

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
REPAIRS, REPLACEMENT,
RESTORATION, AND CERTAIN
OTHER MEASURES MADE NECESSARY
BY HURRICANE SALLY**

OGC NO. 21-0328

EMERGENCY FINAL ORDER

The State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order (Order), including Findings of Fact and Conclusions of Law, in response to the imminent and immediate danger to the public health, safety, and welfare of the citizens of the State of Florida caused by Hurricane Sally (hereinafter “the Hurricane”).

FINDINGS OF FACT

1. On September 14, 2020, the National Hurricane Center reported that Tropical Storm Sally strengthened into a Category 1 hurricane. The National Hurricane Center reported that Hurricane Sally had maximum sustained winds of 100 miles per hour. The Hurricane made landfall on September 16, 2020, with hurricane conditions in Northwest Florida. The Hurricane caused dangerous storm surge, heavy rainfall, severe flash flooding, strong winds, hazardous seas, and the potential for isolated tornado activity in portions of Northwest Florida. The effects of the Hurricane pose a threat to the health, safety, and welfare to the communities, infrastructure, and citizens of the State of Florida. This Hurricane requires timely precautions to protect communities, critical infrastructure, and the general welfare of the State of Florida. The Hurricane caused widespread damage within the following locations: Escambia, Okaloosa, Santa Rosa, and Walton

Counties, which shall constitute the specific area covered by this Order. This area shall herein be referred to as the “Emergency Area.”

2. By State of Florida Executive Order Nos. 20-224, 20-225, 20-248, 20-279, 21-10, and 21-64 the Governor declared that a state of emergency exists in Escambia Okaloosa, Santa Rosa, and Walton Counties based upon the serious threat to the public health, safety, and welfare posed by the Hurricane.

3. The Department finds that the effects of the Hurricane create a state of emergency posing an imminent danger to 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 repair, replace, and restore structures, equipment, surface water management systems, works, and other systems damaged by the Hurricane.

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 poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

2. Under State of Florida Executive Order Nos. 20-224, 20-225, 20-248, 20-279, 21-10, 21-64 and Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, the Secretary or designee of the Department is authorized to issue this 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. WATER RESOURCE MANAGEMENT, RESILIENCY, AND COASTAL PROTECTION

Within the Emergency Area:

1. Definitions

The following definitions apply to activities authorized under Section C of this Order:

- a. For purposes of subsection A.2. of this Order, the term “structures” includes:
 - (1) 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;
 - (2) roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

(3) public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bathhouses, pools, and decks;

(4) piers (including docks, boardwalks, observation platforms, boathouses and gazebos) and pilings;

(5) shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters, and groins;

(6) fences, signs, and billboards; and

(7) buoys, navigational aids, and channel markers.

b. For purposes of subsection A.2. of this Order, 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. For purposes of subsections A.2 of this Order, 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. For purposes of subsections A.2 of this Order, the term "completely destroyed" means none of the structure that existed before the Hurricane 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.

e. For purposes of this Order, the term “water management districts” shall mean the Northwest Florida, St. Johns River, Suwannee River, Southwest Florida, and South Florida Water Management Districts, as they are affected within the Emergency Area.

2. Environmental Resource, Dredge and Fill, and Surface Water Management Activities

This subsection applies to activities located in uplands and waters of the state, including wetlands, but excludes activities located along the sandy beaches or inlets fronting the Atlantic Ocean and the Gulf of Mexico seaward of the Coastal Construction Control Line (CCCL) in counties where a CCCL has been established. The public is advised that Sections 403.813(1)(b), (d), (e), (f), (g), (h), (j), (l), (n), (p), or (t), Florida Statutes, and the corresponding rule exemptions of the Department and water management districts authorize certain repair, restoration, and replacement activities, provided the terms, conditions, and limitations of the exemptions are followed. Such activities located in, on, or over state owned submerged lands that do not qualify for consent by rule under Rule 18-21.005(1)(b), Florida Administrative Code, are hereby granted a Letter of Consent under Rule 18-21.005(1)(c), Florida Administrative Code, provided all the terms and conditions of those rules are met (including certain restrictions for activities performed within aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f), Florida Administrative Code, must obtain the applicable state owned submerged lands easement under Chapter 18-21, Florida Administrative Code, within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions. The following activities

are authorized to be undertaken in the Emergency Area to repair, restore, or replace structures, land, and submerged contours to the conditions that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, subject to the limitations in this Order. However, this Order does not authorize the construction of structures that did not exist prior to the emergency unless specifically authorized below.

a. No Notice Required

The following activities are authorized to be conducted under this Order without notification to the Department or water management district:

(1) 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 Hurricane, 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, on, 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.

