§ 8-0111. Coordination of reporting; limitations; lead agency.

1. State and federal reports coordinated. Where an agency as herein defined directly or indirectly participates in the preparation of or prepares a statement or submits material relating to a statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, whether by itself or by another person or firm, compliance with this article shall be coordinated with and made in conjunction with federal requirements in a single environmental reporting procedure.

2. Federal report. Where the agency does not participate, as above defined, in the preparation of the federal environmental impact statement or in preparation or submission of materials relating thereto, no further report under this article is required and the federal environmental impact statement, duly prepared, shall suffice for the purpose of this article.

3. State and local coordination. Necessary compliance by state or local agencies with the requirements of this article shall be coordinated in accordance with section 8-0107 and with other requirements of law in the interests of expedited proceedings and prompt review.

4. Effective date of coordinated reporting. The requirements of this section with regard to coordinated preparation of federal and state impact materials and reporting shall not apply to statements prepared and filed prior to the effective date of this article.

5. Exclusions. The requirements of this article shall not apply to:

(a) Actions undertaken or approved prior to the effective date of this article, except:

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally

in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

* (b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven and ten of the public service law or requiring a major renewable energy facility or a major electric transmission facility siting permit under article eight of the public service law; or

* NB Effective until December 31, 2040

* (b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law or requiring a siting permit under section ninety-four-c of the executive law; or

* NB Effective December 31, 2040

(c) Actions subject to the class A or class B regional project jurisdiction of the Adirondack park agency or a local government pursuant to section eight hundred seven, eight hundred eight or eight hundred nine of the executive law, except class B regional projects subject to review by local government pursuant to section eight hundred seven of the executive law located within the Lake George park as defined by subdivision one of section 43-0103 of this chapter.

5-a. Exemptions. (a) Notwithstanding any law, rule, or regulation to the contrary, the qualified actions listed in paragraph (b) of this subdivision shall be exempt from the requirements of this article as determined by the responsible agency. In making this determination, the responsible agency shall consider the action as a whole. If the responsible agency determines that no aspect of the action requires review under this article, meaning every aspect of the action meets criteria for exemption pursuant to paragraph (b) of this subdivision or is otherwise exempt from the requirements of this article, the agency may proceed in accordance with the criteria and standards for final

decision under other applicable laws, regulations, and ordinances.

(b) An action that is not otherwise exempt from the requirements of this article, which may include building permits, special use permits, variances, subdivision approvals, site plan approvals, zoning text or map amendments, disposition or acquisition of real property, provision of financial assistance, any other actions governed by laws, rules, regulations, or procedures concerning land use, zoning, permitting, real property acquisition or disposition, or development financial assistance, or any combination thereof, shall be a qualified action exempt from the requirements of this article if the responsible agency determines that the action is for the purposes of:

(i) construction of housing in cities, towns, and villages with populations of one million or more that shall:

(1) be connected to existing community or public water and sewerage systems at the commencement of habitation;

(2) be located at a previously disturbed site;

(3) not be located within an area zoned exclusively for industrial uses;

(4) contain no more than fifty thousand square feet of commercial, retail, community facility, or other non-industrial non-residential uses;

(5) not exceed two hundred fifty dwelling units, provided, however, that for housing that shall be located within a zoning district where, at the time of application, (A) the standard maximum residential building height is greater than forty-five feet, (B) the maximum height of a building is regulated by something other than a horizontal plane and that allows residential buildings to exceed forty-five feet, or (C) there is no such maximum building height, such housing shall not exceed five hundred dwelling units; and

(6) not include construction of only one single-family residence on a parcel of one-half or more acres;

(ii) construction of housing in cities, towns, and villages with populations of fewer than one million persons that shall:

(1) be connected to existing community or public water and sewerage systems at the commencement of habitation;

(2) be located at a previously disturbed site;

(3) contain no more than twenty percent commercial, retail, community

facility, or other non-industrial non-residential uses by gross floor area;

(4) not exceed one hundred dwelling units, provided, however, for housing within cities, towns, or villages without zoning, such housing shall not exceed twenty dwelling units, and provided further, that for housing not within cities, towns, or villages without zoning but within an urban area, as such term or equivalent term is or comes to be defined by the United States Census Bureau in the most recent decennial census beginning on or after the two thousand twenty decennial census, such housing shall not exceed three hundred dwelling units; and

(5) not include construction of only one single-family residence on a parcel of one or more acres;

(iii) construction located at a previously disturbed site of public parks that do not include performance centers, athletic stadiums, or other venues for mass gatherings, or other buildings or structures which do not serve public park, recreation, or open space purposes;

(iv) construction located at a previously disturbed site of multi-use bicycle and pedestrian trails;

(v) construction of public school facilities to be connected at the commencement of use to existing community or public water and sewerage systems, including sewage treatment works, in a city with a population of one million or more;

(vi) water and wastewater infrastructure projects that:

(1) replace, rehabilitate or reconstruct municipal water or wastewater infrastructure, in-kind and on the same site, including lead service line replacement;

(2) replace, rehabilitate, upgrade or reconstruct an existing small community water system, including lead service line replacement; or

(3) provide sewer service to a disadvantaged community served by one or more inadequate sewage treatment systems that has been determined by the department not to require a permit or approval pursuant to articles fifteen, twenty-four or twenty-five of this chapter or any rules or regulations promulgated thereunder; or

(vii) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure.

