

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In Re:

**AUTHORIZATION FOR REPAIRS, REPLACEMENT,
RESTORATION, AND CERTAIN OTHER MEASURES
MADE NECESSARY BY THE APRIL 29 – APRIL 30, 2014
STORM EVENT**

OGC No.: 14-0247

FIRST AMENDED FINAL ORDER

Under Sections 120.569(2)(n) and 403.061, Florida Statutes (“F.S.”), and upon consideration of the following Findings of Fact, the State of Florida Department of Environmental Protection (“Department”) enters this First Amended Final Order (“Order”), including Findings of Fact and Conclusions of Law, in response to action made necessary by the April 29 – April 30, 2014 storm event (“Storm”).

FINDINGS OF FACT

1. The Department is the administrative agency of the state of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 373 and 403, F.S., and the rules promulgated thereunder in Title 62, Florida Administrative Code.

2. On April 29 – April 30, 2014, the Storm struck the Panhandle and Big Bend regions of Florida, producing heavy rainfall in excess of ten inches in some areas. The Storm caused flash flooding and widespread damage that affected the following counties: **Escambia, Santa Rosa, Okaloosa, Walton, and Washington** (collectively, “affected Counties”).

3. On May 2, 2014, the Department entered an Emergency Final Order, in order to address the need for immediate action in the affected Counties created by the Storm. The Emergency Final Order suspended the application of certain statutes and rules as set forth therein so as not to prevent, hinder or delay necessary action in coping with the emergency created by the Storm.

4. On May 30, 2014, the Department entered a First Amended Emergency Final Order which extended the term of the initial Emergency Final Order by 30 days to June 29, 2014, and which required that activities authorized under subsection C.2 of the initial Emergency Final Order be completed by June 29, 2015, rather than April 30, 2015. On April 7, 2015, the Department entered a Final Order extending the date of completion of “No Notice” activities to June 29, 2016.

5. The Emergency Orders referenced herein were intended to address sites damaged by the Storm in the affected Counties, including 85 damaged sites in Escambia County. Sixty-four of the Federal Emergency Management Agency (“FEMA”) projects designed to address the damaged sites in Escambia County have been completed, and twenty-one projects are under construction, or in the bid/design process as of the date of this Order. The remaining twenty-one Escambia County projects have received funding authorization from the FEMA and/or the Natural Resources Conservation Service (“NRCS”) under the Emergency Watershed Program. NRCS requires the projects it funds to be completed by May 24, 2016 and FEMA requires the projects it funds to be completed by various dates; the last project must be completed by January 10, 2017.

6. In order to take advantage of the NRCS and FEMA funding, Escambia County must meet the deadlines set forth in paragraph 5 herein. However, Escambia County experienced an unforeseen delay in initially acquiring funding from NRCS and FEMA. Additionally, requiring Escambia County to strictly adhere to permitting channels set forth in the statutes and rules referenced in the Amended Emergency Final Order and the Final Order issued on April 7, 2015, would further delay the process, thereby jeopardizing the federal funding for the remaining projects and the construction of same. Both NRCS and FEMA have granted extensions for completion of the twenty-one remaining storm specific projects.

CONCLUSIONS OF LAW

7. Based on the findings recited above, it is hereby concluded that this Order is necessary to extend the completion deadline for activities qualifying under the “No Notice Required” provision in section C.2.a of the Amended Emergency Final Order, from June 29, 2016 to June 29, 2017, in order to allow for action by Florida’s citizens and government to continue to repair, replace and restore structures, equipment, surface water management systems, works, and other systems damaged by the Storm.

THEREFORE, IT IS ORDERED:

8. The following definitions apply to activities authorized in paragraph 9 below:

a. The term “structures” includes:

i. Utility infrastructure, including wastewater treatment plants, substations, lift stations, solid and hazardous waste facilities, utility lines (including transmission and distribution), poles, towers, support structures, cables, conduits, outfalls, intake structures, and pipelines;

ii. Roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

iii. Public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bath houses, pools and decks;

iv. Piers (including docks, boardwalks, observation platforms, boat houses, and gazebos), and pilings;

v. Shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters and groins;

vi. Fences, signs and billboards; and

vii. Buoys, navigational aids, and channel markers.

b. The term “drainage systems” includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; underdrains, outfalls, and associated water control structures.

c. The term “water dependent activity” means an activity that can only be conducted in, on, over or adjacent to water areas because the activity requires direct access to the waterbody or state owned submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or state owned submerged lands is an integral part of the activity.

d. The term “completely destroyed” means none of the structure that existed before the Storm remains standing. For example, if at least one piling of a dock or pier remains in place as constructed, then the structure has not been completely destroyed.

