

May 7, 2010**ENVIRONMENTAL UPDATE****LEGISLATURE EXPANDS COP ELIGIBILITY FOR
STRUCTURES BUILT IN TIDAL WATERS PRIOR TO 1995**

Senate Bill 124, passed by the General Assembly May 5, makes significant changes to the statutes regulating docks and other structures in tidal waters. The bill, which has not yet been assigned a Public Act number, was originally proposed by the Department of Environmental Protection (“DEP”). Senator Andrew Maynard (D. Stonington) was successful in obtaining amendments to the DEP proposal, in part to help address the plight of coastal property owners faced with DEP enforcement for structures on their properties built by prior owners.

DEP has issued numerous Notices of Violation (“NOVs”) over the past several years to property owners for maintaining unpermitted docks and other structures in a number of coastal communities. In many cases, these NOVs were issued even though the current owner was not the person who originally built the dock or seawall.

If the structures subject to the NOV could be documented to pre-date 1980, the owner could apply for a Certificate of Permission (“COP”), which the Department is required to process within 45-90 days. If the structures were built post-1980, the owner’s only recourse was either to remove the structures, fight the DEP, or apply for an individual permit. An individual permit application is more expensive and far more time-consuming (on the order of a year or more) than an application for a COP.

The most important revision to the statutory scheme obtained by Senator Maynard this year, with Murtha Cullina’s assistance, was to make many more structures eligible for COPs. Effective October 1, 2010, the bill changes the eligibility date for COPs to 1995, provided the structures comply with applicable standards. This change should greatly assist coastal landowners who acquire property with unpermitted structures on them to bring their properties into compliance.

Another revision sponsored by Senator Maynard was an amendment to the Tidal Wetlands Act which gives an applicant for a tidal wetlands permit the unequivocal right to request a hearing before a DEP hearing officer on an application. This would allow the applicant to challenge an adverse recommendation of DEP staff in a Notice of Tentative Determination on the application. The amendment provides the applicant the same due process rights conferred in other DEP statutes, most notably the Connecticut Clean Water Act. Unfortunately, DEP

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If you have any questions about the issues addressed here, or any other matters involving environmental legal issues, please feel free to contact the following attorneys:

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would not agree to provide the same right to applicants for dock and seawall permits under the Structures and Dredging Act.

The DEP was successful in obtaining an amendment to the Structure and Dredging Act that provides the Commissioner with the authority to charge a processing fee four (4) times the normal fee for an application for unpermitted structures which are not COP-eligible. However, the bill specifically authorizes the Commissioner to lower the fee based on extenuating circumstances, including whether the applicant acquired the property after the unpermitted structures were built and had no knowledge or reason to know that the structures were unauthorized.

There are a number of other important statutory changes for coastal property owners. The bill requires that effective October 1, 2010, the recipient of a permit, certificate or other authorization for a dock or other structure issued under the Tidal Wetlands, Structures and Dredging, or COP statutes must record the relevant document on the municipal land records. DEP proposed this requirement to make it clear to anyone searching the title to a coastal property what structures are permitted at the property. To address the issue of past permits, the bill also requires any coastal property owner with a permit or COP for a dock or other structure to record the most recent approval from DEP on the municipal land records prior to selling the property.

For additional information on this important legislation, or questions on coastal resource permitting, contact Gregory A. Sharp (gsharp@murthalaw.com) at 860-240-6046 or Andrew W. Lord (alord@murthalaw.com) at 860-240-6180.

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