

THE PERMIT EXTENSION ACT OF 2008



On September 6, 2008, Governor Jon S. Corzine signed P.L. 2008, c. 78, the “Permit Extension Act of 2008.”

This law, like a similar law passed in 1992, was passed in response to conditions in the national economy that have had a severe impact on the banking, real estate and construction industries, with the result that developers are unable to proceed with projects for which they have already obtained various approvals, including the approval of plans and the issuance of construction permits by UCC enforcing agencies.

The law applies to any municipal, county, regional, or State development approval or permit, or any other executive or administrative decision, that allows a development or governmental project to proceed, unless that approval or permit is specifically excluded by the Act. The law specifically includes UCC permits. (A list of the approvals included and of those excluded by the Act is attached for your use.)

In order to determine whether a permit qualifies for extension under this Act, the construction official must check with the agencies and officials responsible for issuing prior approvals to make sure that those prior approvals remain in effect. **The construction official must also determine whether or not the exclusion for any “environmentally sensitive area” would apply.** “Environmentally sensitive areas” include areas designated in the State Development and Redevelopment Plan as Planning Area 4B (Rural/Environmentally Sensitive), Planning Area 5 (Environmentally Sensitive), or a critical environmental site (Plan can be viewed at www.nj.gov/dca/osg/plan/stateplan.shtml); the Highlands Region (excluding any area designated for growth in the Highlands regional master plan adopted by the Highlands Water Protection and Planning Council (Plan can be viewed at <http://www.nj.gov/njhighlands/master>), and the Pinelands Area as per N.J.A.C. 13:18A-11 (excluding any growth area designated in the comprehensive management plan

prepared and adopted by the Pinelands Commission, www.nj.gov/pinelands/images/pdf%20files/pinelandsprotectionact1.pdf.)

In order to prevent the wholesale abandonment of approved projects and activities, the Act stops the clock on the running of the term of those approvals during the “extension period,” which is defined as extending from January 1, 2007 through July 1, 2010. This means that any plan approval or permit that was valid as of January 1, 2007 will still be valid on July 1, 2010, at which the time for which the plan approval or permit is valid will start running again. However, six months after the end of the extension period, on January 1, 2011, the term of any plan approval or permit that has only continued in existence because of the Permit Extension Act will end. In short, the clock on permits expiring is deemed to have stopped running on January 1, 2007 and starts again on July 1, 2010. On July 1, 2010, when the clock starts again, the permit is valid for an additional six months or for the time that would have remained on January 1, 2007, **whichever is shorter.**

Under the UCC rules, a construction permit lapses if (i) no work is done for a year or (ii) work, having been started, is discontinued for six months. The following are some examples of how certain scenarios would be affected by the Permit Extension Act:

1. Construction permit was obtained prior to January 1, 2006 and no work was done. The permit has lapsed and is not revived by the Permit Extension Act.

2. Construction permit was obtained on April 1, 2006 and no work was done. The permit was deemed to have lapsed as of April 1, 2007. However, the permit is now deemed to have been revived by the passage of the Permit Extension Act. Since it had been valid for three more months as of January 1, 2007, it will continue to be valid for three more months as of July 1, 2010, and its new expiration date, if it is not acted upon, will be October 1, 2010.

3. Construction permit was obtained on October 1, 2006 and no work was done. The permit was valid for nine more months as of January 1, 2007 and is now deemed to have been revived, and to continue to be valid as of July 1, 2010. However, since a permit that is only valid because it was extended by the Permit Extension Act can only remain valid for six months following the end of the extension period, the permit would only be valid for six more months, and would expire on January 1, 2011, if not used by then.

4. Construction permit is obtained between January 1, 2007 and January 1, 2010. Though the time would not begin to run until July 1, 2010, the permit would expire on January 1, 2011, since the Permit Extension Act does not allow any extensions beyond January 1, 2011 unless the permit would have continued in existence beyond that date had the Permit Extension Act not been adopted.

5. Construction permit is obtained after January 1, 2010. Since the permit is valid for a year, it is unaffected by the January 1, 2011 cut-off date and expires one year from the date of issuance, just as it would if the Permit Extension Act had not been adopted.

In those cases where plan review is done by DCA, any approval that is valid on or after January 1, 2007 may be used to support issuance of a permit through January 1, 2011.

Lastly, any permit issued during the extension period (between January 1, 2007 and July 1, 2010) will be valid until January 1, 2011 (six months beyond the end of the extension period,) or until the date when it would have expired if the Permit Extension Act had not been passed, *whichever is longer*.

List of approvals and permits included and excluded:

The law specifically includes UCC permits and includes the following: any approval of a soil erosion and sediment control plan granted by a local soil conservation district, any waterfront development permit, any permit issued pursuant to "The Wetlands Act of 1970," any permit issued pursuant to the "Freshwater Wetlands Protection Act," any approval of an application for development granted by the Delaware and Raritan Canal Commission, any permit issued by the New Jersey Meadowlands Commission, any approval of an application for development granted by the Pinelands Commission and determination of municipal and county plan conformance pursuant to the "Pinelands Protection Act," any permit issued or center designations made pursuant to the "Coastal Area Facility Review Act," any septic approval, any highway access permit or right-of-way permit granted by the Department of Transportation, any approval granted by a sewerage authority*, any approval granted by a municipal utilities authority, any approval issued by a county planning board, any preliminary and final approval granted in connection with an application for development pursuant to the "Municipal Land Use Law," any plan endorsement and center designations approved pursuant to the "State Planning Act," any permit or certification issued pursuant to the "Water Supply Management Act," any permit granted authorizing the drilling of a well, exemption from a sewerage connection ban granted*, wastewater management plan approved, and pollution discharge elimination system permit pursuant to the "Water Pollution Control Act," any certification granted pursuant to "The Realty Improvement Sewerage and Facilities Act," any certification or approval of water and sewerage facilities for 50 or more units granted pursuant to P.L.1971, c.386, any certification issued and water quality management plan approved pursuant to the "Water Quality Planning Act," any approval granted pursuant to the "Safe Drinking Water Act," any permit issued pursuant to the "Flood Hazard Area Control Act," P.L.1962.

*Note: The continuation of an approval for connection to a sanitary sewer is contingent on the availability of sufficient capacity.

The law specifically **excludes** the following: any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or any permit or approval for which the expiration is determined under Federal law, 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 Federal approval, **any permit or approval issued within an environmentally sensitive area; any permit or approval within an environmentally sensitive area issued pursuant to the "Highlands Water Protection and Planning Act,"** any permit or approval issued by the Department of Transportation other than a right-of-way permit or a highway access permit, 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 or on any buildings or structures; any coastal center designated pursuant to the "Coastal Area Facility Review Act," that as of March 15, 2007 (a) had 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.