

PERMIT EXTENSIONS UNDER THE ACT RELATIVE TO ECONOMIC DEVELOPMENT REORGANIZATION

Massachusetts Governor Deval Patrick has signed the “Act Relative to Economic Development Reorganization”. The Act contains many provisions, including the sales tax holiday, abolishment of the Massachusetts Health and Educational Facilities Financing Authority, and extension of the Brownfields Tax Credit, but it also includes a provision designed to extend approvals granted for real estate projects that may have been stalled during the economic downturn of the last two years, to allow projects to proceed without the expense or delay of having to reapply for permits.

Section 173 of the Act would automatically extend many categories of permits or approvals that were either granted or were simply “in effect or existence” during the period beginning August 15, 2008 through August 15, 2010.

The range of “approvals” is very broad, and includes most local and state permits applicable to real estate development, with the exception of Comprehensive Permits issued under M.G.L. c. 40B (the Affordable Housing Program). Explicitly included as permits automatically extended are MEPA approvals, zoning and subdivision approvals, building permits, highway access permits, Chapter 91 licenses, wetlands approvals, endangered species act permits, and approval under municipal by-laws and ordinances.

A few permits are explicitly excluded, including any enforcement orders, 40B affordable housing comprehensive permits and hunting and fishing licenses. Others, such as air permits and solid waste site assignments, are not included as listed approvals. In addition, permits for connection to a sewer system



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are contingent on there still being sufficient capacity for the sewer system to handle the permitted load.

In the case where a property or project is sold or otherwise transferred, extension of an otherwise expired permit still appears to be automatic if “all commitments made by the original owner or petitioner under the terms of the permit [are] upheld by the new owner or petitioner.”

Approvals that are extended are only those that relate to the use and development of real property, which includes subdivisions of land, construction or conversion of a building, permits involving grading or other site work, or approvals involving uses of land.

This Act is liable to be the subject of some confusion and challenges, but it can open up possibilities for developers. Lenders especially will likely struggle with how much comfort they will require to rely on an otherwise expired permit which has been extended under the provisions of the Act.

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