

Looking to California to Reform New York's Environmental Review Laws Amid a Housing Crisis

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New York has an undeniably severe housing shortage (a staggering 500,000 to a million units) and some of the highest development costs in the country. There is no single reason for this crisis; land prices, labor costs, materials costs, restrictive zoning and local land-use procedures all contribute to soaring costs.

New York's environmental review laws often get some of the blame. Creating more housing-related exemptions in the State Environmental Quality Review Act (SEQRA) won't by itself solve the problem, but would be part of any effective solution.

In 2025 California created new and robust exemptions from its California Environmental Quality Act to encourage "in-fill" housing development in urban areas. Developers, housing advocates and environmental advocates generally applauded the legislative changes. In this article we consider the potential for such changes in New York.

SEQRA Has Few Exemptions For New Housing

SEQRA requires all government "agencies" (departments, state public benefit corporations,



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counties, municipalities) to evaluate the potential environmental impacts of their discretionary decisions, unless a specific exemption (referred to as a "Type II" exemption, see 6 NYCRR 617.5(c)) applies.

In New York many housing development projects require some type of discretionary approval from a government actor, like legislative approval of zoning amendments and planning board approval of a site plan. Even housing projects that are zoning compliant but require some *other* discretionary government action (subdivision or site plan review, lease of government land, wetland permit) often trigger SEQRA compliance.

Environmental review can end with a brief environmental assessment and “negative declaration.” Or, where an agency determines there is a potential for significant adverse impacts in at least one environmental category, preparation of a full environmental impact statement is required, along with consideration of alternatives and mitigations.

Since litigation based on the adequacy of an agency’s SEQRA compliance is common, agencies tend to err on the side of caution in preparing voluminous (sometimes overly so) environmental assessments and environmental impact statements, which can cost applicants (e.g., housing developers) time and money.

The Type II exemptions have not been much use to housing developers; the State SEQRA regulations only exempt projects involving one, two or three-family homes, or conversions of commercial buildings that are otherwise zoning compliant.

That means housing projects with as few as four units that require even modest relief from zoning limits or require site plan approval trigger some level of SEQRA compliance. And with the exception of New York City since June of 2024 (a topic we will return to shortly), that has been the case regardless of whether the project would be located in a neighborhood of single-family homes or in a dense urban area adjacent to public transit.

By contrast, the SEQRA Type I list—the opposite of the Type II list with thresholds at which an EIS is presumptively required—accounts for existing scale. For example, an EIS is presumptively required for 200 units of new housing in cities with populations of 150,000 but the threshold is 1,000 units in cities with populations of over one

million. It would make sense to similarly scale the Type II housing exemptions.

Regardless of how New York tailors SEQRA exemptions, other local land-use reviews are also complex and time-consuming. For example, New York law permits all municipalities to require site plan review for developments even where they otherwise comply with zoning (see General City Law, section 27-a; Town Law, section 274-a; Village Law, section 7-725-a.)

The purpose is to allow “municipalities to analyze development proposals in terms of their impacts on local growth and the need for facilities and services.” See New York State Department of State, *Site Plan Review*, James A. Coon Local Government Technical Series, reprinted 2024.

The legislative goal seems important enough—ensuring that large new developments are well designed, least impactful and have access to adequate local services. But SEQRA compliance and site-plan review can take months or years to complete for large developments—even those that are otherwise zoning compliant.

In New York City, there is no site plan review. But a wide variety of discretionary land-use decisions (zoning changes, special permits, disposition of city property, etc.) trigger the Uniform Land-Use Review Procedure, a public review process that culminates in binding votes by the City Planning Commission, then the city council and the mayor.

The process is long, uncertain and provides tremendous discretion to the affected council members. (On Nov. 4, 2025 New York City voters will vote on three proposed amendments to the City Charter that would shorten and simplify these processes for certain affordable housing (and other housing) applications, in some cases by eliminating City Council review.)

California's 2025 Changes to CEQA Created Robust Exemptions for New Housing in Existing Urban Areas

California, like New York, is one of a handful of states that require environmental review before states or localities make discretionary decisions. Developers and housing advocates have accused CEQA of being used as a basis to challenge infill projects in existing, often in high-income urban areas.

