

MASSACHUSETTS MUNICIPAL ASSOCIATION

Environmental Permitting, Energy, and Housing Developments

June 2, 2026 webinar

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On behalf of the Massachusetts Municipal Lawyers
Association

Mr. McGregor appreciates the assistance of his Senior Associate Caroline Quijada for the
court case summaries

5/27/2026

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Massachusetts State Court Decisions


- ▶ Currence v. A.D. Makepeace Company, 106 Mass. App. Ct. 71 (Sept. 19, 2025) (FAR denied 1/15/2026)
 - ▶ Whether the Carver Earth Removal Bylaw’s “main purpose” was to prevent or minimize damage to the environment as used in M.G.L. c. 214, 7A
 - ▶ Ten Citizens alleged that Makepeace’s failure to obtain a permit under the ERB gave rise to a claim under M.G.L. c. 214, 7A because the earth removal was causing damage to the environment and was in violation of the ERB whose **major purpose** was to prevent or minimize damage to the environment
 - ▶ Sup. Ct.: No, the major purpose of ERB is not to prevent or minimize damage to the environment
 - ▶ App. Ct.: Reversed - Yes, that is its major purpose



Massachusetts State Court Decisions

- ▶ Sunpin Energy Services, LLC v. Zoning Board of Appeals of Petersham, 105 Mass. App. Ct. 641 (July 9, 2025) (appeal pending) 
 - ▶ Plaintiffs sought to build and operate a large-scale ground-mounted solar energy system
 - ▶ The project was proposed outside of the Town's as-of-right solar energy overlay district; it required a special permit and site plan review
 - ▶ Denied by ZBA: 2 (yes) - 1 (no)
 - ▶ Sup. Ct.: Granted summary judgment in favor of the ZBA

Massachusetts State Court Decisions

- ▶ Sunpin Energy Services, LLC v. Zoning Board of Appeals of Petersham, 105 Mass. App. Ct. 641 (July 9, 2025) (appeal pending) 
 - ▶ As summarized by the Appeals Court, the ZBA denied the SP because the ZBA preferred maintaining the land as forest rather than solar energy development
 - ▶ ZBA exceeded its discretionary power - remanded to ZBA - may impose reasonable conditions, but cannot deny SP
 - ▶ FAR allowed on 12/11/2025
 - ▶ SJC-13860: Oral arguments scheduled for April 8, 2026 @ 9 am

Massachusetts State Court Decisions

- ▶ Palmer Renewable Energy, LLC v. Zoning Board of Appeals of Springfield, 105 Mass. App. Ct. 518 (May 7, 2025) (FAR denied 10/16/2025)
 - ▶ On appeal from the Land Court
 - ▶ Plaintiff was granted two building permits in Nov. of 2011 for the construction of a biomass-fired power plant
 - ▶ Building permits were subject to lengthy appeals
 - ▶ Key issue: whether the building permits expired
 - ▶ 2010 “Permit Extension Act” (St. 2010, c, 240, § 173) extended the expiration of the building permits for four years “**in addition to the lawful term of the approval**” → Does this run concurrently or consecutively with equitable tolling periods due to litigation?

Massachusetts State Court Decisions


- ▶ Palmer Renewable Energy, LLC v. Zoning Board of Appeals of Springfield, 105 Mass. App. Ct. 518 (May 7, 2025) (FAR denied 10/16/2025)
 - ▶ Land Ct.: concurrently → permits expired
 - ▶ App. Ct.: consecutively → permits valid
 - ▶ Does tolling begin when appealed at the local level or only once in court?
 - ▶ App. Ct.: tolling began when the city appealed the building permit to the ZBA

Massachusetts State Court Decisions

- ▶ Springfield Water and Sewer Commission v. Department of Environmental Protection, 105 Mass. App. Ct. 721 (July 31, 2025) (FAR denied 12/11/2025)
 - ▶ Involved DEP's regulations that implement the Massachusetts Water Management Act (G.L. c. 21G)
 - ▶ 310 CMR § 36.07(2)(c) required water suppliers to establish enforceable restrictions limiting nonessential outdoor water use during the period of declared drought
 - ▶ The plaintiffs filed suit under G.L. c. 30A, § 7, claiming that this regulation infringed on their right to withdraw more than 100,000 gallons of water per day
 - ▶ Sup. Ct.: (1) the regulation restricts water use, not the amount of withdrawal. No infringement on the plaintiffs' existing withdrawal rights; (2) the regulation is not arbitrary and capricious
 - ▶ App. Ct.: Affirmed



