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PLANNING AND ZONING LAW BULLETIN NUMBER 18 | SEPTEMBER 2010

Development Approval Extension Extended

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The economic recession that began in 2008 continues to have a profound effect on housing and other forms of land development. Many projects that had received state or local regulatory approval were put on hold by their developers. This led the General Assembly in 2009 to enact legislation to extend the validity of most state and local development approvals. The time for taking action pursuant to any approval that was valid between January 1, 2008, and December 31, 2010, was suspended during this three-year period.

Faced with a continuing recession in 2010, the General Assembly took further action to provide relief for developers whose projects have been delayed. New legislation was enacted to extend these permit approvals for an additional year. Local governments were, however, given the opportunity to opt out of this fourth year of permit extensions. The new law also imposed conditions that must be met by those projects that are covered by the additional extension period.

Summary of the Legislation

2009 Permit Extension Law

The original permit extension law was Session Law (S.L.) 2009-406, effective August 4, 2009. The full text of the law, as amended, is set out as Appendix A. This law extended most state and local development approvals that were valid at any time between January 1, 2008, and December 31, 2010.

The section of the law extending development approvals, Section 4, provides:

> For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under [General Statutes] G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

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The law thus stops the clock during the entire period—that is, the period is tolled and resumes running at the end of the extension period.

Section 3 of the law defines those "development approvals" that are subject to extension. It lists a number of local government approvals that are explicitly covered, including sketch plans, preliminary plats, subdivision plats, site-specific and phased development plans, development permits, development agreements, and building permits. Among the state government approvals covered are environmental impact statements, erosion and sedimentation control permits, Coastal Area Management Act permits, water and wastewater permits, nondischarge permits, water quality certifications, and air quality permits. While listing specific approvals, the law also provides that development approvals are included "regardless of the form of the approval." It further defines "development" that is covered by it expansively to include land subdivision, site preparation (grading, excavation, filling), the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, and any use, change in use, or extension of use of land, a building, or a structure.

Section 5 of the law sets out certain exceptions to permit extension. Federal permits are not affected. Also, if a permit term or duration is "specified or determined" by federal law, the law does not affect it. The law does not affect consent orders issued by the Department of Environment and Natural Resources, neither does it affect the ability of the state or a local government to revoke or modify a permit.

The law was amended in 2009 to clarify its application to utility allocations. S.L. 2009-572 provides that the law does not reactivate any utility allocation associated with development approvals that expired between January 1, 2008, and August 5, 2009, *if* the water or sewer capacity was reallocated to other development projects based on the expiration of the prior allocation and there is insufficient supply to accommodate both projects. If a developer's approval is revived but the water or sewer allocation that goes with it is not, the law provides that the developer must be given first priority when new supply or capacity becomes available. The law was also amended to include a slightly different process for dealing with utility allocations that is applicable only to Union County.

2010 Amendments to the Law

S.L. 2010-177 makes several changes to the permit extension law. The principal change is the addition of one year to existing extensions of development approvals. The previous three-year period within which permit expiration deadlines have been suspended has become four years—January 1, 2008, to December 31, 2011.

The amended law also addresses site maintenance, performance guarantees, and infrastructure for partially completed development. In a new Section 7.1(a) the law imposes three conditions for any development approvals extended by the original permit extension law and by the additional extension. The holder of the development permit must:

1. Comply with all applicable laws, regulations, and policies in effect at the time the development approval was originally issued.
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 affirmatively released from that obligation by the issuing governmental entity.
3. Complete any infrastructure necessary in order to obtain a certificate of occupancy or other final permit approval from the issuing governmental entity.

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If any of these three conditions is not met, Section 7.1(b) and (c) of the law provide that the permit approval extension may be terminated. The law specifies the process for that termination. Local government terminations can also be appealed to the board of adjustment.

Another addition is that local governments (but not state agencies) have the option of opting out of this additional extension altogether. A city or county may adopt a resolution providing that this new amendment does not apply to a development approval issued by that city or county. If the local government opts out, the original three-year tolling period still applies but not the fourth year added by the 2010 amendment.

Several other minor modifications to the law were made, including clarification that the law does not change any contract obligations, including bonds, and that new water or sewer tap fees may not be assessed if the fee has previously been paid in full for a project. The 2010 law also consolidates the amendments that had been made to the original law in 2009.

