ENVIRONMENTAL LAW:
DEVELOPMENTS IN THE LAW OF SEQRA

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INTRODUCTION

This Article discusses notable developments in the law relating to the New York State Environmental Quality Review Act ("SEQRA") for the *Survey* period of 2024–2025.[1]

As noted in the 2017–18 *Survey*,[2] the Department of Environmental Conservation ("DEC") made significant amendments to the SEQRA regulations in 2018. The agency had a goal of streamlining the environmental review process and aligning SEQRA with state initiatives, including increasing renewable energy, advancing green infrastructure development, and evaluating climate change impacts.[3] In March 2020, DEC incorporated these regulatory developments into its SEQRA Handbook, a helpful guidance for SEQRA practitioners.[4]

During this year's *Survey* period, lower and intermediate courts issued decisions involving various legal issues relevant to the SEQRA

1. The *Survey* period covered in this Article is July 1, 2024, to June 30, 2025. A prior *Survey* addresses SEQRA developments in the first half of 2024. *See generally* Mark A. Chertok et al., *2023–24 Survey of New York Law: Environmental Law: Developments in the Law of SEQRA*, 75 SYRACUSE L. REV. 388 (2025) [hereinafter *2023–24 Surv. of Env't. L.*].

2. *See* Mark A. Chertok et al., *2017–18 Survey of New York Law: Environmental Law: Developments in the Law of SEQRA*, 69 SYRACUSE L. REV. 774, 782 (2019) [hereinafter *2017–18 Surv. of Env't. L.*].

3. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1 (2019).

4. *See generally* N.Y. STATE DEP'T OF ENV'T CONSERVATION, THE SEQR HANDBOOK (4th ed. 2020), [hereinafter SEQRA HANDBOOK].

practitioner—including standing and ripeness; procedural issues; the adequacy of agencies' determinations of significance; and the sufficiency of an agency's Environmental Impact Statement ("EIS").[5] The Court of Appeals issued one decision in this period, upholding the SEQRA process for the proposed development of the Elizabeth Street Garden in New York City.[6] It also bears noting that, during this *Survey* period, significant changes occurred in the law of SEQRA's parent federal statute, the National Environmental Policy Act ("NEPA").[7] These are briefly described at the end of this Article.

Part I of this Article provides a brief overview of SEQRA's statutory and regulatory requirements. Part II discusses legislative developments. Part III reviews the most noteworthy SEQRA decisions issued during the *Survey* period. Part IV discusses recent changes to the scope of environmental review of federal actions under NEPA.

I. SUMMARY OVERVIEW OF SEQRA

SEQRA requires governmental agencies to consider the environmental impacts of their actions prior to rendering certain defined discretionary decisions, called "actions."[8] "The primary purpose of SEQRA is 'to inject environmental considerations directly into governmental decision making.'"[9] The law applies to discretionary actions by New York State, its subdivisions, or local agencies that have the potential to impact the environment, including funding determinations, promulgation of regulations, zoning amendments, programs, permits, and other approvals.[10] SEQRA charges DEC with

5. *See* discussion *infra* Part III.

6. *See* Elizabeth St. Garden, Inc. v. City of New York, 246 N.E.3d 894, 1011 (N.Y. 2024).

7. *See* Glen Head—Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay, 453 N.Y.S.2d 732, 734 (App. Div. 2d Dep't 1982) ("SEQRA[] is modeled on the National Environmental Policy Act.").

8. SEQRA is codified at N.Y. ENV'T CONSERV. LAW §§ 8-0101–0117 (McKinney 2024). *See* Mark A. Chertok & Ashley S. Miller, *2007–08 Survey of New York Law: Environmental Law: Climate Change Impact Analysis in New York Under SEQRA*, 59 SYRACUSE L. REV. 763, 764 (2009) [hereinafter *2007–08 Surv. of Env't. L.*].

9. Akpan v. Koch, 554 N.E.2d 53, 56 (N.Y. 1990) (quoting Coca-Cola Bottling Co. v. Bd. of Estimate of the City of N.Y., 532 N.E.2d 1261, 1263 (N.Y. 1988)). For a useful overview of the substance and procedure of SEQRA, *see* Jackson v. N.Y. State Urb. Dev. Corp., 494 N.E.2d 429, 434–36 (N.Y. 1986).

10. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.2(b)–(c) (defining actions and agencies subject to SEQRA). Actions of the Governor of New York (as opposed to executive agencies) and the state legislature are not subject to SEQRA. *See id.* § 617.5(c)(46); *see also* SEQRA HANDBOOK, *supra* note 4, at 44–45.

promulgating general SEQRA regulations, but it also authorizes other agencies to adopt their own regulations and procedures, provided those regulations and procedures are consistent with and "no less protective of environmental values" than those issued by DEC.[11]

A primary component of SEQRA is the EIS, which—if its preparation is required—describes the proposed action, assesses its reasonably anticipated significant adverse impacts on the environment, identifies practicable measures to mitigate such impacts, discusses unavoidable significant adverse impacts, and evaluates reasonable alternatives (if any) that achieve the same basic objectives as the proposal.[12]

Actions are grouped into three categories in DEC's SEQRA regulations: Type I, Type II, or Unlisted.[13] The categorization of a particular action is typically made by the agency designated as responsible for the SEQRA process—the "lead agency."[14] Type II actions are enumerated specifically and include only those actions that have been determined not to have the potential for a significant impact and thus are not subject to review under SEQRA.[15] Type I actions, also specifically enumerated, "are more likely to require the preparation of an EIS than Unlisted actions" and, most importantly, "the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS."[16] Unlisted actions are not

11. N.Y. ENV'T CONSERV. LAW § 8-0113(1), (3); *see* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.14(b).

12. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.9(b)(1)–(2), (5).

13. *See id.* at § 617.2(aj)–(al); *see also* N.Y. ENV'T CONSERV. LAW § 8-0113(2)(c)(i) (requiring the DEC to identify Type I and Type II actions).

14. A "lead agency" is the "involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required." N.Y. COMP. CODES R. & REGS. tit. 6, § 617.2(v).

15. *See id.* at § 617.5(a), (c).

16. *Id.* at § 617.4(a), (a)(1). This presumption may be overcome, however, if an environmental assessment demonstrates the absence of significant, adverse environmental impacts. *See, e.g.*, Gabrielli v. Town of New Paltz, 984 N.Y.S.2d 468, 473 (App. Div. 3d Dep't 2014) ("[A] type I action does not, 'per se, necessitate the filing of an EIS.' A negative declaration may be issued, obviating the need for an EIS, if the lead agency . . . determines that 'no adverse environmental impacts [will result] or that the identified adverse environmental impacts will not be significant.'") (first quoting Shop-Rite Supermarkets, Inc. v. Plan. Bd. of the Town of Wawarsing, 918 N.Y.S.2d 647, 650 (App. Div. 3d Dep't 2011); then quoting N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(a)(2)). It is commonplace for a lead agency to determine that

enumerated, rather, they are a catchall for those that are neither Type I nor Type II.[17] In practice, the vast majority of actions are Unlisted.[18]

Before undertaking a proposed action (except a Type II action), an agency must determine whether the proposal may have one or more significant adverse environmental impacts, called a "determination of significance."[19] To reach its determination of significance, the agency must prepare an environmental assessment form ("EAF").[20] For Type I actions, preparation of a "Full EAF" is required, whereas for Unlisted actions, project sponsors may opt to use a "Short EAF" instead.[21] While the Short and Full EAFs ask for similar information, the Full EAF is an expanded form that is used for Type I actions or other actions when more rigorous documentation and analysis are warranted.[22] SEQRA regulations provide models of each form,[23] but allow that the forms "may be modified by an agency to better serve it in implementing SEQR[A], provided the scope of the modified form is as comprehensive as the model."[24]

Where a proposed action involves multiple decision-making agencies, there is usually a "coordinated review" with these "involved agencies," pursuant to which a designated lead agency makes a

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a Type I action does not require an EIS. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(a)(2).

17. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.2(al).

18. *See* SEQRA HANDBOOK, *supra* note 4, at 4.

19. *See* N.Y. COMP. CODES R. & REGS. tit. 6, §§ 617.6(a)(1)(i), (b), 617.7(a)(1)–(2). *See id.* at § 617.7(c) for a list of the criteria considered when determining significance.

20. *See id.* at § 617.6(a)(2)–(3).

21. *See generally id.* at § 617.20 (providing that the project sponsor prepares the factual elements of an EAF (part 1), whereas the agency completes part 2, which addresses the significance of potential adverse environmental impacts, and discussing part 3, which constitutes the agency's determination of significance).

22. *See id.* at § 617.6(a)(3).

23. *See id.* at § 617.20 ("Appendices A and B are model environmental assessment forms that may be used to help satisfy this Part or may be modified in accordance with sections 617.2 (m) and 617.14 of this Part."). DEC also maintains EAF workbooks to assist project sponsors and agencies in using the forms. *See Environmental Assessment Form (EAF) Workbooks*, N.Y. STATE DEP'T OF ENV'T CONSERVATION, http://www.dec.ny.gov/permits/90125.html (on file with Syracuse Law Review) (last visited Oct. 31, 2025).

24. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.2(m). New York City, which implements SEQRA under its City Environmental Quality Review, uses an Environmental Assessment Statement ("EAS") in lieu of an EAF. *See, e.g.*, Hell's Kitchen Neighborhood Ass'n v. City of New York, 915 N.Y.S.2d 565, 567 (App. Div. 1st Dep't 2011).

determination of significance.[25] A coordinated review is required for Type I actions involving more than one agency,[26] and the issuance of a negative declaration in a coordinated review (for Type I or Unlisted actions) binds other involved agencies.[27]

If the lead agency "determine[s] either that there will be no adverse environmental impacts or that the . . . impacts will not be significant," no EIS is required, and instead the lead agency issues a negative declaration.[28] If the answer is affirmative, the lead agency may, in certain cases, impose conditions on the proposed action to sufficiently mitigate the potentially significant adverse impacts[29] or, more commonly, the lead agency issues a positive declaration requiring the preparation of an EIS.[30]

If an EIS is prepared, the first step is the scoping of the contents of the Draft EIS ("DEIS").[31] Until 2018, scoping had been commonplace, but not required.[32] Under the 2018 SEQRA amendments, effective January 1, 2019, scoping became mandatory for all EISs, except for supplemental EISs.[33] Scoping involves focusing the EIS on

25. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.6(b)(2)(i), (b)(3)(i)–(ii); *see also id.* § 617.2(t) (An "involved agency" is "an agency that has jurisdiction by law to fund, approve or directly undertake an action," and a "lead agency" is also an "involved agency."); *see also id.* § 617.2(u) (an agency that "lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action" is known as an "interested agency").

26. *See id.* at § 617.4(a)(2).

27. *See id.* at § 617.6(b)(3)(iii). Note that a coordinated review may also be done for unlisted actions involving more than one agency. For unlisted actions where there is no coordinated review, different agencies make their own determinations of significance. *See id.* § 617.6(b)(2)(i), (b)(4). However, if one of these agencies requires an EIS, that determination is binding on the other involved agencies. *See id.* at § 617.6(b)(3)(iii).

28. *Id.* at § 617.7(a)(2), (d).

29. *See id.* at §§ 617.2(h), 617.7(d)(2). This is known as a conditioned negative declaration ("CND"). For a CND, the lead agency must issue public notice of its proposed CND and, if public comment identifies "potentially significant adverse environmental impacts that were not previously" addressed or were inadequately addressed, or indicates the mitigation measures imposed are substantively deficient, an EIS must be prepared. *Id.* at § 617.7(d)(1)(iv), (2)(i)–(ii), (3). CNDs cannot be issued for Type I actions or where there is no applicant. *See id.* at § 617.7(d)(1). "In practice, CNDs are not favored and not frequently employed." Mark A. Chertok et al., *2015–16 Survey of New York Law: Environmental Law: Developments in the Law of SEQRA*, 67 SYRACUSE L. REV. 897, 901 n.27 (2017) [hereinafter *2015–16 Survey of Environmental Law*].

30. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(a); *see also id.* § 617.2(n).

31. *See* SEQRA HANDBOOK, *supra* note 4, at 86.

32. *See id.* at 100.

33. *See id.*; *see also* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.8(a).

relevant areas of environmental concern, with the goal (rarely achieved) of eliminating inconsequential subject matters.[34] A draft scope, once prepared by a project sponsor and accepted as adequate and complete by the lead agency (which may, as noted, be an agency project sponsor), is circulated for public and other agency review and comment.[35] The project sponsor must incorporate the information submitted during the scoping process into the DEIS or include the comments as an appendix, depending on their relevance.[36]

A DEIS must include an alternatives analysis comparing the proposed action to a "range of reasonable alternatives . . . that are feasible, considering the objectives and capabilities of the project sponsor."[37] This analysis includes a "no action alternative," which evaluates the "changes that are likely to occur . . . in the absence of the proposed action" and generally constitutes the baseline against which project impacts are assessed.[38]

In addition to "analyz[ing] the significant adverse impacts and evaluat[ing] all reasonable alternatives,"[39] the DEIS should include an assessment of "impacts only where they are relevant and significant," with the SEQRA regulations outlining said assessment to include:

> (a) reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts;

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34. *See* SEQRA HANDBOOK, *supra* note 4, at 100.

35. *See id.* at 101–02; *see also* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.8(b)–(d).

36. *See* SEQRA HANDBOOK, *supra* note 4, at 101–02*; see also* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.8(f)–(g); Shapiro v. Plan. Bd. of the Town of Ramapo, 65 N.Y.S.3d 54, 59 (App. Div. 2d Dep't 2017) (holding that failure to follow scope can result in judicial invalidation of EIS).

37. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.9(b)(5)(v). For private applicants, alternatives might reflect different configurations of a project on the site. *See id.* § 617.9(b)(5)(v)(g). They also might include different sites if the private applicant owns or has options for other parcels. *Id.* The applicant should identify alternatives that might avoid or reduce environmental impacts. *Id.* at § 617.9(b)(5)(iii)(*i*).

38. *Id.* at § 617.9(b)(5)(v). "The 'no action alternative' does not necessarily reflect current conditions, but rather the anticipated conditions without the proposed action." Mark A. Chertok & Jonathan Kalmuss-Katz, *2010–11 Survey of Environmental Law*, 61 SYRACUSE L. REV., 661, 665 n.24 (2012). In New York City, where certain developments are allowed as-of-right (and do not require a discretionary approval), the no action alternative would reflect any such developments as well as other changes that could be anticipated in the absence of the proposed action. *See* Uptown Holdings, LLC v. City of New York, 908 N.Y.S.2d 657, 660 (App. Div. 1st Dep't 2010) (citing N.Y. COMP. CODES R. & REGS. tit. 6, § 617.9(b)(5)(v)).

39. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.9(b)(1).

> (b) those adverse environmental impacts that cannot be avoided or adequately mitigated if the proposed action is implemented;
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> (c) any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented;
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> (d) any growth-inducing aspects of the proposed action;
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> (e) impacts of the proposed action on the use and conservation of energy . . . ;
>
> (f) impacts of the proposed action on solid waste management and its consistency with the state or locally adopted solid waste management plan; [and] . . .
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> (i) measures to avoid or reduce both an action's impacts on climate change and associated impacts due to the effects of climate change such as sea level rise and flooding.[40]

Although not required, the lead agency typically holds a legislative hearing regarding the DEIS.[41] That hearing should be, and often is, combined with other hearings required for the proposed action.[42] The next step is the preparation of a Final EIS ("FEIS"), which addresses any project changes, new information, and/or changes in circumstances, and responds to all substantive comments on the DEIS.[43] After preparing the FEIS, and before undertaking or approving an action, each acting involved agency must issue findings that the provisions of SEQRA (as reflected in DEC's implementing regulations) have been met, and "consider[ing] the relevant environmental impacts, facts and conclusions disclosed in the FEIS," must "weigh and balance relevant environmental impacts with social, economic and other considerations."[44] The agency must then:

> [C]ertify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse

40. *Id.* at § 617.9(b)(5)(iii)(a)–(f), (i).

41. *See id.* at § 617.9(a)(4).

42. *Id.* at § 617.3(h) ("Agencies must . . . provid[e], where feasible, for combined or consolidated proceedings . . .").

43. *See id.* at § 617.11(a).

44. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.11(a), (d)(1)–(2), (4).

> environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.[45]

The substantive mitigation requirement of SEQRA is an important feature of the statute—a requirement notably absent from SEQRA's parent federal statute, NEPA.[46]

For agency actions that are "broader" or "more general than site or project specific" decisions, SEQRA regulations provide that agencies may prepare a Generic EIS ("GEIS").[47] Preparation of a GEIS is appropriate if (1) "a number of separate actions [in an area] which, if considered singly, may have minor impacts, but if considered together may have significant impacts;" (2) the agency action consists of "a sequence of actions" over time; (3) separate actions under consideration may have "generic or common impacts;" or (4) the action consists of an "entire program [of] . . . wide application or restricting the range of future alternative policies or projects."[48] GEISs commonly address common or program-wide impacts and should set forth criteria for when further environmental review will be required for site-specific or subsequent actions following approval of the initial program.[49]

As previously explained, SEQRA grants agencies and local governments the authority to supplement DEC's general SEQRA regulations by promulgating their own.[50] The City of New York has promulgated separate regulations implementing City agencies' environmental review process under SEQRA, which is known as City Environmental Quality Review ("CEQR").[51] Section 192(e) of the New York City Charter delegates that authority to the City Planning Commission ("CPC").[52] In addition, to assist "city agencies, project

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45. *Id.* at § 617.11(d)(5).

46. *See* 42 U.S.C. §§ 4321, 4370h (2024) (establishing federal responsibilities for protecting and enhancing the quality of the environment); *see also* Jackson v. N.Y. State Urb. Dev. Corp., 67 N.Y.2d 400, 415 (1986) (quoting Philip H. Gitlen, *The Substantive Impact of the SEQRA*, 46 ALA. L. REV. 1241, 1248 (1982)).

47. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.10(a).

48. *Id.* at § 617.10(a)(1)–(4).

49. *See id.* at § 617.10(c) (requiring GEISs to set forth such criteria for subsequent SEQRA compliance).

50. *See* ENV'T CONSERV. LAW § 8–0113(1), (3). That authority extends to the designation of specific categories of Type I and Type II actions. *See* N.Y. COMP. CODES R. & REGS. tit. 6, §§ 617.4(a)(2), 617.5(b), 617.14(e).

51. *See generally* N.Y.C. RULES, tit. 43, §§ 6-01, 6-15 (2025); N.Y.C. RULES, tit. 62, § 5-01 (2025); Exec. Order No. 11,991, 3 C.F.R. 134 (1977).

52. *See* N.Y.C. CHARTER § 192(e); *see also* N.Y.C. RULES, tit. 62, § 5-01 (2025).

sponsors, [and] the public" with navigating and understanding the CEQR process, the New York City Mayor's Office of Environmental Coordination has published the *CEQR Technical Manual*.[53] First published in 1993, the *CEQR Manual*, as now revised, is about 800 pages long and provides an extensive explanation of the following: (1) CEQR legal procedures; (2) methods for evaluating various types of environmental impacts, such as transportation (traffic, transit, and pedestrian), air pollutant emissions, noise, socioeconomic effects, and historic and cultural resources; and (3) identifying thresholds for both detailed studies and significance.[54]

II. SUMMARY OVERVIEW OF LEGISLATIVE DEVELOPMENTS

In 2022, the New York State Legislature enacted legislation to incorporate environmental justice considerations into the SEQRA process. Senate Bill 8830 of 2022 ("SB 8830"), also known as the Cumulative Impacts Law, injected environmental justice considerations into SEQRA for certain actions and DEC permitting.[55] It was signed by Governor Hochul on December 30, 2022, and would have become effective on June 28, 2023,[56] but the Governor's approval was accompanied by a memorandum that reflected pending amendments.[57] Those

53. N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, CEQR: CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL 1 (2025) [hereinafter CEQR MANUAL].

54. *See id.* Courts equate compliance with the CEQR Manual with compliance with CEQR and thus SEQRA. *See, e.g.*, Elizabeth St. Garden, Inc. v. City of New York, 246 N.E.3d 894, 897 (N.Y. 2024) (holding that an EAS prepared "using the methodology and guidelines set forth in the . . . CEQR Technical Manual . . . ." identified "appropriate areas of concern, [and] took the necessary 'hard look' . . . ."); Voice of Gowanus v. City of New York, 170 N.Y.S.3d 872, 872 (Sup. Ct. Kings Cnty. 2022) (holding that the City of New York undertook "comprehensive and thorough review . . . under the *CEQR Technical Manual* guidelines in compliance with SEQRA."); Rimler v. City of New York, No. 506046/2016, 2016 N.Y. Slip Op. 51627(U), at *18 (Sup. Ct. Kings Cnty. July 7, 2016), *aff'd*, 101 N.Y.S.3d 54, 56 (App. Div. 2d Dep't 2019) (holding that "an EAS prepared consistent with the guidance in the *CEQR Technical Man*ual demonstrates compliance with *SEQRA /CEQR*."); *see also* Friends of P.S. 163, Inc. v. Jewish Home Lifecare, Manhattan, 46 N.Y.S.3d 540, 545 (App. Div. 1st Dep't 2017), *aff'd*, 90 N.E.3d 1253, 1256 (N.Y. 2017) (Agency "is entitled to rely on the accepted methodology set forth in the City Environmental Quality Review Technical Manual (CEQRTM) . . . ." in preparing EIS).

55. *See generally* S. 8830, 245th Sess. (N.Y. 2022).

56. *See id.* (amending N.Y. ENV'T CONSERV. LAW §§ 8-0105, 8-0109, 8-0113, 70-0107, 70-0118).

57. *See* Executive Memorandum relating to ch. 840, *reprinted in* 2022 McKinney's Session Laws of New York, no. 115, ch. 840, at 1 (June 28, 2023) (approving "an act to amend the environmental conservation law, in relation to the location of

amendments, adopted in March 2023 ("SB 1317"), narrowed the legislation's scope and deferred its effectiveness until December 2024.[58] However, even as narrowed, the Cumulative Impacts Law positions New York as one of the leading jurisdictions in incorporating environmental justice considerations and the protection of "disadvantaged communities" into environmental review and permitting processes.[59]

The Cumulative Impacts Law inserts environmental justice considerations early in the SEQRA process by obligating lead agencies, when making determinations of significance, to consider whether a proposed action "may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action."[60] The Cumulative Impacts Law adopts the same definition of "disadvantaged communities" as the 2019 Climate Leadership and Community Protection Act ("CLCPA").[61] Additionally, where an agency prepares an EIS, the Cumulative Impacts Law mandates an analysis of the "effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate pollution burden on a disadvantaged community."[62] While the term "pollution" is defined broadly to mean pollution as defined in Section 1-0303 of the

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environmental facilities" with a note that this act will "require significant State and local government resources to implement and could lead to widespread confusion among the regulation community . . . .").

58. *See generally* S. 1317, 246th Sess. (N.Y. 2023) (amending N.Y. ENV'T CONSERV. LAW §§ 8-0105, 8-0109, 8-0113, 70-0107, 70-0118).

59. *See New York Enacts Cumulative Impacts Bill*, NAT'L CAUCUS OF ENV'T LEGISLATORS (Jan. 3, 2023), http://www.ncelenviro.org/articles/new-york-legislature-passes-cumulative-impacts-bill/ (on file with Syracuse Law Review) (noting similar legislation in New Jersey and Maryland); *see also* Michael B. Gerrard & Edward McTiernan, *Annual Survey of SEQRA Cases: Bad for Plaintiffs, But Important Bill Pending*, N.Y. L.J. (July 13, 2022), https://www.law.com/newyorklawjournal/2022/07/13/annual-survey-of-seqra-cases-bad-for-plaintiffs-but-important-bill-pending/?slreturn=20230214105044 (on file with Syracuse Law Review).

60. S. 1317, 246th Sess., § 4 (N.Y. 2023) (amending N.Y. ENV'T CONSERV. LAW § 8-0109(4)).

61. *See 2023–24 Surv. of Env't. L.*, *supra* note 1, at 573–74 for additional information regarding the CLCPA's definition of "disadvantaged communities." The CLCPA created a "Climate Justice Working Group," which in March 2023 finalized forty-five criteria for identifying such communities and based on the criteria and a Scoring methodology, identified 1,736 census tracts, out of the States 4,918 census tracts, as disadvantaged communities. *See Disadvantaged Communities*, N.Y. STATE ENERGY RSCH. & DEV. AUTH., https://www.nyserda.ny.gov/ny/disadvantaged-communities (on file with Syracuse Law Review) (last visited Feb. 1, 2026).

62. S. 1317, 246th Sess., § 3 (N.Y. 2023) (amending N.Y. ENV'T CONSERV. LAW § 8-0109(2)).

Environment Conservation Law, the term "pollution burden" is not defined.[63] However, the reference to a "pollution burden" in the description of a "burden report," explained below, indicates that such burden is the totality of existing environmental and health stresses on a disadvantaged community.

In addition to imposing greater SEQRA obligations, the Cumulative Impacts Law also creates additional obligations for all DEC-permit actions—except for general permits—under Environmental Conservation Law Title 15 of Article 15 (facility withdrawing and using over 20 million gallons per day of water for cooling); Article 17 (water pollution control); Article 19 (air pollution control); Title 17 of Article 23 (liquified natural and petroleum gas); and Titles 3 (conservation easements), 7 (solid waste), 9 (toxic chemicals in children's product), and 11 (fish and wildlife) of Article 27.[64] For permit applications under these provisions that "*will* cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on a disadvantaged community," DEC or the applicant must prepare an "[e]xisting burden report . . . ."[65] However, the term "de minimis" is not defined.

The scope of an existing burden report will be developed by DEC, in consultation with the State Department of Health, following a minimum 30-day comment period on the report's scope.[66] The report must assess relevant baseline data, environmental or public health stressors already borne by the disadvantaged community, the potential or projected contribution of the proposed action to that existing pollution burden, and benefits to the community from the proposed project.[67]

Perhaps the most significant of the Cumulative Impact Law's obligations is the requirement that DEC, after considering the application and the existing burden report, "not issue an applicable permit for a

63. *Id.* at § 2 (amending N.Y. ENV'T CONSERV. LAW § 8-0105).

64. *Id.* at § 7.

65. S. 1317, 246th Sess. (N.Y. 2023) (emphasis added). For a permit renewal or modification, DEC may not require such a report if the permit would "serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative." *Id.* Further, no report is required for an application for a permit renewal if a report has been prepared with regard to such permit within the past ten years. *See id.*

66. *See id.* This comment period is presumably in addition to other public comment periods already required by SEQRA, although if an EIS is required, this comment period could logically be part of the public scoping process.

