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What is an E-Designation and how will it impact your construction project?

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Every so often you may come upon a property that is marked with an E-Designation. An E-Designation is a NYC zoning map designation that indicates the presence of an environmental requirement pertaining to potential hazardous materials contamination, window/wall noise attenuation, or air quality impacts on a particular tax lot. E-Designations are established on the zoning map by the Department of City Planning (DCP) and City Council as a part of a zoning change/action that would allow additional development to occur on property, or would permit uses not currently allowed. It is not a notice of a building violation. One tax lot can be associated with one, two or all three types of E-Designations.

The E-Designation program is administered by the NYC Office of Environmental Remediation (OER). The program was formerly administered by the NYC Department of Environmental Protection (DEP). All E-Designations must be addressed prior to site development and building permits will not be issued until the OER approves their release. According to the OER an (E) designation can occur because the property was used as or is in close proximity to a gas station or some other underground fuel oil tank; is located in or contiguous to a manufacturing district; has a history of manufacturing uses; is located next to a building with a history of manufacturing uses; is located on a heavily trafficked street or highway; is located next to a railroad; has some other environmental condition on the property or nearby that is a cause for concern.

The hazardous materials designation is generally associated with soil and groundwater quality. The OER requires that soil and groundwater be investigated under their direction prior to development. If any contaminants are identified then a remedial action plan and health and safety plan must be prepared prior to building development and the issuance of building permits. This approval process can take approximately 2 months to complete. During construction the remedial action plan and health and safety plan must be implemented. Upon completion of construction a closure report is filed with the OER and upon approval of such the OER will grant the release of the Certificate of Occupancy.

The window/wall noise attenuation E-Designation is related to exterior noise impacts on building occupants. The OER typically requires maximum interior noise levels ranging from 30 dBA to 45 dBA with windows closed and an alternate means of ventilation. The required interior noise level is obtained by mitigating exterior noise with specialized windows with high OITC ratings. Exterior noise levels can be obtained from the DCP Environmental Impact Statement or they can be reestablished by performing a noise study. A noise study can be extremely beneficial if the DCP Environmental Impact study is old or was performed a distance from your development. The results of the new noise study can help lower the required OITC window ratings because it will reestablish exterior noise levels. The noise study must be approved by the OER prior to its implementation and can be

completed in approximately 2 weeks. The alternate means of ventilation must bring fresh air into each building unit while the windows remain close. The alternate means of ventilation can be an air conditioning unit or a trickle vent. The air E-Designation is generally associated with the HVAC system and boilers.

Similar to the Hazmat E-Designation the air and noise designations are addressed in two phases, prior to the issuance of building permits and then prior to the issuance of the certificate of occupancy. Before the building permits will be release the OER must have all construction documents related to the air and noise E designations. For the noise designation this includes the required interior noise levels, the exterior noise levels, the manufacture's specifications for the windows and the alternate means of ventilation plans and specification. For the air designation this includes the manufacture's specifications for the boiler. The certificate of occupancy will then be released once the OER has proof that the windows, alternate means of ventilation or boiler have been installed.

This "E" designation process can also apply to properties associated with a Restrictive Declaration (RD). A RD can be assigned to a property by a Lead City Agency (such as the NYC Department of Housing Preservation and Development (HPD)). A Lead City Agency may accept the recording of a Restrictive Declaration (RD) as an Institutional Control on a property in order to allow a zoning/variance action to be certified. The RD acts by binding the owner to investigate and remediate after the zoning/variance action is certified. Recorded RDs are also reviewed by OER. The institutional control mechanisms for both the E-Designation and RD programs have equivalent investigation and remedial requirements.

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