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For Whom the Permitting Bell Tolls

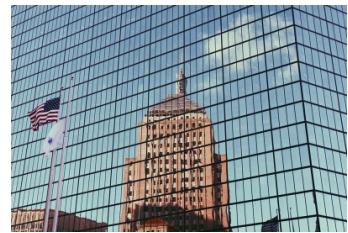
By: Harley Racer

A pair of recent legal events have clarified the time periods for which local and state permit decisions, many currently pending, are now tolled as a matter of law. This is helpful for landowners and developers who have obtained state or local permits and approval in the last couple of years – particularly if they have been tied up in or anticipate litigation. Permit holders can now proceed with a better understanding of the continued validity of those permits.

First, on November 20, 2024, Governor Maura Healey signed into law the Mass Leads: An Act Relative to Strengthening Massachusetts' Economic Leadership (the "MA Leads Act"). Section 280 of the Act provides that "an approval in effect or existence" during the "tolling period", defined as January 1, 2023 to January 1, 2025 "shall be extended for a period of 2 years in addition to the lawful term of the approval."

The MA Leads Act defines "Approval" broadly as "any permit, certificate, order, excluding enforcement orders, license, certification, determination, exemption, variance, waiver, building permit or other approval or determination of rights from any municipal, regional or state governmental entity, including any agency, department, commission or other instrumentality thereof, concerning the use or development of real property, and any environmental permit, including certificates, licenses, certifications, determinations, exemptions, variances, waivers, building permits or other approvals or determinations of rights issued or made under . . . any local by-law or ordinance." The MA Leads Act excludes certain state approvals and federal approvals from the tolling period.

Pursuant to Section 280 of the Act, any local permit in effect or existence between January 1, 2023 and January 1, 2025 is automatically, as a function of law, tolled and extended for two additional years from the prescribed expiration date. No request or action is required by the permit holder or the local permitting agency. For example, if a property owner obtained a zoning variance or a special permit that was valid in December of 2024 but would expire in June of 2025, that variance or special permit is extended to June of 2027 as a matter of law.



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On May 7, 2025, the Massachusetts Appeals Court weighed in on the topic of tolling permits by statute as it relates to litigation tolling in the published decision [Palmer Renewable Energy, LLC v. Zoning Board of Appeals of Springfield, No. 24-P-136](#). The central question before the Court in Palmer was whether statutory tolling, like the tolling provided in the MA Leads Act, runs concurrent with litigation tolling or, instead, runs consecutively after the end of litigation tolling. The Court held that “whether by equitable tolling due to litigation or by exercising a statutory or regulatory mechanism to extend and approval, falls within the broad phrase ‘lawful term of approval,’ the answer is an unequivocal yes.” In Palmer, the Court interpreted the language of a prior statutory tolling act, which uses the same language as that found in the MA Leads Act. The Court acknowledged that protracted litigation combined with statutory tolling provisions may result in “extraordinary” lengths of time for a permit’s validity. The applicant in Palmer now has confirmation that permits obtained as long ago as 2011 are still valid. The Court noted that had the Legislature intended to put definitive dates on such extensions, it could have.

Together, the recently enacted MA Leads Act tolling provision and Palmer provide guidance to permit holders, project proponents – and project opponents – to understand when state and local permit decisions have been tolled as a matter of law.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney [Harley Racer](#).

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