

MHT

MASS HIGH TECH

THE JOURNAL OF NEW ENGLAND TECHNOLOGY

OPINION

Time to speak up on refining state's Ocean Plan

Zoning — a concept generally associated with shopping centers and apartment complexes — moved off dry land this month when Massachusetts released a draft of its trend-setting “Ocean Plan,” which will establish zoning for the state’s coastal waters.

The Ocean Plan, which will soon be the subject of public hearings, is definitely good for business. But it is far better for some businesses than others. Those in industries not favored in the draft document must now speak up for their interests to make sure that the plan takes a more equitable



Ronald Ruth

approach to future ocean development.

The clear winner in the current draft plan is the wind power industry. The plan designates two key areas for large wind projects — one just off the southern end of the Elizabeth Islands and the other off Nomans Land, an uninhabited island southwest of Martha’s Vineyard. Equally important, the plan opens the door to small-scale wind projects of 10 or fewer turbines in many coastal regions of the state. Moreover, it gives clear direction for what these small wind projects will need to do to win approval.

Unfortunately, other industries get no such helping hand. The plan designates a large multi-use area of ocean that can accommodate a wide range of development projects, but it withholds the presumption of approval offered to wind projects. As written, the plan simply gives industries such as aquaculture, transmission cables, fuel pipelines, and sand and gravel extraction a complex set of maps, a series of concerns and a description of hurdles to clear.

This bias toward wind projects reflects a commitment to development of alternative energy resources. Renewable energy projects, such as wave and tidal power generation, while mentioned in the draft plan, are not treated as immediate concerns. As the plan itself states, “It does not appear that commercial-scale opportunities for wave or tidal energy exist in the areas given currently available technology.”

Thus companies and industry groups that hope to eventually benefit from Massachusetts’ new ocean zoning need to be active participants in the coming hearings. The draft plan is a recipe for success for the wind power industry. Other businesses should tell the government, “Write one for me, too.”

The draft plan is a good first step. The plan prohibits development in the Cape Cod Ocean Sanctuary. It also has compiled an impressive series of maps

that document usage considerations ranging from eelgrass beds and shellfish fisheries to whale habitats and commercial fishing areas.

But the plan needs to go further, providing more detailed analysis of the full range of ocean development for the commonwealth. Even the wind power provisions may warrant revision. Rather than promoting small community wind projects as outlined in the draft, state government might do better to allow somewhat larger projects that provide economies of scale. If the goal is to generate power, a limited number of larger projects may prove to be more viable.

Immediate revisions to the Ocean Plan may be a tough sell. Hearings, scheduled to begin in September, will culminate in a final plan by year-end. Still, the plan is being viewed as a work-in-progress that will be revisited at least every five years. Businesses seeking more assistance from state government may not have the ability to affect revisions in 2009, but if they become actively engaged in the process they might be successful when the plan is revisited in 2014.

RONALD W. RUTH is managing partner of Sherin and Lodgen and co-chair of the Environmental Law Group. He concentrates his practice on environmental, real estate and land use law.