

Boston Regulatory Initiatives Address Climate Change

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Matthew J. Kiefer and Christian G. Regnier



Three recent regulatory initiatives affecting land use and development reflect the City of Boston's continuing efforts to prepare for the local effects of global climate change.

1. Climate Change Guidelines and Questionnaire. Following the lead of the Boston Redevelopment Authority ("BRA"), the Boston Zoning Commission recently amended the Boston Zoning Code to include guidelines on climate change preparedness and resiliency (available [here](#)). Proponents of projects subject to Article 80 review, including Institutional Master Plan approvals, must now analyze how forecasted future climate conditions may affect the project's environmental impacts throughout its expected life, and inform the BRA through the accompanying Questionnaire (available [here](#)) of any strategies they intend to employ to avoid, reduce or mitigate those impacts. While the new Guidelines and Questionnaire increase the scope of impact review, they neither proscribe conduct nor explicitly condition project approval on meeting certain baselines. Instead, they seek to raise awareness of the risks posed by extreme weather events and serve as an information-gathering tool by asking proponents to address and disclose how prepared their proposed projects are for future climate conditions.

2. The Air Pollution Control Commission Adopts BERDO Regulations. We advised you a year ago that the Building Energy Disclosure and Reporting Ordinance ("BERDO"), which would require certain Boston buildings to report annual energy and water consumption and greenhouse gas emissions, was before the City Council for approval. The ordinance has since become law. The Air Pollution Control Commission has now adopted final regulations (available [here](#)) to implement the ordinance after receiving written and oral comments on the draft regulations. All non-residential buildings over 50,000 square feet, and any set of non-residential buildings on one tax lot totaling over 100,000 square feet, must report their energy and water consumption for the previous calendar year through the EPA's Portfolio Manager tool by May 15, 2014 (this deadline may be extended). It is expected that all buildings 35,000 square feet or larger will be covered by the ordinance by 2017. The City's step-by-step user guide provides more information on the reporting procedures.

3. Plans to Adopt a Local Wetlands Ordinance on Hold. Last year, the Conservation Commission developed guiding principles for a Local Wetlands Ordinance ("LWO"), which may be

found [here](#), with the help of a steering committee composed of representatives from the private sector and various state agencies. A City Council vote on a proposed ordinance was delayed pending the transition to a new mayor. The guiding principles suggest that the final ordinance will focus on ensuring that the effects of sea level rise and flooding are accounted for during project impact review. If Mayor Walsh decides to present a LWO to the City Council for adoption, and the ordinance is ratified, the Conservation Commission will then develop supporting regulations, likely including a map incorporating projected sea level rise into its delineation of Land Subject to Coastal Storm Flowage.

Goulston & Storrs continues to follow developments related to these regulatory initiatives and [climate change](#) more generally.

For questions about the information contained in this advisory, please contact your usual Goulston & Storrs attorney or the attorneys listed below.

[Matthew J. Kiefer](#)

Director

(617) 574-6597

mkiefer@goulstonstorrs.com

[Christian G. Regnier](#)

Associate

(617) 574-6591

cregnier@goulstonstorrs.com

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