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Governor Corzine Signs the New Jersey Economic Stimulus Act

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In an effort to jump start New Jersey's economy, on July 27, 2009, Governor Corzine signed The New Jersey Economic Stimulus Act of 2009, A-4048/S-2299 (the "NJ Stimulus Act"). The NJ Stimulus Act contains a series of incentives to stimulate development in New Jersey including: grants funded by future development, relaxation of and expansion of eligibility for Urban Transit Hub Tax Credit, boosting of construction on college campuses and the temporary suspension of the affordable housing growth share fee requirement for commercial developments of 2.5% of the equalized assessed value.

The NJ Stimulus Act imposes a temporary moratorium on the collection of the 2.5% non-residential development fee imposed by the "Statewide Non-Residential Development Fee Act" for approved projects prior to July 1, 2010; provided that a permit for construction of the building has been issued prior to January 1, 2013. In part, the 2.5% non-residential development fee imposed under the Affordable Housing Reform Statute (P.L.2008, c.46), which made significant changes to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., also known as the Statewide Non-Residential Development Fee Act, does not apply to:

(1) non-residential property for which either temporary or final site plan approval has been issued prior to July 1, 2010; or

(2) certain non-residential planned development which has received approval or a non-residential development for which the developer has entered into a developer's agreement pursuant to a development approval prior to July 1, 2010; or

(3) non-residential projects that, prior to July 1, 2010, are referred to a planning board by the State of New Jersey, a governing body or other public agency for review; or

(4) non-residential property for which a site plan has received approval by the New Jersey Meadowlands Commission prior to July 1, 2010; or

(5) individual buildings within a non-residential phased development that received either preliminary or final approval prior to July 1, 2010;

in each case provided that a permit for construction of the building has been issued prior to January 1, 2013.

Additionally, under the NJ Stimulus Act, developers who paid the 2.5% non-residential development fee in connection with certain projects that, prior to July 17, 2008, received approval or were referred to a planning board by the State of New Jersey, a governing body or other public agency for review are entitled to a return of any fees paid that represent the difference between monies committed prior to July 17, 2008 and money paid on or after that date. To obtain a refund of the development fees, the developer must file a claim for refund within 120 day of the effective date of the NJ Stimulus Act.

Developers should act quickly to entitle their projects to avoid the 2.5% non-residential development fee and/or file a claim for refund if a developer has already paid the non-residential development fee under the Statewide Non-Residential Development Fee Act. It may be prudent to consult with an attorney if you have questions regarding eligibility for return of a developer fee payment or any other provision of the NJ Stimulus Act.

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