

Governor Christie Signs Latest Amendment to Permit Extension Act

Creates New Extension Area

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For the second time since its enactment, New Jersey's Permit Extension Act of 2008 has been amended to provide developers and property owners with much-needed additional time to secure funding and sign tenants for approved projects against the backdrop of a continued economic downturn and sluggish real estate sector.

On September 21, 2012, Governor Christie signed the most recent amendment to the Permit Extension Act (S-743/A-1338), thereby "tolling" the approval period for certain development permits and approvals for an additional two years. The extension period, which originally expired on July 1, 2010 and was amended, in 2010, to run through December 31, 2012, has now been expanded to encompass the period from January 1, 2007 through December 31, 2014.

Under the modified statute, government approvals in existence during the extension period are automatically extended through the end of 2014. The tolling period continues to be limited to no more than six months beyond the conclusion of the new extension period. By its terms, the statute is not intended to shorten the duration any approval would have had in the absence of the Act, or to eliminate any extension to which a developer or owner otherwise would have been entitled.

Significantly, the definition of "environmentally sensitive area" - previously encompassing Planning Areas 4B and 5 under the State Development and Redevelopment Plan, critical environmental sites, the Highlands Region, and the Pinelands - has been amended to exclude the newly created "extension area." Prior to the recent amendment, the Act expressly excluded approvals or permits in these environmentally sensitive areas from its tolling provisions. Under the amended statute, the list of excluded approvals has been shortened and the category of approvals and permits provided protection under the Act has been substantially expanded to include those relating to approvals in the defined "extension area," as follows:

1. Planning Area I (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area), a designated center, or a designated growth center in an endorsed plan under the State Development and Redevelopment Plan, until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to refine this definition as it pertains to Statewide planning areas, whichever is later;

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2. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission;
3. Regional growth areas, villages, and towns, designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the "Pinelands Protection Act";
4. The planning area of the Highlands Region as defined in the "Highlands Water Protection and Planning Act," and any Highlands center designated by the Highlands Water Protection and Planning Council;
5. An urban enterprise zone;
6. An area determined to be in need of redevelopment pursuant to (C.40A:12A-5 and 40A:12A-6), and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection.

"Extension area" does not include an area designated to the State Development and Redevelopment Plan, as Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive), except for any area within Planning Area 4B or Planning Area 5 that is a designated center, or designated growth center in an endorsed plan.

The statute specifically provides, at N.J.S.A. 40:55D-136.4.a.:

Notwithstanding any previously enacted provision of P.L. 2008, c.78, as amended and supplemented, the running of the period of approval of all government approvals which would have been extended pursuant to the definition of "extension area"... shall be calculated using that definition retroactive to the enactment of P.L. 2008 c.78.

Consequently, approvals that would not have been automatically tolled under the Permit Extension Act of 2008, as a result of being located within the prior definition of an "environmentally sensitive area," have retroactively been given new life and are now tolled through December 31, 2014.

The Act continues to exclude from the tolling provisions those permits or approvals relating to lands within the more limited area designated as environmentally sensitive including approvals or permits issued pursuant to the Highlands Water Protection and Planning Act of 2004, or any permit or approval issued within the preservation area of the Highlands region, among others. In addition, approvals in municipalities within the Highlands planning area which, as of May 1, 2012, had adopted conformance approval, a Highlands Master Plan Element, a Highlands Land Use Ordinance, or an environmental resource inventory, would not have the benefit of the tolling provisions unless they are in a designated Highlands center.

The recent revisions to the Permit Extension Act are a welcome development for New Jersey's real estate industry, and hopefully will provide some relief to the real estate community in the face of continued

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economic difficulties. We will gladly address any inquiries regarding the impact of the amendment on approvals in the newly created extension area, and will continue to monitor and keep you advised on relevant developments in this area. For additional information, please contact the author of this Alert, **Meryl A.G. Gonchar**, co-chair of our Real Estate Department.