

P.L. 2008, CHAPTER 78, *approved September 6, 2008*
Assembly, No. 2867 (*Second Reprint*)

1 AN ACT concerning the extension of certain permits and approvals
2 affecting the physical development of property located within the
3 State of New Jersey, superseding all statutory and regulatory
4 requirements to the contrary, and supplementing Title 40 of the
5 Revised Statutes.

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9

10 1. This act shall be known and may be cited as the “Permit
11 Extension Act of 2008.”

12

13 2. The Legislature finds and declares that:

14 a. There exists a state of ¹[economic emergency in the State of
15 New Jersey, which began on January 1, 2006, and is anticipated to
16 extend at least through December 31, 2012] national recession¹,
17 which has drastically affected various segments of the New Jersey
18 economy, but none as severely as the State's banking, real estate
19 and construction sectors.

20 b. The real estate finance sector of the economy is in severe
21 decline due to the sub-prime mortgage problem and the resultant
22 widening mortgage finance crisis. The extreme tightening of
23 lending standards for home buyers and other real estate borrowers
24 has reduced access to the capital markets.

25 c. As a result of the crisis in the real estate finance sector of the
26 economy, real estate developers and redevelopers, including
27 homebuilders, and commercial, office, and industrial developers,
28 have experienced an industry-wide decline, including reduced
29 demand, cancelled orders, declining sales and rentals, price
30 reductions, increased inventory, fewer buyers who qualify to
31 purchase homes, layoffs, and scaled back growth plans.

32 d. ¹[A myriad of new regulations with regard to environmental
33 protection have significantly increased the costs of infrastructure,
34 site remediation, and construction, putting an additional strain on
35 the economy.

36 e.]¹ The process of obtaining planning board and zoning board
37 of adjustment approvals for subdivisions, site plans, and variances

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted June 12, 2008.

²Assembly ABU committee amendments adopted June 19, 2008.

1 'is] can be' difficult, time consuming and expensive, both for
2 private applicants and government bodies.

3 '[f.] e.' The process of obtaining the myriad other government
4 approvals, 'required pursuant to legislative enactments and their
5 implementing rules and regulations,' such as wetlands permits,
6 treatment works approvals, on-site wastewater disposal permits,
7 stream encroachment permits, flood hazard area permits, highway
8 access permits, and numerous waivers and variances, '[is]' also
9 'can be' difficult and expensive; further, changes in the law can
10 render these approvals, if expired or lapsed, impossible to renew or
11 re-obtain.

12 '[g. County and municipal governments, including local sewer
13 and water authorities, obtain permits and approvals from State
14 government agencies, particularly the Department of Environmental
15 Protection, which permits and approvals may expire or lapse due to
16 the state of the economy and the inability of both the public sector
17 and the private sector to proceed with projects authorized by the
18 permit or approval.

19 h.] f.' County and municipal governments '[also]' obtain
20 determinations of master plan consistency, conformance, or
21 endorsement with State or regional plans, from State and regional
22 government entities which may expire or lapse without
23 implementation due to the state of the economy.

24 '[i.] g.' The current '[economic crisis] national recession' has
25 severely weakened the building industry, and many landowners and
26 developers are seeing their life's work destroyed by the lack of
27 credit and dearth of buyers and tenants, due to the crisis in real
28 estate financing and the building industry, uncertainty over the state
29 of the economy, and increasing levels of unemployment in the
30 construction industry.

31 '[j.] h.' The construction industry and related trades are
32 sustaining severe economic losses, and the lapsing of government
33 development approvals '[is exacerbating] would, if not addressed,
34 exacerbate' those losses.

35 '[k.] i.' Financial institutions that lent money to property
36 owners, builders, and developers are experiencing erosion of
37 collateral and depreciation of their assets as permits and approvals
38 expire, and the extension of these permits and approvals is
39 necessary to maintain the value of the collateral and the solvency of
40 financial institutions throughout the State.

41 '[l.] j.' Due to the current inability of builders and their
42 purchasers to obtain financing, under existing economic conditions,
43 more and more once-approved permits are expiring or lapsing and,
44 as these approvals lapse, lenders must re-appraise and thereafter
45 substantially lower real estate valuations established in conjunction
46 with approved projects, thereby requiring the reclassification of
47 numerous loans which, in turn, affects the stability of the banking

1 system and reduces the funds available for future lending, thus
2 creating more severe restrictions on credit and leading to a vicious
3 cycle of default.

