

State Environmental Quality Review Act (SEQRA): Advanced

Westchester Municipal Planning Federation

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Discussion Outline: Advanced SEQRA Topics

- Intent of the State Environmental Quality Review Act (SEQRA)
- Use of supplementary information
- Declaration of Significance
- DEIS Process
- Other Issues
 - Segmentation
 - Cumulative Impacts
 - Community Character
- Coming Soon...
- Q and A

What is the intent of SEQRA?

- Primary purpose is to **incorporate environmental planning into government decision-making** (§617.1(b))
- To allow for **public/agency participation and coordination**
- To find a **suitable balance of environmental factors** (§617.1(d))
- Take a **“Hard Look”**

What is a “Hard Look”?

- Based on case law (H.O.M.E.S. v. NYS Urban Development Corporation, 1979)
- Identify relevant areas of environmental concern
- Establish a “reasoned elaboration”
- Clearly written elaboration of key facts and rationale for determination

When does SEQRA apply?

The SEQRA process must be applied whenever an action is:

- Directly undertaken by an agency;
- Involves funding by an agency; or
- Requires discretionary approval from an agency or local board (i.e. approval of a site plan, special permit, wetland permit, etc.).

What is “environment”?

SEQRA (§617.2(l))

- The physical conditions that will be affected by a proposed action, including:
 - Land, air, water, minerals
 - Flora, fauna
 - Noise
 - Resources of agricultural, archaeological, historic or aesthetic significance
 - Existing patterns of population concentration, distribution or growth
 - Existing community or neighborhood character
 - Human health

Areas of environmental assessment can include...

- Socioeconomics
 - Direct/Indirect Displacement (“Gentrification”)
 - Provision for Affordable Housing
- Community Facilities
 - Police/Fire
 - Schools
- Traffic and Transportation
- Visual Impacts
- Community Character
- Public Health

Supplementary Information

- Can be (and usually is) required for non-EIS projects
- Local concerns
 - Exterior site lighting
 - Visual resources - Photosimulations
 - Traffic & Parking
 - Natural Resources (trees and 'undeveloped' land)
- Agency Concerns
 - Traffic (state and county roads)
 - Natural Resources (Threatened/Endangered Species)
 - Historic Resources
 - Wetlands and Waterbodies

Supplementary Information

- Consistency of:
 - Requests
 - Scopes
 - Characterization of impacts/ mitigation
- Coordination with agencies
- Early in the process

Determination of Significance

- When making a determination, the Lead Agency considers the potential for the proposed action to result in
 - **A substantial adverse change** in existing environmental conditions (i.e. air quality, water quality, traffic or noise levels; flooding, etc.)
 - **Natural Resources:** Removal or destruction of large quantities of vegetation; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species;
 - **Adopted Land Use Plans:** Material conflict with a community's current plans or goals as officially approved or adopted;
 - **Historic, Archaeological, Cultural Resources:** Impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;
 - **Population:** A large increase in the number of people to a place for more than a few days.

Determination of Significance

- Consistency across applications
- Negative Declarations
 - No significant adverse impacts
 - Work through potential impacts, potentially requiring project changes
 - Work in conjunction with underlying review process (site plan, permits, etc.)
- Positive Declaration
 - Potential for one or more significant adverse impacts
 - Generally, the “bigger” projects, or more controversial ones

