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Preserving Permits and Approvals in New Jersey's Real Estate Industry:

A Guide to the Permit Extension Act (P.L. 2009 c336)

By Jack Plackter

Preserving Permits and Approvals in New Jersey's Real Estate Industry: A Guide to the Permit Extension Act (P.L. 2009 c336)

- Introduction
- Background of Permit Extension Act
- Explanation of the Permit Extension Act
- Types of Permits and Approvals Covered by the Act
- Exceptions to the Act
- How To Apply the Act to Individual Permits or Approvals

Introduction

The New Jersey Permit Extension Act extends the approval period of certain permits issued by state, county and local government units.

Background of Permit Extension Act

In New Jersey, it is costly and time-consuming to obtain permits and approvals for commercial and residential projects. The state Legislature found that there exists a national recession that has drastically affected various segments of the New Jersey economy, but none as severely as the state's banking, real estate and construction sectors. As a result of the economic crisis, real estate developers and redevelopers, including homebuilders and commercial, office and industrial developers, have experienced an industry-wide decline.

Obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans and variances can be difficult, time-consuming and expensive, both for private applicants and government bodies. In addition, obtaining the myriad other government approvals required pursuant to legislative enactments and their implementing rules and regulations—such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits and numerous waivers and variances—also can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, impossible to renew or re-obtain.

The extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the state. As a result of the continued economic downturn and the continued expiration of approvals that were granted by state and local governments, it is possible that thousands of government actions will be undone by the passage of time.

Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources. Moreover, the costs imposed fall on the public as well as the private sector. It is the purpose of the Act to prevent the wholesale abandonment of approved projects and activities due to the present



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unfavorable economic climate by tolling the running of the term of these approvals for a period of time, thereby preventing a waste of public and private resources.

Explanation of the Permit Extension Act

The Act amends the Permit Extension Act of 2008, and permits and approvals are generally extended through December 31, 2012.

The Act does not extend certain types of approvals or permits issued under the Pinelands Act, Highlands Water Protection and Planning Act, Flood Hazard Control Act, Coastal Area Facility Review Act and the Municipal Land Use Law.

The Extension period is defined as January 1, 2007, until December 31, 2012. For any governmental approval in existence during the extension period, the running of the period of approval is automatically suspended until December 31, 2012, provided that permit or approval was in existence on or after January 1, 2007, and provided that nothing in the Act shall extend the permit or approval more than six months beyond the expiration of the extension period.

Below is an example of the application of the Act to a final municipal site plan approval:

The final site plan approval was granted on December 1, 2006. A municipal final site plan approval has a two-year period of protection. Accordingly, one month of the protection period ran before the extension period. The running of the period of protection is suspended (i.e., does not run from January 1, 2007, until December 31, 2012). As a result there are 23 months (two years less one month) remaining on the period of protection at the end of the extension period. Nevertheless, the approval and period of protection only remains for an additional six months or until June 30, 2013.

Moreover, nothing in the Act prevents the granting of additional extensions provided by law when the tolling granted by the Act expires.



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In our example, the case of the municipal final approval extended until June 30, 2013, the property owner can apply for and receive, under the Municipal Land Use Law, up to three additional one-year extensions of the period of protection. In this case, extensions of the period of protection could run until June 30, 2016.

Types of Permits and Approvals Covered by the Act

The Act covers numerous permits and approvals. Under the Act, "Approval" means a:

- (1) Soil erosion and sediment control plan.
- (2) Waterfront development permit.
- (3) Permit issued pursuant to the Wetlands Act of 1970.
- (4) Permit issued pursuant to the Freshwater Wetlands Protection Act.
- (5) Application for development granted by the Delaware and Raritan Canal Commission pursuant to the Delaware and Raritan Canal State Park Law of 1974.
- (6) Permit issued by the New Jersey Meadowlands Commission.
- (7) Application for development granted by the Pinelands Commission and determination of municipal and county plan conformance pursuant to the Pinelands Protection Act.
- (8) Permit issued and center designations pursuant to the Coastal Area Facility Review Act.
- (9) Septic approval granted pursuant to Title 26 of the Revised Statutes.
- (10) Right-of-way permit issued by the Department of Transportation.
- (11) Permit granted by a sewerage authority pursuant to the sewerage authorities law.
- (12) Permit granted by a municipal authority pursuant to the municipal and county utilities authorities law.
- (13) Permit by a county planning board.



