



## ***NEW LIFE FOR OLD PERMITS***

The Massachusetts Legislature has delivered good news to land owners and developers. Most land use permits issued under state and local law have been granted two additional years of life. Under Section 173 of the Economic Development Reorganization Act (Sen. No. 2582), permits and approvals valid at any time from August 15, 2008 to August 15, 2010 are given two additional years of validity beyond the otherwise applicable term of the approval.

The categories of approvals thus extended are very broad. The approvals expressly extended include:

- M. G. L. c. 21 - DCR permits
- M. G. L. c. 21A - DEP and CZM
- M. G. L. c. 21D - Hazardous Waste Siting
- M. G. L. c. 40A - Traditional Zoning
- M. G. L. c. 40C - Historic Districts
- M. G. L. c. 40R - Smart Growth
- M. G. L. c. 41 - Subdivision Control
- M. G. L. c. 43D - Expedited permitting
- M. G. L. c. 81, § 21 - Excavation or driveway openings on state highways
- M. G. L. c. 91 - Waterways

M. G. L. c. 131 - Inland fisheries, game, and other natural resources

M. G. L. c. 131A - Endangered Species Act

M. G. L. c. 143 - Building Inspection

1956 Mass. Acts 665 - Boston Zoning

Only a very few types of approval are excluded from the extension: federal permits, Chapter 40B comprehensive permits, and Chapter 131 hunting, fishing, and aquaculture licenses. While an extension does not satisfy any applicable need to address sanitary sewer capacity, projects with extended permits are entitled to priority on future allocations of sewer capacity. Finally, the Act expressly does not affect any authority of local and state boards to revoke or modify an approval.

The law leaves some questions unanswered, despite its seemingly broad scope. For example, this automatic extension has the potential to conflict with the desire of municipalities, in particular, to regulate the timing of projects. As written, the extension applies without regard to whether a local authority intended a narrower window in which to commence a development project. There exists a potential conflict, then, between the powers of the state to grant a blanket extension and the authority of local administrators to expressly condition permits to development in a particular time frame.

*This client advisory was written by James Gray Wagner. If you wish to inquire further about our Land Use Practice, please contact George M. Ford, James Gray Wagner, Michael T. Sullivan, or your attorney at Conn Kavanaugh Rosenthal Peisch & Ford, LLP.*

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