# THE PERMIT EXTENSION ACT
## NOVEMBER 2010

## FREQUENTLY ASKED QUESTIONS

### WHAT IS THE PERMIT EXTENSION ACT?

The Permit Extension Act was created by Section 173 of Chapter 240 of the Acts of 2010. The purpose of this act is to promote job growth and long-term economic recovery and the Permit Extension Act furthers this purpose by establishing an automatic two-year extension to certain permits and licenses concerning the use or development of real property. With limited exceptions, the Act automatically extends, for two years beyond its otherwise applicable expiration date, any permit or approval that was "in effect or existence" during the qualifying period beginning on August 15, 2008 and extending through August 15, 2010.

### WHAT TYPES OF APPROVALS ARE INCLUDED IN THIS ACT?

The Act applies to regulatory approvals issued by local, regional or state entities that concern the use or development of real property. "Approval" is defined broadly to include any permit, certificate, license, certification, determination, exemption, variance, waiver, building permit, or other approval or determination of rights, and any order, except for enforcement orders.

### DOES THIS EXTENSION APPLY ONLY TO STATE-ISSUED PERMITS?

No, this extension applies to all qualifying permits issued by any municipal, regional, or state entity.

### THE ACT REFERS TO A LIST OF STATUTES. DOES THE ACT COVER APPROVALS UNDER OTHER STATUTES?

Yes. While the definition of "Approval" includes a particular list of statutes, it is not an exclusive list of all statutes affected by this Act. As such, the Act applies to all regulatory approvals concerning the use or development of real property, except those expressly exempted.

### ARE ANY TYPES OF APPROVALS EXEMPTED FROM THIS STATUTE?

Yes. The following approvals are expressly exempted and therefore are NOT covered by the Act:

- Permits or approvals issued by the Federal government, or by a state agency issued pursuant to federal law
- Permits issued under sections 20 to 23 of Chapter 40B
- Hunting, fishing and aquaculture approvals issued by the Division of Fisheries and Wildlife under Chapter 131
- Enforcement orders.

### ARE PRE-DEVELOPMENT ACTIVITIES CONSIDERED APPROVALS?

No. Use or development of real property concerns buildings or structures, or site work specifically associated with the development of buildings or structures, rather than pre-development activities such as oil or hazardous material cleanup. Even though such actions may be deemed a precondition to making real property suitable for use or development, pre-development activities that are independently undertaken outside of the context of a larger development project are not covered by the Act.

**DOES THIS STATUTE APPLY TO PROPERTY RIGHTS GRANTED TO THIRD PARTIES TO USE STATE OWNED PROPERTIES?**

No. The Act does not apply to the property rights issued by the Commonwealth in its role as a landowner and as such does not apply to easements, leases, licenses for the use of property (except to the extent that a license may authorize the use or development of property, such as in the case of a license issued under Chapter 91 or a curb cut permit), and/or conservation or agricultural restrictions.

**IS THE 2 YEAR EXTENSION AUTOMATIC?**

Yes. The two year extension authorized by the Act is automatic, meaning it occurred by operation of law. Neither the permit holder nor the issuing agency needs to take action to implement the extension.

**DOES A PERMIT OR APPROVAL EXTENDED BY THE ACT REQUIRE ANY FURTHER REVIEW?**

No, unless the permit or approval by its terms called for such further review when in effect during the qualifying period. Permits or approvals issued prior to the qualifying period and in effect at any time during the qualifying period, and permits or approvals issued during the qualifying period have completed review and are valid for two additional years from the original date of expiration.

**WHAT IS THE NEW EXPIRATION DATE?**

The new expiration date is two years from the date that otherwise marked the end of the lawful term of the permit or approval. For example, a permit that expired on September 1, 2009 is now revived and will expire on September 1, 2011.

**ARE ISSUING AGENCIES REQUIRED TO ISSUE WRITTEN NOTICES OF EXTENSION TO APPROVAL HOLDERS?**

No. The Act does not require issuing agencies to provide written notice of extension and an approval holder does not need written notice of extension of its permit or approval. However, an issuing agency may post a general notice of the Act on its website and may issue a standard notice of extension eligibility to approval holders who request a document for financing or other purposes.

**DOES THE ACT APPLY TO BUILDING PERMITS?**

Yes. Any building permit issued or in effect between August 15, 2008 and August 15, 2010 has been extended by two years from the date on which the permit was otherwise set to expire.

**DOES THE ACT APPLY TO MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) DECISIONS, CERTIFICATES OR WAIVERS?**

Yes. Certificates issued pursuant to MEPA are specifically listed in the definition of "Approval" included in the Act. Therefore, Certificates that were issued or were in effect between August 15, 2008 and August 15, 2010 will have two additional years before a "Lapse of Time" will have occurred triggering either a Notice of Project Change or a new Environmental Notification Form (See 301 CMR 11.10).