4 **'[m.] k.'** As a result of the continued downturn of the economy,
5 and the continued expiration of approvals which were granted by
6 State and local governments, it is possible that thousands of
7 government actions will be undone by the passage of time.

8 **'[n.] l.'** Obtaining an extension of an approval pursuant to
9 existing statutory or regulatory provisions **'[is] can be'** both costly
10 in terms of time and financial resources, and insufficient to cope
11 with the extent of the present financial **'[emergency] situation'** ;
12 moreover, the costs imposed fall on the public as well as the private
13 sector.

14 **'[o.]** Obtaining extensions of approvals granted by State
15 government is frequently impossible, always difficult, and always
16 expensive and no policy reason is served by the expiration of these
17 permits, which were approved only after exhaustive review of the
18 application.

19 **p.] m.'** It is the purpose of this act to prevent the wholesale
20 abandonment of **'[approvals] approved projects and activities'** due
21 to the present unfavorable economic conditions, by tolling the term
22 of these approvals **'[until such] for a period of'** time **'[as the**
23 **economy improves]'** , thereby preventing a waste of public and
24 private resources.

25

26 3. As used in this act:

27 "Approval" means ², except as otherwise provided in section 4 of
28 this act,² any approval of a soil erosion and sediment control plan
29 granted by a local soil conservation district under the authority
30 conferred by R.S.4:24-22 et seq., waterfront development permit
31 issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to
32 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.),
33 permit issued pursuant to the "Freshwater Wetlands Protection
34 Act," P.L.1987, c.156 (C.13:9B-1 et seq.), approval of an
35 application for development granted by the Delaware and Raritan
36 Canal Commission pursuant to the "Delaware and Raritan Canal
37 State Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.),
38 permit issued by the New Jersey Meadowlands Commission
39 pursuant to the "Hackensack Meadowlands Reclamation and
40 Development Act," P.L.1968, c.404 (C.13:17-1 et seq.), approval of
41 an application for development granted by the Pinelands
42 Commission and determination of municipal and county plan
43 conformance pursuant to the "Pinelands Protection Act," P.L.1979,
44 c.111 (C.13:18A-1 et seq.), permit issued **'[and center**
45 **designations]'** ²and center designations² pursuant to the "Coastal
46 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.),
47 **'[permit and approval issued by the Highlands Water Protection**

1 and Planning Council and the Department of Environmental
2 Protection pursuant to the "Highlands Water Protection and
3 Planning Act," P.L. 2004, c.120 (C.13:20-1 et al.),¹ septic
4 approval granted pursuant to Title 26 of the Revised Statutes,
5 permit granted pursuant to R.S.27:7-1 et seq. or any supplement
6 thereto, 'right-of-way' permit ¹**['granted']** issued¹ by the
7 Department of Transportation pursuant to ¹**['Title 27 of the Revised**
8 **Statutes or under the general authority conferred by State law]**
9 paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301
10 (C.27:1A-5)¹, approval granted by a sewerage authority pursuant to
11 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
12 seq.), approval granted by a municipal authority pursuant to the
13 "municipal and county utilities authorities law," P.L.1957, c.183
14 (C.40:14B-1 et seq.), approval issued by a county planning board
15 pursuant to Chapter 27 of Title 40 of the Revised Statutes,
16 preliminary and final approval granted in connection with an
17 application for development pursuant to the "Municipal Land Use
18 Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted
19 pursuant to the "State Uniform Construction Code Act," P.L.1975,
20 c.217 (C.52:27D-119 et seq.), plan endorsement ¹**['and center**
21 **designations]'** ²and center designations² pursuant to the "State
22 Planning Act," P.L.1985, c.398 (C.52:18A-196 et ¹**['seq.]** al.¹),
23 permit or certification issued pursuant to the "Water Supply
24 Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), permit
25 granted authorizing the drilling of a well pursuant to P.L.1947,
26 c.377 (C.58:4A-5 et seq.), certification or permit granted,
27 exemption from a sewerage connection ban granted, wastewater
28 management plan approved, and pollution discharge elimination
29 system permit pursuant to the "Water Pollution Control Act,"
30 P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant
31 to "The Realty Improvement Sewerage and Facilities Act (1954),"
32 P.L.1954, c.199 (C.58:11-23 et seq.), ¹**['certification or approval**
33 **granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et seq.),**
34 **certification issued and water quality management plan approved**
35 **pursuant to the "Water Quality Planning Act," P.L.1977, c.75**
36 **(C.58:11A-1 et seq.),]** ¹ ²certification or approval granted pursuant
37 to P.L.1971, c.386 (C.58:11-25.1 et seq.), certification issued and
38 water quality management plan approved pursuant to the "Water
39 Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.),²
40 approval granted pursuant to the "Safe Drinking Water Act,"
41 P.L.1977, c.224 (C.58:12A-1 et seq.), permit issued pursuant to the
42 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et
43 seq.), any municipal, county, regional, or State approval or permit
44 granted under the general authority conferred by State law or rule or
45 regulation, or any other government authorization of any
46 development application or any permit related thereto whether that
47 authorization is in the form of a permit, approval, license,