Federal District Court Decisions

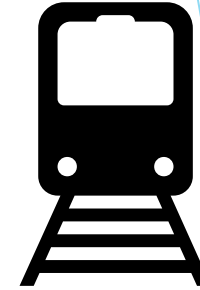
- ▶ New York v. Trump, -- F.Supp.3d---, No. 25-CV-11221-PBS (Dec. 8, 2025)  (appeal pending)
 - ▶ 1/20/25 executive memo directed federal agencies to suspend issuing all new permits/leases/authorizations needed to develop and operate onshore and offshore wind energy projects - indefinite moratorium
 - ▶ An agency action that carries out a presidential directive is *usually* subject to APA review
 - ▶ Memo is a final agency action under APA
 - ▶ Agency Defendants did not reasonably consider the relevant issues and reasonably explain their decision to implement their action
 - ▶ Memo and agency action are arbitrary and capricious
 - ▶ Memo and agency action are contrary to law (APA)
 - ▶ Memo vacated and declared unlawful in violation of the APA

See related decision: Massachusetts v. Trump, 790 F.Supp.3d 8 (2025)



United States Supreme Court Decisions

- ▶ Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168 (May 29, 2025) (Kavanaugh)
 - ▶ Plaintiff proposed an 88-mile railroad line. It submitted an EIS as required by NEPA
 - ▶ The US Surface Transportation Board approved the railroad line
 - ▶ DC Circuit: found “numerous NEPA violations arising from the EIS”
 - ▶ U.S. Sup. Ct.: Reversed and remanded
 - ▶ NEPA is purely procedural and does not mandate particular results -- only the process
 - ▶ Substantial deference - judicial deference extends to the agency’s determination of what details are relevant in an EIS



United States Supreme Court Decisions

- ▶ City and County of San Francisco, California v. Environmental Protection Agency, 604 U.S. 334 (March 4, 2025) (Alito)
 - ▶ San Francisco operates a wastewater & stormwater facility that discharges the untreated water into the Pacific Ocean when over capacity
 - ▶ Under CWA, San Francisco obtained and maintained a NPDES permit to discharge this overflow (raw sewage) into the Ocean
 - ▶ In 2019, the EPA issued the City a renewed NPDES permit for this facility that added two “end-result” requirements.
 - ▶ These entailed requirements that the receiving body of water must meet—instead of requirements that the discharging water must meet or comply with (i.e., the receiving water cannot violate any application water quality standards)



United States Supreme Court Decisions

- ▶ City and County of San Francisco, California v. Environmental Protection Agency, 604 U.S. 334 (March 4, 2025) (Alito)
 - ▶ 9th Circuit: CWA (33 USC § 1311(b)(1)(C)) authorizes EPA to impose any limitations that ensure the receiving body satisfies water quality standards
 - ▶ U.S. Sup. Ct.: § 1311(b)(1)(C) does not authorize EPA to include “end result” requirements in NPDES permits. It is the EPA’s job to determine what steps a source must take to ensure the water quality standards applicable to the body of water are met



EXPEDITED PERMITTING FOR SMALL CLEAN ENERGY PROJECTS

- 225 CMR 29.00 establishes a process whereby small clean energy infrastructure facilities (SCEIFs) may opt into an expedited permit program, through which municipalities must grant a decision within 12 months of completion of the application.
 - In conjunction with the 2024 Climate Act, which seeks to expand clean energy infrastructure by streamlining the approval process.
- This expedited process may be offered by municipalities as early as July 1, 2026, and must be offered by October 1, 2026.

- DOER issued a set of draft guidelines on January 21, 2026. Public comment for the guidelines closed March 13.
- The draft guidelines discuss requirements for pre-filing notices; consolidation of reviews; public participation; meeting public health, safety, and environmental standards; commonly expected conditions; minimization and mitigation measures; and constructive approvals.
- The draft guidelines, in their current state, are very in-depth and provide helpful information for potential SCEIFs hoping to take advantage of the consolidated permitting process.

