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Practice Update

Governor Hochul's Proposed SEQRA Reforms: Seeking to Accelerate Development

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In a January 15, 2026, press release entitled "Let them Build," New York Governor Kathy Hochul announced what her office called "a series of landmark reforms to speed up housing and infrastructure projects...[with] a series of common sense reforms to New York's State Environmental Quality Review Act (SEQRA) and executive actions to expedite critical categories of projects that have been consistently found not to have adverse environmental impacts." The reforms to which the governor's press release referred are embodied in proposed amendments to the SEQRA statute that are part of her legislative package released as part of the budget process.

Background

SEQRA, which is codified in Sections 8-0101, et seq, of New York's Environmental Conservation Law (ECL), was enacted in 1976 for the purpose of incorporating environmental analysis into actions "undertaken, approved, or funded by state agencies." The statute authorizes agencies, which include municipal agencies, to promulgate regulations interpreting the statute and mandates the promulgation of regulations by the New York State Department of Environmental Conservation (DEC),

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which serve as the floor for the implementation of the statute.

The statute and regulations set forth a several-step process for the incorporation of that analysis in what the statute defines as "actions." The process begins with the designation of a "lead agency" that will be responsible for coordinating the environmental review, the lead agency's classification of an action requiring discretionary approval as either a "Type I," "Type II," or "Unlisted" action. Under DEC and other agencies' regulations, Type II actions are excluded from any review under SEQRA, as they are presumed by their nature not to have significant impacts on the environment; Type I and Unlisted actions require further review. The lead agency requires the applicant to prepare an Environmental Assessment Form (EAF), which aids the lead agency in determining whether the project will have a significant impact on the environment, a decision that is made through the adoption of a "Negative Declaration" — a determination that the project will not have a significant impact — or a "Positive Declaration" — a determination that the project may have a significant impact on the environment and will therefore require the preparation and public review of an Environmental Impact Statement (EIS). The time between the establishment of a lead agency and the adoption of a Positive or Negative Declaration can sometimes take years, stalling a project in its tracks.

For projects that receive a Positive Declaration, a Draft EIS (DEIS) is prepared, analyzing and disclosing environmental impacts and proposing mitigation (or stating that impacts cannot be mitigated) in a large variety of categories, including air quality, hazardous materials, traffic, noise, and socio-economics. The categories studied are often times guided from public scoping, a process in which the public can recommend areas of concern that the DEIS should address. The DEIS is subject to public review and comment, typically in a public hearing. A final EIS, incorporating responses to

comments from the public and other agencies, must be adopted by the lead agency along with written findings before a final decision on the project can be made.

Experience has shown that the SEQRA process for non-exempt projects is both expensive and time consuming. Critics have long stated that the process unduly delays the planning and construction of projects such as housing and infrastructure improvements.

In 2024, the City of New York enacted a group of regulations aimed at reforming the SEQRA process as it relates to projects in the City. It did so by exempting small housing projects from review under the set of regulations New York City promulgated, known as City Quality Environmental Review (CEQR). Those regulations, under the name "Green Fast Track for Housing," exempt housing projects (that propose a maximum of between 175 and 250 dwelling units depending on the underlying zoning of the site) from review under CEQR by deeming them Type II actions. However, to qualify for this exemption, the projects must meet certain "green" criteria — such as incorporating all electric heating — and receive certifications from agencies regarding hazardous materials, traffic, and the like.

The Governor's Proposal

Governor Hochul proposes to amend the SEQRA statute by exempting several approvals or determinations from the statutory definition of "actions" and by establishing time frames for the completion of the SEQRA process.

Time Frames: Section 8-0109 of SEQRA would be amended to include a requirement that a determination as to whether an EIS is required by the agency responsible for SEQRA compliance must be made within one year from the establishment of a lead agency and that a final EIS must be issued no later than two years after the lead agency determines

that an EIS is required. Under current regulations and the terms of the statute, there are no such deadlines.

Under the proposed legislation, these deadlines may be extended at the request of the responsible lead agency for specific reasons, such as changes in the project that could create new impacts, or the failure of an applicant to provide necessary information.

Exemptions: The most significant changes are found in proposed amendments to Section 8-0111.5, which would add five new actions to the list of actions that are statutorily excluded from **any** review under SEQRA, thus avoiding the need for the establishment of a lead agency, the classification of the action, or the preparation of an EAF, DEIS, or EIS. These exemptions are stronger than regulatory exemptions because no agency, including DEC, would be permitted to weaken them by regulation.

Housing: Paragraph (d) would exempt projects involving the construction of housing in cities having a population of more than one million (i.e., New York City) provided that such projects: (i) are not located in a coastal flooding area; (ii) are not in an area zoned exclusively for industrial use; and (iii) which are mixed use do not contain more than 50,000 square feet of non-residential use. Subparagraph (iv) limits the exemption to projects not exceeding 250 dwelling units, unless the project is in a medium or high density residential or mixed-use district, in which case the limit is 500 units.

Paragraph (e) would exempt housing projects in cities, towns, and villages with populations of less than one million provided that: (i) they will be connected to existing public water or sewerage systems at the time of habitation; (ii) they involve projects located at a previously disturbed site; and (iii) mixed-use projects do not contain more than 50,000 square feet of non-residential use or 25% of non-residential use by gross floor area, whichever is less. Subparagraph (iv) limits the exemption to

housing projects that do not exceed 100 dwelling units.

Other Exemptions: Paragraph (f) exempts actions located on previously disturbed sites, including: (i) public parks (but not performance centers or stadia); (ii) multi-use bicycle and pedestrian trails; and (iii) new or renovated childcare facilities connected to existing community or public water and sewerage systems. Paragraph (g) exempts water and wastewater infrastructure projects that: (i) are replacements, rehabilitation, or reconstruction of municipal water or waste water infrastructure; (ii) are replacement, rehabilitation, upgrades, or reconstruction of an existing small community water system; or (iii) provide sewer service to a disadvantaged community served by one or more inadequate sewage treatment systems. Paragraph (h) exempts retrofits of an existing structure and its appurtenant areas to incorporate green infrastructure.

Statute of Limitations: The governor's proposal would add a new Subdivision 7 to ECL Section 8-0111 to set forth a specific time for the accrual of the statute of limitations for challenges to agency determinations under the SEQRA statute or implementing regulations. The statute of limitations would begin to accrue at the time when an agency determination to approve or disapprove an action becomes final and binding upon the petitioner or the person whom the petitioner represents in law of fact. This clarifies some concerns as to when the statute begins to run in cases where a final SEQRA determination precedes the final determination of the underlying action.

Conclusion: Overall, the governor's proposals provide some needed reform of what one former client once called "the SEQRA military-industrial complex," particularly those aimed at entirely exempting much-needed housing from the process. The other reforms, more procedural in nature, may very well serve to lessen the number of horror

stories we practitioners have about undue delays in getting projects off the ground.

Whether the Legislature will approve these recommendations remains to be seen.
