



## **Conservation Commissions May Bring Enforcement Actions for Decades-Old Violations of Wetlands Protection Act**

The Massachusetts Supreme Judicial Court (“SJC”) recently issued a decision interpreting the three-year statute of repose under the Wetlands Protection Act (“WPA”), G.L. c. 131, § 40, to restart each time real property is sold.

In *Conservation Commission of Norton v. Pesa*, the Conservation Commission of Norton (“Commission”) issued an enforcement order under the WPA to the current owners of property on which unauthorized fill had been placed by a prior owner decades before. The WPA permits an enforcement action against “any person” who acquires property on which work was done in violation of the WPA. The WPA provides that any enforcement action must be brought within three years of the recording of the deed (or date of death) by which “such person” acquires the property. A Superior Court judge interpreted the WPA as creating a statute of repose that limits a conservation commission to bringing an enforcement action within three years of the date of the first transfer of the property after the violation.

On appeal, the SJC disagreed with the Superior Court, finding that the statute of repose created by the WPA is “personal” and the three year period starts running anew each time the property changes hands. Therefore, the SJC found that the Commission’s enforcement action was not time barred. The SJC explained that the plain language of the WPA permits a commission to bring an enforcement action against “any person” who acquires the property, not only the first person. The SJC stated that its construction of the statute was bolstered by the legislative history, in which the Legislature chose not to adopt language that would have tied the statute of repose to the time of the first transfer of the property. The SJC rejected the defendants’ argument that this interpretation of the WPA would defeat the purpose of a statute of repose, which is to provide finality. The court stated that the period of repose “provides finality for each subsequent owner.”

Finally, the SJC found that its interpretation of the WPA was consistent with the overall statutory scheme, which provides that leaving unauthorized fill in place is a continuing violation. The court explained that “[a]n interpretation that enforcement is possible only with respect to the first subsequent owner would leave conservation commissions without a means to enforce certain continuing violations.”

This decision serves as an important reminder to buyers to be on the alert for potential past wetlands violations in property they purchase, even if they occurred decades earlier.”

## About OCM

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