

# Now & Next

## Affordable Housing Alert

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### **New York SEQRA changes: Eligibility for affordable housing projects**

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New York's enacted SEQRA reforms aim to accelerate affordable housing development, but add a responsible-agency gatekeeping step and tighter eligibility.



#### **What's the impact?**

- Newly adopted SEQRA exemptions could significantly shorten approval timelines for qualifying affordable housing, but project scope, zoning, site conditions, and infrastructure connections may impact eligibility.
- All other regulatory and permitting requirements—including historic preservation, wetlands, environmental justice, and local land use review—remain fully applicable.
- The New York State budget establishes the criteria for exemption from SEQRA and designates the responsible agency as the decision-maker for determining whether a project qualifies.

Following the proposed State Environmental Quality Review Act (SEQRA) reforms included in Governor Hochul's budget proposal released earlier this year, as summarized in our [prior Alert](#),

New York State's enacted budget adopts final SEQRA reforms that significantly narrow the criteria for projects qualifying for a SEQRA exemption and grant the responsible agency greater discretion to make a threshold determination that those criteria are satisfied before any approvals may proceed on an exempt basis.

## **Role of the responsible agency**

A significant change between the proposed and adopted legislation is that responsible agencies are now expressly charged with determining whether a project qualifies for the "qualified action" exemption. If the responsible agency determines that the action meets the exemption criteria, all approvals, including building permits, special use permits, variances, subdivision approvals, site plan approvals, zoning text or map amendments, the acquisition or disposition of real property, and the provision of financial assistance may be included as part of the "qualified action" and thereby be exempted from SEQRA review.

However, this additional step may not streamline the SEQRA process as intended. The legislation requires a "responsible agency," which, depending on the municipality, could be the town board, village board, city council, or an appointed land use board, to make an initial determination that a project satisfies the qualification criteria before any approvals may proceed on an exempt basis. While the criteria seem well-defined, the discretionary decision of whether a project qualifies must itself be reasonable and would be subject to challenge through an Article 78 proceeding. Moreover, a responsible agency has up to 120 days to determine whether an action constitutes a "qualified action," which may be extended by up to 30 days except in limited circumstances (such as applicant-initiated changes or delays beyond the parties' control). If the responsible agency fails to issue its determination within this timeframe, the action is not thereby automatically deemed a "qualified action." Instead, the applicant's sole recourse is to commence a proceeding under Article 78 to request that the court set a new deadline. In effect, the legislation may eliminate delay or litigation, but also inserts new, separately challengeable determinations into the approval timeline.

## **Within New York City**

In New York City, the requirements of SEQRA will not apply to housing projects that meet all of the following conditions: (1) they are connected to existing community or public water and sewerage systems at the commencement of habitation; (2) they are located at a previously disturbed site; (3) they are not located in areas zoned exclusively for industrial use; (4) they contain no more than 50,000 square feet of commercial, retail, community facility, or other non-industrial non-residential uses; (5) the total unit count does not exceed 250 units, unless the project is in a zoning district where buildings may exceed 45 feet in height or where there is no maximum building height, in which case it may include up to 500 units; and (6) the project does not consist solely of one single-family residence on a parcel of one-half or more acres.

## Outside New York City

Outside New York City, a housing project is exempt from SEQRA only if it meets all of the following conditions: (1) it will be connected to existing community or public water and sewerage systems at the commencement of habitation; (2) it is located at a previously disturbed site; (3) it contains no more than 20% commercial, retail, community facility, or other non-industrial non-residential uses by gross floor area; (4) it contains no more than 100 dwelling units (or 300 units in urbanized areas, as defined by the US Census Bureau, or 20 units in municipalities without zoning regulations); and (5) the project does not consist solely of one single-family residence on a parcel of one or more acres (but note: construction or expansion of a single-family, a two-family, or a three-family residence is already categorically exempt from SEQRA).

