NEW YORK CITY PLANNING COMMISSION

NOTICE OF ADOPTION OF FINAL RULE RELATING TO TYPE II DETERMINATIONS UNDER SEQRA AND CEQR

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter, and pursuant to the authority vested in the City Planning Commission ("the Commission") by Sections 1043(a) and 192(e) of the New York City Charter, that the Commission adopts the following rule that adopts a new Type II rule under the State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review ("CEQR") procedures to exempt housing developments up to a certain size from environmental review. The rule shall become effective on June 3, 2024.

The Commission published a Notice of Opportunity to Comment on the rule in the City Record on January 5, 2024. On February 7, 2024, the Commission held a public hearing on the rule.

NEW YORK CITY PLANNING COMMISSION

Statement of Basis and Purpose of Rule

New York City, like other municipalities, is facing a crippling housing crisis which has real and direct human consequences, including high rents, displacement pressure, segregation, gentrification, poor housing quality, tenant harassment, homelessness, and other effects of a market where residents have very limited options because of housing scarcity. Almost every hardship of the City housing market can be traced back to an acute shortage of housing. The housing shortage drives up prices for everyone.

Among the factors contributing to the City's housing crisis are the time and resources required to complete environmental reviews that are ultimately unnecessary because they consistently result in determinations that the proposed developments have no potential for significant adverse environmental impacts. Over the past ten years, an average of 350 housing, commercial and infrastructure projects per year were subject to review through CEQR, the City's procedures for implementing SEQRA.

All 350 went through the first step of CEQR — the production of an Environmental Assessment Statement (EAS). Of those, approximately twelve projects each year also required the more involved process of preparation of an Environmental Impact Statement (EIS). Most housing projects subject to land use approvals or public financing must conduct an EAS that typically takes six to eight months to complete and can cost hundreds of thousands of dollars. Yet, only a few of these smaller projects are found to have a potential for significant impacts on the environment.

To address this, the City agencies that develop or approve housing, including the New York City Planning Commission, are each adopting a new Type II rule under SEQRA and CEQR to exempt housing developments up to a certain size from further environmental review. Type II actions are agency actions that will not have a significant impact on the environment as determined by certain criteria established by SEQRA, and are therefore exempted from environmental review. 6 NYCRR § 627.5. Exempting these projects from review under SEQRA and CEQR will decrease their

overall cost and shorten the time typically needed to complete the approval process, resulting in delivery of new homes faster to residents that need housing today.

This action is authorized under SEQRA, which requires state and local agencies to consider the potential environmental impacts of actions that the agency proposes to approve, fund, or undertake. NYS Environmental Conservation Law Article 8. New York State regulations implementing SEQRA divide state and local actions into three types: Type I, Type II and Unlisted Actions. The State regulations list 46 specific actions as Type II actions that are exempt from environmental review and do not require preparation of either an EAS or an EIS. The State regulations also authorize all state and local agencies to adopt their own lists of Type II actions to supplement the State list. 6 NYCRR § 617.5(b) and (c). To include an action on an agency Type II list, the agency must establish that the action will not have a significant adverse impact on the environment under the criteria established by the State and that the action is not a Type I action as defined by the State regulations. 6 NYCRR § 617.5(b)(1)-(2). Every agency is authorized to adopt its own Type II list.

The Commission adopted a list of Type II actions as authorized by the New York State SEQRA regulations in 2014. *See* 62 RCNY § 5-05(c)-(d). The Commission now amends that list to add new residential housing developments up to a certain size, as described below, exempting those developments from the requirements of SEQRA and CEQR.

The list of Type II actions as modified by this rulemaking will also be adopted by three other City agencies that approve, fund or undertake new residential development: the Office of the Mayor, acting through the Office of Environmental Coordination, the Department of Housing Preservation and Development, and the Board of Standards and Appeals.