67. *See* S. 1317, 246th Sess., § 7 (N.Y. 2023). The potential project benefits that must be assessed under the report can include increased housing supply, alleviation of existing pollution burdens, and operational changes to the project that would reduce the pollution burden. *Id.*

new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community."[68]

The Cumulative Impacts Law directs DEC to undertake rulemaking to amend SEQRA and uniform permit review regulations to effectuate the new legislation.[69] On January 29, 2025, DEC issued draft amendments to the SEQRA regulations implementing the Cumulative Impacts Law.[70] The comment period for the draft amendments ended on May 7, 2025, and DEC is now evaluating public comments and drafting the final rule.

In May 2024, DEC adopted policy DEP-24-1 to implement Section 7(3) of the 2019 CLCPA, which seeks to prevent disadvantaged communities from being disproportionately affected by greenhouse gas ("GHG") or co-pollutant emissions.[71] The policy lays out the procedure DEC will follow when reviewing certain permit applications for projects involving sources or activities that will result in direct or indirect GHG or co-pollutant emissions.

On June 12, 2025, the New York Senate passed S3492A, the Sustainable Affordable Housing and Sprawl Prevention Act.[72] The Assembly did not pass its counterpart, A6283. If enacted, the legislation would exempt or limit environmental review under SEQR for the construction of certain new residential units to avoid creating unnecessary

68. *See id*. There are lesser burdens for permit modifications and renewals. DEC is prohibited from modifying or renewing an existing permit if it "would significantly increase the existing disproportionate pollution burden on the disadvantaged community." *Id.*

69. *See id*. at §§ 7(3), (5), 12 (amending N.Y. ENV'T CONSERV. LAW § 8-0113(1), which obligates the Commissioner of Environmental Conservation to promulgate SEQRA regulations, and N.Y. ENV'T CONSERV. LAW § 70-0107(1), which obligates the Commissioner to promulgate regulations for the uniform review of regulatory permits).

70. *See DEC Seeks Public Comment on Draft Environmental Justice Siting Law Amendments to State Environmental Quality Review Act Regulations*, N.Y. STATE DEP'T OF ENV'T CONSERVATION (Jan. 2025), https://dec.ny.gov/news/press-releases/2025/1/dec-seeks-public-comment-on-draft-environmental-justice-siting-law-amendments-to-state-environmental-quality-review-act-regulations (on file with Syracuse Law Review).

71. *See Environmental Permits Guidance Documents*, N.Y. STATE DEP'T OF ENV'T CONSERVATION, https://dec.ny.gov/regulatory/permits-licenses/notable-projects-documentation/permitting-disadvantages-communities-under-climate-leadership-and-community-protection-act (on file with Syracuse Law Review) (last visited Feb. 1, 2026).

72. *See generally* S. 3492—A, 2025–26 Leg., Reg. Sess. (N.Y. 2025).

housing sprawl, as well as limit certain rights to action under SEQR.[73] The bill is likely to be reconsidered in next year's legislative session.[74]

III. CASE LAW DEVELOPMENTS

A. Threshold Requirements in SEQRA Litigation

SEQRA litigation invariably arises as a special proceeding under Article 78 of the Civil Practice Law and Rules ("C.P.L.R.").[75] Article 78 imposes upon petitioners in such proceedings certain threshold requirements, separate and distinct from the procedural requirements imposed by SEQRA.[76] Several decisions during the *Survey* period addressed questions arising from these threshold requirements, as well as obligations arising solely from SEQRA.[77] The principal cases are discussed below.

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73. *See generally id.*

74. Recent years have also brought changes to CEQR regulations. In April 2024, New York City issued amendments to its regulations implementing CEQR, which became effective on June 3, 2024. *See* N.Y.C. RULES, tit. 62, § 5.05(e)–(f) (McKinney 2025). The amendments created a Residential Development Type II category that exempts from CEQR review housing developments of up to 250 new units in higher and medium density districts, and up to 175 new units in lower density districts, if certain criteria are met. *See id.*

75. *See generally* N.Y. C.P.L.R. § 7803 (McKinney 2024).

76. *See id.* at § 7803(1)–(5).

77. *See, e.g.*, Figueroa v. Town of Wallkill, 220 N.Y.S.3d 434, 436–37 (App. Div. 2d Dep't 2024); Valley Stream Cent. High Sch. Dist. v. Town of Hempstead Indus. Dev. Agency, 2025 N.Y. Misc. LEXIS 2507, at *14–16 (Sup. Ct. Nassau Cnty. 2025); Seneca Meadows, Inc. v. Town of Seneca Falls, 225 N.Y.S.3d 483, 485–86 (App. Div. 4th Dep't 2024); Herbst v. Town of Mamaroneck, 2025 N.Y. Misc. LEXIS 916, at *28–29, *42 (Sup. Ct. Westchester Cnty. 2025); Pres. Pine Plains v. Town of Pine Plains Plan. Bd., 2024 N.Y.L.J LEXIS 1826, at *10–11, *14–15 (Sup. Ct. Putnam Cnty. 2024); 382 McDonald LLC v. N.Y.C. Indus. Dev. Agency, 2024 N.Y. Misc. LEXIS 4943, at *5–6, *11 (Sup. Ct. N.Y. Cnty. 2024); Jackson v. Town of Nanticoke, 2025 N.Y. Misc. LEXIS 1814, at *9–11 (Sup. Ct. Broome Cnty. 2025); Detering v. N.Y.C. Env't Control Bd., 2024 N.Y. Misc. LEXIS 4392, at *14–15 (Sup. Ct. N.Y. Cnty. 2024); Rowlands v. U.S. Army Corps of Eng'rs, 2024 N.Y. Misc. LEXIS 13697, at *2–3, *11–12 (Sup. Ct. Albany Cnty. 2024); 3649 Erie, LLC v. Onondaga Cnty. Indus. Dev. Agency, 220 N.Y.S.3d 540, 544 (App. Div. 4th Dep't 2024); JHK Dev., LLC v. Town of Salina, 224 N.Y.S.3d 769, 776–77 (App. Div. 4th Dep't 2024); Binghamton Plaza, Inc. v. City of Binghamton, 214 N.Y.S.3d 201, 205–07 (App. Div. 3d Dep't 2024).

1. Standing

Standing is one of the more frequently litigated issues in SEQRA case law.[78] To establish standing, a SEQRA petitioner must demonstrate that the challenged action is likely to cause an environmental injury that (1) is different from any generalized harm caused by the action to the public at large; and (2) falls within the "zone of interests" sought to be protected or promoted by SEQRA.[79] The harm must be "different in kind or degree from the public at large," but it need not be unique.[80] To fall within SEQRA's "zone of interests," the alleged injury must be "environmental and not solely economic in nature."[81] Several noteworthy SEQRA decisions addressed standing during this *Survey* period.[82]

A. Where Standing May Be Presumed

Usually, SEQRA requires a demonstration of particularized harm; however, there are circumstances in which other factors give rise to a presumption of standing. One of the most common of these circumstances is where the challenger is the owner of property that was rezoned[83] or within a historic district that would be impacted.[84]

78. *See* Charlotte A. Biblow, *Courts Tackle Standing and SEQRA Review*, LAW.COM (May 22, 2014), https://www.law.com/article/almID/1202656265540/ (on file with Syracuse Law Review).

79. *See* Save the Pine Bush, Inc. v. Common Council of Albany, 918 N.E.2d 917, 924 (N.Y. 2009) (Pigott, J., concurring) (quoting Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk, 573 N.E.2d 1034, 1040–41 (N.Y. 1991)).

80. *See* Sierra Club v. Vill. of Painted Post, 43 N.E.3d 745, 749 (N.Y. 2015) (citing *Soc'y of Plastics Indus.*, Inc., 573 N.E.2d at 1044).

81. *See* Mobil Oil Corp. v. Syracuse Indus. Dev. Agency, 559 N.E.2d 641, 644 (N.Y. 1990) (citing Niagara Recycling, Inc. v. Town Bd., 443 N.Y.S.2d 951, 955 (App. Div. 4th Dep't 1981)).

82. *See, e.g.*, Figueroa v. Town of Wallkill, 232 A.D.3d 729, 731 (App. Div. 2d Dep't 2024); Valley Stream Cent. High Sch. Dist. v. Town of Hempstead Indus. Dev. Agency, 2025 N.Y. Misc. LEXIS 2507, at *4 (Sup. Ct. Nassau Cnty. 2025); Seneca Meadows, Inc. v. Town of Seneca Falls, 233 A.D.3d 1430, 1430 (App. Div. 4th Dep't 2024); Herbst v. Town of Mamaroneck, 2025 N.Y. Misc. LEXIS 916 (Sup. Ct. Westchester Cnty. 2025); Pres. Pine Plains v. Town of Pine Plains Plan. Bd., 2024 NYLJ LEXIS 1826 (Sup. Ct. Putnam Cnty. 2024); 382 McDonald LLC v. N.Y.C. Indus. Dev. Agency, 2024 N.Y. Misc. LEXIS 4943 (Sup. Ct. N.Y. Cnty. 2024).

83. *See* Cold Spring Country Club, Inc v. Town of Huntington., 2023 N.Y. Slip Op. 51407(U), at *4 (Sup. Ct. Suffolk Cnty. Oct. 30, 2023).

84. *Compare* Creda, LLC v. City of Kingston Plan. Bd., 183 N.Y.S.3d 591, 594–95 (App. Div. 3d Dep't 2023) *with* 1160 Mamaroneck Ave. Corp. v. City of White Plains, 180 N.Y.S.3d 211, 214 (App. Div. 2d Dep't 2022).

One dissent issued during the *Survey* period addressed the issue of presumed standing.[85]

B. Sufficiently "Particularized" Harm

As explained by the Court of Appeals, the proximity of a petitioner's property to the location that is the subject matter of the proposed action permits an inference "that the challenger possesses an interest different from other members of the community."[86] This is often shown by the proximity of the challenger to a project site.[87] In *Figueroa v. Town of Wallkill*, the petitioner alleged that the Town Board of Walkill failed to conduct an adequate SEQRA review in issuing a negative declaration in connection with its adoption of a local law amending the town code.[88] The Appellate Division for the Second Department dismissed the challenge because "petitioner failed to establish that his property was located in sufficiently close proximity to the subject location to give rise to standing" and that he had suffered a "cognizable injury different from that of members of the public at large."[89]

C. Zone of Interest

As noted in previous *Surveys*, New York courts have been clear that mere economic injury does not fall within the zone of interests protected by SEQRA.[90] This was reinforced in *Valley Stream Central High School District v. Town of Hempstead Industrial Development Agency*, which involved a challenge to the Town of Hempstead Industrial Development Agency's decision to extend Payment-in-Lieu-of-Taxes and lease agreements to a private entity for a shopping mall complex owned by the agency.[91] The petitioner argued that, in granting these agreements, the Development Agency failed to comply with SEQRA and failed to distribute the recaptured benefits to the School

85. *See* Seneca Meadows, Inc. v. Town of Seneca Falls, 233 A.D.3d 1430, 1434 (App. Div. 4th Dep't 2024).

86. Gernatt Asphalt Prods., Inc. v. Town of Sardinia, 664 N.E.2d 1226, 1238 (N.Y. 1996).

87. *See id.*

88. *See* Figueroa v. Town of Wallkill, 232 A.D.3d 729, 729 (App. Div. 2d Dep't 2024).

89. *See id*. at 731.

90. *See 2017–18 Surv. of Env't. L.*, *supra* note 2, at 794, for a discussion of caselaw concerning solely economic injuries and standing.

91. Valley Stream Cent. High Sch. Dist. v. Town of Hempstead Indus. Dev. Agency, 2025 N.Y. Misc. LEXIS 2507, at *3 (Sup. Ct. Nassau Cnty. Apr. 2, 2025).

District.[92] The Supreme Court rejected the challenge, noting that the petitioner had failed to allege environmental harms and that purely economic harms do not fall within the statute's zone of interests.[93]

Similarly, in *Seneca Meadows, Inc. v. Town of Seneca Falls*, a solid waste management facility operator brought suit against the Town of Seneca Falls, alleging SEQRA defects in the Town's enactment of Local Law No. 3 of 2016, which "prohibit[ed] the construction or operation of waste management facilities" within the Town.[94] The Fourth Department dismissed the claim, holding that the petitioner alleged only economic injuries, which were not cognizable injuries under SEQRA.[95] Justices Smith and Bannister authored a lengthy dissent, arguing that standing should be presumed here, as the challenger was a property owner subject to a zoning enactment, *supra* section III(A)(1)(A).[96]

In *Herbst v. Town of Mamaroneck*, various petitioners challenged a local law regulating tree removal.[97] They asserted a wide range of harms to them "in their use and enjoyment of the affected natural resources."[98] The Supreme Court there held that only one of the five petitioners lacked standing to challenge the law; each of the remaining petitioners successfully demonstrated a particularized injury within the zone of interest protected by SEQRA.[99]

Preserve Pine Plains v. Town of Pine Plains Planning Board involved a challenge to a Planning Board determination to grant a special use permit for a solar facility.[100] The Supreme Court found that the petitioners had both organizational and individual standing; the petitioning organization "was primarily formed to protect and preserve the Town's community character and environmental resources around the site of the solar project, safeguard natural resources, maintain aesthetic resources, and ensure that any proposed projects in the area comply with the law."[101] Moreover, the individuals' alleged injuries

92. *See id.* at *6–7.

93. *See id.* at *18.

94. *See* Seneca Meadows, Inc. v. Town of Seneca Falls, 233 A.D.3d 1430, 1430 (App. Div. 4th Dep't 2024).

95. *Id.* at 1431.