## Previously disturbed sites

Another significant change between the proposed and adopted legislation is the definition of “previously disturbed site.” As adopted, a “previously disturbed site” means: (1) a parcel determined by the responsible agency to have been substantially altered by an occupied, formerly occupied, or demolished building, or by another improvement or use, at least two years before the permit application; (2) for parcels located outside an urban area, the parcel must also abut, adjoin, or be opposite from another parcel that has been occupied by a building or other improvement at least two years prior to the application, provided that such abutting parcel is not occupied by an industrial or agricultural use; (3) parcels in a FEMA-designated 100-year floodplain or special flood hazard area (outside New York City) or a flood hazard area as defined in the New York City building code (in NYC), unless the municipality has adopted a law requiring new construction to be elevated above the base flood elevation; (4) the site must not have been used for agricultural purposes within the preceding two years, or three of the last five years before the application; and (5) must not be located in a designated coastal erosion hazard area.

## Environmental site assessments

One argument against the proposed legislation was that exempting housing projects from SEQRA review increased the risk that residents may be exposed to environmental contamination. To address this concern, the adopted legislation now effectively requires the developer to certify that it has followed and will continue to follow all applicable laws, rules, and regulations regarding hazardous wastes; conduct a Phase I environmental site assessment (except for applications limited to land use approvals, zoning amendments, or variances, which are carved out from the Phase I requirement); follow the recommendations of that assessment; and report all contamination at, on, or under the parcels as required by applicable laws, rules, and regulations. These requirements do not apply to agency-initiated actions or to applicants previously granted an exemption for the same parcel. Although a prudent developer would

conduct a Phase I assessment and comply with all applicable requirements irrespective of this condition, its inclusion reinforces the importance of residents' health and safety.

## **Other regulatory requirements**

The legislation expressly provides that the SEQRA exemption does not supersede or limit any requirements under historic preservation laws (including the National Historic Preservation Act and the New York State Historic Preservation Act), or any environmental regulations, including those governing disadvantaged communities, stormwater management, water quality, air quality, freshwater wetlands, tidal wetlands, and endangered species. All other applicable statutory and regulatory standards, criteria, and permitting procedures remain fully in effect.

The legislation also preserves the authority of cities, towns, and villages under applicable state or local law regarding zoning and land use, including site plan review, traffic studies, contamination testing, and determinations of wastewater and drinking water capacity. The SEQRA exemption removes the environmental review layer, but all other regulatory and permitting requirements remain applicable to qualifying projects.

Developers should also monitor how the exemption interacts with the Environmental Justice Siting Law, which requires agencies to consider whether an action may cause or increase a disproportionate pollution burden on a disadvantaged community. While the savings clause preserves requirements applicable to disadvantaged communities, the Environmental Justice Siting Law operates through the SEQRA review process, creating potential interpretive questions for exempt projects in disadvantaged communities. Similarly, the revised freshwater wetlands regulations, which broaden jurisdiction to cover wetlands located in or adjacent to urban areas regardless of size, remain applicable and could affect site eligibility.

## **Key considerations for developers**

Affordable housing developers should be aware that the exemption applies to the "qualified action" as a whole. Where a project includes nonresidential elements—such as community centers or ground-floor retail—that exceed the applicable square footage or percentage thresholds, those elements could cause the overall project to remain subject to SEQRA under the doctrine of "segmentation," which prohibits municipalities from dividing a single action into separate stages or components to avoid environmental review.

In New York City, the interaction between the new SEQRA exemption and the City Environmental Quality Review (CEQR) process should also be evaluated to ensure consistency. Additionally, the governor has directed the Department of Environmental Conservation to prepare new Generic Environmental Impact Statements (GEISs) for selected categories of housing projects, which may further expedite review for common project types.

## Effective date

The legislation takes effect immediately, or May 27, 2026, and applies to all pending proceedings on or after the effective date, except that actions for which a determination to require an environmental impact statement was made prior to the effective date are not subject to the new provisions.

While the enacted legislation represents a significant step toward reducing procedural barriers to affordable housing development, its practical impact will depend on how responsible agencies exercise their gatekeeping role and how the exemption criteria are interpreted and applied.

Nixon Peabody's [Affordable Housing Team](#) is ready to provide guidance on how New York's SEQRA updates may impact your project timeline or approvals. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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