

Real Estate Journal

COVERING ALL OF LONG ISLAND, NEW YORK CITY AND UPSTATE NEW YORK

Critical info SEQRA negative declarations should contain

 Howard Geneslaw



Gibbons, P.C.

 Jennifer Porter



Gibbons, P.C.

The purpose behind and primary goal of the State Environmental Quality Review Act (SEQRA) is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. As set forth in the SEQRA regulations, 6 NYCRR Part 617, to accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement. If an action will not result in any significant adverse environmental impacts, a negative declaration can be issued.

A negative declaration is a written determination by a lead agency, i.e., the agency principally responsible for undertaking, funding or approving an action, that the implementation of the action as proposed will not result in any significant adverse environmental impacts. In order to issue a nega-

tive declaration, a lead agency must be able to show that the action will not have a significant adverse environmental impact. This is done by taking a hard look at all of the relevant environmental impacts for a proposed action, including those outside the lead agency's jurisdiction, and documenting the reasons for the agency's determination in writing.

A negative declaration must be based on facts available to the lead agency at the time of the determination. As such, a sufficient amount of information must be available to the lead agency at the time it issues the negative declaration in order to show that the action will not have any significant adverse environmental impacts. The lead agency cannot simply issue a negative declaration and then request that an applicant complete studies to support the lead agency's findings concerning the significance of any environmental impacts.

One of the most common mistakes made by lead agencies in issuing negative declarations is failing to issue a written determination or issuing a written determination

that does not contain the proper information required under the SEQRA regulations. It is critical that every applicant, land use attorney and municipality be aware of the five key pieces of information that should be contained in every written negative declaration. First, the negative declaration should contain a statement that it is a negative declaration for purposes of Article 8 of the Environmental Conservation Law. A statement in the title or first paragraph of the negative declaration indicating that it is being adopted pursuant to Article 8 of the Environmental Conservation Law will suffice. Second, the negative declaration should contain the name and address of the lead agency. This information is essential for alerting individuals reading the determination as to which agency was principally responsible for undertaking, funding or approving the action and who ultimately determined that the action did not have any significant adverse environmental impacts.

Third, the negative declaration should contain the name and telephone number of a person who can provide further information. This information is needed so that in the event individuals reviewing the determination have questions, they have the ability to obtain further information. It is important to note that the second and third pieces of information set forth above must be contained in all negative declarations adopted for Type I actions, i.e., those actions specifically identified

in Section 617.4 of the SEQRA regulations, but are not specifically required for unlisted actions, i.e., those actions not identified as Type I actions or actions exempt from SEQRA review (Type II actions).

Fourth, all negative declaration must contain a brief and precise description of the nature, extent and location of the action. This allows any individual or agency reviewing the determination to understand what type of action is being proposed and where. The last and most critical piece of information which should be included in all negative declarations is a brief statement of the reasons that support the determination. Otherwise, there is no basis for anyone reviewing the determination to know why there are no significant adverse environmental impacts and there is no basis for a court to find that the lead agency took a hard look at all of the adverse environmental impacts in making its determination. Simply stating that there are no significant environmental impacts is never sufficient. Knowing the information set forth above will help applicants and municipalities alike in avoiding time and money spent defending against challenges brought for failing to comply with SEQRA will help the land use approval process run more smoothly.

Howard Geneslaw is a director, and Jennifer Porter is an associate, at the law firm of Gibbons P.C., New York, N.Y.