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CHARLES D. BAKER
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ORDER SUSPENDING STATE PERMITTING DEADLINES AND EXTENDING THE VALIDITY OF STATE PERMITS

COVID-19 Order No. 17

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 25, 2020, the Department of Public Health had reported 1,838 cases of COVID-19, including 15 deaths, with counties across the Commonwealth affected;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 23, 2020, I issued an Order requiring all businesses and organizations that are not designated COVID-19 Essential Services to close their physical workplaces and facilities to workers, customers, and the public, and further limited all gatherings to 10 people or fewer;

WHEREAS, non-essential Commonwealth employees have been urged to remain home and work remotely, and many Commonwealth administrative offices are closed;

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WHEREAS, such closures, while essential for public health, are expected to affect the ability of the Commonwealth and its agencies to timely process requests for licenses, permits, approvals, and certificates of registration;

WHEREAS, the current public health crisis is preventing people and businesses from complying with the deadlines and conditions of permits, licenses, and other approvals issued or granted by the Commonwealth and its agencies;

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to the authority to modify of the terms and conditions of licenses, permits, or certificates of registration issued by the Commonwealth or any of its agencies or political subdivisions and authority over assemblages in order to protect the safety of persons;

NOW, THEREFORE, I hereby Order the following:

(a) Constructive Approvals: No approval shall be considered granted, approved, or denied, constructively or otherwise, due to a failure of a state permitting agency to act within the time required by statute, rule, or regulation; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(b) Hearing Deadlines: Any requirement that a hearing commence within a specific period of time after the filing of or appeal of a decision on an application, order, notice of intent, petition, or request for an approval is hereby suspended during the state of emergency; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(c) Decision Deadlines: Any requirement that a state permitting agency (i) issue a decision on an application, order, notice of intent, petition, or request for approval, (ii) issue a decision on an appeal of an application, order, notice of intent, petition, or request for approval, or (iii) request a superseding order or determination, within a specific period of time is hereby suspended during the state of emergency; provided, however, that the running of the applicable time period shall resume 45 days after the termination of the state of emergency.

(d) Appeal Rights: Any person aggrieved by a decision or final decision of a state permitting agency on an approval whose right to appeal such decision would expire during the state of emergency absent the filing of an appeal shall have until 45 days following the termination of the state emergency to file an appeal.

(e) Permit Tolling: An approval issued by a state permitting agency valid as of March 10, 2020 shall not lapse or otherwise expire during the state of emergency and the expiration date of

the approval shall toll during the state of emergency. To the extent that any such approval contains or is subject to other deadlines or conditions, the state permitting agency may extend such deadlines or waive such conditions if an approval holder is not able to abide by the deadlines or conditions due to the state of emergency. This section shall not apply to a holder of an approval who was in violation of the terms and conditions of the approval as of March 10, 2020.

(f) **DEP Intended Use Plan:** The requirement that the Department of Environmental Protection conduct a public hearing before adopting its priority list, or Intended Use Plan (IUP), for 2020 under its State Revolving Fund regulations at 310 CMR 44.00 and 310 CMR 45.00 is hereby suspended. The Department may adopt its priority list without a public hearing if it publishes a draft IUP and accepts and considers public comments on its draft list.

For the purposes of this Order, the following words shall have the following meanings:

"Enforcement Order", an order from an inspector or other authorized official of a state permitting agency compelling the property owner, holder, or intended user of an approval to take or not take an action deemed by the official to be necessary to protect health, safety, or the environment.

"Approval", any permit, including an environmental permit, certificate, license, certification, determination, exemption, variance, waiver, state building permit, or other determination of rights issued by a state permitting agency, including any order but excluding any enforcement order, concerning the use, development, or rehabilitation of real property or improvements located thereon, the allocation or use of water and other natural resources, or the discharge, emission, abatement, or management of waste or pollutants, including but not limited to approvals issued pursuant to chapter 21, section 18 of chapter 21A, chapter 21D, section 3B of chapter 21E, section 61 to 62I, inclusive, of chapter 30, section 20 to 23, inclusive, of chapter 40B, chapter 91, chapter 92A½ , chapter 112, chapter 131, chapter 131A, chapter 132, chapter 142, chapter 143, and chapter 253 of the General Laws, but excluding approvals issued pursuant to chapters 92 or 132A of the General Laws.

"State permitting agency" any agency, board, bureau, department, office, committee, division, or official of the Commonwealth, which issues approvals and is within or reports to the Executive Office of Energy and Environmental Affairs or the Executive Office of Housing and Economic Development.

This Order is effective notwithstanding any general or special law or rule or regulation to the contrary.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is terminated, whichever happens first. Such rescission or termination shall not invalidate any deferral that was effectuated or agreed to pursuant to the terms of this Order during the period in which this Order was in effect.

Given in Boston at 7:05 PM this 26th day of March, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts