STATE OF NEW YORK

925--C

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. MAY, HARCKHAM, HOYLMAN-SIGAL, JACKSON, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 with respect to 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 pursuant hereto:

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

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

LBD03398-14-4

(ii) fewer than fifty total residential units in a building in which no more than twenty percent of the floor area consists of commercial or community facility uses not to be connected at the commencement of habitation to existing community or public water and sewerage systems including sewage treatment works;

(iii) in a city, town, or village having a population of ninety thousand persons or less, fewer than two hundred total residential units in a building in which no more than twenty percent of the floor area consists of commercial or community facility uses 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 greater than ninety thousand but less than one million, fewer than five hundred total residential units in a building in which no more than twenty percent of the floor area consists of commercial or community facility uses to be connected at the commencement of habitation to existing community or public water and sewerage systems including sewage treatment works; or

(v) in a city having a population of one million or more persons, fewer than one thousand total residential units in a building in which no more than twenty percent of the floor area consists of commercial or community facility uses 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 multiple dwelling 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 in the event of sea level rise greater than or equal to the high-medium projection by year twenty-one hundred as set forth in regulations promulgated pursuant to section 3-0319 of this chapter, or any other science-based projection of future sea level conditions deemed satisfactory by the commissioner;

(2) designated as a special flood hazard area by the federal emergency management agency, provided that this provision shall not apply to municipalities that have adopted a building code that mitigates flood hazard risk by requiring new construction to be elevated above the base flood elevation as defined by the federal emergency management agency; or

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

(v) complete a Phase I Environmental Site Assessment 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 multiple dwelling to the local agency responsible for approving or denying the application for such multiple dwelling. If the Phase I Environmental Site Assessment finds contamination that exceeds acceptable levels of contaminants for residential use as set forth in regulations promulgated pursuant to titles thirteen and fourteen of article twenty-seven and title five of article fifty-six of this chapter and related regulations governing environmental remediation, the local agency responsible for approving or denying the appli-

cation may require remediation of the site to applicable standards for residential use prior to the issuing of a construction permit for construction of a multiple dwelling;

(vi) receive a written certification from a qualified environmental professional, as such term shall be defined by the department in regulation, that the construction of such multiple dwelling will not violate any state wetland laws under articles twenty-four and twenty-five of this chapter, or any rules or regulations promulgated thereto;

(vii) receive a written certification from a qualified environmental professional, as such term shall be defined by the department in regulation, that construction of such multiple dwelling, as proposed, will not violate any drinking water laws under article eleven of the public health law, or any rules or regulations promulgated thereto; and

(viii) receive certification by an architect licensed by the state that the building has been designed to meet one or more of the following building standards:

(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 with respect to construction of multiple dwellings subject to limited review. (a) Notwithstanding any law, rule or regulation to the contrary, actions with respect to 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 department in regulation. 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, the proposed multiple dwelling 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 in the event of sea level rise greater than or equal to the high-medium projection by year twenty-one hundred as set forth in regulations promulgated pursuant to section 3-0319 of this chapter, or any other science-based projection of future sea level conditions deemed satisfactory by the commissioner;

(2) designated as a special flood hazard area by the federal emergency management agency, provided that this provision shall not apply to municipalities that have adopted a building code that mitigates flood hazard

risk by requiring new construction to be elevated above the base flood elevation as defined by the federal emergency management agency ; or

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

3. Mandatory review. Every action that is a qualifying action under subdivision one or two of this section shall be subjected to a determination by the local permitting authority 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. If, after sixty days, the local agency responsible for approving or denying the application for such multiple dwelling has failed to return such a determination, the applicant may appeal to the division of housing and community renewal for a determination, and in such case the division shall render a determination within sixty days of receipt of the application.

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 pursuant hereto on the basis that the multiple dwelling would be constructed 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 the proposed multiple dwelling would be substantially contiguous to a historic site, or located in a neighborhood containing historic sites.

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

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

6. Disadvantaged communities. The department shall require, by rule or regulation, that qualifying actions with respect to the construction of new multiple dwellings shall not:

(a) contribute more than a de minimis amount of pollution or any disproportionate pollution burden after the completion of construction; or

(b) directly displace low-income households by reducing, in aggregate, their residential housing opportunities in 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 such commissioner shall deem necessary for the implementation of the provisions of this section; provided, however, that the department and the division of housing and community renewal shall jointly promulgate such rules and regulations as they

shall deem necessary for the implementation of subdivision six of this section.

§ 3. Section 8-0105 of the environmental conservation law is amended by adding six new subdivisions 11, 12, 13, 14, 15 and 16 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, or historic buildings listed as landmarks by the New York city landmarks preservation commission.

12. "Contributing property" means a building, structure, facility, or site located within a historic site or district 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 one year prior to the effective date of this subdivision, 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.