. The applicant should describe all sources of increased surface water runoff expected during and after construction, and the proposed measures to ensure onsite infiltration of rainwater and snowmelt to the soils. Expert analysis by an engineer may be needed to adequately answer these questions.

Short EAF, Part 2 (to be completed by the lead agency)

Part 2 of the Short EAF has four questions (4, 9, 10, and 11) that directly address biological or water resources. Thorough and accurate answers to the Part 1 questions (above) will provide a sound foundation for answering the Part 2 questions and arriving at well-informed determinations of the significance of environmental impacts. In some cases the lead agency may require additional information or analysis from the applicant or from experts before determining the likely impacts of the project.



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