**ASIDE FROM THE TWO YEAR EXTENSION, HAS THE PERMITTING OR CONSTRUCTION PROCESS OTHERWISE BEEN CHANGED BY THE ACT?**
No.

**WHAT IF I SUBMITTED AN APPLICATION FOR A PERMIT DURING THE QUALIFYING PERIOD, BUT IT WAS NOT ISSUED UNTIL AFTER THE PERIOD HAD PASSED?**
The permit does not qualify for extension. The Act only extends permits that were issued or already in effect at any point (e.g., even for one day) during the qualifying period.

**WHAT IF A PERMIT WAS ISSUED BY A BUILDING OFFICIAL DURING THE QUALIFYING PERIOD, BUT NEVER PICKED UP BY THE APPLICANT?**
If the permit was issued and never revoked, it qualifies for the extension regardless of whether it was ever picked up.

**WHAT IF I RECEIVED A PARTIAL BUILDING PERMIT DURING THE QUALIFYING PERIOD, BUT NOT A PERMIT FOR THE REST OF THE PROJECT?**
Only the permit that was issued or already in effect is eligible for the two year extension. For instance, if a foundation permit was issued during the qualifying period, but other permits for the remainder of the project were issued outside of the qualifying period, only the foundation permit is extended. No approvals or permits that were not either issued or already in effect during the qualifying period are eligible for automatic extension.

**DOES THE ACT APPLY TO A PERMIT THAT EXPIRED DURING THE QUALIFYING PERIOD?**
Yes, the Act revives and extends any permit or approval that was valid during the qualifying period of August 15, 2008 through August 15, 2010. For instance, a permit that expired on July 1, 2009 is now revived and set to expire on July 1, 2011.

**DOES THE ACT APPLY TO A PERMIT OR APPROVAL THAT WAS NOT DUE TO EXPIRE UNTIL AFTER THE QUALIFYING PERIOD?**
Yes. The Act provides an additional two years to the original "lawful term of the permit" or approval. If a permit or approval was due to expire on September 1, 2011, it will now automatically expire on September 1, 2013.

**DOES THE ACT APPLY TO A PERMIT THAT HAD AN EXPIRATION DATE THAT FELL WITHIN THE QUALIFYING PERIOD BUT HAS BEEN ADMINISTRATIVELY CONTINUED PAST AUGUST 15, 2010, PURSUANT TO A TIMELY APPLICATION FOR RENEWAL?**
Yes. The Act applies to any permit or approval valid during the qualifying period and extends the permit or approval two years in addition to the "lawful term of the approval."

**DOES THE ACT EXTEND THE TERM OF A PERMIT THAT WAS REVOKED DURING THE QUALIFYING PERIOD?**
No. The Act applies to permits or approvals that were "in effect or existence" during the qualifying period. Any permits or approvals that were revoked or denied an extension during the qualifying period were not in effect or existence for the purposes of this Act. The Act expressly preserves an issuing agency's authority to suspend or revoke an approval in accordance with the terms of approval itself, or the authorizing statute or regulations.

**DOES THE ACT APPLY TO A PERMIT THAT EXPIRED PRIOR TO THE QUALIFYING PERIOD, BUT WHICH HAD BEEN EXTENDED BY THE ISSUING AGENCY?**
Yes, provided the extension resulted in the permit being "in effect" during the qualifying period; if the permit application was pending but not granted during the qualifying period it was not "in effect or existence" for purposes of the Act. For example, a permit that was set to expire on January 31, 2007, but which was lawfully extended for three years by the issuing authority (until January 31, 2010), would now be set to expire on January 31, 2012.

**IF MY PERMIT WAS EXTENDED BY THE AGENCY DURING THE QUALIFYING PERIOD, SUCH THAT I HAD TWO VALID PERMITS FOR THE SAME PROJECT, ARE BOTH EXTENDED?**
While both permits may technically be extended, they would run concurrently, such that the two year extension on the second permit would be the controlling and relevant deadline. For example, if your permit were due to expire on August 15, 2009, and you applied for and received a one year extension until August 15, 2010, your new permit deadline would be August 15, 2012.

**CAN AN AGENCY REVOKE OR SUSPEND A PERMIT OR APPROVAL TO AVOID THE 2 YEAR EXTENSION?**
No. An issuing agency must have an independent reason authorized by the terms of the permit, the statute or the regulation to revoke or to suspend a permit.

**DOES THE ACT REVIVE PERMITS THAT EXPIRED DURING THE QUALIFYING PERIOD WHERE A REQUEST FOR AN EXTENSION OR RENEWAL WAS ALREADY DENIED?**
Yes. The Act only preserves certain rights of an agency to suspend or to revoke an approval. Even if an extension had been previously denied, the permit or approval is revived by the Act. However, a permitting authority retains its rights to revoke or modify a permit to the extent authorized permitted by the underlying permit, statutory or regulatory authority.