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- (14) Preliminary and final approval granted in connection with an application for development pursuant to the Municipal Land Use Law.
- (15) Permit granted pursuant to the State Uniform Construction Code Act.
- (16) Plan endorsement and center designations pursuant to the State Planning Act.
- (17) Permit or certification issued pursuant to the Water Supply Management Act.
- (18) Permit granted authorizing the drilling of a well.
- (19) Certification or permit granted, exemption from a sewerage connection ban granted, wastewater management plan approved and pollution discharge elimination system permit pursuant to the Water Pollution Control Act.
- (20) Certification granted pursuant to The Realty Improvement Sewerage and Facilities Act (1954).
- (21) Certification or approval granted pursuant to P.L.1971, c.386 (state approval of a subdivision covering 50 or more realty improvements).
- (22) Certification issued and water quality management plan approved pursuant to the Water Quality Planning Act.
- (23) Permit granted pursuant to the Safe Drinking Water Act.
- (24) Permit issued pursuant to the Flood Hazard Area Control Act.
- (25) Municipal, county, regional or state approval or permit granted under the general authority conferred by state law or rule or regulation, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption,



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variance, exception, waiver, letter of interpretation, no further action letter, agreement or any other executive or administrative decision that allows a development or governmental project to proceed.

Exceptions to the Act

The Act does not apply to certain permits and approvals.

Nothing in the Act shall be deemed to extend or purport to extend:

- (1) Any permit or approval issued by the U.S. government or any agency or instrumentality thereof, or any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities;
- (2) Any permit or approval issued pursuant to the Pinelands Protection Act, if the extension would result in a violation of federal law, or any state rule or regulation requiring approval by the Secretary of the Interior;
- (3) Any permit or approval issued within an environmentally sensitive area;
- (4) Any permit or approval within an environmentally sensitive area issued pursuant to the Highlands Water Protection and Planning Act;
- (5) Any permit or approval issued by the Department of Transportation pursuant to Title 27 of the Revised Statutes or under the general authority conferred by state law, other than a right-of-way permit or a permit granted pursuant to R.S.27:7-1 et seq., which includes a highway access permit or any supplement thereto;
- (6) Any permit or approval issued pursuant to the Flood Hazard Area Control Act, except where work has commenced, in any phase or section of the development, on any site improvement as defined in paragraph (1) of subsection a. of section 41 of the Municipal Land Use Law, or on any buildings or structures; or
- (7) Any coastal center designated pursuant to the Coastal Area Facility Review Act, P.L.1973, c.185, that as of March 15, 2007, (a) had



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not submitted an application for plan endorsement to the State Planning Commission and (b) was not in compliance with the provisions of the Coastal Zone Management Rules.

- (8) The Act shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the extension period, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985.
- (9) The Act shall not affect the ability of the Commissioner of Environmental Protection to revoke or modify a specific permit or approval, or extension thereof pursuant to the Act, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the department.
- (10) In the event that any approval tolled pursuant to the Act is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders that have not received approval of a hookup prior to the date of enactment of the Act. Priority regarding the distribution of further gallonage to



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any permit holder that has received the extension of an approval pursuant to the Act shall be allocated in order of the granting of the original approval of the connection.

- (11) The Act shall not toll any approval issued under the Municipal Land Use Law, P.L.1975, c.291, in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 2007, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.
- (12) The Act shall not be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the state of the authority to implement a federal law or program.
- (13) The Act shall not be deemed to extend the obligation of any wastewater management planning agency to submit a wastewater management plan or plan update, or the obligation of a municipality to submit a wastewater management plan or plan update, pursuant to the Water Quality Planning Act, P.L.1977, c.75, and the Water Quality Management Planning rules, adopted by the Department of Environmental Protection, effective July 7, 2008.

An example of an exception to the Act would be for approvals for properties located in the Pinelands. The Pinelands Commission takes the position that all of its regulations require approval of the Secretary of the Interior. As a result, Pinelands asserts that the Act only applies to those properties whose approvals comply with the current Pinelands regulations, most significantly the new Pinelands Stormwater Management regulations. This position seems to defeat the purpose of the Act and remains untested.



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How To Apply the Act to Individual Permits or Approvals

To determine whether a permit or approval is extended by the Act and the length of the extension, follow these steps.

- (1) Check to ensure the permit or approval is covered under the Act.
- (2) Check to ensure the permit or approval is not one exempted from the Act's application.
- (3) Determine whether the permit or approval was valid and in full force and effect as of January 1, 2007, or after that date. If so, the Act applies to the permit or approval. The permit or approval would be valid and in full force and effect until December 31, 2012.
- (4) Determine the remaining life of the permit or approval after the Extension Period expires on December 31, 2012. If the remaining life is less than six months, then add the months to December 31, 2012, to determine the new expiration date. If the remaining life is six months or greater, then the permit or approval is extended until June 30, 2013.
- (5) Determine whether the law related to the permit or approval allows for additional extensions beyond the tolling and extensions provided for in the Act. If so, compute the additional time afforded and timely apply for such additional extensions.



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