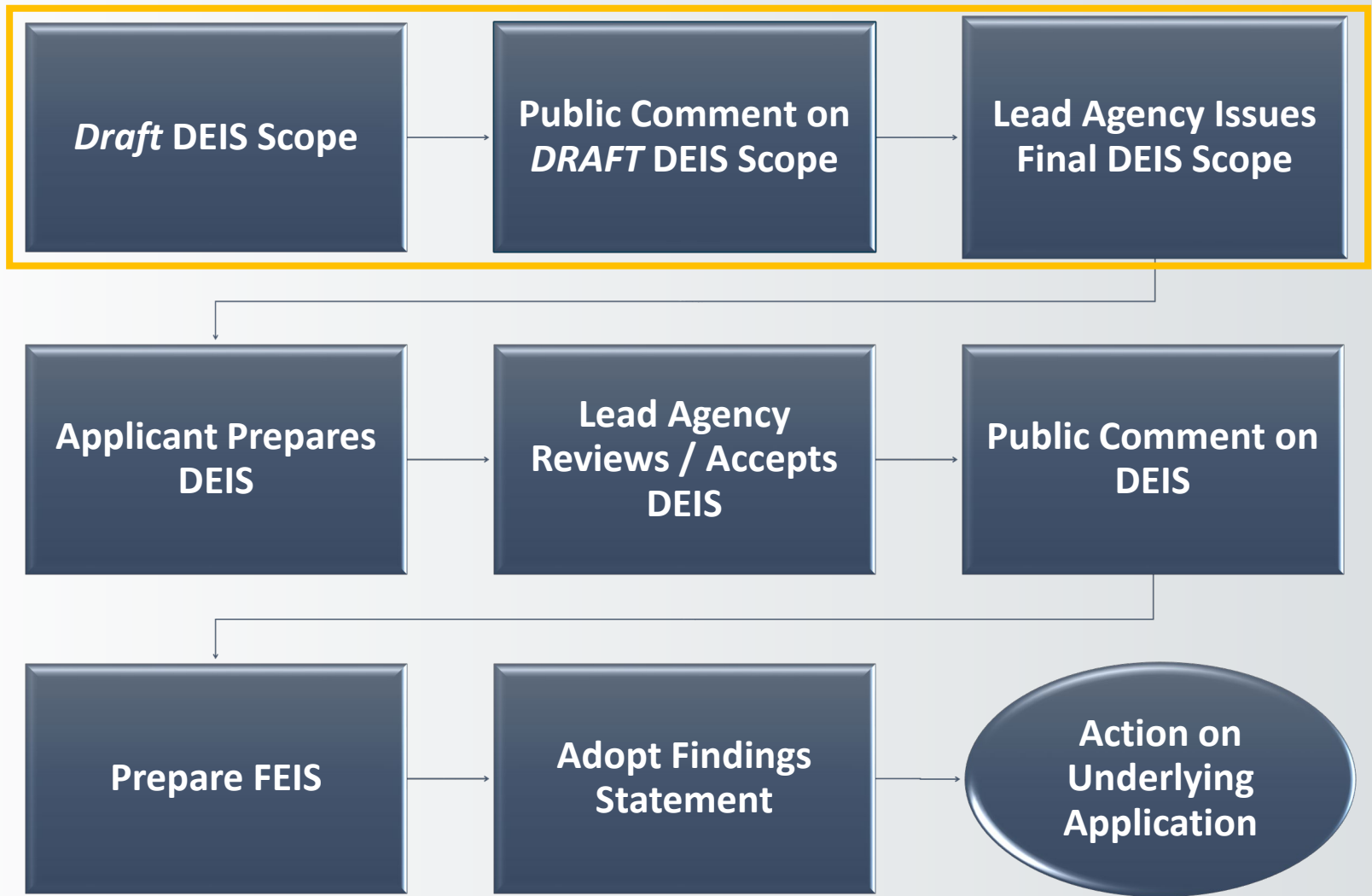
Environmental Impact Statement (EIS)

- **Focuses** on potential significant impacts
- Identifies measures to avoid, minimize, or mitigate impacts
- Is written in concise, plain language
- Presents Alternatives
 - Meet purpose and need of Applicant
 - Reduce potential significant adverse impacts