(2) The restoration (regrading, dredging, or filling) by local, regional, state, and federal 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 Hurricane, provided the restoration does not result in any

expansion or addition of land or deepening of waters beyond that which existed immediately prior to the Hurricane, subject to the following limits:

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

(b) 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 Hurricane, subject to subparagraph A.2.a.(c) of this Order;

(c) 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 Hurricane may be used in the restoration, and no change (from the conditions that legally existed immediately prior to the Hurricane) 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 riprap cannot be replaced with interlocking blocks);

(d) Best management practices and devices 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 Sedimentation Control Inspectors Manual (Florida Department of Environmental Protection July 2018) <https://floridadep.gov/dear/florida-stormwater-erosion>, and the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Transportation and Florida Department of Environmental

Protection July 2013) <https://www.flrules.org/Gateway/reference.asp?No=Ref-04227>.

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;

(e) 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 Hurricane. If the pre-Hurricane shoreline was stabilized with a functioning seawall or riprap, the seawall or riprap may be restored at its former location or within 18 inches waterward of the location where the seawall or riprap legally existed immediately prior to the Hurricane, 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

(f) This section (A.2.a.(2)) shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, except as provided herein.

(3) Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that have been deposited into waters, wetlands, or uplands by the Hurricane, 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 provisions of this Order.

b. Field and Individual Authorization Required

(1) Field authorizations may be issued following a site inspection by Department or water management district personnel to restore structures and property to authorized or otherwise legally existing conditions that existed immediately prior to the Hurricane, to recover property, protect property from further damage, maintain navigation or protect public health, safety, and welfare, when such activities are not otherwise authorized by statutory or rule exemptions or under paragraph A.2.a of this Order. Specifically, field authorizations may be issued for:

(a) Activities including the replacement of structures that are completely destroyed;

(b) Activities on state-owned submerged lands that are not water dependent, except those structures or activities that are authorized in a valid current sovereign submerged lands lease with the Department;

(c) Restoration (regrading, dredging, or filling) of the contours of uplands, wetlands, and submerged bottoms by parties other than local, regional, state, or federal governments;

(d) Trimming or alteration of mangroves that threaten public health, safety, welfare or property, or that currently interfere with navigation;

(e) Removal of debris, including sunken or grounded vessels, vegetation, and structural remains, that has been deposited into waters, wetlands, or uplands by the Hurricane, the removal of which **requires** filling of wetlands or other surface waters, or dredging that creates or expands wetlands or other surface waters. Any wetlands or other surface waters that are dredged or filled to affect such removal must be restored to the contours and conditions that existed before the Hurricane; and

(f) Other activities determined by Department or water management district personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

(2) Field authorizations to replace structures shall not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards, including building codes, or to a more environmentally compatible design, as determined by the Department or water management district, than existed immediately prior to the Hurricane.

(3) Field authorizations may be requested by providing a notice to the local office of the Department or water management district containing a description of the work requested, the location of the work, and the name, address, and telephone number of the owner or representative of the owner who may be contacted concerning the work. Field authorizations also may be issued by Department or water management district personnel without prior notice. Field authorizations may not be issued unless requested on or before the expiration date of this Order, unless that date is modified or extended by further order. Written records of all field authorizations shall be created and maintained by Department and water management district personnel. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Field authorizations issued prior to the effective date of this Order remain in effect for the duration specified in the field authorization but may be extended through written modification by the Department or water management district in accordance with the provisions of paragraph A.3.h. of this Order. Failure to comply with the conditions of

the field authorization may result in enforcement actions by the Department or water management district.

