

MASSACHUSETTS ENVIRONMENTAL, LAND USE AND REAL ESTATE ALERT

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Massachusetts Developments

[MassDEP Proposes Structure to Recognize International Greenhouse Gas Reduction Credits](#)

MassDEP has proposed a rule change that would clarify the types of international greenhouse gas (GHG) reduction projects that will qualify for GHG credits in the MassDEP GHG credit program. The primary effect of the proposal will be to establish a structure for the recognition of internationally certified GHG reduction credits.

[MassDEP Finalizes Supplemental Amendments to the State Cleanup Program](#)

MassDEP has revised the regulations implementing the state privatized cleanup program. These revisions became effective on February 14, 2008, with the exception of the "white knight" provision, described here, which became effective on December 14, 2007.

[Massachusetts Wetlands Rules Amended to Reduce Regulatory Burdens for Certain Stormwater Activities](#)

Following work with an advisory committee of interested stakeholders, MassDEP recently revised the state Stormwater Management Standards that are incorporated into the Wetlands Protection Act and Water Quality Certification rules, effective January 2, 2008.

[Allen v. Boston Redevelopment Authority: SJC finds MEPA Certification Arbitrary and Capricious](#)

The Massachusetts Supreme Judicial Court ("SJC") has ruled that the certification of a final Environmental Impact Report ("EIR") by the Secretary of the Executive Office of Energy and Environmental Affairs ("Secretary") was arbitrary and capricious.

[Appeals Court Annuls and Affirms Subdivision Plan Rescissions in Separate Decisions](#)

In two recent cases the Appeals Court addressed when a planning board may rescind constructive approval of a subdivision plan, and when such a rescission is prohibited by a good-faith mortgage of the property. In *Terrill v. Planning Board of Upton*, 71 Mass. App. Ct. 171 (2008), the Court affirmed the annulment of an attempted rescission because the Planning Board failed to obtain consent of the mortgagee bank.

[Chapter 40B Developer May Lift Age Restriction After Project is Constructed](#)

In a precedent-setting ruling, the Massachusetts Housing Appeals Committee recently held that an age restriction on a Chapter 40B project may be lifted even after the project has been constructed and is operational. *511 Washington Street, LLC v. Hanover Zoning Board of Appeals*, HAC Docket No. 06-05 (January 22, 2008).

[SJC Rules that Increasing the Size of a Residence on an Undersize Lot Increases the Nonconformity Triggering the Need for Zoning Relief](#)

Noting concern among municipalities regarding the trend of “mansionization,” the Supreme Judicial Court recently issued a decision limiting the ability of owners of undersized lots to replace existing structures with larger but otherwise conforming homes. In *Bjorklund v. Zoning Board of Appeals of Norwell*, 450 Mass. 357 (2008), the Court considered whether the proposed replacement of an existing single-family residence on an undersized lot with a larger home that would satisfy all other dimensional requirements of the zoning bylaw would “increase the nonconforming nature of the structure” so that it could not be constructed as of right.

National Developments

[Mandatory U.S. Carbon Reporting Announced](#)

The U.S. Environmental Protection Agency recently announced that it will proceed with rulemaking requiring companies to report their “carbon footprint” from carbon dioxide and other greenhouse gas emissions from U.S. facilities.

[Greenhouse Gas Emission Fees Proposed in California](#)

The Bay Area Air Quality Management District (“BAAQMD”) recently proposed to assess greenhouse gas (“GHG”) emission fees on stationary sources. This appears to be the first GHG emission fee in California, and quite probably in the U.S.

[D.C. Circuit Vacates Two Rules Regulating Mercury Emissions from Power Plants](#)

On February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit vacated two EPA rules that regulate emissions of hazardous air pollutants (“HAPs”) from electric steam generating units (“EGUs”). *New Jersey v. Environmental Protection Agency*, No. 05-1097 (D.C. Cir. 2008).

[FCC Ordered to Implement More Stringent NEPA and ESA Review in Communications Towers Approval Procedures](#)

On February 19, the D.C. Circuit Court of Appeals vacated and remanded portions of an FCC ruling on a petition filed by environmental groups who argued that the FCC’s procedures for approving new communications towers failed to properly implement the National Environmental Policy Act (“NEPA”) and the Endangered Species Act (“ESA”) in regards to new towers’ effects on birds.

[Beveridge & Diamond, P.C. Elects New Principals and Of Counsel](#)

In January, Beveridge & Diamond announced the promotion of new Principals and Of Counsel.

California Maryland Massachusetts New Jersey New York Texas Washington, D.C.