Implications of the 2010 Amendments

Opting Out of the One-Year Permit Extension

A key feature of the 2010 legislation is the "opt-out" provision. That option effectively changes the law from a state mandate to one that involves a degree of local government choice. Local governments (but not state agencies) have been given the choice of whether or not they wish to be subject to the fourth year of permit extensions. If a local government does nothing, the additional one-year extension will apply. If a local government elects to opt out of the fourth year of permit extensions, the city or county must adopt a resolution that provides that the one-year extension and related 2010 amendments shall not apply to a development approval granted or permit issued by that governmental unit. The result of an opt-out is that the period during which permit expirations are suspended (tolled) will end on December 31, 2010, as originally called for in the 2009 legislation. The resolution thus has the effect of preserving the status quo in this regard. Although this year's act does not address when a local government opt-out resolution must be adopted, in order to avoid unnecessary complications the resolution should be adopted and become effective no later than the end of 2010.

One important question for a local government considering opting out of the additional year of permit extension is whether a local government must opt out with respect to all development approvals covered by the law or whether it may opt out with respect to some but not all affected permits and approvals. Section 4.1 of the law provides that a local government "may by resolution provide that [the legislation as amended] shall not apply to a development approval issued by that unit of local government." At first blush the focus of this sentence appears to be on individual permits or approvals. That suggests that an opt-out resolution could (or even should) refer to specifically named permits or possibly only one permit. A broader reading, however, is that this language applies collectively or individually to development approvals. A local government may opt out of the fourth year extension with respect to all of the permits and development approvals that it has granted that are affected by the law. Alternatively, there seems nothing to prevent a city or county from opting out only for certain categories of permits (e.g., land subdivision plat approvals) or even for particular projects within a category. However, if it chooses to partially opt out, a local government will need to offer some justification for the disparate treatment. In either event, the resolution should explicitly define the local development approvals that will not be extended for a fourth year.

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Another consideration for local governments is that opting out means that those units will not be subject to certain conditions that apply if permits are extended for a fourth year (see discussion below). Sample resolutions and commentary involving local government opt-out of the one-year permit extension are presented in Appendix B.

Conditions of the Additional Permit Extension

The 2010 act adds a series of provisions that apply to all governmental agencies that by choice or by operation of law are subject to the one-year extension. These provisions, most of which are included in Sections 5 and 7.1 of the law, were added in the wee hours of the last day of the legislative session. In many instances these provisions serve largely to codify or clarify what was thought to likely be the law under the 2009 legislation. However, certain minor changes also were added.

Performance Guarantees and Affirmative Permit Obligations

One matter that troubled some governmental agencies and developers under the 2009 legislation was whether a permit holder could enjoy the benefits of permit extension without assuming the burdens of continuing to hold a permit. That is, when an approval was extended, did the applicant/beneficiary also have to comply with whatever affirmative obligations were imposed by the terms of the permit? For example, if a grading permit was extended by this law, was it also the responsibility of the permit holder to install and maintain various soil erosion and sedimentation control improvements that were required under the permit? The consensus was that both permit benefits and obligations were extended, at least insofar as the permit holder was not affirmatively released from that obligation by the issuing governmental unit. After all, Section 5(6) of the 2009 law declared that the act did not affect the ability of a government "to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law."

A similar question may involve an express or implied condition that a subdivider furnish a performance guarantee ensuring that improvements will be completed within a definite period of time after final plat approval. As developers postponed their plans to develop, some also let their performance guarantees expire. As a result, some subdividers had their plat approvals revoked.

To clarify these matters, the 2010 amendments added two sections, both of which likely codify the preexisting law. Section 7.1(a)(2) deals with maintenance of performance guarantees, and Section 7.1(a)(3) deals with completion of required infrastructure.

Section 7.1(a)(2) makes explicit the requirement that any permit holder whose permit or approval is extended for one more year under the 2010 act must "[m]aintain 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 affirmatively released from that obligation by the issuing governmental entity." Section 7.1(a)(3) requires those who benefit from the one-year extension to "[c]omplete any infrastructure necessary in order to obtain a certificate of occupancy or other final permit approval from the issuing governmental entity."

