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Landlocked Tidelands Deadline Extended

Final legislation is of critical importance to Boston development

The Massachusetts Supreme Judicial Court (SJC) agreed on September 4th to delay by 60 days the execution of its February decision regarding Chapter 91 license requirements. Without legislative correction, this decision would put into flux the legal status of numerous development projects built, now under construction and in the pipeline. It is estimated that 3,000 acres in Boston may require Chapter 91 licensing. The House and Senate had approved separate bills with marked differences and were not able to reach agreement by a September 6th deadline. The 60-day extension will give the Legislature time to pass legislation preserving the exemption.

The process and regulations for waterfront and landlocked tidelands development have evolved over two decades into a complex but workable system that has involved the active participation of public, business and community interests. The Bureau believes therefore that significant modification of this process is not required. Accordingly, we believe that the Senate bill will best serve the public and development interests of Boston.

Background -This situation came about as a result of a case involving the NorthPoint development project in East Cambridge in which the SJC issued a decision in February that the Department of Environmental Protection (DEP) did not have the authority to exempt development on landlocked filled tidelands from Chapter 91 requirements. Chapter 91 is designed to protect the public's interest by insuring that tidelands and

waterways serve some public purpose and preserve public access. In 1990, DEP issued regulations that exempted landlocked tidelands from requiring a Chapter 91 license. The Court delayed the execution of its decision for six months, in effect, giving the Legislature time to remedy the problem by September 6th.

House and Senate Bills - The House and Senate bills both preserve the exemption but the House bill (H.4184) would create a new Office of Tidelands and Great Ponds that could apply new requirements to any new construction or substantial change in use (residential to retail) on any tidelands. This office would be within the Office of Administration and Finance but seems to have permitting responsibilities similar to the DEP. The House bill also changes the definition of "public ways" that would significantly alter current development planning and the status of existing structures.

The Senate bill (S.2309) comes closest to retaining the process prior to the SJC decision. The bill creates the position of Public Information Officer to report on Chapter 91 public benefits and be a resource to the public on the licensing process. Beyond these differences, both bills expand the MEPA review process to include the environmental impact on groundwater levels and add new requirements regarding consideration of public access. Watch for the final bill.