

## Tolling Period for Development Approvals Extended Through 2011

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On Saturday, July 10, just after 4:30 a.m., the North Carolina General Assembly passed House Bill 683 ("HB 683") which extends the tolling period for development approvals to December 31, 2011. The original tolling period set forth in the Permit Extension Act of 2009 was set to expire on December 31, 2010. The bill was heavily lobbied by both the development community and local government associations. Governor Perdue is expected to sign the new legislation which will make it effective immediately.

In short, the Permit Extension Act of 2009 suspended the expiration of development approvals that were current and valid at any point during the three-year period running from January 1, 2008 through December 31, 2010. In effect, it stopped the clock from running on development approvals during this three-year period. HB 683 extended this tolling period to December 31, 2011 thereby making the tolling period a total of four years. For example, if a permit holder obtained a development approval on March 1, 2008 that requires construction to begin within 12 months, that 12 month period would not begin to run until January 1, 2012. If, however, the development approval was obtained on March 1, 2007, the clock would stop running on January 1, 2008 and would resume on January 1, 2012. The developer would then have 3 months remaining on his development approval to begin construction.

The types of development approvals covered remain unchanged by HB 683. Among the state development approvals are erosion and sedimentation control plans, CAMA permits, water and wastewater permits, nondischarge permits, water quality certifications, and air quality permits. Approvals by local governments include sketch plans, preliminary and final plats under a land subdivision ordinance, site specific or phased development plans under the statutory zoning vested rights provisions, certificates of appropriateness issued by historic commissions, other development permits, and building permits. Federal permits, however, remain unaffected by the new law and are not tolled.

Significantly, however, HB 683 allows local governments to opt out of the additional tolling period by passing a resolution. Although HB 683 does not specifically require local governments to opt out prior to the expiration of the original tolling period, presumably local governments must do so prior to December 31, 2010. It is not clear from the new law or the existing statutes whether local governments are required to provide the permit holder or general public with notice and/or an opportunity to be heard. Therefore, over the next several months, permit holders should keep a close eye on local government jurisdictions where they currently have pending development approvals. While state agencies cannot opt out of the new tolling period and all state issued permits will be tolled until December 31, 2011, permit holders should also take precautions against situations where their state permits are dependent and/or contingent upon local government approvals whose tolling period, as a result of a local government opt out, expires on December 31, 2010.



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Finally, HB 683 provides local governments and state agencies a method whereby they can terminate the permit extension period set forth in HB 683. The governmental entity can do so if the permit holder fails to (1) comply with all applicable laws, regulations and policies in effect at the time the development approval was originally issued by the governmental entity; (2) maintain all performance guarantees that are imposed as a condition of the initial development approval for the duration of the period the development approval is extended or until it is affirmatively released from that obligation by the governmental entity; or (3) complete any infrastructure necessary in order to obtain a certificate of occupancy or other final permit approval from the governmental entity. If the extension period is terminated by a local government entity, the termination can be appealed to the Board of Adjustment pursuant to G.S. §§ 160A-388 or 153A-345. While there is no specific appeal route for a state agency decision to terminate the permit extension period, such a decision would presumably be appealable pursuant to the North Carolina Administrative Procedure Act as a contested case petition.

The extension of the Act will continue to provide a benefit to the development community and should help provide developers with the necessary time in order to keep projects alive during these tough economic times. Likewise, the extension is valuable to local governments that have already obtained state permits or approvals, but are unable to move forward with projects due to budget restraints. It is important for developers and local governments to know the ramifications of the new law and how to utilize it as both a permittee and/or as the permitting authority.

A complete copy of HB 683 showing the changes to the Permit Extension Act of 2009 can be found [here](#).



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