There may be scenarios under which a permit holder would postpone most activity under a still-valid permit into the next decade with no plans to ever complete a project. In that event it seems unlikely that a governmental unit could compel a permit holder or the permit holder's vendee/transferee to complete the project so as to qualify for a certificate of occupancy. But

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failure to complete the project as planned is grounds for terminating the state-mandated extension of the permit or approval.

A related issue concerns whether the 2009 act applies to the obligations of a surety or other third party that a permit holder has engaged to guarantee performance. If the deadline by which a developer must install certain improvements is extended by the act but the governmental entity is authorized to declare a default, a surety might claim that the surety's obligation to pay the proceeds of a bond over to the local government also is suspended or tolled under the act. This argument would appear to fail because the permit extension act applies only to obligations established under the terms of a permit, not obligations subject to a third-party agreement between the permit holder and another private contractor.[1] There is no evidence that the act intended to affect directly the contract rights of third parties, even if a governmental unit is an obligee under the terms of a bond or other financial instrument guaranteeing performance. Section 5(8) of the 2010 act addresses the matter by declaring that the act is not to be construed or implemented to "[m]odify any person's obligations or impair the rights of any party under contract, including bond or other similar undertaking [*sic*]."

Vested Rights and Continuing Compliance with the Law

One little acknowledged issue implicated by the 2009 legislation was the effect that the act might have on vested development rights. Section 2(14) of the law states that it was designed in part to mitigate "unfavorable economic conditions by tolling the terms of these [development] approvals for a finite period of time." Did that mean that under the act a permit holder would be protected from changes in the regulations under which the approval or permit was originally obtained? Did the 2009 act create a new vested right based solely on receipt of a development approval?

A close reading of the law indicates it recognized the existing law on vested rights rather than changed it. A common law vested right is not established in North Carolina simply by issuance of a land development permit. In order to establish a common law vested right, the permit holder must make substantial expenditures in good faith reliance on a valid permit and suffer some detriment if required to comply with a change in the law. The statutes do provide for vesting with respect to four particular development approvals—a building permit, a "site specific development plan," a "phased development plan," and a "development agreement." But for any other form of development approval, substantial action after receipt of the permit is required to establish vested rights. The 2009 law extended the time period within which a person could act to secure a vested right; it did not create a vested right in and of itself.

The terms of the 2009 law support this conclusion. The 2009 act is noticeably silent on the matter of vested rights. Section 4 explicitly recognizes existing statutory vested rights established by site specific and phased development plans. It provides that the running of the period of the development approval "and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1" is suspended for a certain period of time. These two statutory references are to the existing statutory vested rights established by an approved "site specific development plan" or "phased development plan." There is no suggestion that the legislation recognizes or

1. *Cf.* County of Brunswick v. Lexon Ins. Co., ___ F. Supp. 2d ___, 2010 WL 1872551 (E.D.N.C.) (extension of deadline, under original North Carolina Permit Extension Act, for issuer of performance bonds to either pay county or complete infrastructural improvements in new subdivision project was inappropriate because extension of deadline would delay date that payment was inevitably due, the court apparently assuming that act could apply to third parties).

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establishes a vested right for any other development approvals subject to the law's permit extensions. Indeed, whether and when a permit holder becomes protected from future changes in the law is an even more complex subject if one considers the array of development approvals listed in the act and under which vesting questions may arise. Further, Section 5(6) provides that the law does not "[a]ffect the ability of a government entity to revoke or modify a development approval." This continues to allow, for example, a local government to revoke a permit approval for which no vested rights had been established upon a substantial change in the applicable local ordinance. In any event, there is no evidence that the 2009 law was intended to confer vested rights with respect to any of the various listed permits where none existed before.

One of the new conditions added in 2010, Section 7.1(a)(1) prompts renewed attention to this issue. This section, which applies to development approvals subject to the additional permit extension, provides that the permit holder must "[c]omply with all applicable laws, regulations, and policies in effect at the time the development approval was originally issued by the government entity." Does this mean that compliance with the rules in effect when the permit was issued will be sufficient to protect the permit holder from any future change in the law, regardless of the nature of the permit? In other words, does this 2010 language by implication establish vested rights for all development approvals subject to the one-year extension?

