

Resource Area Delineations and the Permit Extension Act

By Lealdon Langley, Massachusetts Department of Environmental Protection

The Jobs Bill passed by the Legislature in July 2012 and signed into law by Governor Patrick extended the tolling period originally set with passage of the Permit Extension Act (PEA) to August 15, 2012. Under the amended PEA, permits issued or in effect during the tolling period are automatically extended for a period of four years from their original expiration date, or from their extended expiration date, if they received an Extension to an Order of Resource Area Delineation (ORAD) or Order of Conditions (OOC).

The majority of applicants possessing valid delineations benefit from the extension of the approval because it gives them certainty about the boundary delineations for the purpose of planning, securing necessary permits and constructing projects at a time when financing of projects is difficult due to slow economic growth. However, for a property owner whose delineation has been extended automatically by the PEA and who may not want the extension, it presents the vexing problem of how to discontinue a delineation that may no longer be accurate or which may not have delineated resource areas specifically enough to seek a new permit. MassDEP has reviewed the issue and has concluded that an amendment of a resource area delineation may be allowed subject to timing restrictions as described below.

Where a Superseding ORAD, DoA or Order of Conditions was issued during the PEA tolling period, the current property owner or his designee will be allowed to seek an amendment to revise a resource delineation during the PEA-extension period, provided that the request can only be filed subsequent to the expiration date established in the most recent valid approval issued by the Department, or as otherwise established by the Wetlands Regulations. This conditional right to file a request to amend a resource area delineation during the PEA permit extension period is limited to the owner/designee and does not extend to private parties or the local and state issuing authorities because parties other than the owner could not reasonably have expected a delineation to be extended past the original term of a Superseding ORAD or OoC, and are not adversely affected by an inability to seek an amendment as is an owner. As alternatives to amending the delineation for projects that have Superseding Orders of Conditions and no other wetland permits, an applicant may request to amend the Superseding Order in accordance with Wetlands Program Policy 85-4 or request a Final Certificate of Compliance if they no longer wish to build the project that was originally permitted.

Conservation Commissions should consult with their Town Counsel on questions about how the PEA affects specific permits. The full text of the 2012 amendments to the PEA may be found in Sections 74 and 75 of the House Report at:

<http://www.mass.gov/legis/journal/desktop/Current%20Agenda%202011/H4352.pdf>

A Frequently Asked Question document is available on the web site of the Executive Office of Housing and Economic Development at: <http://www.mass.gov/hed/economic/eohed/pro/zoning-laws/permit-extension-act.html>

Lealdon Langley is the Director of the Wetlands and Waterways Program at the Massachusetts Department of Environmental Protection.