

SEQRA's 25th Anniversary
A Building Industry Perspective
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In 1975, SEQR started as a well-intentioned tool to help ensure that a "suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making process..." Unfortunately, today it is often a tool utilized by opposition to stop development entirely and for communities to obtain mitigation fees or exactions, often well beyond the proportionate levels of impact. In the early years of SEQR, most planners and developers conscientiously incorporated environmental considerations in the design and analysis of projects. However, that was before attorneys realized the employment potential of this law and found that it could stop projects or delay them until hopefully the developer gave up. The most graphic observation of the evolution of the SEQR Law and procedures is in the presentations to the Lead Agencies. In the early years, planners, engineers, and specialists would prepare and present Environmental Impact Statements while the developer's attorney sat in the wings. Now, 25 years later, those specialists in addressing environmental concerns, usually sit in the wings while the developer's attorney presents the project and its impacts!

Most design professionals and environmental consultants agree that the SEQR Law has done little to change or improve the design of development projects. Over the life of SEQR, we have become better stewards of the environment, however, the increase in environmental regulations and tightening of approval requirements have likely done more than the procedures in the law itself. When you consider evolving wetland, health, drainage, traffic, endangered species, historical preservation and zoning regulations, the SEQR Law may no longer be necessary. Developers have had many occasions when the design plans were put on the shelf while they waited for many years of procedural related SEQR law suits to get over. They have dusted off the plans and built the project as originally designed under those strict regulations but at a far greater cost due to inflation in the time lost.

The growth in New York State has been significantly tempered by regulations and the SEQR Law, but few people would disagree that we will be better and more sustainable for the future. However, we need to be careful about the abuses of the SEQR Law that seem to be increasing. As an example, we are experiencing a considerable demand for housing including: affordable housing, senior living housing, and apartments. These markets have a particularly difficult time with the SEQR process due to "character of the area" or cumulative impact issues and exactions often required by the lead agency. The term cumulative impact doesn't even appear in Article Eight of the ECL! Industries, offices and retail users are trying to expand and create jobs but are finding the available zoned land is shrinking and SEQR exactions are prohibitive. Developers can normally tell a client exactly how long and how much the local regulatory process will take. Unfortunately, they always have to add the caveat that they don't know what SEQR will do to the process or costs. The theme of our state lottery system is "all you need is a dollar and a dream." As for SEQR, all the opposition needs is \$500 and an attorney to delay and cost the developer important time and money.

At about the 20th anniversary of SEQR some important changes were made to the law in an attempt to improve it. The changes were made effective January 1, 1996, thanks to a long effort that included input from NYSDEC, development and environmental interests, various industries and the public. The modifications gave better definition to the scoping process and the importance of establishing a scope and sticking to it. They also defined parameters for interested parties to suggest areas of impact by putting the burden on them to provide information on why there is a suspected impact. However, few communities are either aware of the changes or want to utilize them. Many communities are constantly adding to scope, not making initial judgements that items are legitimate impact concerns, increasingly using disproportionate "mitigation" fees to overcome their lack of proper capitol project financing and seriously abusing the time frames established in the law. Developers are constantly being asked to stop the SEQR clock or pay the consequence of a bad decision.

Many states turn to New York State for guidance as they struggle with growth. They often look at our SEQR Law as something they need to put in place. Ironically, the development industry knows that it is one of the reasons why we have a declining population and other areas are receiving some of the growth we should be achieving. As we head for the next 25 years, with SEQR, the law will need to change or it will become too

great a burden to sustain growth and vitality of the state. With no compromise to environmental quality, the development industries have made the following recommendations to improve the SEQR procedures:

1. Placing some consequences in the law for communities that do not meet the time schedules.
2. Potential for an Environmental Review Board for conflict of SEQR disputes.
3. Potential for a NYSDEC Administrative procedure for conflict resolution.
4. Guidance manual and increased education for communities on the January 1996 and any subsequent law modifications.
5. Monetary consequences for frivolous SEQR actions that damage developers.

If these recommended changes are adopted, we believe that SEQRA will serve the state's environmental and economic interests well into this new millenium. These changes would also get SEQRA back to its original intent of being a tool for providing a "suitable balance of social, economic and environmental factors to be incorporated into the planning and decision-making process... ."