I recently posted about proposed legislation in New York, advanced by the governor, to reform the state's environmental review law (the State Environmental Quality Review Act (SEQRA)) to facilitate infill housing – an approach similar to what California did last year. There's now legislative text (available here) available to allow a close review of what the proposal would do.

The key provisions of the legislative text create new exemptions from SEQRA for:

- Housing projects in cities with more than one million residents, where the projects are in neither a coastal flooding area nor an exclusively industrial zone. The projects must also have less than 50,000 square feet of non-residential use, and be less than 250 units (except in higher density residential zones where they can be up to 500 units).
- Housing projects in cities with fewer than one million residents, where projects have water and sewer service, are on a previously disturbed site, have less than 50,000 square feet (or 20%, whichever is less) of non-residential uses, and are smaller than 100 units.
- Public park infrastructure, bike and pedestrian trails, and childcare facilities on previously disturbed sites.

The real important restriction here is the requirement that projects be on "previously disturbed sites" – that requirement presumably ensures that projects won't cause significant environmental impacts to endangered species, wetlands, or other natural habitats. So the definition of that term is very important. Previously disturbed areas are defined as areas developed for at least two years before any permit application; are "substantially altered" by buildings or impervious surfaces; are not in a floodplain; and were not previously used for agricultural purposes in the prior five years.

That definition is probably effective to exclude most greenfield projects. The requirement that any disturbance have existed for at least two years before a project is proposed is important to ensure that project proponents do not strategically "develop" a site (for example, by just paving over the property) so they can then get a waiver from SEQRA. A longer time frame (say three or more years) would further reduce those incentives. In addition, to the extent there are permitting requirements for any prior development, that would probably constrain strategic behavior along these lines.

Housing projects in big cities do not have to meet the previously disturbed

requirements – only New York City would meet that threshold, so this is basically a special rule for New York City. Should we worry about housing projects on undeveloped lands in New York City? There is a surprising amount of green space in New York City, though much of it is in government ownership, and thus presumably not available for development. Perhaps some parts of the outer boroughs, such as Staten Island, might have parcels of land that would otherwise be protected. It's not clear that protecting those parcels is worth adding a requirement to avoid "previously disturbed land," where that requirement might reduce the streamlining benefits of the legislation – especially given that New York City already has a well developed zoning regulatory system.

Finally, the proposed legislation sets timeframes – one year for the decision whether to prepare a full environmental impact statement, and then two years (for projects that involve permit applications) to prepare the environmental impact statement. There is no specified penalty for missing the deadline in the statute, and I do not know enough about New York administrative law to have an opinion as to whether and how state courts would enforce that deadline. And the implications (for better or worse) of the deadline really do turn on the consequences for an agency of missing them. (For instance, does missing the deadline mean that the environmental impact statement requirement is waived? Or does the court just order the agency to complete the document in a reasonable time frame.)

Overall, this seems like a fairly narrowly tailored approach, and one that (like most, but not all, of California's reforms) appropriately limits environmental review where the environmental benefits of development likely exceed their environmental costs. One could provide some further limitations – exclusion of wetlands or endangered species habitat – to the extent there are doubts about how well the previously disturbed land requirement excludes important natural resources. I might push for a slightly longer time frame for disturbance to have occurred before any project (perhaps three or four years). But these would probably be relatively minor changes.