Such an interpretation is implausible in light of the silence of the 2009 act on the subject of vested rights and the discussion above. The better view is that the language of Section 7.1(a)(1) simply declares that a permit holder must continue to obey the law during the tolling period—to comply with the applicable rules in effect when the approval was granted, including obligations under the permit, in order to avoid having the permit or approval terminated or revoked.

The impact of changing regulations comes up in regard to one other aspect of the 2010 act. Local governments and utility providers have faced some particularly knotty problems in applying the 2009 act to water and sewer allocations associated with development. Because of the retroactive effect of the 2009 act there were instances in which it was impossible for authorities to revive developer utility capacity allocations that had expired before the 2009 act became effective. In some cases water or sewer capacity had already been reallocated by that date and there was insufficient capacity to accommodate the revived project. In a few cases, however, utility allocations were reinstated but only after an additional connection fee was charged or the original fee was increased. In this regard Section 5(9), added in 2010, declares that the law is not be construed or implemented to "[a]uthorize the charging of a water or wastewater tap fee that has been previously paid in full for a project subject to a development approval."

Permit Extension Termination Distinguished from Revocation of Permits

One rather confusing addition made by the 2010 act concerns the topic of terminating permit extensions and how it relates to revoking permits.

Under most environmental, land use, and construction regulatory systems, a permit may be revoked if the holder of the permit fails to comply with the terms of the permit. The 2009 act recognized this existing law in Section 5(6), which provides that the act may not be constructed or implemented to affect "the ability of a government entity to *revoke* or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law" (emphasis added).

Two prominent sections of the North Carolina General Statutes (hereinafter G.S.) that deal with the revocation of building, zoning, and related permits are G.S. 160A-422 (cities) and G.S. 153A-362 (counties). They both provide in part that such a permit "*shall* be revoked for any

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substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit" (emphasis added). They also provide that mistakenly issued permits may be revoked. The revocation of a permit inevitably entails a determination by an administrative official that a violation has occurred. Such a decision or determination typically may be appealed, but the board or body to which the appeal may be taken will depend on the regulatory system involved and the nature of the permit. Appeals of interpretations involving the North Carolina State Building Code go to the North Carolina Commissioner of Insurance. Decisions involved zoning permits may be appealed to the zoning board of adjustment. Actions involving plan approvals under a local soil erosion and sedimentation control ordinance may be appealed to the North Carolina Sedimentation Commission. The 2009 law allowed these myriad administrative arrangements to continue with respect to decisions concerning the revocation of permits that otherwise would have been extended under the law.

The 2010 act adds a related but different procedure. Section 7.1(b) provides for the "termination of the extension of a development approval." Recall that Section 7.1 of the law applies to those development approvals that are subject to the additional one-year extension and only those permits. If a local government opts out of the one-year extension, the permits and approvals that it has issued are not subject to the termination features about to be described. Note, then, that Section 7.1(b) first states that "[f]ailure to comply with any condition in this section may result in *termination of the extension of the development approval* by the issuing governmental entity" (emphasis added). The "conditions" referred to are those requiring the permit holder to, one, comply with the regulations in effect when the permit was issued; two, maintain all performance guarantees; and, three, complete any infrastructure necessary to obtain a final permit. If any of these conditions is not met, then the development approval extension may be terminated. A local government terminating the extension may also take action to revoke the original permit approval, but that is a separate action not affected by this law.

Which extension is meant—the original three-year extension or the one-year extension provided by the 2010 act? Since the language of Section 7.1(b) is in the 2010 amendments (which provides for the one-year add-on extension), and since the original three-year suspension expires on December 31, 2010, the date the add-on extension begins, it is reasonable to conclude that the "extension" referred to is the one-year, add-on extension. It is as if the one-year extension is a bonus for permit holders but a bonus that carries some additional legal baggage.

The question remains, however, what purpose this termination language serves. Since only the one-year permit extension may be terminated for failure to comply with any of the conditions listed above, the underlying permit itself appears to be unaffected. Consider this example: On July 1, 2007, a development company receives final site plan/plat approval for a planned residential development that is subject to the condition that a performance guarantee be maintained for the streets until they are completed and inspected and that certain streets be completed and inspected within one year. Suppose that the local government involved does not opt out under the 2010 act. Then suppose that on March 1, 2011, the streets are not completed and the performance guarantee is allowed to lapse. If a local government chooses simply to "terminate" the one-year extension, then the development company will still have six months to complete the work. That is because once all permit extensions end or are cut short, the development company still has six months left to complete the work before the deadline imposed by the original approval ends. However, if the local government elects to revoke the permit (instead of or in addition to terminating the extension) because of the same failure, no work under the

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permit would be allowed at all. The power to revoke a development permit for proper cause remains available. The power to terminate the one-year extension as it may apply to a particular permit holder provides an additional, milder sanction.

