

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
PLACEMENT OF SAND SEAWARD OF THE
COASTAL CONSTRUCTION CONTROL LINE
IN ST. JOHNS COUNTY MADE NECESSARY
BY HURRICANE IRMA**

OGC NO. 18-0174

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 to prevent further damage to structures. The threat of additional storms has the potential to increase that damage and erosion. Immediate action is warranted to protect coastal homes and structures in St. Johns County, and to place sand 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 from further damaged and to place sand 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. 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.

B. 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 April 28, 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 29th day of March 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.



CLERK

3-29-18

DATE