



*Driving Business Advantage*



# Hot Off the Hill: NAIOP Regulatory & Legislative Update

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# Super-MEPA; What Is It?



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## Integrated MEPA/Permitting Review

- Policy Issued June 2, 2008
- Purpose
  - Provide more and earlier information about project impacts
  - Encourage agencies to take clear positions earlier regarding major permitting issues
  - To better coordinate input from all agencies
- Ultimate goal – “To make a detailed review of permitting information an integral part of MEPA, rather than a separate process that precedes permitting”

## Eligibility

- Participation is voluntary
- Initially limited to projects with public policy benefits
- Focus on
  - Projects that enhance Smart Growth / Smart Energy agenda
  - Models for sustainable development
  - Use of Low Impact Development / LEED Certification
- Examples
  - 40R projects
  - Transit-oriented development
  - Brownfields
  - Renewable energy
  - Public infrastructure

## MEPA Office Expectations

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- Developer must be committed to Super-MEPA approach
- Discourage using Super-MEPA as means to “vet a vague concept prior to permitting”

## Process for Entering Super-MEPA

- Request for Determination of Applicability
  - How project fits criteria
  - Demonstrates commitment to providing information
- MEPA office coordinates inter-agency review team
  - Team determines eligibility
  - Identifies MEPA thresholds and required permits
  - Provides guidance on ENF and Fast Track permitting
- Formal response from MEPA

## ENF and DEIR

- Proponent files ENF (may include scope for EIR)
- MEPA review proceeds in accordance with MEPA regulations
- Agencies expected to file detailed comments regarding expectations for DEIR – also to identify expected obstacles to permitting
- Secretary issues Certificate on ENF; includes information needed for permitting
- Proponent files DEIR

## From DEIR to FEIR

- During public review of DEIR, agencies again meet and coordinate (may include municipalities and interest groups)
- Specific concerns and preferences for alternatives to be identified
- DEIR Certificate issued – Will require draft permit applications as well as proposed Section 61 Findings
- Proponent submits FEIR. FEIR must include “advanced” design drawings, as well as proposed Section 61 Findings (with mitigation)
- Proponent simultaneously files permit applications.



## From FEIR to Permitting

- Review of FEIR occurs in parallel with administrative-technical completeness review of permit applications
- FEIR Certificate issued
  - FEIR should not include any requirements to provide additional analysis during permitting
  - Detailed Section 61 Findings provide “template” for permit conditions

## Implementation/Review of Super-MEPA

- MEPA expects 5-10 projects to utilize Super-MEPA during first year
- MEPA office, with stakeholders, will review effectiveness of the policy

## Issues Concerning Super-MEPA

- Nature of eligibility criteria biases approach – MEPA reserves right to decline to use Super-MEPA for “controversial” projects
- No actual requirement that permitting agencies issue permits within fixed period of time following issuance of FEIR Certificate
- And the real concern – Is Super-MEPA the thin edge of the wedge to MEPA’s real goal

## MEPA's Real Goal?

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