Two other features of the extension-termination option should be noted. Section 7.1(b) also provides that if an extension is to be terminated, the government must "provide written notice to the last known address of the original holder of the development approval of the termination of the extension of the development approval, including the reason for the termination." This feature is apparently designed to shore up the due process requirements that may apply to termination. However, recent experience has shown that a beleaguered property subject to a development permit may be sold, made subject to foreclosure, or otherwise conveyed. Governments are well advised to use due diligence to notify the current permit holder, the property owner, and other interested parties of any termination proceedings as well.

The 2010 act also adds an appeal procedure for a termination. Section 7.1(c) applies to terminations of extensions "if the development approval was issued by a unit of local government with planning authority under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes." In other words the procedures apply to those development approvals that have been granted by almost any city or county.[2] Section 7.1(c) provides that a decision to terminate the one-year extension for a particular development approval may be appealed to the zoning board of adjustment. The development approvals affected include various zoning approvals and permits, certificates of appropriateness, subdivision plat approvals, development agreements, approvals of erosion and sedimentation control plans, and various utility connection and capacity allocation permits issued by a city or county that is authorized to administer such a program. Existing law already calls for appeals of interpretations and revocation actions regarding the zoning-related permits and approvals to be appealed to the board of adjustment. Appeals of termination proceedings to the same board should not be much different. In contrast, appeals of decisions involving building permits, local approvals of soil erosion and sedimentation control plans, and certain utility-related permits are not directed to the board of adjustment by statute. Taking an appeal of a decision to terminate one of these permits or approvals will involve following a wholly new procedural path.

2. Note that the language does not say "issued by a unit of government *pursuant to* planning authority under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes." (emphasis added). That distinction is important because local governments issue building permits and approve erosion and sedimentation control plans pursuant in part to statutes that are in chapters of the General Statutes other than those mentioned, namely, Article 9 (building permits) of G.S. 143 and Article 4 (soil erosion and sedimentation control plans) of G.S. 113A. These approvals, as well as certain utility-related permits, apparently are also subject to the termination provisions described above simply because a city or county with planning authority grants them.

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APPENDIX A. Text of Permit Extension Law (S.L. 2009-406), as Amended

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009
SESSION LAW 2010-177
HOUSE BILL 683

AN ACT TO AMEND THE PERMIT EXTENSION ACT OF 2009.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, and Sections 2 and 3 of S.L. 2009-572, reads as rewritten:

"**SECTION 1.** This act shall be known and may be cited as the "Permit Extension Act of 2009."

"**SECTION 2.** The General Assembly makes the following findings:

(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.
(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.
(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.
(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.
(5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.
(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.
(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State

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and regional government entities that may expire or lapse without implementation due to the state of the economy.

(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

"**SECTION 3.** Definitions.—As used in this act, the following definitions apply:

(1) Development approval.—Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

a. Any detailed statement by a State agency under G.S. 113A-4.
b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.
c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.
d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.

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e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.
f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.
g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.
h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.
i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.
j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.
k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.
l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 18 of Chapter 153A of the General Statutes.
m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.
n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.

(2) Development.—The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

"**SECTION 4.** For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2011.

"**SECTION 4.1.** A unit of local government may by resolution provide that S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, Sections 2 and 3 of S.L. 2009-572, and by this act, shall not apply to a development approval issued by that unit of local government. A development approval issued by a unit of local government that opts out pursuant to this section shall expire as it was scheduled to expire pursuant to S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, and Sections 2 and 3 of S.L. 2009-572 prior to the enactment of this act.

"**SECTION 5.** This act shall not be construed or implemented to:

(1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.

