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Proposed Mass. Contingency Plan (MCP) amendments and potential real estate implications

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The Mass. Department of Environmental Protection (MassDEP) has published amendments to the state's environmental regulations, known as the Mass. Contingency Plan, or MCP (310 CMR 40.0000). These revisions will have a significant impact on property owners, developers, architects, and all those involved in the real estate industry.

The purpose of the proposed MCP amendments, which are part of MassDEP's Regulatory Reform Initiative, are intended to enhance program efficiency and maintain a high standard of environmental protection. The more significant amendments that may affect property construction, redevelopment, and renovation relate to urban fill, petroleum impacted sites, and new health risk information on the toxicity of chlorinated solvents and their potential to migrate into indoor air. Specifically, the amendments are intended to:

- * Streamline site permitting. Sites with releases of oil and/or hazardous materials are currently classified as Tier I or Tier II sites, depending on the degree of environmental risk; with the highest risk sites being ranked as Tier I. Tier I sites currently require a special permit from MassDEP. The proposed amendments eliminate the need for these permits and streamline the disposal site classification system.
- * Provide additional guidance and clarification on "background" conditions posed by urban fill and how to evaluate associated risk.
- * Streamline procedures associated with filing a deed restriction on a property (known as an Activity and Use Limitation or AUL). AULs are deed notices used to limit certain future uses of properties where contamination would pose risk to human health or the environmental.
- * Specify the requirements for sites with systems that capture potentially hazardous gases or vapors from beneath occupied structures. MassDEP describes these systems as Active Exposure Pathway Elimination Measures or (AEP EMs) and has attempted to clarify conditions for these systems for real estate development and maintenance.
- * Utilize recent advancements/understanding of how free-phase petroleum behaves in the environment, and allow Licensed Site Professionals (LSPs) to use this information when evaluating risks posed by residual petroleum and properties (i.e. detection of greater than ½-inch of petroleum in a monitoring well does not mean a site cannot achieve permanent regulatory closure).
- * Revise cleanup standards and notification values using the most up to date toxicity information for several chemicals. Of particular note to real-estate development and property professionals are the lowering of several standards, including lead, trichloroethylene, vanadium, and polychlorinated biphenyls (PCBs). These modifications may result in increased costs for property redevelopment, soil disposal, property maintenance, and regulatory reporting.

The LSP Association (LSPA) has prepared significant comments on these revisions, and their

regulations subcommittee is meeting regularly to discuss the potential impact. The LSPA has suggested a six-month transition period following promulgation of these amendments to work out any issues and establish consistency. Real estate professionals should be aware of these amendments and understand that property redevelopment and construction may include some new requirements related to environmental issues. Many of the changes are intended to streamline the regulatory process of working on impacted properties; however, property owners and LSPs will need to have a thorough understanding of the proposed amendments and how they will affect construction, redevelopment, and long-term property maintenance.

A detailed summary of the proposed MCP amendments can be found at the following link on MassDEP's website:

<http://www.mass.gov/eea/docs/dep/cleanup/laws/mcpsum13.pdf>

The actual proposed amendments can be found at:

<http://www.mass.gov/eea/docs/dep/cleanup/laws/mcpdrtrl.pdf>

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