96. *See id.* at 1438.

97. Herbst v. Town of Mamaroneck, No. 59167/2024, 2025 N.Y. Slip Op. 30579(U), at *1, *2–3 (Sup. Ct. Westchester Cnty. Jan. 7, 2025).

98. *Id*. at *11.

99. *See id*. at *14.

100. Pres. Pine Plains v. Town of Pine Plains Plan. Bd., 2024 NYLC LEXIS 1826, at *1 (Sup. Ct. Putnam Cnty. June 14, 2024).

101. *Id*. at *16.

to their "aesthetic use and enjoyment" of the relevant area of the Town fell within the zone of interests sought to be protected by SEQRA.[102]

The Supreme Court in *382 McDonald LLC v. New York City Industrial Development Agency* dismissed a petition alleging SEQRA defects in the New York City Industrial Development Agency's decision to approve an application for a grocery store.[103] The petitioner owned a grocery store located in the neighborhood where the new grocery store was to be located, and alleged both physical proximity and business harms from the new grocery store as bases for standing.[104] The Supreme Court rejected both theories of standing and held that the petitioner's central complaint—"that it will be at a competitive disadvantage because a nearby grocery store is receiving financial benefits"—did not confer standing.[105] "Generalized concerns about traffic" due to the petitioner's physical proximity to the store were also insufficient bases for standing.[106]

2. Ripeness, Mootness & Statute of Limitations

In addition to standing, a SEQRA petitioner also must satisfy several threshold requirements, including that the claim be ripe, that administrative remedies have been exhausted,[107] that the claim is not

102. *Id*. at *17; *see also* Friends of Shawangunks v. Town of Gardiner Plan. Bd., 224 A.D.3d 961, 964 (App. Div. 3d Dep't 2024) (holding that the claimed injuries to an organization's members' "aesthetic use and enjoyment" of a ridge fell within the zone of interests sought to be protected by SEQRA); Hillcrest Fire Company #1 v. Vill. of New Hempstead, No. 030128/2022, at *1–2 (N.Y. Sup. Ct. Rockland Cnty. Jan. 10, 2023) (holding that injuries alleged by residents living in close proximity to the site, including increased noise and traffic and "degradation in the character of the neighborhood," fell within the zone of interest protected by SEQRA).

103. 382 McDonald LLC v. N.Y.C Indus. Dev. Agency, No. 161947/2023, 2024 Slip Op. 32218(U), at *1 (Sup. Ct. N.Y. Cnty. July 1, 2024).

104. *Id*. at *2, *4.

105. *Id*. at *5.

106. *Id*. at *6.

107. Under the doctrine of administrative exhaustion, "courts generally refuse to review a determination on environmental or zoning matters based on evidence or arguments that were not presented during the proceedings before the lead agency." Miller v. Kozakiewicz, 300 A.D.2d 399, 400 (App. Div. 2d Dep't 2002) (citations omitted). *But see* Jackson v. N.Y. State Urb. Dev. Corp., 494 N.E.2d 429, 442 (N.Y. 1986) ("The EIS process is designed as a cooperative venture, the intent being that an agency have the benefit of public comment before issuing a FEIS and approving a project; permitting a party to raise a new issue after issuance of the FEIS or approval of the action has the potential for turning cooperation into ambush.") (citing Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 553–54 (1978))). *See also* BMG Monroe I, LLC v. Vill. of Monroe, 93 F.4th 595, 603 (2d Cir. 2024) (holding that where applicant wished to alter previously agreed-upon

moot,[108] and that the claim be timely brought within the statute of limitations period.[109]

A. Ripeness

With respect to ripeness, only final agency actions are generally subject to challenge in a SEQRA (or any other Article 78) proceeding.[110] Court of Appeals decisions issued in prior years have held that, in most instances, a positive SEQRA declaration of significance is not a final agency action ripe for review; instead, it is an initial step in the decision-making process.[111] A Court of Appeals decision from 2003, *Gordon v. Rush*, did allow a challenge to a positive declaration, holding that a positive declaration is ripe for judicial review in limited circumstances: when (1) the action imposes an obligation, denies a right, or fixes "some legal relationship as a consummation of the administrative process"; and (2) when there is "a finding that the apparent harm inflicted by the action 'may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.'"[112]

Gordon, though, is the exception to the rule, which the Court of Appeals made clear in its 2016 decision *Ranco Sand & Stone Corp. v. Vecchio*. There, the court held that a positive declaration was not ripe for review under the *Gordon* framework because it did not satisfy the second prong of the *Gordon* inquiry—that the harm could not be ameliorated in the future.[113] The court clarified that its holding in *Gordon* "was never meant to disrupt the understanding of appellate courts that a positive declaration imposing a DEIS requirement is usually not a

conditions outlined in the SEQRA Findings, it had to seek another variance before proceeding to federal court).

108. *See* Friends of Flint Mine Solar v. Town Bd. of Coxsackie, 2019 N.Y. Slip Op. 19-0216(U), at *5–7 (Sup. Ct. Greene Cty. Sept. 13, 2019) (holding, inter alia, that respondent's adoption of the local law rendered the proceeding moot).

109. *See* N.Y. C.P.L.R. § 7801(1) (McKinney 2024).

110. *See id.*; *see also* Essex Cnty. v. Zagata, 695 N.E.2d 232, 235 (N.Y. 1998) (citing N.Y. C.P.L.R. § 7801(1)); N.Y. EXEC. LAW § 818(1)); Vill. of Kiryas Joel v. Cnty. of Orange, 181 A.D.3d 681, 684–85 (App. Div. 2d Dep't 2020) (holding that petitioner's claim was ripe because respondent's completion of the SEQRA process constituted a final agency decision).

111. *See* Ranco Sand & Stone Corp. v. Vecchio, 49 N.E.3d 1165, 1170 (N.Y. 2016) (citing Rochester Tel. Mobile Commc'ns v. Ober, 251 A.D.2d 1053 (App. Div. 4th Dep't 1998)*; but see* Gordon v. Rush, 792 N.E.2d 168, 172–73 (N.Y. 2003) (citing *Essex Cnty.*, 695 N.E.2d at 235).

112. *Gordon*, 792 N.E.2d at 172 (quoting *Essex Cnty.*, 695 N.E.2d at 235).

113. *See Ranco Sand & Stone Corp.*, 49 N.E.3d at 1170.

final agency action, and is instead an initial step in the SEQRA process."[114]

One case decided during the *Survey* period addressed ripeness. In *Jackson v. Town of Nanticoke*, the petitioners alleged that the Town of Nanticoke failed to comply with SEQRA in issuing a Board Resolution authorizing the abandonment of a portion of a road serving a parcel of land owned by the petitioners.[115] The Supreme Court dismissed the petition as unripe, because the matter could not "be considered prior to a determination as to the validity of the Board's Resolution of the abandonment of a portion of Fairbanks Road."[116]

B. Mootness

The mootness doctrine requires that, if "during the pendency of a proceeding to review an agency determination, there has been subsequent action taken which has resolved the issue in dispute, the proceeding should be dismissed as moot."[117] An exception to the mootness doctrine may apply if three factors are met: "(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, *i.e.*, substantial and novel issues."[118] In other words, a matter is not moot where it "presents a live controversy and enduring consequences potentially flow" from the determination that is challenged.[119] And in the case of an agency, the reviewing court must also analyze whether the agency's determination will have the potential to affect a petitioner's

114. *Id.* Similarly, a decision addressed in an earlier *Survey* period rejected a challenge to a positive declaration for failure to satisfy the first step of the *Gordon* inquiry. *See* Mark A. Chertok et al., *2018–19 Survey of New York Law: Environmental Law: Developments in the Law of SEQRA*, 70 SYRACUSE L. REV. 329, 340 (2020) (discussing Lewis Homes of N.Y., Inc. v. Bd. of Site Plan Rev. of the Town of Smithtown, No. 40966/2009, 2019 N.Y. Slip Op. 31376(U), at *5–6 (Sup. Ct. Suffolk Cty. May 20, 2019)) [hereinafter *2018–19 Surv. of Env't L.*].

115. Jackson v. Town of Nanticoke, 2025 N.Y. Misc. LEXIS 1814 (Sup. Ct. Broome Cnty. Mar. 27, 2025).

116. *Id.* at *11.

117. Mehta v. N.Y.C. Dep't of Consumer Affs., 556 N.Y.S.2d 601, 602 (App. Div. 1st Dep't 1990) (citing Flacke v. Onondaga Landfill Sys., Inc., 507 N.E.2d 316 (N.Y. 1987)).

118. Hearst Corp. v. Clyne, 409 N.E.2d 876, 878 (N.Y. 1980).

119. N.Y. State Comm'n on Jud. Conduct v. Rubenstein, 16 N.E.3d 1156, 1160 (N.Y. 2014) (citing Saratoga Cnty. Chamber of Com. v. Pataki, 798 N.E.2d 1047, 1051 (N.Y. 2003)).

future rights.[120] No new cases of note from this *Survey* period addressed mootness in SEQRA proceedings.

C. Statute of Limitations

In accordance with the statute of limitations applicable to Article 78 proceedings, a SEQRA challenge must generally be made "within four months after the determination to be reviewed becomes final and binding upon the petitioner," and that period begins to run when the agency has taken a "definitive position on the issue that inflicts an actual, concrete injury."[121] As a practical matter, it can be difficult to identify that point in time when the statute of limitations begins to run, and the trigger point has become an area of some confusion.[122] Decisions discussed in more detail in previous *Surveys* illustrate the difficulties in determining when an agency reaches its "definitive position that inflicts an actual, concrete injury" to petitioners, thereby commencing the limitations period.[123] Adding to the confusion, a shorter statute of limitations may apply pursuant to statute, often in challenges to certain land use approvals.[124] There were no new cases during the *Survey* period addressing the statute of limitations.

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120. *See* Rukenstein v. McGowan, 709 N.Y.S.2d 42, 43 (App. Div. 1st Dep't 2000).

121. N.Y. C.P.L.R. § 217(1) (McKinney 2024); Stop-The-Barge v. Cahill, 803 N.E.2d 361, 363 (N.Y. 2003) (quoting Essex Cnty. v. Zagata, 695 N.E.2d 232, 235 (N.Y. 1998)); *see* Young v. Bd. of Trs., 675 N.E.2d 464, 466 (N.Y. 1996) ("[T]he Statute of Limitations was triggered when the Board committed itself to 'a definite course of future decisions.'") (first citing N.Y. COMP. CODES R. & REGS. tit. 6, § 617.2(b)(2)–(3) (2024); then citing Save the Pine Bush v. City of Albany, 512 N.E.2d 526, 529 (N.Y. 1987)). However, SEQRA litigants should also be aware that courts will look to the substance of the underlying claim, whether it is styled as an Article 78 claim or a claim for declaratory judgment, in determining what statute of limitations will apply. *See* Schulz v. Town Bd., 111 N.Y.S.3d 732, 735 (App. Div. 3d Dep't 2019) (finding that although the plaintiff couched his requested relief in the form of a declaratory judgment action, which is subject to a longer statute of limitations, the four-month statute of limitations under Article 78 applied since the plaintiff's SEQRA claims could have been addressed in an Article 78 proceeding) (citing N. Elec. Power Co., L.P. v. Hudson River-Black River Regulating Dist., 997 N.Y.S.2d 793, 796 (App. Div. 3d Dep't 2014)).

122. The confusion stems from two Court of Appeals decisions, *Stop-The-Barge*, 803 N.E.2d at 363, and Eadie v. Town Bd. of Town of N. Greenbush, 854 N.E.2d 464, 469 (N.Y. 2006).

123. *See* Mark A. Chertok, Katherine E. Ghilain, & Victoria S. Treanor, *Environmental Law: Developments in the Law of SEQRA*, 66 SYRACUSE L. REV. 905, 921–22 (2015) (discussing *Stop-The-Barge*, 803 N.E.2d at 362 and *Eadie*, 854 N.E.2d at 469).

124. A party may be subject to a shorter statute of limitations period for challenging SEQRA decisions by statute. For example, N.Y. TOWN LAW § 267-c (McKinney 2024) prescribes a thirty-day statute of limitations for persons aggrieved

D. Procedural Requirements Imposed by SEQRA on Agencies

As explained in Part I, much of SEQRA's mandate is procedural; lead agencies must comply with SEQRA's requirements to identify the type of action at issue, issue a determination of significance, and, if the determination is positive, require the preparation of an EIS.[125] A few reported cases during the *Survey* period concerned lead agencies' alleged failures to comply with one or more of these procedural mandates.

3. Classification of the Action

A. Classifying an Action as Type I, Type II, or Unlisted

DEC sorts agency actions into categories by regulation.[126] As noted above, a Type I action carries the presumption that an EIS will be required.[127] Conversely, a Type II action is any action or type of action that does not require further SEQRA review, as it "[has] been determined not to have a significant impact on the environment or [is] otherwise precluded from environmental review under Environmental Conservation Law, article 8."[128] Any state or local agency may adopt its own list of additional Type I or Type II actions to supplement those provided by DEC.[129] An "Unlisted" action is any action not identified as Type I or Type II by DEC's regulations or, where applicable, a lead agency's additional classification of actions by type.[130]

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by a decision of a town's Zoning Board of Appeals regarding a use or area variance, and N.Y. TOWN LAW § 274-a (McKinney 2024) prescribes a thirty-day statute of limitations for persons aggrieved by a decision regarding a site plan approval.

125. *See supra* Part I.

126. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.4 (2024).

127. *See id.* at § 617.4(a).

128. *Id.* at § 617.5(a).