EIS PROCESS



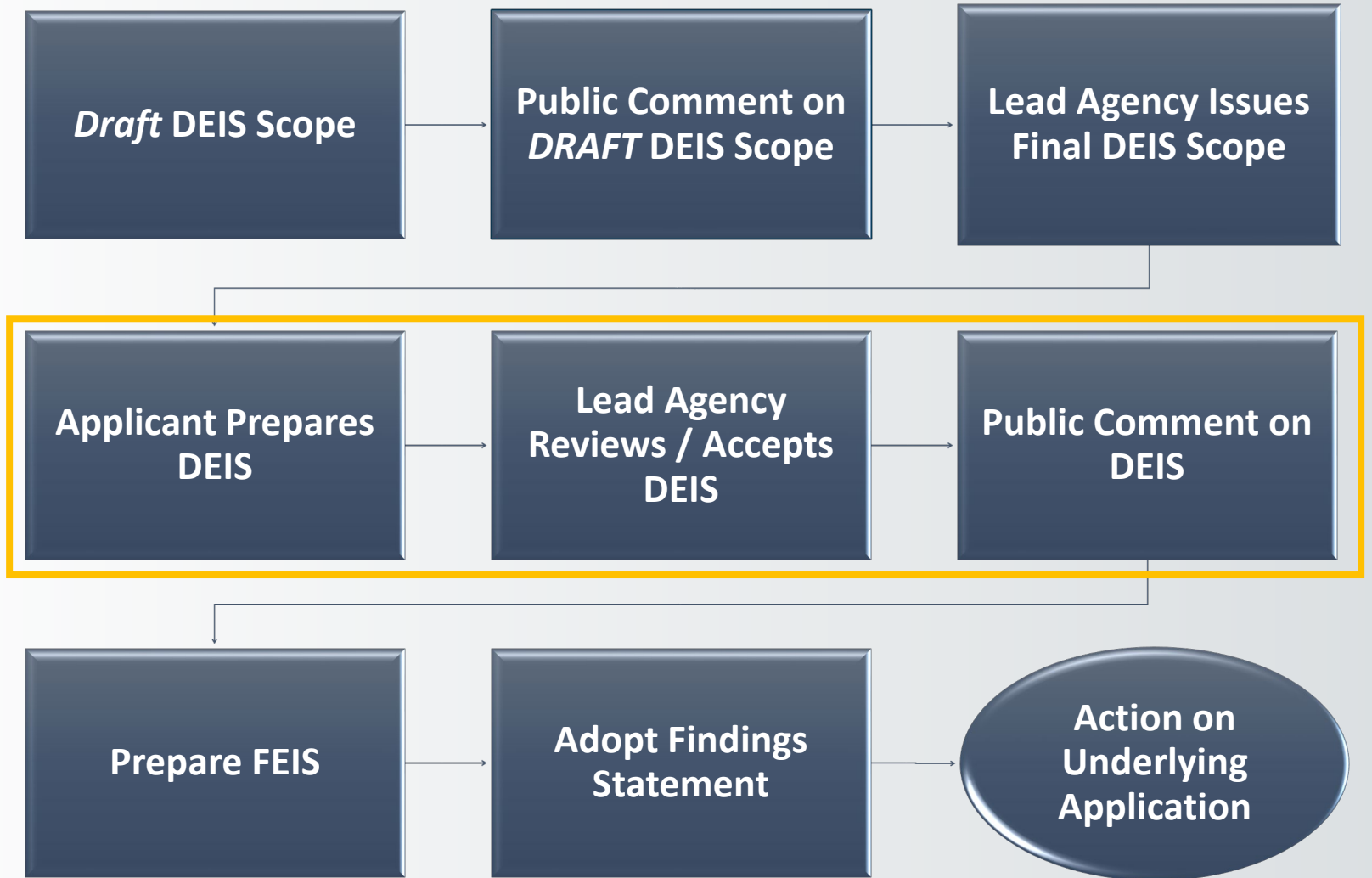
EIS PROCESS



DEIS Scoping

- Stated goal is to focus on potential impacts and eliminate consideration of impacts that are not significant
- *Draft* DEIS Scoping Document
 - Prepared by Applicant, meeting requirements of regulations
 - Circulated by Lead Agency
 - Opportunity for public review and input required (scoping session not)
- Final DEIS Scoping Document
 - Issued by Lead Agency within 60 days of receipt of draft
 - Must include description and discussion of “prominent issues” considered but not included in scope because neither relevant nor environmentally significant (or adequately addressed by prior studies)

EIS PROCESS



Drafting & Accepting DEIS

- Applicant prepares *preliminary* DEIS (pDEIS)
- Lead Agency Review of pDEIS
 - Tailored to ‘Completeness’ with respect to scope
 - Determined to be ‘adequate’ to understand impacts and mitigation
 - For a completeness determination, the Lead Agency does not need to agree with conclusions
 - 45-day initial review; 30 days subsequent
 - Can be extended by mutual consent
 - Best practice: Be complete in first round review, such that subsequent reviews whittle down the list

Circulating the DEIS

- Circulated to Interested and Involved Agencies
- Posted to publicly accessible website
- Available for review at municipal building and/or libraries

