

NOTICE OF ADOPTION OF FINAL RULE

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION by Sections 15(e), 1403 and 1404 of the New York City Charter and Section 11-15 of the Zoning Resolution of the City of New York, that the Department of Environmental Protection has amended its rules to clarify that the (E) designation process is applicable for any review or determination pursuant to the City Environmental Quality Review (CEQR) as set forth in 15 RCNY § 24-02. These amendments were proposed and published in the City Record on January 8, 2024, and a public hearing was held on February 7, 2024. No comments were received.

Statement of Basis and Purpose

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 the CEQR process.

All 350 went through the first process—the production of an Environmental Assessment Statement (EAS). Of those, approximately twelve projects each year 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 Environmental Assessment Statement (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 are simultaneously each adopting a new Type II rule to exempt housing developments up to a certain size from further environmental review. 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.

The State Environmental Quality Review Act (SEQRA) 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. Type II actions are agency actions that will not have a significant impact on the environment or are otherwise not subject to review and are therefore exempted from further environmental review. 6 NYCRR § 627.5. The State regulations list 46 specific actions as exempt Type II actions and 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 its action will not have a significant adverse impact on the environment under the criteria established by the State and that its 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 City Planning Commission is amending 62 RCNY § 5-05 to add new residential housing developments up to a certain size, as described below, to its list of Type II actions, exempting those developments from the requirements of SEQRA and the City's procedures for implementing SEQRA, known as the City Environmental Quality Review procedures or CEQR.

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 are adopting 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 agencies 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. As relevant to this rule, the site-specific criteria include employing 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.

(E) Designation rules are currently found in Chapter 24 of Title 15 of the Rules of the City of New York ("RCNY") within the DEP section of the City's rules. In order to clarify that the (E) designation process applies to any review or determination pursuant

to CEQR and to conform with the proposed Type II rule amendment described above, DEP amends 15 RCNY § 24-02 as follows.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 24-02 of Title 15 of chapter 24 of the Rules of the City of New York is amended to read as follows:

§ 24-02 Applicability. This chapter shall apply in connection with [the environmental] any review or determination pursuant to City Environmental Quality Review (CEQR) of any Zoning Amendment or Zoning Action subject to review and approval pursuant to §§ 197-c and 197-d of the New York City Charter where one or more tax lots in the area subject to the Zoning Amendment or Zoning Action have been identified by the Lead Agency as likely to be developed as a direct consequence of the action.