129. *See id*. at §§ 617.4(a)(2), 617.5(b) ("An agency may not designate as Type I any action identified as Type II" by DEC at section 617.5 of the SEQRA regulations).

130. *See id.* at § 617.2(al). Beyond Type II actions under SEQRA, there exist additional exemptions. *See* N.Y. PUB. AUTH. LAW §1266-c; N.Y. VEH. & TRAF. LAW § 1704(6) (exempting the Triborough Bridge and Tunnel Authority's central business district tolling program from SEQRA). In *Mutual Redevelopment Houses v. Metropolitan Transportation Authority*, the Metropolitan Transportation Authority's (MTA's) installation of a high-voltage power station fell "squarely within [§ 1266-c (11)], which expressly exempt[ed] this project [from] environmental review, specifically from SEQRA's requirements." Mut. Redevelopment Houses, Inc. v. Metro. Transp. Auth., No. 160085/2022, 2023 N.Y. Misc. LEXIS 981, at *9 (Sup. Ct. N.Y. Cnty. Mar. 8, 2023). The MTA has an exemption for most actions the agency takes on land that it already owns. *See* SEQRA HANDBOOK, *supra* note 4, at 8. Additional narrowly focused exemptions exist for agencies such as the Long

In *Detering v. New York City Environmental Control Board*, the New York County Supreme Court found that the New York City Environmental Control Board's decision to alter a noise code fee scheme fell into the enumerated category of Type II actions for "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment" contained in New York Codes Rules & Regulations, title 6, § 617.5 (c)(26).[131] In so holding, the court emphasized that the new fee scheme was "not a new program. It simply lessen[ed] the emphasis on citizens' compensation and the fines to be levied."[132]

B. Unlawful "Segmentation" of SEQRA Review

Defining the proper parameters for an action can be difficult. SEQRA regulations provide that "[c]onsidering only a part or segment of an action is contrary to the intent of SEQR[A]."[133] As explained by the Third Department, impermissible segmentation occurs in two situations: (1) "when a project which would have a significant effect on the environment is split into two or more smaller projects, with the result that each falls below the threshold requiring [SEQRA] review;" and (2) "when a project developer wrongly excludes certain activities from the definition of his project for the purpose of keeping to a minimum its environmentally harmful consequence, thereby making it more palatable to the reviewing agency and community."[134] SEQRA does not strictly prohibit segmentation, but it is disfavored; DEC's SEQRA regulations provide that a lead agency permissibly may segment review if "the agency clearly states its reasons therefor and demonstrates that such review is no less protective of the environment."[135]

Island Power Authority's exemption "for actions involving the decommissioning of the Shoreham Nuclear Plant" and the New York State Department of Transportation's "exemption for certain actions involving the addition of travel lanes and other projects on the Long Island Expressway." *Id.* at 9.

131. Detering v. N.Y.C. Env't. Control Bd., No. 159847/2023, 2024 N.Y. Misc. LEXIS 4392, at *14–15 (Sup. Ct. N.Y. Cty. June 13, 2024).

132. *Id.* at *15; *see also* PJB Equities, Inc. v. Vill. of Ossining, 209 N.Y.S.3d 548, 551 (App. Div. 2d Dep't 2024) (holding that the Village's resolution declaring a housing emergency and applying the Emergency Tenant Protection Act to certain buildings was a Type II action, which did not require an assessment of environmental impact.).

133. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.3(g)(1) (2024).

134. Schultz v. Jorling, 563 N.Y.S.2d 876, 879 (App. Div. 3d Dep't 1990).

135. Concerned Citizens for the Env't v. Zagata, 672 N.Y.S.2d 956, 958 (App. Div. 3d Dep't 1998) (citing N.Y. COMP. CODES R. & REGS. tit. 6, § 617.3(g)(1)).

Four cases from this *Survey* period addressed segmentation. *Rowlands v. U.S. Army Corps of Engineers* involved a challenge to determinations made by the Town of Bethlehem's Planning Board in connection with the Marmen/Welcon Offshore Wind Tower Manufacturing Plant.[136] Among other claims, the petitioners argued that the Planning Board improperly segmented its SEQRA review of the Wind Plant project.[137] They contended that the lack of findings statements from involved agencies (other than DEC, which issued a findings statement in November 2022), "rendered the Planning Board's March 2022 determination incomplete, segmented, and in violation of SEQRA."[138] The Supreme Court rejected this argument, noting that "involved agencies' failure to submit finding statements prior to" the determination of the lead agency (here, the Planning Board) "does not constitute impermissible segmentation since those involved agencies are not mandated to provide such findings" and "nothing in the regulations mandates that an involved agency submit findings statements in response to the final EIS prior to the lead agency issuing its final determination."[139]

In *Matter of 3649 Erie, LLC v. Onondaga County Industrial Development Agency*, the petitioner challenged the Onondaga County Industrial Development Agency's ("OCIDA") authorization of the condemnation of a parcel of real property owned by the petitioner.[140] The petitioner argued that "OCIDA improperly deferred or segmented from its review, inter alia, lighting, noise, and surface water quality."[141] The Fourth Department disagreed, holding that "inasmuch as respondents concede that the project is subject to further design changes and further SEQRA review, . . . OCIDA's storm water, lighting and noise mitigation plans have been developed 'to the fullest extent possible'" and therefore OCIDA did not improperly defer or segment them from its review.[142]

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136. *See* Rowlands v. U.S. Army Corps of Eng'rs., 2024 N.Y. Misc. LEXIS 13697 (Sup. Ct. 2024).

137. *See id.* at *3.

138. *Id.* at *10–11.

139. *Id.* at *11–12.

140. 3649 Erie, LLC v. Onondaga Cnty. Indus. Dev. Agency, 220 N.Y.S.3d 540, 542 (App. Div. 4th Dep't 2024).

141. *Id.* at 544.

142. *Id.*; *see also* Bowers Dev. LLC v. Oneida Cnty. Indus. Dev. Agency, 224 A.D.3d 1240, 1243 (App. Div. 4th Dep't. 2024) (holding that OCIDA did not improperly segment its SEQRA review where it "adopted a resolution affirming its review of the entire project constituting the action under SEQRA and did not improperly limit its review to only a portion of the project.").

Similar issues arose in *JHK Development, LLC v. Town of Salina*, in which the petitioner argued that the Town of Salina Town Board's authorization of the condemnation of a portion of the petitioner's property improperly segmented the Board's review of the condemnation in violation of SEQRA.[143] The land at issue was to serve as an access road to the site, which was to be converted from a candle factory site to a mixed-use redevelopment project.[144] The petitioner argued that the Town Board's SEQRA review was improperly limited to the construction of the access road itself, rather than the broader redevelopment project.[145] The Fourth Department disagreed, noting that the "complete scope of the entire redevelopment project" was not yet known and that the respondents conceded that "at the time of its full completion, the entire project will be further reassessed under SEQRA."[146] Accordingly, the court held that, "absent the identification of any specific future use, the Town Board 'was not required to consider the environmental impact of anything beyond the' construction of the access road, and consequently there was no improper segmentation here that would justify annulling the Town Board's determination."[147]

The same reasoning ran through the Third Department's decision in *Binghamton Plaza, Inc. v. City of Binghamton*,[148] There, the City of Binghamton condemned five parcels of the petitioner's property at a deteriorating strip mall "for the purpose of providing expanded access to a park and recreation trail in connection with a redevelopment project."[149] The Town Board issued a negative declaration, finding that expanding the park to connect it to a riverside walkway would not have a significant impact on the environment, and "segment[ed] the impact of its redevelopment plans for a later SEQRA review."[150] The petitioner sought to vacate the Town Board's determination and bar the condemnation of its property.[151] The Third Department ruled that the Town Board's segmentation of the project's SEQRA review was

143. *See* JHK Dev., LLC v. Town of Salina, 233 A.D.3d 1496 (App. Div. 4th Dep't. 2024).

144. *See id.* at 1496–97.

145. *See id.* at 1502.

146. *Id*.

147. *Id.*

148. Binghamton Plaza, Inc. v. City of Binghamton, 228 A.D.3d 1041 (App. Div. 3d Dep't 2024).

149. *Id.* at 1041–42.

150. *Id.* at 1042.

151. *Id.*

permissible. "[B]ecause respondent stated in its negative declaration that it had not yet determined redevelopment plans for the building parcel, we find it was reasonable to hold off any environmental impact consideration for that related, but independent, project."[152] The court reasoned that any future "action would be no less protective of the environment . . . because future redevelopment would require permitting and be subject to the [Site Management Program]" notwithstanding the negative declaration.[153] Here, the Third Department specifically described the challenged determination as permissible segmentation. Although that precise language was not used in the two preceding cases; it was, in effect, the conclusion in those matters.

C. Lead Agency Designation & Coordinated Review

One of the procedural requirements of SEQRA is that, for all Type I actions that involve more than one agency, the "lead agency" is the one "principally responsible for undertaking, funding, or approving an action," and it must conduct a coordinated review.[154] Under SEQRA regulations, if the "lead agency exercises due diligence in identifying all other involved agencies and provides written notice of its determination of significance to the identified involved agencies, then no [other] involved agency may later require the preparation of an EAF, a negative declaration or an EIS in connection with the action," and the lead agency's determination of significance "is binding on all other involved agencies."[155]

During this *Survey* period, no noteworthy case addressed the lead agency designation and preservation of its determination of significance.

4. "Hard Look" Review & the Adequacy of Agency Determinations of Environmental Significance

Agency decisions are accorded significant judicial deference when petitioners challenge an agency's substantive conclusions

152. *Id.* at 1046–47.

153. *Binghamton Plaza, Inc.*, 228 A.D.3d at 1047.

154. N.Y. COMP. CODES R. & REGS. tit. 6, §§ 617.2(v), 617.6(b)(3) (2024). Agencies have the option of conducting a coordinated review for Unlisted Actions, but it is not required. *See id.* § 617.6(b)(4).

155. *See id.* at § 617.6(b)(4), (b)(3)(iii). When more than one agency is involved, and the lead agency determines that an EIS is required, it must engage in a coordinated review. *See id.* § 617.6(b)(2)(ii).

regarding the environmental impacts of a proposal.[156] Courts have long held that "[j]udicial review of an agency determination under SEQRA is limited to 'whether the agency identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination."[157] With these considerations in mind, and under Article 78's deferential standard of review for agencies' discretionary judgments, a negative declaration or EIS issued in compliance with applicable law and procedures "will only be annulled if it is arbitrary, capricious, or unsupported by the evidence."[158] In applying this standard, courts have repeatedly emphasized that "while judicial review must be meaningful, the courts may not substitute their judgment for that of the agency, for it is not their role to 'weigh the desirability of any action or to choose among alternatives.'"[159]

This deferential standard of review means that successful challenges to the adequacy of an EIS are uncommon.[160] Success has been marginally more common in challenges to determinations of significance—*i.e.*, the issuance of a negative declaration. However, it appears that successful challenges to negative declarations are becoming more common. Courts nullified negative declarations in several cases from this *Survey* period, continuing a trend observed during the previous *Survey* period.[161]

A. Adequacy of Determinations of Environmental Significance

When made in accordance with applicable law and procedures, the issuance of a negative declaration concludes an agency's

156. *See, e.g.*, Riverkeeper, Inc. v. Plan. Bd. of Town of Se., 881 N.E.2d 172, 177 (N.Y. 2007) (quoting Jackson v. N.Y. State Urb. Dev. Corp., 494 N.E.2d 429, 436 (N.Y. 1986)).

157. *Id.* (quoting *Jackson*, 494 N.E.2d at 436).

158. Schaller v. Town of New Paltz Zoning Bd. of Appeals, 968 N.Y.S.2d 702, 704 (App. Div. 3d Dep't 2013) (first citing N.Y. C.P.L.R. § 7803(3) (McKinney 2025); then citing *Riverkeeper, Inc.*, 881 N.E.2d at 177; and then citing Troy Sand & Gravel Co. v. Town of Nassau, 918 N.Y.S.2d 667, 669 (App. Div. 3d Dep't 2011)).

159. *Riverkeeper, Inc.*, 881 N.E.2d at 177 (quoting Akpan v. Koch, 554 N.E.2d 53, 57 (N.Y. 1990)).

160. *See* MICHAEL B. GERRARD, DANIEL A. RUZOW & PHILIP WEINBERG, ENVIRONMENTAL IMPACT REVIEW IN NEW YORK § 7.04(4) (Matthew Bender ed. 2024).

161. *See* Michael B. Gerrard, *Annual SEQRA Review: Project Applicants Winning More Cases*, N.Y.L.J., July 11, 2024, at 1; Mark A. Chertok, Ahlia Bethea & Amy Cassidy, *Environmental Law: Developments in the Law of SEQRA*, 75 SYRACUSE L. REV. 387, 417 (2025).

obligations under SEQRA.[162] As a result, challenges to a negative declaration often attempt to prove that the lead agency's decision was "arbitrary and capricious," or unsupported in the record, because the agency failed to consider a relevant subject; the proposed action may have significant adverse environmental impacts; or the agency failed to provide a written, reasoned elaboration for its determination.[163]

As noted above, courts generally afford substantial deference to an agency's determinations under SEQRA and succeeding on an arbitrary and capricious challenge to a negative declaration can be difficult.[164] However, during this *Survey* period, multiple courts vacated negative declarations.