**CAN THE ISSUING AGENCY CONDITION THE EXTENSION TO CORRECT PROBLEMS, ERRORS, AND/OR PROJECT CHANGES SINCE THE PERMIT EXPIRED?**
No. The extension is automatic and no conditions can be placed on the extension. The Act automatically changes the expiration date of a qualifying approval. Any work that takes place under an extended permit or approval must conform to the existing performance standards. However, an issuing agency may modify the conditions of the extended permit or approval if the underlying statutory or regulatory authority would allow such modification.

**CAN THE ISSUING AGENCY MODIFY A PERMIT OR APPROVAL TO CORRECT PROBLEMS, ERRORS, AND/OR PROJECT CHANGES SINCE THE PERMIT EXPIRED?**
Yes. The Act preserves the issuing agency's authority to modify an approval if the underlying statutory or regulatory authority would allow a modification to correct problems, errors, or project changes. Any work that takes place under an extended permit or approval must conform to performance standards otherwise applicable to the permit as originally granted or previously extended.

**CAN THE ISSUING AGENCY TAKE ENFORCEMENT ACTION TO ADDRESS NONCOMPLIANCE?**
Yes. The Act upholds the issuing agency's enforcement authority.

**DOES THE ACT AFFECT MITIGATION THAT WAS REQUIRED AS A CONDITION OF MY PERMIT?**
No. Any and all conditions that applied to the permit or approval extended by the Act contintue to apply.

**IS ANYTHING OTHER THAN THE EXPIRATION DATE OF MY PERMIT OR APPROVAL CHANGED BY THE ACT?**
No. A permit or approval is subject to the same substantive terms that applied when it was issued by the agency, except that any interim deadlines established by the permit are extended for two years. Permits or approvals can be modified under the same terms that were originally contained in the permit or approval or that are authorized by the underlying statute or regulations.

**IF WORK UNDER A PERMIT OR APPROVAL REQUIRES OTHER PERMITS, ARE THEY ALSO AUTOMATICALLY EXTENDED?**
If such permits or approvals are covered by the Act and were issued or already in effect during the qualifying period, they would also be extended.

**IF AN APPROVAL HOLDER IS IN VIOLATION, DOES THE ACT EXTEND THE PERMIT OR APPROVAL?**
Yes, but the issuing agency can take appropriate enforcement action if a violation has occurred. The Act does not alter other substantive provisions of the permit or approval, or the authority of the issuing agency under which it was issued.

**WHAT IF A PERMIT WAS ISSUED DURING THE QUALIFYING PERIOD BUT IS NOW PENDING ADMINISTRATIVE APPEAL?**
A permit or approval that was pending adjudicatory appeal during the qualifying period is not extended because it is not a final permit or approval and as such is not "in effect or existence." However, if the administrative appeal that prevented the permit or approval from taking effect was resolved and a final permit was issued during the qualifying period, it is a permit in effect or existence and is entitled to the two year extension.

**WHAT IF A PERMIT WAS ISSUED DURING THE QUALIFYING PERIOD BUT IS NOW PENDING JUDICIAL APPEAL?**
As with any permit pending judicial appeal, it is subject to the court's ultimate decision. If a permit that would qualify for the extension is pending appeal, and the court upholds the permit, the permit will qualify for an extension. There is no need for an extension if the court invalidates the permit.

**WHAT IF A PERMIT WAS ISSUED DURING THE QUALIFYING PERIOD BUT WAS APPEALED TO COURT AND THE COURT'S DECISION UPHOLDING THE PERMIT WAS NOT ISSUED UNTIL AFTER THE QUALIFYING PERIOD?**
Because the permit was issued during the qualifying period, it was in effect or existence during the qualifying period and qualifies for an extension.

**IS THERE ANY REASON WHY A PERMIT OR APPROVAL EXTENDED PURSUANT TO THE ACT WOULD NOT BE ELIGIBLE FOR FUTURE EXTENSIONS PURSUANT TO THE STATUTES AND REGULATIONS THAT APPLY TO THAT PERMIT OR APPROVAL?**
No. Such permits would be subject to any substantive provision of the underlying statutes or regulations.

**CAN AN APPROVAL HOLDER REFUSE AN EXTENSION?**
No. If the Act applies to a permit or approval, it is automatically extended. However, an approval holder can surrender its approval under the same terms and conditions of that permit or approval that it could absent the Act.

**WHAT EDITION OF THE STATE BUILDING CODE (780 CMR) IS A PROJECT PROCEEDING UNDER AN EXTENDED PERMIT SUBJECT TO?**
A project should proceed in accordance with the edition of the State Building Code under which the permit was issued.

**UNDERSTANDING THAT CHAPTER 40B PERMITS ARE EXEMPT FROM THIS ACT, ARE THE NON-40B PERMITS ASSOCIATED WITH A 40B PROJECT (SUCH AS WETLANDS PERMITS, ETC.) EXTENDED?**
Yes. Only permits issued under sections 20 to 23 of Chapter 40B are not extended. All other permits associated with the project are extended.

**ARE 40R PAYMENTS OR THE CLAWBACK OF ZONING INCENTIVE FUNDS EXTENDED?**
No. The Act applies only to the use or development of real property and does not extend Chapter 40R incentive payments.