CLIMATE ACT ENERGY REGULATIONS

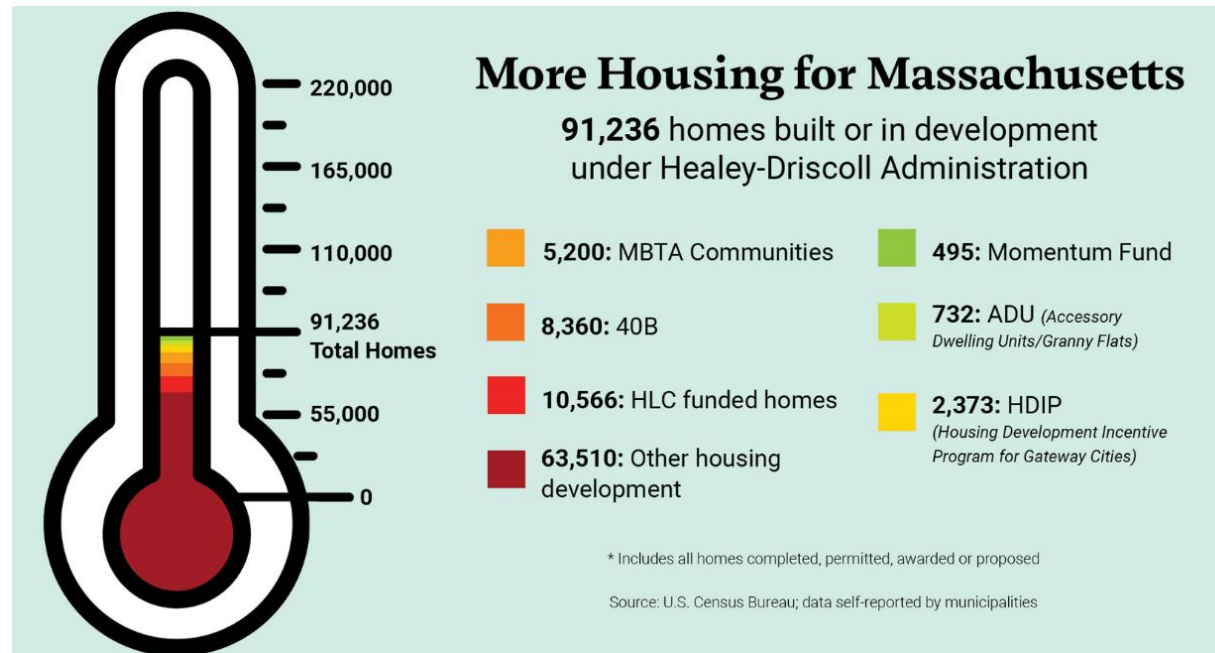
In addition to 225 CMR 29 (and its pending guidelines), a handful of other energy regulations have been recently promulgated in line with the 2024 Climate Act:

- 980 CMR 13, 14, 16: Larger clean energy infrastructure facilities (CEIFs) may also engage in a similar one-stop, consolidated (15 month) permitting process. Very similar requirements as under 225 CMR 29.00. Appeals go directly to Energy Facilities Siting Board (EFSB) Director for de novo review.
- 220 CMR 34: Financial assistance for stakeholders in DPU or EFSB proceedings (up to \$150,000/party and \$500,000/proceeding).
- [PENDING] 980 CMR 15: Requirements for assessing EJ impacts and site suitability for EFSB projects.
- [PENDING]: 980 CMR 17: Constructive approval for EFSBs.
- [PENDING]: 220 CMR 32: New fee schedules for EFSB filings in docket D.P.U. 26-30.

- In response to the proposed rule on fee applications for EFSBs, the Massachusetts Association of Health Boards have issued comments urging the Department to:
 - (1) explicitly recognize local boards of health (BOH) as Permit Enforcement Agencies (PEAs);
 - (2) create a BOH pre-siting and operational public-health review fee applicable in all Battery Energy Storage System (BESS) related cases; and
 - (3) establish a dedicated site-assignment/nuisance bond or cash-deposit line item in them amount of \$250,000 that BOHs can draw upon if a facility is later shown, in their opinion, to be a nuisance or noisome trade requiring a full proceeding.
- The comments state various health concerns in their rationale, including noise from cooling fans, inverters, and transformers and toxic contents of smoke.