To determine the appropriate size of housing developments to be exempted and the appropriate conditions those developments would need to satisfy in order to ensure that they will not have a significant impact on the environment, staff from multiple City agencies reviewed projects with completed applications between January 2013 and May 2023 before the four City agencies and offices that approve, fund or undertake new housing and that proposed this new Type II rule: the City Planning Commission, the Department of Housing Preservation and Development, the Board of Standards and Appeals, and the Office of the Mayor, acting through the Office of Environmental Coordination. In total, the agencies reviewed more than 1,000 projects, including projects that had received negative declarations, conditional negative declarations, and positive declarations under CEQR. That universe was then narrowed to exclude projects that did not facilitate new housing and housing projects proposing greater than 1000 units, which would exceed the State threshold for Type I actions and therefore be ineligible for Type II listing.

Based on this analysis of past environmental reviews, the Commission has concluded that housing developments of up to 250 new units in higher and medium density districts and up to 175 new units in lower density districts that meet certain other density-related and site-specific criteria do not result in significant adverse impacts. The density-related criteria include maximum sizes for accompanying non-residential community facility or commercial uses to ensure no transportation impacts, maximum building heights to ensure no shadows impacts, and maximum construction durations to avoid construction impacts. The site-specific criteria include: excluding sites with archeological significance, relying on the City's existing (E) designation process to address any potential site-specific hazardous materials, air quality, or noise issues, excluding sites adjacent to arterial highways or in certain coastal flood areas, and avoiding developments becoming a source of air quality impacts by requiring that they forego use of fossil fuels. After publication of the proposed rule, the Commission modified the proposed rule and the associated

appendix to the rule to add National Ambient Air Quality Standards to the air quality criteria that must be met by new housing developments in order to be eligible for the new Type II exemption.

The Commission amends its existing Type II rule to add a new Type II category for projects that would facilitate new housing that meet the criteria in this rule. This will exclude from environmental review qualifying projects that are seeking Commission approvals or for which the Commission is acting as lead agency under SEQRA and CEQR. The Commission also amends its existing Type II rule to delete two actions, the first of which relates to a special permit that no longer exists and the second of which is superseded by the new Type II category. These rules renumber various existing Type II actions to reflect these deletions. These rules will reduce the time and resources needed to obtain Commission approval for new housing projects.

The Commission's authority for these rules is found in 6 NYCRR § 617.5(b) and in sections 1043 and 192(e) the Charter.

Green Fast Track for Housing CEQR Type II Rule

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraph 3 of subdivision (c) of section 5-02 of Chapter 5 of Title 62 of the Rules of the City of New York is amended by adding the following definitions, in appropriate alphabetical order, as follows:

Development Site. "Development site" means the zoning lot all or part of which the applicant proposes to develop through the action.

Developable Site. "Developable site" means a zoning lot, including the development site, within the area that is the subject of the action that the lead agency determines is likely to be developed as a result of the action.

Natural Resource. "Natural Resource" means surface water bodies; wetland resources; upland resources, such as beaches, shrublands, meadows, and forests; or other significant or sensitive resources.

§ 2. Subdivisions (c) and (d) of section 5-05 of Chapter 5 of Title 62 of the Rules of the City of New York are amended to read as follows:

(c) *Type II.* The following actions are not subject to review under City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations, subject to 62 RCNY § 5-05(d):

(1) [Special permits for physical culture or health establishments of up to 20,000 gross square feet, pursuant to § 73-36 of the Zoning Resolution;

(2)] Special permits for radio and television towers, pursuant to § 73-30 of the Zoning Resolution;

([3]2) Special permits for ambulatory diagnostic or treatment health care facilities, pursuant to § 73-125 of the Zoning Resolution;

([4]3) Special permits to allow a building or other structure to exceed the height regulations around airports, pursuant to § 73-66 of the Zoning Resolution;

[(5) Special permits for the enlargement of buildings containing residential uses by up to 10 units, pursuant to § 73-621 of the Zoning Resolution;]

([6]4) Special permits for eating and drinking establishments of up to 2,500 gross square feet with accessory drive-through facilities, pursuant to § 73-243 of the Zoning Resolution;

