



# Practice Update

## **Tropical Storm Emily State of Emergency Presents New Opportunity for Extension of Development Approvals, but Time Is Running Out on Hurricane Matthew Extension**

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On July 31, 2017, Governor Scott issued Executive Order 17-204, declaring a 60-day state of emergency in 31 counties for Tropical Storm Emily and thereby providing a new opportunity for extension of certain development approvals in those counties. The emergency declaration applies in the following counties: Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, Seminole, St. Lucie, Sumter and Volusia.

Florida Statute 252.363 provides an extension for certain permits and authorizations when the Governor declares a state of emergency, effective within the area covered by the emergency declaration. With some exceptions, the extension applies to expiration of local-government-issued development orders (such as rezonings, concurrency approvals, and proportionate share agreements with phasing or expiration dates), building permits, Development of Regional Impact development orders, and Environmental Resource Permits issued by the Florida Department of Environmental Protection or water management districts pursuant to Part IV of Ch. 373, Florida Statutes. These extensions do not apply to federal permits.

The emergency declaration tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the state of emergency and extends the deadline for the permit or authorization for an additional 6 months beyond the tolled period. Within 90 days after the termination of the emergency declaration, the holder of the permit or authorization must provide written notice to the issuing authority of the intent to exercise the tolling and extension granted. The notice must reference Section 252.363, Florida Statutes, identify the specific permit or other authorization qualifying for extension and identify the particular state of emergency under which the extension is being sought.

Since our last Practice Update on this topic, the Governor has also extended the state of emergency for the opioid epidemic (EO 17-177, as amended by EO 17-178).

The chart below provides information on the currently available extension opportunities under this statutory provision. With the exception of Zika and Tropical Storm Emily, these emergency declarations were issued statewide. Please note that the deadline to file for Hurricane Matthew is August 29, 2017.

<b>Extension</b>	<b>Start</b>	<b>Expiration*</b>	<b>Deadline to Notify</b>
Zika Virus	6/23/16	8/7/17	11/5/17
Hurricane Matthew	10/3/16	5/31/17	8/29/17
Wildfires	4/11/17	8/9/17	11/7/17
Opioid Epidemic	5/3/17	8/28/17	11/26/17
Tropical Storm Emily	7/31/17	9/29/17	12/28/17

\* Unless extended

While multiple extensions may be applicable to some projects under the recent executive orders and each state of emergency provides a separate 6-month extension, overlapping tolling periods (when multiple states of emergency are in effect) cannot be double-counted. Care must therefore be taken in calculating the total amount of time available under the various development approval extensions and to ensure the notice deadlines are met for each applicable extension.

In addition, governmental agencies, permittees and attorneys can disagree as to whether a permit is eligible for an extension and as to how to calculate the extension and tolling periods. For example, at least one governmental agency has taken the position that the opioid epidemic state of emergency does not qualify as a state of emergency under section 252.363. If practicable, clients should therefore try to get an acknowledgement from the permitting staff agreeing to the extension and new phasing and expiration dates. If that is not practicable, it is important to keep records showing that the notice was given, when it was given, and that it was otherwise in compliance with the statutory requirements. Where multiple notices of extensions have been provided to the permitting authority, it is useful to catalog in the new notice each prior extension for which notice was given and the applicable dates.

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