3. General Conditions

a. All activities conducted under subsections A.2. of this Order shall be performed using appropriate best management practices. For activities conducted in, or discharging to, wetlands or other surface waters, best management practices include properly installed and maintained erosion and turbidity control devices to prevent erosion and shoaling, control turbidity, and prevent violations of state water quality standards and protect the functions provided by wetlands and other surface waters to fish, wildlife, and listed species.

b. The authorizations in subsections A.2. of this Order shall not apply to structures and associated activities that were not legally existing or otherwise properly authorized by all applicable agencies before the passage of the Hurricane.

c. Applicable environmental resource, surface water management, dredge and fill, JCP, or CCCL permits shall be required following provisions of statute and rule for other activities not authorized in this Order that do not otherwise qualify as an exempt activity under statute or rule.

d. The nature, timing, and sequence of construction authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, dune features, native salt-resistant vegetation, and listed species and their habitat, including threatened or endangered sea turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds.

e. Nothing in this Order authorizes the taking, attempted taking, pursuing, harassing, capturing or killing of any species (or the nests or eggs of any species) listed under Rule 68A-27, Florida Administrative Code, or the federal Endangered Species Act.

f. Persons are advised that all structures that are rebuilt under subsection A.2. of this Order should be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Agency.

g. It is recommended that, where possible, owners of property should maintain documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities authorized under this Order and should provide such documentation to the Department if requested to do so.

h. Activities authorized under subsection A. 2. of this Order must be completed as follows:

(1) Within one year from issuance of this Order, for activities that qualify under the No Notice provisions of paragraph A.2.a. of this Order;

(2) By the date specified in the field authorization for activities that qualify under the provisions of subparagraph A.2.b.(1) of this Order. However, the deadline for completing such activities may be extended if a written request with accompanying documentation as described below is submitted by the person(s) authorized in the field authorization and received by the District Office of the Department that issued the field authorization at least 30 days prior to expiration of the field authorization. Such request must be accompanied by a statement that contractors or supplies are not available to complete the work, or that additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers. Such permittee should maintain a list of

contractors that have been contacted and a record of supplies that are on backorder as needed to demonstrate compliance with this provision.

4. Authorization to Use State-Owned Submerged Lands

The Department has been delegated by the Board of Trustees of the Internal Improvement Trust Fund the authority to grant the following authorizations to use state-owned submerged lands, that is, lands lying waterward of the line of mean high water, erosion control line or ordinary high water line, in association with the structure or activity subject to repair, restoration, removal, or replacement authorized in this section.

a. Except as provided in paragraphs A.3.b., A.3.c., and A.3.d. of this Order, and subsection B.1. of this Order, activities authorized under this Order involving the repair, replacement, or restoration of the activities and structures, and the removal of debris located on submerged lands owned by the state that do not qualify for consent by Rule 18-21.005(1)(b), Florida Administrative Code, are hereby granted a Letter of Consent under Rule 18-21.005(1)(c), Florida Administrative Code, provided:

(1) Such repair, restoration, replacement, or removal is conducted in accordance with the terms, conditions, and limitations of this Order;

(2) The structure or activity subject to repair, restoration, or replacement was authorized by the Board of Trustees of the Internal Improvement Trust Fund prior to the Hurricane, or was otherwise legally existing immediately prior to the Hurricane;

(3) The activities are conducted solely to repair, restore, or replace structures or land that was damaged by the Hurricane, or to remove debris resulting solely from the Hurricane; and

(4) The structures and activities are repaired, restored, or replaced in the same location and configuration as was authorized by the Board of Trustees of the Internal Improvement Trust Fund or which otherwise legally existed immediately prior to the Hurricane.

(5) All the terms and conditions of Rule 18-21.005(1)(b) or 18-21.005(1)(c), Florida Administrative Code, as applicable, are met (including certain restrictions for activities performed within aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f), Florida Administrative Code, must obtain the applicable state-owned submerged lands easement under Chapter 18-21, Florida Administrative Code, within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions.

b. Non-water dependent structures that are authorized in a current sovereign submerged lands lease with the Department are not authorized to be repaired, restored, or replaced when more than 50 percent of the structure or activity is lost (based on the cost to repair, restore, or replace the structure or activity);

c. Water-dependent structures that were legally existing immediately before the Hurricane but not in conformance with the current criteria of Chapters 18-18, 18-20, or 18-21, Florida Administrative Code, as applicable, may be repaired, restored, or replaced to the footprint that existed immediately before the Hurricane, but shall, to the greatest extent practicable, be repaired, restored, or replaced to meet the current criteria of Chapters 18-18, 18-20, and 18-21, Florida Administrative Code, as applicable, with respect to design features such as the elevation of decking surfaces and the spacing of deck planking.

d. This Order does not authorize the reconstruction or repair of unauthorized structures.

