

Real Estate Developers Beware! Permit Extension Act of 2020 Not Automatic: Register by October 8th

09/16/20

On July 1, 2020, Governor Murphy signed the Permit Extension Act of 2020, (the “Act”), P.L. 2020, c. 53, codified as N.J.S.A. 40:55D-136.7, et seq., in order to give real estate developers, including homebuilders and commercial, office, and industrial developers, the opportunity to extend various local and State-agency approvals during the pendency of the COVID-19 public health emergency. The Act states that “[f]or any government approval in existence on March 9, 2020, the running period of approval is automatically suspended for the COVID-19 extension period, except as otherwise provided hereunder ...” N.J.S.A. 40:55D-136.10(a). Therefore, approvals and permits issued after March 9, 2020, along with permits and approvals that expired prior to that date, are not eligible for an extension under the Act. However, the notice required by the Act reveals that this “automatic extension” is not automatic at all. Rather, to obtain the extension, a developer must register the approval or permit with the Department of Environmental Protection by October 8, 2020.

Permits / Approvals Extended

Pursuant to N.J.S.A. 40:55D-136.9, the term “Approval” is broadly defined to include various approvals and permits, including but not limited to:

- Preliminary and final approvals granted in connection with an application for development pursuant to the “Municipal Land Use Law” (“MLUL”);
- Approvals of a soil erosion and sediment control plans granted by a local soil conservation district;
- Waterfront development permits and CAFRA permits;
- Permits issued pursuant to “The Wetlands Act of 1970” and the “Freshwater Wetlands Protection Act”;
- Approvals for development granted by the Delaware and Raritan Canal Commission;
- Permits issued pursuant to the “Hackensack Meadowlands Reclamation and Development Act”;
- Approvals of an application for development granted by the Pinelands Commission and determinations of municipal and county plan conformance pursuant to the “Pinelands Protection Act”;
- Approvals granted by sewerage and municipal authorities; and
- Approvals issued by a county planning board.

The term “government” is equally broad, defined as “any municipal, county, regional, or State government, or any agency, department, commission or other instrumentality thereof”; and the phrase “COVID-19 extension period” refers to “the period beginning March 9, 2020 and continuing for as long as a public health emergency, pursuant to the “Emergency Health Powers Act,” ... that has been declared by the Governor in response to COVID-19, is in effect.”

Exceptions

Not all approvals or permits are subject to the Act. For example, the Act states it “shall not toll any approval issued under the [MLUL] in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to March 9, 2020, 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.” N.J.S.A. 40:55D-134.14. Other examples include, but are not limited to: (1) any permit or approval issued by the government of the United States or any agency or instrumentality thereof;

(2) 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 approval by the Secretary of the Interior pursuant to 16 U.S.C. § 471i; and (3) any permit or approval issued within the preservation area of the Highlands Region. N.J.S.A. 40:55D-136.10.

Furthermore, certain government actions are not affected by the Act. For example, the Act does not affect any administrative consent order issued by the Department of Environmental Protection (“Department” or “DEP”) in effect or issued during the COVID-19 extension period, N.J.S.A. 40:55D-136.11; nor does it affect the ability of the Department to revoke or modify a specific permit or approval or extension thereof pursuant to the Act, when that specific permit or approval, or the Commissioner’s underlying statutory or regulatory authority, contains language authorizing the modification or revocation. N.J.S.A. 40:55D-136.12.

The Extension is Not Automatic: Approvals Must be Registered by October 8

The extension afforded by the Act is not automatic. Rather, it requires both State agencies and developers to take action. First, the Act required that State agencies publish notice in the New Jersey Register tolling approvals subject to the Act. N.J.S.A. 40:55D-136.18(a). Following this publication, the responsibility then falls to developers to register their approvals with the department within 30 days of the notice in the New Jersey Register. N.J.S.A. 40:55D-136.18(b). If a developer fails to register the approval, then the running period for that approval shall not be suspended for the COVID-19 extension period. N.J.S.A. 40:55D-136.18(c).

The State agency notice was published on September 8, 2020 (the “Notice”). Therefore, to obtain the extension, applicable approvals and permits must be registered with the Department of Environmental Protection by October 8, 2020. Otherwise, the running period for that approval will not be suspended for the COVID-19 extension period. The Notice continues that “[t]his registration requirement applies to specified permits, approvals, and deadlines from a broad range of State and local entities – not just the Department.” Thus, it is irrelevant whether an approval or permit was issued by the DEP or another State agency. If it is subject to the Act, the approval or permit must be registered with the DEP to obtain the extension. N.J.S.A. 40:55D-136.18(b). To register an approval, developers must provide the information specified at www.nj.gov/dep/pea2020. A link to the request form can be found [here](#).

If you have questions about this legal alert or another land use question, please contact a member of our [Land Use](#) team.

Practice

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