

MASSACHUSETTS ENVIRONMENTAL AND LAND USE ALERT

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EEA Solicits Comments on MEPA Greenhouse Gas Policy

The Massachusetts Executive Office of Energy and Environmental Affairs (now known as EEA) has released for public comment a draft greenhouse gas (GHG) emissions policy for projects undergoing Massachusetts Environmental Policy Act (MEPA) review. The draft policy incorporates substantive GHG evaluation requirements for several classes of projects and expectations of GHG project mitigation. Comments on the draft policy are due at EEA by no later than August 10, 2007.

Massachusetts Tidelands Licensing: Where We Are Now

On February 12, 2007, the Massachusetts Supreme Judicial Court ("SJC") invalidated a regulatory exemption promulgated by the Department of Environmental Protection ("DEP") under G.L.c.91 ("Chapter 91"), the waterways statute, relative to "landlocked tidelands". *Moot v. Department of Environmental Protection*, 448 Mass. 340 (2007). The case involved a challenge to a DEP decision holding that the construction of a multi-use project was exempt from the licensing requirements of Chapter 91 because it involved a landlocked tideland. The implications of this ruling are still being analyzed, but it could have a far reaching impact on existing, proposed and future properties located on landlocked tidelands. The ruling calls into question past developments sited on landlocked tidelands under the now invalid DEP regulation and raises concerns as to what additional approvals are needed for current and future projects. The SJC stayed the effect of its decision for 180 days, giving the legislature time to act if it so chooses. The stay is currently set to expire in September 2007.

MassDEP Proposes Regulatory Changes to Streamline Wetlands Appeal

Newly proposed amendments to the Massachusetts Department of Environmental Protection (MassDEP) regulations governing wetland appeals would attempt to speed up resolution of wetland appeals by reducing the types of individuals who can appeal and altering the timeline for appeal resolution. MassDEP is accepting public comments on the proposed regulations until August 13, 2007.

Municipalities May Issue Comprehensive Permits after Reaching Affordable Housing Thresholds

Massachusetts' highest court has ruled that even after a municipality has fulfilled its low or moderate income housing obligation under Chapter 40B, a board of appeals may still grant a Comprehensive Permit. In *Boothroyd v. Zoning Board of Appeals of Amherst*, SCJ-09896 (June 14, 2007), despite the fact that Amherst had reached its 10 percent affordable housing threshold set under Chapter 40B, the Amherst Board of Appeals granted a Comprehensive Permit with conditions after it took evidence about the regional need for affordable housing.

[Town Cannot Avoid Full Hearing on Comprehensive Permit Application](#)

The Town of Wrentham could not avoid hearing the merits of an application for a comprehensive permit under Chapter 40B based on its own determination that it had met its affordable housing obligation, the Appeals Court recently concluded in *Town of Wrentham v. HAC*, Appeals Court No. 06-P-587 (June 27, 2007).

[Patrick Administration Orders Up Clear Regulations](#)

The Patrick Administration has issued Executive Order 485, requiring all Massachusetts agencies to propose clear, concise, plain and understandable regulations, and establishing a fiscal review process prior to the publication of regulatory proposals.

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