

September 29, 2022

## Governor's Emergency Declaration in Response to Hurricane Ian Authorizes Extension of Time for Development Orders and Permits in Florida

On September 24, 2022, Florida Governor Ron DeSantis issued Executive Order 22-219, declaring a statewide emergency due to the threat posed by Hurricane Ian in the State of Florida.

Pursuant to Section 252.363, Florida Statutes (the "Statute"), a declaration of state of emergency by executive order of the Governor for 'natural emergencies' gives rise to tolling of expiration dates for eligible permits and development orders issued by municipalities and counties, as well as permits issued by the Department of Environmental Protection or a water management district pursuant to part IV Chapter 373, and buildout dates for Developments of Regional Impact.

The Statute provides for an automatic extension for all valid qualified permits and development orders of **6 months plus the duration of the state of emergency**. Currently Executive Order 22-219 creates a state of emergency for 60 days through November 22, 2022, meaning the tolling period would extend current expiration dates for qualified projects across all counties in Florida for up to 8 months.

Real Estate Developers and other permit holders should note the following:

- ***Tolling of Expiration Date upon Proper Written Notification.*** The Statute affords automatic right to an extension upon written notification to the issuing jurisdiction. Permit holders and property owners wishing to take advantage of the statewide tolling must notify the issuing governmental authority of its intent to exercise its rights under the Statute for valid permits or development orders which have not already expired.
- ***Important Time Parameters.*** Written notification of intent to exercise tolling under the Statute must occur prior to expiration of said permit or development order and not later than 90 days after the expiration of the state of emergency. Based on the current declaration of state of emergency, *the current deadline for exercising automatic tolling is February 19, 2023*. This date is subject to change if the Governor further extends the Hurricane Ian state of emergency.<sup>1</sup>

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<sup>1</sup> In event that Governor DeSantis extends the state of emergency, which has been common with hurricanes and other natural emergencies affecting Floridians, including the COVID-19 pandemic and Zika Virus public health crisis, the total tolling period could ultimately extend beyond 8 months.

- **Phased Construction Project Considerations.** If a phased project deadline is extended, the commencement and completion dates for any required mitigation are extended such that the mitigation activities occur in the same timeframe relative to the phase as originally permitted.
- **Possible Reasons for Exclusion.** Projects considered to be in noncompliance with the code and permits conditioned on court approval may be ineligible under the Statute.

Because each local government jurisdiction and regulatory authority may have independent protocols or forms that are adopted in relation to the Statute, it is advisable to contact an attorney licensed in Florida with expertise in this area of law to assist in identifying the applicable local government jurisdiction, evaluating the potential applicability of the Statute and advising on perfecting notification requirements.

*For information directly from the State of Florida:*

- [Executive Order 22-219, September 24, 2022](#)

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Wernick & Co, PLLC brings you this client alert as part of our efforts to stay on top of legal developments in these times of unprecedented change.



If we can be of assistance or you would like more information about eligibility of a development order or permit related to a project in your pipeline, please do not hesitate to contact us.

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