5. Suspension of Fees

For those activities noted above, subject to the limitations, duration, and other provisions of this Order, the following application fee, base fee, and minimal annual lease fee requirements of Sections 373.109, Florida Statutes, and Chapters 18-21, and 62-4, Florida Administrative Code, shall be suspended as follows:

a. For structures and activities authorized under paragraphs A.2.a. of this Order, the lessee may submit a written request to the Division of State Lands, by mail at 3900 Commonwealth Boulevard, Mail Station 130, Tallahassee, Florida 32399-3000, to waive applicable lease fees. In such cases, the owner must identify and document (such as with currently-dated photographs) the area (in square feet) of the structure or facility that is no longer useable. When such documentation is received, and deemed sufficient, lease fees will be waived, but only for that portion of the structure that is no longer useable.

b. When the restoration or replacement of individual structures (such as a dock or pier) or entire facilities (such as marinas) on state-owned submerged lands that are completely destroyed is authorized by a field authorization under paragraph A.2.b. of this Order, applicable lease fees will be waived for the duration described in paragraph A.9.c of this Order.

c. Lease fees that are waived under paragraphs A.5.a. or A.5.b. of this Order will be waived only for the duration of this Order (including subsequent extensions thereto) unless otherwise provided in a field authorization issued under paragraph A.2.b. of this

Order, or until the repairs, restoration or replacement commences, whichever is earlier. The duration of the waiver of suspension of lease fees may be extended beyond the duration of this Order (including subsequent extensions thereto) or beyond the date specified in a field authorization issued under paragraph A.2.b of this Order, upon a written request by the lessee to extend the waiver of the lease fees. Such request must be received by the Division of State Lands before the expiration of this Order (or extensions thereto) or before the date specified in the field authorization (whichever date is later), and must be accompanied by a signed statement that construction has not yet commenced because contractors or supplies are not available to commence the necessary repairs, restoration or replacement, or because additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers or local government. Such request for extension of the waiver of lease fees must also contain a reasonable schedule for when repair, restoration, or replacement will commence.

d. In all cases where lease fees are waived under paragraph a. above, the lessee must notify the Division of State Lands, at the address stated in paragraph A.5.a. of this Order, of the time repair, restoration, or replacement construction commenced.

B. GENERAL PROVISIONS

1. General Limitations

The Department issues this 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 the Emergency Area, 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.

To the extent that any requirement to obtain a permit, lease, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, lease, consent of use or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this Order.

3. Review of Requests for Field Authorizations

It is the intent of the Department to act on requests for field authorizations in a timely and expeditious manner. The Department may require the submission of additional information as is necessary.

4. 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 district or 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.

5. Expiration Date

This Order shall take effect immediately upon execution by the Secretary of the Department, or designee, and shall expire on May 9, 2021, unless modified or extended by further order.

6. 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 253 and 373, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

7. Applicability to Delegated Programs

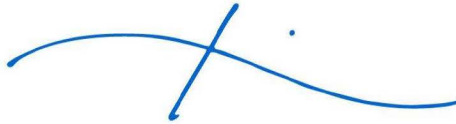
The provisions of this Order apply in those cases where a water management district, local government, or other entity is acting for the Department in accordance with a delegation agreement, operating agreement, or contract. Such water management district, local government, or other entity shall comply with the terms of this Order to the extent that it is acting as an agent of the Department. This Order does not apply in those cases where a water management district, local government, or other entity is acting under its own independent authority.

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 by mail at 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 after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 30th day of March 2021, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Noah Valenstein, Secretary
3900 Commonwealth Boulevard
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

March 30, 2021

DATE