Collecting and Submitting Comments

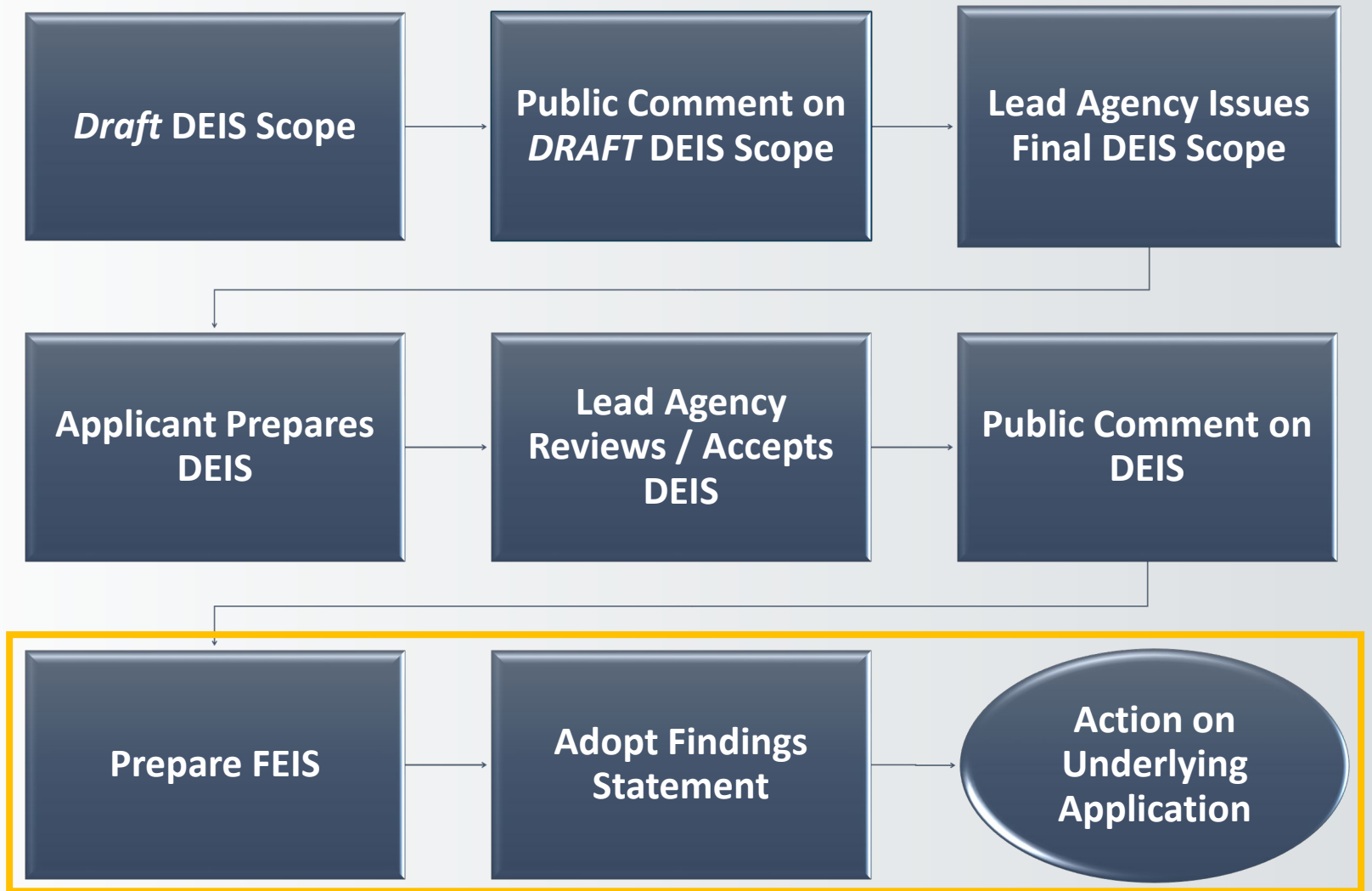
■ EIS Public Hearing

- SEQRA EIS public hearing is not mandatory (but generally prudent)
- Public Hearing Requirements:
 - Post Public Hearing Notice in the ENB, on project website, newspaper of record
 - Hold hearing no earlier than 14 and no later than 60 days after publication of Notice
 - Set and communicate expectations to the attendees

■ Collecting (and Submitting) Comments

- Lead Agency sets a comment period for no less than 10 days following the close of the public hearing (if held).
- Written comments (including those from interested and involved agencies) are submitted to Lead Agency
- Public hearing comments are documented via recording or stenographer

