

MASSACHUSETTS ENVIRONMENTAL, LAND USE AND REAL ESTATE ALERT



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MASSACHUSETTS ENVIRONMENTAL DEVELOPMENTS

Massachusetts Adopts Aggressive Greenhouse Gas Reduction and Green Job Creation Laws

Two significant new environmental bills addressing climate change were recently signed into law by Massachusetts Governor Deval Patrick, creating a package of mandates and incentives that some advocates are calling the most aggressive greenhouse gas control requirements in the country.

Massachusetts Enacts First in the Nation Ocean Management Act

On May 28, 2008 Massachusetts Governor Deval Patrick signed the first in the nation Ocean Management Act into law. See Chapter 114 of the Acts of 2008 (the "Act"). The Act became effective on August 26, 2008. The legislation requires the development of a comprehensive management plan for roughly all of the State controlled waters of Massachusetts. The intent of the Act is to balance natural resource preservation with traditional and new uses of the ocean, including renewable energy.

Recent Brownfields Initiatives in Massachusetts: Gateway Cities Compact and the Brownfields Support Team Initiative

On May 19, 2008, eleven Massachusetts cities signed the "Gateway Cities Compact for Community and Economic Development" establishing an informal alliance to promote a united economic development strategy addressing the needs of regions outside of the greater Boston area. On the same day that the Compact was signed, the Governor's office announced the establishment of the Brownfields Support Team initiative bringing together staff from various state agencies to assist municipalities in resolving the problems that impede the redevelopment of their Brownfields sites. On July 30, 2008, the Governor's office identified five pilot sites that will be the initial focus of the new Brownfields Support Team. These recent Brownfields initiatives are discussed in detail by Jeanine Grachuk and Deb Eliason in the attached article published in the New England Real Estate Journal on August 29, 2008.

MassDEP Proposes Significant Streamlining of Air Permitting

The Massachusetts Department of Environmental Protection has for years administered one of the most stringent air permitting programs in the country. Reflecting a priority announced by Governor Deval Patrick, MassDEP has now proposed to modify its air permitting rules to increase permitting thresholds and simplify the permit amendment process.

Massachusetts Enacts Green Communities Act

On July 2, 2008, Governor Deval Patrick signed the Green Communities Act (the "Act"), which is a comprehensive piece of energy reform legislation promoting development of renewable energy, energy efficiency, "green communities," and implementation of the Regional Greenhouse Gas Initiative ("RGGI").

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MASSACHUSETTS LAND USE AND REAL ESTATE DEVELOPMENTS

Massachusetts SJC Rules Town Cannot Bring Independent Challenge to DHCD Calculation of Subsidized Housing Inventory

The Massachusetts Supreme Judicial Court recently barred a municipality from bringing an immediate court challenge to the Department of Housing and Community Development's ("DHCD") calculation of the subsidized housing inventory ("SHI") outside of the appeal procedures established by Chapter 40B.

Reversing Appeals Court, Massachusetts SJC Rules Abutter Standing Cannot Be Based on Bylaw Alone

Citing the established rubric governing standing in G.L. c. 40A, § 17 appeals, the Massachusetts Supreme Judicial Court reversed an Appeals Court ruling that plaintiffs appealing a special permit could "derive standing" from the language of a local bylaw without putting forth credible evidence that they were in fact "aggrieved" by the decision.

New Massachusetts Law Allows Consolidation of Certain Planning Board Hearings

On August 11, 2008, Governor Deval Patrick signed a law that will help simplify the subdivision approval process in municipalities where the planning board also serves as the special permit granting authority.

DHCD Issues Chapter 40B Guidance in Response to Massachusetts SJC Decision

In Board of Appeals of Woburn v. Housing Appeals Committee, 451 Mass. 581 (2008), the Massachusetts Supreme Judicial Court ruled that the Housing Appeals Committee cannot consider a condition imposed by a local board of appeals on a comprehensive permit that reduces the size of a project to be a "de facto" denial of that project.

Massachusetts Real Estate Legislative Update

Several recently enacted pieces of legislation impact real estate transactions and development projects in Massachusetts. In April 2008, an amendment to the Massachusetts condominium statute took effect eliminating the requirement of attaching a verified copy of the floor plans of a condominium unit to the first deed recorded for each particular unit. In August 2008, the Governor signed a five-year, approximately \$1.66 billion energy and environmental bond bill, including financing for investments in energy efficiency and renewable energy, and new programs addressing climate change. Lastly, in the wake of a recent court decision, amendments to Massachusetts General Laws Chapter 262, § 38 and Chapter 44B, § 8 now expressly require the payment of additional recording fees for multifunctional documents. These amendments are retroactive so as to avoid potential claims for overpayment of recording fees.

Massachusetts Appeals Court Rules Site Plan Review May Be Used to Impose Dimensional Requirements

The Massachusetts Appeals Court has ruled that local boards may utilize site plan review to impose dimensional requirements on a project that are more restrictive than those contained in a local bylaw.

NATIONAL DEVELOPMENTS

EPA Announces Proposed New Chemical Testing Rule and Holds Public Meeting on Voluntary Chemical Evaluation

At the end of July 2008, EPA advanced two chemical evaluation programs of interest to

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chemical manufacturers, importers and processors when the Agency proposed a new test rule for high production volume chemicals under the Toxic Substances Control Act and held a public meeting to discuss proposed modifications to the Voluntary Children's Chemical Evaluation Program.

EPA Releases Interim Approach for Applying the Audit Policy to New Owners

On August 1, 2008, EPA released its "Interim Approach to Applying the Audit Policy to New Owners" ("Interim Approach"). The Audit Policy currently offers reduced penalties to companies that voluntarily discover noncompliance at their facilities, promptly disclose and correct any violations discovered, and take steps to prevent future violations.

California Court Rules Land-Use Decisions Must Address Global Warming

On April 22, 2008, Los Angeles Mayor Antonio Villaragosa signed into law the Private Sector Green Building Plan, one of the nation's first green building laws requiring private property owners to build green. The Ordinance is one element of the "Green LA Plan," which calls for Los Angeles to reduce its carbon footprint by 35 percent below 1990 levels by 2030. Los Angeles estimates that the Private Sector Green Building Plan will reduce carbon emissions by 80,000 tons by 2012.

EPA Issues Advance Notice of Proposed Rulemaking on GHG Emissions: Asks for Further Public Comment

On July 11, EPA confirmed that the present Administration will not be regulating greenhouse gas (GHG) emissions. Stating that the Clean Air Act is "ill-suited for the task of regulating global greenhouse gasses," and that any such regulation "would result in an unprecedented expansion of EPA authority and would have a profound effect on virtually every sector of the economy," EPA instead issued an Advance Notice of Proposed Rulemaking seeking public comment on the potential ramifications of using the Clean Air Act to regulate GHG emissions.

President Signs Bill Overhauling Consumer Product Safety Laws

On August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008 ("the Act") which significantly expands the authority of the Consumer Product Safety Commission (CPSC), imposes new consumer product safety requirements for a wide-range of consumer products, including children's products and all-terrain vehicles (ATVs), and increases funding for the CPSC.

D.C. Circuit Court Vacates EPA Rule Prohibiting Supplemental Title V Monitoring Requirements

On August 19, 2008, the U.S. Court of Appeals for the District of Columbia Circuit vacated a Clean Air Act rule promulgated by the United States Environmental Protection Agency that prevented state and local permitting authorities from supplementing monitoring requirements in Title V permits.

Previous Issues of the Massachusetts Environmental, Land Use and Real Estate Alert