

CHAPTER 48

AN ACT concerning the extension of certain permits and approvals affecting the physical development of property located within the State of New Jersey and amending P.L.2008, c.78.

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

1. Section 2 of P.L.2008, c.78 (C.40:55D-136.2) is amended to read as follows:

C.40:55D-136.2 Findings, declarations relative to extension of certain permits and approvals.

2. The Legislature finds and declares that:

- a. The most recent national recession has caused one of the longest economic downturns since the Great Depression of the 1930s and has drastically affected various segments of the New Jersey economy, but none as severely as the State's banking, real estate and construction sectors.

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

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

- d. The process of 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.

- e. The process of 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.

- f. County and municipal governments obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities which may expire or lapse without implementation due to the state of the economy.

- g. The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants, due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

- h. The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would, if not addressed, exacerbate those losses.

- i. Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals

expire, and 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.

j. Due to the current inability of builders and their purchasers to obtain financing, under existing economic conditions, more and more once-approved permits are expiring or lapsing and, as these approvals lapse, lenders must re-appraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

k. As a result of the continued downturn of the economy, and the continued expiration of approvals which were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

l. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources, and insufficient to cope with the extent of the present financial situation; moreover, the costs imposed fall on the public as well as the private sector.

m. It is the purpose of this act to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable economic conditions, by tolling the term of these approvals for a period of time, thereby preventing a waste of public and private resources.

2. Section 3 of P.L.2008, c.78 (C.40:55D-136.3) is amended to read as follows:

C.40:55D-136.3 Definitions relative to extension of certain permits and approvals.

3. As used in P.L.2008, c.78 (C.40:55D-136.1 et seq.):

"Approval" means, except as otherwise provided in section 4 of P.L.2008, c.78 (C.40:55D-136.4), any approval of a soil erosion and sediment control plan granted by a local soil conservation district under the authority conferred by R.S.4:24-22 et seq., waterfront development permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), permit issued pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et al.), approval of an application for development granted by the Delaware and Raritan Canal Commission pursuant to the "Delaware and Raritan Canal State Park Law of 1974," P.L.1974, c.118 (C.13:13A-1 et seq.), permit issued by the New Jersey Meadowlands Commission pursuant to the "Hackensack Meadowlands Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et al.), 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," P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued and center designations pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted pursuant to Title 26 of the Revised Statutes, permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto, right-of-way permit issued by the Department of Transportation pursuant to paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a sewerage authority pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a municipal authority pursuant to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), an agreement with a municipality, county, municipal authority, sewerage authority, or other governmental authority for the use or reservation of sewerage capacity, approval issued by a county planning board pursuant to chapter 27 of

Title 40 of the Revised Statutes, preliminary and final approval granted in connection with an application for development pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement and center designations pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), permit or certification issued pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et al.), permit granted authorizing the drilling of a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), 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," P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued and water quality management plan approved pursuant to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), permit issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), any 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, variance, exception, waiver, letter of interpretation, no further action letter, agreement or any other executive or administrative decision which allows a development or governmental project to proceed.

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

"Environmentally sensitive area" means an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78, pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 4B (Rural/Environmentally Sensitive), Planning Area 5 (Environmentally Sensitive), or a critical environmental site, but shall not include any extension area as defined in this section.

"Extension area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (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 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; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas, villages, and towns, designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8); the planning area of the Highlands Region as defined in section 3 of the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-3), and any Highlands center designated by the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60

et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (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" shall not include an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78, pursuant to P.L.1985, c.398 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 a designated growth center in an endorsed plan.

"Extension period" means the period beginning January 1, 2007 and continuing through December 31, 2014.

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

3. Section 4 of P.L.2008, c.78 (C.40:55D-136.4) is amended to read as follows:

C.40:55D-136.4 Existing government approval; extension period.

4. a. For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall shorten the duration that any approval would have had in the absence of P.L.2008, c.78, nor shall P.L.2008, c.78 prohibit the granting of such additional extensions as are provided by law when the tolling granted by P.L.2008, c.78 shall expire. 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," added by P.L.2012, c.48, shall be calculated, using that definition, retroactive to the enactment of P.L.2008, c.78.

b. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be deemed to extend or purport to extend:

(1) any permit or approval issued by the government of the United States 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," P.L.1979, c.111 (C.13:18A-1 et seq.) 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 pursuant to Pub.L.95-625 (16 U.S.C. s.471i);

(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," P.L.2004, c.120 (C.13:20-1 et al.), or any permit or approval issued within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3);

(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 issued pursuant to paragraph (3) of subsection (h) of section 5 of

P.L.1966, c.301 (C.27:1A-5) or a permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto;

(6) any permit or approval issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), except (a) 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," P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures or (b) where the permit or approval authorizes work on real property owned by the government or the federal government;

(7) any coastal center designated pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), 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 at N.J.A.C.7:7E-5B.6; or

(8) any permit or approval within the Highlands planning area located in a municipality subject to the "Highlands Water Protection and Planning Act," P.L.2004, c.120, that has adopted, as of May 1, 2012, in accordance with the Highlands Water Protection and Planning Council conformance approval, a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory, except that the provisions of this paragraph shall not apply to any permit or approval within a Highlands center designated by the Highlands Water Protection and Planning Council, notwithstanding the adoption by the municipality of a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory.

c. P.L.2008, c.78 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, c.38 (C.13:1E-137).

d. Nothing in P.L.2008, c.78 shall affect the ability of the Commissioner of Environmental Protection to revoke or modify a specific permit or approval, or extension thereof pursuant to P.L.2008, c.78, when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the department.

e. In the event that any approval tolled pursuant to P.L.2008, c.78 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 who have not received approval of a hookup prior to the date of enactment of P.L.2008, c.78. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to P.L.2008, c.78 shall be allocated in order of the granting of the original approval of the connection.

f. P.L.2008, c.78 shall not toll any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) 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.

g. Nothing in P.L.2008, c.78 shall 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.

h. Nothing in P.L.2008, c.78 shall 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 (C.58:11A-1 et seq.) and the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by the Department of Environmental Protection, effective July 7, 2008.

i. All underlying municipal, county, and State permits or approvals within the extension area as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3), as amended, are extended in the Pinelands Area as designated pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.).

4. Section 5 of P.L.2008, c.78 (C.40:55D-136.5) is amended to read as follows:

C.40:55D-136.5 Notice.

5. State agencies shall, within 30 days after the effective date of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within 30 days after the effective date of any subsequent amendment and supplement thereto, place a notice in the New Jersey Register tolling all approvals in conformance with this act.

5. Section 6 of P.L.2008, c.78 (C.40:55D-136.6) is amended to read as follows:

C.40:55D-136.6 Liberal construction.

6. The provisions of this act shall be liberally construed to effectuate the purposes of this act, and any subsequent amendment and supplement thereto.

6. This act shall take effect immediately.

Approved September 19, 2012.