

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
PROTECTION OF MAJOR STRUCTURES
AND FOR OTHER ACTIVITIES SEAWARD
OF THE COASTAL CONSTRUCTION CONTROL
LINE IN ST. JOHNS COUNTY MADE NECESSARY
BY HURRICANE IRMA**

OGC NO. 18-0136

EMERGENCY FINAL ORDER

Under Section 120.569(2)(n), Florida Statutes, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida posed by Hurricane Irma (hereinafter “the Hurricane”).

FINDINGS OF FACT

1. Hurricane Irma made landfall on the State of Florida on September 10, 2017, and caused catastrophic damage across the full width of the peninsula, including catastrophic damage to homes and other structures located on the coast of St. Johns County. The Hurricane caused substantial erosion and damage to the beach system in St. Johns County. As a result, many homes and other major structures are uninhabitable, and are in danger of collapse. A nor'easter and additional storms have exacerbated the erosion and damage increasing the threat to many homes and structures. Sand dunes are continually being eroded from these constant erosion events, resulting in the need for immediate sand placement. The threat of additional storms has the potential to increase that damage and render these properties even more vulnerable to further damage or collapse. Immediate action is warranted to protect coastal homes and structures in St. Johns County, and to undertake other activities seaward of the coastal construction

control line between Department Reference Monuments R-6 and R-117, which shall constitute the area covered by this Emergency Final Order. This area shall herein be referred to as the “Emergency Area.”

2. The Department finds that the Hurricane created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Florida's citizens and government may be necessary to protect coastal structures and homes damaged by the Hurricane, and to conduct other activities seaward of the coastal construction control line.

3. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in sufficiently timely action to address the emergency.

4. The Department finds that immediate, strict compliance with the provisions of the rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally appropriate under the circumstances.

CONCLUSIONS OF LAW

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Hurricane poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

2. Under Sections 120.569(2)(n), Florida Statutes, the Secretary, or designee, of the Department is authorized to issue this Emergency Final Order.

3. Suspension of rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

A. COASTAL ARMORING AND OTHER PROTECTIVE MEASURES FOR MAJOR STRUCTURES LOCATED IN THE EMERGENCY AREA:

The following rules are waived for major structures that have become vulnerable as defined in subsection 62B33.002(63), Florida Administrative Code (F.A.C.), as a result of the Hurricane and that are located within the Emergency Area (regardless of the location of such a major structure relative to the Coastal Construction Control Line specified in Rule 62B-26.019, F.A.C.):

1. Rules 62B-33.002(17)(b)1.; 62B-33.002(43) and 62B-33.0051(1)(a)1., F.A.C., requiring that a structure be “eligible” in order to apply for a permit for coastal armoring;

2. Rule 62B-33.0085, F.A.C.; regarding payment of fees for processing an application for new permits, permit modifications, permit renewals, and permit extensions for coastal armoring.

3. **For temporary emergency armoring only**, Rule 62B-33.008(3)(d), F.A.C., requiring that a permit application include “written evidence, provided by the appropriate local governmental entity having jurisdiction over the activity, that the proposed activity, as submitted to the Department, does not contravene local setback requirements or zoning codes.” This waiver does not relieve a permit applicant from the need to obtain any required applicable Federal, state, or local permit or authorization for the proposed activity, it merely waives the requirement that permit applicants provide written evidence, from the local government, of the activity’s compliance to the Department for temporary emergency armoring.

4. Rules 62B-56.130(1) and (2)(a), F.A.C., regarding payment of fees for construction permits for sand-filled geotextile dune cores.

Further, any Petition filed under the provisions of Section 120.542, F.S., but not yet acted on by the Department, for waiver of the requirements set forth in 1., above, for structures located in the Emergency Area, are rendered moot by the provisions of this Emergency Final Order, and those petitioners may proceed with a permit application for coastal armoring or related structure under Rule 62B-33.0051, F.A.C.

This Emergency Final Order does not waive the requirement to obtain a permit under Rule 62B-33.0051 or Rules 62B-56.030 and .050, F.A.C., as applicable. The Department intends to expedite issuance of such permits in the Emergency Area upon receipt of a complete application. Permits for coastal armoring or for installation of a sand-filled geotextile dune core seeking relief as specified above must be applied for by no later than the expiration of this Order, unless this Order is modified or extended. Permits to keep in place temporary armoring under local permits issued by St. Johns County under Department Emergency Final Order No. 17-0989, must be submitted to the Department within 60 days of installation.

B. OTHER COASTAL CONSTRUCTION CONTROL LINE ACTIVITIES WITHIN THE EMERGENCY AREA:

This section applies to activities conducted within the Emergency Area seaward of the CCCL as established by Chapter 62B-26, Florida Administrative Code. Emergency Permits may be issued by the Division of Water Resource Management (Division) pursuant to Rule 62B-33.014, Florida Administrative Code. A list of activities seaward of the CCCL that are exempt from CCCL permitting requirements is contained in Rule 62B-33.004, Florida Administrative Code, and Section 161.053(11), Florida Statutes. The Division has developed a Public Information Handout to provide property owners with a concise explanation of activities that are authorized seaward of the CCCL in this Order. To obtain a copy please visit the "hot topics" section of the Division's web-site at

<https://floridadep.gov/water/beaches>. You may also contact the Division directly by mail at 2600 Blair Stone Road, Mail Station #3522, Tallahassee, Florida 32399-3000 or by phone at 850/245-8336.

This Order does not authorize the construction of permanent structures that did not exist prior to the emergency, nor does it authorize beach scraping performed by itself or in association with any other activities. In addition, activities that extend onto state owned lands of Florida seaward of the mean high-water line that would typically require a permit pursuant to Sections 161.041 and/or 161.055, Florida Statutes, (i.e., regulated under the Joint Coastal Permit program (JCP)) are not authorized under this Order.

1. Activities Undertaken by Local Governments, the Department's Division of Recreation and Parks, Department of Transportation and Utility Companies

The following activities may be undertaken by local governments, the Department's Division of Recreation and Parks, the Florida Department of Transportation, and utility companies to protect, repair, or replace structures and property without notice to the Department or a water management district, subject to the limitations below. Work performed under this Section of this Order must be complete by October 4, 2018.

(a) Removal of Hurricane-generated debris. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site. To prevent debris from becoming buried, all Hurricane-generated debris shall be removed prior to conducting any fill activities.

(b) The repair of the following public facilities: utilities, roads, beach access ramps, and dune walkover structures (see guidelines for construction of dune walkovers at <http://www.dep.state.fl.us/beaches/publications/pdf/wlkovrgl06.pdf>).

(c) Return of sand to the beach and dune system that has been deposited upland by the Hurricane, and restoration of a damaged dune system using beach compatible sand from an upland source. The fill material shall not cover any Hurricane-generated debris or construction debris. All fill material shall be sand that is similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay or other foreign matter. No sand may be obtained from the beach, near shore, or below the mean high water line seaward of the CCCL without specific written authorization from the Department.

2. Activities Requiring Local Authorization

Local governments are authorized to issue permits in lieu of Department permits to private and public property owners for the activities listed below. Local governments shall notify the Department in writing within three (3) working days of permits issued under this section. Work authorized by the local government must be complete within 90 days of the expiration of this Order.

(a) Temporary or remedial activities that are necessary to secure structures to remove safety hazards and prevent further damage or collapse of foundations.

(b) Temporary armoring such as wooden retaining walls, cantilever sheetpile walls (without concrete caps, tiebacks, or other reinforcement), sandbags less than 100 lbs. filled bag, or similar structures. Temporary armoring must be removed within 60 days of installation or the individual must seek authorization from the Department to keep the temporary armoring in place. No sand may be obtained from the beach, near shore, or below mean high water seaward of the CCCL to fill sandbags without specific written authorization from the Department.

Pursuant to Section 161.085(3), Florida Statutes, this Order does not authorize local governments to permit geotextile containers as the core of a reconstructed dune for the purposes of temporary armoring.