EIS PROCESS



Final Environmental Impact Statement

- Presents the Lead Agency's response to all substantive comments
- Includes additional technical review (if necessary)
- Includes information on any project modifications to avoid, minimize or mitigate potential impacts

FEIS Public hearing not required (and generally not advisable)

Following adoption of a complete FEIS – a minimum 10-day comment period is required before Lead Agency issues Findings

Statement of Environmental Findings (6 NYCRR 617.11)

- All involved agencies issue their own SEQR Findings Statement
- Negative Findings Statement
 - Action is not approvable after consideration of the FEIS
 - Reasoning for Negative Findings is DOCUMENTED
- Positive Findings Statement
 - Project is approvable after consideration of the FEIS
- Decision is WEIGHED AND BALANCED:
 - “consistent with social, economic, and other essential considerations from among reasonable alternatives available.....the action minimizes or mitigates adverse impacts to the maximum extent practicable”

Segmentation - concept

- “Segmentation”: Evaluating an action as though **components** or **phases** are independent/unrelated
 - Complex Applications with related components that may not be presented or applied for concurrently
 - Series of actions for the same project (zoning change, subdivision/site plan approvals)
 - Phased Projects
 - Separate Project Sites

*SEQRA requires an evaluation of the ‘**whole action**’ - Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action should be evaluated as one whole action.*

Segmentation – How do you know?

- 1) Common purpose?
- 2) Reason to complete segments at the same time?
- 3) Common geographic location?
- 4) Common impacts, when taken together, may be significant adverse impacts?
- 5) Common ownership or control?
- 6) Functionally dependent?
- 7) Inducement: Does the approval of one part or phase commit the Lead Agency to approve the other phases?

If the answer is “yes” to any of the above, segmentation is a possibility

Permissible Segmentation

- Segmented review may be justified if:
 - Information of future project phases or stages is too speculative
 - Future phases may not occur, or
 - Future phases are functionally independent of current phase
- GEIS with thresholds for future analysis can be used

Tips:

- Consult with legal counsel*
- Document the justification for the decision making*
- *Key is demonstrating that such review will be no less protective of the environment*

Cumulative Impacts

- Incremental impacts in conjunction with other past, present and reasonably foreseeable future actions
- Examples
 - Multiple-phase project
 - Multiple road projects that result in development
 - Multiple developments affecting a single resource
 - Incremental growth (no-build)
- Cumulative Impact Assessment generally limited to:
 - Impacts to specific resource
 - Impacts to or within protected resource if management plan exists

Community Character

- Community character considers all of the factors that make a community what it is
 - Man-made *and* natural features
 - Visual character *and* uses of structures and places
 - Community services *and* local policies
- Criterion for determination of significance:
 - Impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character
- Almost every project will change community character
- Context and magnitude are important

Best Practices Re-Cap

- Compliance with SEQRA is critical to protecting municipalities from court challenges.
- Document everything!
 - A determination is only as good as the information relied upon
 - Provide concise written reasoning for determinations of significance
 - Express the “balance” between project benefits and potential impacts
 - Establish the “hard look”
- Use your municipality's website to publish project information
- Develop standard forms and be consistent

Coming Soon...

- Major changes to determination of significance based on EJ Siting Law (2023), effective end of 2024
- Require consideration of impact of “pollution” (defined in ECL) on Disadvantaged Communities (DAC’s)
- DEC to adopt regulations requiring lead agencies to determine whether an action will cause or increase a disproportionate pollution burden, as criteria for determining the significance of the action (whether an action requires preparation of an EIS), in addition to the other significance criteria

SEQRA Guidance Resources

- 6NYCRR Part 617 State Environmental Quality Review – full regulations
 - https://www.dec.ny.gov/docs/permits_ej_operations_pdf/part617seqr.pdf
- SEQRA Cookbook (updated January 2019)
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cookbook1.pdf
 - Uses a flowchart with guidance provided for each step
- SEQRA Handbook (4th edition 2020)
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf
 - Provides more technical guidance and Q&A
- EAF Workbooks
 - URL: <https://www.dec.ny.gov/permits/90125.html>
 - Especially helpful for Long Form and thresholds for Part 2
- DEC Guidance
 - Visual Policy
 - URL: <https://www.dec.ny.gov/permits/115147.html>
 - Noise Policy
 - URL: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf

Questions?

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*"From the violent nature of the multiple stab wounds,
I'd say the victim was probably a consultant."*