

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF ADOPTION OF FINAL RULE

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Commissioner of the Department of Environmental Protection (“DEP”) by Section 1043 of the City Charter, that DEP has promulgated and adopted amendments to rules relating to the New York City (E) Designation program.

The rule was published in the City Record on December 17, 2021. A public hearing was held on January 19, 2022. No comments on the proposed rule amendments were received from the public prior to, during, or after the hearing.

Statement of Basis and Purpose

(E) Designations are placed on a property pursuant to Section 11-15 of the New York City Zoning Resolution (“ZR”) to provide notice that City Environmental Quality Review (“CEQR”) requirements must be met before the property can be redeveloped in accordance with any zoning action.

(E) Designation rules are currently found in Chapter 24 of Title 15 of the Rules of the City of New York (“RCNY”) within the Department of Environmental Protection’s (“DEP”) section of the City’s rules. The first half of the (E) Designation rule addresses the placement of (E) Designations on properties, while the second half describes how a property owner satisfies (E) Designation requirements. In 2009 the second half of the (E) Designation program was transferred to the Office of Environmental Remediation (“OER”), yet the (E) Designation rule has remained in DEP’s regulations. OER and DEP have agreed to transfer the second half of the (E) Designation rule to Title 43, Chapter 14 of the City’s rules, where OER’s rules are found. This will allow OER to administer the rule that governs its portion of the (E) Designation program. Definitions common to both the first half and second half of the (E) Designation rule will remain in DEP’s rules; future amendments will continue to be coordinated to ensure consistency.

New York City Charter (“Charter”) Sections 15(e)(15) and 1404 authorize OER to administer the (E) Designation program, as defined in Section 11-15 of the ZR, acting as successor to DEP for such purpose, and Charter Section 15(e)(18) authorizes OER to promulgate rules to implement these provisions. Section 1403(e) of the Charter and Section 24-105 of the Administrative Code of the City of New York authorize DEP to make these rules.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 24-03 of Title 15 of Chapter 24 of the Rules of the City of New York is amended to read as follows:

CEQR. "CEQR" [shall mean] means the City Environmental Quality Review, Chapter 5 of Title 62 of the Rules of the City of New York.

CEQR Technical Manual. "CEQR Technical Manual" [shall mean] means the current City Environmental Quality Review Technical Manual as issued by OEC [in May 2020] together with any updates, supplements and revisions thereto.

City. "City" [shall mean] means the City of New York.

Contamination. "Contamination," "Contaminated," or "to Contaminate" [shall mean] means the effect(s) on a tax lot(s) from hazardous materials, hazardous substances, hazardous wastes and/or petroleum.

Day. "Day" [shall mean] means a business day.

DCP. "DCP" [shall mean] means the New York City Department of City Planning.

DEC. "DEC" [shall mean] means the New York State Department of Environmental Conservation.

Department or DEP. "Department" or "DEP" means [shall mean] the New York City Department of Environmental Protection.

Development. "Development", or "Develop" [shall mean] means:

1. with respect to hazardous materials, the development of a new structure, an enlargement, extension or change of use with respect to an existing structure involving a residential or community facility use, and/or any work on a tax lot(s) that involves soil disturbance, including, but not limited to grading or excavation related to the construction or alteration of a new or existing structure(s) on a tax lot(s), and

2. with respect to air quality and noise, development of a new structure, or a change of use, enlargement, extension or alteration of an existing structure(s) on a tax lot(s).

Development Site. "Development Site" [shall mean] means a tax lot(s) located within the area of a proposed Zoning Amendment or Zoning Action and which is proposed to be developed by the applicant for such Zoning Amendment or Zoning Action or which

the Lead Agency has identified pursuant to CEQR as likely to be developed as a direct consequence of the Zoning Amendment or Zoning Action.

DOB. "DOB" [shall mean] means the New York City Department of Buildings.

(E) Designation. "(E) Designation" [shall mean] means the designation of an "E" pursuant to § 11-15 of the Zoning Resolution.

Environmental Assessment Statement. "Environmental Assessment Statement" means a report that describes a proposed development, its location, and a first level analysis of environmental impact areas[. Its], the purpose of which is to determine a project's potential effects on the environment.

EPA. "EPA" [shall mean] means the United States Environmental Protection Agency.