AFFORDABLE HOMES ACT

- On August 6, 2024, Governor Maura Healy signed the Affordable Homes Act into law, authorizing \$1.5 billion in spending over the next five years to address the state's lack of affordable housing. The legislation seeks to make housing more affordable by drastically increasing the housing supply, both through direction of state funds and changes to the Zoning Act.



SEASONAL COMMUNITIES

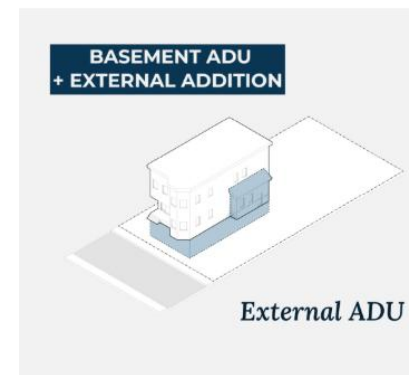
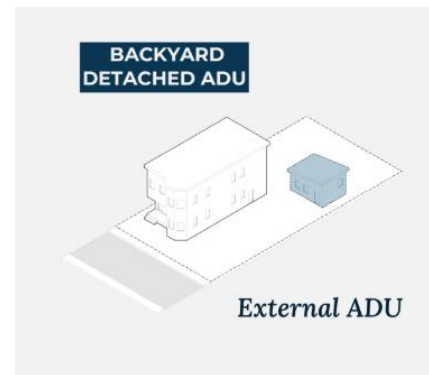
- § 5: Designation of communities with substantial season variations in employment and housing needs as “Seasonal Communities.”
 - The Community may acquire year-round housing occupancy restrictions;
 - The Community may acquire and develop housing units with a preference for housing seasonal community public employees that are “necessary to the health and safety of maintaining a year-round community...”
 - Residential uses are permitted as of right on Undersized Lots if it is to be used for an “attainable housing unit,” it is located in a single-family residential zoning district, complies with floor-to-area ratio and wastewater/sewer requirements, and is not to be used as a seasonal home or short-term rental.

ADUs

- AHA § 3: Subject to reasonable restrictions, accessory dwelling units (ADUs) are allowed as of right in single-family residential zoning districts.
 - May be rented out and will not require a dedicated parking space if located within 0.5 miles of a public transit station.
 - Can be 900 square feet or 50% of the size of the primary dwelling, whichever is smaller.
 - Homeowners can convert existing spaces (like basements or garages) into ADUs.
 - Neither the primary residence nor the ADU must be owner-occupied.
 - Some municipalities, particularly in more rural or less densely populated areas, may be exempt.

AHA § 8: Guidance on “reasonable regulations”

“No zoning ordinance or by-law shall **prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval** for ... a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district... subject to **reasonable regulations**, including, but not limited to... **site plan review, regulations concerning dimensional setbacks and the bulk and height of structures** and may be subject to **restrictions and prohibitions on short-term rental...**”



DRAFT SURPLUS LAND REGULATIONS

- AHA § 121-22: streamlined process for the disposition of surplus land for housing purposes through the Division of Capital Asset Management and Maintenance (DCAMM)
 - Requires municipalities to allow residential development on property conveyed by DCAMM as of right
 - Municipalities may reasonably regulate the following factors, so long as the development achieves a statutory minimum of 4 housing units per acre: bulk and height of structures; lot area; setbacks; open space coverage requirements; and site plan review.
 - Health, safety, utility, environmental, energy code, and other regulations may be applied to these developments.
 - Public comment on these regulations was open until April 13.

