STATE OF NEW YORK

4933--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. KELLES, SIMONE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the public housing law, in relation to enacting the "sustainable affordable housing and sprawl prevention act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "sustainable affordable housing and sprawl prevention act".

§ 2. The environmental conservation law is amended by adding a new section 8-0119 to read as follows:

§ 8-0119. Certain actions exempt or subject to limited review.

1. Exempt actions for construction of residential dwellings. (a) Notwithstanding any law, rule or regulation to the contrary, qualifying actions for the construction of a new multiple dwelling or more than one contiguous multiple dwellings that meet the following thresholds shall be automatically determined not to have a significant impact on the environment and shall be exempt from any environmental review requirements under this article or any rules or regulations promulgated thereto:

(i) fewer than ten total residential units in municipalities that have not adopted zoning or subdivision regulations;

(ii) be located on previously disturbed land;

(iii) fewer than fifty total residential units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(iv) in a city, town, or village having a population of ninety thousand persons or less, fewer than two hundred total residential units to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(v) in a city, town, or village having a population of greater than ninety thousand but less than one million, fewer than five hundred total residential units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works; or

(vi) in a city having a population of one million or more persons, fewer than one thousand total residential units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works.

(b) To be determined as a "qualifying action" under paragraph (a) of this subdivision, such action shall:

(i) be located in a census tract defined as an urbanized area or an urban cluster by the federal Census Bureau;

(ii) be located on previously disturbed land;

(iii) qualify as affordable housing, as shall be determined by the division of housing and community renewal, relative to the municipality or county, as shall be determined by the division of housing and community renewal, in which it is located;

(iv) not be located in an area:

(1) projected to experience flooding at greater than or equal to sea level rise of five feet according to the National Oceanic and Atmospheric Administration, or any other science-based projection of future sea level conditions deemed satisfactory by the commissioner;

(2) projected to experience flooding according to the Federal Emergency Management Agency's five hundred year floodplain maps for flood zone designations, or any other science-based projection of future flooding conditions deemed satisfactory by the commissioner; or

(3) that is designated as a critical environmental area by the department;

(iv) complete a Phase I Environmental Site Assessment (ESA) pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Chapter 103), and complete testing for lead water and paint, asbestos, and radon, the results of which shall be submitted by the proposed developer of such action to the local agency responsible for approving or denying the application for such action;

(v) receive certification from a qualified environmental professional, as such term is defined by the commissioner pursuant to regulation, that such action, as proposed, will not violate any state wetland laws or drinking water laws under article eleven of the public health law, or any rules or regulations promulgated thereto; and

(vi) be certified under:

(1) the Leadership in Energy and Environmental Design Building Rating System (LEED) published by the United States Green Building Council for the category of certified gold, at minimum, as determined by a LEED accredited professional;

(2) Enterprise green communities review and certification; or

(3) Passive House Institute Passive House certification.

2. Actions for construction of multiple dwellings subject to limited review. (a) Notwithstanding any law, rule or regulation to the contrary, actions for the construction of new multiple dwellings that are not exempt from environmental review under subdivision one of this section, and that are qualifying actions, shall not be subject to any environmental review standards under this article, or rules or regulations promulgated thereto, that do not consist of core environmental concerns,

as such term shall be defined by the commissioner. Topics of review that shall be exempt under this subdivision as failing to meet the standard of core environmental concerns shall include, but not be limited to, traffic impacts, casting of shading or shadows, impacts on views from neighboring buildings, consistency with community character, impacts on neighborhood character, and the resources of local school systems; except that, in the case of a disadvantaged community, such topics of concern may include traffic impacts and the resources of local school systems.

(b) To be determined as a "qualifying action" under paragraph (a) of this subdivision, such action shall:

(i) be located in a census tract defined as an urbanized area or an urban cluster by the federal Census Bureau;

(ii) be located on previously disturbed land;

(iii) qualify as affordable housing, as shall be determined by the division of housing and community renewal, relative to the municipality or county, as shall be determined by the division of housing and community renewal, in which it is located; and

(iv) not be located in an area:

(1) projected to experience flooding at greater than or equal to sea level rise of five feet according to the National Oceanic and Atmospheric Administration, or any other science-based projection of future sea level conditions deemed satisfactory by the commissioner;

(2) projected to experience flooding according to the Federal Emergency Management Agency's five hundred year floodplain maps for flood zone designations, or any other science-based projection of future flooding conditions deemed satisfactory by the commissioner; or

(3) that is designated as a critical environmental area by the department.

