

## When you know the right thing to do, how do you get it done?

The revised environmental assessment forms required to begin the project review process under the New York State Environmental Quality Review Act will take effect Oct. 7.

The new forms and an accompanying workbook, issued by the state Department of Environmental Conservation, are intended to identify significant environmental impacts, or the absence thereof, early in the SEQRA review process. While the goal is to create more efficiency, many developers have expressed concerns about how increased costs and time demands may affect their return on investment.

These concerns are valid. It will take some time to work out the details of implementation, both for the developers and the SEQRA lead agencies reviewing a proposed project. Developers can, however, mitigate their bottom-line costs by understanding what is required by the revised SEQRA forms and adjusting their timelines and expectations to match.

The primary change is a requirement to submit more detail than ever before. For example, a visual impact assessment is now mandatory, environmental due diligence must be performed prior to application submission, and detailed traffic impact studies may be required upfront in some cases.

This increase in required information makes it even more important that developers use their team of consultants—attorneys and engineers—to make sure that substantive SEQRA information is provided and that the new forms are filled out correctly and the law's procedural requirements are met. By hiring a consultant team before the proposed project's application documents are submitted, one can manage and sometimes even eliminate many of the obstacles and processes that could create development roadblocks.

As with all development projects, the consultant team should be responsible for reviewing the municipality's comprehensive plan and zoning ordinances and determining whether rezoning, subdivision or variances will be required. The team should also develop justifications and mitigation measures for any deviations from



### VIEWPOINT

Leslie Mauro

the municipality's land use requirements.

Regarding the new assessment forms and accompanying workbook, which is designed to help project consultants complete the forms, the consultant team is in a unique position to review potential SEQRA impacts, determine which will require focused analysis and generate the formal expert reports that might now be required before the application is submitted. While it takes more foresight initially, using a consultant team will expedite the process considerably—and in certain circumstances actually end the SEQRA process without the need for further environmental impact evaluation.

The new SEQRA forms also make working with a lead agency, early in the process, more important than ever. Advance work with the lead agency can provide a developer with critical feedback on the proposed plans, and technical studies' conclusions prior to submission. As the process progresses, continued open communication is a must. Where trust is established, lead agencies will often be willing to allow an applicant to draft the proposed resolutions, findings statements and other SEQRA documents to be issued by the lead agency. This will not only cut down on processing time but guarantee that the documents contain the information and supporting substantive evidence necessary for a valid project approval.

As might be expected, in instances when a proposed project will face lead agency opposition, the upfront information now required to begin the SEQRA review process may provide ample opportunity for delay and cost increases. A hostile lead agency may view the additional SEQRA information required by the new forms as a goldmine of "potential significant envi-

ronmental impacts" and determine that a full SEQRA review is necessary.

Scoping, now mandatory with the new forms, can be subject to a public hearing in addition to the standard written public comment period. A municipality may review the draft Environmental Impact Statement with a fine-toothed comb and then request additional information on the included subject areas and similarly may drag out the final Environmental Impact Statement's review by requiring extensive responses to inquiries from the public and agencies.

When the lead agency opposes a project, developers should work closely with their consultant team to establish a complete record that demonstrates that all of SEQRA's procedural requirements have been met

---

**Developers have the opportunity to amend and streamline their own processes prior to the production stages.**

---

and all of the SEQRA substantive issues have been adequately studied and communicated to the lead agency. This record will be critical if the developer chooses to litigate the agency's decision. On the flip side, a complete written record is similarly important in the defense of any favorable lead agency approvals granted to the developer that are challenged by third parties.

While collaboration with lead agencies is important to the approval process, developers need to be aware that there will be challenges. First, SEQRA allows lead agencies to hire special counsel and engineering consultants to assist in project reviews, and the developer is required to pay for a lead agency's special consultant team, up to a certain dollar amount.

The likelihood of a municipality hiring its own special consultant team will be increased by the project's complexity and the municipality's comfort level with the types of information, now expanded, required by the new SEQRA forms. Should the lead agency determine that it needs its own

experts, working with the lead agency's consultant team will help to keep project review costs down and prevent the process from getting bogged down and delayed.

Another challenge, in the case of redeveloping an environmentally impacted site, is that the developer will have to work with the DEC to reach a mutually beneficial remediation and redevelopment plan. Developers need to coordinate time frames with the DEC and the municipality issuing project approvals. If the project site is in the state Brownfield Cleanup Program, public hearings will also be required. Developers should also note that a brownfield agreement requires that the project be developed within a certain time, or any tax credits issued may be revoked.

Developers often encounter community opposition, which can result in significant project delay. Again, the increased level of detail now required by the revised SEQRA forms may raise additional community concern regarding the proposed project. Developers may want to take time to organize an event to introduce the project to the community, determine whether the concerns can be addressed upfront and look into creative solutions. For example, certain concessions to residents adjacent to a project site, such as additional landscaping and fencing, can go a long way.

Certainly, there are challenges ahead; raising the standard level of due diligence requires changes in processes and initially may cost more. But in facing the revised

SEQRA requirements head-on, developers also have the opportunity to amend and streamline their own processes prior to the production stages of development, which, more often than not, will result in a more efficient SEQRA project review.

Rather than shying away from the increased upfront costs and challenges resulting from the SEQRA forms' revision, developers can adapt and move their projects forward in a manner that will both achieve their financial goals and maintain the high levels of professionalism that have always been the cornerstone of their success.

*Leslie Mauro is a partner at Harter Secrest & Emery LLP, where she leads the environmental, land use and zoning practice groups.*