1 certification, permission, determination, interpretation, exemption,
2 variance, exception, waiver, letter of interpretation, no further
3 action letter, agreement or any other executive or administrative
4 decision which allows a development or governmental project to
5 proceed.

6 "Development" means the division of a parcel of land into two or
7 more parcels, the construction, reconstruction, conversion,
8 structural alteration, relocation or enlargement of any building or
9 other structure or facility, or of any grading, soil removal or
10 relocation, excavation or landfill or any use or change in the use of
11 any building or other structure or land or extension of the use of
12 land.

13 "Environmentally sensitive area" means ²an area designated
14 pursuant to the State Development and Redevelopment Plan
15 adopted, as of the effective date of this act, pursuant to P.L.1985,
16 c.398 (C.52:18A-196 et al.) as Planning Area 4B
17 (Rural/Environmentally Sensitive), Planning Area 5
18 (Environmentally Sensitive), or a critical environmental site;² the
19 Highlands Region as defined in section 3 of P.L.2004, c.120
20 (C.13:20-3) but shall not include any area designated for growth in
21 the Highlands regional master plan adopted by the Highlands Water
22 Protection and Planning Council pursuant to P.L.2004, c.120
23 (C.13:20-1 et al.) ²[,] ;² and the pinelands area designated in
24 section 10 of P.L.1979, c.111 (C.13:18A-11) but shall not include
25 any growth area designated in the comprehensive management plan
26 prepared and adopted by the Pinelands Commission pursuant to
27 section 7 of the "Pinelands Protection Act," P.L.1979, c.111
28 (C.13:18A-8).¹

29 ¹["Economic emergency"] "Extension period"¹ means the period
30 beginning ¹[January 1, 2006] ²[January 1, 2008¹] January 1, 2007²
31 and continuing through ¹[to December 31, 2012] ²[December 31,
32 2010¹] July 1, 2010².

33 "Government" means any municipal, county, regional, or State
34 government, or any agency, department, commission or other
35 instrumentality thereof.

36
37 4. a. For any government approval in existence during the
38 ¹[economic emergency] extension period¹, the running of the
39 period of approval is automatically suspended for the ¹extension¹
40 period ¹[of the economic emergency]¹, except as otherwise
41 provided hereunder; however, the tolling provided for herein shall
42 not extend the government approval more than ¹[two years] ²[one
43 year¹] six months² beyond the ¹conclusion of the extension¹ period
44 ¹[of the economic emergency]¹. Nothing in this act shall ²shorten
45 the duration that any approval would have had in the absence of this
46 act, nor shall this act² prohibit the granting of such additional

1 extensions as are provided by law when the tolling granted by this
2 act shall expire.

3 b. Nothing in this act shall be deemed to extend or purport to
4 extend ¹;

5 (1)¹ any permit ²or approval² issued by the government of the
6 United States or any agency or instrumentality thereof, or to any
7 permit ²or approval² by whatever authority issued of which the
8 duration of effect or the date or terms of its expiration are specified
9 or determined by or pursuant to law or regulation of the federal
10 government or any of its agencies or instrumentalities ¹].