9. The following activities are authorized to be conducted under this Order without notification to the Department or the Northwest Florida Water Management District:

a. Temporary and permanent repair or restoration of structures and drainage systems that are not completely destroyed to the conditions, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to the Storm, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, and provided any such structures or drainage systems in, or over state owned submerged lands are water dependent. This may include the use of different construction materials or minor deviations to allow upgrades to current structural and design standards, or to replace a seawall with a rip rap revetment.

b. The restoration (regrading, dredging, or filling) by local, regional, and state governments of upland surfaces, wetlands, and submerged land contours to the conditions

and configurations that were authorized or otherwise legally existing immediately prior to the Storm, provided the restoration does not result in any expansion or addition of land or deepening or waters beyond that which existed immediately prior to the Storm, subject to the following limits:

i. The removal or deepening of plugs formerly separating canals from other waters is specifically not authorized by this Order;

ii. In the case of dredging, all excavated material shall either be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters, or shall be used to restore bottom contours and shorelines to the conditions existing immediately prior to the Storm, subject to (iii) below;

iii. In the case where upland or dredged material is placed in water to restore pre-existing conditions, only clean material (free from debris and pollutants) from the uplands that existed prior to the Storm may be used in the restoration, and no change (from the conditions that legally existed immediately prior to the Storm) in the slope of the land or the type, nature, or configuration of any pre-existing shoreline stabilization materials is authorized (e.g., sloping revetments cannot be replaced with vertical seawalls, and rock rip rap cannot be replaced with interlocking blocks);

iv. Best management practices and devices such as hay bales, mulch, and floating turbidity screens shall be used to prevent violations of state water quality standards for turbidity during the performance of restoration activities, in accordance with the guidelines and specifications in *The Florida Stormwater, Erosion, and Sediment Control Inspector's Manual* (Florida Department of Environmental Protection and Florida Department of Transportation, Sixth Impression, July 2008) <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>, and the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual*

(HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007)

http://www.dot.state.fl.us/construction/Engineers/Environment/PagesErosionSedimentManual_0309.pdf.

Best management practices also shall be used to prevent erosion and retain sediment of all newly established or restored exposed shorelines during and after the restoration activities, which may include methods such as planting of temporary and permanent vegetation and placing of clean natural rock or concrete rubble riprap;

v. Any fill that is deposited to restore a former shoreline, and any riprap that is used to stabilize a shoreline, must not be placed any farther waterward than the toe of slope of the shoreline that legally existed immediately prior to the Storm. If the pre-Storm shoreline was stabilized with a functioning seawall or riprap, the seawall or riprap may be restored at its former location or within 18 inches (or, within an aquatic preserve, one foot) waterward of the location where the seawall or riprap legally existed immediately prior to the Storm, as measured from the face of the existing seawall slab to the face of restored seawall slab or from the front slope of the existing riprap to the front slope of the restored riprap; and

vi. This section shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, except as provided above.

c. Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that have been deposited into waters, wetlands, or uplands by the Storm, where such removal does not result in filling of wetlands or other surface waters, or dredging that creates or expands surface waters. All removed materials must be deposited on self-contained uplands and must be managed in accordance with Department rules or other provisions of the Amended Emergency Final Order.

TERM OF ORDER


This Order shall expire on June 29, 2017, unless extended by the Department.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n), F.S., any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of it under Section 120.68, F.S.. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days of the filing of this Order with the Clerk of the Department.

DONE AND ORDERED on this 14th day of April, 2016, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jonathan P. Steverson, Secretary
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

FILED on this date, pursuant to
§ 120.52 Florida Statutes, with the
designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

Date: 4/14/16