In two cases, the Third Department reversed the relevant Supreme Court's decision and nullified negative declarations on appeal. In *Clean Air Action Network of Glens Falls, Inc. v. Town of Moreau Planning Board*, the Third Department vacated the negative declaration issued for a proposed biosolids remediation and fertilizer processing facility for failure to take a hard look at the facility's potential adverse air impacts.[165] This decision reversed an opinion by the Supreme Court of Saratoga County, which had been discussed in the previous *Survey*.[166] The project, an unlisted action and "the first of its kind in this state, using a technology derived from known processes that remain untested at scale," is anticipated to generate 12.7 tons of designated hazardous air pollutants ("HAPs") per year.[167] In issuing the negative declaration, the Town of Moreau Planning Board determined that these adverse air impacts would be mitigated by a DEC state air facility permit and "periodic third-party monitoring."[168] The court held that this determination lacked "reasoned elaboration" or a "sound basis in reason."[169] The court noted that because these projected HAP

162. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.5(a) (2024); *see also* GERRARD ET AL., *supra* note 160, at § 2.01(3)(b).

163. *See* N.Y. C.P.L.R. § 7803(3) (McKinney 2024); *see also 2018–19 Surv. of Env't L.*, *supra* note 114, at 347. Challenges to positive declarations are much less common than challenges to negative declarations. *See* GERRARD ET AL., *supra* note 160, at § 3.05(2)(e). Part of the reason is that positive declarations generally are not considered final agency actions. *See supra* notes 98–102 and accompanying text.

164. *See* GERRARD ET AL., *supra* note 160, at § 7.04(4).

165. *See* Clean Air Action Network of Glens Falls, Inc. v. Town of Moreau Plan. Bd., 228 N.Y.S.3d 334, 336, 338, 340 (App. Div. 3d Dep't 2025).

166. *See* Clean Air Action Network of Glens Falls, Inc. v. Town of Moreau Plan. Bd., No. EF 20222135, 2023 N.Y. Slip Op. 50666(U) (Sup. Ct. Saratoga Cnty. July 6, 2023); Chertok et al., *supra* note 161, at 416–17.

167. *Clean Air Action Network of Glens Falls, Inc.*, 228 N.Y.S.3d at 336.

168. *Id.* at 337.

169. *Id.* at 339.

emissions were 50% of major-source level emissions, under the SEQRA regulations, such emissions have "the potential for 'moderate to large' adverse environmental impacts" and must be assessed for significance.[170] But the court did not find an indication in the record that the Planning Board had made such an assessment, nor was it "self-evident from DEC's licensing regime" that the state permit would mitigate these emissions.[171] Finding that the Planning Board gave "unexplained deference to DEC's permitting standards and periodic monitoring," the court nullified the negative declaration as arbitrary and capricious.[172]

In *Bennett v. Troy City Council*, the Third Department vacated a negative declaration issued by the Troy City Council for failure to take a hard look at the potential archeological impacts of a proposed apartment complex requiring a zoning change.[173] The project qualified as a Type I action, and therefore was subject to a presumption that it may have a significant adverse environmental impact.[174] The project site contained an archeological site of "high archaeological sensitivity and cultural significance for the Stockbridge-Munsee Band of Mohican Nation," as evidenced by a statement submitted to the City Council by the Stockbridge-Munsee Community Tribal Historic Preservation Office.[175] The City Council characterized the potential archeological impact of the development as "moderate" and issued a negative declaration, with the explanation that the project would endeavor to "either avoid the expressly defined areas" of the archaeological site or conduct a Phase III archaeological data retrieval study in coordination with the State Office of Parks, Recreation, and Historic Preservation ("OPRHP").[176] The court found that the City Council's description of the archeological impact as "'moderate' unduly minimize[d] the historic/archaeological significance of the project site."[177] Further, the court was critical of the City Council's exclusion of the Stockbridge-Munsee Community as a consulting party in its coordination plan with

170. *Id.*

171. *Id.*; *see also* FTKS Holdings, LLC v. Town of Southold, 2024 N.Y. Slip Op. 50424(U), at *5–6 (Sup. Ct. Suffolk Cnty. 2024) (holding that an agency's environmental review was incomplete where it issued a negative declaration prior to considering Part 3 of the EAF).

172. *Clean Air Action Network of Glens Falls, Inc.*, 228 N.Y.S.3d at 339.

173. *See* Bennett v. Troy City Council, 219 N.Y.S.3d 800 (App. Div. 3d Dep't 2024).

174. *Id.* at 802.

175. *Id.* at 804.

176. *Id.* at 803.

177. *Id.*

OPRHP. The court therefore annulled the negative declaration and remanded the matter to the City Council to prepare an EIS.

The Supreme Court of Erie County in *East Side Parkways Coalition v. N.Y. State Department of Transportation* found that the State Department of Transportation ("DOT")'s failure to conduct an EIS for a $1 billion project to redevelop the Kensington Expressway in Buffalo was arbitrary and capricious.[178] The project involved replacing existing roadways and bridges, creating a three-quarter-mile tunnel through which to route a portion of the expressway, and excavating beneath the local water table. The petitioners asserted that the State failed to take a hard look at the potential environmental effects of the project, including its impacts on noise levels and traffic.[179] Although the court emphasized that its role "is not to second-guess the agency termination," the court also noted that "[b]ecause the operative word triggering the requirement of an EIS is 'may', there is a relatively low threshold for the preparation of an EIS."[180] After describing the above-mentioned project components, the court stated that "[t]he effects to the surrounding community from all of this are incalculable."[181] Citing the "undisputed potential adverse health effects that will occur from the greenhouse emissions, traffic, blasting, and other related impacts associated with heavy industrial construction," the court concluded that the State's negative declaration was arbitrary and capricious and ordered the State to prepare an EIS for the project.[182]

Notwithstanding the above decisions, challenges to negative declarations during this *Survey* period most frequently upheld the lead agency's determination. In *Elizabeth Street Garden, Inc. v. City of New York*,[183] the Court of Appeals upheld the New York City Department of Housing Preservation and Development's ("HPD") negative declaration relating to an affordable housing development on City-owned property, affirming a First Department decision discussed in the previous *Survey*.[184] The Court of Appeals held that HPD took the

178. *See* East Side Parkways Coal. v. N.Y. State Dep't of Transp., 228 N.Y.S.3d 891 (Sup. Ct. Erie Cnty. 2025).

179. *See* W.N.Y. Youth Climate Council v. N.Y. State Dep't of Transp., 224 N.Y.S.3d 790, 797 (Sup. Ct. Erie Cnty. 2024).

180. *East Side Parkways Coal.*, 228 N.Y.S.3d at 902 (quoting Uprose v. Power Auth., 792 N.Y.S.2d 42, 46 (App. Div. 2d Dep't 2001)).

181. *Id.* at 901.

182. *Id.* at 902.

183. *See* Elizabeth St. Garden, Inc. v. City of New York, 246 N.E.3d 894 (N.Y. 2024).

184. *See* Elizabeth St. Garden v. City of New York, 192 N.Y.S.3d 102 (App. Div. 1st Dep't 2023); Chertok et al., *supra* note 161, at 419–20.

requisite hard look and rationally concluded the project would have no significant adverse environmental impact.[185] The Court emphasized that HPD followed the methodology prescribed by the CEQR Manual in preparing its environmental assessment statement.[186] For instance, HPD identified the study area as underserved in terms of open space, then considered both quantitative and qualitative factors to conclude that the development was unlikely to significantly affect open space use in the area.[187] The Court also rejected the argument that HPD failed to take a hard look at sustainability and the impact of climate change, as the petitioners did not point to any published standards for assessing such impacts in this type of project, and neither the CEQR Manual nor the Mayor's Executive Order on climate action contains applicable standards.[188] Finally, the Court held that compliance with local zoning requirements could not be adjudicated under the instant SEQRA review proceeding, as the proposed action was not a zoning amendment.[189]

In *Arntzen v. City of New York*, petitioners sought to vacate the City's negative declaration for the permanent open restaurants program under SEQRA and CEQR.[190] The Supreme Court of New York County found that the City took the requisite hard look at the program's potential impacts and provided a reasoned elaboration "sufficient to overcome the presumption associated with proposed Type I actions."[191] The court noted that the City assessed the program's potential environmental impacts in 19 areas consistent with the CEQR Manual, identified eight potential impact categories (which included the concerns raised by petitioners), undertook further review of these, and concluded that the impacts would not be significant.[192] The court also rejected the petitioners' contention that the presence of mitigation measures for anticipated noise impacts rendered the City's negative declaration arbitrary and capricious.[193]

In *In re Privitera*, the Supreme Court of Columbia County upheld a negative declaration issued by a town Planning Board in connection

185. *See Elizabeth St. Garden*, 246 N.E.3d at 897.
186. *See id.*
187. *See id.*
188. *See id.*
189. *See id.* at 898.
190. *See* Arntzen v. City of New York, No. 160624/2023, 2025 N.Y. Slip Op. 50337(U), at *1 (Sup. Ct. N.Y. Cnty. Mar. 10, 2025).
191. *Id.* at *18.
192. *See id.* at *20–30.
193. *See id.* at *31.

with the Planning Board's modification of a special use permit to allow an increase in the number of outdoor events at a commercial venue.[194] The petitioner asserted that the Planning Board failed to adequately consider potential traffic and noise impacts. However, the court observed that the public hearing minutes did "not reflect that traffic impacts were identified as a concern by the attendees, except as to whether the site had sufficient capacity for parking," and that the Planning Board concluded sufficient parking capacity existed.[195] As to noise impacts, the public hearing minutes indicated that other neighbors "could barely hear the music, if at all"; the site operator indicated that it would employ decibel-monitoring equipment; and the special use permit modification included conditions to limit noise levels.[196] The court therefore concluded that the Planning Board took a hard look at potential impacts and made a reasoned elaboration for its determination that no such impacts would be significant.[197]

In *Acker v. Village of the Head of the Harbor*, the Supreme Court of Suffolk County upheld a negative declaration issued in connection with a special permit for the construction of a small church against a petition containing "conclusory allegations" that the Village did not adequately address potential impacts on community character, traffic, and noise.[198] The court found that the negative declaration analyzed each of these areas, and noted that the petitioners did not submit any information to countervail the Village's conclusions that such impacts would not be significant.[199]

The Fourth Department upheld negative declarations under hard look review in two decisions issued during the *Survey* period, although neither opinion elaborated upon the courts' rationale.[200] Notably, however, in *Ross v. Village of Fayetteville*, the Fourth Department also

194. *See* In re Privitera, 2024 NYLJ LEXIS 1798, at *1 (Sup. Ct. Columbia Cnty. June 5, 2024).

195. *Id.* at *5.

196. *Id.* at *5–6.

197. *See id.* at *6.

198. *See* Acker v. Vill. of the Head of the Harbor, No. 609399/2024, 2025 N.Y. Slip Op. 50418(U), at *22–23 (Sup. Ct. Suffolk Cnty. Apr. 2, 2025).

199. *See id.* at *23–24; *see also* Lamoureux v. Town of Vestal Town Bd., 225 A.D.3d 978, 978 (App. Div. 3d Dep't 2024) (affirming dismissal of petition challenging town's negative declaration where it provided "a reasoned elaboration for the basis of its determination" regarding the potential impacts of a proposed housing complex).

200. *See* Ross v. Vill. of Fayetteville, 233 A.D.3d 1466, 1466 (App. Div. 4th Dep't 2024); Transform Saleco, LLC v. Onondaga Cnty. Indus. Dev. Agency, 232 A.D.3d 1234, 1234 (App. Div. 4th Dep't 2024).

indicated that a failure to set forth specific findings of fact would not be fatal to the Planning Board's negative declaration, because "the record as a whole—which evinces a protracted review process . . . provides a basis for concluding that there was a rational basis for each of the Board's decisions."[201]

As demonstrated above, courts are seemingly beginning to subject lead agency decisions to heightened scrutiny and demand that particular actions be taken to demonstrate the agency "identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination when [deciding] that the environmental impact is not significant and issu[ing] a negative declaration."[202] This trend runs through decisions from the Appellate Division, with the Third Department issuing two decisions that vacated negative declarations during this *Survey* period.

B. Challenges to EISs & Findings Statements

Historically, successful challenges to EISs have been uncommon due to the deferential standard of review. During this *Survey* period, one case involved a challenge to an EIS and Findings Statement, resulting in the typical upholding of the EIS.

In *St. James - Head of the Harbor Neighborhood Preservation Coalition, Inc. v. Town of Smithtown*, the Supreme Court of Suffolk County considered whether an EIS and SEQRA Findings Statement issued in connection with a subdivision plat approval were based upon an inadequate environmental review.[203] The petitioners challenged the EIS and Findings Statement as insufficient in eight areas. The court held that the Planning Board took the requisite hard look at areas of environmental concern and mitigated potential adverse impacts "to the maximum extent practicable."[204] The court walked through the record in these areas and concluded that the Planning Board analyzed each,

201. *Ross*, 233 A.D.3d at 1467; *see also* Cedar St. Comm. v. Bd. of Educ. of the E. Hampton Union Free Sch. Dist., 223 A.D.3d 738, 740 (App. Div. 2d Dep't 2024) (holding that the Board of Education adequately described the nature of a project to allow for a "thorough investigation of the potential environmental impacts," even though the record lacked details pertaining to "the location or elevation of certain elements of the project").

202. Douglaston Civic Ass'n v. City of New York, 159 N.Y.S.3d 23, 24 (App. Div. 3d Dep't 2021) (quoting Friends of P.S. 163, Inc. v. Jewish Home Lifecare, 90 N.E.3d 1253, 1260 (N.Y. 2017)) (internal quotations omitted).

