



NEW YORK STATE BUILDERS ASSOCIATION

Preliminary Self-Assessment for SEQRA Exemption Eligibility – Guide 3

Non-Urbanized Area Outside of NYC with Zoning Eligible for: 100-Units-or-Fewer Exemption

For housing projects in cities, towns, or villages with fewer than 1 million persons, NOT within a U.S. Census Bureau-defined urban area, WITH local zoning

Prepared by NYSBA as a practical guide only. This is NYSBA's reading of the law — not an official interpretation. Consult your attorney before relying on this worksheet.

Disclaimer: *This worksheet is for informational purposes only and does not constitute legal advice. It is a preliminary self-assessment tool and does not guarantee exemption from SEQRA review. Exemption determinations are made exclusively by the responsible government agency. Users must consult qualified legal counsel before relying on this worksheet. NYSBA makes no warranties and shall not be liable for any errors, omissions, or outcomes resulting from its use.*

WHAT THIS EXEMPTION COVERS

If your project qualifies, the following types of approvals and actions may be exempt from SEQRA review [ECL §8-0111(5-a)(b)]:

- Building permits
- Special use permits
- Variances
- Subdivision approvals
- Site plan approvals
- Zoning text amendments
- Zoning map amendments
- Disposition or acquisition of real property
- Provision of financial assistance
- Any other action 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

How to use: Answer YES to all required questions in each step. Always confirm with your attorney.

STEP 1 DOES YOUR SITE QUALIFY AS PREVIOUSLY DISTURBED?

All projects must be located on a 'previously disturbed site' as defined in ECL §8-0105(11). Answer YES to questions 1, 2, and 3. Then answer YES to either question 4 alone, or questions 5 and 6 together. If you cannot satisfy these requirements, the exemption is not available — there is no need to continue.

Questions 1–3: All must be YES

- ☐ 1) The site is NOT currently used for agricultural purposes AND has NOT been used for agricultural purposes within (a) the immediately preceding 2 years, or (b) 3 of the last 5 years before the application. [ECL §8-0105(11)(v)] — Answer: **YES / NO**
- ☐ 2) The parcel is NOT located in a FEMA-designated 100-year floodplain or Special Flood Hazard Area. [ECL §8-0105(11)(iii)] Exception: this restriction does not apply if the municipality has adopted a law or ordinance requiring new construction to be elevated above the base flood elevation as defined by FEMA. — Answer: **YES / NO**
- ☐ 3) The site is NOT located in a designated coastal erosion hazard area. [ECL §8-0105(11)(vi)] — Answer: **YES / NO**

Questions 4–6: Satisfy EITHER Question 4 alone, OR Questions 5 AND 6 together

- ☐ 4) The site has been substantially altered by an occupied, formerly occupied, or demolished building, or by another improvement or use, at least 2 years before the application. [ECL §8-0105(11)(i)] — Answer: **YES / NO**
— **OR** —
- ☐ 5) The parcel abuts, adjoins, or is directly opposite another parcel that is or has been occupied or formerly occupied by a building, a demolished building, or another improvement or use at least 2 years before the application. [ECL §8-0105(11)(ii)] — Answer: **YES / NO**
— **AND** —
- ☐ 6) That abutting, adjoining, or opposite parcel is NOT occupied by an industrial or agricultural use *(as defined in question 1)*. [ECL §8-0105(11)(ii)] — Answer: **YES / NO**

✓ **CONTINUE** — If you answered YES to questions 1, 2, and 3, and YES to either question 4 alone or questions 5 and 6 together, proceed to Step 2.

STEP 2 HOUSING PROJECT CRITERIA

Answer YES to ALL questions below to qualify for the exemption.

- ☐ The project will be connected to existing community or public water AND sewerage systems at the commencement of habitation. [ECL §8-0111(5-a)(b)(ii)(1)] — Answer: **YES / NO**
- ☐ The project will contain no more than 20% commercial, retail, community facility, or other non-industrial non-residential uses by gross floor area. [ECL §8-0111(5-a)(b)(ii)(3)] — Answer: **YES / NO**
- ☐ The project does NOT consist solely of the construction of one single-family residence on a parcel of one (1) or more acres. [ECL §8-0111(5-a)(b)(ii)(5)] — Answer: **YES / NO**

✓ **CONTINUE** — If you answered YES to all applicable questions, your project likely qualifies. Confirm with your attorney and proceed to the agency determination process.

IMPORTANT YOUR PROJECT MUST COMPLY WITH THE FOLLOWING

- A Phase I ESA has been or will be conducted per EPA 40 CFR §312
- All applicable hazardous waste laws and local hazardous materials remediation requirements have been or will be followed
- All Phase I ESA recommendations have been or will be followed
- Contamination will be reported as required by law. Note: does not apply if a prior exemption was granted under ECL §8-0111(5-a)(b)(ii) for the same parcel.

IMPORTANT THIS EXEMPTION DOES NOT AFFECT THE FOLLOWING

Even if your project qualifies, you remain fully subject to all of the following: [ECL §8-0111(8)]

- Historic preservation requirements (National Historic Preservation Act of 1966; NY Historic Preservation Act of 1980; Parks, Recreation and Historic Preservation Law; any other state or local law governing the identification, protection, or management of historic properties)
- Disadvantaged community protections
- Stormwater management and water quality protections
- Air quality standards
- Soil erosion and drainage standards
- Freshwater or tidal wetland regulations
- Critical environmental area protections
- Threatened or endangered species protections
- Any otherwise applicable statutory or regulatory standards, criteria, and permitting procedures (other than SEQRA environmental review)
- Local zoning and land use authority, including site plan review, other discretionary zoning or land use permits, procedures, reviews, or approvals, such as traffic studies, contamination testing, and determinations of the sufficiency of wastewater and drinking water capacity

NOTE AGENCY DETERMINATION TIMELINE

The responsible agency has up to **120 days** from receipt of your application to determine whether the action qualifies for exemption. The agency may extend this by up to 30 days (with limited exceptions). If no determination is made within the required timeframe, the applicant may seek court relief under CPLR Article 78. [ECL §8-0111(5-a)(d)]

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