

SUMMARY OF PERMIT EXTENSION ACT

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On September 6, 2008, the Governor of the State of New Jersey signed into law the Permit Extension Act of 2008 (“PEA”). The PEA is supposed to address the economic distress in the real estate market by extending expired permits through at least July 1, 2010.

The PEA provides for an extension period which it defines as January 1, 2007 to July 1, 2010. Any permit or approval in existence during the “extension period” is tolled (meaning the running of the approval is suspended) for the extension period; however, the tolling shall not extend the approval or permit beyond six (6) months past the extension period. The duration of a permit or approval shall not be shortened by the PEA. Thus, if you received an approval or permit that was set to expire in September of 2008, the approval or permit would have a new expiration date of January 1, 2011 because as of January 1, 2007, the approval or permit was tolled. However, if you receive, for instance, a wetlands permit in March of 2010, which lasts for five (5) years, your permit is still valid through March of 2015.

A developer is still permitted to request and receive additional extensions as permitted by law, i.e., a one-year extension of the statutory protection period under the Municipal Land Use Law. It is unclear how the PEA applies to projects that have already received extensions within the “extension period.” One can argue that a developer “gets back” the extension, provided the approval was in existence as of January 1, 2007.

Lastly, the NJDEP is still allowed to revoke or modify any permit or approval when that permit or approval allows for a modification or revocation by the NJDEP.

Approvals / Permits Covered by PEA

- Soil Conservation District approval;
- Waterfront Development Permit
- Permit issued under the Wetlands Act of 1970;
- Permit issued under the Freshwater Wetlands Protection Act;
- Approval issued by Delaware and Raritan Canal Commission;
- Approval issued by New Jersey Meadowlands Commission;
- Approval by Pinelands Commission and determination of municipal and county planned conformance pursuant to the Pinelands Protection Act, except as outlined below;
- CAFRA Permit and center designations;
- Septic approval per Title 26 of the revised statutes;
- Permit granted pursuant to N.J.S.A. 27:7-1;
- Right-of-Way Permit issued by NJDOT;
- Approval granted by sewage authority or municipal and county utility authorities;

- Approval issued by a county planning board;
- Preliminary and final approval granted pursuant to the MLUL;
- Permit granted pursuant to the State Uniform Construction Code Act;
- Plan endorsement and center designation pursuant to the State Planning Act;
- Permit certification issued by Water Supply and Management Act;
- Permit granted authorizing the drilling of a well;
- Approvals under the Water Pollution Control Act, including exemption from sewer connection ban, waste water management plan approval, and pollution discharge elimination system permit;
- Certification granted pursuant to Realty Improvement Sewerage & Facilities Act;
- Certification issued and water quality management plan approved per the Water Quality Planning Act;
- Approval granted pursuant to the Safe Drinking Water Act;
- Any municipal, county, regional or State approval or permit granted or any other government authorization of a development application, including but not limited to Letters of Interpretation, No Further Action Letters, as well as any agreement or administrative decision which allows a development project to proceed.

Approvals / Permits *NOT* covered by PEA

- Any permit / approval issued within an “environmentally sensitive area”, which is defined as: a.) Planning Area 4B and Planning Area 5 as shown in the State Development Plan, or a critical environmental site, or b.) the Highlands or Pinelands area, not including an area designated growth by the Highlands regional master plan or Pinelands comprehensive management plan.
- Any permit / approval issued by the Federal government.
- Any permit / approval issued pursuant to the Pinelands Protection Act if the extension would result in a violation of Federal or State law requiring approval from the Secretary of the Interior.
- Any permit / approval within an “environmentally sensitive area” issued pursuant to the Highlands Act.
- Any permit / approval issued by the NJDOT other than a right-of-way permit or a permit granted under N.J.S.A. 27:7-1.
- Any permit / approval issued pursuant to the Flood Hazard Area Control Act, except where work has commenced on any site improvements or structures.
- Any coastal center designated pursuant to CAFRA that as of March 15, 2007 had not submitted a plan endorsement application to the State Planning Commission and was not in compliance with the Coastal Zone Management Rules.
- Any site plan or subdivision approval pursuant to the MLUL involving a residential use where, subsequent to the permit expiring, but prior to January 1, 2007, the site was rezoned for industrial or commercial uses.

Many approvals that have expired in the last few years may now have been revived as part of the PEA. A developer with a permit or approval that was in effect past January 1, 2007, but has since expired, should revisit that permit or approval and consult an attorney to determine what rights, if any, he or she may have. This information is not to be constructed as legal advice.