(c) (i) For an application for a permit or authorization for a qualified action listed in subparagraph (i) or (v) of paragraph (b) of

this subdivision, to qualify for exemption from the requirements of this article pursuant to this subdivision, such action shall be subject to a requirement to comply with local municipal requirements regarding hazardous materials remediation to the extent applicable, and the applicant for a permit or authorization for such qualified action shall certify that (1) it has followed and will follow all applicable laws, rules, and regulations regarding hazardous waste, (2) for an application for a permit or authorization for a qualified action other than a land use action, zoning text amendment, zoning map amendment, or variance, a Phase I Environmental Site Assessment has been conducted for the parcel in accordance with the all appropriate inquiries regulations of the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation and Liability Act (40 CFR § 312) to identify any recognized environmental conditions, (3) it has followed or will follow all applicable recommendations of the Phase I Environmental Site Assessment, and (4) it will report contamination at, on, or under the parcel as required by applicable laws, rules, and regulations.

(ii) For an application for a permit or authorization for a qualified action listed in subparagraph (ii) of paragraph (b) of this subdivision, other than a land use action, zoning text amendment, zoning map amendment, or variance, to qualify for exemption from the requirements of this article pursuant to this subdivision, the applicant for a permit or authorization for such qualified action shall certify to the responsible agency that (1) a Phase I Environmental Site Assessment has been conducted for the parcel in accordance with the all appropriate inquiries regulations of the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation and Liability Act (40 CFR § 312) to identify any recognized environmental conditions, (2) it has followed and will follow all applicable laws, rules, and regulations regarding hazardous waste, including, to the extent applicable, complying with local municipal requirements regarding hazardous materials remediation, (3) it has followed or will follow all applicable recommendations of the Phase I Environmental Site Assessment, and (4) it will report contamination at, on, or under the parcel as required by applicable laws, rules, and regulations.

(iii) The requirements of this paragraph shall not apply (1) to a qualified action initiated by an agency, or (2) if the applicant was previously granted an exemption pursuant to subparagraphs (i), (ii), or (v) of paragraph (b) of this subdivision for the same parcel.

(d) For actions involving applications for a permit or authorization, the responsible agency shall determine whether such action is a qualified action pursuant to this subdivision within one hundred twenty days of receipt of such application, unless the responsible agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the agency, establishes a new deadline that provides only so much additional time as is necessary to make such determination. In no event shall the deadline be extended by more than thirty days, except where (i) changes are made by the applicant to the application after its submission to the responsible agency and such changes relate to the criteria for exemption pursuant to paragraph (b) of this subdivision, (ii) an applicant fails to timely provide necessary information despite good faith effort by an agency, or (iii) there are circumstances beyond the control of the agency or an applicant that cause delay requiring an extension beyond thirty days. If the responsible agency fails to make a determination pursuant to this subdivision within the delineated time limits, an applicant may institute a proceeding in a court of competent jurisdiction under article seventy-eight of the civil practice law and rules seeking appropriate relief from the court, which may include an order directing the agency to make a determination by a deadline specified by the court.

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the determination of whether the action may have a significant effect on the environment shall be made by the lead agency having principal responsibility for carrying out or approving such action and such agency shall prepare, or cause to be prepared by contract or otherwise, the environmental impact statement for the action if such a statement is required by this article. In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.

7. Statute of limitations. The time to commence a proceeding to review an agency determination under the provisions of this article or under the rules or regulations implementing the provisions of this article shall begin to accrue when the agency determination to approve or disapprove the action becomes final and binding upon the petitioner or the person whom the petitioner represents in law or in fact.

8. Construction. Nothing contained in the chapter of the laws of two thousand twenty-six which added this subdivision shall be interpreted or construed as superseding, limiting, modifying or affecting any authorizations, requirements, or procedures under the national historic preservation act of nineteen hundred sixty-six, the New York state historic preservation act of nineteen hundred eighty, the parks, recreation and historic preservation law, or any other state or local law governing the identification, protection, or management of historic properties, or under any rules or regulations promulgated thereunder. Nor shall anything in the chapter of the laws of two thousand twenty-six which added this subdivision be interpreted or construed as superseding, limiting, modifying or affecting any authorizations, requirements, or procedures, including but not limited to laws, rules and regulations applicable to disadvantaged communities, stormwater management or the protection of water quality, air quality, soil erosion and drainage, freshwater wetlands, tidal wetlands, critical environmental areas, or threatened or endangered species, or any otherwise applicable statutory or regulatory standards, criteria, and permitting procedures, other than those pertaining to environmental review conducted pursuant to this article and any state and local regulations promulgated thereunder. Nor shall anything in the chapter of the laws of two thousand twenty-six which added this subdivision be interpreted or construed as superseding, limiting, modifying or affecting the authority or discretion of cities, towns, and villages under applicable state or local law, rule, regulation, charter, code, resolution, or ordinance regarding zoning or land use, including but not limited to any such authority or discretion regarding site plan review or other discretionary zoning or land use permits, procedures, review, or approvals, such as traffic studies, contamination testing, and determinations of the sufficiency of

wastewater and drinking water capacity.