That has stifled housing development in the urban parts of the state most suited for higher density, transit-oriented development, and—perversely—pushed development into fringe, rural and agricultural areas, creating sprawl and competition for scarce open space and agricultural land.

Governor Gavin Newsom signed Assembly Bill 130/Senate Bill 131 in June 2025 to create some dramatic new housing exemptions in CEQA. The law now exempts from review “infill housing development projects,” which includes residential housing projects and mixed-use residential projects in existing urban areas.

The project must be 20 acres or less. The project site cannot have other environmental sensitivities like wetlands, historic districts, farmland, flood zones etc. Finally, the project must meet or exceed certain density thresholds (to ensure the exemption does not encourage low-density, sprawling development).

If an exemption is barred because of a single condition (e.g., floodzone), environmental review will occur but be strictly limited to analysis of that condition. Mindful that CEQA is not the only hurdle to new, dense housing projects, the amendments also impose limits on

local land-use reviews. For example, California law now requires municipalities to approve or disapprove a project within sixty days of the determination that it is CEQA exempt.

It is too soon to judge results of California's reforms, but if these reforms were adopted in New York they would address three important impediments to housing development: (1) the over-application of SEQRA to housing projects in dense, non-sensitive, urban settings where they are unlikely to cause adverse impacts; (2) triggering the need for an EIS when only a handful of impact categories are actually of concern; and (3) lengthy and costly local land-use reviews that apply even when an environmental exemption applies.

New York City Substantially Expanded Housing Project Exemptions

SEQRA permits agencies, including municipal agencies, to develop their own Type II lists reflecting their specific expertise as to which types of projects do not have the potential to cause significant adverse impacts.

Recognizing that the statewide Type II list makes no sense in New York City, in 2024 the City Planning Commission, in consultation with other agencies involved in housing development, adopted a rule exempting housing projects that have no more than 250 units in higher density districts (R5-R10) and no more than 175 units in lower density districts (R1-R4), provided they meet other criteria relating to issues such as air pollution, historic resources and hazardous substances.

The city developed this rule based on a review of over 1000 projects from a ten-year period. It went into effect in June 2024 so its full impact on development trends remains to be seen.

Local Environmental and Land-Use Reviews Play a Supporting (not Leading) Role in New York's High Housing Costs

A brief survey of national construction costs suggests New York State is among the top ten most expensive states to build housing in (albeit not at the top of those lists.) New York City shares its own dismal distinction as the most expensive city for building housing.

The Citizens Budget Commission, a leading good governmental organization in New York, evaluated construction costs in New York City in 2025, including hard costs (labor and materials), soft costs (architects, lawyers, lenders and other professionals) and land. It concluded in 2025 that hard costs make up at least 60% of project costs and that New York City has the highest hard costs in the world.

It considered soft costs, which are typically 20% of project costs. While not comparing New York City's soft costs to those in other cities, the report noted that discretionary land-use approvals (the primary driver of soft costs) take longer in New York City than any other place in the U.S.—two and a half years. Finally, land costs (the final 20% of construction costs) are easily the highest or nearly the highest compared to any other U.S. municipality.

Changes to SEQRA Would Not be Enough to Bring Down Soft Costs, But They Would Probably Help

The take-away from the CBC report is that limiting SEQRA and other land-use reviews may help encourage housing production but those changes will not directly resolve the labor, material and land costs that are stifling housing production in New York State and the City. But some housing developers maintain that SEQRA and land-use reviews are not just problematic in their own right, but indirectly impact other cost categories.

The idea is that the long, costly and uncertain discretionary environmental and land-use reviews discourage developers from seeking the zoning changes that might be needed to mitigate hard costs and land costs and thus lead to more robust housing production.

If New York could eliminate those costs for select categories of housing projects that rarely if ever have significant adverse impacts, the change could be meaningful. It might allow developers to seek the modest zoning changes or discretionary approvals needed to make nonviable sites viable. We will watch California's experiment closely.

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