



# ACCELERATED PERMITTING

## Massachusetts Department of Environmental Protection Implements Changes to Wetlands Regulations

### *Expedited Permitting Process Delivers Development Incentives; Frivolous Appeals Are Reduced*

The Massachusetts Department of Environmental Protection (DEP) is offering a sizable incentive to developers as a means to enhance environmental compliance. According to the DEP's revisions to the wetlands protection regulations, developers can expect a much more streamlined permitting process for their projects if they stay at least 50 feet from wetlands. The revisions also propose to limit costly and time-consuming appeals of these projects. The DEP's revisions were proposed, in part, in response to recent data showing greater than expected loss of wetlands, particularly from illegal alterations of resource areas, and DEP hopes to be able to focus more of its resources on enforcement, rather than frivolous appeals.

#### **The Prior Regulations**

In the past, all development projects within a 100-foot buffer zone adjacent to wetland resource areas required review by the local conservation commission through a Determination of Applicability and/or Notice of Intent application process. This permitting process is burdensome on both the conservation commissions and the applicants.

In recent years, the DEP's budget and staff have seen significant reductions. These tightened resources have made it increasingly difficult for the agency to manage the cumbersome permitting process and to effectively enforce the wetlands protection regulations.

The DEP's ability to adequately protect wetland resource areas has been further hindered by the high number of frivolous appeals filed for buffer zone projects that present little or no real environmental impact.

These new regulations are intended to enable DEP resources to be reallocated such that more time and money can be directed to its enforcement function.

# C L I E N T A L E R T

## What Is Changing?

Projects will qualify for a streamlined permitting process if:

- o no work occurs within the first 50 feet of the 100-foot buffer zone and if the project is located away from other sensitive areas
- o stormwater management controls are incorporated
- o erosion controls are provided during construction
- o the buffer zone does not contain slopes greater than 15%, or more than 40% impervious area.

To confirm the extent of resource areas and the buffer, and to certify eligibility, an applicant must submit a Notice of Resource Area Delineation with the required fee and abutter notification.

The conservation commission will confirm the delineation through an Order of Resource Area Delineation, which will be noted on the land records.

Only the wetlands delineation can be appealed if a project meets the criteria for the streamlined permitting.

Projects with proposed work within the first 50 feet of the 100-foot buffer zone still must proceed under a Notice of Intent.

In addition, DEP hopes the new regulations will reduce the number of “delay tactic” appeals – appeals with no true environmental basis – by modifying the criteria for who has standing to appeal, even for projects that must seek Orders of Conditions.

Anyone bringing an appeal must now have participated (meaning submitted written comments) in the permitting process prior to requesting a hearing. This element of the regulations has been included to allow consideration of objections earlier in the process, and to eliminate appeals by those who cannot show that their property will be affected by a project.

The DEP believes that the new regulations are consistent with its obligation to provide due process, while reducing delays in resolving cases.

## Clear Incentive to Avoid Wetland Disturbance

In exchange for a streamlined review process and protection from frivolous appeals, the new regulations encourage project proponents to avoid all disturbance within 50 feet of the edge of wetlands. If project proponents fail to keep all work outside the first 50 feet of the 100-foot buffer zone, they must deal with the burdens and delays associated with proceeding under a Notice of Intent / Order of Conditions. In addition, work within the 50-foot zone within the next three years can be prohibited if an initial streamlined process was utilized.

## Timing of the Changes

These revisions to the wetlands protection regulations became effective on March 1, 2005. They automatically expire in three years, unless renewed.



The full text of the new wetlands protection regulations is available at <http://www.mass.gov/dep/brp/ww/regs.htm>.

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