Hazardous Material. "Hazardous Material" [shall mean] means any material, substance, chemical, element, compound, mixture, solution, product, solid, gas, liquid, waste, byproduct, pollutant, or contaminant which when released into the environment may present a substantial danger to the public health or welfare or the environment, including, but not limited to those classified or regulated as "hazardous" or "toxic" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 (1995) et seq., the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §§ 6901 (1995) et seq., the Clean Water Act (CWA), 33 U.S.C. §§ 1251 (1986) et seq., the Clean Air Act (CAA) 42 U.S.C. §§ 7401 (1995) et seq., Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 (1998) et seq., Transportation of Hazardous Materials Act, 49 U.S.C. §§ 5101 (1997) et seq., the Hazardous Substances Emergency Response Regulations, 15 RCNY Chapter 11, and/or the List of Hazardous Substances, 6 NYCRR Part 597.

Hazardous Waste. "Hazardous Waste" [shall mean] means any waste, solid waste or combination of waste and solid waste listed or regulated as a hazardous waste or characteristic hazardous waste pursuant to RCRA, 42 U.S.C. §§ 6901 (1995), et seq. and/or Identification and Listing of Hazardous Wastes, 6 NYCRR Part 371, et seq.

Lead Agency. "Lead Agency" [shall mean] means the agency responsible under CEQR for the conduct of environmental review in connection with a Zoning Amendment or Zoning Action.

L10(1). "L10(1)" means the stated sound level that is exceeded 10 percent of the time during a 1 hour period[. It is], derived from $L_x(t)$, where "x" is the percentage of time that

the sound level has been exceeded and "t" is the total period of time that the sound has been recorded.

OEC. "OEC" [shall mean] means the New York City Mayor's Office of Environmental Coordination.

Owner. "Owner" [shall mean] means the person, including [his or her] their successors or assigns, who is the recorded title holder of a tax lot(s).

Parties-in-Interest. "Parties-in-Interest" [shall mean] means any person with an enforceable property interest in a tax lot(s).

Person. "Person" [shall mean] means any individual, trust, firm, corporation, joint stock company, association, partnership, consortium, joint venture, commercial entity or governmental entity.

Petroleum. "Petroleum" [shall mean] means oil or petroleum of any kind and in any form, including, but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline and kerosene.

Project Site. "Project Site" [shall mean] means a tax lot(s) that is under the control or ownership of the applicant for the satisfaction and removal of an (E) Designation from the lot(s) and is subject to the proposed Development by such applicant.

Tax Lot. "Tax Lot" [shall mean] means a tax lot identified by parcel number on the official tax maps of the City of New York.

Zoning Resolution. "Zoning Resolution" [shall mean] means the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

§ 2. Sections 24-06 through 24-09 of Title 15 of Chapter 24 of the Rules of the City of New York are REPEALED.

§ 3. Sections 24-10, 24-11 and 24-12 of Title 15 of Chapter 24 of the Rules of the City of New York are renumbered 24-06, 24-07 and 24-08, respectively.

§ 4. Subdivisions b through d of section 24-08 of Title 15 of Chapter 24 of the Rules of the City of New York, as renumbered by section 2 of this rule amendment, are REPEALED and subdivision a of such section 24-08 is amended to read as follows:

[a.] Placement of Air Quality and Noise (E) Designations. The Lead Agency may place Air Quality (E) Designations and Noise (E) Designations on real property as a result of an environmental review of a Zoning Amendment or Zoning Action.

(1) An Air Quality (E) Designation is placed on Development Sites that are not publicly owned, that have the potential to be developed as a consequence of the Zoning Amendment or Zoning Action, and that have been identified by the environmental review as having the potential to contribute to or experience a significant adverse air quality impact related to HVAC systems emissions or industrial or other source emissions.

(2) A Noise (E) Designation may be placed on tax lots that are not publicly owned, that have the potential to be developed as a consequence of the Zoning Amendment or Zoning Action, and that have been identified by the environmental review as having the potential to experience significant adverse noise impacts.



T+ DRK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

GEORGIA M. PESTANA
Corporation Counsel

STEVEN GOULDEN
Division of Legal Counsel
Room 6-231
Tel: (212) 356-4028
Fax: (212) 356-4019
sgoulden@law.nyc.gov

January 24, 2022

Hon. Vincent Sapienza
Commissioner
Department of Environmental Protection

Re: Granting of (E) Designation to Certain Properties

No. 2021 RG 051

Dear Commissioner Sapienza:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

/s/ Steven Goulden

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Russell Pecunies, Esq.