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(2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.
(3) Shorten the duration that any development approval would have had in the absence of this act.
(4) Prohibit the granting of such additional extensions as are provided by law.
(5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2011.
(6) Affect the ability of a government entity to revoke or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.
(7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.
(8) Modify any person's obligations or impair the rights of any party under contract, including bond or other similar undertaking.
(9) Authorize the charging of a water or wastewater tap fee that has been previously paid in full for a project subject to a development approval.

"**SECTION 5.1.(a)** This act does not revive a vested right to the water or sewer allocation associated with a development approval that expired between January 1, 2008, and August 5, 2009, and is revived by the operation of this act if both of the following conditions are met:

(1) The water or sewer capacity was reallocated to other development projects prior to August 5, 2009, based upon the expiration of the development approval.
(2) There is not sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval.

"**SECTION 5.1.(b)** A person whose development approval is revived under this act but whose water or sewer allocation is not revived under this section must be given first priority if additional supply or treatment capacity becomes available.

"**SECTION 5.2.(a)** This section applies only to Union County.

"**SECTION 5.2.(b)** When a development approval that is contingent upon connection to a water supply system or a sanitary sewer system is suspended under Section 4 of this act and there is not sufficient supply or treatment capacity to accommodate requests for additional allocation, the local government that granted the allocation may reallocate reserved requested capacity from projects whose approvals are suspended but are not ready to proceed, if the local government meets all of the following requirements:

(1) Establishes an allocation plan for existing capacity that determines actual capacity and provides for a fair and equitable process to distribute the remaining capacity.
(2) Establishes a reallocation plan to meet requests for capacity above permitted capacity that is fair and equitable and requires the following:
    a. That an applicant for a new or additional allocation demonstrate the ability to begin construction.
    b. That the holder of a development permit suspended under Section 4 of this act demonstrate the ability or intent to begin construction in no less than 120 days in order to retain the reserved capacity.
(3) Does not reallocate capacity to exceed the amount of the reserved capacity.

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"**SECTION 5.2.(c)** This act does not reduce the original period of a development permit.

"**SECTION 6.** Within 30 days after the effective date of this act, each agency or subdivision of the State to which this act applies shall place a notice in the North Carolina Register listing the types of development approvals that the agency or subdivision issues and noting the extension provided in this act. This section does not apply to units of local government.

"**SECTION 7.** The provisions of this act shall be liberally construed to effectuate the purposes of this act.

"**SECTION 7.1.** Conditions for qualification; termination; right of appeal.

(a) For any development approval extended by S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, Sections 2 and 3 of S.L. 2009-572, and by this act, the holder of the development approval shall:

(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 affirmatively released from that obligation by the issuing governmental entity.
(3) Complete any infrastructure necessary in order to obtain a certificate of occupancy or other final permit approval from the issuing governmental entity.

(b) Failure to comply with any condition in this section may result in termination of the extension of the development approval by the issuing governmental entity. In the event of a termination of the extension of a development approval, the issuing governmental entity shall provide written notice to the last known address of the original holder of the development approval of the termination of the extension of the development approval, including the reason for the termination.

(c) Termination of an extension of a development approval shall be subject to appeal to the Board of Adjustment under the requirements set forth in law if the development approval was issued by a unit of local government with planning authority under Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes.

"**SECTION 8.** This act is effective when it becomes law."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:17 p.m. this 2nd day of August, 2010

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APPENDIX B. Sample Resolutions and Commentary for Local Government Opt-Out of Fourth Year of Development Approval Extension

The 2010 permit extension legislation authorizes a city or county to opt out of the fourth year of permit extension. Many cities and counties may decide that a one-year extension to the original three-year period suits them just fine. If they choose to come under the terms of the 2010 act, the choice is easy to accomplish. The city or county need do nothing. But for those cities and counties that are not interested in having the permits they have issued be extended any further, action is necessary. A city or county must adopt a resolution to opt out of the 2010 legislation before the end of the year. Because of the importance of this legislation, two different versions of such a resolution are offered for use by interested cities and counties.

The sample resolution offered here may be used with minor adaptation for either a city or a county. However, for purposes of clarity, the hypothetical city of Green Junction is used as an example. A city or county considering the use of the resolution will want to edit and modify the preface to fit local circumstances. The adoption of the resolution embodies a determination that the benefits of bringing permit extension to an earlier termination will exceed those benefits of bringing it to a later termination. The statements in the preface need to reflect that assessment.

