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A storm of regulatory changes are in the wind

May 23, 2013 - Green Buildings

Several regulatory changes are being considered at the local and state levels, all of which will impact real estate development.

Boston's city council has adopted a Building Energy Reporting and Disclosure Ordinance (BERDO) which requires large buildings (50,000 s/f or larger) to report energy use, including: water consumption and green house gas (GHG) emissions. The reporting will be phased in over several years, starting with city-owned buildings and then moving to non-residential and then residential buildings (35,000 s/f). Reporting will commence this year with information obtained during calendar 2012.

At the request of the mayor, the city's conservation commission has begun the process to establish a local wetlands ordinance. Boston is one of the few municipalities, and one of only six in the coastal zone, that does not have a wetlands ordinance. The ordinance is likely to be more stringent than the state Wetlands Protection Act (which is recognized by the Mass. courts based on the decision in *Lovequist v. Conservation Commission of the Town of Dennis*, 1979). Part of the impetus for the ordinance is tied to the city's concern about climate change issues, increased coastal flooding and temperature rise; and the need for greater protection of sensitive resource areas.

The Mass. Department of Environmental Protection (DEP) has embarked on a regulatory reform package that proposes amendments to regulations for: Wetlands, waterways, wastewater, sewer systems, Title 5, solid waste and hazardous waste. Among the many changes to the Chapter 21E regulations are: the reduction of certain thresholds for NonAqueous Phase Liquid (NAPL), redefinitions of "urban fill," changes to tier classifications, site closure criteria for waste sites with vapor intrusion issues, and modifications to Activity and Use Limitations (AULs).

The Mass. Executive Office of Energy and Environmental Protection has launched a "dashboard" (a performance management tool) to keep track of GHG emissions, as a way to keep track of progress toward the year 2020 goal of reducing GHG emissions by 25% below 1990 levels (as required by the 2008 Mass. Global Warming Solutions Act). To date, about 40% of the goal has been achieved. In addition, governor Patrick announced that the goal to reach 250 megawatts (MW) of solar energy installed in residential and commercial buildings has been reached four years early. A revised goal of 1,600 MW has been set for the year 2020.

Susan Bernstein is an attorney at law, Needham, Mass.