([7]5) Acquisition or lease disposition of real property by the City, not involving a change of use, a change in bulk, or ground disturbance;

([8]6) Construction or expansion of primary or accessory/appurtenant park structures or facilities involving less than 10,000 square feet of gross floor area;

([9]7) Park mapping, site selection or acquisition of less than ten (10) acres of existing open space or natural areas;

([10]8) Authorizations for a limited increase in parking spaces for existing buildings without parking, pursuant to § 13-442 and § 16-341 of the Zoning Resolution;

([11]9) Special permits for accessory off-street parking facilities, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-351 of the Zoning Resolution;

([12]10) Special permits for public parking garages and public parking lots, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-352 of the NYC Zoning Resolution; [and]

([13]11) Special permits for additional parking spaces, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 13-45 of the NYC Zoning Resolution[.]; and

(12) An action listed in subdivision (e) of this section, provided that such action also meets the requirements in subdivision (f) of this section.

(d) *Type II Prerequisites.*

(1) An action listed in 62 RCNY § 5-05(c), which is also classified as Type I pursuant to 6 NYCRR Part 617.4, shall remain Type I and subject to environmental review.

(2) An action listed in 62 RCNY § 5-05(c)([2]1) - ([5]3), or ([8]6) involving ground disturbance shall remain subject to environmental review, unless it is determined that any potentially significant hazardous materials impacts will be avoided.

(3) An action listed in 62 RCNY § 5-05(c)([2]1), ([3]2), [(5),]or ([8]6) involving excavation of an area that was not previously excavated shall remain subject to environmental review, unless it is determined that the project site is not archaeologically sensitive.

(4) An action listed in 62 RCNY § 5-05(c)([4]3) shall remain subject to environmental review, unless it is determined that any potentially significant noise impacts will be avoided.

(5) An action listed in 62 RCNY § 5-05(c) ([2]1), ([3]2), [(5),]or ([8]6) involving the removal or alteration of significant natural resources shall remain subject to environmental review.

(6) An action listed in 62 RCNY § 5-05(c) ([2]1), ([4]3), [(5), (6](4), ([8]6), or ([11]9) - ([13]11) shall remain subject to environmental review if the project site is:

(i) wholly or partially within any historic building, structure, facility, site or district that is calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark;

(ii) substantially contiguous to any historic building, structure, facility, site or district that is designated, calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; or

(iii) wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or archaeological or prehistoric site that is listed, proposed for listing or eligible for listing on the State Register of Historic Places or National Register of Historic Places.

§ 3. Section 5-05 of Chapter 5 of Title 62 of the Rules of the City of New York is amended by adding new subdivisions (e) and (f), to read as follows:

(e) *Residential Development Type II Actions.* The following actions are not subject to review under City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations, subject to subdivision (f) of this section:

(1) Actions that enable incremental development of at least 1 and no more than 250 new dwelling units or new income-restricted dwelling units, and no more than 35,000 gross square feet of space for non-residential uses, which includes no more than 25,000 gross square feet of space for commercial uses and no more than 25,000 gross square feet of community facility space, and which at the time of the environmental determination are:

(i) located wholly within an existing R5 through R10 Residence zoning district, provided that such action does not include the creation or enlargement of a Special Mixed Use zoning district or a stand-alone Commercial zoning district; or

(ii) located in an existing stand-alone Commercial zoning or Manufacturing zoning district and are being developed pursuant to a regulatory agreement or lease with a government agency to develop housing or a decision by the Board of Standards and Appeals authorizing residential development; or

(2) Actions that enable incremental development of at least 1 and no more than 175 new dwelling units or new income restricted dwelling units, and no more than 20,000 gross square feet of space for non-residential uses, which includes no more than 10,000 gross square feet of space for commercial uses, and no more than 10,000 gross square feet of community facility space, and which at the time of the environmental determination, are located at least partially within an existing R1 through R4 Residence zoning district, provided that such action shall not include actions that include the creation or enlargement of a Special Mixed Use zoning district or a stand-alone Commercial zoning district.