Two versions of the resolution are offered. The first is based on the assumption that a city or county is interested in opting out of the new legislation with respect to all of the development permits or approvals it has issued or granted that are subject to the original permit extension legislation. A city or county may, but is not necessarily required, to list the various categories of permits and approvals that are subject to the full opt-out alternative.

The second version of the resolution is based on the assumption that a city or county is interested in opting out only with respect to certain classes or categories of permits or approvals. If a city or county elects to go this route, it should include in the resolution some language that suggests why permits in one or more categories are not to be extended even though holders of other permits are given the additional one-year grace period.

There is no state-law requirement that the adoption of an opt-out resolution must be preceded by a public hearing. Similarly there is no similar requirement that the proposed resolution be referred to the planning board or any other advisory board before action is taken. A city or county may elect to make such a referral or to hold a hearing if that is deemed appropriate.

Option One: Opting Out of All Extensions

A RESOLUTION PROVIDING FOR THE CITY OF GREEN JUNCTION TO OPT OUT OF THE FOURTH YEAR OF PERMIT EXTENSION FOR ALL DEVELOPMENT PERMITS ISSUED BY THE CITY OF GREEN JUNCTION THAT ARE SUBJECT TO NORTH CAROLINA SESSION LAW 2010-177, AS AUTHORIZED THEREBY

WHEREAS, the economic conditions affecting the nation, the State of North Carolina, and our city that began in 2007 and continue today have impacted the local economy and resulted in increased unemployment, lower economic growth, reduced demand for real estate, and higher rates of real property foreclosure;

WHEREAS, developers and builders have sustained losses and have been unable to proceed with projects authorized by State and local permits and development approvals;

WHEREAS, many environmental, land use, and construction permits are subject to legal requirements that cause the permits to expire if progress on the work authorized by such a permit is not initiated or completed within a certain period of time;

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WHEREAS, the North Carolina General Assembly adopted the "Permit Extension Act of 2009" in response to the expiration or impending expiration of certain development permits issued by the State and local governments;

WHEREAS, the Permit Extension Act of 2009 served to toll the expiration of certain development permits during the three-year period from January 1, 2008, until December 31, 2010;

WHEREAS, the City of Green Junction granted or issued some ___ valid, unexpired development approvals and permits that were outstanding on January 1, 2008, and has granted or issued an additional ___ approvals or permits since that date;

WHEREAS, certain development permits issued by the City of Green Junction have not expired or cannot expire for a period of as many as five years from the time of issuance or approval because of the 2009 permit extension legislation and the permit expiration requirements that apply;

WHEREAS, the General Assembly acted again in 2010 to extend for one more year the period during which the expiration of development permits is tolled, so that the running of any applicable expiration period that otherwise would apply does not resume until January 1, 2012;

WHEREAS, Session Law 2010-177 authorizes a unit of local government by resolution to declare that the one-year extension provided for in the Permit Extension Act of 2009, as amended, shall not apply to development approvals that it has issued;

WHEREAS, the suspension of the running of permit expiration periods has provided relief to the development community during a period of economic stress but has also contributed to certain other problems;

WHEREAS, the enforcement by governmental units of permit obligations on projects that are not actively being developed has imposed administrative burdens, especially where partially completed site improvements have been abandoned;

WHEREAS, the extension of the completion time for some partially completed projects has contributed to certain nuisance-like conditions on such sites that have had a blighting influence on nearby properties;

WHEREAS, the failure or postponement of certain private development projects has made it more difficult for the city to coordinate and carry out its capital improvement program concurrently with new development;

WHEREAS, permit expiration provisions serve a useful public purpose in encouraging permit holders to complete projects, winnowing out projects that are not well-conceived, and bringing closure to the permitting process;

WHEREAS, the standards and procedures for obtaining development permits issued by the City of Green Junction are neither unduly onerous or time-consuming;

WHEREAS, additional time to complete key steps in the land development and construction process is more crucial for larger-scale, multiphase developments and less crucial for individual building projects,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Green Junction as follows:

Section 1. The Board hereby declines to be subject to the one-year permit-extension provisions of Session 2010-177, as that act amends the Permit Extension Act of 2009, with respect to all of those development permits that have been issued by the City of Green Junction that are otherwise subject to these acts.