3. Mandatory review. Every action that is a qualifying action under subdivision one and/or two of this section, that is conducted in this state, shall be subjected to a determination of whether such action is exempt under subdivision one of this section, and if such action is not exempt under subdivision one of this section, whether such action is exempt under subdivision two of this section.

4. Historic sites. An action otherwise exempt from environmental review requirements under subdivision one of this section may be required to undergo environmental review pursuant to this article or the rules or regulations promulgated thereto on the basis that such action occurs wholly or partially within a historic site, provided, however that such action affects a contributing property within such historic site, and provided further that such environmental review is limited in its scope to such contributing property. An action shall not be required to undergo an environmental review under this subdivision solely on the basis that such action is substantially contiguous to a historic site, or located in a neighborhood containing historic sites.

5. Wastewater treatment and stormwater management. (a) (i) An action exempt from environmental review requirements under subdivision one or two of this section may provide plans to the appropriate local governmental entity that demonstrate that such action will have adequate wastewater treatment to accommodate the completed action for no less than thirty years. Such action may, alternatively, submit such plans to the department. The department shall establish a method by which developers of proposed actions may submit such plans pursuant to this paragraph. Upon submission of such plans, the local governmental entity or

department shall approve or deny such wastewater treatment plans no later than thirty days after submission of such plans.

(ii) If increased onsite wastewater treatment capacity or a tie-in to the local public sewer system is necessary to implement the action, and building permits are needed to implement such wastewater treatment capacity increase or tie-in, the local governmental entity responsible for issuing such building permits shall not exercise its discretion over any approval relating to such wastewater treatment capacity increase or tie-in in a manner that would inhibit, chill, or preclude development of such action.

(b) An action exempt from environmental review requirements under subdivision one or two of this section shall be required to maintain compliance with all local stormwater regulations.

6. Disadvantaged communities. The department shall require, by rule or regulation, that actions for the construction of new multiple dwellings that are not exempt from environmental review under subdivision one of this section shall not contribute more than a de minimis amount of pollution or any disproportionate pollution burden on, or cause any displacement of residents of, a disadvantaged community.

7. Authority of the commissioner. The commissioner shall be authorized to consult with any other state or local agency and to promulgate and/or amend any rules and/or regulations he or she shall deem necessary for the implementation of the provisions of this section.

§ 3. Section 8-0105 of the environmental conservation law is amended by adding five new subdivisions 11, 12, 13, 14 and 15 to read as follows:

11. "Historic site" means a historic building, structure, facility, site or district, or prehistoric site that is listed on the National Register of Historic Places (36 CFR Parts 60 and 63), or that is listed on the state register of historic places or that has been determined by the commissioner of parks, recreation and historic preservation to be eligible for listing on the state register of historic places pursuant to section 14.07 or 14.09 of the parks, recreation and historic preservation law.

12. "Contributing property" means a building, structure, facility, or site located within a historic site that wholly or partially contributes to such designation as a historic site.

13. "Dwelling" means any building or structure or portion thereof which is occupied or intended to be occupied in whole or in part as the home, residence, or sleeping place of one or more human beings.

14. "Multiple dwelling" means a dwelling that is either rented, leased, let or hired out, or sold, to be occupied, or is occupied as the residence or home of four or more separate individuals or groups of individuals living independently of each other, including, but not limited to, apartments, condominiums, and townhouses. A "multiple dwelling" shall not be deemed to include a class B multiple dwelling as defined by section four of the multiple dwelling law, or a hospital, convent, monastery, residential care facility, or a building used wholly for commercial purposes.

15. "Residential unit" means a room or group of rooms within a multiple dwelling that is designated as the living quarters for an individual or group of individuals living independently from other individuals occupying such multiple dwelling.

16. "Previously disturbed land" shall mean a parcel or lot of land that was occupied or formerly occupied by a building or otherwise

improved or utilized on or before the effective date of this section, and was not most recently used for commercial agricultural purposes.

§ 4. Section 600 of the public housing law is amended by adding a new subdivision 6 to read as follows:

6. A covered housing agency in this state shall be subject, as applicable, to the provisions of article eight of the environmental conservation law and any rules and/or regulations promulgated thereto.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.