

The Revised Massachusetts Greenhouse Gas Policy and Protocol: Potential Implementation Issues

An Update For NAIOP - Massachusetts

May 27, 2010

Boston, Massachusetts

Mark C. Kalpin

mark.kalpin@wilmerhale.com



WILMER CUTLER PICKERING HALE AND DORR LLP ®

Overview

- Revised GHG Policy effective May 5, 2010
- Incorporates most comments received from the MEPA GHG Working Group
- Applies to new projects that file an Environmental Notification Form after the Policy's effective date
- Notice of Project Change for an existing project to be reviewed on a case-by-case basis
- Policy includes detailed list of potential mitigation measures for evaluation
- Secretary's Certificate will establish required scope of analysis for potential mitigation measures



Potential Implementation Issues

- Scope of Technical Analysis
- Mitigation Measure Feasibility Analysis
- Phased Development Analysis
- Compliance Certification

Scope of Technical Analysis

- GHG Policy includes four pages of non-exhaustive potential mitigation measures
- Additional measures potentially established through Stretch Code, LEED, and “Solar Task Force” process
- Secretary’s Certificate on ENF determines scope for quantification of GHG emissions
- Potential additional GHG analysis for high water usage, land clearing, construction-related trips, or other issues
- Potential for cookbook vs. case-by-case evaluation
- Potential benchmark for required GHG reduction (%)
- Unbounded universe of mitigation measures
- Creates potential for iterative review process, public/agency comments, and appeals

Mitigation Feasibility Analysis

- Initial evaluation of feasibility based on scope identified in Secretary's Certificate
- Detailed quantification of GHG reduction for measures identified as feasible (preferred alternative)
- Potential requirement to quantify GHG reduction from measures identified as not feasible to implement
- Based on hypothetical "indicative" design
- Effectively reinstates Case 3 analysis requirement that was eliminated from the Revised Policy

Phased Development Analysis

- Phased Developments grounded on physical, financial, regulatory, or tenant issues
- Underlying need for certainty under MEPA
- Lock in regulatory requirements for financing
- Minimize and define need to file NPC
- Minimize potential for appeals or delays
- Revised Policy Issues
 - Potential for updated baseline / additional review
 - Tenant “Fit Out” Manual – guidance vs. requirement
 - “As-builts” – certification vs. review / approval
 - Ultimate certification plan review process not defined

Compliance Certification

- Certification by appropriate professional that:
 - All required mitigation measures implemented, or
 - Equivalent measures (as determined by same modeling assumptions) have been implemented to achieve same GHG percentage reduction
- Certification to be supported by:
 - “As-built” plans for buildings, and
 - Implementation plan for operational measures
- Review process for certification plans not defined
- Certification process for Phased Developments not defined