203. *See* St. James–Head of the Harbor Neighborhood Preserv. Coal., Inc. v. Town of Smithtown, 2024 N.Y. Slip Op. 51486(U), at *4 (Sup. Ct. Suffolk Cnty. Oct. 11, 2024).

204. *Id.* at *7.

often extensively.[205] With regard to cumulative impacts, the court rejected the petitioners' contention that the EIS was insufficient for failing to include impacts from potential development on adjacent parcels.[206] The court deferred to the Planning Board's conclusion that the projects identified by the petitioners were either speculative, noncompliant with zoning regulations, or already rejected.[207] Additionally, the court explained that although SEQRA requires the lead agency to analyze "reasonably related" cumulative impacts, "[c]ommon geography of projects that are not part of a single overall plan is not a cumulative impact analysis consideration."[208]

C. Supplementation

The SEQRA regulations enumerate certain situations in which new information or changes in circumstances may require an amendment to the determination of significance.[209] These include: (1) substantive changes proposed for the project; (2) the discovery of new information; or (3) changes in circumstances relating to the project.[210] Such amendments occur in the context of a negative declaration, either through an amendment that retains a negative declaration or by rescinding a negative declaration to issue a positive one, although neither is particularly common.[211] In these instances, the lead agency is required to "discuss the reasons supporting the amended determination" and follow the same filing and publication requirements that apply to the original determination.[212] No cases in the *Survey* period addressed the requirement to amend a determination of significance.

Similarly, SEQRA provides that an agency may require the preparation of a Supplemental EIS, known as a SEIS, when a project changes, newly discovered information arises, or changes in

205. *See id.* at *4–7.

206. *See id.* at *6.

207. *See id.*

208. St. James–Head of the Harbor Neighborhood Preserv. Coal., Inc. v. Town of Smithtown, 2024 N.Y. Slip Op. 51486(U), at *6 (Sup. Ct. Suffolk Cnty. Oct. 11, 2024) (citing Long Island Pine Barrens Soc'y v. Plan. Bd. of Town of Brookhaven, 80 N.Y.2d 500, 513–15 (1992); *see also* Matter of Vill. of Westbury v. Dep't of Transp. of State of N.Y., 75 N.Y.2d 62 (1989). For the requirement that cumulative impacts be analyzed for projects in the same geographic area that are part of the same overall plan, *see* Save Pine Bush, Inc. v. City of Albany, 512 N.E.2d 526, 531 (N.Y. 1987); N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(c)(2).

209. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(e)–(f) (2024).

210. *See id.* at § 617.7(e)(1)(i)–(iii).

211. *See supra* Parts II (B)(1)(a), II (B)(2).

212. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.7(e)(2).

circumstances give rise to potential significant adverse environmental impacts not addressed, or not adequately addressed, in the original EIS.[213] In such circumstances, a technical memorandum or supplemental EAF could be used to demonstrate that the change and/or new information does not warrant a supplemental EIS. Whether issues, impacts, or project details omitted from an initial EIS require the preparation of a SEIS is often a subject of litigation;[214] however, no cases in this *Survey* period addressed the preparation of a SEIS.[215]

5. NYC Updates: CEQR

For the most part, New York City practitioners must stay apprised of the same SEQRA principles that apply to practitioners across the state. However, certain aspects of the environmental review process are unique to New York City. The most obvious of these are the CEQR regulations, which include specific procedures for SEQRA in the context of the City's unique land-use procedures.[216] As addressed in Part I, CEQR is often effectuated with the guidance of the *CEQR Manual*, which is published by the New York City Mayor's Office of Environmental Coordination to assist city agencies, project sponsors, and the public in navigating and understanding the CEQR process.[217]

In *Arntzen v. City of New York*,[218] the Supreme Court found that the City took the requisite hard look in examining nineteen separate impact areas consistent with the guidance set forth in the *CEQR Technical Manual*, on which courts have increasingly relied in determining whether parties have complied with both SEQRA and CEQR. The *CEQR Manual* was also at issue in *Elizabeth Street Garden v. City of New York*.[219] The Court of Appeals there adopted the position that the

213. *See* N.Y. COMP. CODES R. & REGS. tit. 6, § 617.9(a)(7); *see supra* discussion Part III(C).

214. *See* Mark A. Chertok, Ahlia Bethea, & Amy Cassidy, *2022–23 Survey of New York Law Environmental Law: Developments in the Law of SEQRA*, 74 SYRACUSE L. REV. 563, 601 (2023).

215. Although the regulatory language for supplementation is permissive, courts have found that supplementation is required where there are new, unaddressed, significant adverse impacts. *See, e.g.*, Jackson v. N.Y. State Urb. Dev. Corp., 494 N.E.2d 429 (N.Y. 1986); Riverkeeper, Inc. v. Plan. Bd. of Town of Se., 881 N.E.2d 172 (N.Y. 2007).

216. *See* N.Y.C. Exec. Order No. 91 (1997) (as amended); N.Y.C. RULES, tit. 43, §§ 6–01–6-16 (2024); *id.* tit. 62, §§ 5–01–6-15.

217. *See* CEQR MANUAL, *supra* note 53, at Introduction-1.

218. *See* Arntzen v. City of New York, 2025 NYLJ LEXIS 958, at *5 (Sup. Ct. N.Y. Cnty. Mar. 10, 2025).

219. *See* Elizabeth St. Garden, Inc. v. City of New York, 246 N.E.3d 894 (N.Y. 2024); *see also* In re 301 E. 66th Street Condominium Corp. v. City of New York,

City had complied with the methodology and guidelines in the *CEQR Manual* in determining that, despite the project's reduction of open space in the area, it would not produce a significant adverse impact on open space.[220]

6. NYS Updates: The Green Amendment

In November 2021, New Yorkers voted to approve a ballot measure to add environmental rights to the Bill of Rights of the New York State Constitution—specifically, the right of each person in the state "to clean air and water, and a healthful environment."[221] Since its approval, courts have begun to grapple with how to incorporate the rights enumerated in the "Green Amendment" into the state's existing environmental protections, including the requirement for lead agencies to conduct environmental reviews under SEQRA for certain projects and the right to challenge the sufficiency of those reviews in court.

For example, in *Fresh Air for the Eastside, Inc. v. State*, residents who live in close proximity to a landfill claimed their constitutional rights under the Green Amendment were being violated as a result of the actions or inactions of multiple players, including the landfill operator, the State of New York, due to its role overseeing the disposal of solid waste, and the City of New York, given its contract with the waste management company to collect and dispose of New York City garbage in the subject landfill.[222] All the defendants moved to dismiss the claims against them.[223] In a decision later modified by the Fourth Department, the Supreme Court of New York County dismissed the claims against the waste management company for failure to state a cause of action, finding that the Green Amendment does not reference private entities, and therefore, such entities cannot be sued for alleged violations of that constitutional right.[224] The court also dismissed the claims against the City of New York for failure to state a cause of action, holding that as a customer of the waste management company,

205 N.Y.S.3d 335, 337 (App. Div. 1st Dep't 2024) (holding that the City of New York's EIS for a blood center rezoning and special permit application appropriately "identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination" where it followed the methodology of the CEQR Manual) (internal quotations omitted).

220. *See Elizabeth St. Garden*, 246 N.E.3d 894 at 897.

221. N.Y. CONST. art. I, § 19.

222. *See* Fresh Air for the Eastside, Inc. v. State, No. E2022000699, 2022 N.Y. Slip Op. 34429(U), at *1 (Sup. Ct. Monroe Cnty. Dec. 20, 2022).

223. *See id.* at *11.

224. *See id.* at *12–13.

the City had no duty to police the company's compliance with permits or to abate operational issues at its landfill.[225]

In denying the state's motion to dismiss, the court rejected the argument that the plaintiff had to pursue the action as an Article 78 proceeding as opposed to a declaratory judgment action, holding that "[a] declaration of constitutional rights is most appropriate in a declaratory judgment action ."[226] Here, the court noted that the plaintiff was not challenging the state's issuance of permits, but rather, was "seeking redress for actions, inactions, and/or results that violate the Permits or which otherwise cause unclean air or an unhealthful environment, and thereby violate the Constitution."[227] The court also rejected the state's argument that the claims should be dismissed because mandamus is available only to force a public official to perform a ministerial duty enjoined by law.[228] The court held such an argument had no merit, because complying with the Constitution, including the newly adopted Green Amendment, "is not optional for a state agency, and is thus nondiscretionary and ministerial."[229]

In July 2024, the Fourth Department modified the Supreme Court's decision, dismissing the plaintiff's claim against DEC and, therefore, the entire action.[230]As in the decision below, the Fourth Department rejected the plaintiff's contention that the waste management company's operation of the landfill was "so entwined with governmental policies" that it could be regarded as state action.[231] The court held that "[a]lthough the disposal of municipal solid waste has traditionally been a governmental function, the fact that landfill operation is a regulated industry and that [the operator]'s customers are predominantly municipal entities is insufficient to impute state action to [the operator]'s conduct."[232] The court further held that although the

225. *See id.* at *13.

226. *Id.* at *14.

227. *Fresh Air for the Eastside, Inc*., N.Y. Slip Op. 34429(U), at *14.

228. *See id.* at *16.

229. *Id.* (citing D.J.C.V. v. United States, 605 F. Supp. 3d 571, 632–33 (S.D.N.Y. 2022)).

230. *See* Fresh Air for the Eastside, Inc. v. State, 217 N.Y.S.3d 381 (App. Div. 4th Dep't 2024), *appeal dismissed* 252 N.E.3d 1124 (N.Y. 2025), and *leave to appeal denied sub nom.*, Fresh Air for Eastside, Inc. v. State, 231 N.Y.S.3d 734 (App. Div. 4th Dep't 2025). This case was discussed in the previous *Survey* and, during this *Survey* period, was applied as binding precedent in a lower court decision. *See infra* notes 232, 235 and accompanying text.

231. *Fresh Air for the Eastside*, 217 N.Y.S.3d at 384.

232. *Id.* at 385. In *Seneca Lake Guardian, Inc. v. Seneca Meadows, Inc*., 236 N.Y.S.3d 519, 538–39 (Sup. Ct. Albany Cnty. 2025), the Supreme Court applied these principles from *Fresh Air* in dismissing a Green Amendment claim against a

complaint ostensibly sought declaratory relief, it was "essentially a CPLR article 78 proceeding in the nature of mandamus."[233] And because the only conduct on the part of DEC that the complaint alleged violated the Green Amendment was its failure to take regulatory enforcement actions against the landfill operator, the court could not impose mandamus relief because such enforcement is not ministerial.[234] Rather, it is an act over which DEC may exercise judgment or discretion.[235]

In *Streeter v. New York City Department of Environmental Protection*, a case decided before the Fourth Department issued its decision in *Fresh Air for the Eastside, Inc. v. State*, the petitioner brought an Article 78 proceeding alleging that the New York City Department of Environmental Protection ("DEP") violated the petitioner's right to clean air and a healthful environment under the Green Amendment by rejecting petitioner's second complaint to the DEP about a vehicle illegally idling.[236] Since the alleged second idling violation was committed by the same vehicle in the same location, DEP determined that the petitioner's second complaint was duplicative of the first and refused to treat it as a second violation.[237] The Supreme Court of New York County held that DEP's determination to block the second complaint was not subject to constitutional scrutiny under the Green Amendment.[238] In so doing, the court distinguished the facts of this case from those of *Fresh Air for the Eastside, Inc.*, noting that in *Fresh Air*, the landfill was "operated contrary to or in violation of current laws and regulations" and was causing "so much harm and impact [to] so many people" that it could not "go unchecked, without the proper

private landfill operator, holding that DEC's imposition of special conditions to a landfill's waste permit—including installation of an onsite monitor—did not constitute state action within the meaning of the State Constitution, and thus the Green Amendment was inapplicable to the actions of the private operator.

233. *Id.* at 386.

234. *See id.*

235. *See id.* In *Seneca Lake Guardian, Inc.*, 236 N.Y.S.3d at 542, the Supreme Court noted that this holding from *Fresh Air* "was not limited to enforcement proceedings," but applied to any claim for mandamus relief involving an action "in respect to which the administrative agency may exercise judgment or discretion." The Supreme Court accordingly dismissed a Green Amendment claim ostensibly seeking declaratory relief, which if successful would nonetheless effectively "mandate DEC's denial of [a] pending permit application." *Id.*

236. *See* Streeter v. N.Y.C. Dep't of Env't Prot., 213 N.Y.S.3d 865, 867–68 (Sup. Ct. Kings Cnty. 2024).

237. *See id.* at 869–70.

238. *See id.* at 870.

intervention from the State."[239] Here, the court agreed with DEP that under the NYC Administrative Code, the City could only impose one penalty per day for an idling violation and, therefore, DEP had complied with the law in deeming the second complaint related to idling occurring on the same day as duplicative. As such, the court determined DEP had not acted "contrary to or in violation of current laws and regulations."[240]

Numerous cases in this *Survey* period further clarified the scope of the Green Amendment. Several challenges brought against the New York City Congestion Pricing Scheme, or Central Business District Tolling Program ("CBDTP"), alleged violations of the Green Amendment.[241] The plaintiffs in both *Chan v. U.S. Department of Transportation* and *Mulgrew v. U.S. Department of Transportation* argued that the CBDTP would divert traffic to other areas of New York City, which would "lead to negative environmental impacts and worse health outcomes for certain communities outside the [tolling area]."[242] The Southern District of New York rejected plaintiffs' claims, declining to read into the Green Amendment "a self-executing substantive right that imposes environmental standards above and beyond the state's preexisting—and robust—environmental regulatory regime."[243] The court held that the main thrust of the Green Amendment is not to "forbid every government action that in any way lessens the cleanliness of any New Yorkers [sic] air or water or makes the environment less healthful."[244] Instead, when faced with Green Amendment claims, courts must query "whether New York State operates a system that ensures all its citizens have a baseline level of clean air, clean water, and a healthful environment."[245] Where, as in both *Chan* and *Mulgrew*, claimants "do not establish that New York's legislative system is failing to ensure its baseline environmental aims," such a claim fails.[246]

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239. *Id.* (quoting Fresh Air for the Eastside, Inc. v. State, No. E2022000699, 2022 N.Y. Slip Op. 34429(U), at *9–10 (Sup. Ct. Monroe Cnty. Dec. 20, 2022)).