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Section 2. If any section, phrase, or provision of this resolution is for any reason declared to be invalid, such declarations shall not affect the validity of the remainder of the sections, phrases, or provisions of this resolution.

Section 3. This resolution shall take effect immediately upon its passage.

Option Two: Opting Out of Specified Extensions

A RESOLUTION PROVIDING FOR THE CITY OF GREEN JUNCTION TO OPT OUT OF THE FOURTH YEAR OF PERMIT EXTENSION FOR CERTAIN DEVELOPMENT PERMITS ISSUED BY THE CITY OF GREEN JUNCTION THAT ARE SUBJECT TO NORTH CAROLINA SESSION LAW 2010-177, AS AUTHORIZED THEREBY

WHEREAS, the economic conditions affecting the nation, the State of North Carolina, and our city that began in 2007 and continue today have impacted the local economy and resulted in increased unemployment, lower economic growth, reduced demand for real estate, and higher rates of real property foreclosure;

WHEREAS, developers and builders have sustained losses and have been unable to proceed with projects authorized by State and local permits and development approvals;

WHEREAS, many environmental, land use, and construction permits are subject to legal requirements that cause the permits to expire if progress on the work authorized by such a permit is not initiated or completed within a certain period of time;

WHEREAS, the North Carolina General Assembly adopted the "Permit Extension Act of 2009" in response to the expiration or impending expiration of certain development permits issued by the State and local governments;

WHEREAS, the Permit Extension Act of 2009 served to toll the expiration of certain development permits during the three-year period from January 1, 2008, until December 31, 2010;

WHEREAS, the City of Green Junction granted or issued some ___ valid, unexpired development approvals and permits that were outstanding on January 1, 2008, and has granted or issued an additional ___ approvals or permits since that date;

WHEREAS, certain development permits issued by the City of Green Junction have not expired or cannot expire for a period of as many as five years from the time of issuance or approval because of the 2009 permit extension legislation and the permit expiration requirements that apply;

WHEREAS, the General Assembly acted again in 2010 to extend for one more year the period during which the expiration of development permits is tolled, so that the running of any applicable expiration period that otherwise would apply does not resume until January 1, 2012;

WHEREAS, Session Law 2010-177 authorizes a unit of local government by resolution to declare that the one-year extension provided for in the Permit Extension Act of 2009, as amended, shall not apply to development approvals that it has issued;

WHEREAS, the suspension of the running of permit expiration periods has provided relief to the development community during a period of economic stress but has also contributed to certain other problems;

WHEREAS, the enforcement by governmental units of permit obligations on projects that are not actively being developed has imposed administrative burdens, especially where partially completed site improvements have been abandoned;

WHEREAS, the extension of the completion time for some partially completed projects has contributed to certain nuisance-like conditions on such sites that have had a blighting influence on nearby properties;

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WHEREAS, the failure or postponement of certain private development projects has made it more difficult for the city to coordinate and carry out its capital improvement program concurrently with new development;

WHEREAS, permit expiration provisions serve a useful public purpose in encouraging permit holders to complete projects, winnowing out projects that are not well-conceived and bringing closure to the permitting process;

WHEREAS, the standards and procedures for obtaining development permits issued by the City of Green Junction are neither unduly onerous nor time-consuming;

WHEREAS, additional time to complete key steps in the land development and construction process is more crucial for larger-scale, multiphase developments and less crucial for individual building projects,

WHEREAS, the expiration of ___ permits issued by the City of Green Junction pursuant to the North Carolina State Building Code has been suspended by the North Carolina Permit Extension Act but the work under some of these permits has been dormant for many months or appears to have been abandoned;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Green Junction as follows:

Section 1. The Board hereby declines to be made subject to the one-year permit-extension provisions of Session 2010-177, as that act amends the Permit Extension Act of 2009, with respect to the following development permits that have been issued by the city and that otherwise are subject to the aforesaid acts:

- Any permit issued pursuant to the North Carolina State Building Code;
- *{list any others}*

Section 2. If any section, phrase, or provision of this resolution is for any reason declared to be invalid, such declarations shall not affect the validity of the remainder of the sections, phrases, or provisions of this resolution.

Section 3. This resolution shall take effect immediately upon its passage.

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