(f) *Type II Residential Development Prerequisites.* An action listed in subdivision (e) of this section must also comply with all of the following to be a Type II action, at or before the time environmental review is required to be completed:

(1) Any new building or any enlargement of an existing building on the development site shall not burn fossil fuels to supply heat or hot water;

(2) The applicant or development site owner shall have complied with the following site-specific requirements:

(i) for developable sites that include one or more tax lots that do not have an (E) designation for hazardous materials pursuant to section 11-15 of the New York City Zoning Resolution at the time of the environmental determination, completed a Phase I Environmental Site Assessment for the development site and either:

(A) obtained a written signoff from the lead agency that no further environmental investigation is required or that a plan to address any hazardous materials is acceptable; or

(B) consented to the establishment of an (E) designation for hazardous materials pursuant to section 11-15 of the New York City Zoning Resolution and 15 RCNY Chapter 24 on the developable sites, provided that where an (E) designation is not available and the development site will be developed pursuant to a regulatory agreement with a government agency, such government agency shall include protections and development oversight requirements equivalent to an (E) designation found in 15 RCNY Chapter 24 in such regulatory agreement; and

(ii) obtained a determination from the New York City Landmarks Preservation Commission (LPC) stating whether any developable site is within an archaeologically sensitive area, is designated, calendared for consideration or eligible for designation as a New York City Landmark or Historic District, is listed on, or formally determined to be eligible for inclusion on, the National Register of Historic Places or the New York State Register of Historic Places, or is substantially contiguous to a sunlight sensitive architectural resource, and

(A) if LPC determines a developable site is within an archaeologically sensitive area, completed an archaeological document study for the development site and obtained a writing from LPC that the development of such development site does not raise archaeological concerns; and

(B) if LPC determines a developable site is designated, calendared for consideration or eligible for designation as a New York City Landmark or Historic District or is listed on, or formally determined to be eligible for inclusion on, the National Register of Historic Places or the New York State Register of Historic Places, obtained a writing from LPC that the development of such development site does not raise historic preservation concerns;

(iii) agreed to prepare and implement a Construction Protection Plan consistent with the requirements of the New York City Department of Buildings Technical Policy and Procedure #10/88 for a development site located at least partially within 90 feet of a building or site formally determined to be eligible for listing on the National Register of Historic Places or the New York State Register of Historic Places or of a building or site that is eligible for designation as a New York City Landmark or Historic District;

(iv) for developable sites within 1000 feet of an air emissions source that operates under a permit issued pursuant to subpart 201-5 of title 6 of the New York Codes, Rules and Regulations (New York State facility permits) or subpart 201-6 of such title (Clean Air Act Title V permits) or either within 400 feet of any existing air emission source with an active or expired industrial permit issued by the New York City Department of Environmental Protection or within 400 feet of any unpermitted industrial source, confirmed to the lead agency based on the emission limits in the permit(s) or, for any unpermitted source, the estimated emission limits from similar source permit(s) provided by the lead agency, that concentrations of any pollutant regulated by the permit(s) or identified by the lead agency for any unpermitted source will not exceed the corresponding National Ambient Air Quality Standards (including background

concentrations) and Annual Guideline Concentration (AGC) and Short-term Guideline Concentration (SGC) in the New York State Department of Environmental Conservation Division of Air Resources Guidelines for Evaluation and Control of Ambient Air Contaminants (DAR-1) at such developable site, as determined in accordance with the industrial source screen in Appendix B of Chapter 5 of Title 62 of the rules of the city of New York (Industrial Air Quality Checklist).

(v) With respect to calculation of noise levels, either:

(A) provided to the lead agency representative peak hour outdoor noise sampling showing less than 70 A-weighted decibels (dBA) L10 ambient noise levels at all developable sites, and provided outdoor noise sampling for all developable site buildings within the line of sight of any railway or elevated subway showing less than 65 dBA Ldn ambient noise levels and confirmed that all developable sites are outside the 65 Day Night Average Sound Level contours established in the Noise Exposure Map (NEM) Report for John F. Kennedy Airport and LaGuardia Airport, or

(B) agreed to establishment of an (E) designation for noise pursuant to section 11-15 of the NYC Zoning Resolution on any developable sites that cannot meet the requirements of item (A) above, provided that where the development site will be developed pursuant to a regulatory agreement with a government agency, such government agency shall include protections equivalent to those imposed by an (E) designation for noise attenuation in such regulatory agreement.

