

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In re:**

**EMERGENCY AUTHORIZATION FOR  
CONTINUED REPAIR AND REPLACEMENT  
OF ALLIGATOR DRIVE IN FRANKLIN COUNTY  
MADE NECESSARY BY HURRICANE MICHAEL**

**OGC NO. 19-1780**

**SECOND EMERGENCY FINAL ORDER**

Under Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, and upon consideration of the State of Florida Executive Order No. 18-276, as subsequently amended and extended, 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 Michael (hereinafter "the Hurricane").

**FINDINGS OF FACT**

1. The Hurricane made landfall on the State of Florida on October 10, 2018, and caused catastrophic damage across the Florida Panhandle, including catastrophic damage to homes and other structures located on Alligator Point in Franklin County. The Hurricane caused substantial erosion and damage to the beach and dune system at Alligator Point, Franklin County, and the sole evacuation route from the area, Alligator Drive. Franklin County began work on replacing Alligator Drive under the emergency provisions of Department Emergency Final Orders No. 18-1335 and 18-1334 ("EFO"), as extended and amended; however, due to a number of factors, including delays in FEMA funding and the additional devastating effects of Tropical Storm Nestor on the evacuation route in October of 2019, work cannot be completed by April 2, 2020, as required by the EFO. Franklin County

Public Works has advised the Department that additional time is needed to finish the Alligator Drive work.

2. By State of Florida Executive Order No. 18-276, as subsequently amended and extended, the Governor declared that a state of emergency existed throughout the State of Florida, based upon the serious threat to the public health, safety and welfare posed by the Hurricane.

3. The Department finds that the Hurricane created a state of emergency threatening the public health, safety, and welfare in Alligator Point, Franklin County, which continues to this date and will continue past April 2, 2020. As a result of the emergency, continued action by Franklin County to repair and replace specific sections of Alligator Drive is necessary to provide ingress and egress from Alligator Point, including evacuation of the area from future coastal storms.

4. 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.

5. The Department finds that immediate, strict compliance with the provisions of the statutes, 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 continues to pose an immediate danger to the public

health, safety, or welfare of the citizens of Franklin County and requires an immediate order of the Department.

2. Under State of Florida Executive Order Nos. 18-276, 8-276, 18-277, 18-360, 19-33, 19-98, 19-134, 19-176, 19-207, 19-261, 20-23, Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, the Secretary, or designee, of the Department is authorized to issue this Emergency Final Order.

3. Suspension of statutes and 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.** The following statutes and rules are waived in order to allow Franklin County to continue work on Alligator Drive under the provisions of this Emergency Final Order:

1. Section 161.053(5)(b), Florida Statutes.
2. Rule 62B-33.005, Florida Administrative Code, which establishes certain criteria for individual permits.
3. Work performed under this Emergency Final Order must be complete within one year of the effective date of this Order.

**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 Statutes and Rules**

Within Alligator Point, Franklin County, and for the sole purposes stated herein, the requirements and effects of statutes and 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 and proprietary 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, or other applicable rules of the Department. 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 24, 2020, 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 24<sup>th</sup> day of January 2020, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

  
\_\_\_\_\_  
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

1-24-2020  
DATE