

Practice Update

COVID-19 - Timing Relief for Florida Developers Related to Land Use Entitlements and Permits

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The coronavirus (COVID-19) pandemic may pose practical and timing challenges to real estate developers in connection with planned and ongoing development projects. Due to existing state law and the state of emergency declared by Governor DeSantis on March 9, 2020, there is relief available for real estate developers in Florida to extend the time to act on land use entitlements and certain permits.

All development orders issued by a local government in Florida, building permits, Florida Department of Environmental Protection (FDEP) or water management district permits issued pursuant to Part IV of Chapter 373, Florida Statutes, and buildout dates for Developments of Regional Impact (DRIs) are eligible to have their expiration date extended for the length of the state of emergency (currently 60 days) plus six (6) months. The extension period could grow longer if the COVID-19 state of emergency is extended by Governor DeSantis in the future.

Background

On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order 20-52 declaring a state of emergency statewide for all 67 Florida counties in

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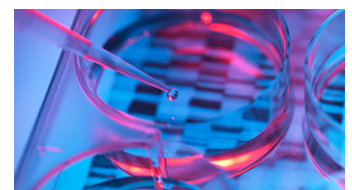
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order to deal with the effects of COVID-19 and to contain the spread of COVID-19. Under existing state law, the declaration of a state of emergency allows real estate developers and permit holders to toll and extend the expiration date of their development orders and permits for the length of time that the state of emergency is in effect, plus an additional six (6) months.

Eligible Development Orders, Permits, and Other Authorizations

Section 252.363, Florida Statutes, provides that upon the declaration of a state of emergency by the Governor for a “natural” emergency, development orders, permits, and other authorizations are tolled for the duration of the declaration plus an additional six (6) months. Certain exclusions apply to Section 252.363. The tolling and extension provisions apply to:

- The expiration of development orders issued by a local government
- The expiration of building permits
- The expiration of FDEP or water management district permits issued pursuant to Part IV of Chapter 373, Florida Statutes
- The buildout dates for Developments of Regional Impact (DRI), including any extension of a buildout date that was previously granted pursuant to Section 380.06(7)(c), Florida Statutes

Recent Changes to State Law Regarding Natural Emergencies & Tolling

Recent revisions to Section 252.363, Florida Statutes, from the 2019 Florida legislative session limit the tolling and extension provisions to “natural” emergencies. On March 20, 2020, the Florida Department of Business and Professional Regulation confirmed that the COVID-19 state of emergency declared by Executive Order No. 20-52 is a “natural emergency” and therefore the development orders,

permits, and other authorizations described above can be extended under the provisions of Section 252.363.

Notification for Tolling and Extension

The holder of the development order, permit, or other authorization must notify the issuing authority of the intent to exercise the tolling and extension. The notice must be in writing (email counts as a writing) and it must identify the specific development order, permit, or other authorization that is being extended. While Section 252.363 authorizes these extensions and they are to be automatic (i.e. the issuing agency/local government does not have discretion on whether to grant the extension), some issuing agencies and local governments may require additional information or forms or application fees to recognize the extensions for local permits. Some issuing agencies or local governments may also question the legitimacy of the extension or the calculation of the extension period. Therefore, developers may wish to consult with legal counsel to discuss filing the required notice depending on the facts of the situation.

In order to take advantage of the extension afforded by Executive Order No. 20-52, notification to the issuing agency or the local government must be given within 90 days of the termination of the emergency declaration. Executive Order No. 20-52 is currently scheduled to expire on **May 8, 2020**. Therefore, permit holders currently have from now until **August 5, 2020** to provide written notification of the extension. This date is subject to change depending on whether the Governor shortens or further extends the COVID-19 state of emergency. If the COVID-19 state of emergency is further extended, the extension period as well as the date by which written notification must be provided will also further be extended.

When To Provide Written Notification

Because the extension of a development order or permit is only effectuated upon providing written notice to the issuing agency or local government by no later than **August 5, 2020**, real estate developers and permit holders may want to review the expiration dates of their existing development orders and permits promptly to determine what course of action to take and whether they are eligible to extend their development orders and/or permits. Note that the application of Section 252.363 cannot bring back to life a development order or permit that has already expired. However, if a development order or permit will expire soon, even before May 8, 2020 when the COVID-19 state of emergency is currently set to expire, you can still extend the development order or permit by providing written notification under Section 252.363 prior to the expiration date of the development order or permit.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.