(3) The projected duration of construction at each development site shall not be greater than 24 months and no consecutive projected construction period for all substantially contiguous developable sites shall be greater than 24 months.

(4) No portion of any developable site shall:

(i) be located adjacent to an arterial highway listed in Appendix H to the New York City Zoning Resolution or a vent structure for a tunnel;

(ii) be located within in a Special Coastal Risk District mapped pursuant to Article XIII, Chapter 7 of the New York City Zoning Resolution; or

(iii) contain a natural resource.

(5) The action shall not enable construction of a new building or other structure or enlargement of an existing building or structure with a maximum allowable height greater than 250 feet, including all rooftop bulkheads, mechanical equipment, parapets, and any other parts of the building, or with a maximum possible height greater than 50 feet if substantially contiguous to a public open space other than a street or sidewalk, natural resource or an architectural sunlight sensitive resource identified by LPC under subparagraph (ii) of paragraph (2) of this subdivision above, unless such open space, natural resource or sunlight sensitive resource is entirely within the area between -108° degrees from true north and +108 degrees from true north of the building or other structure or is an architectural resource that is located on a facade that faces directly away from a developable site.

§ 4. Chapter 5 of Title 62 of the Rules of the City of New York is amended by adding a new Appendix B, to read as follows:

Appendix B to Chapter 5 of Title 62: Industrial Air Quality Checklist

To determine the potential for exceedance of the New York State Department of Environmental Conservation (DEC) Division of Air Resources Guidelines for Evaluation and Control of Ambient Air Contaminants (DAR-1) guidelines at a developable site resulting from industrial emissions, emissions from industrial sources within 400 feet of the development site shall be determined from emission limits in permits issued by the New York City Department of Environmental Protection (DEP) or for unpermitted sources, from the estimated emission limits provided by the lead agency and for Title V or state facility-permitted sources within 1000 feet of the development site, from the emissions limits in the DEC Title V or state facility permits. For purposes of this Appendix, industrial sources means air emission sources (direct and fugitive emissions) that have or should have an existing or expired DEP Clean Air Tracking System industrial permit, concrete batching plants, or material handling facilities. The emissions from any existing industrial or state permitted source or emission assumptions for any unpermitted industrial source must first be converted into grams/second. This converted emission rate must then be multiplied by the value in the table below corresponding to the minimum distance between the industrial source and the building containing the new dwelling units to determine if the National Ambient Air Quality Standards (including background concentrations) and AGC/SGC values in the DAR-1 guidelines are exceeded. Values are provided for 1-hour and annual averages to enable the comparison of pollutant levels to SGCs (1- hour averaging period) or AGCs (annual averaging period).

Distance from Source	1-Hour Averaging Period (ug/m3)	3-Hour Averaging Period (ug/m3)	8-Hour Averaging Period (ug/m3)	24-Hour Averaging Period (ug/m3)	Annual Averaging Period (ug/m3)
30 ft	124,848	61,874	46,700	38,284	5,251
60 ft	31,284	15,479	12,721	10,292	1,386
90 ft	13,936	6,884	6,098	4,858	645
120 ft	7,857	4,028	3,658	2,877	378
150 ft	5,038	2,721	2,476	1,926	252
180 ft	3,507	1,982	1,808	1,393	181
210 ft	2,599	1,520	1,390	1,063	138
240 ft	2,038	1,211	1,109	844	110
270 ft	1,684	992	910	692	90
300 ft	1,449	831	764	580	75
330 ft	1,282	714	653	496	64
360 ft	1,153	631	566	431	56
400 ft	1,015	559	477	364	47