11 c. Nothing in this act shall be deemed to extend **]** ;

12 (2)¹ any permit or approval issued pursuant to the "Pinelands
13 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the
14 extension would result in a violation of federal law, or any State
15 rule or regulation requiring approval by the Secretary of the Interior
16 pursuant to Pub.L.95-625 (16 U.S.C. s.471(i)) ¹]. ;

17 (3) any permit or approval issued within an environmentally
18 sensitive area;

19 (4) ²[any certification or approval granted pursuant to P.L.1971,
20 c.386 (C.58:11-25.1 et seq.);

21 (5) any certification or approval issued or water quality
22 management plan approved pursuant to the "Water Quality Planning
23 Act," P.L.1977, c.75 (C.58:11A-1 et seq.);

24 (6) any center designation pursuant to either the "Coastal Area
25 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.) or the
26 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.);

27 (7)² any permit or approval ²within an environmentally
28 sensitive area² issued pursuant to the "Highlands Water Protection
29 and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.); ²[or

30 (8)² (5)² any permit or approval issued by the Department of
31 Transportation pursuant to Title 27 of the Revised Statutes or under
32 the general authority conferred by State law, other than a right-of-
33 way permit issued pursuant to paragraph (3) of subsection (h) of
34 section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted
35 pursuant to R.S.27:7-1 et seq. or any supplement thereto ²;

36 (6) any permit or approval issued pursuant to the "Flood Hazard
37 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except
38 where work has commenced, in any phase or section of the
39 development, on any site improvement as defined in paragraph (1)
40 of subsection a. of section 41 of the "Municipal Land Use Law,"
41 P.L.1975, c.291, (C.40:55D-53) or on any buildings or structures; or

42 (7) any coastal center designated pursuant to the "Coastal Area
43 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), that as of
44 March 15, 2007 (a) had not submitted an application for plan
45 endorsement to the State Planning Commission, and (b) was not in
46 compliance with the provisions of the Coastal Zone Management
47 Rules at N.J.A.C.7:7E-5B.6² . ¹

1 ~~['d.] c.~~¹ This act shall not affect any administrative consent
2 order issued by the Department of Environmental Protection in
3 effect or issued during the 'extension' period ~~['of the economic~~
4 ~~emergency']~~¹ , nor shall it be construed to extend any approval in
5 connection with a resource recovery facility as defined in section 2
6 of P.L.1985, c.38 (C.13:1E-137).

7 ~~['e.] d.~~¹ Nothing in this act shall affect the ability of the
8 Commissioner of Environmental Protection to revoke or modify a
9 specific permit or approval, or extension thereof pursuant to this
10 act, when that specific permit or approval contains language
11 authorizing the modification or revocation of the permit or approval
12 by the department.

13 ~~e.~~² In the event that any approval tolled pursuant to this act is
14 based upon the connection to a sanitary sewer system, the
15 approval's extension shall be contingent upon the availability of
16 sufficient capacity, on the part of the treatment facility, to
17 accommodate the development whose approval has been extended.
18 If sufficient capacity is not available, those permit holders whose
19 approvals have been extended shall have priority with regard to the
20 further allocation of gallonage over those approval holders who
21 have not received approval of a hookup prior to the ²date of²
22 enactment of this act. Priority regarding the distribution of further
23 gallonage to any permit holder who has received the extension of an
24 approval pursuant to this act shall be allocated in order of the
25 granting of the original approval of the connection.

26 ~~['f.]~~ ²~~['e.]~~ ~~f.~~² This act shall not toll any approval issued under
27 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et
28 seq.) in connection with an application for development involving a
29 residential use where, subsequent to the expiration of the permit but
30 prior to January 1, ~~['2005]~~ 2007¹ , an amendment has been adopted
31 to the master plan and the zoning ordinance to rezone the property
32 to industrial or commercial use when the permit was issued for
33 residential use.

34 ²~~['f.]~~ ~~g.~~² Nothing in this act shall be construed or implemented
35 in such a way as to modify any requirement of law that is necessary
36 to retain federal delegation to, or assumption by, the State of the
37 authority to implement a federal law or program.¹

38 ²h. Nothing in this act shall be deemed to extend the obligation
39 of any wastewater management planning agency to submit a
40 wastewater management plan or plan update, or the obligation of a
41 municipality to submit a wastewater management plan or plan
42 update, pursuant to the "Water Quality Planning Act," P.L.1977,
43 c.75 (C.58:11A-1 et seq.) and the Water Quality Management
44 Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by the Department
45 of Environmental Protection, effective July 7, 2008.²

1 5. State agencies shall, within 30 days after the effective date
2 of this act, place a notice in the New Jersey Register tolling all
3 approvals in conformance with this act.

4

5 6. The provisions of this act shall be liberally construed to
6 effectuate the purposes of this act.

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8 7. This act shall take effect immediately.

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The "Permit Extension Act of 2008."