(c) Repair or replacement of minor ancillary structures (such as stairs, landings, and HVAC platforms) and service utilities that are associated with the existing habitable structure. The repair of minor ancillary structures or service utilities shall not exceed the size of the original structure or service utility damaged or destroyed by the Hurricane. Repair of surviving beach/dune walkovers is authorized provided the structure is substantially intact and the repair adjusts the seaward terminus of the walkover to accommodate changes in the shoreline topography and native salt-resistant vegetation patterns. Viewing platforms as part of the walkovers may not be included seaward of the surviving or post-Hurricane rebuilt dune system or sandy beach.

(d) Permanent repair of foundations for buildings that have not been substantially damaged.

(e) The replacement or repair of caps and anchoring systems (or tiebacks), for seawalls or bulkheads.

3. Other Activities

(a) Actions taken by local governments, the Department's Division of Recreation and Parks, the Department of Transportation and utility companies under Section B. of this Order do not require additional permits from the Department.

(b) Section B. of this Order does not authorize the following activities:

(1) Permanent repair of foundations of major structures which have been substantially damaged;

(2) Rebuilding of or substantial improvements to major structures;

(3) The repair or reconstruction of coastal or shore protection structures except as specified;

(4) Replacement of walkover structures not meeting the criteria of Subsection B.2(c), retaining walls, decks, gazebos and other similar structures;

(5) Local governments to install or permit geotextile containers as the core of a reconstructed dune for the purposes of temporary armoring; or

(6) Excavation of the beach face, near shore, or below the mean high water line.

(c) Activities not covered by Section B. of this Order may require a permit from the Department under Section 161.053, Florida Statutes and Chapters 62B-33, 62B-34, or 62B-56, Florida Administrative Code. For more information, please visit the Division's web-site at <https://floridadep.gov/water/beaches> or contact the Division of Water Resource Management by mail at 2600 Blair Stone Road, Mail Station #3522, Tallahassee, Florida 32399-3000 or by phone at 850/245-8336.

C. SAND PLACEMENT IN EMERGENCY AREA WITHOUT NOTICE TO THE DEPARTMENT

In the Emergency Area, any person may return sand to the beach and dune system that has been deposited upland by the Hurricane or restore a damaged dune system using beach compatible sand from an upland source to protect structures or property without notice to the Department or a water management district, subject to the following limitations.

1. Work performed under this subsection must be complete by expiration date of this Order.

2. The fill material shall not cover any Hurricane-generated debris or construction debris.

3. All fill material shall be sand that is similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay or other foreign matter.

4. All fill material which is imported to the site from landward of the CCCL shall be obtained from a source approved by the Department. Alternatively, if the sand is not obtained from a source approved by the Department, the imported sand shall be certified by a licensed professional to meet the standards contained within this order.

5. No sand may be obtained from the beach, near shore, or below the mean high-water line seaward of the CCCL without specific written authorization from the Department.

6. No sand shall be placed below the mean high-water line seaward of the CCCL without specific written authorization from the Department.

7. Return of sand to the beach dune system which has been deposited upland by the Hurricane. The recovered fill material shall be free of debris and other foreign matter, and shall not cover any Hurricane-generated debris or construction debris.

D. GENERAL PROVISIONS

1. General Limitations

The Department issues this Emergency Final Order solely to address the emergency created by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

2. Suspension of Rules

Within the Emergency Area, the requirements and effects of rules which conflict with the provisions of this Order are suspended to the extent necessary to implement this Order.

3. Other Authorizations Required

This Order only provides relief from the specific regulatory requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of Chapter 471, Florida Statutes, regarding professional engineering.

Activities subject to Federal consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict conformance with this Order.

4. Expiration Date

This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, or designee, and shall expire on March 29, 2018, unless modified or extended by further order.

5. Violation of Conditions of Emergency Final Order

Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n), Florida Statutes, 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, Florida Statutes. 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, Mail Station 35, 3900 Commonwealth Boulevard, 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 thirty days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 27th day of February 2018, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



For

Noah Valenstein, Secretary
3900 Commonwealth Blvd
Tallahassee, FL 32399-3000

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

Hea Crandall
CLERK

2-27-18
DATE