STARTER HOME ZONING DISTRICTS

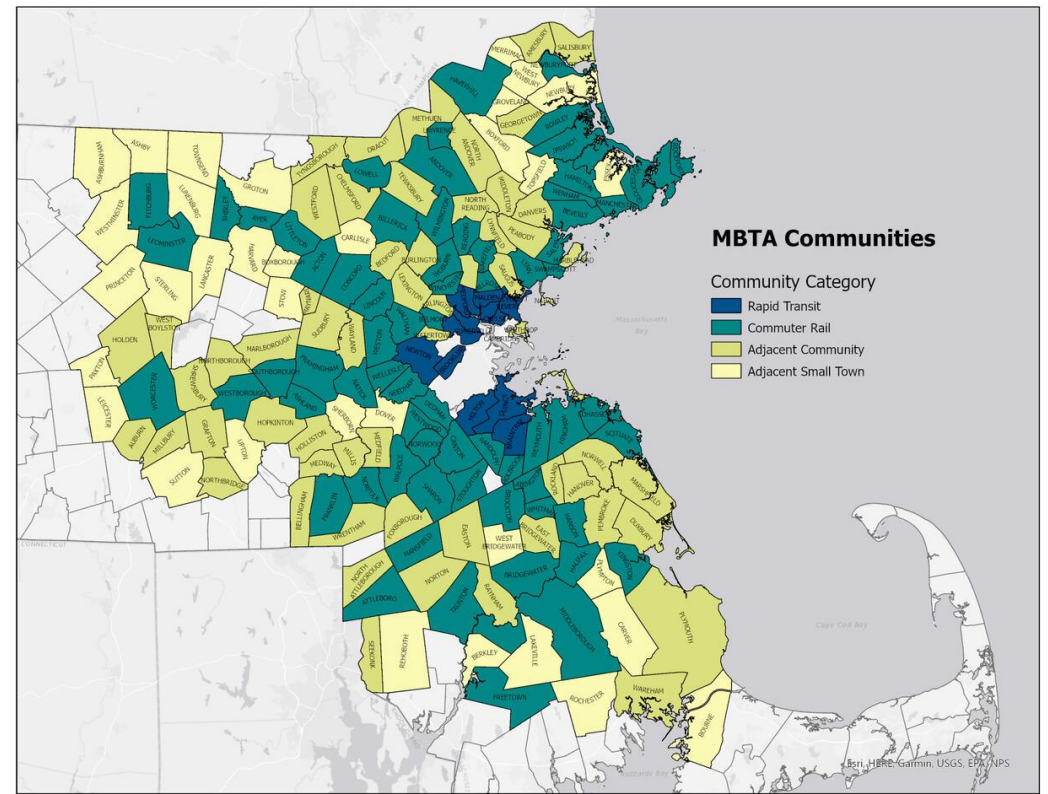
- March 13, 2026: Executive Office of Housing and Livable Communities (EOHLC) finalizes 760 CMR 69.00, implementing the Starter Home Zoning District Program under M.G.L. c. 40Y.
- 40Y districts may be in any location, so long as the zoning meets other requirements under 40Y
 - While prioritizing density, 40Y does not require zoning districts to be near public transit, village centers, etc.

- 40Y districts must have a minimum density of 4 units per acre
- Upon EOHLC approval of a 40Y District, cities and towns are eligible for two grants:
 - Zoning Incentive Payment: one-time payment of \$10,000 to \$60,000, based on the number of additional as-of-right units allowed by the new zoning. Granted at the time of conditional or final approval.
 - Density Bonus Payment: \$3,000 per new unit which are (i) not previously allowed of right and (ii) meet affordability requirements. Granted at construction.
 - These payments have various eligible uses, including community infrastructure, transportation, and utility upgrades.

MBTA COMMUNITIES ACT UPDATE

- AHA § 3A: MBTA communities must have at least one zoning district of “reasonable size” in which multi-family housing is permitted as of right. This district must (i) have a minimum gross density of 15 units per acre and (ii) not be located more than 0.5 miles from public transit.
- *Attorney General v. Town of Milton et. al*, 495 Mass. 183 (2025): SJC rules that the AG can enforce the MBTA Communities Act against cities and towns.

- January 29, 2026: AG Campbell files lawsuit against Dracut, East Bridgewater, Halifax, Holden, Marblehead, Middleton, Tewksbury, Wilmington, and Winthrop for their continued noncompliance with the MBTA Communities Law.
- To date, 165 out of 177 MBTA communities are in compliance, creating nearly 7,000 new homes across 34 communities.



QUESTIONS & DISCUSSION

