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NEW “JOBS BILL” HAS HIDDEN GEMS: PERMIT TERMS EXTENDED AND ABUTTER NOTIFICATIONS CHANGED

The economic development legislation signed into law by Governor Patrick on August 7, 2012 contains good news for stalled development projects and potentially good news for large projects proposed near wetlands.

The new law extends the provisions of the Permit Extension Act of 2010 in two ways. First, the “tolling period” has doubled, so that approvals in effect or existence in the period from August 15, 2008 through August 15, 2012 (rather than 2010) are automatically extended. Second, the length of the automatic extension has doubled from two to four years. Therefore, a permit in effect or existence at any time between August 15, 2008 and August 15, 2012 is valid for four years beyond the expiration date of the permit. Even if a permit expired, it can be revived and extended under this law.

The Permit Extension Act defined “approval” to include any permit, license, variance, waiver, or other approval from any municipal, regional or state governmental entity, concerning the use or development of real property. The Act covers approvals issued under the Massachusetts Environmental Policy Act, Zoning Act, and Wetlands Protection Act, among others. It does not apply to Comprehensive Permits issued under Chapter 40B. Approvals under a local by-law or ordinance also receive the benefit of the automatic extension.

Another section of the new law contains changes to the abutter notification requirements under the state Wetlands Protection Act. Under existing law, a person filing a notice of intent with a conservation commission must provide notice to all abutters within 100 feet of the property line of the land where the activity is proposed. The new language applies to a notice of intent for activities on land under water bodies and waterways or on a tract of land greater than 50 acres. In those cases, written notification must be given to abutters within 100 feet of the proposed "project site," which means the land where jurisdictional work (e.g., dredging, filling, road construction) will take place. In addition, the new language requires notice to be given to abutters within 1,000 feet of a proposed project site when the notice of intent proposes activity on a linear shaped project site longer than 1,000 feet in length.

The abutter notification amendments are reportedly intended to narrow the notification requirement. Because the language is somewhat ambiguous, however, the effect of the changes may not be clear for some time.

For more information contact Michelle O'Brien.