240. *Id.*

241. *See* Chan v. U.S. Dep't of Transp., 2024 WL 5199945 (S.D.N.Y. Dec. 23, 2024); *see also* Mulgrew v. U.S. Dep't of Transp., 750 F. Supp. 3d 171 (S.D.N.Y. 2024).

242. *Chan*, 2024 WL 5199945, at *39.

243. *Id.* at *38.

244. *Id.*

245. *Id.*

246. *Id.* at *39.

In *East Side Parkways Coalition v. New York State Department of Transportation*, the Erie County Supreme Court denied a motion to dismiss a Green Amendment claim challenging a project to redevelop the Kensington Expressway in Buffalo.[247] The court noted that, "to establish a violation of the Green Amendment, a party must show, based on established science, that a government will significantly contribute to unclean air, unclean water, or an unhealthful environment."[248] The court found that the petitioners in the action had asserted a cognizable cause of action by "set[ting] forth convincing allegations that this project will affect the disadvantaged community around the construction site," by alleging that the project would release over 26,000 metric tons of carbon dioxide, which would affect the petitioners "differently than other members of the public."[249]

Western New York Youth Climate Council v. New York State Department of Transportation involved a challenge to the same expressway and redevelopment project at issue in *East Side Parkways Coalition*.[250] The plaintiffs in this case alleged that the defendants' "continuous maintenance and operation of the [existing Kensington] Expressway" violated the Green Amendment.[251] The Supreme Court of Erie County rejected the plaintiffs' argument, noting that amendments are presumed to have prospective rather than retroactive application absent clear legislative intent or a remedial purpose. Here, the court determined that the legislature gave no indication that the Amendment was to apply retroactively, and it is not remedial legislation.[252] As such, the Green Amendment was not applicable under these circumstances.[253]

In *People v. PepsiCo, Inc.*, the Supreme Court of Erie County, with little explanation, declined to entertain the plaintiffs' argument that the Green Amendment's right to clean water, clean air, and a healthy environment could provide a basis for imposing a duty to warn on a plastics manufacturer whose products pollute state waterways

247. *See* East Side Parkways Coal. v. N.Y. State Dep't of Transp., 228 N.Y.S.3d 891 (Sup. Ct. Erie Cnty. 2025).

248. *Id.* at 898–99.

249. *Id.* at 899.

250. *See* W.N.Y. Youth Climate Council v. N.Y. State Dep't of Transp., 224 N.Y.S.3d 790 (Sup. Ct. Erie Cnty. 2024) (consolidating cases, including *East Side Parkways Coalition*).

251. *Id.* at 804.

252. *See id.* at 805.

253. *See id.*

when discarded by third parties.[254] The court thereby dismissed the plaintiffs' cause of action for failure to warn because the plaintiffs failed "to reference any statutory obligations that Defendants have violated by producing these bottles and plastic wrappings."[255]

Further, in *Detering v. New York City Environmental Control Board*, the Supreme Court of New York County held that a New York City rulemaking which capped certain penalties for Noise Code violations did not implicate the Green Amendment.[256] Although the court's opinion only briefly addressed the Green Amendment, the court noted that the rulemaking neither barred enforcement of the Noise Code nor increased the permitted noise, and reasoned that the petitioner's desire to "punish violators more harshly is not a basis to find" that the City's rulemaking violated the Green Amendment.[257]

7. SEQRA in the Federal Courts

In keeping with precedent, throughout the *Survey* period, federal courts have predominantly demonstrated a reluctance to adjudicate SEQRA claims, often dismissing them for lack of supplemental jurisdiction.[258] In the few instances in which SEQRA claims are implicated in federal litigation, they typically arise from allegedly discriminatory behavior in the land-use and zoning review process.

Such was the case in *WG Woodmere LLC v. Incorporated Village of Woodsburgh*, discussed *supra*, which involved a challenge to a rezoning scheme that reduced the number of lots that petitioner property owners could develop from 284 to 59.[259] After petitioners' initial challenge to the zoning scheme was dismissed without prejudice, they filed a second suit on September 20, 2023, alleging violations of the federal Constitution, the New York Constitution, and state law.[260] The

254. *See* People v. PepsiCo, Inc., 222 N.Y.S.3d 907, 914 (Sup. Ct. Erie Cnty. 2024).

255. *Id.*

256. *See* Detering v. N.Y.C. Env't Control Bd., 2024 N.Y. Slip Op. 32030(U), at *13–14 (Sup. Ct. N.Y. Cnty. June 13, 2024).

257. *Id*. at *14.

258. *See, e.g.*, Eisenbach v. Vill. of Nelsonville, No. 20-CV-8566, 2021 U.S. Dist. LEXIS 210639, at *17–18 (S.D.N.Y. Nov. 1, 2021) (declining to exercise supplemental jurisdiction after dismissing federal claims in connection with permitting denial for construction of wireless service generating facility); *see also* City of New Rochelle v. Town of Mamaroneck, 111 F. Supp. 2d 353, 370–71 (S.D.N.Y. 2000) (declining to exercise supplemental jurisdiction over SEQRA claim due to "novel and complex state law issues").

259. *See* WG Woodmere LLC v. Inc. Vill. of Woodsburgh, 2024 U.S. Dist. LEXIS 197420 (E.D.N.Y. 2024).

260. *See id.* at *3-4.

matter had come before the Eastern District of New York three times as of the end of the *Survey* period, on a motion to dismiss, a motion for reconsideration of that order, and another motion to dismiss.[261] The Eastern District ultimately held that the action was ripe for judicial review, as the Town had denied petitioners' appeal to the Village's Board of Zoning Appeals, and had therefore "reached a final decision regarding the application of the regulations to the property at issue."[262]

IV. RECENT FEDERAL DEVELOPMENTS UNDER NEPA: A BRIEF SUMMARY

This *Survey* period saw sweeping changes to the scope of environmental review of federal actions under NEPA, the federal progenitor to SEQRA. Regulations promulgated by the White House Council on Environmental Quality ("CEQ") had governed federal agencies' compliance with NEPA since 1978. On January 20, 2025, however, President Trump issued Executive Order ("E.O.") 14154, which directed CEQ to propose rescinding its NEPA regulations and directed federal agencies to expedite their permitting and approval processes.[263] Soon after, on February 25, 2025, CEQ published an interim final rule proposing to rescind its regulations implementing NEPA.[264] This interim final rule became effective on April 11, 2025, upon which date CEQ's NEPA regulations were removed from the Code of Federal Regulations.

President Trump also revoked, on January 20, 2025, President Biden's E.O. 14096, which directed agencies to analyze the "direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns" in their NEPA reviews.[265] The following day, President Trump revoked President Clinton's E.O. 12898, which had required agencies to identify and address "disproportionately high and adverse human health or environmental effects" of agency programs, policies, and activities on minority and low-

261. *See generally WG Woodmere LLC*, 2024 U.S. Dist. LEXIS 197420; *see also* WG Woodmere LLC v. Inc. Vill. of Woodsburgh, 2025 U.S. Dist. LEXIS 112039 (E.D.N.Y. June 12, 2025).

262. *WG Woodmere LLC*, 2024 U.S. Dist. LEXIS 197420 at *6, *8.

263. *See* Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 29, 2025).

264. *See* Removal of Nat'l Env't Pol'y Act Implementing Reguls., 90 Fed. Reg. 10,610 (Feb. 25, 2025) (to be codified at 40 C.F.R. pts. 1500–08).

265. Exec. Order No. 14148, 90 Fed. Reg. 8237 (Jan. 28, 2025); Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 26, 2023).

income populations.[266] In 1997, pursuant to E.O. 12898, CEQ promulgated guidance to federal agencies on identifying and analyzing environmental justice concerns in their NEPA reviews.[267]

CEQ issued new guidance on February 19, 2025 to guide agencies' NEPA analyses in light of Trump's recent actions. Among other things, the guidance specified that "NEPA documents should not include an environmental justice analysis, to the extent that this approach is consistent with other applicable law."[268] This guidance has since been superseded by additional guidance issued by CEQ on September 29, 2025, discussed *infra*.

Marking yet another sea change in NEPA's implementation, the Supreme Court on May 29, 2025 issued a decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, further curtailing the scope of federal agency environmental review under the statute.[269] The plaintiffs in this case had challenged the Surface Transportation Board ("STB")'s approval of a new rail line that would connect Utah's Uinta Basin to the national rail network to transport crude oil to refineries on the Gulf Coast. The plaintiffs argued that the STB's final EIS was insufficient under NEPA because it failed to consider the project's potential upstream impacts on oil drilling in Utah and Colorado and downstream impacts on oil refining on the Gulf Coast.

The Court held the STB was not required to analyze these impacts in its NEPA review. It emphasized that courts "should afford substantial deference" to agency reviews under NEPA, so long as the agency's choices "fall within a broad zone of reasonableness."[270] Although NEPA requires an agency to consider the environmental effects of the project itself, the Court explained that NEPA does not require consideration of the "potential environmental effects of future or

266. *See* Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 31, 2025); Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

267. *See* ENV'T PROT. AGENCY, ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (Dec. 10, 1997).

268. Memorandum from Katherine R. Scarlett, Chief of Staff, Council on Env't Quality, to Heads of Fed. Dep'ts & Agencies (Feb. 19, 2025) (on file with Syracuse Law Review).

269. *See* Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168 (2025).

270. *Id.* at 183. The scope of discretion accorded to agencies' NEPA analysis under *Seven County Infrastructure* is especially broad; as the Court further explained, "The ultimate question is not whether an EIS in and of itself is inadequate, but whether the agency's final decision was reasonable and reasonably explained. Review of an EIS is only one component of that analysis. Even if an EIS falls short in some respects, that deficiency may not necessarily require a court to vacate the agency's ultimate approval of a project, at least absent reason to believe that the agency might disapprove the project if it added more to the EIS." *Id.* at 183–84.

geographically separate projects."[271] Even if the project is a "but for" cause of environmental effects from a separate project, an agency need not consider such effects in its NEPA review if that separate project is not part of the same agency action.[272] While an agency *may* choose to consider such effects, the Court held that an agency "may draw what it reasonably concludes is a 'manageable line'" when determining which indirect effects to analyze.[273] Moreover, the Court held that "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority."[274]

To incorporate both CEQ's revocation of its NEPA regulations and the Supreme Court's decision in *Seven County Infrastructure*, CEQ released additional guidance to federal agencies for implementing NEPA on September 29, 2025.[275] This guidance directs federal agencies, in consultation with CEQ, to "revise their NEPA implementing procedures (or establish such procedures if they do not yet have any) consistent with E.O. 14154," the statutory provisions of NEPA, and case law.[276] Several federal agencies are currently adopting new regulations or guidance for NEPA implementation, with the specifics varying from agency to agency.

These developments will have broad implications for federal agencies' environmental analyses under NEPA, including severely limiting the scope of indirect and cumulative impacts that agencies must consider in their environmental reviews. These changes will likely severely curtail (if not eliminate) federal agencies' analyses of environmental justice and climate change impacts of federal actions, which stands in stark contrast to state agencies' increasing obligations in these areas under SEQRA, as discussed *supra*.[277]

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271. *Id.* at 190.

272. *See id.* at 189–91.

273. *Id.* at 189.

274. *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 188.

275. *See* Memorandum from Katherine R. Scarlett, Chair, Council on Env't Quality, to Heads of Fed. Dep'ts & Agencies (Sep. 29, 2025) (on file with Syracuse Law Review).

276. *Id.*

277. For example, most cases requiring a federal agency to consider the effects of a proposal on climate change under NEPA relied on the now-revoked CEQ regulations. *See, e.g.,* Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin., 508 F.3d 508 (9th Cir. 2007), *vacated and revised*, 538 F.3d 1172 (9th Cir. 2008); Sierra Club v. FERC, 867 F.3d 1357 (D.C. Cir. 2017); Border Power Plant Working Grp. v. Dep't of Energy, 260 F. Supp. 2d 997 (S.D. Cal. 2003).

CONCLUSION

Case law from this *Survey* period demonstrates that SEQRA continues to present courts with difficult legal questions related to standing, ripeness, and the statute of limitations; procedural issues, including the classification of an action and segmentation; the adequacy of agencies' determinations of significance; and the sufficiency of agencies' environmental impact statements. These issues will continue to evolve as the courts face new SEQRA challenges. In addition, major legislative changes addressing inequitable siting and mandating greater consideration of environmental justice issues under SEQRA have the potential to dramatically alter the analysis framework for future environmental reviews and generate new challenges for judicial review; the initial wave of such litigation is reflected in the discussion *supra* of the decisions under the Green Amendment. Dramatic changes in NEPA's implementation will undoubtedly affect SEQRA review, although the extent of these effects remains to be seen. These and other developments in the law of SEQRA will be covered in future installments of the *Survey of New York Environmental Law*.